WEEK 3:
Introduction to Civil Litigation

Scope of Civil Litigation

It is Adjectival Law comprised of:

1. The procedural aspect, and
2. Evidential aspect.

DISPUTE RESOLUTION MECHANISMS

1. Litigation
2. Mini trial
3. Private judging
4. Early neutral evaluation
5. **Arbitration**
6. **Conciliation**
7. **Negotiation**
8. **Mediation**
9. Hybrids-Med – Arb, Arb – Med, Arb-Lit, Con-Lit
10. Facilitation

TYPES

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.

MEDIATION: This involves a neutral third party who facilitates a negotiation between two disputing parties to reach an agreement. This ADR method is usually chosen where there is a need to preserve a relationship e.g. in family matters.

CONCILIATION: 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.

ARBITRATION: This is a method of setting dispute through an impartial third party or parties called Arbitrator. The Award is binding on the parties when they agree to that**. Section 5 Arbitration Act.** This provides for stay of proceeding in court where there is an arbitration clause in an agreement.

ENFORCEMENT: An agreement reached during mediation is enforceable if the terms of settlement **are REDUCED INTO WRITING, SIGNED BY THE PARTIES and WITNESSED BY THEIR COUNSEL.**

The terms of settlement will thereafter be filed in court and made a judgment of the court in form of a consent judgment.

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

ADR mechanisms are not applicable to the following matters:

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

Sources of Civil Litigation Law

1. Rules of the Courts, e.g. (Supreme Court Rules; Court of Appeal Rules; Federal High Court Rules, High Court Rules, High Court of Lagos (Civil Procedure) Rules 2012) - Each court has its own set of rules which are usually made by the authorities prescribed by the statutes or law establishing the court
2. Constitution of the Federal Republic of Nigeria, 1999. The constitution is the enabling law for some of the procedural rules of court e.g. the Fundamental Right (Enforcement Procedure) Rules 2009, which was made by the Chief Justice of Nigeria.

3. Various Legislations on Courts (Supreme Court Act, Court of Appeal Act, Federal High Court Act, High Court Act, etc). **Statutes Creating Courts: Section 8(2) Court of Appeal Act** confers power on the appropriate authority to make rules for the C. of A; **Section 7 of the Supreme Court Act; and section 25 of C. of A. Act** provides for filing of notice of appeal.
4. Decisions of Superior Courts on procedure e.g. **Kotoye v CBN; Craig v Craig**
5. Practice Direction made under the Rules of Court. This is a direction given by an appropriate authority. It is not an enactment thus have no force of law **EXCEPT election matters.**
6. Other special statutes touching on civil procedure. There are provisions in other statutes that deal with procedure in some specific matters not conversely provided by the various rules of court. Examples of such statutes are:
   (a) The Sheriffs and Civil Process Act/Law and the Judgment (Enforcement) Rules
   (b) The Evidence Act 2011,
   (c) **The Admiralty Jurisdiction Act 1991 Cap A5 LFN 2004**
   (d) **Matrimonial Causes Act and Rules**
   (e) **Electoral Act and rules**
   (f) Foreign judgment (reciprocal enforcement) Act 1961 Cap F35 LFN.
   (g) Companies and Allied Matters Act Cap C20 LFN.
      - **Companies winding up rules 2001**
      - **Companies proceedings rules 1992 (as amended)**

CONFLICT BETWEEN VARIOUS SOURCES OF LAW

- Conflict between CFRN and ANY OTHER LAW-CONSTITUTION PREVAILS-**S.1(3) CFRN 1999**
- Procedural provisions in statutes take precedence over rules of courts
- Where there is a conflict between a practice direction and a rule, the rule of court prevails -**UNILAG V. AIGORO**

OPTION OPEN TO THE COURT WHEN THERE IS A LACUNA IN RULES OF COURT

The court can adopt any procedure that will ensure substantial justice btw the parties concerned-

Section 1(2) High Court of the FCT, Abuja Civil Procedure Rules 2004
Order 1 Rule 1(3) High Court of Lagos State (Civil Procedure) Rules 2012

THE AIM OF RULES OF COURT

a. To achieve order and speed in the dispensation of justice:
b. To guide litigants' steps from commencement to judgment
c. To reduce time and cost of litigation

SCOPE AND APPLICATION OF RULES OF COURT

1. Regulates matters of practice and procedure
2. Regulates conduct of various civil proceedings and modes of commencement

3. Regulates modes of instituting civil proceedings and conduct of interlocutory applications
4. Regulates enforcement of orders and judgment

TABLE OF VARIOUS RULES OF COURTS AND ENABLING SECTIONS

	Court	Rules	Sources	Enabling Section
1.	Supreme Court	Supreme Court Rules 1985	CJN	S. 23
2.	Court of Appeal	Court of Appeal Rules 2011	President CA	S. 245
3.	High Court	HCCPR of Lagos 2012	Chief Judge Lagos	S. 274
4.	High Court FCT	HCCPR of Abuja 2004	CJ FCT High Court	S. 25
5.	Federal High Court	Federal High Court Rules 2009	Chief Judge FHC	S. 254
6.	N.I.C	N.I.C Rules 2007	President NIC	S. 254
7.	Customary Ct of A	Customary Court of Appeal Rules	President CCA	S. 284
8.	CCA FCT	Customary Court of Appeal Rules of FCT	President CCA FCT	S. 269
9.	Sharia Court of Appeal	Sharia Court of Appeal Rules	Grand Kadi SCA	S. 279
10.	SCA FCT	Sharia Court of Appeal FCT Rules	Grand Kadi FCT SCA	S. 26.4
11.	Magistrate Court	Magistrate Court Rules Lagos 2009	J . Lagos High Court	
12.	District Court	District Court Rules FCT 1990	(J. FCT High Court)	
13.	Customary Court	Customary Court Rules	(J High Court)	Area Court
14.	AREA COURT	Area Court Act Amendment 2010	Grand Kadi	S. 490

Sources of Law generally are:

1. Nigerian Legislations
2. Nigerian case Law
3. Received English Law
4. Customary Law
5. Islamic Law

Hierarchy of Courts

1. Supreme Court
2. Court of Appeal
3. Federal High Court, High Court of the States and the FCT, Sharia Court of Appeal, Customary Court of Appeal, National Industrial Court
4. Magistrate Court, Upper Area Court
5. Area Court Grades, Sharia Court and Customary Courts

Jurisdiction of the Courts

Jurisdiction is the power of a Court to decide or sit over a matter, which is fundamental. See **MADUKOLU V. NKEMDILIM**

Lack of it could be raised at any time in trial, and the trial no matter how well conducted will be a nullity: **ANIH V. NNA**

CONDITIONS FOR EXERCISE OF JURISDICTION BY A COURT

a. The Court must be properly constituted (this is with respect to the number of Judges sitting and their qualification).
b. The subject matter of the case must be within the jurisdiction of the court.
c. The matter must have come to the court initiated by due process.

MADUKOLU v. NKEMDILIM (SC)

WHEN CAN JURISDICTION BE RAISED

- This depends on the type of jurisdiction-**SUBSTANTIVE JURISDICTION** could be raised at any time even on appeal at the Supreme Court. While **PROCEDURAL JURISDICTION** must be raised timeously and contained in the PLEADINGS OTHERWISE they are **DEEMED WAIVED** and cannot be raised on appeal.

Types of Jurisdiction

It may be:

1. Substantive jurisdiction. This is statutorily provided for and it is divided into:
    a. Subject-matter
    b. Territorial jurisdiction

These could be raised at any time even on appeal at the Supreme Court

2. Procedural jurisdiction, e.g. pre-action notices, matters statute-barred or res judicata (finality of judgment). Any of these must be raised timeously and contained in the pleadings otherwise they are deemed waived and cannot be raised on appeal.

FACTORS DETERMINING JURISDICTION OF A COURT

1. Nature and subject matter of dispute
2. Parties
3. Mode of commencement of action
4. Geographical area
5. Presence of any legal requirements or condition precedents
6. Constitutional provision

TERRITORIAL JURISDICTION OF Federal High Ct AND State High Ct

NR=> The **Federal High Court is only one**. It has one jurisdiction but with various divisions.

For administrative convenience, parties are advised to institute actions in divisions where the contract took place or where the subject – matter is situated. **ABIOLA V. FRN**

NB =>**The State High Court has one territorial jurisdiction** i.e. one SHC in each state. However, there may be various divisions of the SHC in a state. For administrative convenience parties are advised to institute their actions in the divisions where the cause of action arose.

CASES INSTITUTED IN WRONG JUDICIAL DIVISIONS MAY BE TRANSFERRED- Order 9 Rule 6(HCCPR ABJ);

Order 2 Rule 5(HCPR -LAGOS) – can be transferred unless the Chief Judge directs otherwise.

Supreme Court

- Composition: it is composed of the Chief Justice of Nigeria and not more than 21 Justices, as may be prescribed by an Act of the National Assembly: **s.230 (2) CFRN 1999.**
- Constitution: at least 5 justices on Appeals from the Court of Appeal while not less than 7 Justices will sit on the following matters (Original jurisdiction):
    a. Disputes between the Federation and a State or between two States: s232(1) CFRN
    b. Disputes between the National Assembly and the President

Also 7 Justices for appeals on Fundamental Human rights and interpretation and application of the Constitution.

By **S. 1 of the Supreme Court (Additional Original Jurisdiction) Act 2002 and S. 233(2) of the 1999 Constitution** (the latter allows the National Assembly to confer additional original jurisdiction on the Supreme CT by an Act) as amended three additional exclusive jurisdictions has been conferred.

c. Dispute between the National Assembly and a State of the Federation in so far as the dispute involves any question whether of law or fact non which the existence or extent of a legal right depends
d. The National Assembly and any State House of Assembly
e. Dispute between the National Assembly and the President

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 Jurisdiction Act, 2002.

However, one justice can deliver its judgment - **S. 294(4) of the 1999 Constitution as amended.**

- Qualification for appointment as a Justice of the Court: 15 years post call experience - **S. 231(3) of the 1999 Constitution** as amended.
- Appointment: 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 **- S. 231(1) & (2) of the 1999 Constitution**
- Appellate Jurisdiction: Exclusive appellate jurisdiction over appeals from the Court of Appeal. Appeals to the Supreme Court could be as of right or with leave. Its decision is final and not appealable. It is the apex Court in Nigeria - **S. 235 of the 1999 Constitution as amended.**
- 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 of the 1999 Constitution as amended.**

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

CONDITIONS FOR INVOKING ORIGINAL JURISDICTION OF THE SUPREME COURT

1. Must be brought by the **ATTORNEY GENERAL** of the state or federation-**s.20 Supreme Ct Act**
2. Subject matter of dispute must be one where State government /Federal government are direct beneficiaries-**AGF V. AG IMO; PLATEAU STATE V. AGF.**
3. Must pertain to existence of a legal right

LIMITATIONS/QUALIFICATIONS

- **LGAs/ INEC** cannot be **joined** or bring action- **AG ONDO V AGF.**

The Court of Appeal: See S. 237 of the 1999 Constitution as amended.

- Composition: Composed of the President but not less than 49 and 3 to be learned in customary law and 3 learned in Islamic personal law: **s237(1)**
- Qualification for Appointment: Not less than 12 years post-call experience: **S. 238(3) of the 1999 Constitution as amended**.
- Appointment: It is done by the President on the recommendation of the National Judicial Council (NJC): **s238(2)** while only the President of the Court's appointment is subject to confirmation by the Senate: **s238(1)**
- Constitution: At least 3 Justices sit on a matter: **S. 239(2) of the 1999 Constitution as amended.**
- Original Exclusive Jurisdiction: **s239(1)**
    a. It has jurisdiction to determine if a person has been validly elected to the office of the President or Vice President
    b. whether his term of office has ceased
    c. The office of President or Vice President has become vacant.
- 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 of the 1999 Constitution as amended.**
- Final Decisions of the Court of Appeal:
    1. Decisions on appeals from the National and State Houses of Assembly Election Tribunal are final - **S. 246(3) of the 1999 Constitution**
    2. Decisions on appeals from the National Industrial Court are final in **(s243(4))**

Removal: see **S. 292(1) of the 1999 Constitution as amended**: President of the CT of Appeal is 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

Federal High Court Established in S. 249 of the 1999 Constitution as Amended.

- ❖ Composition: It is composed of the Chief Judge and such other number of Judges as prescribed by the Act of the National Assembly – **s249(1)**
- ❖ Constitution: At least one judge can sit on a matter - **S. 253 of the 1999 Constitution as amended.**
- ❖ Qualification for Appointment: At least 10 years post-call experience -S. **250 (3) of the 1999 Constitution as amended.**
- ❖ 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. See **S. 250(1)&(2) of the 1999 Constitution as amended.**

a. Original Exclusive Jurisdiction: **s251** It has an exclusive jurisdiction to sit on the following matters to wit; revenue of the Government/any of its agencies; taxation of companies and persons subject to Federal taxation; customs and excise; banks and banking matters; matters arising from the management of the Companies and Allied-Matters Act; any Federal enactment relating to copyright; admiralty/shipping; diplomatic and trade representation; citizenship and aliens/extradition; bankruptcy and insolvency; aviation/safety of aircraft; arms and ammunition; drugs and poisons; mines and minerals; weights and measures; administration or the management and control of the Federal Government or any of its agencies; subject to the provisions of the Constitution, the operation and interpretation of the Constitutions in so far as it affect the Federal government or any of its agencies; any action for declaration or injunction affecting the validity of any executive or administrative action/decision of FG or any of its agencies; and any other matter conferred upon it by an Act of the National Assembly, Whether a term of office or a seat of a member of the Senate or House of Representatives has ceased or his seat has become vacant

The Problem of Jurisdiction Between the Federal High Court and the States High Courts.

Sometimes, some cause of actions are wrongly instituted at the States High Courts because the Court usually has an unlimited jurisdiction on civil matters but with the establishment of the a Federal High Court conferred with Exclusive Original Jurisdiction, one have to be careful to institute an action in the right Court looking at both the subject matter and the party involved. There are plethora of cases in which the apex and appeal Courts has handed down decisions to clear the point on whether the Federal High Court (FHC) or the State's High Court (HC) has the jurisdiction to entertain a particular matter.

- ❖ On the enforcement of fundamental rights: In TUKUR V. GOVERNMENT OF GONGOLA STATE [1989], Supreme Ct held that the Federal High CT had no jurisdiction to enforce fundamental rights over chieftaincy matters and it was a matter for the State High Ct. However, in GRACE JACK V. University of Agriculture Makurdi [2004], the Supreme CT held that both the FHC and the HC has concurrent jurisdiction. Since the latter Supreme CT case didn't refer to the Tukur case without reference to the earlier case so the current position is unclear

- In cases of banker-customer relationship both the Federal High Court and the High Courts of the States will have jurisdiction under the proviso to S. 251(1) (d) of the 1999 Constitution. See FEDERAL MORTGAGE BANK V. NDIC [1999] and NDIC v Okem Enterprises [2004].
- *Reference* of question of law as to interpretation or application of the Constitution can be heard by both courts. S.295 (1) of the 1999 Constitution.
- 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 [1999]**
- **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 executive jurisdiction. **SOCIETE-GENERAL BANK V. DELLUCH**
- **NON CUSTOMER of bank suing for negligence –FHC has jurisdiction**
- 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 [2005] but this is incompatible with earlier decision in NEPA v Edegbenro [2002]

A- ACTIONS AGAINST FEDERAL GOVERNMENT OR ANY FG AGENCIES

OLD POSITION-

Once it is a matter involving the Federal Government or any of its agencies then the FHC has exclusive jurisdiction.

NEPA V. EDEGBENRO [2002] ;

OLUTOLA V. UNIILORIN

NEW POSITION

However, the subject matter and the parties involved will determine the proper Court to approach.

TUKUR V. GOVERNMENT OF GONGOLA STATE.

In **SIMPLE CONTRACTS** between a **Federal Government agency and an individual**, **the State High Courts alone will have jurisdiction** to try the matter**.**

ONUORAH V. KRPC;

NKUMA V. ODILI;

ADELEKAN V. ECU LINE NV

NOTE THE FOLLOWING DECISIONS-

- **National Union of Electricity Employees v. BPE (2010) –**

The parties and the subject - matter must be examined against the background of **S. 251** to determine whether the FHC or the SHC has jurisdiction.

- **OSAKUE V. FCE ASABA-**

When there is a **conflic**t between decisions of a superior court the lower court should follow the later decision. Thus, this decision has validated the decision in **ONUOHA V. KRPC.**

- It is only the constitution that **can remove the jurisdiction of the State High Court**. An Act of the National Assembly **cannot** remove the jurisdiction of SHC.
- Therefore, the provisions of the **Public Procurement Act vesting in the FHC cases** arising from **contract involving a government agency** only confers jurisdiction on the Federal High Court but **does not remove jurisdiction of the SHC**

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 High Courts and not to strike it out. See S. 22 of the Federal High Court Act, FASAKIN FOODS LTD V. SHOSANYA and AMC LTD V. NPA. Mokelu v. Federal Commissioner for Works and Housing. Inah V. Ukoi

Note that the States or FCT High Courts cannot transfer a matter, which it lacked jurisdiction to try to the Federal High Court.

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

If a matter is stroke 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.

State High Court and the High Courts of the FCT

They are established by S. 270 and S. 255 of the 1999 Constitution as amended respectively.

- Appointment: The Chief Judge and other Judges of the High Courts of the States are appointed by the Governor on the recommendation of the National Judicial Council while the Chief Judge's appointment is subject to confirmation of the House of Assembly. See S. 271(1)&(2) of the 1999 Constitution as amended.
- While the appointment of the Chief Judge and other Judges of the FCT High Court is done by the President on the recommendation of the National Judicial Council and the Chief Judge's appointment is subject to the confirmation of the Senate. See ***S. 256(1)&(2) of the 1999 Constitution as amended.***
- Qualification: At least 10 years post call experience. See S. 271(3) of the 1999 Constitution as amended.
- Constitution: At least one judge can sit over a matter. See S. 273 of the 1999 Constitution as amended.
- Jurisdiction of the State High Courts. Is provided under s.272 of the 1999 Constitution. Can assume jurisdiction over any civil proceeding, however limited by s. 251 of the Constitution which deals with exclusive jurisdiction of the Federal High Court
- Appellate Jurisdiction of the High Court. Have appellate jurisdiction over decisions of Magistrate Courts, Area Courts, Customary Courts

National Industrial Court

It is recognised as a superior Court of Record pursuant to S.6 (altering S. 254'CC') of the Third Alteration Act 2010 to the 1999 Constitution and the National Industrial Court Act 2004.

- Composition: It is composed of a President and other number of Judges to be determined by the Act of the National Assembly **– s254A**
- Constitution: At least one judge can sit over a matter or not more than 3 Judges as directed by the President of the Court. **(254E)** of the Third Alteration Act 2010 to the Constitution.
- 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. **254B(1) &(2) of** the Third Alteration Act 2010 to the 1999 Constitution.
- 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. **Section 254B (3) of the Third Alteration Act 2010 to the 1999 Constitution as amended.**
- Jurisdiction: It has exclusive jurisdiction in **civil** causes and matters to try the following matters notwithstanding the provisions of sections 251, 257 and 272 of the 1999 Constitution as amended:
    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.

    Section 254C of the Third Alteration Act 2010 to the 1999 Constitution.

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. Magistrates are usually appointed by the State Judicial Service Commissions.

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. The constitution of the Court is one.

Jurisdiction of Magistrate Court in Lagos

By s.28 of the Magistrate Court Law 2009 of Lagos State, vest 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, 10,000,000.00 at the time of filling
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 contractor 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

TRANSFER OF CASES-can transfer cases between magisterial district with consent of magistrate.-**S.32 MCL OR** by **ORDER &SEAL OF THE CJ OF THE STATE AT ANY TIME BEFORE JUDGMENT-S.34 MCL**

JURISDICTION OF DISTRICT COURTS IN FCT-

COURT	OLD POSITION	NEW POSITION
CHIEF DISTRICT JUDGE 1	**250 000**	**5,000,000.00**
CHIEF DISTRICT JUDGE II	**200 000**	**4,000,000**
SENIOR DISTRICT JUDGE 1	**180 000**	**3,000,000**
SENIOR DISTRICT JUDGE II	**100 000**	**2,000,000**
DISTRICT JUDGE I	**50 000**	**1,000,000**
DISTRICT JUDGE TWO	**20 000**	

OLD POSITION- S.13&14 FCT (DISTRICT COURTS ACT)
Recovery of premises; personal actions in tort and contract; recovery/imposition of penalties.
NEW POSITION-pursuant to S.17 OF THE DCA- NEW ORDER CAME INTO FORCE 14TH FEBRUARY 2014.

MINISTER MADE AN ORDER TITLED- THE DISTRICT COURTS(INCREASE OF JURISDICTION OF DISTRICT JUDGES) ORDER 2014

Sharia Courts of Appeal
In the Federal Capital Territory, FCT, it is compulsory to have it but for other States of the Federation it can be established by any State that requires it. See S. 275 and s260 of the 1999 Constitution as amended.

- Composition: It is composed by the Grand Kadi and other Kadis as prescribed by the House of Assembly of the States or the National Assembly if it relates to the FCT. See **S.275 (2) (b) & s260(2)(b) of the 1999 Constitution** as amended respectively
- Qualification and appointment: It is either a legal practitioner with 10 years post-call experience with a recognised 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. See S.276 (3) & s261(3) of the 1999 Constitution as amended.
- Jurisdiction: It only has appellate jurisdiction from lower Courts (e.g. Area/Sharia Courts) on Islamic personal Law. See S.277 & 262 of the 1999 Constitution as amended.
- Constitution: It is presided by at least 3 Kadis. See S. 278 & s263 of the 1999 Constitution as amended.

Customary Court of Appeal of the FCT and the States

In the Federal Capital Territory, FCT, it is compulsory to have it but for other States of the Federation it can be established by any State that requires it. See S. 280 & s265 of the 1999 Constitution as amended.

- Composition: It is composed by the President and other Judges. See S. 280 (2) & s265(2) of the 1999 Constitution as amended.
- Qualification, Appointment and Removal: Apply that of the FCT High Court for the Customary Court of Appeal of the FCT while that of the State High Courts for the ones in the States – s281(1) &(2), s266(1)&(2)
- Constitution: By at least 3 Judges of the Court. See S. 283 & s268 of the 1999 Constitution as amended.
- Jurisdiction: It has appellate and supervisory jurisdiction on civil matters involving questions of customary Law. See S. 282 & s267 of the 1999 Constitution as amended.

Election Tribunals, see S. 285 of the 1999 Constitution as amended.

Types of Election Tribunals are:

1. The Court of Appeal: It sits only on Presidential election in its original jurisdiction. See S. 239(1) of the 1999 Constitution as amended

2. The National and State Houses of Assembly Election Petition Tribunals: It sits on petitions from the States and Federal Legislative Houses elections.

3. Governorship Election Tribunal: It sits on petitions arising from gubernatorial elections of the States.
   a. 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.
   b. Qualifications: It is either a Judge of the High Court, Customary Court or at least a Chief Magistrate. See the Sixth Schedule to the 1999 Constitution as amended.
   c. Composition: it is composed of a Chairman and two (2) members. See the Sixth Schedule to the 2nd Alteration Act of the 1999 Constitution as amended.
   d. Constitution: it is composed of a Chairman and two (2) members.
   e. Quorum: a Chairman and one (1) member: s285(4)
   f. Removal: by the President of the Court of Appeal.

NB: The time for the presentation of election petition is within **21 days** after the declaration of results (s285(5)). **Judgment of the Tribunal** is to be given within **180 days** of the filing of the Petition (s285(6)). **Appeals** arising from election Tribunals are to be dealt with within **60 days** of the delivery of the judgment (s285(7)).

The Federal High Court now has original jurisdiction on:

a. Pre-election or party matters; and
b. To decide whether the term of office or a seat of a member of the Senate or House of Representative has ceased or become vacant. See S. 27 of the First Alteration Act 2011 to the 1999 Constitution and s251(4) respectively

QUESTION ASKED IN CLASS

Recently the House of Assembly of Ekiti State impeached the Governor. This led to a power tussle between the Deputy Governor and the Speaker of the State House of Assembly on who will succeed the Governor.

In view of the chaos, the Executive President GCFR declared a state of Emergency in the State. Thereafter, a military administrator was appointed to take charge of the state. The EFCC also declared the Governor wanted on grounds of misappropriation of State Funds.

The Governor is aggrieved and wishes to seek redress. He has approached you.

1. If he wants to sue the State House of Assembly for a declaration that his impeachment and removal is unlawful and unconstitutional, which court should go

⇨ **The State High Court -S. 272 CFRN**

2. Assuming the Attorney General of Ekiti wants to institute an action against the Federal Government seeking a declaration that the proclamation of the State of Emergency is inconsistent with the constitution thus null.

The Supreme Court S. 232.

3. If the National Assembly wants to institute an action against Ekiti State House of Assembly on the grounds that the panel which removed the Governor was not duly constituted.

⇨ T**he Supreme Court**

4. Assuming the court wants to challenge the validity of the election of a member of the State House of Assembly, which court

⇨ **There is a Governorship Election Petition Tribunal and a National and State House of Assembly Election Petition Tribunal**

⇨ The Governor should go to the latter.

5. What would be the composition of the court in 1 => 1 Judge?

What would be the composition of the court in 2 => 7 Judges?

What would be the composition of the court in 3 => 7 Judges because it is a constitution?

What would be the composition of the court in 4 => 3 i.e. chairman and two members.

6. Assuming the Governor wants to **institute an action against the EFCC to restrain** them from arresting him.

⇨ **Federal High Court.**

7. Where the State High Court **sat two instead of one**, is this invalid or unconstitutional.

⇨ No. This is because the CFRN prescribed **at least one judge**
Also in some states when sitting an appeal, the SHC sits with 2 judge

ETHICAL ISSUES ARISING FROM COMMENCING ACTION AT THE WRONG COURT

1. Where an action is commenced at the wrong Judicial Division, it leads to delay as the matter may eventually be transferred.
2. It would lead to the strike out of the matter
3. The time delay can lead to the mater being statute bared.
4. Also, the client can sue the counsel for negligence R 14 (5) RPC

WEEK 4:
Parties to a Civil Suit

Parties are those whose names appear on the Court documents. See GREEN V. GREEN.

- **The relevance of Parties:** It is written so that the judgment of the Court will be binding on those named as parties.
- **Designation of Parties**: Parties are designated as follows:
  Abuja: PLAINTIFF(S) V. DEFENDANT(S) – writ of summons
  Lagos State: CLAIMANT V. DEFENDANT – writ of summons
  APPLICANT V. RESPONDENT – originating summons
  PETITIONER V. RESPONDENT - petition

Matters to consider when taking instructions as it relates to parties are:

1. *Locus standi* of the client
2. The proper parties
3. Jurisdiction; and
4. Capacity to sue.

A Party must be a Legal Person Capable of suing and being sued.

- A party may be:
  1. Natural persons
  2. Artificial persons: persons created by law. E.g. companies registered under Part A CAMA; associations registered under Part C CAMA; firms/partnerships/registered business names under Part B CAMA:
     Order 10 rule 10(1) Abuja: any two or more persons likely to benefit or be liable, as partners, may sue or be sued in the name of the partnership when the cause of action arose. **Order 10 Rule 10(2)**: a party to an action may apply to the CT for a statement of the names and addresses of the persons who were partners when a cause of action arose, to be furnished in a manner directed by the CT, and verified on oath
     Order 13 rule 24 Lagos: Any two or more person claiming or alleged to be liable as partners and doing business within the jurisdiction may sue or be sued in the name of the firms, if any, of which they were partners when the cause of action arose and party to an action may in such case apply to the judge for a statement of the names and addresses of the persons who were partners in the firm when the cause of action arose, to be furnished in such manner, and verified on oath or otherwise as the judge may direct;
     Statutory corporations created by statute e.g. Council of Legal Education, NNPC, INEC; non-statutory corporations not stated by any law to have legal personality but who are given functions by law which could cause injury to others in performing their functions

Does the suing or sued party have legal capacity?

- **Shitta & Ors v Ligali (1941) 16 NLR P. 21**: the plaintiff sued in the name of and as the "Executive Committee of the Central Mosque (Lagos)". It was held that the committee was not a legal entity and therefore had no capacity to sue.
- **Adegbite v Lawal 12 WACA 398:** the plaintiffs described themselves as suing for themselves (natural persons) and on behalf of the Muslim community of Ijebu-Ode Central Mosque. They could sue as natural persons and as representatives of the group

Main types of juristic bodies

- Companies registered under Part A CAMA
- Companies registered under Part C CAMA e.g. NGOs, churches, charities. Under the old law, they were registered as registered trustees under the Land Perpetual Succession Act. Now under CAMA, they are registered as incorporated trustees
- Firms/partnerships/registered business names under Part B CAMA
- Statutory corporations created by law e.g. Council of Legal Education
- Non-statutory corporations not stated by any law to have legal personality. Non-corporate bodies that have been given functions by law which can cause injury to others in performing their functions. Thus, the law allows them to sue and be sued in order to be fair e.g. Thomas v Local Government Services Board

Misnomers

- Sometimes the CT takes the view that a party is mis-described (a misnomer) and allows it to be amended when the identity of the party is not in doubt: **Okechukwu & Sons v Ndah (1967) NMLR 366**
- **Order 10 Rule 2 Abuja Rules:** Where an action commences in the name of a wrong person as plaintiff, or where is doubtful that it commenced in the name of the right plaintiff, a Court or Judge in chambers, if satisfied that it commenced through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person to be substituted or added as plaintiff upon such terms as may be just.
- **Order 13 Rule 2 Lagos Rules:** Where an action has been commenced in the name of the wrong person as claimant or where it is doubtful whether it has been commenced in the name of the right claimant, a Judge may order the substitution or addition of any other person as claimant on such terms as may be just.
- Some other case, the CT does not treat the name as a misnomer i.e. a non-legal person has been brought to CT and thus no amendment is allowed e.g. **Emecheta v Ogueri [1996]:** he was sued as Chief Assistant Registrar of Abia State High CT. High judge and CT of Appeal held this is not a misnomer but a

case of bringing a non-juristic person to CT – the CT relied on **Manager SCON Benin City (unreported case)**

- **So Safe Table Water Technologies Ltd v Ayinoluwa [2014] All FWLR (pt 747) p. 649:** plaintiff brought an action against So Safe Table Water Technologies missing the Ltd from the company's name. The Defendant stated that the name was a non-legal person. High Ct disagreed as no mistake as to the identity and merely a case of mis-description. The Ct of Appeal held this was a case of misnomer. In business circles, the company was known as So Safe Table Water Technologies and the CT is moving away from technicalities and dealing with substantial justice so an amendment was allowed. The Ct relied on a 2002 Supreme Ct judgment of **Maerskline v Addide Investment Ltd [2002] 4 SC (pt 11) 157 at 197** where the Supreme Ct held that a Ct is not precluded from allowing the amendment if it is a non-juristic person provided it is a misnomer
- Prior to these cases, in **Njemanze v Shell BP Development Company Port Harcourt (1966):** the name of the defendant is Shell BP Petroleum Development Company of Nigeria Ltd. The Ct said this was not a misnomer but no application to amend in this case. Supreme Ct in a later case commented that no application was made to amend and if such an application had been made, it would have been allowed.

Types of Parties

1. Proper Parties
   These are the parties who are directly involved in the cause of action i.e. the Plaintiff or person who has suffered damages and the Defendant or person whose act of commission or omission has occasioned the damages e.g. **Mobil Producing (Nig) Ultd v LASEPA & Ors [2002]:** Supreme CT held that any party whose interest will be directly affected if a relief claimed in the action were granted is a proper party to a suit
2. Desirable Parties
   This is a party who was not originally a party to the action nor whose presence is necessary for the just determination of the issues in the action but nevertheless needs be a party in order to be bound since the decision in the case may directly affect him: **Col. Hassan Yakubu (Rtd) v The Governor of Kogi State & Ors [1995]**
3. Necessary Parties
   A party is one whose presence is necessary for the effectual and complete determination of issues in a suit. In **Union Beverages Ltd v Pepsi Cola Int. Ltd [1994]:** held that where a complaint is made against a person in an action and the question or issues involved in the complaint cannot be effectually and completely determined or settled in the absence of the person, such a person is a necessary party and ought to be joined in the suit
4. Nominal Parties
   These are those who have no direct interest in subject matter but made a party by virtue of his office e.g. A. G of the State or Federation in actions against the government. Any action against the state for instance has to be

against the Attorney General (s20 Supreme Court Act 2004). An action against the State House of Assembly is against the Speaker of the House (s3 Supreme Court (Additional Original Jurisdiction) Act 2002). They are the medium by which the institution they represent can sue or be sued. Their position in a suit is therefore nominal.

Capacity to Sue and be Sued

1. Infants: can sue through their *next friend* and defend actions through their *guardian ad litem*

   Order 10 Rule 11 Abuja: An Infant may sue as plaintiff by its next friend, and may defend by guardian(s) appointed for that purpose.

   Order 13 Rule 9 Lagos: Persons under legal disability may sue by their guardians or defend by guardians appointed for that purpose.

   Order 13 Rule 10 Lagos: Where any person's name is to be used in any action as guardian of a person under legal disability or other party or as relator, a written authority for that purpose signed by that person shall be filed in the registry.

   NB: in Abuja (**Order 10 Rule 13(2) Abuja**), if the lawyer files Form 14, then no need for written authority (an affidavit)

   Example '*Bobo Adams (An infant) suing by his next friend, Mrs. Funke Adams*'
2. Lunatic: can sue through a next friend or committee in Lunacy and defend actions through their guardian or Committee in Lunacy.

   Order 10 rule 12 Abuja: A lunatic or person of unsound mind may sue as plaintiff by their committee or next friend, any may defend any action by their committee or guardian(s) appointed for that purpose.

   In Lagos, they sue or defend by their guardians.

The CONDITION PRECEDENT FOR BRINGING ACTIONS FOR INFANTS/ LUNATICS

For ABUJA ONLY)

a. There must be consent letter from the next friend
b. There must be an application supported by affidavit

CONTENTS OF THE AFFIDAVIT

The affidavit must state that the proposed guardian is a fact proper person and has no interest adverse TO THAT OF the infant.

However you can circumvent these conditions in Abuja by the counsel **filing FORM 14.**

3. Trustees/ Executors and Administrators of Estates: the name of the trustee or Executor must appear on the Court processes stating that they sue as the executor of the deceased or the administrator if there is no will: **Order 10 Rule 15 Abuja; Order 13 Rule 11 Lagos**

Example:

Musa Ardo suing as Trustees/Executor or Administrators of the Estate of Sani Abacha (deceased) …… Plaintiff

See The Estate of Abacha V. Eke Spiff.

4. Charitable organisations/non-trade organisation, churches: can sue and be sued in the name of their incorporated trustees

5. Trade Unions are registered under the Trade Unions Act so can sue and be sued in their own name
6. Unincorporated association: sue in the names of some of them as representing the rest
7. Partnerships such as in **Iyk v Pfizer** – could sue in the firm's name, individual name as partners or one or more could sue representing the other parties e.g. *Obi John (suing under the name and style of BUS Enterprises) …….. Plaintiff*
8. The Government of a State or Federation: can sue and defend actions through the Attorney-Generals of the States or the Federation. This is because they are the Chief Law officers of the Government. **See S. 150, 195 of the 1999 Constitution** as amended. However they are not prevented from instituting actions or been sued in their names as the principals using the Attorney-General as their agent, i.e. *The Governor of Kano State……. Plaintiff,*
   See Plateau State Governor v. AG Federation (2006) 3 NWLR (pt. 967) p. 346
   Note: some government agencies have juristic powers to sue in their own name e.g. NPA, INEC, NNPC

Representative Actions

There are situation where a person or group of persons may want to sue, or a person may want to sue someone else but neither of the above categories possesses the capacity to sue or be sued. Such suits must be instituted by or against some other persons who have the legal capacity to sue and be sued, on behalf of such persons lacking capacity. Needs leave of the Ct to bring such an action and a consent order authorising the few to represent them

Order 10 rule 8 Abuja: Where more persons than one have the same interest in one suit, one or more of them may, with the approval of the Court, be authorised by the other persons interested to sue or to defend the suit on behalf of all parties.

Order 13 rule 12 Lagos: Where there are numerous person having the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested. Where there are numerous persons having the same interest in one suit and they seek to defend the action, a Judge may allow one or more of such persons to defend the action on behalf or for the benefit of all persons so interested.

Example:

Ojo Madu, Dupe Wazobia suing for and on behalf of themselves and the WAZOBIA FAMILY as Defendants

Procedure:

1. The representatives must be appointed by those to be represented
2. The representatives will seek the leave of the Court to sue as such via a Motion Ex parte supported with an affidavit exhibiting the memorandum signed by a majority of members authorising the representation and a written address. The content of the Affidavit in support will disclose the

names of the representatives, when appointed and the believe that they can represent the group.

The Conditions for a Representative Action are:
a. Common interest and grievance of all the persons sought to be represented
b. The reliefs sought must be beneficial to all represented.
See **ATANDA V. OLAREWAJU**

Class Action
Where in any proceedings, the person or class of persons or some members of that class that may be interested in the subject matter cannot be ascertained, if ascertained cannot be found or if ascertained and found, it is expedient that one or more persons be appointed for the purpose of representing the class.
Order 10 rule 9 Abuja: On an application for a declaration or an injunction, the Court may appoint one or more persons to represent any class or group of persons who-(a) may be commonly interested in any matter; or (b) are commonly affected or likely to be commonly affected by any act or action of any person or authority, where such class or group or persons may not be easily ascertainable or conveniently found, if satisfied that it is expedient to do so.

Order 13 rule 13 Lagos: (1) Where in any proceedings concerning;

. (a) the administration of an estate or

. (b) property subject to a trust or

. (c) land held under customary law as family or community property or

. (d) the construction of any written instrument, including a statute, a Judge is satisfied that:

. (i) the person, the class or some members of the class interested cannot be ascertained or cannot readily be ascertained;

. (ii) the person, the class or some members of the class interested if ascertained cannot be found;

. (iii) though the person or the class and the members thereof can be ascertained and found; it is expedient for the purpose of efficient procedure that one or more persons be appointed to represent that person or class or member of the class, the Judge may make the appointment. The decision of the Judge in the proceedings shall be binding on the person or class of persons so represented.

. (2) Notice of appointment made by a Judge under this rule and all processes filed in court shall be served on a person(s) so appointed.

. (3) If in any proceedings mentioned in sub-rule 1 of this Rule, several persons having the same interest in relation to the matter to be determined attend the hearing by separate Legal Practitioners, then unless the judge considers that the circumstances justify separate representation, not more than one set of costs of the hearing shall be allowed to these persons, and the judgment or order shall be framed accordingly.

. (4) In this Rule, the word "class" includes the persons recognised by Customary Law as members of a family or as members of a land owing community.

Joint Actions (Joint Plaintiffs/ Defendants)
Order 10 Rule 1 of the High Court of the FCT Rules 2004: (1) More than one person may be joined in an action as plaintiffs in whom a right to relief (arising out of the same transaction or in a series of transactions) is alleged to exist whether jointly or severally, where, if the plaintiffs decide to bring separate actions, any common question of law or fact would arise; and judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, without any amendment.

(2) Where a defendant applies and it appears that the joinder in sub rule (1) may embarrass any of the parties or delay the trial of the action, a Court or Judge in chambers may order separate trial or make such order as may be expedient in the circumstances

Order 13 Rule 1 Lagos Rules 2004: All persons may be joined in one action as claimants in whom any right to relief is alleged to exist whether jointly or severally and judgment may be given for such claimant(s) as may be found to be entitled to relief and for such relief as he or they may be entitled to, without any amendment.

Conditions for a Joint Action
1. The reliefs claimed arose from the same transaction
2. There is a common question of Law or fact to be decided by the Courts
3. The joint plaintiffs are not opposed to each other
4. Must come by one statement of claim
5. The joints defendants are to come by different statements of defence
   See **OGBOLO V. FABUARA**

Derivative Actions Used in Company Proceedings for Minority Rights Protection.
Procedure: Persons under **S.309 of CAMA** are to obtain the leave of Court by ORIGINATING SUMMONS supported with an affidavit evidencing the grounds for its grant as follows:
1. That the wrong doers are the directors of the company and will not take action
2. The applicant has given notice of his intention to sue to the directors

3. It is in the interest of the company to bring the action
4. That the applicant acts in good faith.
   See S. 303 of CAMA.

Effect of suing or being sued in a wrong capacity

- Fatal to the action if the person is a plaintiff and it is not a misnomer
  Order 10 rule 2 Abuja rules; **Order 13 Rule 2 Lagos**
- **Order 13 Rule 5 Lagos**: Where an action has been instituted against a wrong defendant or where the name of a defendant has been incorrectly stated a judge may upon application order a substitution or addition of any person as defendant or correction of any such name on any term as may be just

Joinder of Parties to an Action

This is a situation where a person who is a necessary party is not joined to an action and he brings an application as an intervener to be joined the action. It may also arise from a situation where an Applicant/Plaintiff fails to sue a necessary party; he may bring an application to join the said necessary party. The purpose of this is to avoid multiplicity of actions and abuse of Court process. See **OGBOLO V. FABUARA** and **HASSAN V. ATANYI (2002)**. The rule permits joinder of parties not joinder of causes of action.

JOINDER OF PARTIES TO AN ACTION

- This is a situation where a person who is a **NECESSARY PARTY** is not joined to an action and he brings an application as an intervener to be joined the action.
- It may also arise from a situation where an **Applicant/Plaintiff** fails to sue a necessary party; he may bring an application to join the said necessary party.
- A person who is joined is entitled to be notified of his joinder.
- The joinder of parties takes **effect from the date the court** so orders and cannot take a **retroactive** effect from the date the writ of summons was filed before the court – **ODUOLA V. OGUNJOBI (1986) 2 NWLR (PT. 23) 508 AT 509.**
- There is a need to amend the writ where there has been a joinder of a party – **NEWBREED PRESS LTD V. JAIYESIN (2000) 6 NWLR (PT. 662) 561.**

WHO CAN APPLY FOR JOINDER

1. The court may in its **discretion *suo motu***
2. **Upon application of a party** join any person who has sufficient interest in the suit – **AONIYI V. REGISTERED TRUSTEES OF THE ROSICRUCIAN ORDER, AMORC (NIGERIA?)**

TIME OF JOINDER

- Preferably at pre trial conference
- Anytime before judgment
- Even on appeal

YAKUBU V. GOVERNOR KOGI STATE

Procedure when there was a Non- Joinder:

It is applied for by a Motion on Notice supported with an Affidavit showing reasons why the said person is to be joined as a party and a written address.

- **Order 10 Rule 5 (1) of the High Court of the FCT Rules:** Where it appears to a Court, at or before hearing, that all the persons possibly interested in the suit have not been made parties, the Court may adjourn, and direct that those persons be made either plaintiffs or defendants in, the suit.

- **Order 13 Rule 16 (3) of the High Court of Lagos Rules 2004**: A Judge may order that the names of any party who ought to have been joined or whose presence before the court is necessary to effectually and completely adjudicate upon and settle the questions involved in the proceedings be added.

- **NB:** in Lagos, a copy of the pleadings will be attached

CONDITIONS

A party complaining of not being joined or of not being made a party to the suit must satisfy the court that:

1) He is entitled to some share or interest in the subject matter of the suit;
2) He is likely to be affected by the outcome of the suit; and
3) If he is not made a party, the case cannot be decided with finality –

Order 10 Rule 5(1) Abuja High Court Rules;

Misjoinder of Parties

This is where a wrong person who is unconnected to the suit in anyway is joined in an action. The proper thing to do to remedy this is to bring an application praying the Court to strike out the name of the party wrongly joined. See

Order 10 Rule 5(5) of the High Court of the FCT Rules 2004: A Court may, at any stage of the proceedings and on such just terms Order that the name of any party improperly joined, be struck out, whether as plaintiffs or defendants.

Order 13 Rule 16(2) of the High Court of Lagos Rules 2004: A Judge may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the judge to be just, order that the names of any parties improperly joined be struck out.

Procedure: Bring the application by a Motion on Notice supported with an Affidavit and a written address.

The effect of applications for joinder of a party or to strike out the name of a party for misjoinder is that they cannot defeat the suit and the Judge will sit on the matter. See GREEN V. GREEN.

EFFECT OF DETERMINATION OF MISJOINDER OR NON JOINDER
ORDER 10 RULE 1&3(ABJ)
ORDER 13 R.16(ABUJA)

- Does not vitiate the action
- The party wrongly joined will be struck out
- The action CANNOT be struck out

UNION BEVERAGES V. PEPSI COLA

NOTE-the above is not applicable in election matters for non joinder of a necessary party and may lead to the striking out of the election petition.

FACTORS USED IN DETERMINING EXISTENCE OF JOINDER

The court in deciding whether there should be joinder where non-joinder exist would have to resolve the following issues:

1) Is the cause or matter liable to be defeated by the non-joinder.
2) Is it possible for the court to adjudicate on the cause of action set-off, without the third party being joined either as plaintiff or defendant.
3) Is the party or person someone who ought to have been joined *ab initio.*
4) Is he a person whose presence before the court as defendant or plaintiff will be necessary in order to enable the court to effectively or completely adjudicate or settle all the questions involved in the case with finality.

PURPOSE OF JOINDER

- Joinder of parties aid quick dispensation of justice.
- Joinder of parties permits effective administration of justice by bringing all the appropriate and necessary parties before the court.
- Joinder of parties obviate the multiplicity of action
- When plaintiff is in doubt as to who among the persons is liable, all can be joined- **EKUM V. YOUNARR**
- It guarantees the right of all interested parties in an action to be heard together. **OGBOLO V. FABUARA and HASSAN V. ATANYI**

THIRD PARTY PROCEEDINGS

- This procedure is only available to a defendant or a claimant who is a defendant to a counter-claim.
- When this is granted, a third party notice is issued and served on the person with a copy of the writ of summons or originating summons and of any pleadings filed in the action; or
- The third party can file a statement of defence against the claim of the party, joining him.
- A third party is to be designated as such on the Court processes and not to be made a co-defendant. **SOYINKA V. ONI** .He is only a defendant to the defendant.
- **IN LAGOS**, the procedure is only by way of **MOTION EX PARTE..**
  Order 10 rule 18 Abuja rules.
  Order 13 Rule19 (1) Lagos High Court Rules

CIRCUMSTANCES WHEN THIRD PARTY APPLICATION IS NEEDED

1. Where defendant claims contribution or indemnity from the third party e.g. in accidents cases where the defendant bring the insurance company as 3rd party.
2. Where defendant is entitled to substantially same reliefs claimed by the plaintiff

3. Entitled to any relief remedy related or connected with the original subject matter of the action. E.g. Mr. A contracts to sell car to B contracts to sell car to C. A fails to sell to B consequently B fails to sell to C. C sues B, B can join A as a third party.
4. If the issue is such that it can be best resolved among all the parties.
5. Where a third party will bear eventual liability in whole or in part.

PROCEDURE:

1. The defendant will **APPLY FOR LEAVE OF THE COURT T**o issue third party notice by a **MOTION EX PARTE** supported with an Affidavit and a written address. The motion must state **THE GROUNDS** for wishing to join the third party
2. A Third party Notice is issued if the application for leave is granted.
   ALTERNATIVELY IN **ABUJA-** By issuing a summons to the plaintiff where the court or judge in chambers so directs - By issuing a summons to the plaintiff where the court or judge in chambers so directs

O. 10 R. 18(2) of the High Court of the FCT Rules 2004
OKAFOR V. ACB LTD.
See Form 23 or 24 of the High Court of the FCT Rules 2004.
O. 13 R. 19 of the High Court of Lagos Rules 2012;
UBA V.ACHAONU

Third party proceedings are special proceedings in favour of a defendant only, or in favour of a plaintiff who is himself a defendant in a counterclaim, for joinder of a third party not to prosecute the suit in Ct but to prosecute another action btw the defendant and the third party in the same suit btw the defendant and the plaintiff. The object of a 3rd party proceeding is to prevent a multiplicity of actions – ***Bank of Ireland v Union Bank of Nigeria Ltd (1998) 7 SCNJ 385; Soyinka v Oni (2011)***

THE DIFFERENCES BETWEEN THIRD PARTY PROCEDURE AND JOINDER OF PARTIES INCLUDE:

(1) In third party proceeding, only the defendant or a plaintiff who is also a defendant to a counter claim can apply for it, whereas in joinder of parties, either party can apply; even the court can make a suo motu order to that effect.
(2) In third party procedure, the issue between the defendant and the third party is always fundamentally different as between the plaintiff and the defendant(s), where as in joinder of parties, the issue remains the same
(3) In third party procedure, the third party may bear the eventual liability either in whole or in part, where as in joinder of parties, the party so joined may not necessarily bear any liability.
(4) For a defendant to join a third party, the leave of the court must be first obtained to issue and serve the third party notice and the application must be by **MOTION EXPARTE- Order 10 Rule 18(2) (Abuja), Order 13 Rule 19(1) (Lagos**). Whereas in joinder of parties, except where the joinder is by court's own motion, where any of the parties seek the joinder, he has to come by way of motion or summons or in a summary manner at the trial of the action-**Order 10 R17 (Abuja), Order 13 R17(2) (Lagos) .**

Survival of Parties

A dead party ceases to have legal personality from the time of his death either personally or in a representative capacity. The action then abates: **Oketie & Ors. V. Olughor**. The only exception is where the cause of action survives him, example not a personal action. Personal actions like libel, defamation, marriage, contract of services etc will abate at death of a plaintiff. This is captured in the Latin maxim: *action peronalis moritur cum persona* meaning a personal action dies with the person..

However, where the action survives the sole plaintiff, an application may be brought by his legal representatives to be substituted for the dead party. **Order 10 r.39 Abuja**

Joinder, Alteration, Change/ substitution of parties

During the pendency of a suit, certain circumstances may arise that may necessitate change of parties, such as a party who is unmarried got wedded or there is a transfer of the interest of a party to the suit or death/ bankruptcy of a party.

a. If it is the death of a party, the dead party is to be substituted by his Executors or personal representatives
b. If bankruptcy, to be substituted by his trustees in bankruptcy with regards to cases relating to the property of the bankrupt S.58(1)(b) Bankruptcy Act 1979,. A case premised on a cause of action relating to personal injuries of the bankrupt is not vested in the trustee.

E.g. Mr A sold land to Miss X. Miss X built a house and put Miss Y into occupation as a tenant. Mr B sued Mr A contesting title to the land. Who must Mr B join to the action

- Who is a proper, desirable, necessary and nominal party to the claim
- Mr A is a necessary party. Miss Y is a proper and desirable party
- **Order 10 rule 16 and 17 Abuja**: 16 - Where a defendant is added or substituted, the writ of summons shall be amended accordingly and the plaintiff shall, unless ordered by the court or a Judge in chambers, file an amended writ and cause the new defendant to be served in the same manner as original defendants are served and the proceedings shall be continued as if the new defendant had originally been made a defendant; 17. An application to add, strike out or substitute a party may be made to a Court or Judge in chambers at any time before trial, by motion or summons, or in a summary manner at the trial of the action.
- **Order 13 Rule 16, 17 and 18 Lagos Rules**: see 16(2) & 16(3) above. Rule 17: Any application to add or strike out or substitute or vary the name of a claimant or defendant may be made to a Judge by motion. Where the application is to add a claimant or a defendant, the application shall be accompanied by the statement of claim or defence as the case may be, all the exhibits intended to be used and the depositions of all the witnesses. Provided that where the application is to substitute a deceased party with another person the application may not be accompanied by the documents specified above

Rule 18: Where a defendant is added or substituted the originating process shall be amended accordingly and the claimant shall unless otherwise ordered by a Judge file an amended originating process and cause the new defendant to be served in the same manner as the original defendant

- Agricultural Bank Plc case in book. Miss Yakuba is claiming breach of contract against Agric Bank who is in liquidation. NDIC is the liquidator of the bank who will pay out any judgment debt. NDIC as liquidator wants to be added to the suit. Is NDIC a necessary party? It should be since in the absence of NDIC, no one else is responsible for the settlement of the debt
- A person who applies to be joined to the action is an intervener applicant such as NDIC above. A intervener defendant should exhibit the proposed statement of his defence to the affidavit

Procedure for Substitution of Party:
It is applied for by a Motion on Notice supported with an affidavit and a written address.

ALTERATION OF PARTIES
Alteration of parties usually arises **after the commencement of the case IN THE FOLLOWING instances**

1. Death
2. Bankruptcy.
3. An unmarried female become married
4. Where the suit becomes defective or incapable of being carried on as originally composed
5. Where there is an **assignment, transmission or devolution of the interest or** liability of the party in the pending suit
   Order 10 Rule 35 (1) Abuja
   Order 13 Rule 30 (1) Lagos

In such a situation, a person interested may apply to the court to change such a party to the case –
Order 10 Rule 35 Abuja High Court Rules.
But the death of a plaintiff or defendant shall not cause a suit to abate if the cause of action survives – **Order 10 Rule 36 Abuja High Court Rules.**
Order 10 Rule 37 Abuja High Court Rules - Also, where there are two or more plaintiffs or defendants and one of them dies, the suit shall proceed at the instance of the surviving plaintiff(s) against the surviving defendant provided that the cause of action survives

<u>Ethical issues</u>

Rule 14(1) RPC: It is the duty of a lawyer to devote his attention, energy and expertise to the service of his client and, subject to any rule of law, to act in a manner consistent with the best interest of the client.

Rule 14(5): Negligence in handling of a client's affairs may be such a nature as to

amount to professional misconduct

Rule 15 RPC: (1) In his representation of a client, a lawyer may refuse to aid or participate in conduct that he believes to be unlawful even though there is some support for an argument that the conduct is legal.

(2) In his representation of his client, a lawyer shall (a) keep strictly within the law notwithstanding any contrary instruction by his client and, if the client insists on a breach of the law, the lawyer shall withdraw his service;

(b) use his best endeavours to restrain and prevent his client from committing misconduct or breach of the law with particular reference to judicial officers, witnesses and litigants and if the client persists in his action or conduct, the lawyer shall terminate their relations.

(3) In his representation of his client, a lawyer shall not ---- (a) give service or advice to the client which he knows or ought reasonably to know is capable of causing disloyalty to, or breach of, the law, or bringing disrespect to the holder of a judicial office, or involving corruption of holders of any public office;

(b) file a suit, assert a position, conduct a defence, delay a trial, or take over action 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;

(c) knowingly advance a claim or defence that is unwarranted under existing law, but he may advance such claim or defence if it can be supported by argument in good faith for an extension, modification, or reversal of existing law;

(d) fail or neglect to inform his client of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of his client.

(e) conceal or knowingly fail to disclose that which he is required by law to reveal;

(f) Knowingly use perjured or false evidence;

(g) Knowingly make a false statement of law or fact:

(h) participate in the creation or preservation of evidence when he knows or ought reasonably to know that the evidence is false;

(i) counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent; or

(j) Knowingly engage in other illegal conduct or conduct contrary to any of the rules.

(4) Where in the course of his representation of his client a lawyer receives clearly established information that the client has perpetrated a fraud upon a person or tribunal, he shall promptly call on his client to rectify it, and if his client refuses or is

unable to do so he shall reveal the fraud to the affected person or tribunal, except when the information is a privileged communication; and if the person who perpetrated the fraud is not his client, the lawyer shall promptly reveal the fraud to the tribunal.

(5) A lawyer shall not assert in argument his personal belief in the integrity of his client or of his witnesses or in the justice of his cause, but he may make a fair analysis of the evidence touching on those matters.

Rule 16 RPC: A lawyer shall not (a) handle a legal matter which he knows or ought to know that he is not competent to handle, without associating with him a lawyer who is competent to handle it, unless the client objects;

(b) handle a legal matter without adequate preparation; (c) neglect a legal matter entrusted to him; or

(d) attempt to exonerate himself from or limit his liability to his client for his personal malpractice or professional misconduct.

Rule 30 RPC: A lawyer is an officer of the court and accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice.

Note: costs (i.e. awarded against your client) follow event if application for amendment is given because a lawyer didn't adequately prepare for his case.

ETHICAL ISSUES INVOLVED IN SUING A PARTY

- A legal practitioner should not sue those who cannot sue and be sued.

AGBONMAGBE BANK LTD. V. GENERAL MANAGER, GB OLIVANT LTD

- A legal practitioner should not join unnecessary parties to a suit.

NIGERIAN DEPOSIT INSURANCE CORPORATION V. ENYIBROS FOODS & ANOR.

<u>Scenarios</u>

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.
   Answer: Mr L [suing as representing the estate of Chief G (deceased)] …….claimant
   v
   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
   Answer: Miss Sally Harris (suing through her lawful attorney Mr Dibia)…. Plaintiff
   V
   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.
   Answer: The incorporated trustees of the Redeemers Christian Church of God….. plaintiff
   V
   Vanguard Nig Ltd and
   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
   Answer: 3 ways to sue
   Figure Consult…. Plaintiff or Messrs Obi, Chukwura, Chukwudi and Onome …. plaintiffs or Messrs Obi & Chukwura (suing on behalf of Figure Consult) ….. plaintiffs
   V
   Logo Corporation International…. Defendant
5) Jacob Olumo alias Jay Jones ants to sue Central Bank of Nigeria for wrongful termination of employment
   Answer: Jacob Olumo (also known as Jay Jones) …. plaintiff
   V
   Central Bank of Nigeria ….. defendant
   NB: CBN is a corporate entity so can sue and be sued in its name, even though an agent of the government
6) Rose Kalu, a legal practitioner facing the disciplinary committee of the NBA intends to sue the association for breach of her fundamental rights
   Answer: Rose Kalu….plaintiff
   V
   Incorporated trustee 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
   Fashola Odibo….plaintiff
   V
   Council of Legal Education....defendant
8) Aneke a patient at Uselu Psychiatric Hospital Lagos wants to sue his former employer Casa Bank Plc for his unpaid severance benefits
   Answer: Mr Aneke (suing through his guardian, Tony Ramal)….claimant
   V
   Casa Bank Plc …..defendant
   If suing in Abuja, then
   Answer: Mr Aneke (suing through his committee in lunacy) or Mr Aneke (suing through his next friend_…. Claimant
   V
   Casa Bank Plc…defendant
   As defendant: Mr Aneke (suing through his committee in lunacy) or Mr Aneke (suing through his guardian)

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
   Answer: Tega (infant) (suing through her next friend, Mrs Okoro)….plaintiff
   V
   James…defendant
   In Lagos: Tega (infant) (suing through her guardian)
10) The Bwari market women intends to bring an action against the Bwari Area Council for wrongly earmarking the market for relocation and they seek to obtain an injunction restraining the council from relocating the market. Mrs Agidigba & Mrs Abdulateef are their spokesperson
   Answer: Mrs Agidigba
   Mrs Abdulateef (suing for themselves and on behalf of the Bwari Market Women)…. Plaintiffs
   V
   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
   Answer: The University of Abuja …. Plaintiff
   V
   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
   Answer: Alhaji Danjuma …. Plaintiff
   V
   Attorney General of the Federation
   and The Ministry of Commerce …. Defendants

A third party is to be designated as such on the Court processes and not to be made a co-defendant. See SOYINKA V. ONI

(a) Using case study 2 on page 32: Application for joinder of a party

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

SUIT NO:PA/2/2014

BETWEEN:
MRS KAYUBA ADA…….. CLAIMANT/APPLICANT
AND
1) AGRICULTURAL BANK PLC…… DEFENDANT/RESPONDENT
2) NIGERIAN DEPOSIT INSURANCE CORPORATION……..PARTY SOUGHT TO BE JOINED

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 13 RULE 4 AND ORDER 39 RULE 1 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES, 2012 AND UNDER THE INHERENT JURISDICTION OF THE COURT

TAKE NOTICE that this Honourable Court will be moved on the …… day of …….. 2014 at the Hour of 9 O' clock in the forenoon or so soon thereafter as Counsel for the Claimant/Applicant will be heard praying this Tribunal for:

1. **AN ORDER** joining the Nigerian Deposit Insurance Corporation as Co-defendant in this suit
2. **AND FOR SUCH FURTHER ORDER OR ORDERS** as the honourable Court may deem fit to make in the circumstances.

DATED THIS …… DAY OF …… 2014.

_____

Bello Adamu Tope Esq.
APPLICANT'S SOLICITOR
ADAMU & CO.,
No. 1 Ademola Way, Victoria-Island, Lagos

FOR SERVICE ON:
Olatayo Okagbue Esq
RESPONDENT'S SOLICITOR
EXCLUSIVE ASSOCIATES
No. 15 Adeosun Close, Ikoyi, Lagos

NIGERIAN DEPOSIT INSURANCE COMMISSION
No. 1 Constitutional Avenue, Central Area, Abuja

(b) Striking out name of NDIC as co-defendant assuming they were originally joined as party

IN THE HIGH COURT OF JUSTICE OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO: LAG/31/2014

BETWEEN

MRS KAYUBA ADA……CLAIMANT/RESPONDENT

AND

1. **AGRICULTURAL BANK PLC**……DEFENDANT
2. **NIGERIAN DEPOSIT INSURANCE CORPORATION..**DEFENDANT/APPLICANT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 13 RULE 5 AND ORDER 39 RULE 1 OF THE LAGOS STATE HIGH COURT (CIVIL PROCEDURE) RULES 2012 AND UNDER THE INHERENT JURISDICTION OF THE COURT

TAKE NOTICE that this Honourable Court will be moved on the …… day of …….. 2014 at the Hour of 9 O' clock in the forenoon or so soon thereafter as Counsel for the Defendant/Applicant will be heard praying this Tribunal for:

1. **AN ORDER STRIKING OUT NIGERIAN DEPPOSIT INSURANCE CORPORATION AS CO-DEFENDANT IN THIS SUIT**
2. **AND FOR SUCH FURTHER ORDER OR ORDERS** as the honourable Court may deem fit to make in the circumstances.

DATED THIS …… DAY OF …… 2014

Akanji Bolu

DEFENDANT/APPLICANT'S SOLICITOR

AKANJI & CO.,

No. 10 Ade Street, Victoria-Island, Lagos

FOR SERVICE ON:

1. **Bello Adamu Tope Esq**
   CLAIMANT/RESPONDENT'S SOLICITOR

   ADAMU & CO

   No 1 Ademola Way, Victoria-Island, Lagos

2. **1st Defendant**
   Olatayo Okagbue Esq

   1st DEFENDANT SOLICITOR

EXCLUSIVE ASSOCIATES

No. 15 Adeosun Close, Ikoyi, Lagos

(c) Joining ABC Insurance PLC (the company that insured the consignment)

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

SUIT NO:PA/5/2014

BETWEEN:
MRS KAYUBA ADA…….. CLAIMANT/APPLICANT
AND
AGRICULTURAL BANK PLC……. DEFENDANT/RESPONDENT
AND
ABC INSURANCE PLC……..PARTY SOUGHT TO BE JOINED

MOTION ON NOTICE
BROUGHT PURSUANT TO ORDER 13 RULE 4 AND ORDER 39 RULE 1 OF THE LAGOS STATE HIGH COURT (CIVIL PROCEDURE) RULES, 2012
AND UNDER THE INHERENT JURISDICTION OF THE COURT

TAKE NOTICE that this Honourable Court will be moved on the …… day of …….. 2014 at the Hour of 9 O' clock in the forenoon or so soon thereafter as Counsel for the Claimant/Applicant will be heard praying this Tribunal for:

1. **AN ORDER** joining ABC Insurance Plc as Co-defendant in this suit
2. **AND FOR SUCH FURTHER ORDER OR ORDERS** as the honourable Court may deem fit to make in the circumstances.

DATED THIS …… DAY OF …….. 2014.

_____
Bello Adamu Tope Esq.
APPLICANT'S SOLICITOR
ADAMU & CO.,
No. 1 Ademola Way, Victoria-Island, Lagos

FOR SERVICE ON:
1. **Olatayo Okagbue Esq**
RESPONDENT'S SOLICITOR
EXCLUSIVE ASSOCIATES

No. 15 Adeosun Close, Ikoyi, Lagos

2. ABC INUSURANCE PLC
No. 10 American Embassy Drive, Central Area, Abuja

a. Third party application

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

SUIT NO:……..
MOTION NO:..

BETWEEN:

DR. HENRY OBAMA …….. PLAINTIFF

AND

1. MR DARLINGTON OKOYE (AKA OSAM) **DEFENDANTS/APPLICANTS**
2. CITY LINKS TRANSPORT LTD

AND

ABC INSURANCE CO. PLC …….. THIRD PARTY

MOTION EX PARTE
BROUGHT PURSUANT TO ORDER 10 RULE 19 OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2004 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

TAKE NOTICE that this Honourable Court will be moved on the …… day of …….. 2012 at the Hour of 9 O' clock in the forenoon 20or so soon thereafter as Counsel for the Defendants/Applicants will be heard praying this Court for:

1. **AN ORDER** joining ABC Insurance PLC as a third party in this suit
2. **AND** FOR SUCH FURTHER ORDERS AND ORDERS as this Court may deem fit to make in the circumstances.

DATED THIS …… DAY OF …….. 2012.

……..
Njoku Sly, Esq.
Counsel to the Defendants/Applicants
Whose address for serviceis:
No 15 Okon Street
Wuse Zone 5 Abuja.

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

SUIT NO:……..
MOTION NO:……..

BETWEEN:

DR. HENRY OBAMA …… PLAINTIFF

AND

1. MR DARLINGTON OKOYE (AKA OSAMA) **DEFENDANTS/APPLICANTS**
2. CITY LINKS TRANSPORT LTD

AND

ABC INSURANCE CO. PLC …… THIRD PARTY

AFFIDAVIT IN SUPPORT OF THE MOTION FOR THIRD PARTY NOTICE

I, Daniel Ikemson, Adult, Male, Managing Director, Christian, and a Nigerian Citizen residing at No. 15 Kuje, FCT Abuja do hereby make oath and state as follows:

1. I am the Managing Director of the 2nd Defendant/Applicant and by virtue of which I am conversant with the facts of this case.
2. I have the consent and authority of my employer to depose to this affidavit.
3. I know as a fact that on the 15 day of July 2000, the 2nd Defendant bought 15 cars and they were insured with the Third party for a comprehensive cover policy, a copy of the insurance policy is attached and marked as Exhibit A.
4. On the 10 day of August 2010, the 1st Defendant, a driver of one of the insured vehicles with registration number XL 252 KUJ had a collision with the Plaintiff.
5. The Third party is to indemnify the 2nd defendant of any liability arising from such accidents as a term in the insurance policy.
6. It is in the interest of justice that the third party be joined in this suit.
7. I make this statement in good faith believing its content to be true and correct in accordance with the Oaths Act 2004.

……..
Deponent

Sworn to at the High Court Registry, Gwagwalada

Dated This ……day of …… 2012

BEFORE ME

_____
COMMISSIONER FOR OATHS

c. Application for leave in representative action

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

SUIT NO:…..
MOTION NO:…….

BETWEEN:

1. ALHAJI ASMAU OLA
2. CHIEF DEDE SANYAOLU } **CLAIMANTS/APPLICANTS**
(SUING FOR THEMSELVES AND ON BEHALF OF THE ODOFIN FAMILY)

AND

CHIEF MOGAJI OKECHUKWU …… DEFENDANT/RESPONDENT

MOTION EX PARTE
BROUGHT PURSUANT TO ORDER 13 RULE 12 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2004 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

TAKE NOTICE that this Honourable Court will be moved on the …… day of …….. 2012 at the Hour of 9 O' clock in the forenoon or so soon thereafter as Counsel for the Claimants/Applicants will be heard praying this Court for:

1. **AN ORDER** granting leave to the Applicants to sue for themselves and on behalf of the Odofin family of Ikotun Lagos State.
2. **AND FOR SUCH FURTHER ORDERS AND ORDERS** as this Court may deem fit to make in the circumstances.

DATED THIS …… DAY OF …… 2012.

……..
Bello Adamu Tope Esq.
Counsel to the Claimants/Applicants
No. 10 Bagaga Street Ikeja, Lagos

Week 5

PRELIMINARY CONSIDERATION BEFORE COMMENCEMENT OF AN ACTION

In addition to any other consideration that may weigh in the mind of a litigant's counsel, it is advisable before commencing proceedings in court, to consider important issues that will most likely affect the action. These are:

a) Whether the proposed plaintiff or claimant has a cause of action;

b) Whether the proposed court has jurisdiction in the matter;

c) Locus standi

d) Whether all conditions precedent have been satisfied/pre-action notices

e) Exhaustion of available remedies and their effect on the jurisdiction of a CT

f) Appropriate venue

g) Litigation costs and charges

h) Availability of Alternative Dispute Resolution

i) Whether the action is not statute barred (limitation period)

LIMITATION PERIODS

This has to do with if an action is statute barred or not. For the purposes of time for action, time begins to run from the moment the cause of action has arisen, that is, when the facts which are material to be proved to entitle the plaintiff to success have happened – ***Lasisi Fadare v. A. G, Oyo State (1982) 4 SC 1.***

The law sometimes places limitation in bringing certain actions in court. Where there is lapse of time as regard to limitation of time, proceedings will be statute barred – ***Ajayi v. Military Administrator of Ondo State (1997); Egbe v. Adefarasin (1987).*** This means that a party will be denied proceedings after time has elapsed – ***Obiefuna v. Okoye (1961; Sanda v. Kukawa Local Government (1991) 2 NWLR.***

Limitation periods are creatures of statutes so depends on what state you are in. ***Sanda v Kukawa Local Government (1991):*** *ignorance of the limitation statute is not an excuse*

The following are limitation periods prescribed by the limitations laws:

a) Action founded on simple contract – 6 years –**section 6 Limitation Act, Abuja; section 8 Limitation Law, Lagos**

b) Action for damages for negligence – 3 years –**section 8(1), Abuja; section 9, Lagos**

c) Action for damages for slander – 3 years –**section 9, Abuja; section 10, Lagos**

d) Action upon instrument under seal – 12 years – **section 12, Lagos; section 11, Abuja.**

e) Action by state authority to recover land – 20 years – **section 16, Lagos; section 15, Abuja (**the limitation period for this is 12 years in Abuja**).**

f) Actions for recovery of land is 12 years for individuals

g) Actions against public officers: 3months: **section 2(a) Public Officers Protection Act**

This period begins to run when the cause of action accrues – ***Egbe v. Adefarasin (1987) 1 NWLR (Pt. 47) 1*** and the period of limitation is determined by looking at the writ of summons and the statement of claim alleging when the wrong was committed which gave the plaintiff a cause of action and by comparing that date with the date on which the writ of summons was filed. If the time on the writ is beyond the period allowed by limitation law, then the action is statute barred – ***Ajayi v. Military Administrator of Ondo State (supra).***

Also note that once the limitation period has elapsed, the defendant can set it up as a full defence, though for it to be in favour of the defendant, the defendant must specifically plead it. It becomes imperative on the plaintiff counsel to consider whether the cause of action is out of time before venturing into the expense of issuing a process.

Where an action is statute barred, the defendant shall raise it as a point of law in his statement of defence. Thereafter, the defendant applies by motion on notice to dismiss the action. However, where the pleadings are clear, the CT may raise the issue suo motu: **Fayemi v Local Government Service Comm, Oyo State (2005)**.

HOWEVER, THERE ARE EXCEPTIONS TO BE LIMITATION RULE:

a. Where the cause of action was fraudulently concealed, the limitation period would not apply
b. Time does not run against actions for fraud

PRE-ACTION NOTICES / CONDITION PRECEDENTS

The law most times requires certain conditions to be satisfied before filing an action in court. Such condition precedents may be by way of service of pre-action notice or satisfaction of other steps required by law before commencement of action.

Cases where pre-action notices can be served are:

1) Between landlord and tenant, where there is recovery of premises. The court can only exercise jurisdiction in such instances where the landlord has served the tenant statutory notice to quit - **section 8(1) Recovery of Premises Act of Abuja; Section 14(1) Rent Control and Recovery of Residential Premises Law of Lagos State.** Such service has been held to be condition precedent for commencement of action for recovery of premises – ***Gambari v. Gambari (1990) 5 NWLR (Pt. 152) 572.***

2) Laws establishing statutory bodies which require a pre-action notice to be served. For example **Section 12(2) of Nigerian National Petroleum Corporation (NNPC) Act** which provides that *"no suit shall be commenced against the Corporation before the expiration of one month after written notice of intention to commence the suit shall have been served upon the Corporation by the intending plaintiff or his agent; and the notice shall clearly and explicitly state the cause of action, the particulars of the claim, the name and place of abode of the intending plaintiff and the relief which he claims".* Non-issuance of such pre-action notice, where required, is fatal to the suit as such suit will be incompetent against the party who ought to have been served with the notice. This right may, however, be waived by the defendant taking steps in the proceedings – ***Ugwuanyi v. NICON Plc (2004); NNPC v. Sele (2004)***

3) With respect to public officers. For example, **section 2 Public Officers Protection Act LFN 2004,** which provides that *"an action or proceeding shall not lie or be instituted against such person unless it is commenced within three months next after the act, neglect or default complained of or in the case of a continuance of damage or injury, within three months next after the ceasing thereof".* For the protection to be applicable, the act done must be one in pursuance or execution or intended execution of any law or of any public duty or authority – ***Ademola II v. Akinwale Thomas (1946)***

4) **Katsina L.A. v Makudawa (1971)**: cases where the statute requires that before the intending plaintiff files the actions, he fist serve a pre-action notice on the potential defendant. The scope of the principles and rationale for pre-action notice were determined by the Supreme CT in **Mobil v LASEPA**

5) Legal Practitioner Act: LP must serve bill of charges before an action for recovery of legal fees

6) Chieftaincy cases in some states e.g. complain to traditional council of the area before applying to CT

7) Actions against local government councils and other statutory bodies.

The party who is the beneficiary of the pre-action notice may waive it e.g. by filing his statement of defence. Such objections can only be raised as a point of law in the statement of defence and a motion after filing the defence: **Provisional Council O.S.U v Makinde (1991)**

LOCUS STANDI

This means legal capacity to institute proceedings in a court of law and is used interchangeably with the terms like "standing" or "title to sue" – ***Sen. Abraham Adesanya v. President of FRN & Anor. (1981) per Fatayi Williams CJN (as he then was); Ogunsanya v. Dada (1992).***

It is also defined as the right of a party to appear and be heard on the question before any court or tribunal – ***Gombe v. P. W. (Nig.) Ltd (1995).*** It is also the right or competence of instituting proceedings in a court for redress or assertion of a right enforceable at law – ***A.G. Kaduna State v. Hassan (1985) per Irikefe JSC (as he then was); Adefule v. Oyesile (1989).***

Legal capacity of a person to institute an action in a CT of law i.e. the right to sue. In civil cases, the statement of claim/particulars of claim will show whether a person has locus standi: **Adesokan v Adegorolu (1997)**

No one can properly sue for the enforcement of a right apart from the person, in whom a right is vested as his personal right, as such having the *locus standi* to sue. It has been stated that a party prosecuting an action would confer some benefit on such party – ***Buraimoh Oloriode & Ors v. Opebi & Ors. (1984).*** Such benefit must be personal or peculiar to that party instituting an action – ***Abraham Adesanya's case (supra).***

A person who makes a claim, which in actual fact belongs to another has no *locus standi* before the court – ***Buraimoh Oloroide's case (supra).*** There must be a dispute between a person who makes a claim and the one against whom the claim is made and the action must be justifiable – ***A. G. Kaduna State v. Hassan (supra).***

Where a plaintiff has no *locus standi* a court is obliged to strike out his action without going into the merits of the case – ***Sen. Abraham Adesanya's case (supra).*** Objection as to lack of *locus standi* should be raised at the earliest stage and can be raised before the defendant files his statement of defence – ***Bolaji v. Bamgbose (1986).*** The most ideal time to raise it is after the plaintiff has filed his statement of claim which must disclose a cause of action vested in him – ***Adefule v. Oyesile (supra).*** The plaintiff needs not plead in his statement of claim that he has *locus standi* to commence the proceedings against the defendant for the relief(s) sought – ***Orogun v. Soremekun (1986).*** All he needs to plead and prove are facts establishing his right and obligations in respect of the subject-matter of the suit. Thus, the issue of *locus standi* does not depend on the success or merit of a case but on whether the plaintiff has sufficient interest in the subject-matter of the dispute – ***Adesokan v. Adegorolu (1997).***

The law is that there is no room for the adoption of the modern and liberal views on *locus standi* being followed in such common law jurisdictions like England and Australia which adoption has support in statute law – ***Per Oputa JSC in A. G, Kaduna State's case (supra).*** In an action to assert a public right or to enforce the performance of a public duty, it is only the A. G of the Federation or of a State, as the

case may be, who in law, has the requisite standing to sue – ***A. G of the Federation v. A. G. Imo State & Ors (1982).*** A private person can only bring such an action if he is granted a fiat by the A. G to do so in his name. Such an action is referred to as a *relator action* and the private person to whom the fiat is granted, as a *relator.*

Where the plaintiff alleges his civil rights and obligations, then he can bring a public interest case: **section 6 CFRN** (**Abraham Adesanya v President**). The Fundamental Rights (Enforcement Procedure) Rules 2009 has enlarged those that have locus standi for public interest cases e.g. an NGO can file action for fundamental human rights; members of families, public interest person

Finally, when a court holds that a plaintiff has no *locus standi* in respect of a claim the consequential order to be made is striking out of such claim and not as dismissal of the claim. This only means that the court before which such action is brought cannot entertain the adjudication of such an action when question arises as to a plaintiff not having the *locus standi* to institute an action.

VENUE

A party who decides to initiate an action in a magistrate court in Lagos State must comply with **Order 2 Rule 1 & 2 of the Magistrates Court Rules**. An action must be such that it can come under that provision. An action can be brought where:

a) The defendant or one of the defendants resides or carries on business in Lagos.

b) The cause of action arose wholly or partly in Lagos.

c) The plaintiff sues as assignee of a debt or other thing in action, the action may be commenced in Lagos if the assignor might have commenced it in Lagos but for the assignment.

d) The subject-matter of an originating application is in Lagos.

e) Where there is no respondent to an application and the applicant lives in Lagos.

f) In Lagos, if suit is commenced in the wrong judicial division, it may be transferred to the appropriate CT unless the Chief Judge orders otherwise: see **Order 2 Rule 5 Lagos rules**

It should be noted that where a person carries on business through an agent in a place but has his principal place of business elsewhere, the first mentioned place is where he carries on business.

CAUSE OF ACTION

There must be a cause of action before an intending litigant can seriously think of initiating proceedings in court, that is, a cause of action must have arisen. A party who has no cause of action has no legal righto sue.

Hence, cause of action can be defined as "a factual situation, the existence of which entitles one person to obtain from the court a remedy against another person" – ***Egbe v. Adefarasin (supra);*** or "the facts which constitute the essential ingredients of an enforceable right or claim" – ***Tower & Sons Ltd v. Ripstein (1994) (per Lord Wright)***

Mobil v LASEPA: the totality, combination or aggregate of facts necessary for a party to establish a legal right.

The phrase *"cause of action"* comprises every fact which is material to be proved to enable the plaintiff to succeed – ***Cooke v. Gill (1873) per Brett J.*** It can also be said to be the fact or combination of facts which gives rise to a right to sue and it consists of two elements – the wrongful act of the defendant which gives the plaintiff his cause of complaint and the consequent damage – ***Savage v. Uwaechia (1972) per Fatayi Williams, JSC (as he then was),*** or the act on the part of the defendant which gives the plaintiff his cause of complaint.

The cause of action must be reasonable – must not be frivolous but must have some prospect of success having regard to the pleading of the case.

The factual situation on which the plaintiff relies to support his claim must be recognised by the law as giving rise to a substantive right capable of being claimed against the defendant – ***Bello v. A. G, Oyo State (1986).*** Each of the factual elements making up the cause of action should have come into being before any proceedings are commenced, otherwise the proceedings will be premature and consequently unsustainable. An action relates back to the date it was commenced, that is, the date of the writ and not to a subsequent date and therefore a plaintiff cannot succeed in a cause of action, which did not exist on the date of the issue of writ – ***Mohammed v. U. B. A (1976)***

A cause of action may give rise to more than one remedy and where this is so, all the remedies must be claimed in the same action and not by way of separate actions – ***Gafaru v. U. A. C Ltd (1961)***

Cause of action varies from case to case: differs as between contract and tort

JURISDICTION

Jurisdiction is the legal capacity of a court to hear and determine judicial proceedings. It has the power to adjudicate concerning the subject matter of the controversy. A court of law can only exercise judicial powers when it has jurisdiction – ***Bronik Motors Ltd v. Wema Bank Ltd (1983).***

Jurisdiction is fundamental in any proceeding and lack of it is fatal to such proceedings – ***Madukolu v. Nkemdilim (1962); Sken Consult v. Secondy Ukey (1981).***

If the CT adjudicates on a matter it does not jurisdiction, it would be a nullity. Parties cannot by consent confer jurisdiction on a Court. NB: jurisdiction of National Industrial CT, State High CT, Federal High CT. For simple contract and tort even if one of the parties is an agency of the government, Federal High CT does not have jurisdiction, thus **NEPA v Edegbenro** is no longer good law

The limit of jurisdiction of Magistrate Court is spelt out in Abuja, ***Section 13 of the District Court Act,*** which provides for the limit of jurisdiction of the District Court Judges has been amended by the District Court (increase in jurisdiction of District Judges) Order, 1997. However, this was further increased in 2014. In Lagos, ***Section 17 of the Magistrate Court Law, Lagos State amended by Notice of Increase in Jurisdiction No 62 2006.***

LAGOS

1. Customary Court Grade I - N1,000000
2. Customary Court Grade II - N1,000000
3. Senior Magistrate Grade I - N750,000
4. Senior Magistrate Grade II - N750,000
5. Magistrate Grade I - N500,000
6. Magistrate Grade II - N500,000

ABUJA

1. Chief District Judge I - N5,000,000
2. Chief District Judge II - N4,000,000
3. Senior District Judge I - N3,000,000
4. Senior District Judge II - N2,000,000
5. District Judge I - N1,000,000
6. District Judge II - N25,000

The criteria for competence of a court were adumbrated in ***Madukolu v. Nkemdilim (supra)*** as follows:

a) The court must be properly constituted as regards numbers and qualification of the members of the bench and no member is disqualified for one reason or another.

b) The subject matter of the case must be within the court's jurisdiction and there must not be any feature in the case, which prevents the court from exercising jurisdiction.

c) The case before the court must be initiated by due process of law and upon fulfilment of any condition precedent to exercise of jurisdiction.

The issue of jurisdiction may be raised at any time of the proceedings including during appeal for the first time without leave – ***Yusuf v. Co-op Bank Ltd (1994); Ozomo v. Oyakhire (1985).***

LITIGATION COSTS

Litigation involves expenses by both parties. There are various court fees paid for filing processes and other documents and for their preparation, the amount spent in summoning the witnesses, and paying them allowances in certain cases and of course, the legal practitioner's fees where one is engaged.

Costs are meant to compensate one of the parties, most often the successful party, for expenses he has incurred in the litigation.

There are two elements in litigation cost which are:

1) The fees a party pays to his legal practitioner for professional services (called solicitor's and own client costs); and

2) The other sums of money spent by him in the course and for the purposes of the litigation (called party costs).

It is from statute, mainly from the rules of court, that the courts derive the power to order costs. Thus, according to Lagos High Court Rules, no party is entitled to any costs of or incidental to any proceedings from any other party to the proceedings except under an order of the court.

Also there are other relationship costs e.g. in divorce case, the psychological trauma of separation on the children.

AVAILABILITY OF ALTERNATIVE DISPUTE RESOLUTION METHOD

It is the method by which parties to a dispute reach an amicable resolution of the dispute without the need to resort to Court or litigation. ADR could be **Court connected** or **non-Court connected**. It is the former when where the matter was already in Court and the parties agreed on an out of Court settlement while it is the latter where the parties mutually reach an acceptable agreement without recourse to Court.

There are different types of ADR which are alternatives to litigation. These are:

1. Negotiation;
2. Mediation;
3. Conciliation
4. Multi-Door Court House;
5. Early Neutral Evaluation; and
6. Arbitration.

Any of the above is available to parties that do not prefer litigation due to delay in justice and expenses to be incurred unlike alternative dispute resolution. ADR is cheaper than litigation in many cases. Better for an on-going contractual relationship. The rules enjoin counsel to advice clients as to the availability of ADR.

In both the FCT and Lagos, when an action is filed, certain forms must be filed to show that the client has been advised as to the need for ADR. **Order 4 Rule 17 FCT rules 2004**: counsel shall file a pre-action counselling certificate showing that the parties have been appropriately advised as to relative strengths and weaknesses of their respective cases and the counsel has personally pay the cost when it turns out to be frivolous. **Order 3 Rule 2 (1)(e) Lagos 2012** is Pre-Action Protocol Form 001. Also in **Rule 15(3)(d) RPC**: in his representation of his client, a lawyer shall not fail or neglect to inform his client of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of his client.

EXHAUSTION OF AVAILABLE REMEDIES

Rules in most universities state that if a student has a complaint against the University, he/she must write and complain to Council before applying to CT. Where there is a failure by plaintiff to exhaust all internal remedies, then an objection can be raised: **Okomalu v Akinbode**

Where the law has given exclusive power to a body to decide, the CT cannot come in before that body has exercised the power but Supreme CT stated that where the plaintiff has complained and the body does not act promptly, the plaintiff is as free as a bird to apply to CT: **Ogologo & Ors v Uche & Ors**

DUTIES TO CLIENT

Ugba v Suswam (2012): SC ordered cost of 1 million naira each was awarded against counsel. Total cost of 3 million naira. This was due to brining a frivolous suit and also in violation of Rule 15(3)(c) of the Rules of Professional Conduct In his representation of his client, a lawyer shall not knowingly advance a claim or defence that is unwarranted under existing law, but he may advance such claim or defence if it can be supported by argument in good faith for an extension, modification, or

reversal of existing law;

PRE-ACTION COUNSELLING

This is to give professional or legal help and advice to clients on certain conditions to be satisfied before filing an action in court. Such condition precedents may be by way of service of pre-action notice or satisfaction of other steps required by law before commencement of action

PARTIES: The parties against whom an action is sought to be instituted are to be considered. E.g. Are they persons who have immunity? If they have constitutional immunity what can be done? E.g. Diplomatic President. **Constitutional immunity cannot be waived (section 308 CFRN 1999)**

MODE OF COMMENCING THE ACTION: The cause of action determine the mode of action to some extent. However, the rules of the court prescribes the various modes of instituting various actions e.g. Writ, summons, Petition, Motion.

ENFORCEABILITY OF JUDGMENT: The counsel should also consider the legal and practical problems of enforcement and realisation of any judgment that could be obtained.

INTERVIEWING AND COUNSELLING SKILLS

This is to help the potential client air his or her concerns; the interview must be conducted effectively.

Legal interviewing is a medium of communication between a practitioner and a potential client. A client may consult a practitioner with a matter which he or she believes relates to law, but which has nothing to do with law, in which the legal practitioner is to aid the client to the right place.

1) **To form an attorney-client relationship –** this has to do with three level viz.: personal, educational, and contractual. It is personal where you and the client come to understand each other, that is, you have to know each other very well in the course of interviewing and counselling. It is educational where you explain to the client what is involved in practice, for instance, fiduciary relationship, confidentiality, etc. finally, it is contractual where the client agrees to hire you and pay for your fees and expenses incurred.

2) **To learn the client's goals –** know what the client wants and explain the best options to him.

3) **To learn as much as the client knows about the facts –** this is the major aim of the interview.

4) **To reduce the client's anxiety without being unrealistic –** give the client the feeling that you can help with the matter but do not assure him that you must win the case as this will be unethical.

ETHICS OF INTERVIEWING AND COUNSELLING

1) A lawyer should not assure his client that he must win the case presented to him.

2) It is imperative on the part of the counsel to ensure that all alternative dispute resolution methods have been explored before proceeding to commence an action.

3) A lawyer should not agree to accept a case, which he is not specialised on.

4) To handle a client's matter, the practitioner may need to interview other people who possess information or can provide explanations relating to it.

LETTER WRITING

Practitioners are required to draft letters of various kinds, ranging from a covering letter to a letter before a civil action. In drafting letters, the conventions governing letter writing such as layout, salutation and complimentary close must be adhered to. Since the practitioner acts on behalf of a client in a professional capacity, the letter should be written in plain English. It should never be conversational; thus, can't, won't, they're, and so on, should not be used. Such an informal style of writing is inappropriate. In ***Weston v. Central Criminal court, Courts Administrator (1977) 1 QB 32 at 39, the Court of Appeal*** *observed that the letter was discourteous and rude.*

Every letter should bear a date. The day should be written in figures, the month in words and the year in figures. The month and year should not be abbreviated but be written in full. Dates should not be punctuated. However, it is permissible to insert a comma after the month. The month should be written out in words, while the day and year should be written in figures.

A letter must bear a heading or caption, for example, if a client is being informed about progress in a suit, then the heading of the letter will be the suit number and the parties to the suit

Where it is intended that the letter should be read only by the addressee, the expression **'Strictly Private and Confidential',** should be written on it.

No letter must be dispatched unsigned. A letter must be signed either by the writer or on his behalf.

CHARGING OF FEES

A firm should charge fees for doing legal work, except where it does free legal work for those who cannot afford it. Legal work done for free is called *pro bono* work. It is permissible to do free work for the poor, colleagues, widows, orphans, etc.

A law firm may have a special or general retainer to do legal work. There is a special retainer, where it is instructed to handle a single work; and a general retainer where it is instructed to handle all problems arising in an area of law during an agreed period of time.

A law firm cannot charge arbitrary fees. It must charge fees according to the provisions of the law because a law firm is a professional business. Such fees are regulated by Legal Practitioners Act, 2004, and the Rules of Professional Conduct (RPC). ***Section 19(3) of LPA*** *provides that the remuneration provisions shall apply to a firm consisting of legal practitioners in partnership as they apply to a legal practitioner. The* ***RPC*** *provides that in fixing fees, it should never be forgotten that the profession is a branch of the administration of justice and not merely a money-getting trade.*

The Legal Practitioners' Remuneration Committee is empowered under **section 15 of the LPA** to make orders regulating fees of legal practitioners.

DUTY TO CLIENT

The Rules of Professional Conduct is made for the maintenance of the highest standard of professional conduct etiquette and discipline in terms of the constitution of the Nigerian Bar Association.

This can be found under Rules 14 to 25 of the Rules of Professional Conduct for Legal Practitioners, 2007.

A lawyer has the duty to take instructions from his client, represent his client in court, give legal advice to his client, etc.

ETHICAL ISSUES INVOLVED IN INSTITUTING FRIVOLOUS ACTIONS, ABUSE OF COURT PROCESS AND FAILURE TO ADVICE ON ADR OPTIONS

1) A practitioner must comply with the law and rules of professional conduct when consulted by a potential client to handle a matter.

2) A legal practitioner should know whom the enforceable right in the cause of action is vested to enable him decide whether he, himself, can properly sue.

3) A legal practitioner must ascertain whether there is any conflict of interest with existing clients. If there is, a legal practitioner is to decline the matter. A violation of this will constitute professional misconduct – **Rule 17 of the Rules of Professional Conduct (RPC).**

4) A legal practitioner must also ensure the potential client's matter does not involve illegality, crime or fraud. A legal practitioner should decline where the matter involves one or any of these.

5) Legal practitioners must be frank in dealing with potential clients. If it is a field where the legal practitioner lacks knowledge, the legal practitioner should decline to the matter.

6) A legal practitioner should endeavour to obtain full knowledge of his client's case before advising thereon, and he is bound to give candid opinion of the merits and probable results of pending or contemplated litigation.

7) The client must be assured that the facts will be treated confidentially – ***Fawehinmi v. Nigerian Bar Association & Ors. (1989)***

8) A legal practitioner is to give advice on the possible courses of action (e.g. alternative dispute resolution).

9) It is important for counsel to ensure that all conditions precedent have been satisfied before commencement of proceedings.

10) The legal practitioner must possess analytical skill, and the ability to articulate clearly and advice being offered.

CONSEQUENCES OF NOT OBSERVING THE PRELIMINARY MATTERS BEFORE INSTITUTING AN ACTION IN COURT

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

R. 14(1) & (2): see week 4

R. 15(3) (b): In his representation of his client, a lawyer shall not file a suit, assert a position, conduct a defence, delay a trial, or take over action 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

See R15(3)(c) above

R. 16(1) OF THE RPC: A lawyer shall not (a) handle a legal matter which he knows or ought to know that he is not competent to handle, without associating with him a lawyer who is competent to handle it, unless the client objects; (b) handle a legal matter without adequate preparation; (c) neglect a legal matter entrusted to him; or (d) attempt to exonerate himself from or limit his liability to his client for his personal malpractice or professional misconduct.

GENERAL PRINCIPLES AND PROCEDURE FOR COMMENCING ACTIONS IN THE MAGISTRATE COURT OF LAGOS STATE

Laws to Note

- Magistrate CT Law 2009 Lagos State
- Magistrate CTs Regulatory Enforcement Procedure Rule 2009
- The Magistrate Civil Procedure Rule 2009 of Lagos State

General Comments

- States in the Southern part, magistrate CTs exercise both civil and criminal
- In the North, when a magistrate exercises civil jurisdiction, it is a district CT

Magistrate Courts

Magistrates are usually appointed by the State Judicial Service Commission.
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. The constitution of the Court is one.

Jurisdiction of Magistrate Court in Lagos

By **s.28 of the Magistrate Court Law 2009 of Lagos State**, vest 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

Compare with FCT: In 2009, the Minister of the FCT upon recommendation of Chief Judge made an Order – the District Court (increase of jurisdiction of District Judges) Order 2014 has fixed the maximum monetary limit of the Chief District Judge 1, the highest grade of District CT is 5 million naira (personal actions in contract and tort and actions for recovery of premises

Mode of Commencement of action in the Magistrate CT in Lagos State

- 2 main methods: (a) by way of claim and (b) by originating application: See **Order 1 Rules (1) and (2) of the Magistrate CT (Civil Procedure) Rules 2009 Schedule 4 to the Magistrate Court Law No.16 2009 of Lagos State**
- Any action commenced by claim is commenced by the claimant or his solicitor delivering to the Registrar a precipe as in Civil Form 1 of Appendix 1 to the Magistrate Court Rules and filing same together with the particulars of claim –***Order 2 Rule 1 Abuja; Order 2 Rule 6(1) Lagos***

Place of commencement

- The action may be filed where the defendant resides; or
- Where he carries on business; or
- Where the cause of action arose

Contents of particulars of claim

- The particulars of claim shall be headed in the CT, have claim number, indicate the parties, and contain a brief summary of the claim, sufficient to disclose a cause of action. It shall also indicate the relief claim
- It shall be dated, signed by the claimant or solicitor, and endorsed with address for service
- It shall also contain the telephone number or email address of the claimant
- A claim that does not disclose a cause of action shall be struck out by the CT

Action by Registrar and Magistrate

- Upon filing the claim the registrar shall enter same in the Civil Cause Book kept for that purpose
- Thereafter, the Magistrate or Registrar shall issue an ordinary summons to the defendant which shall be served with the particulars of the claim. If you attach a letter, then magistrate will issue a summary summons (see sample: address a letter to the registrar/magistrate to issue a summary summons)

Types of summons

- There are 2 types of summons: ordinary summons and summary summons
- An ordinary summons is for contentious matters while a summary summons is for non-contentious matters like actions for recovery of liquidated sum of money (an ascertainable sum of money)
- A summary summons may be exchanged with an ordinary summons upon application by the claimant made within 3 months of the issuance of the summary summons subject to the payment of the necessary fees.

Summary summons

- An application for summary summons is made by filing a claim and a letter to the Registrar for endorsement of the claim as a summary summons
- Note that a summary summons shall not issue in the following cases:
- (1) Where the defendant is an infant or a person of unsound mind
- (2) To recover money lent by a money lender etc
- (3) For actions on behalf of an assignee of a debt or other chose in action or to recover money secured by a mortgage or charge
- (4) Where the defendant is to be served outside jurisdiction (i.e. does not live in Lagos State)

Ordinary summons

- Form 6 of appendix A to the Rules
- Upon service of an ordinary summons, the defendant may ask for further particulars within 6 days after service, but he must indicate the exact nature of the particulars he seeks
- On receipt of the notice, the claimant or counsel on his behalf shall file the further particulars within 2 days after service
- If the claimant does not comply with the application for particulars, the matter may be stayed if the Ct is of the view that it would prejudice the defendant (i.e. the CT has a discretion depending on whether the CT feels the further particulars is necessary to avoid prejudice)
- After 6 days of the service of an ordinary summons and there is no demand for further particulars, the matter would be set down for trial
- But after 5 days of the service of a summary summons judgment would be entered if the defendant does not react
- In both summary and ordinary summons, the defendant may react by filing a defence, counter-claim or set-off using Form 6A. Where that is the case the matter would be set down for trial like an ordinary summons
- He may file a notice in Form 6(b) admitting liability for the whole or part of the claim and ask for more time within which to pay up. This must be filed within 6days of the service of the summons on him. If this is acceptable to the plaintiff, he will send a notice of acceptance within 3 days of receipt of the defendant's notice and judgment will be entered accordingly. A notice of non-acceptance must be sent within 3 days, on the other hand, in which case the matter will proceed to trial.

- He may pay into an amount to settle the claim within 7 days or the time set by the registrar for the defendant to appear in court.

Life-span of summons

- The lifespan of an ordinary summons is 3months from the date of issue. It becomes void thereafter with liberty to file a fresh action subject to any statute of limitation

- A summary summons that has been served and 3 months have expired since it was served but no defence or admission or counter-claim has been delivered and no judgment has been made against the defendant; or an admission has been delivered but no notice of accept or non-acceptance has been received from the claimant, the action shall be struck out and no extension of time shall be granted beyond the 3 months: **Order 3 Rule 8 (Form 4)**

BY ORIGINATING APPLICATION

This is rarely used. However, people in practice use it for non-contentious matter, that is, interpretation of statute when the facts are not in dispute – ***Order 2 Rule 2 MCR, Lagos.***

The life-span of originating process is 12 months, but can be renewed for a period of 6 months upon an application by way of motion *ex parte* supported by affidavit and a written address. Where an originating process expires without renewal, the plaintiff cannot go ahead to serve the expired writ unless a renewal is asked for.

Mode of service:

1) This is served personally on the defendant – ***Order 6 MCR, Lagos.*** It should be served by the bailiff or police officer or any other person designated by the court – ***Order 6 Rule 6 MCR, Lagos.***
2) Substituted service by motion *ex parte* supported by affidavit and written address stating that it has been impossible to serve personally on the defendant.

Mode of service for substituted service is served on:

1) Agent of defendant
2) Advertisement in newspaper within courts jurisdiction,
3) Pasting it on conspicuous part of last known address of defendant.
4) Pasting in conspicuous place of court once one is sure that it will be seen by defendant.
5) Or any other way the court decides – ***Order 6 Rule 2 MCR, Lagos.***

APPLICATIONS FOR SUMMONS

Three copies of the particulars of the Plaintiff's Claims, showing his cause of action and his pecuniary or other claim, must be furnished with a further copy for each additional defendant if more than one.

Ordinary Debt Cases: The particulars should show dates of all items, goods or other debts, and also cash received or credits. However, where the plaintiff is willing to abandon the excessive portion of his claim so as to be able to commence his proceedings in the Magistrate court or District court, the fact must be noted at the end of the particulars.

Un-liquidated damages: In claims for un-liquidated damages, the plaintiff can state that he limits his claim to a certain sum, which will then in general be deemed to be the amount claimed, certainly in respect of the court fee to be paid or in relation to any award of costs against an unsuccessful plaintiff.

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

a) The date of the loan;

b) The amount actually lent;

c) The rate per cent of interest charged;

d) The date of the note or written memorandum of contract;

e) The date the contract was signed by the borrower;

f) The date when a copy of the contract was sent or delivered to the borrower;

g) Payment received, with the date of payment;

h) Amount of every sum due to the plaintiff;

i) The date the same became due; and

j) Amount of interest accrued due thereon and unpaid.

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

a) The date of the agreement and the parties thereto;

b) The goods claimed;

c) The amount of the hire-purchase price;

d) The amount paid by or on behalf of the hirer;

e) The amount of the unpaid balance of the hire-purchase price;

f) The date when the right to demand delivery of the goods accrued;

g) The amount if any claimed as an alternative to the delivery of the goods; and

h) The amount claimed in addition to delivery of the goods or the alternative money claim, stating which.

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

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

a) The date of the mortgage or charge;

b) The amount of principal money lent;

c) The amount still due with interest; and

d) What if any, proceedings have been taken by the plaintiff in respect of the property mortgaged and whether he has obtained possession thereof. In regard to claims for possession of the mortgaged property, the plaintiff must give the details required at (b) and (c) above and add particulars of the proceedings taken in respect of the principal money or interest.

Claims against the State: In proceedings against the State, the particulars of claim must contain information as to the circumstances in which it is alleged the liability of the state has arisen and as to the government departments and officers of the State concerned.

AMENDMENT OF CLAIMS

The Plaintiff's claim can be amended at any time before judgment with leave of court by filing and delivering amended particulars.

The amount of the claim can be increased, in this case, an additional court fee may become payable. The court at the hearing may allow or disallow the amendment.

Where an action is for un-liquidated money demand, the plaintiff will apply for ordinary summons. In all cases of liquidated money demand, the application will be for summary summons – ***Order 3 and 4 MCR, Lagos.***

See pg 31 for the case study of the Curriculum

Case study 1 on Crown Kitchen – preliminary issues

- Cause of action: breach of contract

- Issue of locus standi: Crown Kitchen has an interest protected by law. The parties are artificial persons so they can institute an action
- Jurisdiction: contract was performed in Ikoyi so should institute action in Lagos High CT Ikoyi Division. Since claim is for 2.17 million naira, counsel should have gone to the Magistrate CT (CT of summary jurisdiction) which would have been faster and magistrate CTs can handle claims of up to 10 million naira in Lagos. Competence issue as the solicitor filed the issue in High CT instead of the Magistrate CT Lagos since no magistrate CT in Ikoyi since defendant has its office in Ikoyi
- Limitation period: action is statute barred as done btw 1995-1997 but new case study has a recent date
- Commencement of the actions: writ of summons (ordinary) as it is contentious
- Mode of commencement of this action: not originating application and not summary summons. An ordinary summons and by claim
- Enforcement of judgment
- Condition precedent: the contract clause stated they must first submit to conciliation before litigation and this condition was not fulfilled. Therefore, the matter will be stayed until conciliatory action is taken.
- Another reason for the magistrate Ct as Crown Kitchen wants a faster trial as magistrate CT is a CT of summary jurisdiction. ADR: on-going business relationship

Case study 2

- Cause of action: Breach of contract
- Jurisdiction: State High CT in Lagos: **Onura v Kaduna Refining** as it is a simple contract, it is in the State High CT regardless of the fact that a federal agency is involved in the suit
- Limitation: contract 2000 and matter started in 2006 so action is statute barred. NB: doctrine of acknowledgement exception will not apply in this case as letter written by the bank will have no effect on the statute of limitation because Agric Bank did not admit liability or promise to pay the sum of money. Vandat v National Bank
- Capacity of the parties (locus standi): Mrs Kayuba and Agric Bank can commence actions and defend in its name and have locus standi in this case
- Mode of commencement should have been by writ of summons

NB: **AG Rivers v AG Bayelsa (2013)**: another exception to limitation act when there is continuous damage – e.g. someone operates a mine and causes damage to the environment and the people there suffer because they were working the mines. A cause of action arises perhaps due to negligence. If a fresh damage occurs causing fresh injury, the cause of action arises again as a result of the earlier (first working of the mines). The people can now bring an action based on this fresh damage and the defendant cannot argue that he did not work the mines a second time (continuance of damage).

See how to draft a pre-action counselling certificate. No pre-action counselling certificate in magistrate Courts. NB: for Lagos, there is no requirement for pre-action counselling certificate, just have Form 01

Pre-action counselling certificate

I, EMOKINIOVO DAFE-AKPEDEYE, Legal Practitioner of COMPOS MENTIS CHAMBERS, No 1 Ahmadu Bello Way, Garki II, Abuja and counsel to the plaintiff, have gone through the facts of the case of the said plaintiff and on my honour have appropriately counselled him on the relative strength of his case or otherwise and should this turn out to be frivolous, I am prepared to be liable according to the provisions of the Rules of this court.

Dated this……of…..2014

…… ……..

EMOKINIOVO DAFE-AKPEDEYE SHEU AHMED

Legal Practitioner to the Plaintiff Plaintiff

Form 1

(Statement of Compliance with Pre-Action Protocol)

(Order 3 Rule 2(1)(e)

(Order 3 Rule 8(2)(d)

IN THE HIGH COURT OF LAGOS STATE

IN THE IKEJA JUDICIAL DIVISION

HOLDEN AT IKEJA

SUIT NO……..

BETWEEN

ABAYOMI TADE……..CLAIMANT

AND

KUNLE HAMMED……..DEFENDANT

STATEMENT OF COMPLIANCE WITH PRE-ACTION PROTOCOL

I/WE……(Claimant/Claimant's Legal Practitioner) do make oath and say as follows:

1. I/WE have complied with the directions of the Pre-Action Protocol as set out in Order 1 Rule 1 (4)(ii)(e) of the High Court Rules

2. I/WE have made attempts to have this matter settled out of Court with the Defendant and such attempts were unsuccessful (claimant must state what attempts he has made to have the matter settled and attach such evidence of same)

3. I/WE have by a Written Memorandum to the Defendant set out my/our claim and options for settlement

Dated at Lagos this…..Day of…..2014

Case study 1: Page 31

IN THE MAGISTRATE COURT OF LAGOS STATE

IN IKEJA MAGISTERIAL DISTRICT

HOLDEN AT IKEJA

Claim No:……..

BETWEEN

CROWN KITCHEN LTD……..CLAIMANT

AND

K & T LTD……DEFENDANT

CLAIM

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.

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

PARTICULARS OF CLAAIMS

1. The claimant is a limited liability company whose address is No 16 Kayode Street, Ajah, Lagos

2. The defendant is a limited liability company whose address is at No 12 Obafemi Awolowo Road, Victoria Island, Lagos

3. The defendant owes the claimant the sum of 2.17million being the sum accrued to the partnership contract between the claimant and defendant

4. 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

5. 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…

CLAIMANT'S SOLICITOR

SUNDAY OGUNLEWE

BORN FOR GOOD CHAMBERS

3 MODAKEKE AVENUE, IKEJA, LAGOS

FOR SERVICE TO DEFENDANT

NO 18 IKEJA ROAD, IKEJA, LAGOS

Presentation of the claim based on case study 1

Particulars of claim: the claimant and who he is (a limited liability company), the defendant and who he is, the facts giving rise to the action, what you are claiming for

Should claim for interest was payable; not only the contract sum given the sum of money has remained unpaid for a length of time

There must also be an address for service to serve to the defendant

Particulars of claim is for magistrate CT while statement of claim is for High CT (Crown Kitchen):

- Give particulars of the vehicles you want to have the injunction made against, registration number, chassis number, motor company from where it was bought, the receipt of the car. So you say the cars with particulars: …. (list)
- Talk about the partnership agreement dated and state that term of agreement says that these stated vehicles will be used jointly in running the business after which the vehicles will have be shared equally
- However, the defendant has converted the cars and refused to allow the claimant have equal use/enjoyment of the vehicles
- The defendant has refused to pay the claimant's share of the vehicles despite repeated demands
- That the claimant has written repeatedly to the defendant to ask for such payment

Whereof the claimant claims as follows: (there will be 4 prayers)

- Monetary claim: The sum of 2.17 million naira being the claimant's share of the proceeds of the contract performed by the parties from… to…
- A declaration that the contract between the claimant and the defendant and the partnership entered into by them is still valid and subsisting
- An order of perpetual injunction restraining the defendant from converting the vehicles to its sole use
- An order directing a division of the vehicles equally between the parties

Order 4 rule 17 Abuja rules: a certificate of pre-action counselling signed by Counsel and the litigant, shall be filed along with the writ where proceedings are initiated by Counsel, showing that the parties have been appropriately advised as to the relative strength and weakness of their case, and the Counsel shall be personally liable to pay the costs of the proceedings where it turns out to be frivolous

Order 3 Rule 2(1)(e) Lagos Rules: all civil proceedings commenced by writ of summons shall be accompanied by pre-action protocol Form 01

Order 3 Rule 8(2)(d) Lagos Rules: an originating summons shall be accompanied by pre-action protocol Form

WEEK 6

COMMENCEMENT OF ACTION IN THE HIGH COURT

PLACE OF COMMENCEMENT/VENUE

Order 9 Abuja

Order 2 Lagos

1. For Land matters the matter can be instituted in the judicial divisions **where the land is situated: Order 9 Rule 1(a) &(b)Abuja; Order 2 Rule 1 Lagos**
2. Actions relating to personal property distrained or seized for any cause – where the distrain or seizure took place**: Order 9 Rule 1(a) &(b) Abuja, Order 2 Rule 1 Lagos**
3. For tort; where the tort was committed
4. Actions against public officers, for recovery of penalty or forfeiture should be commenced where the cause of action arose: **Order 9 Rule 2 Abuja; Order 2 Rule 2 Lagos**
5. In contract; **where the contract was to be performed** or **where the defendant resides** or **does his business: Order 9 Rule 3 Abuja; Order 2 Rule 3 Lagos**
6. If a company is a party in the suit, action is to be commenced in the judicial division where it has its central place of business, management and control-**KRAUS THOMPSON V UNICAL**
7. For all other suits not specifically mentioned, where the defendant resides or does his business or where the cause of action arose **= Order 9 Rule 4ABUJA.**
   For all other suits not specifically mentioned where the defendant resides or does his business = **Order 2 Rule 4 LAGOS**

Where does a company reside?

- A company is deemed to reside where its central management and control is located
- E.g. a University resides where its Vice Chancellor has his office or the main campus of the University: **Kraus Thompson Org. Ltd v UNICAL (2004); Unit Construction CO. Ltd v Bullock**

ACTIONS COMMENCED BY WRONG MODE

- The matter is no longer interpreted to be fundamental:
  ORDER 2 RULE 1(1) ABUJA; ORDER 5 RULE 1(3) LAGOS

- For example, if an action is commenced by originating summons instead of a writ, the court will order a conversion of the originating summons to a writ of summons and order pleadings: **Adeyelu II v Ajagungbade III (2007) Pt 1054**
- This is provided that the dispute is disclosed on the process. The case will proceed for trial in the normal way.

ACTION COMMENCED IN THE WRONG JUDICIAL DIVISION

- In **ABUJA**, the matter may proceed unless the court directs or the defendant pleads specially an objection to the jurisdiction before or at the time of pleadings: **ORDER 9 RULE 5 ABUJA**
- The judge shall order a transfer if satisfied or retrain and proceed with the matter. No appeal lies against his decision **ORDERS 9 RULE 6 ABUJA.**
- In **LAGOS**, the matter could proceed in that court's judicial division **UNLESS** the Chief Judge directs otherwise: **ORDER 2 RULE 5 LAGOS**

FORM OF COMMENCEMENT OF ACTION (ORIGINATING PROCESSES)

Actions are commenced in the High Court through four different processes viz

a. Originating motion
b. Originating summons
c. Petition
d. Writ of summons

ORIGINATING MOTION

This is used only when provided for by a statute or a rule of court
ORDER 1 RULE 1(ABUJA)
ORDER 3 RULE 1(LAGOS).

EXAMPLES OF ACTIONS TO BE COMMENCED by this way is

1. Application for habeas corpus,
2. Order for mandamus,
3. Prohibition or certiorari,
4. Application for judicial review under **Order 42 Abuja and Order 40 Lagos**;
5. Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009

Where a statute provides that action be commenced by application but does not specifically provide the procedure**, originating motion should be used.**
-Akunnia v AG (Anambra) [1977]

ORIGINATING SUMMONS

This is used whenever there is interpretation of a written law, etc
It is **USED** generally for non-contentious matters i.e. those maters where the facts are not likely to be in dispute.
In Abuja, the defendant has 8 days to respond (**see Forms 54 and 55** in the appendix to the rules.

In Lagos, the defendant has 21 days to respond: **Order 17 Rule 16 Lagos**

EXAMPLES OF ACTIONS TO BE COMMENCED BY THIS MODE ARE

1. Action for interpretation of a written law, documents,
2. Company proceedings-**rule 2(1) CPR 1992**
3. Interpretation of any instrument or deed,
4. Will, contract agreement or some other question of law.

ORDER 1 RULE 2(2) ABUJA;
ORDER 3 RULE 5 (LAGOS)

PETITION

This is a written application made to court setting out a party case.
It **is only used where a statute** or the rule of court provide for its use.
ORDER 1 RULE 2(3) ABUJA and ORDER 6 ABUJA
ORDER 3 RULE 1 (LAGOS)

EXAMPLES OF SUITS TO BE COMMENCED BY PETITION INCLUDE

1. Dissolution of marriage-matrimonial proceedings,
2. Election petitions,
3. Winding up of companies under the CAMA

In a petition, the parties are referred to as PETITIONER AND RESPONDENTS.
HEADED- IN THE MATTER
USUALLY STARTS "the humble petition"

WRIT OF SUMMONS

Writ of summon is used to commence every action **EXCEPT** if particular rule or law, provides otherwise: **ORDER 1 RULE 2(1) ABUJA; ORDER 3 RULE 1 (LAGOS)**
The writ is **the main mode** of commencing actions in the High Court. For contentious matters.
A writ of summons shall be the form of commencing all proceedings.
WHERE A CLAIMANT CLAIMS

(i) Any relief or remedy for any civil wrong
(ii) Damages for breach of duty, where contractual, statutory or the
(iii) Damages for personal injuries to or wrongful death of any person
(iv) Where the claim is based on or includes on allegation for fraud
(v) Where an interested person claims declaration.

NOTE-

Generally, when in doubt as to how to commence a proceeding is most appropriate to use the writ of summons- **DOHERTY V. DOHERTY.**
Writ of summons is in Form 1 in the Appendix to the Rules (Abuja and Lagos).
EXAMS: Fill in Judicial division, parties, counsel's name, prayer clause (look for a blank writ of summons and fill it in)

ENDORSEMENT OF A WRIT OF SUMMONS

- Before filing, one should **ensure that it is properly endorsed at the back side of the writ** stating the reliefs which the Plaintiff/Claimant is seeking from the defendant.
- A writ is **endorsed** when it contains a concise statement of the complaint and the relief or remedy to which the Plaintiff considered himself entitled- **NPA V.OMOLULU**

THERE ARE TWO TYPES OF ENDORSEMENT ON A WRIT which are:

(A) GENERAL ENDORSEMENT OF A WRIT OF SUMMONS

This means the **reliefs sought will be briefly stated in the Writ,** while **the facts giving rise to the cause of action will be detailed in the Statement of claim of the Plaintiff.**

(B) SPECIAL ENDORSEMENT OF A WRIT SUMMONS

Here the writ will contain **the full particulars of the claim and the reliefs sought.** It is a writ endorsed with the statement of claim, but in view of the frontloading concept, it is no longer of much relevance. It is in Form 2 of the appendix to the rules in Abuja. There is no sample in the Lagos rules

Order 4 Rule 1 & 8 of the High Court of the FCT Rules 2004 (Forms 1 & 3)
Order 3 Rule 3 of the High Court of Lagos Rules 2012 (Forms 1 &2),
and ALATEDE V. FALODE.

COMMENCEMENT OF ACTION

An action is commenced when all of the following has been done:

1. Filing fees are paid on the processes
2. Any Affidavit or Witness Statement on Oath have been taken before the Commissioner of oaths
3. The processes are duly served on the adverse parties
4. The Registrar of the Court gives it a suit number and it is entered in the Cause Book.

-**UBA V. MODE NIG. LTD**
ALAWODE V. SEMOH

THE CONCEPT OF FRONTLOADING

This simply means that at the time of filing originating process, all other documents to be relied upon in the matter are to be filed alongside the originating process.

FRONTLOADING DOCUMENTS IN ABUJA

In Abuja**, ORDER 4 RULE 15** provides thus:

A writ **is issued when signed** on by **a Registrar or other officer of court** duly authorised to **sign** the writ and accompanied by –

a. A statement of claim;
b. Copies of document mentioned in the statement of claim to be used in evidence.
c. Witness statement on oath, and
d. A certificate of pre-action counselling

DOCUMENTS TO BE FRONTLOADED IN LAGOS

Order 3 Rule 2(1) Lagos; HCCPR 12

All civil proceedings commenced by writ of summons shall be accompanied by:

a. Statement of claim;
b. List of witnesses to be called at the trial;
c. Written statements on oaths of the witnesses except witnesses on subpoena
d. Copies of every document to be relied on at trial
e. Pre-action protocol Form 001.

DIFFERENCES BETWEEN LAGOS AND ABUJA FRONTLOADED DOCUMENTS
ADVANTAGES OF FRONT LOADING SYSTEM

- The essence of front loading is to save time and fasten the trial process.
- Prevents surprises
- Aids the quick dispensation of justice
- It prevents the hoarding of or the use of perjured evidence
- It aids the principle of Natural justice as the defendant knows what to confront at the trial
- It promotes the use of Alternative Dispute Resolution mechanisms by the parties.

EFFECT OF NOT FILING THE REQUISITE DOCUMENTS ALONG WITH THE WRIT

- In **Abuja,** the Registrar writ **shall not be issued – Order 4 Rule 15 Abuja**
- In **Lagos**, the Registrar will simply **reject** the originating process – **Order 3 r 2 (2)**
- **Jabita v Onikoyi (2004):** a writ unaccompanied by the prescribed documents shall be struck out
- **But in Olaniyan v Oyewole (2008):** the CT of Appeal held that it may be treated as an irregularity – not dealing with Lagos and Abuja rules but in another jurisdiction where frontloading was not stated in mandatory terms
- The former case (**Jabita**) was under the Lagos rules which specifically state that the writ will be rejected if copies of the prescribed documents are not attached whereas in Abuja and Kano (**Olaniyan)**, the rules do not specifically make the writ subject to rejection for failure to accompany it with the relevant documents. This might the reason for the differing decisions.

Distinction between affidavit and witness statement on oath

- Affidavit evidence needs no adoption, unlike witness statement on oath i.e. once filed affidavit becomes evidence whereas witness statement on oath requires adoption before it is taken as evidence
- A defect in the original oath in respect of a witness statement on oath is cured by the second oath made in court by the witness prior to adoption: **Uduma v Arunsi**
- Witness statement on oath may be prepared in prose

EFFECT OF NON-COMPLIANCE WITH THE RULES (anything other than frontloading)

- In Abuja, it may be treated as an irregularity which shall not nullify proceedings: **Order 2 Rule 1 Abuja**
- The court may: (1) set aside proceedings in which the failure occurred; (2) allow an amendment; (3) make other orders that are just

- In Lagos: (1) if the non-compliance is at the beginning of the proceedings in relation to frontloading under Order 3 Rule 2 or Rule 8, it nullifies proceedings: **Order 5 Rule 1(1) Lagos**
- (2) If it is in the course of proceedings in relation to time, place, manner or form, it is treated as an irregularity: **Order 5 Rule 1(2) Lagos**
- (3) The Judge shall not wholly set aside proceedings or writ or other originating processes on ground that another form of originating process is what is required: **Order 5 Rule 1(3) Lagos**
- Note: non-compliance that affects jurisdiction cannot be treated as an irregularity

WHEN IS A WRIT SAID TO BE ISSUED

In **ABUJA,** the **writ is issued** when **it is signed by the Registrar** provided it is accompanied with the necessary documents under frontloading system**– order 4 rule 1 Abuja.** Sealing may not be necessary in Abuja except the law expressly demands: **Order 4 Rule 9 Abuja**

In **LAGOS,** a writ **is said to be issued** when the **Registrar sealed** the writ.

-O. 6 R 2(1) LAGOS. But in practice, it is also signed

WHO ISSUES A WRIT?

The **Registrar issues the writ of summons**, or **could be issued by any other officer** authorised by the court.

WHAT IS THE MODE OF APPLICATION FOR A WRIT?

By filing Form I in the Appendix to the rules

FORM OF A WRIT

The writ must be clearly printed on opaque A4 paper of good quality:

ORDER 4 RULE 7 ABUJA; ORDER 6 RULE 1 LAGOS

A writ should be front and back.

The endorsements are to be made on the back of the writ i.e. the claims etc.

In **ALATEDE V. FALEDE –**it was held that tying on a separate paper then gumming same to the writ was an irregularity and not in compliance with the rules. Thus, the writ may be struck out as not being properly endorsed.

ESSENCE/FUNCTION OF A WRIT

A writ commands the defendant to enter appearance in an action instituted against him and warns that if he fails to do so within the time limited for entry of appearance, that plaintiff or claimant may proceed to enter judgment against him.

CONCURRENT WRITS

- When a writ is to be served on a defendant within jurisdiction and also on another defendant outside jurisdiction, the writs are described as concurrent

- It is a copy of the original Writ of Summons issued before its expiration to be used for service outside jurisdiction when there are many parties to the action.
- It must **be endorsed on top of the Writ** that **it is issued by the Court for service** outside the jurisdiction of the Court.

O. 4 R. 13 of the High Court of the FCT Rules 2004
O. 6 R. 9 & 10 of the High Court of Lagos Rules 2012

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. In certain actions, the heading of the matter (e.g. fundamental rights enforcement)
c. Suit No.
d. The names and descriptions of the parties and the capacities in which they sue or are sued
e. To the (Name of defendant and defendant's address) within the jurisdiction of the court
f. YOU ARE HEREBY COMMANDED TO ----- (time within which the defendant is commanded to enter appearance)
   In Abuja, appearance is entered within **8 days of service**
   In Lagos, defendant enters appearance **within 42 days of service** of writ.
g. Consequences of not entering appearance within the time stipulated
h. Life span of the writ
i. How the defendant may enter appearance i.e. either personally or through solicitor.
j. Nature of the claim (particulars) against the defendant and reliefs sought (should be on the reverse side)
k. Signature, Name and address of plaintiff's solicitor within jurisdiction
l. Address of plaintiff
m. Date of the writ and place of hearing (return-place)

Order 4 Rule 2, 10-13Abuja; Order 4 Rule 1-7 Lagos

SERVICE OF ORIGINATING PROCESSES
PURPOSE OF SERVICE-

The general purposes of service of process is to give notice to the defendant where a writ of summons is not served, the court lacks jurisdiction even if the defendant enters an appearance. **-NBN V. GUTHRIE.**

The whole of Nigeria is regarded as **one jurisdiction** on the issue of service of originating processes under the Sheriffs and Civil Process Act (SCPA). Under the Act, **outside jurisdiction** means **outside Nigeria**.

Issuance of writ and service of writ are two different things. State law regulates issuance of writ, whereas SCPA regulates service of writ. Under **s96 SCPA**, a writ issued in one state can be served in another state as if it were issued there. Leave is not required for service out of jurisdiction: **Nigerian Merchant Bank Ltd v Bay & Julie Ltd (1986)**

EFFECT ON NON COMPLIANCE WITH THE RULE AS TO ISSUANCE OF WRIT

Non-compliance with the rule as to issuance and service of writ renders the writ **voidable**- **ODU'A IVESTMENT CO V. TALABI**

Objection to such irregularities must be done timeously. If the defendant enters unconditional appearance and files pleadings, it will be too late: **Odu'a (supra); Ezemo v Oyakhire (1985)**

SERVICE OF PROCESSES

(A) SERVICE OF ORIGINATING PROCESSES WITHIN NIGERIA BUT OUTSIDE A STATE

THE PROCEDURE IS AS FOLLOWS:

1. Apply for the leave of the Court (by motion ex parte) to **ISSUE THE WRIT OUT** of the jurisdiction to another State: **Order 4 Rule 6 Abuja**. Service of the writ outside the jurisdiction of the court itself requires no leave (**ORDER 4 RULE 14 (ABUJA)).** In Lagos, the rules do not state that leave is required to issue the writ. But in practice, the lawyers obtain leave to issue such writ served outside jurisdiction.
2. A special endorsement by the registrar that **this writ of summons is to be served outside Abuja in Lagos State, must be made-S.97 SCPA**
3. The return date must **NOT BE LESS THAN 30 DAYS after service**: s**99 of the SCPA.** This means that there must be at least 30 days btw the date the defendant is served with the writ and the return date on the writ. But if a longer period is prescribed in the rules of court, then the return date must not be less than the longer period – s99 SCPA. E.g. in Lagos, the defendant is to enter appearance within **42 days** so a writ emanating from Lagos High Court for service outside Lagos must give the defendant 42 days within which to enter appearance. In Abuja, the defendant is to enter appearance within 8 days but period in s99 SCPA is longer, so defendant has 30 days.

NWABUEZE V. OKOYE – answering of writ is different from entering appearance

EFFECT ON NON-COMPLIANCE

- ⇨ Where leave of court **is not sought to issue a writ** to be served outside **an originating court in ABUJA,** the **service will be invalid/incompetent: Drexel Energy and Natural Resources Ltd v Tran International Bank Ltd; Skenconsult v Ukey (1981)**
- ⇨ **Where a summons or writ to be served outside the state** is not endorsed by the Registrar, the writ of summon may be set aside or its service set aside.

Judicial attitude to non-compliance with ss97 & 99 SCPA

- The provisions of s97 and 99 SCPA are mandatory: **Skenconsult v Ukey; Drexel Energy (Supra)**
- But case law on the effect of non-compliance with s97 &99 appears to be in two conflicting parts
- Cases like **Adegoke Motors v Adesanya; Skenconsult v Ukey** state that non-compliance with the provisions render the void and non-compliance

could not possibly be waived by any conduct of the defendant, even if the defendant has taken steps in the proceedings

- On the other hand, **Odu'a Investment Co Ltd v Talabi; Ezemo v Oyakhire** held that non-compliance with the provisions render the writ voidable. Provided the defendant has not taken new steps, he can have it set aside ex debito justitiae

(B) SERVICE OF ORIGINATING PROCESSES OUTSIDE OF NIGERIA

The procedure is as follows:

1. Apply by **Motion Ex Parte** for leave to **issue Writ out of the jurisdiction** of Nigeria AND **for substituted service** stating **how the process should be served.**
2. The proposed Writ of Summons to be served will be **attached as an exhibit to the affidavit in support of the Motion.**

O. 11 R. 19 of the High Court of the FCT Abuja Rules 2004.
O. 8 of the High Court of Lagos Rules 2012
In Abuja

1. Seek leave of court for the writ to be issued and served out of jurisdiction in the foreign country
2. Where leave is given to serve a writ of summons or a notice of a writ of summons in any foreign country other than a convention country with the following procedure may be adopted -
   (a) the document to be served shall be under the seal of Court for use out of the jurisdiction; and

   (i) transmitted to the Solicitor-General of the Federation by the Chief Registrar on the direction of the Chief Judge, together with a copy of it, translated into the language of the country in which Service is to be effected; and

   (ii) contain a request for transmission to the Minister responsible for Foreign Affairs for the further transmission of the same to the Government of the country in which leave to serve the document has been given; and

   (iii) be in Form 7, as in the Appendix with such variations as circumstances may require.

   (b) the party procuring a copy of a document for service under the Rule shall, at the time of procuring the document, file a praecipe in Form 8, as in the Appendix;

   (c) an official certificate or declaration on oath, transmitted through the diplomatic channel by the Government or Court of a foreign country to which this provision applies, shall certify the document to have been personally served or to have been duly served on the defendant in accordance with the law of that foreign country, which certificate shall be filed on record and

constitute sufficient proof of service within the requirements of these Rules;

(d) where an official certificate transmitted to a Court as provided in paragraph (c), certifies that efforts to serve the document have been without effect, a Court or Judge may, upon an ex parte application of a plaintiff, Order substituted service of the document, and a copy of it, and the Order, shall be sealed and transmitted to the Solicitor-General of the Ministry of Justice, together with a request in Form 9, as in the Appendix, with such variations as circumstances may require.

In Lagos: Order 8 Rule 3

1) Where leave is granted to serve an originating process in any foreign country with which no convention in that behalf has been made, the following procedure may be adopted;

a) the process to be served shall be sealed with the seal of the court for service out of Nigeria, and shall be transmitted to the Solicitor General of the Federation by the Chief Registrar, together with a copy translated into the language of that country if not English, and with a request for its further transmission to the appropriate authority in that country. The request shall be in Form 7 with such modifications or variations as circumstances may require;

b) a party wishing to serve a process under this rule shall file a praecipe in Form 8 with such modifications or variations as circumstances may require;

(c) a certificate, declaration, affidavit or other notification of due service transmitted through diplomatic channels by a court or other appropriate authority of the foreign country, to the court, shall be deemed good and sufficient proof of service;

(d) where a certificate, declaration, affidavit or other notification transmitted as aforesaid states that efforts to serve a process have failed, a Judge may, on an ex-parte application, order substituted service whereupon the process and a copy as well as the order for substituted service shall be sealed and transmitted to the Solicitor General of the Federation together with request in Form 9 with such modifications or variations as circumstances may require;

Provided that notwithstanding the foregoing provision a claimant may with leave of Judge serve any originating process by courier.

WHO CAN SERVE PROCESS

- In Abuja, under **Order 11 Rule 1**, the following can serve process
    - Bailiff or other officer of court authorised by court
    - Person appointed by court or judge in chambers
    - Solicitor who gives undertaking to a registrar
    - Order of judge in Chambers as to mode of service
- In Lagos, under **Order 7 Rule 1 Lagos**, the following can serve

- Sheriff
- Deputy sheriff
- Bailiff
- Special marshal
- Other officer of court
- Law chambers appointed by the Chief Judge
- Courier company appointed by the Chief Judge
- Any person appointed by the Chief Judge (process server)

WHERE PERSONAL SERVICE IS NOT REQUIRED

- If personal service is not required, service may be made by or on the legal practitioner representing the party or the clerk under his control
- **Order 11 Rule 1(2) Abuja; Order 7 Rule 1(2) Lagos**
- Service may also be made on an adult resident or employed at the address for service: **Order 7 Rule 4 Lagos**

MODES OF SERVICE

There are two types of service:

a. Personal service
b. Substituted service

PERSONAL SERVICE

⇨ Originating processes **must be served personally** UNLESS where substituted service become necessary.
⇨ But service on a secretary, who then delivered it to her boss was held to be personal service
⇨ Where personal service is required, **this is done by delivery to** the person to be served a copy duly certified in the manner prescribed the rules.
⇨ **ORDER 11 RULE 2 (ABUJA); ORDER 7 RULE 2 (LAGOS)**
⇨ Where **personal service is not required**, service may be effective **if left with an adult resident, or employed at the address govern service – 0. 7 R 4 LAGOS.**
⇨ Furthermore, personal service shall not be required where defendant authorises in writing his solicitor to accept service of the writ and other processes on behalf and the Legal practitioner enters an appearance.**- ORDER 11 RULE 3 Abuja; ORDER 7 RULE 3 LAGOS. In Lagos,** solicitor must attach the letter of authority from the client

SUBSTITUTED SERVICE

This is applied usually for when any attempt to effect service personally on a party has failed or that the party is evading service.

NB- IN ABUJA RULES –An **ATTEMPT NEED NOT BE MADE** before the application is made or granted. Lagos rules are silent on this point.

THE PROCEDURE IS:

1. Apply for L**EAVE OF THE COURT VIA A MOTION EX PARTE** supported with an affidavit stating grounds for the application (why personal service had been difficult/impossible) and written address.

2. State in the application the proposed means of serving it on the party.
   Order 11 Rule 5(1) & (2) Abuja
   Order 7 Rule 5(1) & (2) Lagos

   THE VARIOUS MODES OF SUBSTITUTED SERVICE INCLUDE:
   In Abuja; ORDER 11 RULE 5

a. Delivery of document to some adult at the usual or last known place abode or business of the defendant.
b. Delivery to some person being the agent of the person to be served
c. Advertisement in the Federal Gazette or in some newspaper circulating within the jurisdiction.
d. Notice pasted at the principal court house or some other public place in the judicial division or notice pasted at the usual or last know place of abode or business of the dft.
e. E-mail or any other specific device now known or later developed
f. Courier service or any other means convenient to the court.
   In Lagos, any mode as may seem just in the opinion of the judge: **ORDER 7 RULE 5(1) LAGOS**
   SERVICE ON SPECIFIC PERSONS

1. **HUSBAND AND WIFE-** Husband and wife are distinct persons in the Eyes of the law. So **should be served personally**. A husband **cannot be served** in **place of his wife** where the wife be served personally, **unless the court so orders or service** is by substituted means.
   PANACHE COMMUNICATION LTD V. ACHOMO (1994) 2 NIG PT 327 P. 420.
2. **A GOVERNMENT EMPLOYEE:** - Deliver process to senior office in the office who would transmit same to the employee: **ORDER 11 RULE 6 Abuja.**
3. **Service on local agent of principal who is out of jurisdiction:** if the cause of action arose within jurisdiction and the addressee is carrying on business within jurisdiction in his name or under the name of a firm through an authorised agent, the process shall be served on the agent: **Order 11 Rule 12 Abuja; Order 7 Rule 11 Lagos.** In Lagos, the claimant is to send the originating process by courier to the defendant at his address outside the jurisdiction
4. **PARTNERSHIP:** Service upon any of the partners or at the principal place of business of the partnership within jurisdiction upon a person having control or management of the partnership business **– ORDER 11 RULE 7 ABUJA;**
   ORDER 7 RULE 8 LAGOS,

⇨ Where the partnership is **dissolved,** service shall be **effected on the partners within jurisdiction sought to be made liable.**

5. **FOREIGN COMPANY:** A company having a place of business within Nigeria within the context of **s54 CAMA** may be served by a principal officer or representative: Order 7 Rule 10 Lagos. If the company has been incorporated as a separate entity in Nigeria under Cap 3, CAMA, service may be effected on such company in the usual way for Nigerian companies
6. Service **on Board ship** shall be effected by **serving the captain in charge of the voyage: ORDER 11 RULE 9 ABUJA. No equivalent in Lagos**
7. A **PRISON** inmate is served through a superintendent of prison:

ORDER 11 RULE 10 ABUJA; ORDER 7 RULE 7 LAGOS

8. A **LUNATIC** shall be served through a **superintendent or person in charge of the asylum or a person who resides with him.**
   -ORDER 11. RULE 10 ABUJA.
   For **LAGOS**; persons **under disability shall be served through the guardian – ORDER 7 RULE6 Lagos.**
9. An **INFANT** shall be served **through his father or guardian** or a person **whom he resides or under whose care he is, in the absence of father or guardian, unless the court orders otherwise: ORDER 11 RULE 11 Abuja; ORDER 7 RULE 6(1) LAGOS.** Lagos rules refer to infants as persons under legal disability
   Service on person above 16 years living independently: a minor above 16 years, doing business or living independently can be served personally: **proviso to ORDER 7 RULE 6(1) LAGOS**
10. **Service on corporation or company:** a combined reading of **s78 CAMA** and the rules of court prescribe how a corporation or company is to be served. S78 CAMA: a company shall be served with court process in accordance with the rules of court; and any other document may be served by leaving it at, or sending it by post to the registered or head office of the company.
    Order 11 Rule 8 Abuja: a company is to be served, subject to the law establishing the company, by giving the writ to a Director or Secretary or other principal officer or leaving it at the corporate office.
    Order 7 Rule 9 Lagos: a company is to served, subject to any statute regulating its service (if it is an originating process or a process requiring personal service by:
    Delivery to a Director;
    Secretary;
    Trustee; or
    Senior/Principal officer; or
    Leaving the process at the registered, principal or advertised officer or place of business of the organisation within jurisdiction

- **SUBSTITUTED SERVICE APPLIES ONLY** to natural persons and not to corporations…
  MARK V. EKE (2004): cannot serve company by substituted means**, KRAUS THOMPSON V.. UNICAL**
- **MULTICHEM IND. V. MUSA –**service on receptionist held valid because of job schedule.
  WHO IS A PRINCIPAL OFFICER OF A COMPANY?
  - He is the alter ego of the company: **TEXACO V LUKOKO (1997)**
  - A secretary to a director is not a principal officer: **WIMPY V BALOGUN (1986)**

TIME OF SERVICE OF PROCESSES

In Abuja, service cannot be effected on Sunday or public holiday except by court order endorsed on the document to be served. No time of day is prescribed in the rules: **Order 11 Rule 30 Abuja**

In Lagos, processes of courts are **to be served between 6am and 6pm d**aily **EXCEPT** on **Sundays and Public Holidays.** However, in exceptional circumstances, **by a court order** processes may be served **on a Sunday or Public Holiday:**
Order 7 Rule 15(1) & (2) Lagos

RECORDING OF SERVICE
ORDER 11 RULE 31 ABUJA; ORDER 7 RULE 16 LAGOS

- A register is to be kept at the Registry for recording service of process by the Registrar or process server
- It should contain the names of the parties, method of service (personal or otherwise) and the manner in which it was ascertained that the proper person was served
- If there was no service, the reason for the failure shall be stated

PROOF OF SERVICE
This is done by swearing an affidavit to service or certificate of service by the bailiff or process server containing the time, date, mode of service, place of service is prima facie evidence of service: **ORDER 11 RULE 28 ABUJA;**
ORDER 7 RULE 13 LAGOS
Acknowledgment of service (signed by the person served) should be attached as affidavit to the affidavit of service, unless the resisted service was by substituted means (name, signature, date, address)
Appearance in court by the defendant: **Mohammed v Mustapha (1993)**
STEPS BALIFF OUGHT TO TAKE WHEN DEFENDANT REFUSES TO ACCEPT PROCESS SERVED
NB: => Where the defendant refuses to accept the process served, the Bailiff or the process server should leave the process within the reach of the Defendant. The Bailiff has to swear an affidavit stating what transpired: **ORDER 7 RULE 12 LAGOS**

-

In **ABUJA**, the Bailiff is to explain the contents of the process to the Defendant standing within a safe distance to avoid violence from the defendant i.e as near the defendant as practicable: **ORDER 11 RULE 27 ABUJA**. He shall also depose to an affidavit thereafter.

PAYMENT FOR COSTS & EXPENSES INCIDENTAL TO SERVICE

- It shall be made by the party requesting service:
  ORDER 11 RULE 29 ABUJA; ORDER 7 RULE 14 LAGOS

CONSEQUENCES OF THE FAILURE TO SERVE ORIGINATING PROCESSES

⇨ Service of processes goes to the root of the jurisdiction of a Court.
⇨ If there is lack of service, it is a breach of the right to fair hearing and the Court will **strike out the action** as it lacks the jurisdiction to sit on the matter OR
⇨ set aside any proceedings conducted in the absence of service of the other party.

EFFECT OF IRREGULAR SERVICE
Conversely, lack of proper (the correct) service is treated as an irregularity which can be waived or the aggrieved party **may bring a Motion on Notice** to **set aside**

the service wrongly done. Thus renders the writ voidable. Therefore, objections to service must be done timeously before taking further steps otherwise it is deemed a waiver: **Adegoke Motors v Adesanya (1989).** However, there can be no waiver of service because that is fundamental and goes to the issue of jurisdiction**: Mark v Eke (supra)**

DEFECTIVE WRIT OF SUMMONS

A Writ of Summons is said to be defective when the Writ's contents did not comply with the form prescribed by the Rules of Court.

OPTIONS OPEN TO DEFENDANT AFTER BEING SERVED WITH A DEFECTIVE WRIT/CHALLENGE OF VALIDITY OF SERVICE.

1. The defendant can enter a conditional appearance and filing by a Motion on Notice to set aside the service for the Writ for being defective: **HOLMAN BROS (NIG) LTD V KIGO (1980).**
2. File a motion on notice to set aside the writ itself for being defective without entering an appearance: **SKENCONSULT V UKEY (1981)**
3. File a Notice of preliminary objection or motion on notice or viva voce challenging the jurisdiction of the court with or without entering appearance: **AG EASTERN NIGERIA V AGF**

ORDER 12 RULE 7 of the High Court of the FCT Rules 2004,
ORDER 5 RULE 2 of the High Court of Lagos Rules 2012,
SKENS CONSULT V. UKEY,
A.G EASTERN NIG. V. A.G FED.
HOLMAN BROS (NIG) LTD V. KIGO NIG. LTD

NOTE THE FOLLOWING

1. The defendant's Motion **to set it aside should be filed** at the earliest time **before taking steps in the action** otherwise **he will be deemed to have waived** it.
ORDER 2 RULE2 of the High Court of the FCT Rules 2004.
ORDER 5 RULE 2 of the High Court of Lagos Rules 2012
2. On an application to set the Writ aside, the Court **may agree to set it aside** and **strike out the plaintiff's/Claimant's action.**
3. The Plaintiff can bring a Motion Ex parte to amend the Writ of Summons**.**
OKOMU PALM Co V. ISERHIENRHIEN
However, if the defect affects the court's jurisdiction, it cannot be waived.

ENTERING APPEARANCE TO A WRIT OF SUMMONS

Appearance is entered by filling a Memorandum of appearance in **Form II;** signed by the solicitor **acting on his behalf or by the defendant himself. Note that entering appearance is different from announcing appearance in court.**

TIME FOR SERVICE OF MEMORANDUM

The memo is to be **SERVED** on the claimant's lawyer or on the claimant **WITHIN 7 DAYS** of entering appearance.

TYPES OF MEMORANDUM OF APPEARANCE

i. **Conditional Memorandum of appearance**-

Where the defendant wishes to object either to the jurisdiction of the court, some irregularity in the issue or service of the writ, he is to enter a conditional appearance.

This is done by inserting the word "CONDITIONAL" in the memorandum of appearance.

ii. **Unconditional Memorandum of Appearance**

Here the defendant file the memo of appearance without more. Thus, he submits to the jurisdiction of the court and is taken to have waived any irregularity in the writ.

TIME FOR ENTRY OF APPEARANCE

- **IN ABUJA** appearance is to be **ENTERED WITHIN 8 DAYS** by the defendant **(OR 30 DAYS)** if the defendant is outside the jurisdiction of the Court) **after the service of the Writ** on him.
- In **LAGOS,** it is to be entered **WITHIN 42 DAYS AFTER THE SERVICE OF THE WRIT** whether the defendant is within or outside the jurisdiction. –

O. 12 R.1 OF THE HIGH COURT OF THE FCT RULES 2004.

O. 9 R. 1-3 OF THE HIGH COURT OF LAGOS RULES 2012

DEFAULT OF APPEARANCE

Order 13 Abuja; Order 10 Lagos

- In Abuja, if writ is for liquidated money demand, final judgment may be entered for plaintiff in default of appearance: Order 13 Rule 1 & 2(1) Abuja
- If money lender's action, application will be made for leave to enter judgment by notice returnable not less than **4 clear days** after service of notice;
- For all other actions, in default of appearance, the matter will be set down for hearing: **Order 13 Rule 5 Abuja**
- If defendant is an infant or person of unsound mind, not adjudged a lunatic, and fails to enter appearance, the plaintiff shall apply for a guardian to be appointed before further proceeding: **Order 13 Rule 8 Abuja**
- In Lagos, the position is same as in Abuja, except that claims for mesne profits and detention of goods are also in the category of claims whereby claimant can apply for judgment in default of appearance: Order 10 Lagos

SETTING ASIDE JUDGMENT IN DEFAULT OF APPEARANCE

- In Abuja, the court may set aside a judgment in default of appearance, on such terms as may be just: Order 13 Rule 6 Abuja
- Application to set aside is by a motion on notice supported with an affidavit and a written address. A good reason for the default must be furnished

APPLICATION FOR EXTENSION OF TIME TO ENTER APPEARANCE.

- The defendant may avoid a default judgment given against him by seeking the leave of the Court to enter appearance out of time: Order 12 Rule 5 Abuja
- He would pay additional fee of **N 200 PER DAY OF DEFAULT in Lagos- OR.9 R 5 Lagos**

- **Form for memorandum of appearance out of time: Form 12 (Abuja rules)**

PROCEDURE FOR LEAVE TO APPEAR OUT OF TIME

1. This is applied for by **a Motion on Notice** supported with an affidavit **disclosing the reasons for non-appearance within time** and a Written Address.
2. The Affidavit in support of the Motion will have to exhibit the following:
   i. Statement of defence
   ii. Witness Statement on Oath
   iii. Copies of the documents to be relied upon during trial
   iv. List of witnesses(only in Lagos)
   v. Pre-action counselling Certificate(only in Abuja) /PRE ACTION PROTOCOL FORM 001 (Lagos)

LIFE SPAN OF A WRIT

In Abuja, the life span of a Writ is 12 months renewable for 12 months.
Order 4 Rule 16(1) of the High Court of the FCT Rules 2004.
In Lagos lifespan of it is 6 months renewable for 3 months and 3 months more (in all not to be more than 12 months) **Order 6 Rule 6(1) of the High Court of Lagos Rules**

RENEWAL OF A WRIT

A writ can be renewed by filling a **MOTION EX PARTE** for renewal.
In **ABUJA,** you can apply for renewal either **BEFORE OR AFTER** the expiry of the writ: **ORDER 4 RULE 16(2) ABUJA**
In **LAGOS**, renewal has to be applied for **BEFORE** the expiration of the writ – **Order 6 Rule 6 (2) & 7 LAGOS**
JUDICIAL LIMITATION/QUALIFICATION-KOLAWOLE V. ALBERTA (1989)- the Supreme court held that a writ of summons can be renewed even **AFTER** its expiration. **Thus, Order 6 Rule 6(2)** Lagos should be ignored.
Mode of application: motion ex parte and affidavit disclosing facts responsible for failure to serve and written address. In Abuja, in practice, a written address is filed although the provisions of Order 7 Rule 9 Abuja (which are not very clear) may be read to mean that a written address may not be required for a motion ex parte.
EXTENSION OF TIME AFTER EXPIRATION OF THE WRIT
Similarly, **ORDER 44 RULE 4:** Lagos also gives the judge the power to extend time even after the time has expired.
SUBSEQUENT RENEWAL OF WRIT

⇨ In **Abuja**, a writ can be renewed **AGAIN AND AGAIN** for a period **not exceeding 12 months on each single renewal.**
⇨ **In Lagos,** a writ can **ONLY BE RENEWED FOR 3 MONTHS AND ANOTHER 3 MONTHS: ORDER 6 RULE 7 (LAG)**

THREE TRACKS IN LAGOS

When a case is filed in Lagos, the Registrar screens it for suitability for one of 3 tracks: ADR, Litigation, Fast Track Procedure

(**ORDER 3 RULE 11, ORDER 56 LAGOS**)

A- **OBJECTIVE-**
To reduce time spent on litigation to **NINE(9) MONTHS** from commencement of action up to judgment- **ORDER 56 RULE 1, HCCPR 2012.**

B- **QUALIFICATIONS FOR FAST TRACK APPLICATION**

- ANY ACTION COMMENCED BY **WRIT OF SUMMONS- ORDER 56 R 2(1)(a)**
- Application must be made to the registrar by **the CLAIMANT** or the defendant making a **COUNTER CLAIM-**
  ORDER 56 RULE 2(1)(b)

TYPES OF CLAIMS /SUBJECT MATTER SUITABLE FOR FAST TRACK PROCEDURE- ORDER 56 RULE 2(2)
L- LIQUIDATED MONETARY CLAIMS/COUNTER CLAIMS
MINIMUM AMOUNT- NOT LESS THAN 100 MILLION NAIRA, OR
M- MORTGAGE TRANSACTION/CHARGE/OTHER SECURITIES, OR
F- LIQUIDATED MONETARY CLAIM AND CLAIMANT IS NOT A NIGERIAN OR FINANCIALLY RESIDENT IN NIGERIA

PROCEDURE

- **SPECIAL MARK**-
  Once a case satisfies the criteria, the writ and other documents shall be marked QUALIFIED FOR FAST TRACK) by Deputy Chief Registrar and directions for filing fees will be made by registrar.

- **SERVICE OF PROCESSES**-
  Originating process must be served **WITHIN 14 DAYS-**
  ORDER 56 RULE 4

- **ENTRY OF APPERANCE BY DEFENDANT-**
  Filing of statement of defence /frontloading must be **WITHIN 42 DAYS** of service by the claimant- **ORDER 56 RULE 5**

- **REPLY-**
  Claimant must reply **WITHIN 7 DAYS of** service of the statement of defence-
  ORDER 56 RULE 5(2)

- **CASE MANAGEMENT CONFERENCE NOTICE**-
  FORM 17 AND 18 must be ISSUED **WITHIN 7 DAYS** OF CLOSE OF PLEADINGS:
  Order 56 Rule 6(1)

- **DURATION OF CMC-**
  Case management conference must be concluded **WITHIN 30 DAYS** and can be extended for **14 DAYS-ORDER 56 RULE 7(1) and (2).**

- A case management conference report will be issued upon completion and case file will be forwarded to a judge **– ORDER 56 RULE 8(1)**

- **TRIAL TIMETABLE-** Trial directions and timetable will be issued **–ORDER 56 RULES 9 AND 10**
- The trial will be conducted daily**- ORDER 56 RULE 12**
- Adjournment is an order of last resort- **ORDER 56 RULE 13**
- **DURATION OF TRIAL-**
  The trial including presentation of final addresses must be done **WITHIN 90 DAYS from DATE TRIAL DIRECTIONS** were issued**- ORDER 56 RULE 14**
  NOTE-PROVISO
- **JUDGMENT- Must be delivered WITHIN 60 DAYS of completion of trial- ORDER 56 RULE 15 HCCPR 2012.**

When is a suit deemed to have commenced? On the day the writ is filed and necessary fees are paid: **UBA v Mode (Nig) Ltd (2000)**

TASKS:

1. Complete two writ of summons using case studies 1 and 2 produce a list of document necessary to be attached to each writ
2. Assuming the action in case study 1 is simply for the interpretation or construction of terms of the agreement in the case study (without any dispute as to fact), prepare the necessary processes for the commencement of the action.

General corrections given in class:

- **Writ of summons must be one paper, back and front as cases have been struck out due to bad endorsement.**
- **Endorsements on writ of summons where generally not good e.g Title of court put without parties and all court processes must have: court, suit no, parties, title of d parties**
- **In Lagos, one needs statement of claim, list of witnesses, statement of those witnesses**
- **Commencing by originating summons, in Lagos, one needs an affidavit (affidavit must contain certain paragraphs referring to the document) and written address**
- **Motion for substituted service has to be ex parte and not on notice**
- **Renewal of writ is by motion ex parte and not notice**
- **'writ of summons' must be on top of the paper**
- **In drafting a motion: 'TAKE NOTICE that this honourable court…'**

NB: most of exam questions will be drafting and practical exercises.

3. Prepare the necessary processes for the commencement of the action in case study 2
4. Assuming the claim in case study 1 is simply for N150 million being the claimant's share of the proceed of a contract performed by the parties from

March 2009 to December 2011, explain in numbered paragraphs the procedure you will adopt to obtain judgment after trial by the quickest means possible.

5. Assuming the defendant in case study 2 could not be served with the originating process 5 months after filing and you realised that the process may not be served until the 7th month, prepare the necessary application to ensure that the process remains valid until the time of service.
6. Assuming all efforts to get the defendant in case study 2 to be served with the originating processes has proved abortive due to the fact the defendant has been evading service, prepare necessary application to ensure that the processes are served on the defendant.
7. Assuming the defendant is resident in the Ghana and does not have a place of business in Nigeria, what step will you take to ensure that he is properly served with the originating processes. DRAFT THE NECESSARY APPLICATION. Would this procedure have been necessary if the defendant had been resident in or carries on business in Nigeria but in a state different from where the action is commenced.?
8. Prepare the memorandum of appearance to be filed by the defendants in the above cases.

ETHICAL ISSUES

1) **Rule 15 –** Representing client within the bounds of law.
2) **Rule 16 –** Representing client competently.
3) **Rule 19 –** Privilege and confidence of a client.
4) **Rule 21(1)(c) and (3) –** Withdrawal from employment.
5) **Rule 24(2)(3)(4) and (5) –** Responsibility for litigation.
6) **Rule 25(1) and (4) –** Investigation of facts and production of witness, etc.
7) **Rule 30 –** Lawyer as officer of court.
8) **Rule 31 –** Duty of lawyers to court and conduct in court.

DRAFTS TO DO

1. **MOTION FOR SUBSTITUTED SERVICE**
2. **MOTION TO SET ASIDE THE WRIT OF SUMMONS ON GROUND OF LACK OF JURISDICTION**
3. **APPLICATION FOR LEAVE TO ENTER APPEARANCE OUT OF TIME**

COMPLETE WRIT OF SUMMONS

General Forms of Writ of Summons,

(Order 3, rule 3)

20……..

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

BETWEEN

A.
B ……
. Claimant

AND

C.
D ……
… Defendant

To C. D. of …… in the …… of ……

You are hereby commanded that within forty two days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A. B.; and take notice that in default of your so doing the claimant may proceed therein and judgment may be given in your absence.

DATED this …… day of …… 20……

……
Registrar

Memorandum to be subscribed on the writ

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

The defendant may enter appearance personally or by legal practitioner either by handing in the appropriate forms, duly completed, at the Registry of the High Court in which the action is brought or by sending them to the Registrar by registered post.

Endorsements to be made on the writ before issue thereof.

The claimant's claim is for etc ..... This writ was issued by G. H., of..... whose address for service is ..... agent for ..... of ..... legal practitioner for the said claimant who resides at ..... (mention the city or town and also the name of the street number of the house of the claimant s residence, if any).

Endorsement to be made on copy of writ forthwith after service.

This writ was served by me at ..... on the defendant (here insert mode of service) on the ..... day of ..... 20 .....

Endorsed the ..... day of ..... 20.....

(Signed) .....

Address for service .....

FORM 3

(Order 3 rule 8)

GENERAL FORM OF ORIGINATING SUMMONS

IN THE HIGH COURT OF ……

IN THE ..... JUDICIAL DIVISION

(If the question to be determined arises in the administration of an estate or a trust, entitle it "In the matter of the estate or trust").

BETWEEN

A.
B.....
Claimant

AND

C. D.,
E.F.....
Defendants

Let …….. of …….. in …….. within eight days after service of this summons on him, inclusive of the day of such service, cause an appearance to be entered for him to this summons which is issued upon the application

of..... whose address is……..and who claims (state the nature of the claim), for the determination of the following questions: (State the questions).

Dated the ..... day of ..... 20 .....

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

FORM 4

ORIGINATING SUMMONS UNDER (Order 3, Rule 8(1))

IN THE HIGH COURT OF LAGOS STATE

IN THE …… JUDICIAL DIVISION

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

Let A.B. of ……..attend the Court, (or Chief registrar's Office) HIGH COURT LAGOS, on the …….day of ……..20…..... At 9 o'clock in the forenoon (on the hearing of an application on the part of ……..). (State relief sought). (If for leave to endorse award under the Arbitration Law, ap. Add, "And that the respondent do pay the costs of this application to be taxed."

DATED the ……. day of …… 20……..

This summons was taken out by ……..

Note:

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

WEEK 7

INTERLOCUTORY APPLICATIONS

Generally, interlocutory applications are applications made in course of pending proceedings. That is, they are applications that are made to court while an action is pending in court and may be made at any stage of an action.

Order 7 Rule 1 Abuja High Court Rules (HCR), 2004: An interlocutory application may be made at any stage of an action.

These are provisional, interim, intervening applications made btw the commencement and end of a suit to decide some points or matter but not a final decision of the whole controversy.

Interlocutory application follows the cause or event in the proceedings and therefore where the cause or event necessitates filing or making an interlocutory, an aggrieved party will be perfectly entitled to do so in the court – ***Ezegbu v. FATB Ltd (1992).*** In ***Smith v. Cowell (1881),*** the English Court, while explaining the nature of interlocutory order which is a natural consequence of an interlocutory application held:

> *"an interlocutory order means any order than the final judgment in an action. It does not mean an order between the writ and the final judgment. It is an order available both before and after judgment in court".*

The major advantage of some of these proceedings are designed to assist the parties pursue their cases and also ensure the speedy resolution of matters.

Once an action has been commenced, all subsequent applications are referred to as interlocutory applications – ***Nalsa Teem Associates Ltd. v. NNPC (1991); Kotoye v. Saraki (1991).***

NB: interlocutory injunction may come after judgment e.g. judgment debtor asking for payment of judgment debt by instalment

Purposes

1) To cure defects in substantive suit e.g. to amend pleadings
2) To obtain some temporary relief especially when time is of essence
3) To nip an action in the bud e.g. a preliminary objection to the CT's jurisdiction to hear the matter
4) To fulfil a condition precedent to the commencement of a substantive suit e.g. a man suing in a representative capacity and he needs leave of court to sue.

Types of interlocutory application

- Extension of time to file pleadings
- Striking out of a suit
- Amendment of pleadings
- Leave to sue in a representative capacity
- Application for adjournment
- Interpleader summons
- Anton Pillar
- Mareva
- Amendment of the name of a party
- Motion for substituted service
- Application for leave to issue and serve Third party notice
- Interim injunction
- Application for notice to produce documents
- Application for joinder of party
- Application for striking out
- Preliminary objection for jurisdiction of CT

MODE OF APPLYING TO COURT

Order 39 Rule 1(1), Lagos provides that where by the rules any application is authorised to be made to the court or a judge in chambers, such application *shall* be made by motion. But in Abuja, the application *may* be made by motion – **Order 7 R. 2(1) Abuja 2004.** It should be noted that it is contentious applications that are made in court whilst the non-contentious ones are made in chambers. But nevertheless, whether it is in open court or in chambers, the rules of justice must be adhered to – ***Oγeγipo v. Oγinloγe (1987).*** In this case, it was also held that the power of the Supreme Court to sit in chambers derives from the rules made under **section 236** of the Constitution and that, therefore, the power is constitutional and not a breach of **section 36(3)** of the Constitution which enacts that courts proceedings shall be held in public.

Ordinarily, interlocutory applications require that there must be pending a substantive action in court. Thus, an interlocutory application filed before the commencement of an application will be incompetent. However, a claimant may file any application along with an originating process and may serve both on any defendant simultaneously – **Order 39 Rule 8, Lagos.**

The procedure of serving an interlocutory motion together with a writ of summons or before the defendant enters appearance is usually adopted where the plaintiff feels the need to urgently obtain an order of court. For example, in actions for damages for trespass, the plaintiff may feel the need to restrain a continuing trespass.

Interlocutory applications come by way of written application but can be made orally in certain cases. For example, where the application is explicit enough but the opposing party can object to the making of an interlocutory application orally or the court may refuse to entertain such an oral application and consequently, direct that it be put in writing and also served on the other party. However, where the application is in writing, the following documents are required:

1) Motion paper;
2) Affidavit in support of the motion;
3) Exhibits (if necessary); and
4) Written address in support of application.
5) In Lagos, for interim injunction: affidavit and an affidavit of urgency must be made (so 2 affidavits are required). Urgency must be real urgency, not self imposed urgency – affidavit of facts and affidavit of urgency

MOTIONS

Note: generally made in writing but exceptions where it can be made orally. Also motions for adjournment can be made orally. Sometimes an adjournment may be

written (a letter to the Registrar of the CT), which is not a motion and the client will deliver the letter to the Registrar to give to the CT to state that perhaps he has a matter in another CT such as the CT of Appeal.

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. 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. To rely on points of law or facts already before the CT (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 (1992).*** The hearing of any motion may, from time to time, be adjourned upon such terms as the court may deem fit.

Motions are filed with affidavits in support, deposed to by the applicant and these affidavits are evidence on which the applicant relies in support of his motion. It is not compulsory that the applicant must be the deponent in the affidavit. What is essential is that whoever is deposing has the consent and authority of the applicant to do so. In ***Enuma v. Consolidated Discounts Ltd. (2001),*** the court held that the affidavit in support of an application for summary judgment need not be deposed to by the plaintiff. The affidavit shall also state the fact that in the deponent's belief, there is no defence to the claim except as regards the amount of damages claimed.

Motions are of two types viz. **motion *ex parte*** and **motion on notice**. The applicant is bound by the prayers in his motion as a plaintiff is bound by the case put forward in the statement of claim – ***Commissioner of Works, Benue State v. Devcon Ltd (1988).*** 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 (1989).*** Motions are generally made on notice but exceptional cases where it is made ex parte.

MOTION *EX PARTE*

The word *ex parte* means "by or for one party", "done for, or on behalf, or on the application of one party only". Thus, it is where the interests of the other party will not be prejudiced if he is not put on notice, that is, it is an application by one party in the absence of the other.

It is used where, from the nature of the application, there ought not to be any opposition to it, such as where the prayers sought affect the interest of the applicant only or where at the stage the application is made, the other party cannot be put on notice. For example, applications for leave to serve processes by substituted means; or for Enforcement of Fundamental Human Rights where the leave of court is necessary – **Order 1 Rule 2(3) of Fundamental Rights Enforcement Procedure**

Rules, 1979; *Attamah v. Anglican Bishop (1999).* In such proceedings, the only participant is the party (or person) moving the motion. It is also used for leave to serve a third party notice – **Order 13 Rule 19, Lagos; Order 10 Rule 18(2) Abuja** and for seeking a very urgent relief or order as in applications for interim injunctions – **Order 39 Rule 3(1) Lagos; Order 31 Rule 1(2) Abuja.**

When applications can be made by ex parte motions

- When the prayer sought affects only the interest of the applicant e.g. motion for substituted service.
- Where the law or rules stipulates so – leave to issue a third party notice
- When time is of the essence e.g. interim injunction

In any of these circumstances, a court may rightly exercise its discretion by granting a motion *ex parte.* But where the motion will affect the interest of the adverse party, a court of law should insist and order that the adverse party be put on notice

Generally, the court may either grant the hearing of *ex parte* motion or refuse it, or it may where appropriate make an order that the other party appear on a certain date and show cause why the application should not be granted, or order that hearing of the application be adjourned and the other party put on notice – **Order 7 R. 10 Abuja.** Where an applicant obtains an order *ex parte* rather than by a motion on notice, such order will be void and liable to be set aside for having been obtained in breach of natural justice – ***Unibiz Nig. Ltd. v. CBCL Ltd (2003).***

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. Serenỵ (1945)***. It is also required that the rule under which an application is brought should be stated on the motion paper. But this is not a requirement of law, a motion could not be struck out or dismissed because of failure to observe this practice – In ***Uchendu v. Ogboni (1999),*** the Supreme Court, dealing on the matter, held that *while it is true that a particular rule of court or law under which a motion is brought is generally stated on a motion paper, failure to do this will neither make the motion incompetent nor the order granted upon the motion invalid, so long as there exists a rule or law which can back up the motion.*

LIFE SPAN OF *EX-PARTE* APPLICATIONS

Generally, it has a life span of few days or as may be permitted by the Rules of Court. It is usually granted to last until a named date or in anticipation of a motion on notice which is to be heard on the merits – ***Odutola v. Lawal (2002); Unibiz Nig. Ltd. v. CBCL Ltd. (supra); Gov. Lagos State v. Ojukwu (1986).***

Under the Abuja Rules, a party affected by an order made *ex parte* may apply by motion within 7 days after service of the Order or within any further time that may be allowed by the court apply to the court to set it aside – **Order 7 R. 11 Abuja.** But

such an order shall last for only 14 days after the affected party has applied for it to be varied or discharged or for a further 14 days after such an application to vary or discharge the order has been concluded – **Order 7 Rule 11 Abuja.** Where the application to vary or discharge the *ex parte* order is not heard within 14 days of its being filed, *ex parte* order shall lapse automatically – **Order 7 R. 12 Abuja (now Order. 26 Rule 12 Abuja, 2009). NB: Abuja lasts for 14 days and extended for a further 14 days**

Under the Lagos Rules, there is no general provision for the lifespan of *ex parte* orders. Further, as it relates to an order of injunction which is made pursuant to an *ex parte* application, it shall **lapse for 7 days** but can be extended for a further period of 7 days where the application for extension is brought before the order abates – **Order 39 Rule 3(3) and Order 39 Rule 3(4) Lagos.**

The court also has inherent jurisdiction to revoke or set aside (*suo motu)* an order made *ex parte* where for example, it feels that it gave its original leave under a misapprehension upon new facts being drawn to its attention – ***Becker v. Noel (Practice Note) (1971) 1 WLR 803.***

MOTION ON NOTICE

Unless a Statute or Rule of Court permits, every motion shall be on notice – **Order 7 R. 7(1) Abuja.** Unlike *ex parte* motion, this puts the other party on notice of the application thereby giving him an opportunity to respond to the application. By being put on notice, the adverse party is given the opportunity to contest the grant or otherwise of the application by the court.

SERVICE OF MOTION

It is required that motions together with all affidavits be served on the other party – **Order 7 R. 4 Abuja.** Lagos rules expressly provide for these along with a written address in support of the relief sought - **Order 39 R. 1(1) & (2) Lagos.** In practice, written address is also filed in Abuja.

It may be served by any person, notwithstanding that he is not an officer of the court and without the leave of the court – **Order 7 R. 19 Abuja.** Where a party is represented by counsel, service on the counsel is deemed as good service – **Order 7 Rule 20 Abuja**. There should be at least 2 clear days between the service of the notice of motion and the day named in the notice for the hearing of the motion unless the court gives special leave to the contrary – **Order 7 R. 18 Abuja.** In Lagos Rules, it is mandatory that every motion should be served within 5 days of its filing, if not the judge may strike out the application – **Order 39 Rule 3 Lagos.**

A person may be served with a notice or put on notice of a motion even though he is not a party to the substantive suit if his interest may be affected by the order sought. Where the other party intends to oppose the motion, it shall file his written address and counter-affidavit within 7 days of the service of the motion on him. The applicant, in turn, has 7 days after the service of a counter-affidavit on him to file an

address in reply on points of law and further affidavits, if need be – **Order 39 Rule 1(4) and (5) Lagos.** At the hearing, if the judge is of the opinion that any person who ought to have been put on notice had not been put on notice, the court may adjourn the hearing or dismiss the motion. Where the court adjourns hearing, it will do so on terms as it deems fit –**Order 7 Rule 22 Abuja and Order 39 Rule 6 Lagos;**

An applicant moves his motion by oral argument and the time limit for oral argument when moving a motion is *not more than 30 minutes under* ***Order 36 Rule 5, Abuja HCR, 2004*** *and* not more than 20 minutes under **Order 31 Rule 4 Lagos.** A prayer will not be deemed abandoned because oral argument is not led in support of it as long as there are facts in support of the affidavit, and the party had drawn the court's attention to the paragraphs relied upon - ***Jeco Pracla Nigeria Ltd v. Ukiri (2004).***

CONTENTS OF A MOTION

1) The heading of the court in which the action is pending or sought to be commenced;

2) The suit number;

3) The name of the parties and their official titles e.g. 'applicant' and 'respondent';

4) The type of motion, that is, whether it is a motion *ex parte* or motion on notice;

5) It must state the order, law or rule of court under which the motion is brought. This requirement is specifically provided for under **Order 39 R. 1 Lagos** but in Abuja, Kano and other jurisdictions using the Uniform Rules, it has been a matter of practice to state the rule or Law under which the application is brought. The Supreme Court has however held in ***Uchendu v. Ogboni (1999)***, that failure to state the rule or law under which an application is brought is not sufficient to make the application incompetent or the order made thereunder invalid, provided the court has jurisdiction. Also, in ***Maja v. Samouris (2002),*** the Supreme Court further held that even where the powers of the court is invoked under a wrong rule, there will be no good reason for refusing to make the order sought for, if the court has jurisdiction to make the order in the first place;

6) The order or relief sought;

7) The grounds upon which the reliefs are sought;

8) The date of the application;

9) The name, signature, and address of the applicant's counsel; and

10) The address of the respondent for service.

HEARING OF MOTIONS

A motion is heard by the court when the party applying moves the motion before the court and urges the court to grant the application. Like a judgment, it must be in writing and reasons must be given why the motion is dismissed or granted after arguments have been taken on both sides – ***Onyekwuleje v. Animashaun (1996).*** Also, where a judge fails to fix a motion for hearing or after having fixed same for hearing, refuses to hear it, same would amount to a refusal of the application and the applicant is entitled to appeal against it – ***Salim v. Ifenkwe (1996).***

Generally, the order in which pending motions are heard is in the discretion of the court although it is usual to take pending motions in the order in which they are filed. Where there are two motions with adverse effect on the proceeding, one seeking to regularise, and the other to dismiss or strike out the suit, the motion seeking to regularise the proceeding will be taken first – ***A. G (Fed.) v. AIC Ltd. (1995); Nalsa & Team Associates v. NNPC (1991); Daniel Matinga & Ors. v. Mil. Admin (Plateau State) & Ors. (1998).***

INJUNCTIONS

Injunctions are preservative relief designed to maintain the status quo between the parties pending the final determination of the suit or pending a certain date. Any party may make an application for the grant of an injunction to an action once an action is commenced, before or after trial and even at the end of the proceedings before judgment, whether or not a claim for injunction was included in the party's original action – **Order 31 R. 1(1) Abuja.** A party may not however make an application for an injunction before filing of the originating process in the action (**Order 31 R. 1(3) Abuja**) although he may file his application for injunction together with the originating process –**Order 39 R. 8 Lagos**

INTERIM INJUNCTION

This is an injunction granted to an applicant seeking a temporary order of court to restrain another person from doing an act or series of acts or to command a person to undo an act or series of acts towards the applicant or towards the subject-matter of a suit pending the happening of an event. Generally, applications for injunctions are to be made on notice and only in cases of urgency are they to be made *ex parte* – **Order 7 R. 8 Abuja.**

See Order 7 rule 12 Abuja and Order 39 rule 3(3) & (4) Lagos above.

Interim injunction is not granted as a matter of course because the power of the court to grant it is of a very extraordinary jurisdiction – ***Ogujiefor v. FRN (2002);*** **Order 31 Rule 2 Abuja.** It is granted in circumstances of real urgency.

The main features of an interim injunction are:

a) It is made to preserve the status quo until a named date, or until a further order, or until an application on notice for interlocutory injunction is heard or determined;

b) It is made in situations of urgency to prevent the destruction of the rights of a party;

c) It can be made during the hearing of an application for interlocutory injunction if it appears that irreparable damage may be done before the hearing is completed – ***Olowu v. Building Stock Ltd. (2004).***

Defendant has a right to apply to the court to vacate the order after the Court has granted the order.

INTERLOCUTORY INJUNCTION

This is granted pending the determination of the suit or unless discharged by the court. It is applied for through a motion on notice only after a suit has been properly commenced; and if the order is granted, it will last till the determination of the case. Every party may apply for it although the application is generally made by a plaintiff. A defendant can only be granted the relief against the plaintiff only if the injunction relates to a relief claimed by the plaintiff – ***Nig. Cement Co. v. NRC (supra)***

This is an injunction granted to preserve the status quo (before the cause of action arose) pending the determination of the substantive suit. The object is to protect the applicant against injury for violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty is resolved in his favour at the trial: **Obeya Memorial Hospital v AGF (1987)** considered the factors to be considered by the CTs in deciding whether the application should be granted; **Koyote v CBN (1989)** distinguished btw interim and interlocutory injunction (interim application: it is made via ex parte application and it is made in case of extreme urgency and not one made up by the application and it is made for a definite period whereas interlocutory injunction is made on notice, lasts till the determination of the substantive suit), Wali v Amaefule (2014)

NB: in Lagos, must also attach an affidavit of extreme urgency for an interim injunction.

Interlocutory injunction: someone thought the NBA had unnecessary jacked up its fees and took the case to Ct. **Wali v Amaefule (2014):** cannot apply for an interlocutory injunction on behalf of a class of persons that cannot be defined. Applicant had asked for restraining Wali and NBA from collecting the increased fees. Some legal practitioners in Nigeria were not aggrieved by the rise in fees. Some asking for the injunction is vague (on behalf of himself and members of the NBA). Since some members of the NBA had already paid the fees, they were not aggrieved so the class of persons was not defined.

Manna v PDP (2012) 13 NWLR (Pt 1318) Pg 759: how to oppose an application. Counter affidavit and when not to oppose and use counter affidavit

Conditions for grant of interlocutory injunctions are:

1) **Existence of a legal right –** Injunctions are usually granted to protect legally recognised rights – ***Green v. Green (1987).*** Where the applicant has no right recognisable by law, injunction cannot be granted – ***Ladunni v. Kukoyi (1972).*** The applicant must show that he has a legal right which is threatened and worthy of protection – ***Akapo v. Hakeem Habeeb (1992).***

2) **Substantial issue to be tried –** The applicant needs to show to the court in his affidavit that the suit is not frivolous. He must show that there is a dispute to be resolved by the court at the trial. CT will look at the writ of summons, affidavit and other documents that have been filed in the substantive suit to see whether there are serious issues to be trialled.

3) **Balance of convenience (crux on which all applications for injunctions rest) –** This is a question of who will stand to lose more if the *status quo ante* is restored and maintained in the final determination of the suit, that is, the court is to consider whether if the plaintiff were to succeed at the trial, he would be adequately compensated by an award of damages for the loss he would have suffered as a result of the defendant's continuing to do what was sought to be restrained between the time of the application and the time of the trial. In ***Ayorinde v. A-G. Oyo State (1996),*** the Supreme Court made it clear that the determination of the question by the court where the balance of convenience rests in a case is a question of facts and not of law.

4) **Irreparable damage or injury –** The applicant has to show that damages will not be adequately compensated for the injuries he will suffer if the injunction is refused thereby causing the defendant to do more damage.

5) **Conduct of the parties –** The applicant must show that his conduct before and after the trial is not reprehensible – ***Ladunni v. Kukoyi*** **(supra).** An applicant in breach of contract, for instance, would not be entitled to an injunction against a defendant alleged to be in breach of the same contract – ***Kotoye v. CBN (1989).*** He who comes to equity must come with clean hands.

6) **Undertaking as to damages –** Although failure of an applicant to state in his affidavit or otherwise that he undertakes to pay damages may not rob the court of the discretion to grant the injunction, it is usually required that the applicant undertakes to pay all damages caused to the opposing party if the order so granted ought to have been granted – ***Adeyemi Works Construction Nig Ltd v. Omolehin (2004).***

Specialised interlocutory application

- Mareva Injunction

- Anton pillar injunction
- Interpleader summons

MAREVA INJUNCTION

This is a kind of interlocutory injunction which a creditor suing for debt due and owing can obtain against a defendant who is not within the country but has assets in it, restraining that defendant from removing the assets from the country or disposing of them within the country, pending the trial of the action. The *locus classicus* is the English case of ***Mareva Compania Naveira SA v. International Bulk Carrier Ltd (1975).***

The whole objective is to ensure that the assets would be available to satisfy, if necessary by means of execution being levied on them, any judgment the plaintiff may obtain in the action against the defendant based outside the country. The assets in question need not be the subject-matter of the suit – ***Efe Finance Holdings v. Osagie & Ors. (2000).***

Various High Court Rules (HCR) have made provisions for such interim attachment of property –**Order 15 R. 1 Abuja.**

Mode of application –

An application for Mareva injunction is by *ex parte* motion supported by an affidavit containing facts upon which the applicant relies for the grant of the order. In order for the application to succeed, the affidavit must disclose:

1) That there is an action by the plaintiff pending against the defendant within jurisdiction;
2) The existence of strong and arguable case by the plaintiff;
3) That the defendant has assets within jurisdiction (the plaintiff must furnish particulars);
4) Grounds for believing that the defendant owns the assets;
5) That the defendant is a foreigner and/or that his place of business and domicile are in a foreign country;
6) That there is real likelihood of the defendant removing the assets from within jurisdiction, thus rendering any judgment which the plaintiff may obtain, having no purpose or value, or that he is a persistent debtor – ***Barclays Johnson v. Yuill (1980)***
7) That the defendant has not given any indication of willingness to pay – ***Hunt v. B. P Exploration Co. (Libya) Ltd. (1980).***

8) That the balance of convenience is on the side of the plaintiff; and

9) That the plaintiff is ready to give an undertaking as to damages – ***Durojaiye v. Continental Feeders Nig. Ltd (2001).***

Though Mareva injunction is a kind of interlocutory injunction, it is different from interlocutory injunction in a way that all the applicant needs to do is succeed on the strength of his case while interlocutory injunction requires that the applicant needs to show that there is a serious question to be tried – ***Ayorinde v. A. G Oyo State (1996).***

See Sotominu v Oceans Steamship: Nigerian case (conditions for grant of Mareva injunction)

- Applicant must show that he has a cause of action that is justiciable under common law
- Real and immediate danger of the defendant removing his assets from jurisdiction
- Applicant must make full disclosure of the relevant facts
- Applicant must make full disclosure of assets that the defendant has
- The balance of convenience must be in the favour of the applicant
- Undertaking as to costs: similar to **Abuja rules under Order 15 Rule 1-4** (interim attachment of property: application to be made ex parte – different from Mareva). Not expressly provided in Lagos (s2 High Court law of Lagos State says the Ct is enjoined to do substantial justice where there is a lacuna in Lagos i.e. the CT can look anywhere in any jurisdiction to do justice). Based on this, such an application similar to Mareva can be made in Lagos. In Lagos, the application is made on notice (following the England ruling in Mareva)

Also see cases of:

- **AIC Ltd v NNPC (2005) 11 NWLR Pt 937 Pg 563**
- **Arobirkin Nigeria Ltd v Cadbury Nigeria Ltd**

ANTON PILLAR ORDER

This type of injunction is designed to ensure that pending trial, the defendant does not dispose of any article in his possession, which could be prejudicial at the trial. It is particularly useful to plaintiffs who are victims of commercial malpractice like breach of copyrights, patent rights, etc (alleging breach of intellectual property). It is awarded in exceptional cases of extreme urgency because of its *draconian nature as it invades the privacy of the defendant*. The practice is confirmed in the case of ***Anton Pillar K.G. v. Manufacturing Process Ltd. & Ors (1976)***. Here the employee was stealing the trademark of another company and selling it to a rival company. The

order compels the defendant to allow the plaintiff or his solicitor to enter his premises and inspect documents or any other material. Unlike a search warrant, it does not authorise the plaintiff to enter against the defendant's will but it orders the defendant to permit the plaintiff to enter so that if the defendant does not comply, not only does he commits a contempt of court but adverse inferences would be drawn against him at the trial.

Where a plaintiff shows a very strong *prima facie* case that a property, the subject matter of the suit, is in the possession of the defendant and that the defendant will most probably destroy it if he had notice of the proceedings, the order may be granted - ***Ferodo Ltd v. Unibros (1980).***

By this order, the court authorises one person to enter upon the premises of another and inspect property being kept there and may have such property detained. The various High Court Rules provide for preservation, detention and inspection of property which is the subject matter of a suit (Anton Pillar) –**Order 31 Rule 2 Abuja; Order 38 Rule 4 Lagos.** It may also be granted against un-named defendants selling particular categories of infringing articles, e.g. street hawkers – ***EMI Records Ltd v. Kudhali (1985).***

Also, section **22(1) of the Copyright Act, Cap 68, LFN, 1990**, which is a statutory type of the Anton Pillar principle in the Federal High Court made provisions to the Anton Pillar order by providing thus –

> "*In any action for infringement of any right under this Act, where an ex parte application is made to the court, supported by an affidavit that there is reasonable cause for suspecting that there is in any house or premises any infringing copy or any plate, film or contrivance used or intended to be used for the purpose of making copies of any other article… the court may issue an order upon such terms as it deems just, authorising the applicant to enter the house or premises at any reasonable time by day or night accompanied by a police officer not below the rank of an Assistant Superintendent of Police and;*
>
> *a) Seize, detain and preserve any such infringing copy or contrivance; and*
> *b) Inspect all or any document in the custody or under the control of the defendant relating to the action."*

Copyright Act: Federal High Court has exclusive jurisdiction on copyright issues so application for Anton Pillar can only be made to this court

Mode of application

It is by *ex parte* motion (and in the judge's chambers i.e. not in open CT) supported by affidavit which must disclose the following facts (conditions for grant of Anton Pillar):

a) That the applicant has a extremely strong prima facie case;

b) That he stands the risk of a very serious potential or actual damage to his interest;

c) That there is clear evidence of the defendant having in his possession offensive or incriminating documents or things and of a real possibility that the defendant may dispose of or destroy the material before an application on notice can be made;

d) That he is ready to give a satisfactory undertaking to indemnify the defendant in damages if at the end of the hearing *inter parties,* it appears to the court that the order ought not to have been made.

INTERPLEADER SUMMONS

Where a person is under liability in respect of a debt or money or goods and he accepts to be sued in respect of same by two or more persons making adverse claim to it or a claim is made to money, goods or property taking and intended to be taken by a sheriff in furtherance of executing a court judgment by a person other than the judgment debtor, such a person under liability or the sheriff, as the case may be, may apply to the court for relief by way of interpleader summons –***Order 26 Rule 1 Abuja; Order 43 Rule 1 Lagos.*** For example, where a tenant of a deceased landlord who died intestate and succession to whose estate is governed by customary law is faced with rival claimants for rents by the landlord's brother on one hand and by his son on the other hand, each claiming to be entitled to the rents under the applicable customary law. Faced with such competing complaints, the person in possession is in a dilemma if he pays the rent to one claimant, he runs the risk of being sued by the other. He can call upon the two claimants to interplead, that is, claim against one another so that the title to the property may be decided.

By this procedure an Interpleader protects himself by getting the rival claimants to contest the title to the goods, property or money before the courts.

There are two types of Interpleader: **the sheriff interpleader** and **the stakeholder interpleader**.

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 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. The person seeking the relief must be under a liability for a liquidated debt and there are adverse claims in respect therefore. 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 two persons claiming receipt of the rent. Thus approaches the CT 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 claimant to establish their claim.

Where the applicant has not yet been sued but suspects to be sued, the expectation must be well founded – ***Diplock v. Hammond (1854).*** For the applicant to succeed in such application, he must establish by affidavit, evidence –

a) That he claims no interest in the subject matter in dispute other than for charges or costs;

b) That he does not act in collusion with any of the claimants; and

c) Applicant is willing to pay or transfer the subject matter into court or to dispose of it as the Judge may direct–**Order 26 R. 4 Abuja; Order 43 R. 2 Lagos**

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 creditor 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 (1991) 3 NWLR (Pt. 178) 125.***

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. (1992).***

With respect to the Sheriff Interpleader in addition to the High Court Rules, **Section 34 of the Sheriffs and Civil Process Act** and the rules made under it shall apply – **Proviso to Order 43 Rule 1 Lagos.**

PROCEDURE FOR APPLYING FOR INTERPLEADER SUMMONS

In **Abuja,** the application for relief under interpleader proceedings shall be made by originating summons unless when made in a pending action (that son B has already sued D for the rent), it shall be by way of motion - **Order 26 R. 3(1) Abuja.** Unlike in other originating processes like writ of summons, appearance need not be entered by the party served with the originating summons –**Order 26 R. 3(3) Abuja.**

In **Lagos**, the application is made by originating summons but where the applicant is a defendant, the application can be made at any time after service of the originating process and this is by way of interlocutory summons - **Order 43 Rules 4 Lagos.**

Where the application is made by a defendant in an action, the judge may stay all further proceedings in the action –**Order 26 Rule 6 Abuja; Order 43 Rule 5 Lagos**

The service of an interpleader summons on the claimants to the debt or property calls on them to appear in court and state the nature of their claims while amending or relinquishing it. Where a claimant duly served fails to appear or appears but fails to comply with any order made after his appearance, the court or judge in chambers may make an order declaring him and all persons claiming under him barred forever from bringing an action against the applicants and persons claiming under him. However, this does not affect the rights of the claimants as between themselves –**Order 26 Rule 8 Abuja; Order 43 Rule 8 Lagos**

ORDERS THAT THE COURTS MAY MAKE ON HEARING AN INTERPLEADER SUMMONS

1) Where there is a pending action, the court may order that either of the claimants be made defendants in lieu or in addition to the applicant.

2) Where there is no pending action, the court will make an order directing which of the claimant should be plaintiff and which should be the defendant –**Order 26 R. 7 Abuja; Order 43 R. 6 Lagos;**

3) Where the question that arises between the claimants is one of law, the court may there and then decide the question – **Order 43 Rules 7 Lagos.**

It should be noted that a 'plaintiff' is addressed as a 'claimant' in Lagos.

Also, under the Lagos Rules, an applicant shall not be disentitled to relief on the grounds that the titles of the claimants do not derive from a common origin but are adverse to and independent of each other – **Order 43 Rule 3 Lagos.**

AFFIDAVIT EVIDENCE

Affidavit is statement made on oath and sworn to by the maker known as deponent to be true to the best of his knowledge, information or belief – ***Josien Holdings Ltd. v. Lornamead (1995) 1 NWLR (Pt. 371).***

An affidavit is a written declaration of facts made voluntarily and confirmed by oath or affirmation of the party making it and taken before a person (known as Commissioner for Oaths) empowered to administer it. Usually, it is the Registrar of Court where the proceeding is pending that administers oath.

Oral evidence will not be allowed in support of any motion except with the leave of court – **Order 7 Rule 24 Abuja.**

CONTENTS OF AFFIDAVITS

A good affidavit shall contain the following information –

a) The heading of the court before which the oath is sworn;

b) The suit number where one has been given;

c) The names of the parties and their official titles e.g. applicant, plaintiff, claimant, etc

d) The application which the affidavit supports;

e) The name, status, sex, nationality, religion, profession and address of the deponent;

f) Where the deponent is not a party, the authority on whom he deposes;

g) Where the deponent deposes to facts not within his personal knowledge, the source and circumstances of his information must be stated – ***Ajayi Farms Ltd. v. NACB (2003);*** **section 90 of the Evidence Act**;

h) The oaths clause; and

i) The signature and official stamp of the Commissioner for Oaths.

An affidavit is written in numbered paragraphs and contains a mandatory clause which is the 'Oath Clause'. It reads:

"I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act."

Absence of this clause will render the affidavit invalid but the deponent need not comply with it word for word – ***Lonestar Drilling Nigeria Ltd. v. Triveni Engineering And Industries & 9 Ors. (1999).***

Affidavits constitute evidence and are, therefore, different from pleadings, which are statements of facts yet to be proved. Thus, it is wrong for the court to treat both as the same – ***Magnusso v. Koiki (1993),*** which held that a court can properly act on affidavit evidence.

COUNTER–AFFIDAVIT

A party served with an affidavit in support of a motion and who is desirous of contesting the motion must file a counter-affidavit. The only way to controvert affidavit evidence is by another affidavit. The counter-affidavit must specifically deny averments made in the affidavit in support of the motion and not just making general denials. In ***Adesina v. Commissioner (1996)***, the Supreme Court held that if a party deposes to certain facts in an affidavit, his adversary who wishes to dispute the facts so stated has a duty to swear to an affidavit to the contrary. Otherwise, the facts deposed to may be regarded as duly established.

Where a respondent fails to file a counter-affidavit or fails to specifically deny averments made in the affidavit in support of the motion, the court shall act on the unchallenged or un-contradicted evidence and deem them to be admitted and treat them as such – ***Nwosu v. Imo State Environmental Sanitation Authority (1990;***

Akagbe v. Abimbola (1978. The exception to this rule is that where the respondent wants to rely on points of law alone or facts as deposed to by the applicant himself, he need not bother to file a counter-affidavit – ***Badejo v. Minister of Education (1996).***

FURTHER–AFFIDAVIT

If the applicant, upon being served with a counter-affidavit, sees the need to oppose facts stated in the counter-affidavit, he is expected to file a further affidavit. Even where the respondent fails or neglects to file a counter-affidavit, the applicant may file a further affidavit if some fresh facts come to his knowledge before the hearing of the application.

CONFLICTS IN AFFIDAVITS

Where there is a conflict on material facts deposed to by the parties, it is imperative for the court to take oral evidence in order to be able to resolve the conflict and make a finding of fact – ***Falobi v. Falobi (1976).*** However, where there is documentary evidence that can resolve the conflict, the court may dispense with oral evidence – ***Eimskip Ltd v. Exquisite Industries (Nig.) Ltd. (2003).***

The essence of the oral evidence is to give opportunity to either party to cross-examine the deponents on either side or to examine and cross-examine other witnesses called on both side on the material issue of facts – ***Falobi v. Falobi (supra).*** Where a party files multiple affidavits in which there are contradictions, it does not qualify as conflict in affidavit to justify calling the deponent to give oral evidence – ***Arjay Ltd v. AMS Ltd (2003).***

PRINCIPLES FOR GRANT OF AN INJUNCTION

The principles guiding the grant or refusal of an injunction are the same in interim and interlocutory injunctions except for the requirement of a situation of real urgency for an interim injunction. They are stated in the case of **Obeya Memorial Hospital v Attorney General of the Federation & Anor (1987)** by the Supreme CT:

1) Legal right
2) Substantive issue to be tried
3) Balance of convenience
4) Irreparable damage or injury
5) Conduct of the parties: as an equitable remedy, the parties must come with clean hands
6) Undertaking as to damages

EXHIBITS

Where there is documentary evidence attached to any of the affidavits as exhibits and such exhibit is favourable to the party making it, the court will use it to assess the oral testimony – ***Tanko v. First Bank Of Nigeria Plc (2004)***

In law, an annexure to an affidavit is automatically part of the affidavit and are referred to as exhibits and not annexure – ***A. G Enugu State v. AVOP Plc (1995);*** **Order 8 Rule 9 Abuja; Order 33 R. 8 Lagos.** An exhibit being part of an affidavit must be consistent with paragraphs deposed to in the affidavit. Where therefore there is any contradiction or inconsistency between a paragraph of the affidavit and the exhibit(s), a court is bound to hold such contradiction or inconsistency against the deponent.

Every certificate on all exhibits referred to in an affidavit signed by the commissioner before whom the affidavit is sworn shall be marked with the short title of the proceedings –**Order 8 Rule 10 Abuja; Order 33 Rule 9 Lagos**

ETHICAL ISSUES

1) In an interlocutory application, the court should not consider issues required to be determined in the substantive suit for to do so would amount to prejudging that suit itself.
2) A person making application by motion need not only file the motion in court but must also move it in court.

3) A Judge should not act carelessly or recklessly or in abuse of power in making orders based on *ex parte* applications.

4) 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.

5) Counsel is not just an agent of his client but is also a Minister in the temple of justice and therefore should not aid the abuse of the Court process by seeking to abuse ex-parte applications.

6) 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**

7) 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 (1945) 2 All ER 646***.

8) **Rule 15(3)e RPC**: where there is an arbitration clause, the counsel should not conceal/supress the fact.

9) **Rule 15(3)(e) - (g) RPC:**

10) **Section 36 Constitution:** fair hearing so in most cases motion is on notice

11) **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.

12) An abuse where lawyer files for a motion and never moves the motion - stalling the process

13) Doing anything to bring the legal profession into disrepute

14) Some lawyers now apply for the interim order late in the evening so that the defendant cannot quickly come to court to vacate the order (generally used in election matters where the order will affect circumstances of the following day)

15) Rule 15(3)(b): late filing of affidavit to harass or maliciously injure another

16) Delaying the action by bringing many interlocutory applications so that the matter does not go to trial: Pere Roberto Nigeria Ltd v Ani (2009) 13 NWLR (Pt 1159) Pg 522

Abuse of Ex parte Injunction:

- **Rule 30 0f the 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.
- **RULE 32 RPC 2007**: a counsel shall not mislead the court – He shall deal candidly and fairly with the court.
- **Rule 36 (3) 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**

JUDICIAL EXAMPLES

⇨ Where a judge adjourned the hearing of ex parte injunction for 2 weeks and after hearing, adjourned the ruling to another week, this amounted to an abuse **MORGAN AIRLINE LTD V. TRANSNET**

⇨ A court adjourned a motion for interlocutory injunction sine die (i.e indefinitely)

- ⇨ The practice of ARRESTING RULING, Here, a legal practitioner may apply to restrain the judge from delivering his ruling. This is not in our Rules but it is practiced by some lawyers. Most times the court does not grant the application.
- ⇨ AN injunction was granted to two students who failed an exam restraining the University from convocating the other students who passed successful. This was an abuse.
- ⇨ Injunction restraining NEPA from commissioning electrical plant in a town because two contractors were in dispute over the contract. The injunction was granted. This was an abuse of injunction.
- ⇨

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) of the 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. However, in circumstances mentioned in **Rule 20(2)**, a counsel can depose to an affidavit.

Suppression of Facts in Ex Parte Applications;

As an officer of the court, a lawyer shall not act in any manner that may obstruct, delay or adversely affect the course of justice- **Rule 30 of the RPC.**

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.

Affidavits: facts that you have proven and are taken as evidence whereas pleadings are facts that you intend to prove. Also affidavit is also one exception to the hearsay rule and you must state the circumstances of knowing the information (e.g. X told me and I verily believe him). If your averment is in conflict with documents say in the exhibits, the conflict will be resolved against you.

To announce appearance

May it please this honourable court, C O Oba (Mrs) appearing for the Claimant/Applicant. Thank you my Lord.

HOW TO MOVE A MOTION IN COURT – look this up again

Generally, moving a motion is by oral arguments-IRPAAC

1. I-Before this honourable court is an application for___brought by motion on notice for_____ with motion no__dated the _____day of __2013 and filed_____
2. R(Rule/section)- the motion is brought pursuant to _____and under the inherent jurisdiction of this honourable court
3. P-My Lord, we seek the following RELIEFS(read out reliefs)
4. A-my lord, our motion is supported by a 10 paragraph affidavit deposed to by one _____We rely on all the paragraphs of the affidavit. (In Lagos, all motions are supported with a written address). Accompanying the affidavit are ___ exhibits marked___.

5. A- In compliance with the rules of court, we have also filed a written address dated and filed ___ in support of our application. We wish to adopt same as our oral argument

My lord it is trite law that_____

6. C-We humbly pray this honourable court to grant our application

Thank you, my lord

SIIMILARITIES BETWEEN AFFIDAVIT AND WITNESS STATEMENTS ON OATH

1. Both must be made on oath
2. Both must have the same formal requirements
3. Both are generally required in court proceedings
4. Both deponents who testify falsely can be charged with perjury

DIFFERENCES BETWEEN AFFIDAVITS AND WITNESS STATEMENTS ON OATH

S/ NO	AFFIDAVIT	WITNESS STATEMENT ON OATH
1.	Prayers and opinions not allowed- S.115(2-3) E.A	Prayers and opinions are allowed
2.	Hearsay evidence is allowed so long as the requirements of S.115 (3-4) EA are complied with	Hearsay evidence is inadmissible
	Need not to be adopted by deponent to be valid evidence before a court	Has no evidential weight till adopted
	Used to establish facts in court	

Application for Interim injunction: case study 2: Pg 32

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

SUIT NO:
MOTION NO:

BETWEEN

MRS KAYUBA ADA……CLAIMAINT/APPLICANT

AND

1) AGRICULTURAL BANK PLC ……..DEFENDANTS/RESPONDENT

MOTION EX PARTE

BROUGHT PURSUANT TO ORDER 39 RULE 3 OF THE LAGOS STATE HIGH COURT CIVIL PROCEDURE RULES, 2012 AND UNDER THE INHERENT JURISDICTION OF THIS COURT

TAKE NOTICE that this Honourable Court will be moved on the ___ day of _____ 2015 at the hour of 9 o'clock in the forenoon or soon thereafter as counsel on behalf of the claimant/applicant may be heard praying this Honourable Court for the following orders:

1. **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.
2. **AND FOR SUCH ORDER OR FURTHER ORDERS** this honourable Court may deem fit to make in the circumstances.

DATED THIS 6TH DAY OF JANUARY, 2015

_____

EMOKINIOVO DAFE-AKPEDEYE
CLAIMANT'S SOLICITOR
COMPOS MENTIS CHAMBERS
18 WUSE STREET
IKOYI

AFFIDAVIT IN SUPPORT APPLICATION FOR INTERIM ORDER

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

SUIT NO:
MOTION NO:

BETWEEN

MRS KAYUBA ADA……CLAIMANT/APPLICANT

AND

1) AGRICULTURAL BANK PLC……DEFENDANT/RESPONDENT

AFFIDAVIT OF FACTS IN SUPPORT OF MOTION FOR INTERIM INJUNCTION

I, Mrs Kayuba Ada, a Female, Business woman and Nigerian citizen of No 15 Asokoro Road, Ikoyi, Lagos do hereby make oath and state as follows:

1. That I am the claimant/applicant in this case and by virtue whereof I am conversant with the facts deposed to in this affidavit.
2. That the defendant/respondent in this case is a company duly incorporated under the Companies and Allied Matters Act 1990 to carry on business as a bank and a financial institution concerning agricultural products with its registered address at 12 Kawasaki Road, Ikoyi, Lagos.
3. That in March 2000, I entered into a contract with the defendant/respondent to supply 500 (five hundred) tons of Cashew Nut worth N10,000,000 Naira (ten million) only to them for onward exportation to Malaysia. A copy of the contract agreement is hereby attached as Exhibit A1.
4. That the claimant avers that a clause in the agreement was for the defendant/respondent to make a down payment of N3,000,000 Naira (three million) before exportation and for the balance of N7,000,000 (seven million) Naira to be paid when the goods reaches its destination.
5. That the down payment of N3,000,000 was made on the 25th of March, 2000 and the goods have been supplied and transported to Malaysia.
6. That the defendant/respondent as failed, refused or neglected to pay the balance sum of N7,000,000 despite letters that were sent to them. The letters are attached and marked as Exhibit A2.
7. That on 1st June 2006, the defendant wrote a letter to the claimant of its decision not to pay the balance because it claimed that the goods supplied were inferior to the standard requested for. This letter is attached and marked as Exhibit A3.
8. That the defendant has decided to burn the 500 tons of cashew nuts because the defendant claims that the goods are inferior.
9. That the defendant intends to burn the goods within a matter of days and I received this information via Mr Johnson Ayoade, credible source as he works at the defendant's warehouse. See Exbihit A4 of Mr Ayoade's details
10. That if the goods are destroyed, I will suffer irreparable damage as there would be goods for which the value of damages on the substantive issue can be judged.
11. That I, the claimant instituted a suit before this court to claim damages for breach of contract on the 19th day of June 2006
12. That I, the claimant will suffer irreparable damage or injury if the application is not granted.
13. That the defendant's right will not be affected in any way if the application is granted but the claimant will suffer if this application is not granted
14. That the claimant undertakes to pay all damages caused to the defendant if this application ought not to have been granted
15. That I swear to this affidavit is made in good faith believing same to be true and in accordance with the provisions of the Oath Law of Lagos State

_____

DEPONENT

Attach passport photo of deponent
SWORN TO AT THE HIGH COURT REGISTRY, LAGOS STATE

THIS 6TH DAY OF JANUARY 2015

BEFORE ME

_____

COMMISSIONER FOR OATHS

WRITTEN ADDRESS IN SUPPORT OF MOTION EX PARTE

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

SUIT NO:
MOTION NO

BETWEEN

KAYUBA ADA……CLAIMANT/APPLICANT

AND

AGRICULTURAL BANK PLC……DEFENDANT/RESPONDENT

WRITTEN ADDRESS IN SUPPORT OF MOTION EX PARTE

1. **INTRODUCTION**
2. **BRIEF FACTS OF THE CASE**
   The Claimant/Applicant entered into a contract on the 1st day of March 2000 with the Respondent for the supply of cashew nuts worth's N10,000.000.00. The Applicant has since supplied cashew nuts. The respondents has only paid N3 million and the outstanding balance of N7 million is yet to be paid.
3. **ISSUE FOR DETERMINATION**

1. Whether the court ought to grant the application for interim injunction in the circumstances of the instant case

4. **LEGAL ARGUMENT**
   The law is that where there is urgency and a threat to the res in the court may make an order of interim injunction restraining party from destroying the res. Thus this order is made to preserve rights of the party as provided by Order 38 Rule 1 Lagos State court civil procedure Rules 2012. In the instant case, if the Respondents were not restrained from selling the cashew nuts, this would be of a great disadvantage to the applicants case.
5. **CONCLUSION**
   Having considered the foregoing, I humbly urge my Lord to grant our prayers as prayed on the motion paper.
6. **LIST OF AUTHORITIES**
   ORDER 38 RULE 1, 4 and 8,HCCPR 2012

DATED THIS __ DAY OF _____ 20__

NDU GABRIELLA
SOLICITOR TO THE APPLICANT
BINGHAMS AND ASSOCIATES
18 WUSE STREET
IKOYI
LAGOS STATE
NIGERIA

Interlocutory Application: Case study 1, Pg 31: Motion on notice

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

SUIT NO:……
MOTION NO:

BETWEEN:
CROWN KITCHEN LTD …… CLAIMANT/ APPLICANT
AND
K & T LTD. …… DEFENDANT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 39 RULE 1 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2004 AND WITHIN THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that this Honourable Court will be moved on the …… day of …….. 2015 at the Hour of 9 O' clock in the forenoon or so soon thereafter as Counsel for the Claimant/Applicant will be heard praying this Court for:

1. **AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the defendant/respondent, their agents, servant and any person acting on their behalf from converting the 20 vehicles to their sole use pending the determination of the substantive suit.
2. **AN ORDER OF INTERLOCUTORY INJUNCTION** restraining the defendant/respondent, their agents, servant and any person acting on their behalf from from interfering with the proceeds of the contract between the claimant and defendant pending the determination of the substantive suit.

AND FOR SUCH FURTHER ORDERS as this honourable court may deem fit to make in the circumstances.

DATED THIS …….. DAY OF …….. 2015.

……..
NDU GABRIELLA
CLAIMANT'S SOLICITOR
10 Yaba Road, Lagos
Phone number
email

FOR SERVICE ON:
KOME AKODO
DEFENDANT'S SOLICITOR
Plot 2, Ikoyi Road, Lagos

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

SUIT NO:…… **BETWEEN:**

CROWN KITCHEN LTD …… CLAIMANT/ APPLICANT

AND

K & T LTD ……. DEFENDANT/ RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE

I, Isioma Wogu, Adult, Male, Christian and a Nigerian citizen of no 15 Ikoyi road Lagos do hereby make oath and state as follows:

1. That I am the Managing Director of the claimant/applicant in this suit and by virtue of which I am conversant with the facts and circumstances of this case.
2. That I have the consent and authority of the Claimant/applicant, my employer, to depose to this affidavit.
3. That there was a partnership agreement between the Claimant and Defendant which contract was evidenced in writing dated 15th day of February 1995. The agreement is attached as EXHIBIT A1
4. That twenty vehicles were purchased only for the sole purpose of implementing the terms of the contract and these vehicles are parked at the defendant's premises. The particulars of the vehicles are marked EXHIBIT A2
5. The sum of N2.17 million has accrued as proceeds of the contract, the receipt of which the claimant acknowledged on the 1st March 1997. This is marked as EXHIBIT A3
6. That The defendant converted the twenty vehicles to its sole use and thus for other purposes different from the express terms of the contract
7. That the defendant's right will not be affected in any way if the application is granted but the claimant will suffer if this application is not granted
8. That I believe that irreparable damage or injury will be caused to the Claimant if the application is not granted
9. That the Claimant undertakes to pay all damages caused to the Defendant if this application ought not to have been granted
10. I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Law of Lagos State

……..
Deponent

Sworn to at the High Court Registry, Ikeja
This …….day of ……2015

BEFORE ME
……..

COMMISSIONER OF OATHS

WRITTEN ADDRESS IN SUPPORT OF MOTION EX PARTE for K&T – not enough facts to do this

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

SUIT NO:
MOTION NO

BETWEEN:
CROWN KITCHEN LTD ……CLAIMANT/APPLICANT
AND
K&TLTD……DEFENDANT/RESPONDENT

COUNTER AFFIDAVIT IN OPPOSITION TO APPLICATION FOR INTERLOCUTORY INJUNCTION

I, Gabriel Reuben, Adult, Male, a Director of K&T Ltd, a Nigerian citizen of Road 16, Plot 2, Federal Housing Estate, Ikoyi, Lagos state do hereby make this oath and state as follows:

1. That I am a Director of K&T Ltd, the Defendant/Respondent in this suit and that by virtue of my position, I am conversant with the facts and circumstances of this suit.
2. That I have the consent and authority of the Board of Directors of the Defendant/Respondent Company to depose to this affidavit.
3. That the Defendant/Respondent is a limited liability company incorporated under the laws of the Federal Republic of Nigeria with its registered office at Plot 100, Ikoyi Lane, Ikoyi, Lagos
4. That paragraphs 6,7 and 8 of the affidavit in support of the motion on notice for an interlocutory injunction filed by the Claimant/Applicant is not true.
5. That the vehicles are parked at the defendant's compound not for conversion by the defendant but for safe custody in fulfilment of the partnership agreement
6. That the allegation that the defendant has converted the buses for its sole use is denied. The buses are being used for the purposes that are in accordance in the terms of the contract. Documents showing the use of the vehicles are marked EXHIBIT A
7. That the allegation that the claimant's right will be impaired if its application is not granted is denied
8. That the Defendant/Respondent will incur expenses and inconveniences if the application is granted.
9. That the Defendant/Respondent will be prejudiced if the application is granted.
10. That it will be in the interest of justice to refuse the application for interlocutory injunction.
11. That I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Law of Lagos State.

……..

DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, LAGOS
This … day of …., 20..

BEFORE ME

……
COMMISSIONER FOR OATHS

WEEK 8

DEFAULT AND SUMMARY JUDGMENT PROCEDURE

A summary judgment is one given in favour of the plaintiff or claimant summarily, without going through a full trial or plenary trial of the action. That is, it is the fastest method by which a plaintiff or claimant can obtain judgment where there is plainly no defence to the claim. Thus, the normal steps of filing all necessary pleadings, hearing evidence of witness and addresses by counsels before the court's judgment are not followed. In some instances, there may be no pleadings but just an affidavit by the plaintiff and if necessary, a counter-affidavit by the defendant. Saves time and cost where obvious there is no defence to the action.

Such judgment is based on the writ of summons, the statement of claim and, sometimes, statement of defence. The main reason for summary judgment is to save time and cost of lengthy and expensive trial where the defendant obviously has no defence to the action. It is for disposing with dispatch, virtually all contested cases – ***Mcgregor Associates v. NNBN (1996) 2 SCNJ 72.***

TYPES OF DEFAULT JUDGMENT

1. Judgment in default of appearance: it is given where a defendant fails to file his memorandum of appearance; or where the party fails to appear on the date slated for hearing

2. Judgment in default of pleadings: judgment in default of defence (because of frontloading procedure there can no longer be default in absence of plaintiff filing something)

TYPES OF SUMMARY JUDGMENT

1. Summary judgments based on admission of facts –**Order 28 Rule 3 Abuja; Order 19 Rule 4 Lagos.** In Lagos, if defendant makes an admission of facts and the plaintiff can apply for judgment based on judgment made, possible for the court to give judgment**.** Bring application by Motion or summons in Abuja, motion in Lagos

2. Summary judgments on application for accounts –**Order 16 R. 1(1) Abuja; Order 12 R. 1 Lagos. Application is made by summons in Abuja**

3. Summary judgment under **Order 11 of the Lagos High Court Civil Procedure Rules.**

4. Summary judgment under the undefended list – **Order 21 Abuja**

5. Summary judgment for occupation of property by squatters**: Order 53 Lagos.** Application is by originating summons in Form 38

DISTINCTION BETWEEN SUMMARY JUDGMENT AND DEFAULT JUDGMENT

1. A summary judgment is a final judgment and can only be set aside on appeal since it is a judgment given on the merit for want of a defence by the defendant – ***Iron Product Ltd. v. Sac (1992); ACB v. Gwagwada (1994).*** While a default judgment can be set aside by the same court that gave the judgment because it was given in default not necessarily for want of a defence.

2. A summary judgment is resorted to in circumstances where it is obvious or, at least, it appears to the plaintiff that the defendant has no defence to the action – ***Sodipo v. Leminkainen (1986); UTC (Nig.) Ltd. v. Pamotei (1989).*** While a default judgment is resorted to where the defendant has failed, neglected and or refused to either enter appearance or file his defence.

DEFAULT JUDGMENTS

A default judgment is one that is obtained pursuant to such an application for default of appearance.

Since a judgment which a plaintiff or claimant obtains by reason of failure to enter appearance is a default judgment, that is, not a judgment on the merit, then the court has jurisdiction to set aside or vary such a judgment –**Order 13 Rule 6 Abuja and Order 10 Rule 11 Lagos.**

Before the court can set aside such default judgment, the defendant must make an application to court within a reasonable time of the entry of the judgment praying the court to set aside such judgment. The application must be supported by an affidavit explaining the delay and other reasons for the default. It should also show that he has a good defence for the action.

The principles that a court will consider in exercising discretion to set aside a default judgment were first enunciated in ***Idam Ugwu v. Nwaji Aba (1961),*** and more forcefully re-stated by the Supreme Court in ***Williams v. Hope Rising Voluntary Fund Society (1982)*** to the following effect:

a) The reasons for the applicant's failure to appear at the hearing or trial of the case in which judgment was given in his absence;

b) Whether there has been undue delay in making the application to set aside the judgment so as to prejudice the party in whose favour the judgment subsists;

c) Whether the latter party (i.e. in whose favour the judgment subsists) would be prejudiced or embarrassed upon an order for re-hearing of the suit being made so as to render such course inequitable; and

d) Whether the applicant's case is manifestly unsupportable.

In addition to the foregoing factors, the court must also be satisfied that the applicant's conduct throughout the proceedings, that is, from the service of the writ upon him to the date of the judgment has been such as to make his application worthy of sympathetic consideration.

A default judgment may be set aside by another Judge of the same court and not necessarily the Judge that gave it – ***Emodi v. Kwentoh (1996) 2 SCNJ 134***

UNDEFENDED LIST PROCEDURE (ABUJA)

The undefended list procedure is a civil action in most of the States of the Federation (except Lagos) used to recover debts or liquidated money demand only, which is filed in court by way of *writ of summons accompanied by an affidavit stating the grounds on which the claim is based and stating that in the deponent's belief there is no defence to it.* The court shall, if satisfied that there is no defence, enter the suit for hearing under the "Undefended List" and a date shall then be entered for hearing – **Order 21 R. 1(1) & (2) Abuja.**

It should be noted that a liquidated claim is one where the amount is certain or the basis of calculation is certain while an unliquidated claim is one where neither the amount is certain nor the basis of calculation. See **Maja v Samouris**. Thus, interest cannot be claimed under the undefended list as it is unascertainable except where the exact interest rate is specifically stated in the agreement between the parties.

The procedure is best explained in three various steps.

STEP 1

a) The application to place a suit on the undefended list is made at the time of applying for the writ of summons.

b) The plaintiff is to File Form 1, that is, a writ of summons where the only claims made are for debt or liquidated money demand.

c) The writ of summons is supported by an affidavit stating the following:

   i. The grounds on which the claim(s) in the writ of summons is based; and

   ii. The deponent's belief that there is no defence to the claim.

   iii. And pre-action counselling certificate

However, an omission on the part of the deponent to declare or aver that in his belief the defendant has no defence to the action is not fatal to the action. It is left for the court to form its own opinion whether there are good grounds for believing that the defendant has no defence to the action – ***Edem v. Cannonball Ltd (1998).***

In Abuja, the effect of the completion of Form 1 supported by an affidavit constitutes the application on which the court, if satisfied, will enter the suit under the undefended list. In ***Kwara Hotels Ltd. v. Ishola (2002)***, the Court of Appeal, Ilorin Division held thus:

> *"...the application contemplated by Order 22(1) of the High Court Rules is the one done by the completion of Form 1 in the Appendix to the Rules. Where the claim is for the recovery of a debt or liquidated money demand as envisaged by Order 22 Rule 1, then such an application for the issue of a writ of summons must be accompanied by an affidavit setting forth the grounds upon which the claim is based etc. It is, therefore, my considered opinion that the completion of Form 1, coupled with an affidavit, constitutes the application on which the court, if satisfied, will enter the suit under the undefended list and mark the writ so issued accordingly. To insist on a separate formal ex parte motion for the purpose or entering the suit under the undefended list is in my view superfluous and unnecessary burden, the rules having clearly provided what is meant by an application for the issue of a writ of summons..."*

It should be noted that Order 22 Rule 1 referred to above is that of Kwara State Civil Procedure Rules, 1989.

STEP 2

a) The court, where the action is filed, shall examine the claim and the supporting affidavit and if satisfied that there are good grounds for believing that there is no defence to the claim will enter the suit for hearing under the undefended list and mark the writ of summons accordingly.

b) The court shall then enter a date for hearing suitable to the circumstances of the case. It should be noted that when an action under the undefended list comes up for the first time in court, that is, on the return date, it only comes up for hearing and not for mention. On that date, the court has a duty to see if a notice of intention to defend with a counter-affidavit in support has been filed by the defendant. If none had been filed, the court will proceed to judgment – ***Ben Thomas Hotels Ltd. v. Sevit Furniture (1989).***

However, if the suit was specifically fixed for mention, then the court cannot properly provide that hearing on that day and if it does, any judgment obtained must be set aside on appeal - **UBA v. Bauchi Meat Products (1978).**

The court cannot delegate the power to consider or place the writ in the undefended list since it is a judicial function – **Nwakanma v. Iko Local Government Council Rivers State (1996) ,** where the marking of the writ "undefended" was done by the Registrar of the Court and the Court of Appeal held it to be invalid.

STEP 3

A copy of the marked writ and supporting affidavit is served on the defendant. In such situations, the defendant has two options:

a) He may admit the claim if he has no defence; or

b) He may wish to defend the action.

If the defendant is not disputing the claim, that is, if he concedes the claim, he does not need to do anything. On the day fixed for hearing, the court may give judgment for the plaintiff based on its rules and affidavit in support and the fact that the defendant has no intention to defend the action – ***Ahmed v. Trade Bank (1997),*** a defendant who has filed nothing has no right to be heard in court even if physically present.

However, where the defendant on being served with the writ of summons and affidavit, feels like challenging the claim, he is required by the rules to file in writing a notice of intention to defend together with a counter-affidavit disclosing a defence on the merit to the Registrar. *His notice of intention to defend must be filed not less than* ***five (5) days*** *before the date fixed for hearing* – **Order 21 Rule 3(1) Abuja; *Bulet Nigeria Ltd. v. Adamu (1997).*** In those jurisdictions where there is no time limit, the defendant can file any day before the date fixed for hearing. This notice of intention to defend must be accompanied by the grounds for his defence (a counter affidavit to the application)

Thus, under the Abuja Rules, for a writ to be properly served, the defendant must be given more than 5 days before the date of service to the day given for hearing. A writ of summons under the undefended list which does not allow a defendant five (5) days before hearing will mean that the writ was improperly served and is therefore voidable at the option of the defendant. It also means that such an irregularity can be waived by the defendant – ***Obi v. N. M Community Bank Ltd (2001)***

However, where a defendant fails to file within the time limit, he may apply for an extension of time – ***Olubusola Stores v. Standard Bank (1975) 4 SC 51***, a defendant who fails to file within time may bring an application for extension of time within which to file it.

It should be noted that the court is not precluded from hearing or requiring oral evidence if it thinks fit at any stage of the proceedings – **Order 21 Rule 5 Abuja.**

After the defendant has delivered his notice of intention to defend (with the counter-affidavit), the court shall determine if the counter-affidavit discloses a defence on the merit. Where the court is satisfied that no defence has been disclosed, the case will be heard as an undefended list and judgment thereupon given to the plaintiff without calling upon the plaintiff to summon witnesses – ***Bature v. Savannah Bank (1998) 4 NWLR (Pt. 546) 438.***

The defendant's counter-affidavit must as nearly as possible reply the claim of the plaintiff's affidavit and not merely a denial of the plaintiff's claim as such will be devoid of any evidential value – ***Agro Millers Ltd. v. CMB (1997); Jipreze v.Okonkwo (1987).***

Where the defendant has disclosed a defence, the action shall be removed from the undefended list and transferred to the ordinary cause list and the court may order pleadings, or proceed to hearing without further pleadings – **Order 21 Rule 3(2) Abuja.** In such instance, it is immaterial whether the defendant or his counsel is in court – ***Eastern Plastic Ltd. v. Synco (W. A) Ltd. (1999)***.

Good defences in a counterclaim: Alleging facts making the case of plaintiff to be doubtful, misrepresentation by the plaintiff, alleging facts that entitle him to interrogate the plaintiff's witnesses, alleging set-off or counterclaim, there are substantial questions of facts/law to be trialled.

If there was no service on the defendant and case went on and judgment was entered, defendant has the right to get the judgment set aside (lack of fair hearing: Chevron v Warri North Local Government (2003). If court was incompetent (not within jurisdiction of court), possible for it to set that judgment aside. If the judgment was been given and the defendant states that it was obtained by fraud, the proper thing to do is to file a fresh action alleging the fraud and not just file a motion: **AIB Industries v Parko Plast Ltd (2003)**

JUDGMENT IN UNDEFENDED LIST

This can be found under **Order 21 Rule 4 Abuja.** Where the defendant neglects or has failed to deliver the notice of intention to defend together with a counter affidavit disclosing a merit of defence, or such defendant is not given leave to defend by the court, the suit shall be heard as an undefended list and judgment shall be given accordingly without the need of calling witnesses (judgment on the merits)– ***Alale v. Olu (2001).***

SETTING ASIDE JUDGMENT UNDER THE UNDEFENDED LIST

The general rule is that a judgment on the undefended list is one on merit and cannot be set aside by the same court that gave it, the only option open to an aggrieved defendant is to appeal against it – ***ACB Ltd. v. Gwagwada (supra).***

The exception to this rule is that the court has the power to set aside its own judgment even where the judgment was entered under the undefended list where:

1. Judgment was entered without jurisdiction, that is, incompetency of the court; or

2. The judgment was obtained by fraud.

In ***Mark v. Eke (2004),*** the Supreme Court held that it was competent for the trial court to set aside its own judgment given under the undefended list where there was non-service of the originating process.

The defendant seeking to set aside the judgment must come by way of motion on notice specifying in the affidavit attached, the nature of the irregularity, how it arose and disclosing a defence on the merits – ***Bendel Construction Co. Ltd. v. Anglo Dev. Co. (Nig.) Ltd. (1972).*** The notice of defence must state the particulars of defence, which would constitute a good defence when proved – ***John Holt Ltd. v. Fajemirokun (1961).*** Where the notice of defence did not disclose a defence on the merits, the court may refuse such defence – ***Jopreze v. Okonkwo (1987); Obi v. Ngwo Market Community Bank Ltd (2001).***

Thus, the law is that where a judgment was given under the undefended list and the defendant contends that it was given without jurisdiction, he has a choice of either appealing against the decision or applying to the same court to set it aside.

ORDER 11 PROCEDURE (LAGOS)

This procedure is only applicable in Lagos State under **Order 11 of Lagos High Court Civil Procedure Rules, 2004.**

This procedure is available for every claim and is used where the claimant believes that there is no defence to his claim; or where it will amount to delay to allow the defendant defend the action or where the facts are straight forward and uncontested by the defendant – ***UTC (Nig.) Ltd. v. Pamotei (supra)*** ***Per Karibi-White JSC.***

Macaulay v New Merchant Bank (1994) NWLR (Pt 144) Pg 283: with respect to when a judgment is in default and when it is on merits under order 11

The claimant shall file his originating process the following:

i. Writ of summons;

ii. Statement of claim;

iii. List of Documents to be relied upon;

iv. Deposition of his witnesses

v. An application for summary judgment (motion on notice);

vi. Affidavit in support stating grounds for his belief that there is no defence to the claim – ***Jamin Systems Consultants Ltd v Braithwaite (1996)***

vii. A written brief

viii. Pre-action protocol Form 001

Order 11 Rule 1 Lagos

NB: every time you're asked to make an application: file a motion, affidavit and written address

PROCEDURE FOR FILING

Order 11 of Lagos High Court Rules is silent on the mode of bringing the application for summary judgment, but it is suggested that it should be by **motion on notice** since all applications under the Lagos Rules, except otherwise required, shall be by motion which may be supported by affidavit – **Order 39 Rule 1, Lagos.**

For the claimant's application to be competent, he shall file a writ of summons accompanied by statement of claim, list of witnesses, written statements on oath of the witnesses and copies of every documents to be relied upon at the trial, pre-action protocol Form 001 otherwise, the application of the claimant shall not be accepted for filing by the Registry – **Order 3 Rule 2(2), Lagos.** The affidavit must be detailed to support all the grounds contained in his claim and must state that in the claimant's belief, the defendant has no defence to the claim. The affidavit need not be sworn to personally and may be sworn to by any other person who can swear positively to the facts of the case – ***Emuwa v. Consolidated Discount Ltd. (2001),*** where the court held that the affidavit in support of an application for summary judgment need not be deposed to by the claimant.

The affidavit shall also state the fact that in the deponent's belief, there is no defence except as regards the amount of damages claimed – ***Jamin Systems Consultants Ltd. v. Braithwaite (1996).***

NOTICE TO DEFEND

A defendant who is served with the process has a defence to the claim and where he intends to defend the claim, he must do so by filing within the limited time for defence (**42 days** under **Order 15 Rule 1(2), Lagos)** the following:

i. His statement of defence;

ii. Deposition of his witnesses;

iii. List and copies of documents to be used in his defence; and

iv. A counter affidavit and a written brief in reply to the application for summary judgment. If relying only on points of law, then no need for counter-affidavit, just file a written brief.

v. Memorandum of appearance

Order 11 Rule 4, Lagos.

The defence must show whether the defendant is denying the whole or part of the claim and not just a mere or general denial. The defence must sufficiently answer the claim – ***Adebisi Mac Gregor Associates v. NAL Merchant Bank (1996).*** In ***Cotia Commercio E. Importacao SA v. Sanusi Brothers (Nig.) Ltd. (2000),*** the Supreme Court held that mere general denial of a claim, showing a case of hardship or inability to pay in the counter affidavit; or filing of sham or frivolous defence was not sufficient for the defendant to be granted leave to defend.

WHERE A DEFENCE IS DISCLOSED

Claimant moves his application for summary application. Where it appears to a judge *prima facie* that a defendant has a good defence and ought to be permitted to defend the claim, **he may be granted leave to defend – Order 11 Rule 5(1) Lagos;** in which case, the matter will be entered in the general cause list to be tried fully. In ***Adebisi Mac Gregor Associates v. NAL Merchant Bank (supra),*** the Supreme Court, ruling on the old order 10, held that for leave to defend to be granted, the court must peruse all documents filed and satisfy itself that a good defence on the merit has been disclosed. Therefore, defendant has to show whether on the face of it, there are triable issues, and not that the defence will succeed.

WHERE NO DEFENCE IS DISCLOSED

But where it appears to the judge that the defendant has no good defence, the judge may enter judgment in favour of the claimant – **Order 11 Rule 5(2) Lagos.**

Where the defendant fails or neglects to file his defence, and judgment is entered thereon, it would seem to be a default judgment, which may be set aside for good cause shown.

Where it appears to a Judge that a defendant has a good defence to a part of the claim but no defence to the other parts of the claim, the Judge may thereupon enter judgment in respect of the part of the claim to which no defence has been disclosed, and grant leave to defend that part to which a defence has been disclosed – **Order 11 Rule 5(3) Lagos.**

Where there is more than one defendant, the judge may enter judgment against those defendants who do not disclose a defence to the claim but shall grant leave to defend to those defendants who disclose a defence – **Order 11 Rule 6 Lagos.**

Both parties are required to file a written brief either in support of or in opposition to the application for summary judgment but the parties are at liberty to advance oral submissions in clarification of their defence.

2 types of judgment under Order 11: If the judgement was given because of failure of defendant to say file his defence or counter affidavit, it is a default judgment and it could be set aside under Order 20 Rule 12 or Order. If the judgment was given after the defendant has filed his defence and counter affidavit, it is a final judgment (judgment on the merits)

SIMILARITIES BETWEEN UNDEFENDED LIST (ABUJA) AND ORDER 11 PROCEDURE (LAGOS)

1. They are both summary judgment procedures

2. They both apply where plaintiff/claimant believes that the defendant has no defence to an action.

3. They are both filed at commencement.

4. They are both commenced by writ of summons.

5. They are both supported by affidavit.

DIFFERENCES BETWEEN UNDEFENDED LIST (ABUJA) AND ORDER 11 PROCEDURE (LAGOS)

1. Undefended list relates to debt or liquidated money demand only while Order 11 Procedure relates to all claims (liquidated and unliquidated).

2. The time for filing is at least is five (5) days before the date fixed for hearing under undefended list while the time for filing is forty-two (42) days from service of the writ under Order 11 Procedure.

3. Undefended list is by a notice of intention to defend while Order 11 Procedure is by a statement of defence.

4. Undefended list applies to the rest of the Federation while Order 11 Procedure applies to Lagos only.

5. Undefended list allows for only a final judgment whether the defendant files a defence or not while Order 11 Procedure has two (2) types of judgment which are default judgment and judgment on merits (final judgment).

ETHICAL ISSUES

1. A counsel in filing counter-affidavit must only reply to the affidavit and to restrain from ridiculing an affidavit of filing a counter-affidavit based on law rather than facts.

2. **Rule 14 (1) of the Rules of Professional Conduct (RPC) –** Dedication and devotion to the cause of the client.

3. **Rule 15 of RPC –** Representing clients within the bounds of the law.

4. **R. 15 (3) (e), (f)** if the defendant forges documents to disclose a defence on the merit and there is a judgment in his favour, such judgment may be set aside for fraud.
5. **R. 16** Duty to represent client competently.

6. **R. 24 (3)** A Lawyer should not enter a defence when he knows it is meant only to insult and harass the other party: thus wasting the time of the court.
7. **R. 14 (2) (c)** A Lawyer should warn his client as to the risks which may occur in the course of the case.
8. **R. 15 (3) (d)** Inform client of ADR.
9. **R. 3 (1)(a)**: lawyer should aid a non-lawyer in the unauthorised practice of law.
10. **R. 27 (2) (c)** Do not take undue advantage of the predicament of the opposing lawyer or client.
11. **R. 30** Do not conduct himself in a manner which may obstruct, delay or adversely affect the administration of justice.
12. **R. 16(c)** Do not neglect a matter entrusted to you as a counsel

13. **Rule 24(3) RPC:** A lawyer shall not conduct a civil case or make defence in a civil case when he knows or ought reasonably to know that it is intended merely to harass or to injure the opposite party or to work oppression or wrong.

Make sure to announce appearance.
ALSO SEE WRIT OF SUMMONS FOR UNDEFENDED LIST

UNDEFENDED LIST PROCEDURE (ABUJA)
IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE WUSE JUDICIAL DIVISION
HOLDEN AT WUSE II

SUIT NO: _____

BETWEEN
CROWN KITCHEN LTD …… PLAINTIFF
AND
K & T LTD …… DEFENDANT

AFFIDAVIT IN SUPPORT OF APPLICATION TO ENTER SUIT IN THE UNDEFENDED LIST PURSUANT TO ORDER 21 RULE 1 OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA (CIVIL PROCEDURE) RULES 2004

I, Mr. Henry Freeman, Adult, Male, Businessman, Nigerian Citizen of No. 3 Broad Street Ikeja, Lagos do hereby make oath and state as follows:

1. I am the company secretary of the Claimant/Applicant by virtue of which I am conversant with the facts deposed to in this affidavit.
2. I have the consent and authority of my employer to depose to the facts in this affidavit.
3. On the 2nd day of March 1995, the Claimant signed a partnership agreement with the Defendant to render catering services and transport food products produced to different government agencies within the state. The partnership agreement is attached as Exhibit A.

4. Pursuant to the partnership agreement, the Claimant and Defendant jointly purchased 20 (twenty) vehicles for the smooth operation of the business. Particulars of these vehicles are attached as Exhibit B.
5. The business thrived till the 31st day of December 1997 when a disagreement ensued between the Claimant and the Defendant regarding the mode to adopt on the expansion of the business.
6. Following the disagreement and while the partnership was still subsisting, the Defendants appropriated the sum of N4,340,000.00 (Four Million, Three Hundred and Forty Thousand Naira) only being profit realised from the business between March 1995 and December 1997 for its sole use.
7. The Defendant also converted the 20 vehicles used in the operation of the business to its sole use.
8. The Claimants via a letter dated 10th January 1998, demanded payment of the sum of N2,170,000.00 being its share of the profits. A copy of the letter is attached as Exhibit C.
9. The Defendants wrote to the claimant refusing to pay over the sum of N2,170,000.00 (Two Million, One Hundred and Seventy Thousand Naira) only to the Claimant being the Claimant's share of the profit made. A copy of the letter is attached as Exhibit D.
10. I verily and honestly believe that the Defendant has no defence to this claim.
11. It is in the interest of justice if this application is granted and that the Defendant's right will not be affected if the application is granted.
12. I make this solemn declaration conscientiously and in good faith believing same to be true and correct and by virtue of the provisions of the Oaths Act.

_____
DEPONENT
SWORN TO AT THE HIGH COURT REGISTRY, ABUJA
This ____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATHS

NOTICE OF INTENTION TO DEFEND

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

SUIT NO: _____

BETWEEN

CROWN KITCHEN LTD ……. PLAINTIFF

AND

K & T LTD ……. DEFENDANT

NOTICE OF INTENTION TO DEFEND PURSUANT TO ORDER 21 RULE 3(1) OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA (CIVIL PROCEDURE) RULES 2004

TAKE NOTICE that the defendant intends to defend the suit at the hearing.
DATED THIS _DAY OF ____2014.

X Y Bullock
Counsel for Defendant
Race Associates Chambers
No. 10 Silver Lane Avenue
Victoria Island, Lagos

FOR SERVICE ON:
TJ Gold, Esq
Counsel for Claimant
Liberty Chambers
5 Leedway Street
Ikoyi, Lagos
TG@Liberty.com
08022222222

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA
IN THE WUSE JUDICIAL DIVISION
HOLDEN AT WUSE II

SUIT NO: _____

BETWEEN
CROWN KITCHEN LTD …… PLAINTIFF
AND
K & T LTD …… DEFENDANT

COUNTER AFFIDAVIT DISCLOSING A DEFENCE ON THE MERIT PURSUANT TO ORDER 21 RULE 3(1) OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA (CIVIL PROCEDURE) RULES 2004

I, Mr. James Okoye, Adult, Male, Businessman and Nigerian Citizen of No. 70 Jubmo Street, Oshodi Lagos do hereby make oath and state as follows that:

1. I am the Litigation director of the defendant and by which of which I am conversant with the facts deposed to in this affidavit.
2. I have the consent and authority of my employers to depose to the facts in this affidavit.
3. I admit paragraphs 3, 4 and 5 of the affidavit of the Claimant in support of the Application for Summary Judgment.

4. I deny paragraphs 6, 7 and 8 of the Claimant's affidavit and aver that clause 15 of the said partnership agreement provides that within 5 (five) years of the partnership, a certain percentage of profits realised, to be agreed by the parties shall be ploughed back into the business for purposes of its expansion. The partnership agreement is attached as Exhibit B1.
5. The Claimant, by a letter dated the 10th day of January 1998 requested for an equal division of the profits realised thus far in clear disregard of the said clause 15 of the partnership agreement. A copy of the letter is attached as Exhibit B2.
6. The defendants by a letter dated the 17th January 1998 informed the claimant of its decision not to pay the said funds and referring it to Clause 15 of the partnership agreement.
7. The defendants never appropriated or converted to its sole use the 20 vehicles or the said sum of N4,340,000.00 (Four Million, Three Hundred and Forty Thousand Naira) at any time or at all.
8. Clause 20 of the Partnership Agreement provides that in the event of any dispute, recourse shall first be had to Arbitration under the platform of the Arbitration and Conciliation Act.
9. I know the defendants have a defence to the Claimant's Claim.
10. I swear to this affidavit solemnly and conscientiously believing its contents to be true and correct and in accordance with the Oaths Act.

_____
DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, ABUJA

This ____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATHS

SUMMARY JUDGMENT PROCEDURE (ORDER 11, LAGOS)

IN THE HIGH COURT OF LAGOS STATE

IN THE IKEJA JUDICAL DIVISION

HOLDEN AT IKEJA

SUIT NO: _____

MOTION NO: _____

BETWEEN

CROWN KITCHEN LTD …… CLAIMANT/APPLICANT

AND

K & T LTD …… DEFENDANT/RESPONDENT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 11 RULE 1 AND ORDER 39 RULE 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 _____, 2014 at the hour of 9 O'Clock in the forenoon or so soon thereafter as the applicant or counsel on his behalf may be heard praying this Honourable Court for the following orders:

1. AN ORDER entering summary judgment for the claimant/applicant.
2. AND FOR SUCH ORDER OR FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

Dated this 29st day of March, 2014

_____

TJ Gold, Esq
Counsel for Claimant
Liberty Chambers
5 Leedway Street
Ikoyi, Lagos
TG@Liberty.com
0802222222222

For Service on:
X Y Bullock
Counsel for Defendant
Race Associates Chambers
No. 10 Silver Lane Avenue
Victoria Island, Lagos

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICAL DIVISION
HOLDEN AT IKEJA

SUIT NO: _____
MOTION NO: _____

BETWEEN

CROWN KITCHEN LTD …… CLAIMANT/APPLICANT

AND

K & T LTD …… DEFENDANT/RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT PURSUANT TO ORDER 11 RULE 1 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2012

I, Mr. Henry Freeman, Adult, Male, Businessman, Nigerian Citizen of No. 3 Broad street Ikeja, Lagos do hereby make oath and state as follows:

1. I am the company secretary of the Claimant/Applicant by virtue of which I am conversant with the facts deposed to in this affidavit.
2. I have the consent and authority of my employer to depose to the facts in this affidavit.

3. On the 2nd day of March 1995, the Claimant signed a partnership agreement with the Defendant to render catering services and transport food products produced to different government agencies within the state. The partnership agreement is attached as Exhibit A.
4. Pursuant to the partnership agreement, the Claimant and Defendant jointly purchased 20 (twenty) vehicles for the smooth operation of the business. Particulars of these vehicles are attached as Exhibit B.
5. The business thrived till the 31st day of December 1997 when a disagreement ensued between the Claimant and the Defendant regarding the mode to adopt on the expansion of the business.
6. Following the disagreement and while the partnership was still subsisting, the Defendants appropriated the sum of N4,340,000.00 (Four Million, Three Hundred and Forty Thousand Naira) only being profit realised from the business between March 1995 and December 1997 for its sole use.
7. The Defendant also converted the 20 vehicles used in the operation of the business to its sole use.
8. The Claimants via a letter dated 10th January 1998, demanded payment of the sum of N2,170,000.00 being its share of the profits. A copy of the letter is attached as Exhibit C.
9. The Defendants wrote to the claimant refusing to pay over the sum of N2,170,000.00 (Two Million, One Hundred and Seventy Thousand Naira) only to the Claimant being the Claimant's share of the profit made. A copy of the letter is attached as Exhibit D.
10. I verily and honestly believe that the Defendant has no defence to this claim.
11. It is in the interest of justice if this application is granted and that the Defendant's right will not be affected if the application is granted.
12. I swear to this affidavit conscientiously and in good faith believing same to be true and correct and in accordance with the Oaths Law of Lagos State.

_____
DEPONENT
SWORN TO AT THE HIGH COURT REGISTRY, LAGOS
This ____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATHS

WRITTEN ADDRESS

IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICAL DIVISION
HOLDEN AT IKEJA

SUIT NO: _____
MOTION NO: _____

BETWEEN

CROWN KITCHEN LTD …… CLAIMANT/APPLICANT

AND

K & T LTD …… DEFENDANT/RESPONDENT

WRITTEN ADDRESS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

1.0 INTRODUCTION

My Lord, before this Honourable Court is an application by way of Motion on Notice dated the 30th day of June 2014 and filed on the ____ day of _____, 2014 along with the Writ of Summons, Statement of Claim, List and Copies of Documentary Exhibits to be Relied Upon, List and Deposition of Witnesses on Oath and a Pre-action Protocol Form 01.

My Lord, the Motion is brought pursuant to Order 11 Rule 1 and Order 39 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules, 2012 and Under the Inherent Jurisdiction of this Court.

My Lord, the Motion is praying this Honourable Court to enter a Summary Judgment for the Claimant on his bona fide belief that the Defendant has no defence to his claim. The Motion is supported by an 11-paragraph affidavit deposed to by one Mr Henry Freeman and we rely on all paragraphs of the affidavit particularly paragraphs 3-9.

2.0 SUMMARY OF FACTS

The facts adduced in support of the claim of the Claimant are that on the 2nd day of March 1995, the Claimant and Defendant entered into a partnership for the business of rendering catering services and transportation of food products within the state. The Claimant and Defendant jointly pooled resources and bought vehicles for the smooth operation of the business. The business thrived up until the 31st day of December 1997 when a disagreement as to the expansion of the business arose between the Claimant and Defendant. The Defendant then appropriated and converted all the partnership property for its sole benefit, despite repeated demands by the Claimant for a share in the proceeds/property of the partnership. Hence the action before this Honourable Court.

3.0 ISSUES FOR DETERMINATION

My Lord, it is humbly submitted that the sole issue for determination in this case is WHETHER, IN THE INTEREST OF JUSTICE, THE CLAIMANT IS ENTITLED TO A SUMMARY JUDGMENT IN HIS FAVOUR?

4.0 LEGAL ARGUMENT

My Lord, it is the principle of law that a Claimant in an action may be entitled to a summary judgment in his favour when he honestly believes that the Defendants have no defence to his claim. He shall be entitled to this relief where he bona fide believes that there is no defence to the action and by filing the necessary process accompanied by an application for summary judgment before this Court based on Order 11 rule 1 High Court of Lagos State Civil Procedure Rules 2012.

The principle of law also states that such belief of the Claimant must be apparent on the face of the processes filed in court and such claimant must clearly establish that the defendant may not have a defence to the claim against him. As such, if the facts are straightforward and uncontested by the Defendant, it would amount to a delay to allow the Defendant to defend the action in full trial.

We humbly wish to refer my Lord to a plethora of authorities that have upheld and elucidated on the above principle of law: Sodipo v. Leminkainen (1986) 1 NWLR (pt. 15) 220; UTC (Nig) Ltd v. Pamotei (1989) 2 NWLR (pt. 103) 224 at 303-304; Iron Product Ltd v. Sal (1992) 4 NWLR (pt. 238) 734; ACB v. Gwagwada (1994) 5 NWLR (pt. 342) 23.

My Lord, paragraphs 3 and 4 of the affidavit together with partnership deed annexed thereto clearly show that existence of a partnership between the parties. The partnership, having been entered into in Lagos State, is regulated by the Partnership Law of Lagos State. More so, section 3(1) Partnership Law of Lagos State 2009 defines partnership as the relationship which subsists between persons carrying on a business in common with a view of making profit.

In addition, the partnership agreement did not provide for division of profits and proceeds realised from the partnership business. As such, the law is that in such absence, the profits from the business shall be shared EQUALLY amongst the partners. (Section 20 Partnership Law of Lagos State 2009).

From the principle of law above, the defendants violated the provisions of the partnership law by converting and appropriating the 20 vehicles and the sum of N4,340,000.00 (Four Million, Three Hundred and Forty Thousand Naira) for its sole use and benefit. The Claimant clearly averred to this in paragraphs 6, 7 and 8 of the affidavit.

Thus, the defendants cannot possibly have a defence to the claimant's claim as the exhibits attached evidences their wrongful actions and the principle of law in this regard is clear.

It is therefore humbly submitted that the Claimant is entitled to a summary judgment in his favour as the Defendants could not possibly have a defence to his claim.

5.0 CONCLUSION

In view of the argument laid down in favour of the Claimant/Applicant above, together with the facts deposed to in the affidavit and reinforced by the documentary exhibits attached thereto, it is established that:

1. There was a valid and subsisting partnership agreement between the Claimant and Defendants;

2. The Defendants wrongly appropriated and converted the partnership property in breach of the partnership agreement and in contravention of the partnership law of Lagos State;
3. The Claimants honestly believe that the Defendants do not have a defence to its claim.

We therefore urge this Honourable Court to grant this application and enter a summary judgment for the Claimant/Applicant on the following reliefs:

1. A DECLARATION that the partnership contract agreement dated 2nd March, 1995 is still valid and subsisting.
2. AN ORDER OF PERPETUAL INJUNCTION restraining the Defendant from converting the 20 vehicles and the sum of N4,340,000.00 (Four Million, Three Hundred and Forty Thousand Naira) to its sole use

IN THE ALTERNATIVE

1. AN ORDER that the defendants pay the Claimants the sum of N2,170,000.00 (Two Million One Hundred and Seventy Thousand Naira);
2. AN ORDER for an equal division of the 20 vehicles converted by the Defendants;
3. AN ORDER for costs to the Claimant

6.0 LIST OF AUTHORITIES

A. **JUDICIAL AUTHORITIES**

1. Sodipo v. Leminkainen (1986) 1 NWLR (pt. 15) 220;
2. UTC (Nig) Ltd v. Pamotei (1989) 2 NWLR (pt. 103) 224 at 303-304;
3. Iron Product Ltd v. Sal (1992) 4 NWLR (pt. 238) 734;
4. ACB v. Gwagwada (1994) 5 NWLR (pt. 342) 23.

B. **STATUTORY AUTHORITIES**

1. Order 11 Rule 1 High Court of Lagos State (Civil Procedure) Rules 2012;
2. Order 39 Rule 1 High Court of Lagos State (Civil Procedure) Rules 2012;
3. Sections 3(1) and 20 of the Partnership law of Lagos State

Dated this 29th day of March 2014

_____

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IN THE HIGH COURT OF LAGOS STATE
IN THE IKEJA JUDICAL DIVISION
HOLDEN AT IKEJA

SUIT NO: _____

BETWEEN

CROWN KITCHEN LTD …… CLAIMANT/APPLICANT

AND

K & T LTD …… DEFENDANT/RESPONDENT

COUNTER AFFIDAVIT IN OPPOSITION TO APPLICATION FOR SUMMARY JUDGMENT PURSUANT TO ORDER 11 RULE 4 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2012

I, Mr. James Okoye, Adult, Male, Businessman and Nigerian Citizen of No. 70 Jubmo Street, Oshodi Lagos do hereby make oath and state as follows that:

1. I am the Litigation director of the defendant and by which of which I am conversant with the facts deposed to in this affidavit.
2. I have the consent and authority of my employers to depose to the facts in this affidavit.
3. I admit paragraphs 3, 4 and 5 of the affidavit of the Claimant in support of the Application for Summary Judgment.
4. I deny paragraphs 6, 7 and 8 of the Claimant's affidavit and aver that clause 15 of the said partnership agreement provides that within 5 (five) years of the partnership, a certain percentage of profits realised, to be agreed by the parties shall be ploughed back into the business for purposes of its expansion. The partnership agreement is attached as Exhibit B1.
5. The Claimant, by a letter dated the 10th day of January 1998 requested for an equal division of the profits realised thus far in clear disregard of the said clause 15 of the partnership agreement. A copy of the letter is attached as Exhibit B2.
6. The defendants by a letter dated the 17th January 1998 informed the claimant of its decision not to pay the said funds and referring it to Clause 15 of the partnership agreement.
7. The defendants never appropriated or converted to its sole use the 20 vehicles or the said sum of N4,340,000.00 (Four Million, Three Hundred and Forty Thousand Naira) at any time or at all.
8. Clause 20 of the Partnership Agreement provides that in the event of any dispute, recourse shall first be had to Arbitration under the platform of the Arbitration and Conciliation Act.
9. I know the defendants have a defence to the Claimant's Claim.
10. I swear to this affidavit solemnly and conscientiously believing its contents to be true and correct and in accordance with the Oaths Law of Lagos State

_____
DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, LAGOS

This ____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATHS

Summary judgment under Order 11 in Lagos using case study 1

- Order 3 rule 2; Order 11 rule 1: Crown Kitchen needs to bring deed of partnership, the contract, particulars (e.g. invoice) of the 20 vehicles, where the payment of 2.17million was paid (evidence of this), all applications will be made by motion on notice, an affidavit (must state that the claimant has no defence to the claim) and written address.
- K&T: to defend the matter, statement of defence (a counter- affidavit stating that they have a defence to present) and submit documents and witness statement on oath. Failure to defence, then judgment in default will be entered. Judge can set this judgment aside if they have a good reason as to why they didn't enter a defence on time.

Summary judgment in Abuja using case study 1

- Only a debt or liquidated money demand
- Writ of summons and affidavit in support.

- Defendant to file defence not less than 5 days before the return date. Failure to do so a final judgment will be given

Summary judgment in Abuja using case study 2

- N7 million for contractual damages; 3 million general damages, 4 million special damages
- She can only claim N7 million in the undefended list as claims in this are for debt and liquidated money and the N3 and N4 million are not ascertainable. If claiming on interest, the interest must have been agreed to by the parties. (for it to fall under undefended list in Abuja)

Summary judgment in Lagos

- Kayuba Ada can claim for N7million, N3million, N4million

WEEK 9- PLEADINGS

Pleadings are **written statements** or allegations of the parties in an action begun by **WRIT OF SUMMONS AT THE HIGH COURT** setting out in summary form the particulars of the materials facts on which each party relies for his claim or defence.
No definition of pleadings in statute. Only cases give the definition of pleadings – sets out material facts in dispute. A brief summary of each parties case: Ascertainment of disputes btw the parties and those with which there is agreement btw them – **Mobil v LASEPA**. Pleadings are peculiar to actions started by way of writ. Pleadings are for actions in the High Ct. It is briefs in the Ct of Appeal
ORDER 23 ABUJA; ORDER 15 LAGOS

RELATIONSHIP BETWEEN WRIT OF SUMMONS AND PLEADINGS

- Writ of summons ordinarily does not form part of pleadings-**LEWIS V. PARKER**
- A Writ of Summons **may** qualify as a pleading if it is specially endorsed.
- However, once a **statement of claim is filed, it SUPERCEDES the writ. Any statement in the writ not in the Statement of Claim is deemed abandoned.**

- Where **a Statement of Claim refers to the writ. BOTH MUST BE READ TOGETHER.**

FUNCTIONS OF PLEADINGS

1. Pleadings define and ascertain the various matters in dispute between the parties and those upon which they are agreed. **HIGHGRADE MARITIME LTD V. FBN LTD.**
2. Pleadings serve as a notice to the other party as to what to expect and thus forestalls the springing of surprises thus saving time and cost. **GEORGE V. DOMINION FLOUR MILLS LTD.**
3. They serve as a guide to the court as to the precise matters to decide between the parties.
4. Pleadings constitute a permanent record of the issues and questions raised and determined between the parties and constitute public record.
5. Pleadings show on whom the burden of proof lies on the respective issues raised- **BAKARE V. ACB LTD.**
6. It aids the parties to determine the proper approach to the opponents' case. A party may upon the pleadings apply for judgment upon admission –
   Order 28 Rule 3 (ABJ); Order 19 Rule 4 (LAG)
7. Determines the evidential burden and shows where the burden of proof must lie

CONTENTS OF PLEADINGS

These are the cardinal rules as to what the pleadings should contain or should not contain.

0rder 23 Rule 4 Abuja Rules 2004;
0rder 15- Order 19 Lagos Rules 2012
AGU V.IKEWIBE

1. Every pleading must contain only material facts. The material facts are those facts essential to the party's case. **BRUCE V. ODHAM'S PRESS LTD.**
2. Pleadings must not **CONTAIN EVIDENCE** but shall contain facts by which the evidence is shown.
3. A party is not allowed to **PLEAD LAW OR LEGAL ARGUMENTS OR CONCLUSIONS**. **OBIJULU V. OZIM EXCEPT** Where the point of law pleaded will dispose of the entire action-**MARTINS V. FED ADMINISTRATOR GENERAL**
4. The facts must be stated precisely, positively, distinctly and briefly
5. Pleadings must contain relief sought or prayers.

FORMAL REQUIREMENTS OF PLEADINGS

1a. Pleadings should be printed, have the heading of the court, suit No., parties title.
b. Introduction ⇒ introduces the parties in a statement of claim; states the general traverse in a statement of defence.
c. The body ⇒ facts which gave rise to the suit
d. The relief/prayer part
e. Pleadings must be dated

f. 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 plaintiff or defendant's counsel

g. Address of defendant or claimant for service

2. Pleadings are arranged in paragraphs and numbered consecutively

a. The paragraphs should be written in a chronological order

b. Avoid the use of pronouns

c. There must be consistency in the nomenclature e.g. Deed of lease. This is so as to avoid confusion or ambiguity

d. Dates, sums and numbers shall be written in figures and not words. **However, 0rder 23 Rule 4(2) Abuja permits the expression of these items in words too).**

NB: 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.

FACTS THAT MUST BE SPECIFICALLY PLEADED

See Buhari v Obasanjo

Generally, any matter, **which will take the other party by surprise** if not pleaded must be pleaded. You plead relevant facts and not evidence

Order 23 Rule 6 ABUJA; 0rder 15 Rule 7 LAGOS;

1. Charges of fraud, commission of crime or any fact showing illegality. Must plead the particulars of the crime committed (e.g. falsification of results in election petition)

USEN V.BANK OF WEST AFRICA LTD;
GEORGE V. DOMINION FLOUR MILLS LTD

2. Unenforceability of document must be pleaded. Documents of material facts must be specifically pleaded where the document itself is in issue
TEBARA V. MERCURY ASSURANCE CO. LTD.

3. Statute of limitation must be specifically pleaded where it is sought to be relied upon **ISHOLA BALOGUN V. WAHABI ONIKONO**

4. Equitable defences of laches, acquiescence standing by; undue influence.

IBENWEHI V. LAWAL.

5. The plea of estoppel must be specifically pleaded.

OBANYA V. OKUNWA.

6. The plea of res ipsa loquitur (the thing speaks for itself meaning that the elements of duty of care and breach can sometimes be inferred from the nature of the accident even without direct evidence of how any defendant behaved) must be specifically pleaded by pleading facts, which justify its application.
OKEKE V. OBIDIFE.

7. Where family or traditional history or title of ancestors is to be relied upon for a declaration of title to land, the names and histories of the ancestors must be pleaded.

8. In a case of libel, the particulars of the alleged libel must be pleaded and the precise words set out/used by the defendant, the publication of the defamatory words – note: interpretation to English if words are not in English
9. The defence of justification, privilege or fair comment to an action for defamation must be pleaded.
10. Particulars of alleged acts of adultery including times and places of each act of adultery must be pleaded.
11. Breach of a fundamental term in contract
12. Foreign law, customary law and Islamic law must be pleaded except where the custom has been taken judicial notice.
13. A purchaser for value without notice specifically pleaded the defence.
14. Special and exemplary damages must be specifically pleaded and the particulars set out.
15. A set-off must be specifically pleaded-**0rder 15 Rule 1(2) LAGOS.**
16. Insanity or intoxication must be pleaded e.g. that at the time testator made the will he was insane (give periods of his insanity etc)
17. Waiver of right must be pleaded specifically
18. Statutory immunity or exception to statutory immunity must be specifically pleaded
19. Negligence must be specifically pleaded

You must set out the particulars for this (if not it goes to no issue)

NB ⇒ In pleading each of the above mentioned facts, the circumstances giving rise to that fact must be set out in the pleadings E.g. it is insufficient to plead thus:

"The defendant avers that the claimant's claims statute barred".

NB⇒DAMAGE is the loss or injury suffered by a party while DAMAGES is the monetary claim sought by the injured party.

TYPES OF PLEADINGS

i. Statement of claim
ii. Statement of defence
iii. Reply
iv. A counterclaim or set-off
v. Further and better particulars

STATEMENT OF CLAIM

- Key process when an action is commenced
- It is usually filed by the plaintiff/ Claimant to an action stating the material facts (matters of substantive law) that gave rise to him having a cause of action against the defendant i.e. must set out the relevant ingredients to prove the claim e.g. negligence (duty, breach and damages)
- It **supersedes the Writ of Summons once it is filed because it is more detailed** and
- It contains the claims of the plaintiff and the Court is to grant reliefs based on the prayers contained therein.
- You plead facts and not law

- Onus of proof lies on the plaintiff

RULE NOT TO DEPART FROM PLEADINGS

Evidence of a matter not specifically pleaded goes to no issue

A plaintiff cannot raise new issues by way of Reply to a counterclaim.

LEAPING BEFORE THE STYLE

This relates to a situation where the plaintiff anticipates the defence of the defendant and makes a comment on it in his statement of claim. This should be avoided. Allow him to make his statement of defence before you reply to the defence.

PARTS/ CONTENTS OF A STATEMENT OF CLAIM

1. The heading of the Court
2. Parties
3. Title
4. Body- introduction/ matters of inducement
5. All other relevant facts to be contained in the body
6. Prayers/ reliefs. Exhaust all the prayers for the Court to decide if to grant all or less because it is trite law that the Courts cannot grant reliefs not prayed for.
7. Date and signature of the Plaintiff
8. Address for service on the defendant

STATEMENT OF DEFENCE

This is filed by the defendant to an action stating his defence (s) to the Plaintiff's claims. Must find out if it is necessary to file the statement of defence at this time e.g. raising a preliminary objection: no service, improper name of defendant. Must address the specific allegations in the statement of defence.

HOW CAN THE DEFENDANT RESPOND TO A STATEMENT OF CLAIM

The defendant may in answer to a statement of claim pleadings in the following ways:

The defendant may respond in six(6) ways namely:

1. Admission
2. Denial/ traverse
3. Confession and avoidance
4. Objection on point of Law: Elebanjo v Dawodu (2006)
5. Set off
6. Counter claim

1. **TRAVERSE**

A traverse is a **categorical or unequivocal denial** of a fact alleged by the opposing party more specifically in relation to statement of defence.

0rder 23 Rule 9 Abuja; 0rder 15 Rule 5(1)Lagos

FORM OF DENIAL/TRAVERSE

a) A denial **must not be evasive**, vague or ambiguous; it must answer **specifically** the point of substance alleged in a statement of claim:
0rder 23 Rule 14 Abuja; 0rder 17 Rule 2 Lagos

b) Denial or traverse must be unambiguous. Any general statement will not constitute a denial: **MERIDIAN TRADE CORP. LTD V. METAL CONSTR. WA LTD:** In that case, the defendant pleaded thus: The defendant denies paragraphs 4,5,6 and puts the plaintiff to his strictest proof.

c) In order to deny a plaintiff's claim that the defendant is owing him, it would not be a specific denial to state that the defendant denies owing the amount stated

d) Where the defendant states that he is not in a position **to admit or deny** a particular paragraph in the statement of claim, this would be bad for **equivocal denial**. Thus, the allegation may be deemed to have been admitted- **LEWIS PETROLEUM LTD V. AKHIMIEN**

NOTE-Reliefs in pleadings need not to be traversed

TYPES OF TRAVERSE

a. **GENERAL TRAVERSE:** This is a denial in general terms.
Usually, in a statement of defence, the general traverse is stated at the preamble of the statement of defence thus: i.e. casts the burden of proof on the plaintiff
"SAVE AND EXCEPT as herein expressly admitted, the defendant denies each and every allegation of fact contained in the statement of claim as if the same were herein set out and traversed seriatim" (GENERAL TRAVERSE IS NOT SUFFICIENT DENIAL OF **ESSENTIAL AND MATERIAL FACTS –LEWIS PETROLEUM V. AKHIMIEN)**

b. **SPECIAL TRAVERSE:** This in addition to generally denying what is in the opposing party's claim, contains an affirmative statement of what the position is
IGBINOVIA V. OKUMU OIL PALM CO. PLC (2002)1NWLR (PT.796)386.

c. **COMMON TRAVERSE**: Is a simple and direct denial of material allegations of the opposite party.

d. **PROPER TRAVERSE:** Is a traverse, which specifically denies or does not admit an allegation. It is not **evasive or indirect**. **OKOROMAKA V. ODIRI**

e. However, if the plaintiff really doesn't know, he can state that **"The Defendant is not in the position to deny or admit paragraph X because they are peculiar facts within the knowledge of the plaintiff"**

f. **NEGATIVE PREGNANT TRAVERSE:** This is a **DENIAL** pregnant with admission.
It is a special denial, which **apparently denies a material allegation** while in reality, it **leaves a positive allegation unanswered or admitted**. It is evasive and incomplete
IT SHOULD NOT BE USED IN ANSWERING CLAIM
ILLUSTRATION
Eg I: **Mr. X alleges that Y struck him on the head and Y pleads that he did not strike him on the head.**

Eg II: A alleges that B is indebted to him to the fine of ₦200,000.00 and B pleads that he did not owe A ₦200,000.00.
⇒ This denial is pregnant because it could mean **that B owes A, a different sum of money or item.**
SHOULD BE COUCHED THUS-
The defendant (B) denies owing A the sum of ₦200,000.00 or any amount or thing whatsoever"
NOTE: It might be stated that 'The defendant is not in a position to admit or deny paragraph X ' – a fact which is within the knowledge of the plaintiff alone. Some SC cases (e.g. **Lewis & Peat (NRI) Ltd v Akhimien [1976]**) have criticised this traverse and that this is not an equivocal denial. Other SC cases (**Aja v Okoro [1991]**) state this traverse is sufficient. A SC case (**Ugochukwu v CCB (Nig) Ltd [1996]**) seems to have settled the issue stating that provided the general traverse exists with this specific traverse above, it is sufficient to amendment of the statement of defence and defendant is allowed to do so.

Certain matter that you don't need to traverse

- Matters of introduction except the suit concerns the identity of the man i.e. identity is a material fact in issue before the court or they are manifestly untrue
- Matters of law
- Damages – assumed that they are already in issue
- Reliefs

2. ADMISSION
This is where the defendant in his statement of defence, admits an alleged fact in the statement of claim.

EFFECT OF ADMISSION any fact admitted is deemed established.
NB: Any fact which is **not denied is deemed admitted** and **any fact admitted needs no proof: Section 123 EVIDENCE ACT 2011.**

EXCEPTION-an admission will be not be effective where the plaintiff is bound to prove his claim-**NATIONAL INVESTMENT PROPERTIES V. THOMPSON;**
BELLO V. EWEKA.
Judgment will be given in favour of the plaintiff. Defendant could bring a motion with affidavit and written address to the court to allow him to pay the debt by instalment.

3. CONFESSION AND AVOIDANCE
Here, the defendant in admitting the plaintiff's claim brings up a new fact, which negate the effect of the admission e.g. justification or privilege in defamation, or the defendant entered into a contract with the plaintiff but the contract is illegal (null and void)

4. SET-OFF

0rder 23 Rule 16 & 33 Abuja

0rder 17 Rule 6 Lagos

This is a **MONEY CLAIM** pleaded by the defendant as a defence to **THE PLAINTIFF'S CLAIM FOR MONEY.** Where successful, the court will set-off or deduct the different claim from the sum claimed by the plaintiff. Thus set-off reduces plaintiff's claim

This plea collapses with **the discontinuance or resolution** of the plaintiff's action. Does not stand on its own. If the plaintiff's action fails, the set-off will also fail

NB-Where **THE AMOUNT OF SET-OFF EXCEEDS THE PLAINTIFF'S CLAIM**, the defence should come by way of a counter claim.

COUNTER CLAIM: **Order 23 Rule 16 ABUJA; Order 17 Rule 6 LAGOS**

This is a cross action included in the statement of defence (under a different heading) arising where a defendant has a cause of action against a plaintiff who has sued him. Therefore, the plaintiff becomes defendant in this action

⇒The cause of action need not to be for monetary claim.

A counter claim is a separate and independent action; thus may proceed irrespective of the dismissal, stay or discontinuance of the plaintiff's action. Where a counter claim is filed and no defence is filed to this counter claim, the legal consequence is that the case is deemed admitted (judgment will be given against the plaintiff)

DISTINCTION BETWEEN SET-OFF AND COUNTER CLAIM

a.	A set-off is tied to the plaintiff's claim.	A counterclaim is an independent action.
b.	A set-off must be a monetary claim.	A counterclaim need not to be a monetary claim.
c.	A plaintiff is not required to traverse a set-off except it raises new issues.	A plaintiff is required to file a defence to a counterclaim except he admits it.
d.	The defendant can plead the set-off in his statement of defence.	A defendant must file a counterclaim under a different heading

PARTS/ CONTENTS OF A STATEMENT OF DEFENCE

1. The heading of the Court
2. Parties
3. Title
4. Body- general traverse
5. Specific denials
6. All other relevant facts to be contained in the body
7. Prayers/ reliefs/set-off/counter-claim. Exhaust all the prayers for the Court to decide if to grant all or less because it is trite that the Courts cannot grant reliefs not prayed for.
8. Date and signature of the defendant
9. Address for service on the plaintiff.

REPLY

This is usually filed by the Plaintiff when

1. New issues are raised in a Statement of Defence or
2. He has to reply on point of Law.

PARTS OF A REPLY

1. The heading of the Court
2. Parties
3. Title
4. Introductory statement of a Reply which is :
   "**The Plaintiff joins issues with the Defendant in respect of the entire paragraphs in the statement of Defence."**
5. Body- respond to each specific paragraphs of the Statement of Defence.
6. Prayers/ reliefs. Exhaust all the prayers for the Court to decide if to grant all or less because it is trite law that the Courts cannot grant reliefs not prayed for.
7. Date and signature of the Plaintiff
8. Address for service on the defendant

FURTHER AND BETTER PARTICULARS

- This is needed where the **pleadings are vague, evasive** or **over generalised in order to tie down specific allegations.**
- Also it may be filed when new facts come into existence or notice of a party.
- Usually brought by the **DEFENDANT but may be brought by ANY OF THE PARTIES IF NEEDED.**
- An **APPLICATION** shall ONLY be made to the judge only at the **CASE MANAGEMENT CONFERENCE IN LAGOS.**
- The judge may grant the application on terms as he deems just.

0rder 23 Rule 7 & 8 ABUJA
0rder 15 Rule 4 LAGOS
NOTE-However**, it does not operate as a stay of proceeding** or affect the time limit for filing his statement of defence. So **the defendant** should be time conscious in everything he does.

TIME FOR FILING PLEADINGS

- Registrar in Abuja will not issue the writ in Abuja if not statement of claim is not filed and in Lagos, the writ will be rejected.
- In ABUJA: The statement of claim shall be filed along with the writ of summons - **0rder 4 rule 15 Abuja.** In **LAGOS,** the **statement of claim** shall be filed along with the **writ of summons. Order 3 Rule 2 Lagos**
- The statement of defence shall be filled **WITHIN 14 DAYS OF SERVICE OF THE WRIT** and statement of claim on the defendant **0rder 23 Rule 2 ABUJA.**
- The **statement of defence (set-off or counter claim where inclusive**) shall be filed **WITHIN 42 DAYS** from date of service of the claimant's originating process and accompanying documents. -**0rder 15 rule 1(2) Lagos**

FOR SERVICE OUTSIDE THE STATE:
The statement of claims shall be filled along with the writ.

S.99 Sheriffs and Civil process Act.

FOR REPLY;
In ABUJA,
Reply shall be filled by the plaintiff **WITHIN 14 DAYS FOR THE SERVICE** on him of the defence: **0rder 23 rule 3(4)Abuja.**
In Lagos, it shall be filled **WITHIN 14 DAYS FROM THE SERVICE OF THE statement of DEFENCE: Order 15 rule 1(3) Lagos**

FOR DEFENCE TO A COUNTERCLAIM,
ABUJA-it shall be filed by the **PARTY'S WITHIN 14 DAYS AFTER SERVICE ON HIM OF THE COUNTERCLAIM-OR.23 Rule 3(4) ABUJA**

LAGOS, defence to counterclaim shall be filled **WITHIN 14DAYS FROM SERVICE OF THE COUNTERCLAIM: 0rder 15 Rule 1(3)LAGOS.**

EXTENSION OF TIME TO FILE PLEADINGS
The time limited by the rules for filing/service of pleadings may in **ALL CASES** be extended by the court – discretionary for the CT to grant extension of time.
0rder 20 Rule 3(1)ABUJA; **0rder 44 Rule 4 LAGOS.**
This has to be done if a party in any proceedings failed to file any pleading within the time allowed to do so.
⇒ Pleadings filed out of time **WITHOUT THE LEAVE OF COURT** is **ONLY VOIDABLE AND NOT VOID-**
UBA V. DIKE NWORAH
THE PROCEDURE:

- An application via Motion on Notice supported with an affidavit and a written address (set out reasons for delay – NB: must account for every single day of your delay e.g. delay in gathering information, ill-health of counsel (must move this by medical evidence)
- The proposed pleading should be exhibited in the affidavit.
- In **LAGOS,** an extension of time attracts an additional fee of N200 for each day of default. –**Order 44 Rule 4 LAGOS.**

DEFAULT OF PLEADINGS

a. Generally, where the defendant is in default of filing/serving pleadings, the plaintiff may apply to court for judgment (e.g. liquidated damages claim)
b. Where pecuniary damages are claimed, such damages is to be proved as such, apply for default judgment would necessitate some form of hearing in order to ascertain the damages claimed.
c. If declaration of title to land, matter will be set down for trial
d. Where possession of land is claimed, judgment would be given for possession
e. In issues like mortgage, or declaration of title to lands, the plaintiff should proceed to lead evidence to prove his case.
f. Judgment in default of pleadings **MAY BE SET ASIDE– 0rder 25 Rule 9 ABUJA.**

g. However, in **LAGOS**, **BY 0rder 20 Rule 12** such judgment shall **BE FINAL AND REMAIN VALID**. It may only be set aside on grounds of (**i) fraud (ii) non-service (iii) lack of jurisdiction.**
⇒The non-service referred to is **non-service of originating process** or **pleadings-ONIGBANJO V. INT'L BUSINESS SYSTEMS (NIG) LTD.**

CLOSE OF PLEADINGS
This refers to the stage when parties are no longer allowed to file further pleadings **EXCEPT WITH THE LEAVE OF COURT. At this stage, parties are said to have joined issues (MCQ QUESTION)**

NB ⇒**Parties JOIN ISSUES** where one party denies or states fact in contradiction to the facts stated by the other party. At this point, the case is ripe for trial

In ABUJA; pleadings are deemed to be closed

a) At the expiration **OF 14DAYS AFTER SERVICE OF THE REPLY OR DEFENCE TO COUNTERCLAIM**

b) Where **neither a reply or defence to counterclaim** is served, pleadings are closed at the expiration of **14DAYS AFTER SERVICE OF THE DEFENCE.**
0rder 23 Rule35(2)ABUJA.

In **LAGOS;** pleadings are deemed to have closed

1. In the event **OF FAILURE TO FILE DEFENCE** within **42 DAYS**
2. At the **EXPIRATION OF 7DAYS FROM THE SERVICE OF THE DEFENCE OR REPLY**
3. Pleadings close **AT THE EXPIRATION OF 14DAYS FROM SERVICE OF THE COUNTERCLAIM**
   EXCEPTION-where a d**efence is filed to the counterclaim**, then such time as court may be allow for filing of a defence**.**
   0rder 15 Rule 19 LAGOS.

IMPLIED JOINDER OF ISSUES/ CLOSE OF PLEADINGS
This is implied

1. When a **STATEMENT OF DEFENCE IS FILED** or
2. If the Plaintiff **FAILED TO FILE A REPLY** after the **RECEIPT OF THE STATEMENT OF DEFENCE**.
   NB: Plaintiff/Claimant may file a **REPLY AND DEFENCE TO THE COUNTER-CLAIM** in a single document to respond to new issues raised and his defence to the defendant's counter-claim.

AMENDMENT OF PLEADINGS-Order 24(LAG AND ABJ)
ABUJA
WHO CAN APPLY

- The court may also amend pleadings suo motu (on its own motion)-
  Order 24 Rule 1 ABJ;
  Order 24 Rule 8 LAGOS
  MAERSKLINE V ADDIDE INVESTMENT LTD

- A party to the proceeding
  Order 24 Rule 2 Abuja;
  Order 24 Rule 1 LAGOS

MODE OF APPLICATION FOR AMENDMENT

- Application is usually by motion on notice supported by affidavit disclosing cogent reasons for the amendment and a written address.
  Order 7 Rule2(1) (Abuja);
  Order 39 Rule1(1) (Lagos)
  If a minor amendment, can be done orally.

  In Lagos, during the case management conference, parties can amend pleadings. After the CMC, he can amend pleadings only two more times before judgment. In Abuja, party can amend at any time before judgment. **Okafor v Ikeanyi [1979]** SC decision where the plaintiff did not specifically plead certain matters he ought to have pleaded. On the day of judgment (while the judge was reading his judgment, he brought an application to amend his statement of claim. Trial judge refused saying it was too late. On appeal, Supreme CT held that he ought to have allowed amendment

- The Rules provide that APPLICATION FOR LEAVE TO AMEND may be made **by either party** to the Court or **Judge in Chambers** without prescribing the form-
  Order 24 Rule 3 (Abuja);
  Order 24 Rule 2 (Lagos)
- In Lagos, the application should be accompanied with a written address in support-
  Order 39 Rule 1(2)(lagos)
- Application may be oral if not contentious- **LAWAL V AREA PLANNING AUTHORITY**
- In LAGOS, a copy of the proposed amendment must be attached as exhibit in the affidavit.- **Order24 Rule 2 (**In amending a pleading, one files a new statement of claim (Titled: 'proposed amendment to the statement of claim'), highlighting or underlining the areas amended)
- If amendment leads to new witnesses, **ORDER 24 RULE 3 LAGOS** requires filing the list of additional witnesses and their witness statement on oath

CAN AMENDMENT BE DONE ON APPEAL

Amendment may be made at appeal stage. Supreme Ct and the Ct of Appeal both have inherent and statutory powers to amend pleadings provided that the amendment is consistent with evidence adduced at the trial.

0rder 1 Rule 20, COURT OF APPEAL RULES,

S. 16 COURT OF APPEAL ACT and S. 22 SUPREME COURT ACT – give power to the Courts. The CT of Appeal Act allows the CT of Appeal may from time to time make any order for determining the real question in appeal. So under this provision, CT of Appeal can order an amendment of pleadings e.g. to bring the pleadings in line with evidence already tendered in court.

EZEAKAEKWE V. JULIUS EMENIKE

OKOLO V. UBN

UBN PLC SPARKLING BREWERIES LTD

If amendment is short, it can be captured on the motion paper e.g. just one paragraph. If it is more than this, capture it in bold on your statement of claim or defence and attach it to your affidavit
Indicate on the amended pleadings (at the foot of the pleadings):
AMENDED THE …. DAY OF…2015 PURSUANT TO ORDER OF HONOURABLE JUSTICE OKE OKOYE DATED THE …DAY OF…2015 – Order 24 Rule 6 Abuja and Order 24 rule 6 Lagos

PURPOSE OF AMENDMENT OF PLEADINGS

1. To enable the court determine questions or issues in controversy.
2. To introduce claims connected to the suit
3. To secure substantial justice
4. To bring pleadings in line with the evidence already adduced on record e.g. by adding additional claim if the evidence entitles to you to that claim

CIRCUMSTANCES WHEN THE COURT IS LIKELY TO GRANT AMENDMENT:

1. Where the purpose of amendment is to bring pleadings in line with evidence already adduced before the court**.**
SPDC V. AMBAH ;
ENGLAND V. PALMER;
OGUNTIMEHIN V GUBERE.

- It even includes evidence adduced through cross examination-**WOLUCHEM V GUDI**

2. To secure substantial justice **–**
OJA V. OGBONI ;
ADEKEYE V. AKIN-OLUGBADE

3. To include an additional claim where there is evidence on record to sustain that claim and the parties have canvassed it in the proceedings**- IBANGA V USANGA**

4. To reflect the capacity in which a party sues or is sued or to correct the name of a party but not to introduce an entity or to substitute a juristic person for a non juristic person.-
OLU OF WARRI V ESSI ;
OKECHUKWU & SONS V NDAH

If the error is that of the client
If the error is that of counsel, CT is more ready to exercise its discretion in favour of the amendment.
Time when application is brought, if brought before close of pleadings, then will be granted with costs. After evidence has closed, it can only be granted to bring evidence in line with the pleadings. Thus, if in CT and evidence is being given out of line of pleadings, then raise the objection immediately so that the other side doesn't have time to ask for amendment of pleadings.

CIRCUMSTANCES WHERE AN APPLICATION FOR AMENDMENT WILL BE REFUSED

1. The proposed amendment is immaterial -**OYENUGA V. UNIFE**
2. The facts sought to be added were not in existence at the commencement of the suit
3. If the amendment is allowed, it will change the nature of the claim.
   The amendment will result to a new cause of action, which was not included at the initial stage: **GOWON V. IKE OKONGWU**
4. The amendment will amount to hearing further evidence.
5. It will amount to an abuse of court process. Bringing the application mala fide
6. It is to introduce fraud or defence of justification for the first time.
   AWACHIE V CHIME,
   OKOLO V CBN,
   GOWON V. IKE OKONGWU

Overreaching the other party (check examples): to take advantage

1. Amendment will result to a new cause of action
2. Adding so many new paragraphs to the pleadings (e.g. adding another 900 paragraphs)
3. Some things that must be plead from the onset e.g. libel (see above)

NB: Cannot amend an incompetent process e.g. signature signed by Mrs Amara & Co instead of Mrs Amara. This cannot be amended because you cannot put something on nothing and expect it to stand i.e. the pleading didn't exist from the onset (i.e. jurisdictional issues).

FACTORS CONSIDERED BY THE COURT IN GRANTING APPLICATIONS FOR AMENDMENT

⇒ In an application for amendment, the court will consider the following:

i. The attitude of the party applying.
ii. The reason and nature of the amendment sought.
iii. The time factor in relation to the suit.
iv. The stage at which the amendment is sought.
v. All other surrounding circumstances.

POST AMENDMENT REQUIREMENTS

1. Where amendment of pleadings is ordered, the amended pleading must be filed and served on all the parties in the suit.
2. The pleading must have endorsed on it the date of the order
   "Amended this _____day of_____pursuant to the order of _____(name of judge. Dated the__of ____2014- ORDER 24 Rule 6(LAGOS AND ABUJA)

TIME LIMIT FOR FILING AMENDMENT OF PLEADINGS

The time for filing amended pleadings is **WITHIN 7 DAYS from the TIME specified IN THE ORDER** in both **LAGOS AND ABUJA: Order 24 Rule 4 (Abuja and Lagos)**

EFFECT OF FAILURE TO FILE WITHIN TIME LIMIT GIVEN IN THE ORDER-

- In the **ABUJA RULES**, the order becomes **void** unless extended by the court-**Order 24 Rule 4 (Abuja)**

- Under the **LAGOS RULES** such party shall pay a fee of N200 for each day of default from **DATE LIMITED BY THE ORDER** or **7DAYS FROM DATE OF ORDER**. **Order 24 Rule 4 Lagos**

THE STAGE AT WHICH AMENDMENT OF PLEADINGS ARE ALLOWED

This depends on the Court Rules as follows:

ABUJA RULES:

- It can be done **at any stage** of the proceedings **BEFORE JUDGMENT**: **Order 24 Rule 2**

LAGOS RULES:

- It can be done at any time before the close of case management conference and not more than **TWICE** before a party closes his **case** at trial: **Order 24 Rule 1 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2012.**

THE EFFECT OF AMENDMENT OF PLEADINGS

1. It is retrospective, as the amended pleading is deemed filed when the earlier one was filed.
2. It gives room for consequential amendment, for instance if it is the plaintiff that **amended his statement of Claim** the defendant **may without leave** amend his statement of defence.

MCQ-must defendant seek leave to amend-NO. he can only make consequential amendments.

FURTHER AND BETTER PARTICULARS

- A party may seek further and better particulars of any pleading that had been field previously
- When facts are vague
- Provides more details of general and vague assertions in order to promote or rebut an allegation in a statement of claim or defence as the case may be
- Subsequent details constitute the pleadings
- Sometimes better not to ask for better particulars because then the other party cannot lead evidence of these better particulars in CT. However, in other cases, the CT has asked counsel why he didn't ask for better particulars (thus a catch 22 situation).

PROCEEDINGS IN LIEU OF DEMURRER

- Where a party is objecting to the court to entertain a case, he need not file his pleadings. Before Order 22, it was possible to raise a point of law asking the court to dismiss the claim of the plaintiff without filing a statement of defence. Stating that even if the plaintiff is saying is correct, due to the point of law, there can be no case to answer e.g. a contract case, defendant raises an objection asking court to dismiss the case because the contract is unenforceable without filing a statement of defence
- **Demurrer has been abolished-Order 22 ABUJA AND LAGOS RULES. Now it is proceedings in lieu of demurrer**

- He can file a **NOTICE OR MOTION OF PRELIMINARY OBJECTION IF IT RELATES TO JURISDICTION.**
- Where a party is not objecting based on jurisdiction of the court, he should **file his statement of defence and in one of the paragraphs, raise the objection**: **0rder 22 Lagos and Abuja.** The reason for this change is due to the fact that counsel were abusing the process whether or not they had a valid point of law or not, wasting the time of the court.
- Here, the court will decide whether it would decide on the objection before the total whether to rule on it in the judgment.

PRELIMINARY OBJECTIONS
MEANING-usually used to attack the propriety or otherwise of court processes

WHEN CAN A PRELIMINARY OBJECTION BE RAISED

1. Where the processes raised by the claimant are essentially defective or incompetent
2. Adoption of irregular or defective procedure by the plaintiff/claimant
3. Where court lacks jurisdiction
4. Where the action discloses no reasonable cause of action
5. Where action is statute barred
6. Failure to comply with condition precedents
7. Where party fails to comply with requirements of a statute or rules of court

NOTE:

1. It must be raised timeously
2. Where preliminary objection is to be taken against an action on ground of jurisdiction, it can be raised anytime
3. If it is on ANY OTHER GROUNDS with the abolition of demurrer proceedings, the objection will be taken after filing Statement of Defence. That point of law can be raised in the pleadings accompanied with the NOTICE OF PRELIMINARY OBJECTION

FORM OF PRELIMINARY OBJECTION

- Can be brought **by notice of motion** or by **notice of preliminary objection.**
- Notice of preliminary injunction is usually brought when objection is based on point of law
- Notice of preliminary objection must not have an affidavit but can have written address

ETHICAL ISSUES

1. A lawyer must not plead untrue facts
   R.15(3)b,c,d,e,f,g
   - (b) file a suit, assert a position, conduct a defence, delay a trial, or take over action 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;
   - (c) knowingly advance a claim or defence that is unwarranted under existing law, but he may advance such claim or defence if it can be supported by

argument in good faith for an extension, modification, or reversal of existing law;

- (d) fail or neglect to inform his client of the option of alternative dispute resolution mechanisms before resorting to or continuing litigation on behalf of his client.

- (e) conceal or knowingly fail to disclose that which he is required by law to reveal;

- (f) Knowingly use perjured or false evidence;

- (g) Knowingly make a false statement of law or fact:

2. Do not bring a defence which is meant to insult or harass the other party.
R.24(3): A lawyer shall not conduct a civil case or make defence in a civil case when he knows or ought reasonably to know that it is intended merely to harass or to injure the opposite party or to work oppression or wrong.

3. Duty not to mislead the court
R.32(3)(g): with knowledge of its invalidity, cite as authority a decision that has been overruled, or a status that has been repealed with intent to mislead the Court or Tribunal.

4. **Rule 30**: a Legal practitioner is an officer of the court and accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice: **Controller General of the Nigerian Prison Services v Adekanye (2002)**: must not mislead or deceive the CT

5. Duty to disclose all facts that are material to the just determination and conclusion of the matter

6. Facts pleaded must also be a true and correct state of things or events as they relate to the issue in dispute

Class example:

1. The defendant is an engineer and a civil servant with the Ministry of Works, Abuja. He resides at No. 6 Show Street, Gombe, Borno State.

2. On the 5th of January 2014, the defendant while on his way to repair a bridge in Lagos drove his grey Toyota Land cruiser car negligently along Admiralty Way, Lekki, Lagos and knocked down the plaintiff's cow

3. The plaintiff's cow was resting on the road near the plaintiff's house

4. The defendant's actions caused the plaintiff serious emotional distress, significant damages and losses to the sum of N12 million.

5. In 2014, the plaintiff and his lawyer wrote several letters to the defendant including those dated the 12th January 2014 and 5th December 2014 but the defendant still refused to compensate the plaintiff for the damages and loss

6. Whereof the plaintiff claims from the defendant the sum of N12 million as special damages

- The particulars of negligence was not specially pleaded
- Public Officers Protection Act: if this is a possibility, the claim is statute barred within 3 months
- Does this CT have territorial jurisdiction since the defendant lives in Gombe
- Was service properly executed
- Significant damages, losses, emotional distress: damages must be proved specially. No particulars as to the value of the cow, the emotional distress of the loss of the cow

NOTE FOR EXAMS:

- Writ of summons are ONLY considered pleadings where they have been endorsed with the statement of claim, Thus, writ of summons are not usually considered pleadings-LEWIS V. PACKER
  - Originating summons are also not pleadings
  - One cannot lead evidence contrary to pleadings
  - There is no effect of filing pleadings out of time as there could be an application for extension of time, and this should be by motion on notice supported by affidavit. Therefore the court is prayed to grant the extension of time, and the statement of defence filed with such application.
  - Where there is a motion for judgment and a motion for extension of time, the court will first take the motion for extension of time. **NALSA &Team Ass v NNPC**

SCENARIOS FOR TASKS

IN THE HIGH COURT OF JUSTICE OF LAGOS STATE

IN THE IKEJA JUDICIAL DIVISION

HOLDEN AT IKEJA

SUIT NO:

BETWEEN

CROWN KITCHEN LIMITED……CLAIMANT

AND

K&T LIMITED……DEFENDANT

STATEMENT OF CLAIM

1. The Claimant is an incorporated limited liability company registered in Nigeria under the Companies and Allied Matters Act Cap C20 Laws of the Federation 2004 with registration number RC1453 which deals in rendering catering services and supply of general goods and merchandise with its registered office at No. 1 Benakol Street, Victoria Island, Lagos. The Claimant is also a registered contractor with the defendant
2. The Defendant is an incorporated limited liability company registered in Nigeria under the Companies and Allied Matters Act Cap C20 Laws of the Federation 2004 with registration number RC1567, which deals in the supply of general goods and merchandise with its registered office at No. 2 Allen Avenue, Ikoyi, Lagos
3. The Claimant avers that a valid partnership contract was signed between the Claimant and Defendant on 1st March 2009 which is still subsisting
4. The Claimant hereby pleads the contract and will rely on it in the course of the trial.
5. The Claimant avers that the purpose of the contract is to perform the catering service to ABC organisation for which the 20 vehicles (add the particulars of the vehicles) were purchased in the partnership's name between March 2009 and December 2011
6. The Claimant avers that the contract was performed by both parties between March 2009 and 2011 and subsequently the sum of N2.17 million accrued.
7. The Claimant avers that in April, September and December 2012, several letters of demand were written to the Defendant for the share of the proceeds of the contract of N2.17million and the 20 vehicles
8. The Claimant avers that the Defendant refused to respond to any of the letters and instead sought to convert the 20 vehicles to its sole use and as such intends to breach the terms of the partnership contract between the parties.
9. The Claimant shall, during the trial, rely on the following documents:
   a) Partnership Agreement between the parties;

   b) Receipt of the purchase of 20 vehicles;

   c) A photocopy of the receipt of the sum of N2.17 million being proceeds of the contract written in favour of the partnership venture;

   d) Letters of demand of money written by the claimant;

10. The Claimant avers that by reason of the matters stated above, the claimant suffered loss and damage.
11. Whereof the claimant claims as follows:
    a) A declaration that the contract between the parties is still valid and subsisting
    b) An order of perpetual injunction restraining K&T from converting the 20 vehicles to its sole use

c) An order for the equal share of the sum of N2.17 million being the proceed of the contract between the parties between March 2009 and December 2011
d) An order for the equal sharing of the 20 vehicles between the claimant and defendant
e) An order for the payment of interest at 4% on the sum of N1.085million owing under the contract, from January 2012 till when judgment is entered and until such a time judgment debt is paid (set out the basis for this interest – is it by operation of law or if it was in the contractual agreement)

DATED THIS 20TH DAY OF JANUARY 2015

……..

AKIN OLAWALE ESQ

AKIN-OLAWALE & CO

CLAIMANT'S SOLICITOR

NO. 1 BENAKOL ROAD

VICTORIA ISLAND, LAGOS

ADDRESS FOR SERVICE

OLUWOLE ALAJA

DEFENDANT'S SOLICITOR

C/O OLUWOLE & CO

NO 10 AKINSWAY

VICTORIA ISLAND, LAGOS

B) STATEMENT OF DEFENCE

IN THE HIGH COURT OF JUSTICE OF LAGOS STATE

IN THE IKEJA JUDICIAL DIVISION

HOLDEN AT LAGOS

SUIT NO:

BETWEEN

CROWN KITCHEN LIMITED……CLAIMANT

AND

K&T LIMITED……..DEFENDANT

STATEMENT OF DEFENCE

1. **SAVE AND EXCEPT** as is herein expressly admitted; the defendant denies each and every allegation of fact as contained in the Plaintiff's Statement of Claim as if each paragraph were set out and traversed seriatim.
2. The Defendant admits paragraphs 1,2,3 and 4 of the statement of claim
3. The Defendant denies paragraphs 5,6,7 and 8 of the statement of claim
4. The Defendant denies paragraph 5 and 8 of the statement of claim and in further answer states that the 20 buses were not purchased for the purpose of transporting kitchen utensils (what were purchased for)
5. The Defendant denies paragraph 6 as the contract was not performed by both parties. The Defendant performed the contract to ABC by itself.
6. The Defendant denies paragraph 7. There was no breach of the partnership contract between the parties because proceeds are divided in proportion to investment in the partnership. Therefore, the defendant is entitled to the entire sum of N2.17million as sum due for performance of the contract
7. The Defendant shall, during trial, rely on the following evidence:
   a) Partnership agreement between the parties executed on March 2009.
   b) Receipt of the sum of N2.17 million being proceeds of the contract written in favour of the partnership venture
   c) Responses to the letters of demand from the claimant dated April, September and December 2012
8. The Defendant avers that the court lacks the jurisdiction to entertain this suit as the claimant did not exhaust the provision for Conciliation first before resulting to Litigation which is a condition precedent before commencing this suit as contained in the partnership agreement
9. The Defendant states that it is not liable for the claims of the Claimant and prays the court to dismiss the suit as being frivolous and baseless.

DATED THIS …..DAY OF…..2015

……..

OLUWOLE ALAJA

DEFENDANT'S SOLICITOR

OLUWOLE & CO

NO 10 AKINSWAY

VICTORIA ISLAND, LAGOS

FOR SERVICE ON:
THE CLAIMANT

C/O CLAIMANT'S COUNSEL

AKIN OLAWALE ESQ

CLAIMANT'S SOLICITOR

AKIN-OLAWALE & CO

NO. 1 BENAKOL ROAD

VICTORIA ISLAND, LAGOS

Case study 2: In March 2005, Mrs Kayuba Ada, entered into a contract in Lagos with Agricultural Bank PLC with registered office at No. Ikoyi Street Lagos, to supply 500 tons of cashew nut worth N10m only to the bank for onward exportation to Malaysia, The term of the contract is that down payment of N3m will be made before the exportation and that the balance will be paid when the goods reaches its destination. Subsequent to this, Mrs Kayuba Ada received the sum of N3m and supplied the goods to its destination in Malaysia.

Since then Agricultural Bank has refused to pay Mrs Kayuba Ada the balance sum despite letters of repeated demands sent. However, on 1st June 2011 Agricultural Bank wrote a letter to Mrs Kayuba Ada (plaintiff) of its decision not to pay the balance because the goods supplied were inferior to the standard requested for. The Plaintiff, on 19th June 2011 instituted an action at the Lagos State High CT against Agricultural Bank claiming the balance of N7m; N4m special damages and N3 m as general damages. See pg 30 of class work

i. Assuming you have been briefed by Mrs Kayuba Ada, draft the statement of claim.
ii. Assuming you have been briefed by Agricultural bank to defend it against the claim of Mrs Kayuba Ada, prepare the statement of defence.
iii. Assuming the bank intends to claim damages from Mrs Kayuba Ada for breach of contract occasioned by failure to supply the required standard of products prepare the statement of defence and counter claim.
iv. Assuming Mrs Kayuba Ada forgot to state in her statement of claim the quantity of cashew nuts supplied by her to the bank as well as the date and location of the supply. She now wishes to raise these facts by way of amendment of her statement of claim. Draft the necessary application for amendment.

IN THE HIGH COURT OF JUSTICE 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 Garki, Abuja.
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 Garki Abuja.
3. The Claimant entered into a contract with the defendant on the 15 day of March 2005 for the supply of 500 tons of cashew nuts worth N10, 000, 000.00 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 will be paid when the goods reaches Malaysia.
5. The Claimant has received the down payment of N3,000,000 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. An 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 plaintiff 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 which the defendant has refused to pay, the letters of demand are pleaded.
8. WHEREOF THE CLAIMANT THEREFORE 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 __ 2013.

GABRIELLA NDU, ESQ.
COUNSEL TO THE PLAINTIFF
WHOSE ADDRESS FOR SERVICE IS:
10 GIMBIA STREET, MARINA, LAGOS

THE DEFENDANT
AGRICULTURAL BANK LTD

NO 1 MAITAMA WAY
VICTORIA ISLAND
LAGOS

B.STATEMENT OF DEFENCE

IN THE HIGH COURT OF JUSTICE 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

1. **SAVE AND EXCEPT** as is herein expressly admitted, the defendant denies each and every allegation of fact as contained in the Plaintiff's Statement of Claim as if each paragraph were set out and traversed seriatim.
2. The defendant admits paragraphs 1, 2, 4 and 5 of the Statement of Claim.
3. The defendant denies 3 of the statement of Claim and avers that the terms of the contract included an express term at clause 6 that the 500 tons of cashew nuts to be supplied must be of merchantable quality.
4. The defendant denies paragraph 6 of the statement of claim and avers that no certificate of inspection was sent to the claimant by Mr Ayoade Aruna stating that the cashew nuts were of satisfactory quality
5. The Defendant received a delivery note from its warehouse stating that the cashew notes were not of satisfactory quality. The delivery note is hereby attached.
6. The defendant denies paragraph 7 of the Statement of Claim. In response to the letter dated the 1st day of June 2011 was sent to the plaintiff informing her of the decision not to pay the balance of the contract as agreed since the goods supplied were substandard.
7. The defendant entered into another contract with Best Agrics Limited dated the 20 day of September 2011 for the supply of 300 tons of good and standard cashew nuts worth N7, 000,000.00 to replace the sub-standard cashew nuts supplied by the plaintiff.
8. The defendant admits that it did not pay the balance of N7,000,000 owing to the fact that the claimant breached the terms of the contract to supply cashew nuts of satisfactory quality.
9. The defendant therefore claims that the claimant's claim be dismissed with cost as it lacks merit.

DATED THIS…… ……DAY OF __ 2015

……
THE DEFENDANT
AGRICULTURAL BANK LTD
NO 1 MAITAMA WAY

VICTORIA ISLAND
LAGOS

GABRIELLA NDU, ESQ.
COUNSEL TO THE PLAINTIFF
WHOSE ADDRESS FOR SERVICE IS:
10 GIMBIA STREET, MARINA, LAGOS

COUNTER-CLAIM

10. The defendant avers that on the 30 of January 2010, it entered into a legal mortgage with the plaintiff where it loaned the sum of N50 million only to the plaintiff on the security of a house at No. 15 Jose Street Maitama Abuja worth N52 million.
11. The legal mortgage's due date for the redemption of the mortgage was on the 22 day of February 2011.
12. The defendant has delivered a Notice of Intention to sale the mortgaged property dated the 15 day of March 2011 to the plaintiff with no response nor repayment of the total sum of the loan and interest been made by the plaintiff.
13. The loan sum of N50 million has been has been partly paid with a balance of N3, 000, 000.00 only.
14. The defendant claims as follows:

a. An Order attaching the mortgaged property at No. 15 Jose Street Maitama Abuja for sale to secure the balance of N3, 000, 000.00 on the legal mortgage.
b. Grant of special damages to wit:
   i) Cost of paying agent fee to the sale of the property N100, 000
   ii)Cost of postage of the notice of Intention to sell the mortgaged property to the plaintiff N20,000
   iii) interest of 30 percent on the balance of the loan sum N400, 000
   TOTAL N520, 000
c. Cost of maintaining this action.

DATED THIS ……..DAY OF ……..2014

Chioma ezenduka, Esq.
Counsel to the Defendant/Counterclaimant
WHOSE ADDRESS FOR SERVICE IS:
No 10 Ogun Street Area 2 Garki Abuja

FOR SERVICE ON:
THE PLAINTIFF
C/O HER COUNSEL
GABRIELLA NDU,
WHOSE ADDRESS FOR SERVICE
IS: NO 10 GIMBIA STREET,
GARKI 2 ABUJA.

REPLY AND A DEFENCE TO COUNTER-CLAIM.

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

HOLDEN AT ABUJA

SUIT NO……..

BETWEEN:
MRS KAYUBA ADA …….. PLAINTIFF
AND
AGRICULTURAL BANK PLC …….. DEFENDANT

REPLY AND DEFENCE TO COUNTER-CLAIM

1. The Plaintiff joins issues with the defendant in respect to paragraphs 5, 7, 8, 9 and 10 of the defendant's statement of defence and Counter-Claim.
2. The Plaintiff avers that the Defendant never at any time whatsoever, entered into any contract with Best Agrics Limited for the supply of 300 tons of cashew nuts but that the said 300 tons claimed to be supplied was part of the goods she supplied.

DEFENCE TO THE COUNTER-CLAIM

3. The Plaintiff admits paragraph 7 of the Defendant's Counter-Claim.
4. The plaintiff denies paragraph 8 of the Counter-Claim and avers that the legal due date of the legal mortgage is on the 10 December 2012 and that when a Notice of Redemption is given to her as contained in clause 3 of the Deed of Mortgage, but the defendant has failed to deliver to her the notice of Redemption.
5. The plaintiff avers that an equity of redemption of the mortgage still exists in her favour.
6. The plaintiff whereof prays that the claim of the Defendant in the counter-claim be dismissed with cost as it lacks merit.

DATED THE …….. DAY OF ……2014

GABRIELLA NDU ESQ.
COUNSEL TO THE PLAINTIFF
WHOSE ADDRESS FOR SERVICE IS:
NO 10 GIMBIA STREET, GARKI 2 ABUJA.

FOR SERVICE ON:
THE DEFENDANT
C/O COUNSEL
CHIOMA EZENDUKA ESQ.
WHOSE ADDRESS FOR SERVICE IS:
NO 10 OGUN STREET AREA 2 GARKI ABUJA.

Legal Opinion criticising the sample draft statement of defence

WEEK 10: PRE TRIAL ISSUES AND PRE TRIAL PROCEEDINGS

APPLICATIONS THAT ARE USUALLY TAKEN BEFORE TRIAL INCLUDE THE FOLLOWING:

1. Application for Striking out pleadings where no reasonable cause of action is disclosed.
2. Interrogatories/Discovery of facts.
3. Inspection/Discovery of Documents.
4. Notice to produce/Inspection of Documents.
5. Notices to admit documents and facts.
6. Settlement of issues.
7. Notice of preliminary objection in lieu of demurrer-**OR.22**
8. Notice to admit documents.

APPLICATION FOR STRIKING OUT OF PLEADINGS

Any of the parties can apply to the CT to strike out pleadings. The cause of action entitles the plaintiff to file a case, where the pleadings do not disclose a reasonable cause of action; the pleadings may be struck out on the grounds that it discloses no reasonable cause of action, or no defence to the action as the case may be; or that it is embarrassing (bringing an action in two courts), frivolous or scandalous (and don't form part of the facts in issue) or vexatious or an abuse of the process of the Court. **TONY-ANTHONY HOLDINGS LTD V CBA (2013) ALL FWLR PT 698 (PG**

944); AMOBI V. ADOGU; ORDER 23 RULE 20 ABUJA; ORDER 22 R.4 HIGH COURT OF FCT; ORDER 15 RULE16&18 LAGOS

THE PROCEDURE:
ABUJA RULES:

- In ABUJA, pleadings could be struck out at any time on application of either party. **0.23r.20 Abuja**
- It is by a Motion on Notice supported with an affidavit and a written address. **O. 22 r. 2-4 of the High Court of the FCT Abuja (Civil Procedure) Rules 2004.**

LAGOS RULES:
It is the same procedure with the Abuja Rules but it can be done **either at case management conference or during the proceedings-**
O. 15 R.16 & 18 OF THE HIGH COURT OF LAGOS (CIVIL PROCEDURE) RULES 2012.

Under the Abuja rules, there is a provision to the effect that the Court may either give leave to amend that pleading or may proceed to give judgment for the plaintiff or the defendant, or may make such other order on terms and conditions, as may be just. There is no corresponding provision of the Lagos Rules so the Judge does not seem to have power to enter judgment, dismiss, or stay the action on any of the above grounds. Rather, the Judge may at the pre-trial conference order such pleading to be struck out or amended; and order costs of the application to be borne as between legal practitioner and client. But if the Judge orders an amendment at the pre-trial conference and the party fails or neglects to comply with such order, judgment may be entered or the case dismissed as the case may be. Such judgment may however be set aside within 7 days upon application of a party – **Order 25 Rule 6 Lagos.**

THE POSSIBLE ORDERS THE COURT WILL MAKE UPON HEARING THE APPLICATION

a. The court rather than strike out the pleadings may order for its amendment.
b. The court may enter judgment.
c. The court may order the action to be stayed.
d. The court may dismiss the action.
e. Grant leave to a party to amend the pleadings complained of

WHEN CAN PLEADINGS BE STRUCK OUT?
Pleadings may be struck out **on the application of any** PARTY for the following reasons:

1. It discloses no reasonable cause of action or no defence to the action.
2. Defendant's statement of defence does not disclose reasonable defence.
3. Pleading is embarrassing, scandalous, frivolous or vexatious.
4. The pleadings is an abuse of process of court.

5. Pleadings are unnecessary, may prejudice or delay the fair trial of the action.

PLEADINGS DISCLOSING NO REASONABLE CAUSE OF ACTION OR DEFENCE.

- A cause of action is one that raises an issue of law or fact that needs to be determined by the court.
- Where the pleadings fail to disclose a cause of action or raise some question fit to be decided by the court, it may be liable **to be dismissed or struck out**: **TIKA-TORE PRESS LTD V. UMA**
- However, for a pleading to be said to disclose no cause of action, it must be such that nobody can understand what claim it is required to meet – ***Tika-Tore Press Ltd. v. Umar (1968).***
- In ***Mobil Producing (Nig.) Ltd. v. LASEPA (2002),*** ascertaining whether a reasonable cause of action has been disclosed in a pleading or not, Ayoola J.S.C opined thus:
  "Once the allegations in the pleadings show real controversy that are capable of leading to the grant of a relief, the pleading cannot be rightly said to disclose no reasonable cause of action. The weakness of the plaintiff's case is not a relevant consideration when the question is whether or not the statement of claim has disclosed a reasonable cause of action."
- It should however be noted that the power conferred on the Court by the rule is discretionary and not mandatory, by it, the Court may either strike out a pleading or dismiss the action or enter judgment if it considers it just to do so in an application – ***Ibrahim v. Osim (1988).*** And if the pleading is capable of being remedied, the court may grant leave to file another one, or may order an amendment to be made without striking out the pleading. In ***John George Will v. J. A. George Will (1924) 5 NLR 76,*** in an action for trespass to land, the plaintiff failed to allege that he had possessory title to the land in his pleadings. As the statement of claim did not disclose a cause of action, it was struck out but with leave granted to the plaintiff to file a fresh and amended statement of claim.
- **IN A-G FED V. D.G ABIA STATE (2001)**, the court stated that a cause of action is reasonable once the statement of claim in a case discloses some cause of action or some questions fit to be decided by a judge notwithstanding that the case is weak or not likely to succeed.

PLEADINGS ARE FRIVOLOUS, VEXATIOUS, EMBARRASSING OR SCANDALOUS WHICH CAST ANY IMPUTATION ON THE OPPONENT OR MAKES ANY CHANGE OF MISCONDUCT OR BAD FAITH AGAINST HIM.

- Vexatious pleadings are cases where the pleadings are obviously unsustainable-**AMOBI V. ADOGU**
- Where scandalous facts are relevant , it may not be struck out-**AMOBI V. ADOGU**
- Frivolous-filed to waste time of court or rules.
- A pleading is embarrassing where a party does not make it clear how much of a claim he admits and how much he denies. A statement of claim will not be struck out merely because it is unnecessary, so long as it is otherwise harmless. But it will be struck out if wholly immaterial matter is set out in such a way that the applicant must plead to it, and it raises irrelevant issues which may involve expense, trouble,

and delay, then the irrelevant matter will be struck out as it will prejudice the fair trial of the action.

- It is frivolous where the pleading is not useful or serving no useful or serious purpose. Thus a pleading will be frivolous where it is filed just to waste the time or cause the delay of the court and/or the parties – ***Chaffer v. Goldmid (1894) 1 QB 186; Remmington v. Scoles (1886) 2 Ch. 1.*** That is, the case put forward in the pleadings has no foundation.
- It is vexatious where the pleadings are obviously unsustainable. However, frivolous and vexatious are used interchangeably or conjunctively – ***Eleko v. Baddeley (1925)***
- It is scandalous where indecent or offensive matters are alleged for the mere purpose of abusing or prejudicing the opposite party – ***Christie v. Christie (1873) LR 8 Ch. 499.*** But a pleading cannot be said to be scandalous where the matters alleged are relevant or material – ***Fisher v. Owen (1878) 8 Ch. D. 653.***
- There is a legal maxim ***eloquentia cogniturans male decendi subile,*** which means it is a dog's eloquence to abuse or insult one's opponent. Therefore, a counsel should not act as a dog and refrain from abusing or ridiculing his opponent under the guise of pleadings. If this is the case, such pleadings will be struck

PLEADINGS AMOUNTING TO AN ABUSE OF THE PROCESS OF COURT.

- The process of the court must be used **BONAFIDE** and properly and must not be abused. The court must prevent the improper use of it machinery or as a means of vexation and oppression in the process of litigation-**AMOBI V. ADOGU**

NOTICE OF PRELIMINARY OBJECTION IN LIEU OF DEMURRER PROCEEDINGS (refer to week 9)

- This is filed if a party has objection to the action instituted by a party on point of Law or it is related to the jurisdiction of the Court.
- If it is filed on any other grounds, the grounds are to be stated in the Statement of defence.

O. 22 R.2 ABUJA and LAGOS RULES

Interrogatories may be disqualified if the questions are found to be oppressive, scandalous, not made *bona fide* or not sufficiently material at that stage –**Order 30 Rule 1, 2(2) and 7, Abuja; Order 26 Rule 4, Lagos;**

THE PROCEDURE:

It is to file a Notice of Preliminary Objection and a written address **(sometimes with an affidavit if some facts will aid the application to be granted**

DISCOVERIES

This may be either:

a. Discovery as to facts- interrogatories
b. Discovery as to documents- Notice to Produce

PURPOSE/AIM OF DISCOVERIES

The aim of both is to find evidence in support of a party's case interrogating.

To weaken the case of the party interrogated
To ascertain to some extent the case of the opponent (NB cannot elicit evidence from the other party)
The party interrogated will be placing on evidence facts that he cannot later deny
O.30 r. 9 of the High Court of the FCT Abuja (Civil Procedure) Rules 2004
O. 26 r.8 of the High Court of Lagos State (Civil Procedure) Rules 2012

INTERROGATORIES/DISCOVERY OF FACTS
Interrogatories are a set of questions administered to the other party to answer.

ESSENCE OF INTERROGATORIES
The main essence of interrogatories is to elicit certain facts from a party. It is deeper than mere question & answer: **ORDER 30 ABUJA**; **ORDER 26 LAGOS**

TYPES OF INTERROGATORIES :

1. **Admissible interrogatories-** Admissible interrogatories are facts directly in issue and relevant based on the pleadings. (This could also mean facts the existence or non-existence of which is relevant to the facts in issue)
2. **Inadmissible interrogatories -** There are interrogatories, which are not admissible and may not be answered. OBJECTIONS may be raised on those points.
   TYPES
   i. Fishing interrogatories- i.e. outside the issues raised in the pleadings filed.
   ii. Interrogatories, which borders on the credibility of witnesses.
   iii. Interrogatories bordering on the other party's evidence.
   iv. Interrogatories, which border on contents of a document, this is because the contents of a document are proved by the maker of the documents itself.
   v. Interrogatories found to be oppressive or scandalous e.g. asking the party to disclose a trade secret; asking for records from many years; the costs of supplying the answers will not be justified for the use of the answers
   vi. Interrogatories not material to the issues raised

   The party answering can object to an interrogatory on the ground that it is scandalous, it is not administered in good faith, it is not sufficiently material at the stage they are asked, or the party enjoys privilege from answering e.g. **under section 192 Evidence Act 2011** (lawyer-client confidentiality)

FORM FOR INTERROGATORIES

- In **ABUJA,** the form for interrogatories is **FORM 30** and the form for answer to interrogatories is **FORM 31.** Two copies in answer must be filed
- In **LAGOS,** for interrogatories is **FORM 19** and the answer is in **FORM 20. Two** copies in answer must be filed.
- Party to state any objection to the interrogatories in his answer form

THE PROCEDURE:
ABUJA RULES

- In **ABUJA,** interrogatories may be delivered to the other party **AT THE CLOSE OF PLEADINGS.**

- The application seeking the **LEAVE OF COURT** shall be by **SUMMONS OR MOTION ON NOTICE, SUPPORTED BY AFFIDAVIT AND A WRITTEN ADDRESS.**
- A copy of the proposed interrogatories is to be attached to the Motion paper and exhibited in the Affidavit.
- The court considers the questions and may grant leave.
- The interrogatories shall be delivered **AT LEAST TWO CLEAR DAYS** before the hearing.**-0.30R.2(1) ABUJA.**

LAGOS

In LAGOS, no leave of court is required to issue interrogatories because this is done during the case management conference.

A party is merely required to deliver interrogatories in writing **WITHIN 7DAYS** of the close of pleadings to the other party.-**0.26R.1-LAGOS.**

THE ANSWER TO INTERROGATORIES

- The party interrogated must answer **WITHIN 5DAYS** in **ABUJA** and **WITHIN 7DAYS IN LAGOS or as such time as allowed by the CT**, of the service of the interrogatories **EXCEPT** The court **extends time.**
- The answer shall be by Affidavit, re-stating each question and followed by the relevant answer.
- Where the party does not answer sufficiently or fall to answer the pre-trial judge may on application order him to answer.**-0rder 26 Rule 7 LAGOS.**

OBJECTIONS TO INTERROGATORIES
ORDER 30 R 7 ABUJA
ORDER 26 R 4 LAGOS

The person upon whom interrogatories are administered may object.

HOW ARE OBJECTIONS RAISED

In **ABUJA**, he can raise the objections in the **Affidavit of Answer**
In **LAGOS**, he should raise the objections at the **case management conference**.

GROUNDS FOR OBJECTIONS

The grounds for objection may include

a. The questions are not material to the issue at hand
b. It is brought in mala fide (bad faith)
c. Right of privilege, immunity (information is privileged)
d. The questions seek to disclose the defendant's evidence
e. Questions are insulting or degrading

CONSEQUENCES OF REFUSAL TO ANSWER TO INTERROGATORIES

Any party who fails to comply with any order to answer interrogatories shall face the following consequences.

CONSEQUENCES OF FAILURE TO ANSWER INTERROGATORIES BY A PARTY ARE:

ABUJA

1. Committal to prison for contempt
2. If it is a plaintiff that is in default, his action shall be dismissed for want of prosecution
3. If it is the defendant, his defence will be struck out and it is taken he has not defended the action:
   O.30 R. 20 OF THE HIGH COURT OF THE FCT ABUJA (CIVIL PROCEDURE) RULES 2004.

LAGOS

In **Lagos,** interrogatories form part of the pre-trial conference so the consequences of failure to comply with a pre-trial order will apply as follows:

1. If it is the claimant that defaults, his claim will be dismissed
2. If the defendant is in default, final judgment may be entered against him (struck out). **International Parts Ind. Ltd v UTB (1997)**
   O. 25 R.6 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2012
3. The legal practitioner shall be liable to committal or attachment: **Order 26 Rule 12 Lagos**

NOTICE TO PRODUCE

This may either be:

i. **DISCOVERY OF DOCUMENTS**- This is the disclosure of the documents relevant is the suit which are in a party's possession or control for him to inspect and make copies if necessary: **O.30 Rule 14(1) Abuja; O.26 Rule 8 Lagos**. This has limited use under the current civil procedure rules because of the frontloading concept (parties to frontload documents that he wants to rely on).
   You want to tender a document, which you have averred to in your pleadings but the document is in the custody of the opposing party. In the statement of claim, you will state that Notice to produce is hereby given to the defendant to produce during trial (this is a formal application to make the person produce the document)

ii. PRODUCTION OF THE DOCUMENTS FOR INSPECTION

<u>DISCOVERY OF DOCUMENTS</u>

ABUJA RULES:

- In **ABUJA, application is made to the judge in chambers** for an order directing the other party to make a discovery on oath of the documents in his possession or power relating to any matter in issue.
- No **Affidavit is required**-**ORDER 30 RULE 9(1) ABUJA**

1. If granted, the party is to answer it by filling an Affidavit as to Document in **FORM 32: Order 30 Rule 9, 11 & 14 of the High Court of the FCT Abuja (Civil Procedure) Rules 2004**

PRODUCTION & INSPECTION OF DOCUMENTS (ABUJA only)

- This is not applicable in **LAGOS**,

- It is applicable under the Abuja Rules **0.30r.14.**
- **A court may order production of documents SUO MOTU**
- A party may **give notice to the other party** to produce any document referred in his pleadings and affidavits for inspection and to permit copies of them to be made.
  NB ⇒ **The relevance of this rule is in doubt due to the current practice of frontloading documents to be relied on by parties in civil proceedings.**
  TIME LINES

1. When a notice for the inspection of documents has been delivered; the persons on served has to comply within

b) **TWO DAYS** if he had earlier delivered a list of documents under interrogatories.

c) **FOUR DAYS** of the service of the notice in other cases; to state a date and time **(NOT MORE THAN 7DAYS LATER)** when the documents will be made available for inspection.

2. If the party objects to the inspection, the grounds must be stated in the Notice going the appointment **0.30r.16 Abuja.**

CIRCUMSTANCES WHEN COURT MAY FIX TIME FOR INSPECTION
0.30r.17 ABUJA
The court may fix time for inspection when

(i) If a party fails to serve notice of appointment for inspection or omits to notify a time for inspection; or
(ii) Objects to give inspection.
(iii) Offers inspection elsewhere other than his solicitor's office.

FORM 33 Notice to produce for inspection
FORM 34 Notice to inspect documents

CONSEQUENCES OF NON-COMPLIANCE WITH ORDER OF INSPECTION

1. The court will not allow the defaulting party to rely on such document in evidence on his behalf in the action if he fails to comply with **MERE NOTICE OF INSPECTION: Order 30 Rule 14(2) Abuja**

EXCEPTIONS: Order 30 Rule 14(2) Abuja

a) It is a document relating only to his own title.
b) He being a defendant to the matter
c) He gives reasonable excuse for not complying with the Notice
   Here, the court may allow the document to be put in evidence, such terms as to costs as the court may think fit.**-0.30R.14(2) ABUJA.**

Not **complying with an order of court for inspection**, the party defaulting shall be liable to

i. Committal to prison.
ii. The **action** may be dismissed for want of prosecution if the plaintiff defaults.
iii. The action may be struck out. -**0.30R.20 ABUJA.**

Lagos Rules:

- In **LAGOS, leave of court is not required**
- A party may **WITHIN 7 DAYS OF CLOSE OF PLEADINGS** may make **a written request** to the other party to **make discovery on oath** of the documents that or have been in his **possession, custody, power or control,** relating to the issues- **ORDER 26 RULE 8(1) LAGOS**
- The party **against whom the order is made** would be required to **file an Affidavit of Documents** (i.e. a list of the document which are or have been in his possession, custody or control).
- The party **may raise objections** to the production of certain documents in the Affidavit; as well as state the reason for the objection.

PROCEDURE

1. Write **A LETTER** requesting the disclosure of listed documents to the party's counsel
2. Answer to be delivered/filed **WITHIN 7 DAYS** by **Affidavit of documents on Oath** in **Form 21** attaching the documents so requested - **O. 26 R.8 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2012**
   NOTE-O.26r.10 Lagos ⇒ Production of documents in relation to verification of business books: (1)Where any document required to be attached to any process or produced under this or any other rule is a business book a Judge may upon application order a copy of any entry therein to be furnished and verified in an affidavit. Such affidavit shall be made by a person who keeps the book or under whose supervision the book is kept; (2) Notwithstanding that a copy has been supplied a Judges may order inspection of the book from which the copy was made; (3) The Judge may upon application whether or not an affidavit of document has been ordered or filed, make an order enquiring any party to state by affidavit whether any particular document or any class of documents is or has at anytime been in his possession, custody, power or control, when he parted with the same and what has become of it.

PLEASE NOTE:
The Lagos rules dispenses with the need to treat discoveries different from inspection of document
This is because every affidavit filed in answer to a discovery shall be accompanied with copies of the documents referred to -**0.26r.8(2) Lagos**

GENERAL SANCTIONS FOR FAILURE TO DISCOVER FOR PRODUCE DOCUMENTS FOR INSPECTION

(i) Committal for disobedience
(ii) Dismissal of plaintiff's case
(iii) Striking out defendant's defence
(iv) Attachment of parties' solicitors for disobedience i.e cost-

0.30 R.20 ABUJA; ORDER 25 RULE 6(2); 0.26r. 11 Lagos;

NOTICE TO ADMIT DOCUMENTS AND FACTS
0.28 ABUJA; 0.19 LAGOS

PROCEDURE FOR NOTICE TO ADMIT

ABUJA RULES

1. In ABUJA, a party may bring a motion on Notice seeking to obtain leave of court to call on the other party to admit certain documents or facts. Where a Court grants leave, it shall fixed the terms and conditions of it, including the time within which the admission is to be made.
2. The party who is served may file **a "Notice of non-admission**" where he does **not file a Notice of non-admission (ORDER 28 RULE 2(4)), he is taken to have admitted the documents or facts.-0.28 r.2(5) Abuja.**
3. Thereafter, the other party may apply for judgment based on the admission.

LAGOS RULES

1. In Lagos, **WITHIN 7 DAYS BEFORE** the commencement of the case management conference; a party may require the other to admit a fact/document.
2. The other party served may file a **Notice of admission or file a Notice of non-admission** not later **THAN 4 DAYS** after service.
3. Where he **files a Notice of non-admission**, and at trial, it is proved against him; he would bear the **cost of proving the documents** or fact denied.
4. A party **may challenge** the authenticity of any document **NOT LATER THAN 7 DAYS OF SERVICE** of that document, he shall give **notice** that **he does not admit the document** and requires it to be proved at trial. –

0.19R 2(1) & (2) LAGOS;

SETTLEMENT OF ISSUES: O33 Abuja; O27 R1 Lagos

Settlement of issues is the process by which the real issues for determination in a case are so isolated so that the proceedings are focused on them. It is on such issues that a decision in the case will be arrived at. It helps to lessen the expense of trial in terms of time and costs. Irrelevant considerations are eliminated while attention is concentrated on the cardinal issues of facts or law that call for determination. It is by the process of settlement of issues that isolation of the real issues in a case is effected. They are said to be settled when they have been so isolated for determination. Settlement of issues is only necessary where there is some imprecision or lack of clarity or manifest obscurity as to the nature of the issues that have emerged from the pleading of the parties – ***Ukaegbu v. Ugoji (1991).***

This is **DONE OR FILED AFTER THE CLOSE OF PLEADINGS ONLY** where there are obscurities as to the nature of the issues in dispute in the case.

WHEN CAN ISSUES SAID TO BE SETTLED

Issues are settled when they have been clearly defined by the court in line with the points of dispute between the parties.

AIM OF SETTLEMENT OF ISSUES

The aim is to isolate the real issues in dispute for the Court to determine. This would direct the court to focus on the cardinal issues.

WHO CAN COMMENCE PROCEEDINGS FOR SETTLEMENT OF ISSUES

Proceedings for settlement of issues are commenced on

1. The application of one of the parties
2. By the Judge of his own motion. **OBIJULU V. OZIMS**

ADVANTAGES OF SETTLEMENT OF ISSUES

1. It helps the court to concentrate on the cardinal issues
2. It helps the parties to confine himself to relevant evidence in proof of such issues-**ORDER 33 R.6 ABUJA**
3. It saves cost and time

THE PROCEDURE AND TIME LIMIT FOR SETTLEMENT OF ISSUES

ABUJA RULES (Order 33 Rule 1-3):

1. It is to be filed **WITHIN 14 DAYS AFTER THE CLOSE OF PLEADINGS** by the parties
2. Where the parties defaults, the Court may proceed to settle it based on the pleadings filed, or
3. Give notice to the parties to attend to settle the issues

CONSEQUENCES OF FAILURE OF PARTIES TO SETTLE ISSUES IN ABUJA.

1. Where **ONE PARTY** fails to submit issues, the court may set down the matter for trial based on the issues submitted by the other party
2. Where **BOTH PARTIES** fail to submit issues the court shall cause a notice to be served on the parties to attend court and settle issues**.-0.33R.3 ABUJA..**

AMENDMENT OF ISSUES

The court may amend the issues and frame additional issues at ANY TIME **before** judgment where it is necessary for determining real questions between the parties-**OR 33 R. 5 ABUJA.**

EFFECT OF SETTLEMENT OF ISSUES

- After the settlement of issues, all other facts not raised in the settlement are **deemed admitted**.
- Settlement of issues **SUPERSEDES PLEADINGS** -**MAXIMUM INSURANCE CO. LTD V. OWONIYI (1994)**.

LAGOS RULES:

1 In Lagos, settlement of issues is done at the case management conference.

2 Parties are to settle the issues as to **FACTS ONLY WITHIN 7 DAYS AFTER THE CLOSE OF PLEADINGS**, and if they fail to do so the pre-trial Judge will do it based on the pleadings filed.

3. The Court may direct both parties to settle all documents to be relied upon.

O. 27 r. 1 of the High Court of Lagos (Civil Procedure) Rules 2012.

NOTE.

- The court may set down the issues where the parties differ
- The issues to be settled in Lagos are limited **ONLY** to **ISSUES OF FACT.**

CASE MANAGEMENT CONFERENCE (LAGOS STATE):Order 25

This was formerly referred to as pre-trial conferencing.
It is obtainable only in Lagos High Court,

MODALITIES OF THE CASE MANAGEMENT CONFERENCE

- It is a semi-formal arrangement.
- The Judge and Counsel for the parties need not be robed.

DURATION- It is to be held from day to day. It lasts for **ABOUT 3 MONTHS** and can **ONLY BE EXTENDED** upon **application** to the **CHIEF JUDGE- 0.25R.3 LAGOS**.

SUMMARY OF PROCEDURE FOR CASE MANAGEMENT CONFERENCE

1. Claimant is to apply for it by filling **Form 17**- Case management Conference Notice within 14 days after the close of pleadings: **Order 25 Rule 1**
2. The court registrar will issue and serve **FORM 18-** case management Information Sheet
3. The Judge is to **issue a scheduling Order** after the defendant has **RETURNED FORM 18: O. 25 r. 2 of the High Court of Lagos (Civil Procedure) Rules 2012.**
4. All pre-trial applications are dealt with at the conference.
5. At the end of the conference, the pre-trial Judge is to issue a Report which shall guide the subsequent course of proceedings**- O. 25 r.4 of the High Court of Lagos (Civil Procedure) Rules 2012.**

Order 25 Rule 1(2): Upon application by a claimant under sub-rule 1 above, the Judge shall cause to be issued to the parties and their Legal Practitioners (if any) a Case Management Conference notice as in Form 17 accompanied by a Case Management Information sheet as in Form 18 for the purpose set out hereunder: (a) disposal of matters which must or can be dealt with on interlocutory application; (b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal; (c) promoting amicable settlement of the case or adoption of Alternative Dispute Resolution. (ADR)

TIME FOR APPLYING FOR CASE MANAGEMENT CONFERENCE NOTICE

The **CLAIMANT** shall apply for the issuance of **a case Management Conference Notice** which is **FORM 17 WITHIN 14 DAYS AFTER CLOSE OF PLEADINGS**,. **ORDER 25 RULE 1 HCCPR LAGOS 2012.**

CASE MANAGEMENT INFORMATION SHEET

The court through the **REGISTRAR** will cause the **case management information sheet FORM** 18 to be **issued and served** on the **parties and their legal practitioner.**

Purpose of Form 17 to inform the parties that there will be a CMC/CMC has been initiated and Form 18 tells the parties all issues/applications that can be dealt with during CMC/requests that can be made during CMC.

SCHEDULING ORDER-ORDER 25 RULE 2

The judge is expected to enter a scheduling order for the following PURPOSES;

1. Joining other parties.

2. Amending pleadings
3. Filing motions
4. Further case management conferences
5. Any other appropriate matter.

THE PURPOSE OF CASE MANAGEMENT CONFERENCE

a. Enable disposal of matters, which must be dealt with by interlocutory application.
b. Gives such directions as to the future course of action as appear best adapted to secure its just, expeditious and economic disposal.
c. Promote amicable settlement of the case through alternate dispute resolution (ADR)

NB: If the claimant fails to apply for the case management conference notice, the defendant may make the application or apply for an order dismissing the action – **Order 25 Rule 1(3), Lagos.**

CASE MANAGEMENT CONFERENCE AGENDA
0.25R.2 LAGOS

(a) Formulation and settlement of issues;

(b) Amendments and further and better particulars;

(c) The admission of facts and other evidence by consent of the parties;

(d) Control and scheduling of discovery, inspection and production of documents;

(e) Settlement of document to be admitted as exhibits at the trial;

(f) Narrowing the field of dispute between expert witnesses, by their participation at Case Management Conferences or in any other manner

(g) Hearing and determination of applications and objections on points of law;

(h) Giving orders or directions for separate trial of a claim, Counter-Claim, set-off. Cross-claim or Third party Claim or of any particular issue in the case.

(i) Settlement of issues, inquires and accounts under Order 27;

(j) Securing statement of special case of law or facts under Order 28;

(k) Determining the form and substance of the Case Management order;

(l) Making referrals to the Lagos Multi-Door Courthouse or other relevant ADR bodies

(m) Implementing any ADR Order made under (1) above

(n) Such other matters as may facilitate the just and speedy disposal of the action

CASE MANAGEMENT CONFERENCE REPORT
ORDER 25 R.4
The Judge is expected to make a Report of the conduct of the case Management conference.
USE/FUNCTION-the report shall guide the subsequent course of the proceedings **UNLESS** modified by trial judge (the pre trial judge is usually different from the trial judge).

SANCTIONS FOR FAILURE TO ATTEND CASE MANAGEMENT-
0.25R.5 LAGOS
Where a party fails to attend the case management conference or failed to keep a pre trial order of the Judge (fails to obey a scheduling order) or attends but is not prepared

1. If the claimant failed to attend, his action will be dismissed.
2. If the defendant defaults in attending **DEFAULT JUDGMENT** will be entered against him.

ORDER 25 RULE 6: where a case is deemed suitable for ADR, the pre-trial judge will direct the case to an ADR judge.

SANCTIONS FOR FAILURE OF PARTIES TO FOR ADR DIRECTIVES
Where parties fail to follow ADR, directives, sanctions may be given ⇒

a. If it is the claimant, Dismissal of claim
b. If it is the defendant, entering of judgment against defendant where appropriate **0.25r.6(2)(a) &(b)**

EFFECT OF DEFAULT JUDGMENT IN CASE MANAGEMENT CONFERENCE

- A judgment given in default of case management conference can be set aside.

OPTION OPEN TO THE DEFENDANT AFTER DEFAULT JUDGMENT
However, an application should be brought within 7days of the judgment or such other period as the Judge or ADR Judge may allow setting reasons for such failure, as well as an undertaking to fully participate in future case management conference: **0RDER 25 RULE 7 Lagos 2012.**

Case management judge makes a report and this will be transmitted to the judge who will handle the trial. Consent judgment is given if the case is referred to an ADR judge and he enters judgment based on the terms agreed upon by the parties.

QUESTIONS ASKED IN CLASS

1. **What are the consequences of failure to attend the case management conference**?
2. **If judgment is entered in default thereof, what can the defendant do?**
3. **What is the purpose of a case management conference?**
4. **Who applies for FORM I** the ⇒claimant.
5. **What is FORM 17.**
6. **Who issues it ⇒** the Registrar?

7. **He accompanies it with what**? ⇒ with case management information sheet which contains questions to be answered FORM 18.
8. **What are the matters to be dealt within case management conference?**
   ⇒Interlocutory applications, narrowing the field of dispute between two expert witnesses, admission of facts and other evidence, formulation and settlement of issues, production and inspection of documents, hearing ad determination of objections on point of law;
9. **What is the effect of failure to abide by an order of interrogatories**

a) Committed for disobedience
b) The courts will not allow on that party on the documents or facts
c) Presumption that the document is not in his favour **S.167(d) EA 2011**
d) Striking out the suit for want of diligent prosecution
e) Striking out the defence.

NOTICE OF PRELIMINARY OBJECTION

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

SUIT NO:……

MOTION NO……..

BETWEEN:
K & T LTD. …… DEFENDANT/ APPLICANT
AND
CROWN KITCHEN LTD…….. CLAIMANT/RESPONDENT

NOTICE OF PRELIMINARY OBJECTION BROUGHT PURSUANT TO ORDER 22 RULE 2 OF THE HIGH COURT OF LAGOS STATE (CIVILPROCEDURE) RULES 2004 AND WITHIN THE INHERENT JURISDICTION OF THIS HONOURABLE COURT

TAKE NOTICE that at the hearing of the above suit the Defendant/Applicant intends by way of preliminary objection to challenge the competence of this suit, and may be heard praying this Honourable Court for an Order dismissing or alternatively striking out the suit.

AND TAKE FURTHER NOTICE that the grounds on which the Defendant/Applicant intends to rely on are as follows:

1. The matter/dispute had not first been submitted to conciliation based on Clause 2 of the Partnership Agreement of the parties.
2. That the action was commenced in the wrong Judicial Division.

DATED THIS …….. DAY OF …….. 2014..

……..
Samuel Ayodeji Esq.
Counsel to the Claimant
Whose address is:
10 Yaba Road, Lagos

FOR SERVICE ON:

THE DEFENDANT
No 1 Ikoyi Hall, Lagos

MOTION ON NOTICE FOR STRIKING OUT OF PLEADINGS
IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO:...
MOTION NO:

BETWEEN:
K & T LTD. ……DEFENDANT/APPLICANT
AND
CROWN KITCHEN LTD. ……CLAIMANT/RESPONDENT

MOTION ON NOTICE
BROUGHT PURSUANT TO ORDER 15 RULE 16 OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2004 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

TAKE NOTICE, that this Honourable Court will be moved on the ……day of …….. 2015 at the Hour of 9 O'clock in the forenoon or so soon thereafter as Counsel on behalf of the Applicant can be heard praying for:

1. AN ORDER striking out the Claimant/Respondent's statement of Claim for the non-disclosure of reasonable cause of action.
2. AND FOR SUCH FURTHER ORDERS OR ORDERS as this Court may deem fit to make in the circumstances.

DATED THE ……..DAY OF ……2015

NDU GABRIELLA
Counsel to the Defendant/Applicant
WHOSE ADDRESS FOR SERVICE IS:

FOR SERVICE ON:
THE CLAIMANT/RESPONDENT
C/O his Counsel
EZENDUKA CHIOMA

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

SUIT NO:...
MOTION NO:

BETWEEN:
K & T LTD. ……DEFENDANT/APPLICANT
AND
CROWN KITCHEN LTD. ……CLAIMANT/RESPONDENT

AFFIDAVIT IN SUPPORT OF THE MOTION ON NOTICE

I, Mr Ifeanyi Ututu Managing Director, Adult, Male, Christian, Nigerian Citizen of No 35 Ademola Way, Ikoyi, Lagos do hereby make oath and state as follows:

1. I am the Managing Director of K&T Ltd and by virtue of my position, I am conversant with the facts in this case
2. I have the consent and authority of the defendant to depose to this affidavit
3. The claimant's action should be dismissed as containing no reasonable cause of action
4. The contract was solely performed and financed by the defendant and therefore the defendant is solely entitled to the proceeds of N2.17million
5. The defendant solely purchased the 20 Toyota Hillux vehicles and therefore the defendant is entitled to the sole use of these vehicles
6. The claimant's interests are not in any way prejudiced by these actions of the defendant
7. I make this oath in good faith believing same to be true and correct and in accordance with the Oaths Law of Lagos State.

_____
DEPONENT

Sworn to at the High Court Registry Lagos
This _____day of _____2014

BEFORE ME

_____
COMMISSIONER FOR OATH

MOTION ON NOTICE FOR LEAVE TO ISSUE NOTICE TO PRODUCE

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

SUIT NO……
MOTION NO

BETWEEN:
MRS KAYUBA ADA …….. PLAINTIFF/APPLICANT
AND
AGRICULTURAL BANK PLC …….. DEFENDANT/ RESPONDENT

MOTION ON NOTICE
BROUGHT PURSUANT TO ORDER 30 RULE 9 OF THE HIGH COURT OF THE FCT ABUJA(CIVIL PROCEDURE) RULES 2004 AND UNDER THE INHERENT JURISDICTION OFTHIS COURT

TAKE NOTICE, that this Honourable Court will be moved on the ……day of …….. 2015 at the Hour of 9O'clock in the forenoon or so soon thereafter as Counsel on behalf of the Plaintiff /Applicant can be heard praying for:

1. AN ORDER granting leave to the Applicant to file a Notice to produce documents on the Defendant/Respondent.

2. AN ORDER directing the Defendant/Respondent to produce the following documents for inspection to wit:

a. Notice of Supply of substandard goods dated the 1 day of June 2011
b. Agreement on supply of 500 tons of cashew nuts

3. AND FOR SUCH ORDERS this Court may deem fit to make in the circumstances.

DATED THE ……..DAY OF ……2015

GABRIELLA NDU Esq.
Counsel to the plaintiff
WHOSE ADDRESS FOR SERVICE IS:
No 10 Gimbia Street,
Garki 2 Abuja.

FOR SERVICE ON:
THE
DEFENDANT
C/O Counsel
GABRIELLA NDU, ESQ.
WHOSE ADDRESS FOR SERVICE IS:
NO 10 OGUN STREET AREA 2 GARKI ABUJA.

N.B: *O.26, r.2 - Form 19 Lagos.* ***INTERROGATORIES***

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

SUIT NO:……

BETWEEN:
CROWN KITCHEN LTD …… CLAIMANT
AND
K&T LTD …… DEFENDANT

Interrogatories on behalf of the above named Claimant for examination of Mr. Ifeanyi Ututu Managing Director of the above named defendant.

1. Did you not deposit the sum of N2,170,000.00 on the 19th day of June 2011 in a current account no 5679829 with Zenith Bank Nig. Plc in an understanding that such sum is to be made out in favour of the claimant and defendant?
2. Did you not register 20 Toyota Hilux trucks on the 12th day of January 2009 on the understanding that it be used to further the business partnership with the claimant?
3. Are you not aware that failure of the defendant to honour the terms of the partnership agreement as at when due would affect the claimant's liquidity adversely and as to the survival of the claimants business?

Dated the ..... day of ..... 20....

_____
Chukelu Chinedu Esq.

(Claimant Counsel)
C.V. Chukelu LL.P
No. 1 Osborne Road Ikoyi, Lagos.

FOR SERVICE ON:
Tope Tokan-Lawal Esq.
(Defendant Counsel)
Tokan-Lawal & Uzuh (Legal Practitioners and Solicitors)
No. 21 Adebayo Doherty Street Lekki, Lagos .

N.B**: 0.26 r. 6 - Form 20 Lagos **ANSWER TO INTERROGATORIES

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

SUIT NO:.....

BETWEEN:
CROWN KITCHEN LTD ..... CLAIMANT
AND
K&T LTD ..... DEFENDANT

The answers of the above named defendant, K&T LTD, to the Interrogatories for his examination by the above named claimant.
In answer to the said Interrogatories, I Mr. Ifeanyi Ututu make oath and state as follows:

1. No
2. Yes
3. No, not to my knowledge

I, the above named Mr. Ifeanyi Ututu hereby solemnly swear by Almighty God that this is my name and that the facts deposed by me in this affidavit are the truth, the whole truth and nothing but the truth.

_____
DEPONENT

Sworn to at the High Court Registry,
This ..... day of ..... 20....

BEFORE ME

.....
COMMISSIONER FOR OATHS

N.B:** 0.26 r. 8(1) **APPLICATION FOR DISCOVERY OF DOCUMENTS

C.V. CHUKELU LL.P
NO. 1 OSBORNE ROAD IKOYI, LAGOS STATE
TEL: 08135008768 EMAIL: chukelullp@gmail.com WEBSITE: www.chukelullp.com

Our Ref: zzz/090/2014 Your Ref:.....

21st February, 2014.

Tope Tokan-Lawal Esq.
Tokan-Lawal & Uzuh
(Legal Practitioners and Solicitors)
No. 21 Adebayo Doherty Street Lekki, Lagos .

Dear Madam,

CROWN KITCHEN LTD V. K&T LTD SUIT NO: .....

REQUEST FOR PRODUCTION OF DOCUMENTS

We write on behalf of Crown Kitchen Ltd, our client in the above matter pending before the High Court of Lagos State.

Pursuant to Order 26 rule 8(1) of the Lagos State High Court (Civil Procedure) Rules 2012, we request your client to make discovery of the following documents which are within its possession:

1. The Bank Statement from March 2009 to December 2011 of Zenith Bank Nig. Plc Current a/c no: 00009678, a/c name: K&T Ltd within the possession of your client.
2. The particulars of 20 vehicles (Toyota Hilux trucks 2011 model) jointly purchased by our client and yours and which have been in your client's possession.
3. Any other documents that are or have been in your possession, custody, power or control relating to the matter in question.

Thanks for your cooperation as we expect your early response.

_____
Chukelu Chinedu Esq.
FOR: C.V. Chukelu
N.B: *O. 26 r. 8 (2) & (3)-*

Form 21 ***AFFIDAVIT IN ANSWER TO REQUEST FOR DISCOVERY OF DOCUMENTS***

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

SUIT NO:.....

BETWEEN:
CROWN KITCHEN LTD ..... CLAIMANT
AND
K&T LTD ..... DEFENDANT

AFFIDAVIT IN ANSWER TO REQUEST FOR DISCOVERY OF DOCUMENTS

I, Ifeanyi Ututu, male, adult, Christian, Nigerian citizen resident at no. 3 Adeola Odeku Road, Victoria Island, Lagos, do hereby make oath and state as follows:

1. I am the Managing Director of the defendant in this action by virtue of which I am conversant with the facts of this case.
2. I have the consent and the authority of the defendant to depose to this affidavit.
3. The defendant is possession of the bank statement to Zenith Bank Nig. Plc Current a/c no: 00009678, a/c name: K&T Ltd. A copy of the said bank statement is attached to this affidavit and marked "Exhibit A".
4. The defendant is in possession of the particulars of the 20 Toyota Hilux trucks 2011 model. Copies of the particulars all of the cars are hereby attached to this affidavit and marked "Exhibits B1-B20" respectively.
5. I do not know of any other documents within the possession of the defendant, which are relevant to this case.
6. I make this oath in good faith believing same to be true and correct and in accordance with the Oaths Law of Lagos State.

_____
DEPONENT

Sworn to at the High Court Registry Lagos
This _____day of _____2014

BEFORE ME

_____
COMMISSIONER FOR OATH

N.B: *O.25 r. 1(2)- Form 18.* ***CASE MANAGEMENT INFORMATION SHEET***

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

SUIT NO:.....

BETWEEN:
CROWN KITCHEN LTD ..... CLAIMANT
AND
K&T LTD ..... DEFENDANT

This Case Management Information Sheet is intended to include references to all applications, which the parties would wish to make at the case management conference. Application not covered by the standard questions raised in this Case Management Information Sheet be entered under item 12 below:
All parties shall not later than 7 days before the first Case Management Conference, file an serve on all parties:

a) All applications in respect of matters to be dealt with before trial including but not limited to the matters listed hereunder;
b) Written answers to the questions contained in this Case Management Information Sheet.

1. Do you require that this action be consolidated with any other action(s)? If so give Particulars.
2. Are amendments to any originating or other processes required?
3. Are further and better particulars of ant pleadings required? If so, specify what particulars are required.
4. Do you object to Interrogatories that may have been delivered pursuant to Order 26 Rule 1 of the High Court (Civil Procedure) Rules? If so, state the grounds of such compliance with Order 26 Rule 1.
5. Do you object to any document in respect of which a request for discovery has been made pursuant to Order 26 rule 8(1) of the High Court (Civil Procedure) Rules? If so, state the grounds of such objection in compliance with Order 26 Rule 1 of the Rules.
6. If you intend to make any further admission give details.
7. Will interpreters be required for any witness? If so state in what language.
8. Is this a case in which the use of a single or joint expert might be suitable? If not, state reasons.
9. Is there any way the court can assist the parties to resolve their dispute or particular issues in it without the need for trial or full trial?
10. Have you considered some form of Alternative Dispute Resolution (ADR) procedure to resolve or narrow the dispute or particular issue in it? If yes, state the steps that have been taken? If not, state reasons.
11. State any question or questions of law arising in your case, if any, which you require to be stated in the form of a special case for the opinion of the judge in accordance with Oder 28 of the rules.
12. List the applications you wish to make at the case management conference.

DATED THIS.....DAY OF ....20.....

_____

Chukelu Chinedu Esq.
(Claimant Counsel)
C.V. Chukelu LL.P
No. 1 Osborne Road Ikoyi, Lagos.

FOR SERVICE ON:
Tope Tokan-Lawal Esq.
(Defendant Counsel)
Tokan-Lawal & Uzuh (Legal Practitioners and Solicitors)
No. 21 Adebayo Doherty Street Lekki, Lagos .

N.B: ANSWERS TO QUESTIONS CONTAINED IN CASE MANAGEMENT INFORMATION SHEET

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

SUIT NO:.....

BETWEEN:
CROWN KITCHEN LTD ..... CLAIMANT

AND
K&T LTD ..... DEFENDANT

ANSWERS TO QUESTIONS CONTAINED IN CASE MANAGEMENT INFORMATION SHEET

1. No consolidation required.
2. No amendment required.
3. No further and better particulars of pleadings required.
4. Interrogatories have been served and answered in accordance with the rules. Also there is no objection.
5. There was a request for documents and defendant has duly complied. Therefore there is no objection.
6. No admission.
7. No interpreters required.
8. No expert witness required.
9. The court may intervene by advising the defendant to pay the amount claimed, that is the sum of N2,170,000.00 only. on its part, the claimant is willing to make a concession by forgoing the interest that has accumulated on the said sum, but however insists on an equal division between the parties, of the 20 vehicles jointly purchased by the parties.
10. No alternative dispute mechanism required.
11. No question requiring special case for the opinion of the judge.
12. Motion for interlocutory Injunction restraining the defendant from the use of 20 vehicle pending the determination of this suit.

DATED THIS.....DAY OF ....20.....

_____
CHUKELU CHINEDU ESQ.
(CLAIMANT COUNSEL)
C.V. CHUKELU LL.P
NO. 1 OSBORNE ROAD IKOYI, LAGOS.

FOR SERVICE ON:
Tope Tokan-Lawal Esq.
(Defendant Counsel)
Tokan-Lawal & Uzuh (Legal Practitioners and Solicitors)
No. 21 Adebayo Doherty Street Lekki, Lagos

NB: REPORT OF THE CASE MANAGEMENT CONFERENCE

REPORT OF THE CASE MANAGEMENT CONFERENCE IN THE CASE OF CROWN KITCHEN AND K&T LTD

1. The Case Management Conference began on the ..... day of ..... 20.... at the High Court of Lagos State. Parties had exchanged pleadings and pleadings closed on the ..... day of ..... 20....
2. The claimant's action is in respect of the contract and partnership agreement entered into between the parties in 1995. The claimant claimed as follows:

I. The Sum of N2, 170,000.00 as proceeds of various contracts executed by the parties between March 2009 and December 2011.
II. Equal division of 20 Toyota Hilux Trucks jointly bought by the parties pursuant to the partnership agreement.
III. A declaration that the partnership agreement between the parties is valid and subsisting.

3. The defendant denied liability. It denied being indebted to the claimant in any sum and further denied that the partnership agreement was still valid and subsisting.
4. Issues were settled as follows:

a. Whether the claimant is entitled to the sum of N2,170,000.00 being proceeds of the contract as claimed?
b. Whether the partnership agreement was validly executed?
c. Whether both parties are joint owners of the 20 vehicles in the defendant's possession bought pursuant to the purported partnership agreement?

5. The defendant brought a preliminary objection to strike out the suit on the grounds that the court lacked jurisdiction but the court overruled the preliminary objection and held that the court had jurisdiction because the contract was a simple contract and the defendant was within the jurisdiction of the court.
6. The claimant filed and served Interrogatories on the defendant and the defendant responded. The claimant requested from the defendant, discovery of documents to with particulars of the 20 vehicles. The defendant responded in an affidavit attaching the document requested.
7. No facts were admitted or requested and no expert witness was sought to be used.
8. The claimant intends to make and application for interlocutory injunction restraining the defendant for converting the 20 vehicles.
9. On consideration of the whole circumstances, I find that there is a matter to be tried. However, the precondition for instituting action in this matter, according to clause 11 of the partnership agreement between the parties dated the 1st day of March 2009 is that the matter first be taken to Conciliation. Thus, I hold that without and attempt at Conciliation, the matter is premature for litigation. I therefore refer this matter to the Lagos Multi-door Courthouse to enable the parties to attempt Conciliation in a bid to amicably settle this matter. The parties are to report back to the court on the 20th day of April 2014.

   The Proceedings at this case management conference are therefore stayed pending the outcome of the attempt at conciliation at the Lagos Multi-Door Court House

_____

Hon Justice Mute Ebiai

High Court Lagos

WEEK 11 -TRIAL PREPARATION AND EVIDENCE

Case analysis: analyse the facts of the case brought by the client. From the analysis, develop a theory (whether you can convince another person that the client has a cause of action or a plausible defence).

Kayuba Ada case – whether there is a cause of action founded in contract. Evidence to present to the court

Advantages of case analysis

- Assist lawyer in revealing the strengths and weaknesses of the client's case
- Determine the factual and legal basis for the case
- Enables lawyer to develop a coherent story/plan
- Assists lawyer in integrating the facts with the law as the lawyer understands it to be

TRIAL PREPARATION

WHEN SHOULD PREPARATION START?

- At the time of briefing

ISSUES TO CONSIDER DURING TRIAL PREPARATION

- Who has the burden of proof
- Means by which your client would establish their case
- Number of witnesses
- Documents to be tendered and conditions for their admissibility
- How would you secure the appearance of a witness

WHEN SHOULD A TRIAL PLAN AND CASE THEORY BE FORMULATED?

It should be done after an analysis of the issues above.

CASE THEORY AND TRIAL PLAN

WHAT IS A CASE THEORY?

Case theory simply means a **line of argument** one chooses to adopt **in arguing their** case in order to achieve the best for a client.

A case theory of a lawyer is the lawyer's understanding of the case of the client (the counsel for the claimant should be concerned with the claims of his client. He is to decide whether the claims can be tried together or separately.

Example: Where Mr A orders for an LCD Flat Screen TV, and the Delivery Man delivers Black and White TV; Mr A complains and the deliveryman slaps him. These facts can found an action in contract and is tort. They can be tried together in one suit. If the lawyer institutes different suit for the claims of breach of contract and tort of assault, the court may rule the CONSOLIDATION of the suits into one). A combination of facts and law applicable to the case.

Case theory

- Persuasive line of argument to convince the judge to make judgment in favour of your client
- Mentally visualise the story lawyer wants to tell
- It should be coherent and logical and point towards the conclusion the lawyer wants to arrive at, at the end of the trial. It must be systematic
- This theory of the case is the medium through which the lawyer conveys the client's side of the story to the Ct
- Case theory may be said to be a logical or historical account of the case related to the legal rules, principles and practice of the aspect of law in question in a case
- It should be a plausible theory that the lawyer can sell to the judge

ELEMENTS OF A CASE THEORY

a. The case theory must be logical
b. It must be credible
c. The theory must be based on undisputed facts
d. Where the facts are disputed, the facts must be such that it can accord with common sense and must be consistent with the evidence available.
e. The case theory must understand the basic elements of the claims and the relief the claimant is entitled upon the proof of the elements.
f. The trial plan must be dynamic so as to able to accommodate subsequent changes arising in the case.
g. A trial plan should be arranged in a chronological order

Qualities of a good case theory

- It should be imaginative: if the story is conveyed to a person, the person can imagine it to be true. This doesn't mean it should be a figment of your imagination
- It should be comprehensive and persuasive – there shouldn't be gaps in the theory
- It must be logical

- It must be factual and capable of being visualised by the fact finder/judge
- It must be holistic and not piecemeal e.g. vital ingredients of the cause of action should be complete in your theory
- It must have a legal content and a factual content – legal content: principles of law used to anchor the claim; factual content: the moral basis for the claim e.g. fairness. Kayuba Ada's case, the legal content is the breach of contract (claimant supplied goods to defendant, defendant took delivery of goods and failed to pay), the factual content is that it is unconscionable for the defendant having taken delivery of the goods and used it, for him to turn round and refuse to pay for the goods

TRIAL PLAN: The trial plan is a means by which one's theory of the case can be achieved i.e. A trial plan **MUST** accompany the theory of the case in order that full effectiveness can be achieved at trial.

ISSUES THAT MAY BE CONTAINED IN A TRIAL PLAN (CIVIL CASE) -

- 1st column should contain the issues which are determined by the facts (facts can be ascertained via pleadings)
- 2nd column should contain the witnesses i.e. for both sides (Claimant and defendant)
- NB: The other sides witnesses should be in a separate column-
- The evidence they are likely to give can also be put in a separate column
- Another column for the envisaged case of the other side
- Comments on a separate column, probably, stating the effect in law

Trial plan (Chapter 7: Anthony Ekundayo: Hints on Legal Practice)

- In preparing civil cases, a lawyer should bear in mind that the overriding principle is to do his best to avoid litigation, whenever and wherever possible – litigation should be a matter of last resort
- Do not give bold assurances to the client
- The preparation needs to be thorough, meticulous and diligent – unorganised preparation will result in a disorganised presentation
- While preparing, the lawyer should bear in mind that as he hopes for the best, he should also be prepared for the worst.
- Trial plan is like the counsel's war plan – the trial plan should embrace all the stages of the litigation from the preparation of documents, to filing of processes to the type/types and number of witnesses that you may call to other evidence that you will rely on in the course of trial
- While drawing trial plan, have an item to place yourself in the shoes of the possible opponent
- Assemble facts includes witnesses and other evidence
- Prepare the law – good research is essential. Gather authorities in support and against your case
- Strategically organised in a sequential form
- Trial plan should include: documents to be filed, discovery and inspection of documents, witnesses to be called (their names and that their written

statement on oath will be prepared), other physical things you want to rely on, objections that the other party will raise (e.g. objection to the action, admissibility of witnesses etc plus the authorities to answer such objection), different stages of the case and how lawyer will proceed (e.g. in the pre trial stage, case management conference etc), how to handle setbacks, prepare for the possibility of appeal.

THE RELATIONSHIP BETWEEN CASE THEORY AND A TRIAL PLAN

The trial plan is a means by which one's theory of the case can be achieved i.e. the means to the end. Thus, the trial plan should ideally not be inconsistent with the theory of the case.

- Thus, if one has come up with the theory of the case, and a clear and realistic trial plan, one should be able to predict the outcome of the case.

NB: There is no law enacted/practice direction that one must have a trial plan or theory of the case, or how they should be formulated. These are matters that have evolved overtime from practice.

TRIAL PLAN

Draw up a trial plan using case study 1 – look at this again – should add a relief column

INGREDIENTS OF CLAIMS	**EVIDENCE FOR CLAIMANT**	**EVIDENCE FOR DEFENDANT**	**DOCUMENTS TO BE PRODUCED**	**APPLICABLE LAW**	**STRENGTHS AND WEAKNESSES OF THE CASE**	**THEORY OF THE CASE**	**BURI OF PI**
Term of contract	The Partnership Agreement	The Partnership Agreement Receipt of purchase of vehicle	Receipt of the vehicles	Partnership law of Lagos Contract Law of Lagos State 2004	Claimant's weak point is the non-exhaustiveness of conciliation clause	Court to enforce the clear terms of the partnership contract/ agreement which exist between the parties.	Joint owne of veh and proce the contr be pr by th claim
Breach of contract	Purchase of vehicle	Witness statement on oath	Receipt for the proceeds of N2.17million	Bank v Bilante Int'l	Claimant's strong point is that the partnership agreement states that there should be equal		Existe of co agree to prove the claim

					contributio n to the contract. Therefore, there should be joint ownership of proceeds and vehicles purchased for the sole purpose of performing the contract. However, issue of non-possession of the vehicles		
Damages	Receipts of proceeds of contracts Letters of demand written to the defendant	Conciliatio n clause in the agreement			Also claimant's problem of non possession of receipt for the vehicles		Claim show based the const n of t Conci n clau the partn p agree it is allow pursu matte comp court law
	Witnesses statement				Difficult to prove acts		

	on oath				constitutin g conversion as relying on one witness statement		

RULES OF EVIDENCE AT CIVIL TRIALS

COMPETENCE AND COMPELLABILITY
Sections 175 – 196 Evidence Act 2011

- A competent witness is a person considered in law as fit and proper person to testify-
- **Section 175(1)**: All persons shall be competent to testify, unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by reason of tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.
- A person of unsound mind is not incompetent to testify **UNLESS** he is prevented by his mental infirmity from understanding the questions put to him and giving rational answers to them – **S.175(2).**
- For a blind person, he can testify by writing or signs which must be made in open court and such evidence shall be deemed to be oral evidence. – **S.176(1)&(2).**

EVIDENCE OF A CHILD

A child is a person who is **above the age of seven years** but **has not attained the age of fourteen Children**.**(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.

Under the **Evidence Act of 2011, A CHILD BELOW 14 YEARS** MUST GIVE UNSWORN EVIDENCE that **needs to be corroborated** to sustain a conviction **if he is a witness for the Prosecution.** While A CHILD **FROM 14 YEARS AND ABOVE** can give **sworn evidence**. **–**

- ***209****. (1) In any proceeding in which a child who has not attained the age of 14 years 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, he is possessed of sufficient intelligence to justify the reception of his evidence and understands the duty of speaking the truth. (2) A child who has attained the age of 14 years shall, subject to sections 175 and 208 of this Act give sworn evidence in all cases.*

- In examination-in-chief of the child, **the counsel** may also **apply for leave of Court** to ask the **child leading questions, which is not ordinarily permitted.**
- A person shall not be liable to be convicted for an offence unless the testimony admitted **by a child below 14 years** and **given on behalf of the prosecution** is

corroborated by some other material evidence in support of such testimony implicating the defendant. - S. 209(3) OF THE EVIDENCE ACT 2011

- The sworn evidence of a child may corroborate the unsworn testimony of another child; though the judge should be cautions in acting on such evidence. – **Queen v. Ekelagu.**

COMPETENCE OF SPOUSE

- By **Section 178 of the Evidence Act**, 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**
- It is instructive to note the change in the definition section of the Evidence Act. Under Section 2(1) of the 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.
- 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.
- **Section 165 EA**: Without prejudice to section 84 of the Matrimonial Causes Act, where a person was born during the continuance of a valid marriage between his mother and any man, or within 280 days after dissolution of the marriage, the mother remaining unmarried, the court shall presume that the person in question is the legitimate child of that man.
- **Section 165 EA**: Also neither the mother nor the husband is a competent witness as to the fact of their having or not having sexual intercourse with each other where the legitimacy of the woman's child would be affected, even in proceedings instituted in consequence of adultery, nor are the declaration by them upon that subject deemed to be relevant, whether the mother or husband can be called as a witness or not. 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.

PARTIES TO THE PROCEEDINGS.
IS A DEFENDANT A COMPETENT AND COMPELLABLE WITNESS FOR THE PLAINTIFF AND VICE VERSA.

The **Supreme Court** held that a defendant is both competent and compellable to testify on behalf of a plaintiff especially if the defendant has been subpoenaed- **OBOLO V. REV. ALUKO**

Conversely, a plaintiff is a competent and compellable witness at the instance of a defendant.

NON-COMPELLABILITY

The following persons are competent witnesses but are not compellable wither by virtue of office or occupation.

1. **DIPLOMATS**
   By **S.1(1) Diplomatic, Immunities and Privileges Act 1962 foreign envoys, consular officers and members of their families and staff are accorded immunity from suits, and legal processes.** They cannot be summoned to court as witness.
   Similar immunity is accorded High Commissioner from commonwealth countries- **Section 3; and officials of some international organisations such as the EU, United Nations (members whose name are in the official gazette: section 11.**
   These immunities accorded diplomats can be waived by the persons on whom they are conferred with the consent of his government or the foreign government to waive the immunity. Sections 2, 4 and 15 of the Act.
   EXCEPTIONS-
   - **DOES NOT COVER THEIR NIGERIAN STAFF -**
   - **Does not cover their commercial activities/professional activities- ZABUSKY V. ISRAELI AIRCRAFT INDUSTRIES**

2. **BANKERS:** By virtue of **Section 177 Evidence Act 2011**, a banker or an officer of a bank or of other financial institution shall not in any legal **proceedings to which the bank or financial institution is not a party**, be compellable to produce any banker's book or financial book **the content of which can be proved in the manner provided in Ss 89 & 90** or to appear as a witness to prove the matters recorded in such book. – **UNLESS** by order of the court made for special cause.

3. **PRESIDENT, VICE PRESIDENT, GOVERNOR AND DEPUTY GOVERNOR**
   They cannot be compelled to attend and give evidence while they are in office.
   They are immune **from civil or criminal proceedings** during their tenure of office and none of them can be arrested or imprisoned during the same period. – **S. 308 (CFRN 1999). Note 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
   THEY CAN BE SUBPOENAED FOR ELECTION PETITIONS: AD v Fayose; Buhari v Obasanjo

4. **JUDGES, MAGISTRATES**
   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 – so exception where magistrate can be compelled.**
   EXCEPTION-He 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.**

5. 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:** 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**; HORN v. RICHARD; Adara v Ibadan West District Customary CT of Appeal.** If counsel didn't realise that he would have to testify but later realised this in the course of the matter, he shall withdraw**.** If he finds out that he may be required to testify for some other party on the matter, he can continue to represent his client provided the testimony would not be prejudicial to his own client. If justice demands that he should testify and it is not prejudicial to the client's case, he can leave the case to some other counsel. If he decides to go ahead to conduct the matter, he should not argue the credibility of his own testimony**: Rule 20 RPC**

S192(1) EA: 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.

6. 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 **– SECTION 191 EVIDENCE ACT.**

7. SPOUSES

- ***Section 182(3) EA****: 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 the marriage.*

- ***Section 187 EA:*** *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.

- 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.

S. 196 of the Evidence Act: 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

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.**
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. S. **197 of the Evidence Act:** a plaintiff in an action for breach of promise to marry cannot succeed unless other material evidence is used to corroborate the evidence: **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

CATEGORIES OF WITNESSES ARE:

a. Lay witnesses, and
b. Expert witnesses.

OPINION EVIDENCE
The general rule is that the opinion of a person is not admissible in Court except as provided in the Evidence Act: **Section 67 EA**
Section 68. When the court has to form an opinion upon a point of foreign law, customary law or when and custom, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, customary law or custom, or science or art, or in questions as to identity of handwriting or finger impressions, are admissible.

(2) Persons so specially skilled as mentioned in subsection (1) of this section are

called experts.

Section 69. Where there is a question as to foreign law, the opinions of experts who in their Opinions as to foreign profession are acquainted with such law are admissible evidence of it, though such experts may produce to the court books which they declare to be works of authority upon the foreign law in question, which books the court, having received all necessary explanations from the expert, may construe for itself.

Section 70. In deciding questions of customary law and custom, the opinions of traditional rulers, chiefs or other persons having special knowledge of the customary law and custom and any book or manuscript recognised as legal authority by people indigenous to the locality in which such law or custom applies, are admissible.

Section 71. Facts not otherwise relevant are relevant if they support or are inconsistent with the opinions of experts, when such opinions are admissible.

Section 72.- (1) When the court has to form an opinion as to the person by whom any document was handwriting, when written or signed, the opinion of any person acquainted with the handwriting of the person by admissible, whom it is supposed to be written or signed that it was or was not written or signed by that person, is admissible.

(2) A person is said to be acquainted with the handwriting of another person when he has seen that person write, or when he has received documents purporting to be written by that person in answer to documents written by himself or under his authority and addressed to that person, or when in the ordinary course of business, documents purporting to be written by that person have been habitually submitted to him.

Section 73. (1) When the court has to form an opinion as to the existence of any general custom or right, the opinions, as to the existence of such custom or right, of persons who would be likely to know of its existence if it existed are admissible.

(2) The expression "general custom or right" includes customs or rights common to any considerable class of persons.

Section 74. When the court has to form an opinion as to —

(a) the usages and tenets of any body of men or family;

(b)the constitution and government of any religious or charitable foundation; or

(c)the meaning of words or terms used in particular districts or by particular classes of people, the opinions of persons having special means of knowledge on the matters specified in this section, are admissible.

Section 75. When the court has to form an opinion as to the relationship of one person to another, the opinion expressed by conduct, as to the existence of such relationship of any person who, as a member of the family or otherwise, has special means of knowledge on the subject, is admissible:

Provided that such opinion shall not be sufficient to prove a marriage in proceeding for a divorce or in a petition for damages against an adulterer or in a prosecution for bigamy.

Section 76. Whenever the opinion of any living person is admissible, the grounds on which such opinion is based are also admissible.

MEANS OF PROOF IN CIVIL CASES
Types of judicial evidence

Oral, real, documentary evidence, circumstantial, direct, hearsay

Oral evidence: the spoken words by witnesses in CT. **Section 125 EA**: all facts except the contents of documents may be proved by oral evidence. Oral evidence must be direct evidence subject to some exceptions (section 125 EA). Only in certain situations where oral evidence will be allowed in respect of a document e.g. where someone is talking about fraud of the document.

Section 205: oral evidence must be on oath except those with religious beliefs not allowing oath, children under age of 14

Subpoena: if a witness is subpoenaed, 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 willfully mislead this court you are liable to be prosecuted and if found guilty you will be seriously dealt with accordingly to law."

Real evidence: material objects e.g. a plot of land, a scene of the crime, a book (bringing it in as a physical object that was stolen): **section 127**: any thing other than testimony or the contents of a document which is examined by the CT as means of proving a fact.

Real evidence is the production of the actual item i.e. gun as exhibit in Court. Real evidence may be movable or immovable in nature.
For immovable real evidence, it is best proved by a visit to ***locus in quo.***
VISIT TO THE LOCUS IN QUO
There are two procedures to be followed to conduct a visit to locus in quo as follows:

a. Adjourn the case, visit the place and the parties come to Court to give evidence. **See S. 127(2) (b) of the Evidence Act and R V. DOGBE**.

b. Adjourn the case, the judge will visit the place and hold the proceedings at the locus. The Parties give evidence and are cross-examined there. **S. 127(2)(a) of the Evidence Act and R.V. OLAOPA.**
THE FOLLOWING RULES APPLY WHEN CONDUCTING A VISIT TO THE LOCUS IN QUO:
a) All the parties to the case must be present at the place.
b) The Judge is not to use his personal knowledge except to resolve conflicts.
c) It cannot be conducted by the Registrar of a Court.
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. Facts that point to the fact in issue. **Section 9 EA:** 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. Generally, circumstantial evidence is in criminal litigation.

Direct evidence: **s126 EA**: 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 at issue. If it is the opinion of someone, it should be given by the person who it is his/her opinion. Exclusion of hearsay evidence.

Hearsay evidence: Normally excluded because of the unreliability of the original maker who is not called to CT to be cross-examined (**s38 EA**). Depreciation of truth and it gets edited as information is passed from one person to the next. Sometimes this evidence is admissible (**s39 EA:** hearsay evidence admissible if the statement was made by a person who is dead, cannot be found, who had become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the CT unreasonable). Also an entry in the books of the business made during the course of business, some affidavit evidence, statement of opinion as to a public right

1) Dying Declarations

Statements made by persons who are dead must be proved but section 40 E.A. 2011 prescribes cases the cases in which such statements if they relate to relevant facts are themselves relevant and therefore admissible. To fit into this exception to the hearsay rule, all the following conditions must be satisfied:

- The declaration, which may be oral or written, must be of relevant facts
- The declarant must have died before the evidence of the declaration is required to be given
- The declaration must relate to the cause of death of the declarant or as to any of the circumstances of the transaction that resulted in his death, and the cause of the declarant's death must be in question in the trial.

- The declaration is relevant only in trials for murder of for manslaughter of the declarant
- The declarant must have believed himself to be in danger of approaching death (and the trial judge must make a specific finding that the deceased did in fact believe in the danger of approaching death when making the declaration)

2) Statements made in the course of business

- The statement must have been made in the ordinary course of business, and in particular the statement may consist of any entry or memorandum made by the person in books kept in the ordinary course of business or in the discharge of professional duty. It is found in section 41 E.A, 2011.

3) Statements against interest of the maker with special knowledge

- The statement must be against the pecuniary or proprietary interest of the deceased. If it was made against other types of interest it will not be relevant under this heading. The declarant must have had a particular means of knowing the matter upon which he made the declaration. It is found in section 42 E.A. 2011.

4) Statements of opinion as to a public right or custom and matters of general interest

- The statement must be the opinion of the declarant as to the existence of a public right or custom or matter of general interest, the existence of which if it existed, the declarant would have been likely to be aware. It is found in section 43 E.A. 2011.

5) Statements relating to the existence of a relationship

- The statement must relate to the existence of any relationship, marriage or adoption of some persons. The statement must have been made by a declarant shown to be related by blood to the person to whom it relates, or by the husband or wife of such a person. It is found in section 44 E.A. 2011.

6) Statements by testators

- The declaration must have been made by the deceased testator and in relation to his testamentary intentions and the content of his will. Such statements are admissible in spite of the hearsay rule when the will of the testator has been lost and there is a question as to what were the contents of the will. The statements are also admissible where the question before the

court is whether an existing will is genuine or improperly obtained, or when the question is whether any of the existing documents constitutes a will. It is found in section 45 E.A. 2011.

Subramaniam v Public Prosecutor (1956) 1 WLR 956 at 969: Privy Council stated that: "*Evidence of a statement made to a witness by a person who is not himself called as a witness may or may not be hearsay. It is hearsay and inadmissible when the object of the evidence is to establish the truth of what is contained in the statement. It is not hearsay and is admissible when it is proposed to establish by the evidence, not the truth of the statement, but the fact that it was made. The fact that the statement was made, quite apart from its truth, is frequently relevant in considering the mental state and conduct thereafter of the witness or of some other person in whose presence the statement was made*"

DOCUMENTARY EVIDENCE

THE TYPES OF DOCUMENTARY EVIDENCE ARE:
Section 258(1) defines documentary evidence: *"document" includes—(a) books, maps, plans, graphs, drawings, photographs, and also includes any matter expressed or described upon any substance by means of letters, 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;*

(b) any disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it, and

(c) any film, negative, tape or other device in which one or more visual images are embodied so as to be capable (with or without the aid of some other equipment) of being reproduced from it; and

(d) any device by means of which information is recorded, stored or retrievable including computer output.

Section 102(a) & (b): *defines public documents as The following documents are public documents—(a) documents forming the official acts or records of the official acts of (i) the sovereign authority,(ii) official bodies and tribunals, or (iii) public, officers, legislative, judicial and executive, whether of Nigeria or elsewhere: and (b) public records kept in Nigeria of private documents.*

Section 103*:* All documents other than public documents are private documents.

Admissibility of documents:

83*.- (1) In a proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document which seems to establish that fact shall, on production of the original document, be admissible as evidence of that fact if the*

following conditions are satisfied—

(a) if the maker of the statement either —(i)had personal knowledge of the matters dealt with by the statement, or

(ii)where the document in question is or forms part of a record purporting to be a continuous recordmade the statement (in so far as the matters dealt with by it are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters; and

(b) if the maker of the statement is called as a witness in the proceeding:

Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is outside Nigeria and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success.

(2)if having regard to all the circumstances of the case it is satisfied that undue delay or expense would otherwise be caused, order that such a statement as is mentioned in subsection (1) of this section shall be admissible as evidence or may, without any such order having been made, admit such a statement in evidence notwithstanding that -

In any proceeding, the court may at any stage of the proceeding,

(a)the maker of the statement is available but is not called as a witness; and

(b)the original document is not produced, if in lieu of it there is produced a copy of the original document or of the material part of it certified to be a true copy in such manner as may be specified in the order or as the court may approve, as the case may be.

(3)Nothing in this section shall render admissible as evidence any statement made by a person interested at a time when proceedings were pending or anticipated involving a dispute as to any fact which the statement might tend to establish. (this would be challenged in CT)

(4) For the purposes of this section, a statement in a document shall not be deemed to have been made by a person unless the document or the material part of it was written, made or produced by him with his own hand, or was signed or initialed by him or otherwise recognised by him in writing as one for the accuracy of which he is responsible.

(5) For the purpose of deciding whether or not a statement is admissible as evidence by virtue of this section, the court may draw any reasonable inference from the form or contents of the document in which the statement is contained, or from any other

circumstances, and may, in deciding, whether or not a person is fit to attend as a witness, act on a certificate purporting to be the certificate of a registered medical practitioner.

84*. (1) In any proceeding 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 the conditions in subsection (2) of this section are satisfied in relation to the statement and computer in question.*

(2) The conditions referred to in subsection (1) of this section are —

(a) that the document containing the statement was produced by the computer during a period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period, whether for profit or not, by anybody, whether corporate or not, or by any individual;

(b) that over that period there was regularly supplied to the computer in the ordinary course of those activities information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) that throughout the material part of that period the computer was operating properly or, if not, that in any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of its contents; and

(d)that the information contained in the statement reproduces or is derived from information supplied to the computer in the ordinary course of those activities.

(3)Where over a period the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in subsection (2) (a) of this section was regularly performed by computers, whether—

(a) by a combination of computers operating over that period;*(b)* by different computers operating in succession over that period;

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers,

all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceeding where it is desired to give a statement in evidence by virtue of

this section, a certificate —

(a) identifying the document containing the statement and describing the manner in which it was produced;

(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.

(i) dealing with any of the matters to which the conditions mentioned in subsection (2) 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 for

the purpose of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

The actual computer (the make and model, the series model) must be described. A certificate is desirable but not always mandatory if the person appears before the CT and narrates to the CT how he produced the document (i.e. he was the one in charge of the computer and states how he produced the document)

Man was beaten by security officials and someone took pictures of the incident. In order to tender the pictures as evidence must satisfy s84 of the Evidence Act

- Affidavit by man beaten up – the applicant refers to the certificate prepared by the person who took the pictures in order to satisfy **section 84**
- Affidavit by man who took the photos on how he took the photos, the device used etc: also see **section 84**

Kubor v Dickson (2013) All FWLR Pt 676 Supreme CT decision on steps to be taken to admit computer generated evidence. The Supreme CT quoted the conditions specified in section 84 of the evidence act for the admissibility of computer evidence. Thereby affirming that they will be interpreted literally by the courts. Hon. Justice Onnoghen stated that S84(2) is mandatory for tendering computer generated evidence

1. **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 lesse)

c. A document executed in counterpart. (copy executed by the party against whom it is sought to be tendered) – 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**

2. **SECONDARY EVIDENCE: S.87 of the Evidence Act.**
87. *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.

NB-proper foundation must be laid before it can be tendered in -**EDOKPOLOR S CASE.** Proper foundation is proffering before the CT statutory permissible or credible excuse for tendering secondary evidence. This is crucial to admissibility of secondary evidence.

The general rule is that documents are to be proved by primary evidence (the original document) except as provided under the Act-**S. 88 OF THE EVIDENCE ACT.**
EXCEPTIONS TO THE RULE THAT DOCUMENTS ARE TO BE PROVED BY PRIMARY EVIDENCE
Section 89 of the Evidence Act after laying proper foundation (when you can bring secondary evidence):
89. *Secondary evidence may be given of the existence, condition or contents of a document when-*

(a)the original is shown or appears to be in the possession or power—

(i) of the person against whom the document is sought to be proved, or

(ii) of any person legally bound to produce it, and when after the notice mentioned in section 91 such person does not produce it (i.e. the document itself is a notice e.g. a notice to quit, then no need for the person to give a notice to bring the document)

(b) the existence, condition or contents 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;

(c) the original has been destroyed or lost and in the latter case all possible search has been made for it;

(d) the original is of such a nature as not to be easily movable;

(e) the original is a public document within the meaning of section 102;

(f) 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;

(g) the originals consist of numerous 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; or

(h) the document is an entry in a banker's book.

Section 90 EA states what secondary evidence would be admissible
***90**. (1) The secondary evidence admissible in respect of the original documents referred to in the several paragraphs of section 89 is as follows—*

(a) in paragraphs (a), (c) and (d), any secondary evidence of the contents of the document is admissible;

(b) in paragraph (b), the written admission is admissible;

(c) in paragraph (e) or (f), a certified copy of the document, butno other secondary evidence, is admissible;

(d) in paragraph (g), 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; and

(e) in paragraph (h) the copies cannot be received as evidence unless it is first be proved that—

(i) the book in which the entries copied were made was at the time of making one of the ordinary books of the bank,

(ii) the entry was made in the usual and ordinary course of business, (iii) 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

(iv) 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.

Newspaper: initially Supreme CT held it to be a public document (**Fawehinmi v IGP (2000)**). In 2005, another case (CT of Appeal: **Bello HO v I&S**: held it to be a private document). Lecturer thinks it is a public document as a public document is a private document of which a public record is kept e.g. Library's Act states that library

should have a copy of each newspaper published in the country). Thus, just go to National Library and get a certified true copy to tender a newspaper.

Whatever you post is open to anyone who opens the website. So once you open the website, you have published something defamatory.

Hostile witness: apply to the CT to declare him a hostile witness and then cross examine him

THE EFFECT OF A WRONGFUL ADMISSION OR EXCLUSION OF EVIDENCE

If it does not affect the case's outcome**, then the judgment in a case will be upheld on appeal.**

On the other hand, if **the evidence wrongly admitted or excluded affects the result** of the case occasioning the miscarriage of justice **on appeal it will be set aside. S. 251 of the Evidence Act.**

Burden of proof: obligation of the party to adduce evidence to establish/prove his case. Standard of proof: the quantum of proof needed to prove your case

Ultimate burden of proof and evidential burden of proof. Former is the general/legal/persuasive burden of proof – the burden upon the person who instituted an action to prove his case (balance of probabilities or preponderance of evidence).

Evidential burden of proof: burden the party has to adduce evidence in respect of facts he introduces to the case e.g. plaintiff makes allegation that defendant did not supply the goods. Defendant states that he was on his way to supply the goods but he ran into Boko Haram and he had to flee abandoning the goods. The Defendant will have to prove this. He who asserts must prove (**s131 EA**)

Section 133.-(1) In civil cases, the burden of first proving existence or non-existence of a fact lies on the party against whom the judgment of the court would be given if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings.

(2) If the party referred to in subsection (1) of this section adduces evidence which ought reasonably to satisfy the court that the fact sought to be proved is established, the burden lies on the party against whom judgment would be given if no more evidence were adduced, and so on successively, until all the issues in the pleadings have been dealt with.

(3) Where there are conflicting presumptions, the case is the same as if there were conflicting evidence.

The burden of proof may be altered due to the state of pleadings/existence of presumption: **Igbokwe v UCH**: woman gave birth and she had post partum depression. The doctor on duty told the nurse to keep an eye on her. The next day she was discovered missing. Family sued for negligence stating that the thing speaks for itself. Now falls on the hospital to disprove its negligence

In a case of libel and the defendant pleads justification or truth or fair comment, the onus shifts on the defendant.

BURDEN AND STANDARD OF PROOF

- 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 is a suit or proceeding lies on that person who would fall if no evidence were produced on either side, regard being had to any presumption that may arise on the pleadings..- **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 ...."- **NIGERIAN MARITIME SERVICES LTD V. ALHAJI BELLO AFOLABI**

STANDARD OF PROOF

- On the standard of proof, in civil proceedings, the burden of proof shall be discharged on the **BALANCE OF THE PROBABILITIES OR PREPONDERANCE OF EVIDENCE SECTION 134 EA.**
- 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. ODFIN**, the Supreme Court laid the procedure for reaching a decision on where the balance lies.

a. 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.
b. The Judge is to weigh them together.
c. 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 of proof would be required in civil cases.

i. Where there is an **allegation of crime in a civil action**, such crime must be proved beyond reasonable **doubt S. 135 EA.** E.g. within an election petition matter, an allegation of fraud is made, this fraud must be proved beyond reasonable doubt.

ii. 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**

iii. In respect of matrimonial causes, matters are to be established to **the satisfaction of the court**: **S. 82 Matrimonial Causes Act 1970**

Doctrine of severance of pleadings

- In civil trials, the CT is required to separate facts which will establish on a balance of probabilities' from those which will be established beyond reasonable doubt.

SETTING DOWN CASE FOR TRIAL
(HEARING)
ABUJA RULES:
The Registrar shall **WITHIN 7 DAYS OF** the settlement of issues, set a matter down for hearing.
It is an administrative matter that requires no act from the plaintiff.
Order 35 Rule 1 OF THE HIGH COURT OF THE FCT ABUJA

LAGOS RULES:
There is no specific provision for hearing.
This is one of the issues to be dealt **with in the Report** of the pre-trial Judge at the end of the conference.

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

1. Where **BOTH PARTIES** are absent, the Court may strike out the matter or adjourn the matter if it sees good reason to do so.
2. If it is the **CLAIMANT/PLAINTIFF** 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**
3. 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 –Order 35 Rule 4 FCT Abuja; Order 30 Rule 3 Lagos**
4. **In Lagos, within 6 days (or such larger period as the judge will allow: Order 30 Rule 4(3) Lagos), such default judgment may be set aside upon good cause being shown – must file a motion on notice with an affidavit**

ORDER OF PRESENTATION OF A PARTY'S CASE AT TRIAL
In a matter commenced BY WRIT OF SUMMONS, a party on whom burden of proof lies is to OPEN his case FIRST.THE PLAINTIFF MUST NOT BE THE FIRST.
The order of presentation of case depends on the circumstances of the case.

1. WHERE THE DEFENDANT ELECTS NOT TO ADDUCE ANY EVIDENCE
a. The plaintiff's witness are called

b. **The plaintiff or his counsel** submits a written address **WITHIN 21 DAYS Of** the close of evidence, that sums up his case.
c. The **Defendant Submits His Written Address Within 21days** of being served with the plaintiff's written address
d. The plaintiff **replies only as to points of law** raised by the defendants
e. After exchange of written address; on a date fixed by the court, the parties would be allowed to orally elaborate on their written submission in the order of their submissions.

2. WHERE THE DEFENDANT ELECTS TO ADDUCE EVIDENCE

a. The plaintiff's witnesses are called **(and this includes the whole process of examination in-chief, cross examination and re-examination.**
b. The defendants or his counsel makes an opening speech
c. The defendant's witnesses are called (examination-in-chief, cross examination and re-examination all included).
For multiple defendants, after plaintiff's case, they open and call their evidence in the order, which their names appear on the court record.
d. The defendant submits his written address summing up his case
e. The plaintiff submits a written address.
f. The defendant may reply only on points of law raised in plaintiff's address: **Order 35 Rule 13 – 18; 0rder 30 ABUJA; Order 30 Rule 10 – 15 0.30 LAGOS**
g. After exchange of written address, on a date fixed by the court the parties would be allowed to orally elaborate on their written address in the order of their submissions.

NB THE DEFENDANT SHALL FILE HIS WRITTEN ADDRESS **WITHIN 21 DAYS OF THE CLOSE OF EVIDENCE.** Upon being served with the other party's written address, **the party beginning** shall **WITHIN 21 DAYS** file his own written address **0.30 r. 14 & 15 Lagos.**
A reply by the party who first filed an address may also be filed on points of law within 7 days being served the other party's address.
For the purpose of this 2nd order of presentation, 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 consents. **- AUTOMATIC TELEPHONE AND ELECTRIC CO LTD. V. FMG OF NIGERIA**

The parties are given a time limit of **MAXIMUM OF 30 MINUTES (Abuja)** and **20 MINUTES (Lagos)** for oral arguments.

WRITTEN ADDRESS

A written address is required to be filed for all applications and final address under the Lagos and Abuja Rules

FORMAT/CONTENTS OF A WRITTEN ADDRESS

A written address is required to be set out in numbered paragraphs and contain the following:

i. The claim or the application on which the address is based attached to the application or tendered at the trial.
ii. The issues arising from the evidence.
iIi. A succinct statement of the argument on each issue including the purport of the authorities referred to together with full citation of each such authority.

IMPORTANCE OF WRITTEN ADDRESSES

The essence is to reduce congestion, which oral arguments perpetuate in courts.

OPTIONS OPEN TO A DEFENDANT IN A CIVIL TRIAL AFTER PLAINTIFF HAS CLOSED HIS CASE

1. He may decide to rely on the plaintiff'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 party other the party beginning may indicate to the court that he does not intend to called evidence.

He may make a submission that the **plaintiff 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 plaintiff is so unsatisfactory or unreliable that the court should hold that the burden on the plaintiff 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 & 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 prosecutions 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 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.

PRE TRIAL BRIEFING AND PREPARATION OF WITNESS STATEMENT ON OATH

HOW IS THE WITNESS'S STATEMENT USED AT THE TRIAL?

This is done by adopting them as evidence in trial for the purpose of tendering them

TYPES OF WITNESSES

1. **FRIENDLY WITNESS**
2. **NEUTRAL WITNESS**
3. **HOSTILE WITNESS**

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 his 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

DISTINCTION AND SIMILARITIES BETWEEN WITNESS STATEMENT ON OATH AND AFFIDAVIT-SEE WEEK 7

PRE TRIAL BRIEFING

The essence of the briefing is to counsel witnesses as to the procedure in the courtroom and to coach him. Lies should not be manufactured at this stage.

1. You can take him to court on a neutral day to observe proceedings
2. Tell him how questions are asked
3. Tell him how court will protect his rights.

PROCEDURE FOR ADOPTING WITNESS' STATEMENT ON OATH

1. The court is to ask a witness as soon as he steps into the witness box whether he is a Christian, or a Moslem, or whether he belongs to any other religious body.
2. If the witness belongs to any of the above, he is sworn in accordance with the provisions of the Oaths Act
3. Where a person declares to the court that his religion does not permit the taking of an oath, the court may allow such person to give evidence not on oath provided the court thinks it just and expedient
4. Also, a person who has no religious beliefs (e.g. a pagan) may be allowed to give evidence without taking oath –
5. Where evidence not given upon oath has been received, a record of this and reasons for such reception must be recorded in the minutes of the proceedings: **section 208 Evidence Act 2011**

LAYING FOUNDATION FOR EXAMINATION IN CHIEF IN ABUJA AND LAGOS ORDER 38 RULE 2 ABUJA

Subject to the provisions of any enactment relating to evidence, any fact required to be proved at the trial of an action commenced by writ, **BY THE EVIDENCE OF WITNESS SHALL BE PROVED BY THE EXAMINATION OF THE WITNESS ORALLY AND IN OPEN COURT**.

The **JUDGE CAN ALSO DIRECT THAT EVIDENCE OF A PARTICULAR FACT SHALL BE GIVEN AT THE trial IN A SPECIFIED MANNER 0.38 r. 4 (1).**

ORDER 32 RULE 1(4) LAGOS provides thus:
The **oral examination of a witness** during his evidence-in-chief **shall be limited to confirming his written deposition and tendering in evidence all disputed documents or other exhibits referred to in the deposition provided, that a judge may allow a witness on subpoena to lead oral evidence in examination-in-chief without having sworn a written statement in appropriate cases.**

EXAMPLE:
Where the witness seeks to tender a computer generated evidence; what would he do?

- Under **Order 32 r. 1(4) Lagos, Rules 2012**, the foundation **of conditions stipulated in S. 84(2) Evidence Act 2011 should be contained in the written statement on oath in Lagos.**
- This is because, all the witness will be allowed to do is to adopt the statement on oath.
- No foundation can be laid at that stage.

SAMPLE WITNESS STATEMENT ON OATH

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

SUIT NO……..

BETWEEN

KAYUBA ADA……PLAINTIFF

AND

AGRICULTURAL BANK PLC……DEFENDANT

WITNESS STATEMENT ON OATH OF MRS KAYUBA ADA

I, KAYUBA ADA, Nigerian, Adult, Female, of No. 45, Games Village, Abuja do hereby state as follows;

1. I am the claimant in this case and a business woman involved in the business of supplying Cashew nuts

2. By a contract executed on 1st March, 2000, the defendant contracted me to supply five hundred tons of Cashew nut worth ₦10,000,000.00 naira (ten million naira).
3. It was agreed that the defendant will pay a sum of ₦3,000,000.00 (three million naira) as a down payment before the exportation and the balance of ₦7,000,000.00 (seven million naira) to be paid when the goods reaches its destination
4. I have since supplied the said cashew nuts as agreed under the contract but the defendant has refused to pay the above sum
5. I have sent repeated letters of demand for the payment of this sum
6. On 1st June, 2007 the Defendant wrote a letter to me of its decision not to pay the balance alleging that the goods supplied were inferior to the standard requested for
7. The goods supplied are of good quality and in accordance with the terms of the contract
8. I will rely on the said contract and the letters of demand during trial
9. I know I am entitled to;

a. The sum of N7,000,000.00 (seven million naira only) being the balance of the price for the supply of five hundred tons of Cashew nut
b. The sum of N4,000,000.00 (two million naira only) for special damages
c. The sum of N700,000.00 (seven hundred thousand naira only) being general damages

10. This statement is made in good faith and represents the irrefutable truth and is made in accordance with Oaths Act CAP O1 LFN 2004

_____
DEPONENT

SWORN TO AT THE HIGH COURT OF FEDERAL CAPITAL TERRITORY REGISTRY, ABUJA
THIS 7TH DAY OF JANUARY, 2014
BEFORE ME

_____

COMMISSIONER FOR OATHS

MODES OF COMPELLING ATTENDANCE OF A WITNESS
USE OF SUBPOENA AND WITNESS SUMMONS
ORDER 38 RULE 29 – 31 ABUJA
ORDER 32 RULES 16 LAGOS

A leading case on subpoena in **Nigeria is Buhari v Obasanjo (2005) 13 NWLR (Pt 941) 1**: Supreme CT 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 see (**Famakinwa v University of Ibadan (1992) 7 NWLR (Pt 255) 192**).
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: 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.

Forms for subpoena are as in the precipe attached to the rules of court. The precipe should be carefully adapted to suit the purpose of the party. If the precipe 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: see Famakinwa v University of Ibadan (supra). Note this is a dangerous situation since you've not prepared a witness statement or prepped the witness)

USES OF SUBPOENA
A party in an action may by subpoena ad testificandum or duces tecum require the attendance of any witness before an officer of the court or the person appointed to take the examination, for the purpose of using his evidence on any proceeding in the cause or mater in like manner as such witness would be bound to attend and be examined at the hearing or trial and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the action shall be bound on being served with such subpoena to attend before such officer or person for cross-examination: **Order 38 Rule 29 ABUJA; Order 32 Rule 16 Abuja; INEC V. ACTION CONGRESS**

TWO TYPES OF SUBPOENA
a**. SUBPOENA AD TESTIFICANDUM**
It compels a witness to appear before the court and give evidence orally. He will be cross examined.
b. **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.
HESKY V. MAGAJI (2009) ALL FWLR
AKOMO V. NIG ARMY (2000) PT 28

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.

USES

a. Subpoena is used for oral evidence to be adduced before the court

b. For documents to be produced

PROCEDURE

1. In Abuja, fill **FORM 86** 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 **O. 38 r. 34.**

2. Pay the necessary court fees (including fee for service)

3. Service of the subpoena on the person

4. Where the witness refuses to comply with the summons, such refusal is to be noted down.

NOTE-Subpoena for attendance of a witness for proceedings in Judge's chambers, that subpoena shall issue 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 – **O.38 r. 38 Abuja.**

LIFESPAN OF SUBPOENA

A subpoena shall remain in force from the **date of issue until the conclusion of the trial** of the mater in which it is issued **O.38 r 39 Abuja.** However, in practice, once the witness obeys and appears in CT and gives testimony, usually the CT will tell him that he is discharged and he need not come again.

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 ORDER 32 RULE 20.**

Where a subpoena is required for attendance of a witness for proceedings in Chambers, such subpoena shall issue from Registry upon the Judge's directive: **O.32 r 22 Lagos.**

A SUBPOENA SHALL be served personally unless substituted service has been ordered by a Judge**. O.32 r 24.**

A subpoena shall be in one of **Form 27, 28, or 29** with such variations as circumstances may **require O.32 r. 21 Lagos.**

CORRECTION OF ERRORS IN SUBPOENA:

Order 38 Rule 37 Abuja; Order 32 Rule 23 Lagos

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:

PLEASE NOTE

There is one unique thing in the Lagos rules on this subject

- The Court may mandate the appearance of any person for the purpose of producing any writing or document**, without using the word subpoena O.32 r 9 Lagos** **Disobedience to attend for examination or production** of any document shall be in **CONTEMPT OF COURT AND MAY BE DEALT WITH ACCORDINGLY O.32 OR 10 LAGOS.**

NOTE THE FOLLOWING

1. **A subpoena duces tecum et ad testificandum** is used to compel a party to produce document and to testify orally.
2. A subpoena simpliciter but which expressly provides that the party addressed is to produce document and give oral evidence, would held to be **subpoena deuces tecum aet ad testificandum**
3. The money to be paid by the person **applying for the subpoena in addition to the fee paid for issuing the subpoena is called CONDUCT MONEY-O.38 R 34(2) ABUJA**

ETHICAL ISSUES

1. A lawyer shall not engage in any conduct which is unbecoming of a legal practitioner – **Rule 1 of the Rules of Professional Conduct (RPC), 2007.**
2. A lawyer shall not disclose his client's oral or written communications – **Rule 19(1) of RPC.**
3. A lawyer shall not conduct a civil case or make defence in a civil case when he knows or ought to know that it is intended merely to harass or to injure the opposite party or to work oppression or wrong – **Rule 24(3) of RPC.**
4. A lawyer shall not participate in a bargain with a witness either by contingent fee or otherwise as a condition for giving evidence – **Rule 25(2) of RPC.**
5. A lawyer shall not state or allude to any matter which he has no reasonable believe is relevant to the case or that will not be supported by admissible evidence – **Rule 32(3)(a).**
6. A lawyer shall not intentionally or habitually violate any established rule of procedure or of evidence – **Rule 32(3)(e) of RPC.**
7. A lawyer shall not abandon or withdraw from an employment once assumed, except for good cause: **Rule 21(1) of RPC.**
8. A lawyer must not do any act that will delay, obstruct or affect the administration of justice – **Rule 30 of RPC.**

SUBPOENA IN HIGH COURT

FORM 27

SUBPOENA AD TESTIFICANDUIM
(0.32, R 21)
IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO: LHC/30/2904

BETWEEN
CROWN KITCHEN LTD……CLAIMANT
AND
K & T LTD. ……DEFENDANT

To BEN ADEYEMI, of No 1, Crown Kitchen Staff Quarters, Victoria Island, Lagos
You are commanded in the name of the Governor of Lagos State to attend before this Court at Lagos on the 12th day of January 2013 at 9 o`clock in the forenoon and so from day to day till the above cause is tried, to give evidence on behalf of K&T LTD of the said document.

DATED THIS 17TH DAY OF JANUARY 2013

_____
JUDGE

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

CASE NO: HC/ABJ/131

BETWEEN
CROWN KITCHEN LTD ……
PLAINTIFF
AND
K & T LTD …… DEFENDANT

SUBPOENA DUCES TECUM AD TESTIFICANDUM

TO: Praise Oge, Manger, Block J NLS, Bwari, Abuja

You are commanded in the name of the President, Commander-in-Chief of the Armed Forces to attend the High Court of Justice at Federal Capital Territory, Abuja, on the 21st day of February 2014 at the hour of 9 O'Clock in the forenoon and so from day to day until the above cause is tried, to give evidence on behalf of the **Defendant**, to bring with you and to produce at the time aforesaid the following documents:

1. The original particulars of the 20 Toyota Hilux Vans 2006 model with registration and chassis numbers as follows:

a. ….
b. ….

c. ....

DATED THIS 28TH DAY OF MARCH 2014

_____
Judge

This Subpoena was prepared by the Law Office of Pearson & Co (Solicitors to the Plaintiff)

_____

Jessica Pearson, Mrs.
PP: Law Office of Pearson & Co
No. 20 Fela Kuti Street,
Gwarimpa, Abuja
Jessica@Pearson.com
080000000000

WITNESS SUMMONS IN MAGISTRATE COURT

IN THE MAGISTRATE COURT OF LAGOS STATE
IN THE LAGOS MAGISTERIAL DISTRICT
HOLDEN AT LAGOS

CLAIM NO: MC/LG/KJ/132

BETWEEN

MRS KAYUBA ADA …….. CLAIMANT

AND

AGRICULTURAL BANK PLC ……..
DEFENDANT

WITNESS SUMMONS

You are summoned to attend Lagos State Magistrate Court at Lagos on the 28th day of April, 2014 at the hour of 9 O'Clock in the forenoon and so from day to day until the above action is tried, to give evidence in the above action or matter.

IN DEFAULT of your attendance, you will be liable to forfeit N… if there was paid or tendered to you at the time of the service of this summons your reasonable expenses of travelling to and from the court, together with a sum as compensation for loss of time according to the prescribed scale.

DATED THIS … DAY OF … 2014

_____
Magistrate

To _____
This summons was issued in the application of the …
Sum to be paid and tendered to the witness N2,500.00

Week 12 & 13: Trial – Examination of Witnesses

3 stages of the examination of witnesses

Examination in chief, Cross examination, Re-examination (**s210-215 Evidence Act**)

Order 38 Rule 2 Abuja Rules: Subject to the provisions of any enactment relating to evidence, any fact require to be proved at the trial of an action commenced by writ, by the evidence of witness shall be proved by the examination of the witness orally and in open Court.

Order 32 Rule 1(1) Lagos: Subject to these rules and enactment relating to evidence any fact required to be proved at the trial of any action shall be proved at the trial of any action shall be proved by written deposition and oral examination of witnesses in open court.

In theory, Abuja and Lagos rules differ i.e. FCT seems to state only oral examination of witnesses but in practice, in both jurisdictions, witnesses appear and adopt their written statement on oath. Both **Order 38 Rule 2 Abuja and Order 32 Rule 1(1) Lagos** make the provisions of the rules in relation to the taking of evidence subject to the provisions of any other enactments. This would still be the effect as evidence is under the exclusive legislative list as only the National Assembly can make law on evidence. Where the rules of CT provide for filing of written deposition, the party should comply with the rules of court. A party in violation of the rules of CT cannot

be heard. So notwithstanding the Evidence Act, parties must comply with the rules of court.

Order 32 Rule 1(4) Lagos: The oral examination of a witness during his evidence in chief shall be limited to confirming his written deposition and tendering in evidence all disputed documents or other exhibits referred to in the deposition provided that a judge may allow a witness on subpoena to lead oral evidence in examination-in-chief without having sworn a written statement in appropriate cases (i.e. oral evidence will be allowed for witnesses on subpoena without a written deposition).

If witness does not appear and adopt his written statement on oath, it cannot be used in evidence. If the witness disowns his written statement on oath, the evidence is worthless. If the witness confirms and adopts his written statement on oath, but under cross-examination he is unable to replicate the signature on the written statement on oath, it substantially erodes the probative value of the witness's evidence (happens in election petition cases as counsel asked his clerk to sign different signatures for the written statement on oath).

See the rest of Order 38 Abuja and Order 32 Lagos in relation to handling of exhibits

Procedure for adopting the witness statement on oath

Order 32 Rule 1(1) & (4) Lagos; Order 38 Rule 2 FCT

1) The witness ought to be sworn or affirmed as the case may be
2) **Section 206 Evidence Act** should also be complied with: any witness summoned to give oral evidence in any proceeding, shall be before giving such evidence be cautioned by the CT or Registrar by the following words, "You (Full *name)* ..... .are hereby cautioned that if you tell a lie in your testimony in this proceeding or willfully mislead this court you are liable to be prosecuted and if found guilty you will be seriously dealt with accordingly to law."
3) Therefore only summoned or subpoenaed witnesses must be cautioned
4) Witness will lead the witness to state his name, residential address, why he is in Court or if he has come to court before, if he sees his written statement on oath, can he identify it; Yes and counsel will ask how, by his signature and name. Counsel seeks court's permission to show the statement. Clerk will take it to show him the evidence. Witness recognises that it is his statement. Counsel will ask what he wants the CT to do with the evidence. He will state that he wants the CT to use the written deposition as his evidence in this case or he adopts the written deposition as the evidence in the case. Counsel will apply to tender it and it will be admitted.

Foundation for tendering exhibits/documents

Order 32 Lagos

The foundation that a party needs to lay before tendering a document will depend on the nature of the document. It will also depend on the pleadings of the parties. Documents that are not covered by pleadings of either party are not admissible in civil cases. The foundation to be laid depends on the type of document, (primary or secondary, is the witness the maker of the document). See section 84 for computer-generated evidence.

Whether photocopy of a public document is admissible

- One line of authority: If the photocopy was produced from a certified document, it will not require a further certification
- Another line of authority: The photocopy requires certification.
- The weight of the authorities are in favour of the latter: **Ogboru v Uduaghan (2011) 2 NWLR (Pt 1232) 583**
- A public document properly certified is admissible across the bar

Also, the foundation a party needs to lay for tendering a document may depend on whether the parties have agreed by consent during the case management conference that the document will not be disputed. If parties have agreed to the document, the document is tendered across the bar as undisputed evidence.

If admissibility of document is disputed, must prepare the necessary foundation.

Counsel can still object to the production of a document even if you agree to the document at the case management conference (objection will be taken on its merits i.e. if the document is inadmissible under a relevant law)

Order 32 Rule 1(2) Lagos provides that all agreed documents or other exhibits may be tendered from the bar or by the party where he is not represented by a legal practitioner (where parties have agreed in the CMC that there will no dispute)

What does the Lagos rules say about adoption of witness statement and tendering of exhibits? A witness shall have a written statement on oath and adoption confined to that written statement on oath and all evidence to be tendered through the witness must be in his statement

Under the Lagos rules would the witness statement on oath not contain how the document (computer generated evidence) was produced?

- Document must be covered by your pleadings
- The written statement on oath should refer to the document otherwise the document cannot be admitted through the witness
- Thus the written statement on oath would have probably produced the step by step procedure on how document was generated because in Lagos state, witness is confined to adopting his statement

What does the FCT rules say about adoption of witness statement and tendering of exhibits? **Order 38 Rule 2 Abuja**: unlike the Lagos rules that state that written

statement must refer to the document and how it was produced. The Abuja rules are not directly on all fours with the Lagos rules since examination of witness is oral. In practice, the written statement on oath will contain the necessary foundations for the documents to be tendered

When both parties appear, the party on whom the onus of proof lies will adduce evidence by calling witnesses. Generally speaking, this will be the claimant. But perhaps due to the case management conference, there was settlement of issues (so if one party has made substantial concessions, this may affect the burden of proof). See **order 35 Abuja; Order 30 Lagos** in previous weeks.

The claimant/plaintiff adduces evidence and the defendant states that he doesn't desire to call witnesses. This may have one/two effects: (a) defendant expressing telling the CT he is resting the case on that of the claimant/plaintiff (a dangerous gamble since civil cases are on the balance of probabilities); (b) defendant may make a no case submission (no case to answer) – in practice, happens in criminal cases than in civil cases (another dangerous gamble).

Difference btw pre-trial briefing and coaching

- The key to winning a case is preparation.
- Thus must prepare the witness
- Coaching is suggesting to the witness what to say – story will fall when the witness faces a good cross-examiner. Therefore, should not coach the witness to lie
- Counsel should have the pleadings and the theory of the case, interview the witness (loquacious, reticent, neutral) before preparing the witness statement on oath. Beware of witness whose only desire is to make sure the client wins.
- The witness statement on oath should be headed by the court's name together with parties' name
- The facts that counsel is relying on in his pleadings is the basis for calling the witness
- Witness statement on oath does not need to be the same as affidavit. It should be direct and innovative in drafting the witness statement on oath
- 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 (2001) 15 NWLR (Pt 735) 47**, **Haruna v Modibbo (2004) 16 NWLR (Pt 900) 489**
- Witness to read over the document and make any correction to his written statement on oath
- Then file with the processes of court (frontloading)
- Pre-trial briefing: you explain the court room atmosphere to the witness (when judge will sit, counsels will sit, witness will sit). Sometimes take witness to CT to see things for himself days before he gives his testimony. If you know opposing counsel (e.g. badger witnesses), tell the witness that that is the style of the opposing counsel.

- One line of cases state that the witness should physically go to the CT (Registrar or Commissioner for Oaths) and sign the written statement on oath in his presence before the written statement on oath is admissible (election petition matters)
- **Buhari v INEC (2008) 19 NWLR (Pt 1120) 246 at 377**(witness statement should be free flowing
- The second line of cases state that so long as the witness has deposed to the facts, then presumption of regularity applies and the written deposition may be admissible

Depositions and affidavit (similarities and differences)

- Both must be sworn before a person commissioned to administer oath. May be commissioner for oaths or a notary public etc.
- However, affidavits constitute evidence so that where there is no counter affidavit, a CT can presume the contents of the affidavit to be correct. Unlike an affidavit, a written statement on oath must be adopted by the witness in open CT before it can be used as evidence. **Nkeiruka v Joseph (2009) 5 NWLR (Pt 1135) 505, INEC v Action Congress (2009) 2 NWLR (Pty 1126) 524**
- Where the rules of court requires the filing of written statements on oath, the examination-in-chief shall not ordinarily be taken viva voce (verbally or orally): **Order 32 Lagos rules**

Section 205 EA 2011: Save as otherwise provided in sections 208 and 209 of this Act, all oral evidence given in any proceeding must be given upon oath or affirmation administered in accordance with the Oaths Act or Law, as the case may be. Witness shall be warned as to the consequence of breaking his oath.

THE ORDER OF EXAMINATION OF WITNESSES is thus;

i. Witness shall be first examined-in-chief
ii. If any other party so desires, the witness is cross-examined
iii. If the party calling him so desires, the witness is re-examined S. 215(1) Evidence Act
iv. The examination-in-chief must relate to relevant facts only S. 215(2) Evidence Act

EXAMINATION-IN-CHIEF

The examination of a witness by the party who calls him shall be called examination-in-chief.- **Section 214(1) Evidence Act 2011.**

WITNESS STATEMENT ON OATH

Examination-in-chief for all persons/witnesses should now take the form of a written statement on oath.

This is to be frontloaded with other copies of dominants to be relied upon during the filing of originating process.

0rder 4 Rule 15 ABUJA; 0rder 3 Rule 2(1) LAGOS RULES

ANY WRIITEN STATEMENT NOT ADOPTED BY WITNESS WILL BE DISCOUNTENANCED.
SUBPOENAED WITNESSES DO NOT NEED WITNESS STATEMENTS ON OATH

WHO CONDUCTS EXAMINATION IN CHIEF
It is conducted by the party calling the witness, usually through the counsel.
THE PURPOSE OF EXAMINATION-IN-CHIEF

- To place witnesses story before the court so as to obtain testimony in support of the facts for which the party calling that witness is contending.
- It is designed for the party to put across his case or EVIDENCE to the court.
- To introduce facts relevant to the admissibility of documents in a party's case
- If it is a party to a case that is being examined, it may be to also pray the Court to grant his prayers or reliefs sought.

PROHIBITED QUESTIONS IN EXAMINATION-IN-CHIEF ARE AS FOLLOWS:

1. Leading questions that suggest the answers the examiner expects
2. Irrelevant questions to the facts in issue. **S. 221(1) OF THE EVIDENCE ACT**
3. Questions in the character of cross-examination questions

NB: In civil cases, pleadings define the dispute between parties. However, it is not only pleadings that determines relevancy of facts. For instance, under **section 9, Evidence Act**, 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. Thus under the Evidence Act, it is not only facts in pleadings that are relevant, the rules of relevancy includes facts that are inconsistent with other facts or facts in issue that render such facts probable or improbable.

LEADING QUESTIONS: A **LEADING QUESTION** is defined as any question suggesting the answer which the person putting it wishes or expects to receive **S. 221(1)**

(In a charge of assault brought against Ibrahim, Counsel trying to establish that the witness (Okon) saw Ibrahim (the accused hit (Akpan) the victim:
It is not allowed for counsel to ask: "Okon, did you see Ibrahim hit Akpan"? The proper question could be to ask Okon what he saw during the incident or what he saw Ibrahim do to Akpan at the material place and time).

EXCEPTIONS WHERE LEADING QUESTIONS CAN BE ASKED ARE AS FOLLOWS:

1. Introductory matters like the name, address and occupation of a witness
2. Undisputed facts or facts already proved in a case
3. If permitted by the Court
4. A hostile witness who is adverse to the party calling him can be asked leading questions.
   S. 221. (3)& (4) and 230 of the Evidence Act

Exception to the exception: if the introductory facts are in issue such as the name or address, then one cannot ask leading questions of such issues (it will no longer be an introductory issue).

TWO TYPES OF QUESTIONS MAY BE ASKED IN EXAMINATION-IN-CHIEF VIA

i. Open Questions
ii. Closed questions

OPEN QUESTIONS

Open questions guide the witness along a story line but allow him to tell his story. It is only prompted with closed questions so as to make the witness remain on course as he tells his story. Thus, open questions used in examination-in-chief in preference to closed questions.

Example include questions starting with the words "**WHY", "WHERE", "HOW", "WHAT", DESCRIBE, EXPLAIN**

ADVANTAGES OF OPEN QUESTIONS

1. They subtly direct the witness and towards the desired answers without necessarily leading him.
2. They can confer credibility of a witness testimony since he would be telling is own story.

DISADVANTAGE

1. The witness could steer out of course or say more than he is required to say especially if he is not properly guided by counsel.

CLOSED QUESTIONS

A closed question does not give a witness the opportunity to tell a story.
Rather it limits the witness response to **'YES' OR NO'**.
Such questions usually commence with words like **'DID YOU" "WHO".**

ADVANTAGES OF CLOSED QUESTIONS

1. It helps in achieving precision
2. It is good for controlling a witness by keeping him on course.
3. A closed question can easily destroy a witness's credibility.

THUS, IT IS ADVISED THAT COUNSEL IN CROSS-EXAMINING A WITNESS SHOULD USE CLOSED QUESTIONS.

CROSS EXAMINATION

The examination of a witness **BY A PARTY OTHER THAN THE PARTY WHO CALLS** him shall be called cross-examination **S. 214(2) i.e. examination by the opposite party**

PLEASE NOTE:

- Cross-examination must relate to relevant facts, but **need not be confined to the facts to which the witness testified on in his examination-in-chief. -S. 215(2)**
- Where there are **two or more defendants each of the defendants is entitled to cross-examine** any witness for the plaintiff.

- Also a witness called by one defendant may be cross-examined by the other defendants. -**S. 217**

NOTE-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.-S. 219 EVIDENCE ACT 2011**

Leading questions may be asked in cross-examinations **SECTION 221(4).**

THE PURPOSE/IMPORTANCE OF CROSS EXAMINATION

1. To extract from the witness evidence, which is favourable to the party cross-examining or which would destroy the case for the party producing the evidence.
2. To extract evidence which would destroy the case for the party producing the witness.
3. To limit the extent of the credibility of the witness' testimony.
4. To cast doubt upon the accuracy of the evidence already given by the witness.
5. In case of an EXPERT, to discredit the qualification of the expert, thus render his opinion unreliable.
6. To put forth his own side/version of the case to the witness to either admit or deny.
7. To discredit the witnesses and destroy case of opposing party: **OLOMOSHOLA V. OLORIAWO**

QUESTIONS ALLOWED IN CROSS EXAMINATION-SECTION 223 EA 2011 (important)

a. To test his accuracy, veracity or credibility or
b. To discover who he is and what is his position in life; or
c. To shake his credit, by injuring his character.

SEE IFEAJUNA V. IFEAJUNA (1997)7 NWLR (PT. 541)404
EZEWUSIN V. OKORO (1993)5 NWLR (PT. 294) 478

Section 233: The credit of a witness may be impeached in the following ways by any party other than impeaching credit of the party calling him or with the consent of the court by the party who calls him—

(a) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;

(b) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence; or

(c) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted.

EVALUATION OF THE STATEMENT "THE SKY IS THE LIMIT" IN CROSS EXAMINATION

1. This is a cliché that counsel use arbitrarily when throwing questions to witnesses in cross-examination.
2. However, this is not correct in its entirety.

VIEW IN SUPPORT OF STATEMENT

It is **only correct to the extent that in cross-examination, questions need not be confined to facts or issues arising from examination-in-chief.** (Thus, questions may be asked of things unrelated to facts raised in examination-in-chief)

The sky is limit approach was discredited in the case of **OLOMOSOLA V. OLARIAWO (2002) 2 NWLR (Pt 750) 113: the sky has nothing to do with cross examination.**

LEGAL RESTRICTIONS TO THE QUESTIONS ALLOWED TO BE ASKED IN CROSS-EXAMINATION

The sky is not the limit in cross examination absolutely because the court has the powers to moderate the flows answer of question.

1. In questions relating to S. 223 EA; the court often decides when the witness can be compelled to answer question put to him.
2. The court may warn a witness that he need not answer a particular question.
3. In exercise of its **discretion to allow or not allow a question**; the court is to be guided by the following;
   a. Any question, which would seriously affect the opinion of the court as to the credibility of the witness, is proper.
   b. Any question which relates to maters so remote in time, or is of such character that any answer given would not or at best would slightly affect the opinion of the court as to the credibility of the witness and improper. -**S. 224(2)(a)&(b)**
   c. If there is a great disproportion between the importance of the imputation made against a witness's character and the importance of his evidence, then the question is improper. S**. 224 (2)(c)**

4. The court in its discretion may forbid any question which apt to the court

QUESTIONS NOT ALLOWED IN CROSS EXAMINATION)- Ss. 227, 238

i. To be indecent or scandalous
ii. To be intended to insult or annoy the witness
iii. To be needlessly offensive in form even though proper

If counsel remains obstinate in his questioning along lines, the judge may report the counsel to the Attorney General of the Federation or to the Disciplinary Committee of the NBA: S 226; OFORLETE V. THE STATE

IS CROSS EXAMINATION MANDATORY

NO. A witness shall not be cross-examined when his testimony will not affect the other party's case.

WHEN CROSS-EXAMINATION IS NOT NECESSARY

It is not in all cases that cross-examination of witness is necessary

a. Where such evidence is self-contradictory and lacks substance
b. Where the evidence is adverse to the case of the party who called the court.
c. Where the testimony does no harm to the case of the party who should have cross-examined.

The testimony in examination-in-chief will rather help the case of the party who should have cross-examined.

NB=> Cross-examination in any of the above instances will only give the witness a second chance to correct his mistakes.

IMPLICATION OF NON CROSS EXAMINAATION

However, where witness is not cross-examined, the truth of his evidence is impliedly admitted by the opposite party -**R v. HART**

TECHNIQUES OF CROSS – EXAMINATION

1 **PROBING TECHNIQUE**

This is designed to elicit information by pinning a witness down to a definite account of events. Until the desired answer is giving the cross-examiner does not give up. This method calls for the **use of both open and closed question** as much as **leading questions.**

2. **INSINUATION TECHNIQUE**

In this technique, the witness is carefully lured, through the use of either inductive or deductive reasoning, to a point where he will expose his ignorance of the events he speaks about, or the fallacy in his assumption, if he is an expert.

(Mostly used where he sounded convincing in his testimony). YOU CAN ASK HIM WHAT HAPPENED BEFORE AFTER AND DURING THE INCIDENT. DURING YOUR ADDRESS, POINT OUT THOSE INSIUNATIONS TO THE COURT.

3. CONFRONTATION TECHNIQUE

Here, the witness is confronted with incontrovertible acts from which he cannot deny. Such facts are used to contradict his earlier assertions, either in-chief or in the earlier part of his cross-examination.

4. **JUMP – AROUND TECHNIQUE**

Here, questions are not asked in a chronological order as such that the witness may be able to see where the counsel is driving at. The counsel jumps around the facts, throwing questions from any angle he chooses. This also aids in testing the confidence and stability of a witness.

5. SILENT CROSS – EXAMINATION

This process entails looking into the eyes of the witness as if the counsel can see his soul. The witness would retain his confidence or he would quiver.

The JURY or the JUDGE may ask the question thus: why is the witness quivering if he is saying the truth.

RE – EXAMINATION

This is conducted by the party who called the witness after the cross-examination**: S. 214(3). Where there is no cross-examination, there cannot be a re-examination**

NOTE-Re-examination **is not absolutely necessary**, EXCEPT where it is required in order to clear any ambiguities arising from the witness's responses to cross-examination questions**.-S. 215(3)**

Re-examination is not designed to patch up witnesses' testimony. A CT may allow new matters to be raised in re-examination for purposes of examination, but cross-examination will then be allowed.

RESTRICTIONS ON RE -EXAMINATION

NEW ISSUES ARE NOT ALLOWED TO BE RAISED DURING RE-EXAMINATION.

1 If a new matter is, **by permission of the** court, introduced in re-examination, the adverse party may further cross-examines upon that matter.-**S. 215(3)**

2 Leading questions are also not allowed during re-examination

NB=> The court should not refuse a party right to re-examine his witness after cross-examination.

RULES OF QUESTIONING

i. Ask one question at a time
ii. Guide the witness while asking the question
iii. Limit questions to relevant facts
iv. Be guided by pleadings in asking relevant question about facts contained them.
4. Evidence of facts not pleaded is irrelevant

OATH TAKING BY WITNESSES

The Law is that before a witness will testify in Court, he must be sworn on oath or affirm to say the truth.

THE EXCEPTIONS WHERE WITNESSES MAY NOT BE SWORN ON OATH ARE:

1. Persons insisting that it is against his religious belief. **S. 208 of the Evidence Act.**
2. Unsworn evidence of a child below 14 years. **S. 209 of the Evidence Act.**

REFRESHING OF MEMORY

The general rule is that all testimonies of witnesses must be given **from personal memory.**

EXCEPTION TO THE ABOVE RULE is the use of a document earlier made to refresh memory for the purpose of giving testimony**.-S. 239 OF THE EVIDENCE ACT**

CONDITIONS FOR REFRESHING OF MEMORY

The condition for its use is that

1. The document was made when the transaction was fresh in the maker's memory
2. The writing in question must have been made either at the transaction or so soon thereafter.
3. When he read it he knew it to be correct.-**S. 239(2)**
4. Any such writing a witness used to refresh his memory must be produced and shown to **the adverse party if he requires it,**
5. The adverse party may if he pleases, cross-examine the witness upon the writing.-**S. 241 EA**

NB-Documents made when proceedings are anticipated cannot be used.
ANYEABOSI V. R.T BRISCOE

THE INSTANCES WHEN DOCUMENTS EARLIER MADE ARE USED TO REFRESH MEMORY IN COURT ARE AS FOLLOWS:

a. Documents made by a witness himself when the transaction was fresh in his memory
b. The document was made by another person but the witness had knowledge of its content
c. He can be asked leading questions

EXAMINATION IN CHIEF OF PECULIAR WITNESSES

Such peculiar persons include a child, an Expert, a hostile witness.

A CHILD

S. 175 EA 2011 provides that all persons are competent witnesses except by reason of **age, tender years, disease he is prevented from understanding the question and giving rational answers.**

Section 205: Subject to section 208 and 209, oral evidence shall be given under oath or affirmation. Witness shall be warned as to the consequence of breaking his oath.

A CHILD IS A PERSON BELOW 14 YEARS

However S. 209(1) EA provides **that a child below 14yrs** may give evidence **not on oath or affirmation** where the **court is of the opinion that he is possessed of sufficient intelligence and understands the duty of speaking the truth**.

HOSTILE WITNESS

3. The general rule is that a party producing a witness is not allowed to impeach his witness' credit during examination-in-chief.
4. An exception to this rule is when the witness is adverse to the party calling him and he does not tell the truth**. S. 230 OF THE EVIDENCE ACT.**
5. Such a witness is called a **hostile witness.**
6. Hostile witness is a person who begins to give evidence that is adverse to the interest of the party who called him and is not willing to speak the truth.

PROCEDURE

When a Counsel to a party calling a witness discovers that the witness is hostile,

a. He should apply to the Court to declare the witness hostile or
b. Ask that the evidence he has given be expunged from the record.
c. To contradict him by other evidence **or by leave of court**, prove that he has made at other times a statement inconsistent with this testimony.
d. Where the court is of the opinion that a witness is hostile to the party who called him, the court will permit the party

S. 230, S 231 EVIDENCE ACT; **ESAN V. STATE; IBEH V. STATE**

THE CONSEQUENCES OF THE COURT DECLARING A WITNESS AS HOSTILE ARE:

1. The Court will attach less weight to his testimony or disregard the testimony he has given
2. The witness can be cross-examined by the party calling him
3. He can be contradicted using his previous statements made which is inconsistent with his present testimony
4. He can be asked leading questions

EXAMINATION OF WITNESS BY COURT

The court may ask witnesses questions in order to clear up ambiguities or to clarify points which have been left obscure in the giving of evidence by any witness

THE QUESTIONS CAN COME IN ANY FORM, AT ANY TIME OF ANY WITNESS OR OF THE PARTIES ABOUT FACTS.

1 The court **may order the production of any document or thing**

NOTE- neither party shall be entitled to raise **OBJECTION OR WITHOUT LEAVE OF COURT** cross **examine any witness upon any answer given S. 246(1) EA.**

LIMITATIONS

The Judge shall not compel any witness to **answer any question** or **to produce any document which such witness would be entitled to refuse to answer** or **produce under this Act, if the question/document was called for by the adverse party: S. 246(3); OGBODU V. ODOGHA**

FOUNDATION AND PROCEDURE FOR TENDERING DOCUMENTS AND OTHER EXHIBITS

MODES OF TENDERING EVIDENCE DURING TRIAL

Tendering of documents in examination of witnesses can be done through any of the following ways:

a. Undisputed documents can be tendered from the Bar after an agreement by the Counsel in the matter
b. 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

POINTS A COUNSEL SHOULD NOTE

NB=> **COUNSEL NEEDS TO ADVERT HIS MIND TO WHETHER THE DOCUMENT SOUGHT TO BE TENDERED IN EVIDENCE IS**

a. Primary
b. Secondary
c. Private document
d. Public document – in which case, it is the CTC that will be tendered.

PROCEDURE FOR TENDERING DOCUMENT FROM THE BAR

i. Counsel brings to the notice of the court the document he intends to tender.
ii. Objections may be raised at this stage by the adverse party

NB=> **Objections are supposed to be raised UPON APPLICATION BY COUNSEL TO TENDER SUCH DOCUMENT AND NOT WHEN IT IS PRODUCED.**

iii. Counsel tenders the document
iv. Document is shown to the other party for identification and appraisals
v. The court may admit it in evidence and mark it as an
vi. The court may reject it and mark it "tendered and rejected"

=> Once the document is rejected, it cannot be tendered again. **ITA V. EKPENYONG**

NB=> This procedure of tendering document from the Ba**r is no longer applicable in all the states because of the concept of frontloading.** Counsel is expected to forward all the document he seeks to rely upon; at the time he files the originating process **O.4 r. 15 Abuja, O.3 r. 2(1) Lagos.**

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.

PROCEDURE FOR TENDERING DOCUMENT THROUGH A WITNESS

1. Witness is sworn on OATH
2. Introductory questions are put to the witness
3. Proceed to ask the following questions

a. Whether the witness can recognise the document if he sees it
b. How can he identify the document

4. Counsel to seek the leave of court to show the document to the witness for identification; through the Registrar. After identifying, the witness will confirm that he made the statement
5. Witness to express readiness to tender the document as evidence in the case.
6. The adverse party could object as to admissibility on points of law.
7. Counsel will seek the leave of court to tender the document in evidence and for the court to mark it as Exhibit.
8. Evidence is admitted and marked as Exhibit.

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.

QUESTIONS

HOW DO YOU DRAFT A WITNESS STATEMENT ON OATH OF A CHILD IN LAGOS AND ABUJA?

AN EXPERT

DEFINED IN **In Henry Tuah v. Michael (2010)10 NWLR (Pt. 1203)519.**

HOW DO YOU LAY FOUNDATION FOR EXPERT EVIDENCE

1. Establish the pedigree of the expert by asking questions (The usual practice is for the party calling an expert to elicit from him in the witness box factors that quality him as an expert on the subjects in which he is to give opinion e.g. academic qualification, professional training or practical experience)

i. By acquisition of knowledge, training

ii. Personal knowledge/experience in that area

2. Ask questions relating to his opinion.

NB- BUHARI V. INEC. COURT IS NOT BOUND TO ACCEPT THE qualifications if it goes against common sense

NOTE THE FOLLOWING

a. The plaintiff must not satisfy in his case.
b. The plaintiff must not be the person to start the case (calling evidence)
c. The court may direct the defendant to open the floor depending on the circumstances of the matter.
d. The plaintiff decides which witness to call first – the order in the list of witnesses must be followed.
e. The witness after being sworn on oath or affirmation, will identify the statements in the witness statement on oath as those made by him – He would adopt same as his oral evidence in the case.
f. The court must not admit the witness statements on oath as Exhibits.
g. Cross – examination of a witness by the adverse party is not compulsory.

ETHICS OF EXAMINATION OF WITNESSES

Rule 25(1) RPC

Subject to the rules dealing with communications with the other party, it shall be lawful for a lawyer to interview any witness or prospective witness for the opposing side in any action without the consent of the opposing counsel or party, but he shall not take any action calculated to secrete a witness.

Rule 25(2): A lawyer shall not participate in bargain with a witness either by contingent fee or otherwise as condition for giving evidence. However, reasonable fees may be paid the witness for expenses incurred for the purpose of giving the evidence.

R 25(4)

A lawyer shall not be unfair or abusive or inconsiderate to adverse witnesses or opposing litigants or ask any question only to insult or degrade the witness; and he shall not allow the unfair suggestion or demands of his clients to influence his action.

Rule 32(3)(a) &(b)

(3) In appearing in his professional capacity before a court or Tribunal, a lawyer shall not -----

(a) state or allude to any matter which he has no reasonable basis to believe is relevant to the case or that will not be supported by admissible evidence.

(b) ask any question that he has no reasonable basis to believe is relevant to the case and that is intended to degrade a witness or other person;

WEEK 14: CLOSING ADDRESS AND JUDGMENT

Closing address is also referred to as Final Address **Order 36 Abuja, Order 31 Lagos.** A denial of the right of address to a party where the right exists is an infringement on the constitutional rights of the parties.

ROLE AND FUNCTION OF ADDRESSES

1. It presents an opportunity to the parties to logically present their arguments.
2. To urge the court to decide in favour of party addressing the court
3. It provides an opportunity for parties to present their case theory by blending it with the evidence given at trial.
4. It might assist parties to sway the mind of the court.
5. Addresses assist the court in the just and proper determination of the case **OBODO V. OLOMO**
6. Addresses persuade the court as to the theory of their case.
7. It is a stage where the parties try to marry the facts or issues raised to the law.
8. It provides an opportunity to resolve all questions hanging during cross-examination and stress them.
9. To assist the court in arriving at a just decision based on the evidence led and the law: **Beloxxi & Co Ltd v Southtrust Bank (2012) 2 NWLR (pt 1285) page 605** 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 avoided on the basis of non-mention or non-consideration of counsel's address.

Order 36 Abuja; Order 31 Lagos

THE ORDER OF PRESENTATION AND THE TIME LIMIT FOR FILING FINAL ADDRESSES

IF THE **DEFENDANT AND PLAINTIFF LED EVIDENCE (NB: tendering evidence includes tendering documentary evidence by the defendant through the witness of the plaintiff)**

1. **The defendant is to file his Final written Address** first **within 21 days of the close of his case**
2. **The Plaintiff is to file his final address within 21 days after the receipt of defendant address.**
3. If the Plaintiff raised new issues in his address on points of law, the Defendant is to file a Reply Address **within 7 DAYS OF THE RECEIPT OF THE PLAINTIFF'S FINAL ADDRESS.**

   NB: the rules uses the words: Where the party beginning closes his case, the other party will be called upon to start his case and this other party will file its final address first. Thus who is the first to file the final address will depend on where the burden of proof lies

   Parties are allowed time to adopt their written address and adumbrate on salient point. **Order 36 Rule 5 Abuja** (30 minutes) and **Order 31 rule 4(1) Lagos** (20 minutes). In Lagos (**Order 31 Rule 4(2)Lagos**), where parties don't come to court for final address, then assumed that they adopt their written address and CT will adjourn for judgment

IF THE **DEFENDANT DID NOT LEAD ANY EVIDENCE IN SUPPORT OF HIS DEFENCE**,

1. The plaintiff will **first file his Final Address within 21 days** of the close of the Defendant's case.(evidence)
2. The defendant is to **respond within 21 days**
3. If **new issues are raised** by the defendant's Address, the plaintiff is to file a Reply Address **WITHIN 7 DAYS OF THE RECEIPT OF THE DEFENDANT'S ADDRESS.**

WHEN IS EVIDENCE CLOSED- AFTER CROSS EXAMINATION/RE EXAMIINATON OF ANY OF EITHER PARTIES LAST WITNESS.

O. 36 r. 1-4 Abuja; O. 30 R. 13-16 Lagos

FORM/STRUCTURE OF CLOSING ADDRESS

1. The paper should be A4, opaque white paper

2. It should be in distinct paragraphs numbered serially/seriatim. It shall contain the claim, brief statement of the facts with reference to the exhibits tendered at the trial, issues arising from the evidence, succinct statement of argument on each issue incorporating the purpose of authorities cited with full citation of each authority, concluded with a numbered summary of points raised and the party's prayer, a list of all authorities referred must be submitted with the address, date, signature, name and address of lawyer filing the written address.

REPLY OF BOTH PARTIES MUST BE ON POINT OF LAW (OBJECTIONS IN ADDRESS MUST RELATE TO DOCUMENTARY OR PROCEDURAL DEFECTS)

THE STRUCTURE OF A FINAL WRITTEN ADDRESS

1. Heading of the Court
2. Reference number: suit No:
3. The parties
4. Title- CLAIMANT/DEFENDANT'S WRITTEN ADDRESS
5. Introduction
6. Brief statement of the facts and evidence adduced
7. Issues raised
8. Arguments in support of each issue raised.
9. Conclusion - PRAYER/CONCLUSION is not prescribed by the Abuja Rules
   For LAGOS; the conclusion must be a numbered summary of the points raised and the prayers. **Order 31 Rule 3**
   Give a list of the authorities relied upon.
   For non-reported cases, file a Certified True Copy of the judgment.
10. Reliefs sought
11. List of authorities
12. Date, signature and address of Counsel
    Each party shall file 2 copies of his written address in court and serve copies on all parties in the action.
    NB: Objections should not be raised during oral adoption.

JUDGMENT

A judgment is defined as a reasoned decision and which is delivered to the suit. It is a binding decision which to the rights of the parties.

OBI v. OBI

ORDER 39 Abuja, ORDER 35 Lagos

CHARACTERISTICS OF A VALID JUDGMENT

1. **S 294(1) CFRN 1999:** Every court established under this Constitution shall deliver its decision in writing not less than **90days** 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 **7days** of the delivery thereof Judge is not allowed to deliver judgment and write it later. Judge cannot deliver judgment and write it later.
2. **It must be written by the judge himself**
3. A judgment must contain a dispassionate consideration/evaluation of the issues properly raised and heard- **OJOGBUE V. NNUBIA**
4. 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) CAN ADJOURN FOR REASONS-S. 285(8) CFRN. Also Supreme CT has the power to reserve reasons for its judgment**
5. It is to be delivered in an open Court
6. A judgment must contain the name and signature of the judge, the date and seal of the court.

7. It grants the claims of the parties and **not more** than was requested by the parties- **EKPENYONG V. EFFIONG.** The court is however allowed to grant **ANCILLLIARY /CONSEQUENTIAL ORDERS not expressly asked for but are necessary for just determination of a case-AMAECHI V. INEC [2008]** – where the claim was whether the appellant was the lawful PDP candidate for the elections, the Supreme CT 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
8. It is to be delivered within a reasonable time i.e. **within 90 days after the Final addresses, see S. 294(1) of the 1999 Constitution as amended**.
9. It contains a summary of all the facts and evidence adduced by the parties
10. A judgment must show a clear resolution of all the issues that arise for decision in the case
11. It contains a finding of facts based on credible witnesses and their probative values
12. The judgment should show clearly that the court considered the evidence at the trial.
13. Witnesses must be expressly or impliedly believed, or disbelieved.
    MOGAJI V. ODOFIN and ADEYEYE V. AJIBOYE
    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**

PROPER APPROACH TO WRITING A GOOD JUDGMENT
This was laid down in **ADEYEYE v. AJIBOYE ORS; OPUTA J.S. C**

a. First set out the claim or claims
b. Then the pleadings
c. The issues arising from the pleadings
d. The evaluation of evidence in proof of each issue
e. Decide on which side to believe on the preponderance of credibility evidence.
f. Record his logical and consequential finding of fact
g. Discuss the applicable law against the background of his finding of fact.

FORMAT: (a)ISSUES; (b)FACTS AND EVIDENCE; (c)RESOLUTION OF ISSUES OF FACTS OR LAW OR BOTH; (d) CONCLUSION

FORM AND TIME LIMIT OF DELIVERY OF JUDGMENT

1. Judgment must **be delivered** in writing within a reasonable time (**NOT LATER THAN 90 DAYS)** after conclusion of evidence and final addresses.
2. All parties must be furnished with duly authenticated copies within such period.
   S. 294(1) CFRN
   RECALL OF PARTIES FOR FURTHER ADDRESS

- 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

- 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**

EFFECT OF NON-COMPLIANCE WITH S. 294(1) OF THE CFRN.

- The decision of the court **shall not be set aside or treated as a nullity** solely on the ground of non-compliance with **S. 294(1)** unless that non-compliance occasioned a miscarriage of justice. CT of Appeal will determine whether there has been a miscarriage of justice.
- On appeal, where the court determines or observes that there was non-compliance with S. 294(1), the person presiding at the sitting of the court shall send the case to the chairman of the National Judicial Council. –**S. 294(6)**

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

PLACE OF DELIVERY OF JUDGMENT

Judgment shall be delivered in **OPEN COURT:**

Order 39 Rule 1 Abuja; Order 35 Rule 1 Lagos

EXCEPTION

It is only where hearing was conducted in chambers that judgment may be delivered in chambers **NAB LTD V. BARI. ENGINEERING NIG. LTD.**

EXAMPLES: (PRIVATE DELIVERY OF JUDGMENT)

Section 36(4) CFRN 1999: Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal: Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners **in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties** or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, **a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any**

matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

READING AND DELIVERY OF JUDGMENT

HIGH COURT

A judgment **may be written by one judge and read by another** provided that the judge who **wrote the judgment signed and dated it is the person who heard the case-AGF V. ANPP.** CT must be properly constituted when reading the judgment e.g. High CT is properly constituted by one judge and it should be this judge to read the judgment.

COURT OF APPEAL AND SUPREME COURT

- The Justices of the court of Appeal or Supreme Court who sit to hear matters **MUST** be at the end of the case,
- Expressly deliver their opinion in writing or
- May state in writing that they adopt the opinion of any other justice.
- However, the justices who heard the appeal need not be present when is delivered.- **SECTION 11 COURT OF APPEAL ACT; s.294(2)CFRN**
- It is lawful, if another justice of that court reads the written opinion of any one of them who is unavailable.
- CT of Appeal –just one Justice can deliver the judgment, and read the judgment of the other 2 Justices

PRONOUNCEMENT OF JUDGMENT

But, where a judge after sitting over a case and writing his opinion, **dies**, **retires** or is **elevated** to another court **BEFORE** he delivers the judgment; his opinion must be PRONOUNCED by another **justice**. His judgment shall not be READ out in court: **AG (IMO) V. A.G RIVERS STATE (1983)**. 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

PLEASE NOTE CAREFULLY
A JUDGMENT CAN ONLY BE DELIVERED BY THE JUDGE WHO WROTE IT
A JUDGMENT WRIITEN BY A JUDGE CAN BE READ BY ANOTHER JUDGE
A JUDGMENT CAN BE PRONOUNCED BY A JUDGE WHEN THE OTHER JUDGE DIES, IS ELEVATED OR RETIRES.

REVIEW/AMENDMENT OF JUDGMENT

A court's judgment is final once it has been pronounced /delivered. It can only be set-aside on appeal.

- The court has no power to review its own decision.

- This is because once the court enters its judgment, it become **functus officio**

HOWEVER, THERE ARE SOME EXCEPTIONS TO THIS RULE.

1. Clerical mistakes or accidental errors or omissions in judgments may at any time be corrected by the judge in chambers on a motion or summons.
2. Where the decision was given without jurisdiction/such a judgment is a nullity and the court has powers to set it aside.
3. Where the judgment was obtained as a result of fraud perpetrated by one of the parties – **ALAKA** v. **ADEKUNLE**
4. Where the judgment is a complete nullity ab initio- CHIEF LANDS OFFICER V. ALO
5. Where the judgment was entered on the mistaken belief that the parties consented to it when in fact they did not. **–AGOBADE V. OKONUGA**

NB =Where a judgment is challenged on grounds of fraud, the proper procedure is not to file an appeal, but be file a fresh action in which the issue of fraud is the only issue. **A.I.B V. PACKOPLAST**.

NB =Contempt proceedings can be commenced against any person who is in contempt of a court order or judgment.

TYPES OF JUDGMENTS

1. INTERLOCUTORY JUDGMENT

An interlocutory judgment disposes of only one issue raised during the pendency of the suit. It does not dispose of the rights of the parties finally e.g. injunctions

2. FINAL JUDGMENT

A final judgment is one that disposes of the rights and liabilities of the parties finally in a suit. It comes at the end of the matter. At the end of the trial, the judge may either give judgment for the plaintiff or dismiss his case thereby giving judgment for the defendant.

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. 25 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.

3. CONSENT JUDGMENT

- A consent judgment is judgment entered pursuant to an agreement between the parties.
- 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.
- It is binding on the parties but a third party can apply to set it aside for **FRAUD; MUTUAL MISTAKE**
- A consent judgment is a final judgment and **leave of** Court is required to appeal against it **S. 241(2)(c) CFRN**; **AFEGBAI** V. **AG EDO STATE**.

NOTE:

- The consent of the **DEFENDANT** is to be given by his **legal Practitioner** or agent before any consent judgment may be entered: **Order 35 Rule 6 LAGOS.**
- Where not represented by counsel, the defendant must appear in court and give his consent in open court: **Order 35 Rule 7 LAGOS**

4. DECLARATORY JUDGMENT

A declaratory judgment is a judgment of a court which determines the rights of parties without ordering anything to be done or awarding damages. Not an executory judgment – e.g. might be declaring the rights of the parties

5. DEFAULT JUDGMENT

This is a judgment given due to default or failure of a part in the proceedings to take any steps, which he ought to have taken e.g. default to enter appearance e.g. Default to file pleadings

A default judgment is not a judgment on the merit (NOTE LAGOS STATE)

A JUDGMENT ON THE MERIT is a judgment given after the case has been argued and the court has decided which party is right or wrong.

- **FOINTRADE v. UNIVERSAL LTD**

6. **NON-SUIT**

This is an order, which terminates the plaintiff's case without a decision on the merits. Where this order is made, it means that the plaintiff's claim is neither allowed nor dismissed. Circumstances of the case are such that the court does not think it should enter judgment against the plaintiff or for the defendant.

- **KAURA v. UBA PLc (2005)**

NB= The power of a court to enter a non-suit is not inherent in the court rather must be expressly conferred by statute **IBIYEM**I v. **FBN** Plc.

This order of non-suit is **NOT PROVIDED IN THE ABUJA RULES** but it is provided in **Order 34 Rule 1 Lagos.**

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 plaintiff and the non-suit will not result to injustice on the defendant.

EFFECT OF ENTERING AN ORDER OF NON SUIT

It allows the plaintiff 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.

SOME TERMS COMMONLY USED IN REFERENCE TO JUDGMENTS

1. **LEAD JUDGMENT**: This is the judgment of the court as determined **S. 294(3) CFRN.**
2. **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.
3. **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.
4. **PERVERSE JUDGMENT**: This is a judgment, which ignores the facts or evidence and amounts to a miscarriage of justice.
5. **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.**

ETHICAL ISSUES

1. Counsel should not knowingly made a false start of law or fact **R. 15(3)(g) RPC.**
2. Duly to conduct case with devotion and dedication **R. 14(1) RPC.**
3. A lawyer appearing before a judicial tribunal shall accord due respect to it and shall treat the tribunal with courtesy and dignity: **R. 35 RPC.**
4. Duty to treat the court with respect; dignity and honour: **R. 31(1) RPC**
5. Duly to be fair and candid in dealings with court: **R. 32(1) RPC.**

Opinion on the judgment of Savannah Bank v Ajilo

Strengths

- Followed the literary rule to the letter by following the clearly stated words of the Land Use Act
- Section 22 Land Use Act is clear: It shall not be lawful for the holder of a statutory right of occupancy granted by the Governor to alienate his right of occupancy or any part thereof by assignment, mortgage, transfer of possession, sublease or otherwise howsoever without the consent of the Governor first had and obtained
- Clearly explained that deemed grant in section 34(2) i.e. that the section uses the words 'as if' it had been granted by the Governor. Therefore, Ajilo had a statutory right of occupancy. To exclude the holder of a deemed statutory right of occupancy from obtaining Governor's consent on alienation would defeat the purpose of the Land Use Act.
- Therefore by not obtaining the Governor's consent, the mortgage agreement was held to be null and void

Criticisms

Nnaemeka-Agu, J.C.A. (as he then was) said

"Although the 1st plaintiff/Respondent by the tenor of the Land Use Act committed the initial wrong by alienating his statutory right of occupancy without prior

consent in writing of the Governor, the express provisions of the Land Use Act makes it undesirable to invoke the maxim *'ex turpi causa non oritur actio'* i.e. A plaintiff will be unable to pursue legal remedy if it arises in connection with his own illegal ac

- This maxim should have never been overridden in this case. Allowed the borrower to benefit from his own illegality. He should have obtained Governor's consent and he failed to do so and he is then allowed by the courts to avoid liability under the mortgage agreement
- Imagine a man killing his father to claim the inheritance and then relying on the will to claim his father's property. This would go against common sense and justice.
- Equity should have mitigated against the position of the law in this law to reach a fair decision

Things to do: write written address of defendant and claimant for both scenarios (Crown Kitchen and Kayuba Ada).
Look at judgment of Odeingbo v Ilokhor to write a legal opinion (write this in full)

Strengths

- Judge using his jurisdiction under the civil procedure rules (Order 33 Rule 5 Abuja) to add a vital issue of 'is the 2nd defendant liable for plaintiff's left hand injury by its non provision of protective gloves? Since it is necessary for the determination of quantum of damages and is encompassed in the claim of negligence
- Correct on the point of law that the burden of proof cannot shift to the defendant until the plaintiff discharges its burden of proof by evidence: used the Evidence Act and statutes to show this point. Also negligence must be specifically pleaded so not enough to just state negligence but state the particulars clearly so the judge is right on this point
- Disregarded the testimony of DW1 as his testimony was conflicting and inconsistent: used a Supreme CT judgment to back up this assertion
- Judgment is logical and in writing

Weaknesses

- Gave the plaintiff what he didn't ask for. Claim was given for damage caused by negligence of the defendant in not providing gloves. This issue was not included in the pleadings of the plaintiff but referred to in oral evidence
- Principle that court cannot give you what you didn't ask for. Even though general damages do not need to be specifically pleaded, plaintiff should have stated the general damages even though particulars are not given

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

SUIT NO:.....

BETWEEN

MRS KAYUBA ADA..... PLAINTIFF

AND

AGRICULTURAL BANK PLC..... DEFENDANT

DEFENDANT'S FINAL ADDRESS

1.0 CLAIM

This action was commenced by writ of summons and duly filed along with it the statement of claim, written statement on oaths of witnesses and certificate of pre-trial counselling as required by the Rules of Court. The Defendant was duly served the processes on 7th January, 2015.

The Defendant entered unconditional appearance and filed its statement of defence and counterclaim, written statement on oaths of witnesses, copy of contract agreement and a copy of invoice issued by the defendant. They were all served on the Plaintiff on 20th January, 2015.

2.0 BRIEF FACT OF THE CASE

a. The Plaintiff entered into a contract with the defendant in March, 2000.
b. The plaintiff was to supply five hundred tons of Cashew nut worth N10,000,000.00 to the defendant for onward exportation to Malaysia for industrial use.
c. The defendant made a ground payment of N3,000,000.00 to the plaintiff as agreed and that the balance sum would be paid when the goods reaches Malaysia and confirmed to be of standard according to the terms o the contract.
d. The goods were confiscated by the Malaysian Custom Service after series of examination carried thereon and finding that the cashew nut could not be allowed into Malaysia for it non-merchantable quality and possibility of it causing diseases to the populace.
e. The defendant thereupon rescinded the contract according to the dictate of the contract and at the same time required from the plaintiff the repayment of the deposit sum of N3,000,000.00 which was the consideration for the contract that has failed.
f. The defendant in the meantime, advanced a loan of N3,000,000.00 to the plaintiff on a separate mortgage transaction between them.
g. The plaintiff is to repay the mortgage debt in three instalments but the plaintiff has not paid any even after a letter notifying the plaintiff of the defendant's intention to sell the mortgage property.

h. The claim on the mortgage transaction constitutes the defendant's ground for counterclaim in this suit.

The plaintiff was called as witness who in her examination in chief claimed that the goods were of merchantable quality. The plaintiff during cross-examination denied that she was aware of terms in the contract agreement relating to unilateral recessionary right of the defendant in case the goods were found to be of substandard.

The defendant called the Branch Manager of the defendant company as witness through whom the contract agreement was tendered in evidence and an expert report from Malaysian Custom Service was tendered through the defendant company's secretary. Both witnesses gave evidence respectively confirming the terms in the contract agreement and the defective quality of the cashew nut supplied by the plaintiff.

3.0 ISSUES FOR DETERMINATION

It is humbly submitted that the issues for determination are as follows:

1. Whether or not the plaintiff owes the defendant obligation under the contract on the quality of goods to be supplied.
2. Whether or not the contract has been validly rescinded by the defendant on a breach of warranty of merchantability.
3. Whether or not the plaintiff still possesses any right of claim having failed to perform her part of the obligation under contract.
4. Whether or not the defendant's counterclaim under the mortgage is valid.

4.0 LEGAL ARGUMENT

From the evidence garnered from both parties in this suit. It is clear that there is a valid contract between the plaintiff and the defendant. It is not in dispute that the five tone of cashew nut was supplied and a sum of N3,000,000.00 was paid to the plaintiff. What are in dispute are the quality of the goods and the term of the contract giving the defendant right to rescind the contract unilaterally.

ISSUE 1

Whether or not the plaintiff owes the defendant obligation under the contract on the quality of goods to be supplied

My Lord, it is stated in the contract agreement that the cashew nut was to be exported to Malaysia which was for industrial use. Apart from this express expectation, it an implied term under the contract of sale of goods that goods must be of merchantable quality. This is provided for under S. 14 of Sale of Goods Act. **Lord Wright** in ***Canada Atlantic Grain Export Co v Eilers*** **(1929) 35 Ll L Rep 206 at 213** explained that "if goods are sold under a description which they fulfil, and if goods under that description are reasonably capable in ordinary user of several purposes, they are of merchantable quality within s. 14(2) of the Act if they are reasonably capable of being used for any one or more of such purposes, even if unfit for use for that one of those purposes which the particular buyer intended." But the cashew nut supplied were rejected at the Malaysian boarder, My Lord, on the ground that they were good for nothing and even likely to cause diseases to the

populace. Although it was held in **ASWAN ENGINEERING ESTABLISHMENT CO V LUPDINE LTD AND ANOTHER (THURGAR BOLLE LTD, THIRD PARTY) [1987] 1 ALL E.R. 135** that inability of goods to survive shipment did not render it non-merchantable but the subject matter of this case referred, My Lord was liquid waterproofing compound which could not survive the heat en-route shipment to Kuwait. Meanwhile, the cashew nut supplied by the defendant was not affected by weather but that they were bad in themselves.

Moreover, My Lord, although it is not part of an implied warranty under the Sale of Good Act that goods shall be fit for purpose but the proviso under S. 15 of the Act furthers that where the buyer makes it known to the seller the purpose for which the goods is bought such term becomes implied, and the seller owes obligation to make it thus fit. I humbly referred My Lord to paragraph 3 of the contract agreement where the plaintiff was acutely informed that the cashew nut was met to be exported to Malaysia for industrial use. This obligation was re-emphasised in **NGONADI NIGERIAN BOTTLING CO. LTD. Vs CONSTANCE OBI NGONADI 1 NSCC 753** where the court ruled that a defendant cannot deny this obligation on the ground that he is not the manufacturer of the goods.

ISSUE 2

Whether or not the contract has been validly rescinded by the defendant on a breach of warrant of merchantability.

My Lord, the un-contradicted report from Malaysian Custom Service evidenced the fact that the plaintiff has failed in her obligation under the contract. Although the plaintiff denies the contents of the contract agreement which was glaringly reached between her and the defendant but during cross-examination she has shown herself to be an educated and experienced businesswoman who can read and write. It was also confirmed that the plaintiff signed the contract under her hand in person. It is a rule of evidence that such written agreement cannot be allowed to overridden or contradicted by oral evidence. **S. 128 Evidence Act, 2011**. And the plaintiff will not be allowed to plea ***non est factum*** of contract signed by her, an educated and experienced businesswoman, My Lord. It has been held that the term of a contract is the condition which keeps a contract alive. **SCHULER A G V WICKMAN MACHINE TOOL SALES LTD [1973] 2 ALL ER 39** and where parties *ad idem* slate the terms in a contract between them, they are bound by it, parties are bound by their agreement, ***pacta sunt servanda,*** *the agreement must be kept at all cost.*

ISSUE 3

Whether or not the plaintiff still possesses any right of claim having failed to perform her part of the obligation under contract.

My Lord, it is apparent that the plaintiff's claim of right is based on her own wrong. A breach of fundamental term in a contract is highly fatal to the lifelines of a contract. Lord Abinger stated in **CHANTER Vs HOPKINS (1838) 4 M&W 399 P. 404** that a breach of fundamental term amounts to non-performance of the contract. The plaintiff, having therefore failed on her side of the contractual obligation, has given the defendant right to exercise its right under the contract which is mere agreement to rescind the contract made prior to the contract, ***eodem modo quo,***

aritur oedema modo dissolvitur. The plaintiff is said to have thereby lost her right of claim under the contract.

ISSUE 4

Whether or not the defendant's counterclaim under the mortgage is valid.

My Lord, the plaintiff has not offered any material objection to the defendant's Counterclaim as no defence to counterclaim has been filed in this Honourable court and so the defendant has not been serve with any. The Deed of Assignment duly executed by both the plaintiff and the defendant filed along with the defendant's counterclaim exposes the fact that the defendant's right under the mortgage to exercise its power has ensured. I humbly wish to refer this honourable court to paragraph... in the Deed which prescribes that the plaintiff pays the mortgage debt in three installments on or before the legal due date, to wit, 18/1/2013**. S. 19 of the Conveyancing Act, 1881** gives the defendant therefore right to exercise its power of sale having served the plaintiff notice dated 2/1/2013 of its intention to exercise this right. It has been held in **WEMA BANK PLC Vs ABIODUN (2006) ALL FWLR, pt 317 at 430** that where these aforementioned conditions have been fulfilled, the mortgagee can exercise its power of sale. Court of Appeal held in **AFRICAN INTERNATIONAL BANK LTD. v. LEE AND TEE INDUSTRIES LTD. [2003] 7 NWLR (PT 819) 366** that the court will not intervene when mortgagor's power of sale or to foreclose becomes exercisable as it will amount to varying the terms of the mortgage deed for parties or rewriting mortgage agreement for the parties.

It is humbly submitted that the plaintiff, having failed to establish his case, the defendant is entitled to its claim.

CONCLUSION

We urged this Honourable Court therefore to grant the defendant reliefs as contained in the statement of defence and counterclaims for the facts being established that:

a. The defendant paid the sum of N3,000,000.00 as consideration to the plaintiff to supply goods.
b. The contract has failed for non-compliance with fundamental terms thereto.
c. The plaintiff owes a mortgage debt to the tone of N3,000,000.00 to the defendant.
d. The plaintiff has breached the mortgage agreement and the defendant's power of sale (or to foreclose the mortgage) has become exercisable.

LIST OF AUTHORITIEs

JUDICIAL

- CANADA ATLANTIC GRAIN EXPORT CO V EILERS (1929) 35 LL L REP 206 AT 213
- ASWAN ENGINEERING ESTABLISHMENT CO V LUPDINE LTD AND ANOTHER (THURGAR BOLLE LTD, THIRD PARTY) [1987] 1 ALL E.R. 135
- NGONADI NIGERIAN BOTTLING CO. LTD. VS CONSTANCE OBI NGONADI 1 NSCC 753
- SCHULER A G V WICKMAN MACHINE TOOL SALES LTD [1973] 2 ALL ER 39
- CHANTER VS HOPKINS (1838) 4 M&W 399 P. 404

- WEMA BANK PLC VS ABIODUN (2006) ALL FWLR, PT 317 AT 430
- AFRICAN INTERNATIONAL BANK LTD. V. LEE AND TEE INDUSTRIES LTD. [2003] 7 NWLR (PT 819) 366

STATUTORY

- SALE OF GOODS ACT
- CONVEYANCING ACT, 1881
- Evidence Act, 2011

DATED THIS 5TH DAY OF FEBRUARY, 2013.

OLAJIDE P. A
COUNSEL TO:
The Defendant
Olajide Adewale & Associates
1, Olade Street, Falomo, Ikoyi, Lagos.

FOR SERVICE OF ON:
THE PLAINTIFF
Akande Q. E, Esq
20, Blantyre Street, Wuse II, Abuja

WEEK 15-ENFORCEMENT OF JUDGMENT

Enforcement of judgment refers to all the available method of enforcing judgment.

Execution of judgment is restricted to enforcement by Writs.

THE APPLICABLE LAWS HERE
Sheriffs and Civil Process Act Cap 56 LFN 2004.
Judgment Enforcement Rules made under powers given under the **SCPA (s94)**
Note all the states have made their own SCP laws but these are in conformity with the SCPA

DESIGNATION OF PARTIES- The designation for parties under enforcement of judgment is **Judgment Creditor** (the successful party) or **Judgment Debtor** (the unsuccessful party).

WHEN IS A JUDGMENT EFFECTIVE
A judgment shall take effect from the date it is pronounced/read unless the court orders otherwise - **ORDER 39 RULE 6 ABUJA; ORDER 35 RULE 2 LAGOS**
A person directed to pay money, or do any act by an order of court is bound to obey it without demand and if no time is expressed in the order he is bound to do so immediately.
Sheriff, deputy sheriffs and bailiff are the officers of the court that enforce judgment

INSTALLMENTAL PAYMENT OF DEBT
This may be done by a motion supported by an affidavit. The creditor may file a counter affidavit and written address
The registrar will suspend execution till the determination of the suit.

TIME FRAME FOR LEVYING EXECUTION OF JUDGMENT
Order 4 Rule 2 JER
It depends on the type of judgment as follows:

1. Money judgments and others cannot be commenced **until after the expiration of 3days from the day on which judgment is given except with the express leave of court**
2. Judgment of possession **can be commenced 14 days after delivery of the judgment**
3. In any other case not specified by Law, with the leave of Court.

LIFE SPAN OF PROCESS OF EXECUTION
The life span of a process of execution when issued shall be **ONE YEAR** from the date of issue if unexecuted.
The process may be issued within **2 YEARS** after the judgment is delivered and a party can apply to the court for writ of execution without **LEAVE.**
After expiration of the **2 YEARS**, **leave** of **court** is required to issue the writ at that point.
If it is a process not against a person (e.g. corporation/institution) then the process may be issued at any time within **6 YEARS** with **NO REQUIREMENT FOR LEAVE**.

DAY AND TIME OF EXECUTION OF JUDGMENT

A judgment can be executed on any day except on **Sunday**, or **Public Holiday**,
It must not be done **before 6am** and **not after** 6pm unless the judge or magistrate directs otherwise by order endorsed on the process executed.

MODES OF ENFORCING JUDGMENTS

There are several methods of enforcing different types of judgments. Method chosen will depend on the type of judgment

A. MONEY JUDGMENTS

When a judgment creditor desires to recover a debt he would need a writ of attachment and sale either against the movable property or immovable property of the judgment debtor to be issued.

- Means of enforcing money judgments are as follows:
    1. Writ of sequestration
    2. Writ of fifa (fieri facias)
    3. Garnishee proceedings
    4. Charging order
    5. Committal order (committing the judgment debtor to prison)

1. **WRIT OF FIFA (writ of attachment and sale)**

The writ of FIFA is the most common writ of execution, which normally commands the Sheriff to seize and sell properties belonging to the judgment debtor.
Writ of fieri facias (fifa) otherwise called writ of attachment is for recovering of money judgments. It is a writ of attachment and sale.

PROCEDURE (MOVEABLE PROPERTY)

1. For execution against movable property, the judgment creditor shall file an application for a writ of execution in **FORM 3, 1st Schedule SCPA** with the Registrar of Court-**0.4 R. 2 JUDGMENT ENFORCEMENT RULES JER.**
2. The Registrar issues the writ of FIFA.

EXECUTION OF A WRIT OF FIFA

A writ of Fifa is executed by seizing any goods or chattels of the judgment debtor worth **N10.00** and above **EXCEPT** his wearing apparels, beddings and tools and implements of his trade: **s25(a) SCPA**
If sufficient movable property of the judgment debtor can be found within the jurisdiction and costs of execution, execution shall not issue against his immovable property.

WRIT OF EXECUTION

This is applied for by the judgment creditor when the movable property seized were not enough to satisfy the judgment debt-**S. 44 of the SCPA**.
The purpose is to attach the immovable property i.e. land, machines etc to satisfy the debt which will be sold **AFTER 15 DAYS OF** the attachment.

PROCEDURE: The Application shall be by motion on notice supported by Affidavit and Written Address.

CONTENTS OF THE AFFIDAVIT

The Affidavit must show the following;

1. What steps, if any already taken to enforce the judgment and with what effect;
2. The sum due that have remained unpaid under the judgment;
3. That the movable property of the judgment debtor are not sufficient to satisfy the judgment debt or that there are no more movable property found diligently -**0.4 r. 16 JER**

d. Evidence of proof of ownership of the property sought to be attached -S. 44 SCPA (e.g. if land show evidence of search)

All these is done by filing **F0RM 38**

PLEASE NOTE-

A Magistrate can enforce its judgment by issuing a Writ of fifa but he cannot issue a Writ of execution. The judgment Creditor in such a case must apply to the High Court for the grant of Writ of execution.

S. 44 of the SCPA.

MODE OF EXECUTING THE WRIT (IMMOVEABLE PROPERTY)

The writ is executed in the following ways

a. By the Registrar delivering the notice to the judgment debtor **FORM 41**
b. By pasting **FORM 40** on the land prohibiting people, from buying such land which is intended to be attached and sold.
c. The **Sheriff** can take actual possession of the property by putting a respectable person in possession.-**0rder 5 r. 3 & 4 JER**

TIME FOR SALE OF DEBTOR'S GOODS

MOVABLE PROPERTY

The goods or chattels are **sold 5days** after they are seized

EXCEPTIONS

1. If the judgment debtor consents to an earlier sale
2. The goods are of a perishable nature.

S. 29 SCPA

IMMOVABLE PROPERTY

If the property is immovable, the sale has to be done **AT LEAST 15DAYS** after COURT ORDER attaching same.

EXCEPTION

Consent of the judgment debtor: **Order 7 Rule 6(1) JER**

APPLICATION OF PROCEEDS OF SALE

The money realised from the sale of the goods or immovable property should be applied in the following manner.

i. First pay cost of execution e.g. auctioneer's fees
ii. Pay the judgment debt

iii. Whatever is left goes back to the judgment debtor

GARNISHEE PROCEEDINGS

The garnishee proceedings: used by a judgment creditor to attach to debts owed a judgment debtor by a third party.
This is not a writ of execution.

SECTION 83 SHERIFFS AND CIVIL PROCESS ACT

Here the court orders a third party called the GARNISHEE pay to the court a debt due by him to the judgment debtor; be used to pay the judgment creditor.

PARTIES TO GARNISHEE PROCEEDINGS

In a garnishee proceedings, there are usually 3 parties namely;

a. The judgment creditor Known as **GARNISHOR**
b. The judgment Debtor (NB: JUDGMENT DEBTOR IS A NOMINAL PARTY-**STB V. OLUSHOLA)**
c. The third party owing the debt to **judgment** debtor => **GARNISHEE**

It is not every debt that can be attached through garnishee proceedings.

RIGHTS OF PARTIES IN GARNISHEE PROCEEDINGS.

There is a conflict as to the rights of parties in a garnishee proceedings.
In **NOC v. OGINI (2011)2 NWLR (Pt. 1230)** the court of Appeal stated thus; at the hearing, all three parties will be heard, i.e. it is a tripartite proceedings. The judgment debtor is entitled to file an Affidavit explaining why the money should not be attached.
On the other hand, in **NITEL v. ICIC (2009) NWLR (Pt 1167) 356**, the court of Appeal held that the matter is strictly between the **Garnishee** and the **Garnishor** and that the judgment debtor is just an observer. It is not a proceeding against the judgment debtor.
Purification Technique v AG Lagos State (2004) 9 NWLR (Part 879) 665, Nitel v ICIC (2009), Wema Bank case:
NB: Advantage to this is that judgment creditor can carry on with your application for garnishee proceedings even if judgment debtor has applied for stay of execution because garnishee proceedings are not execution proceedings.

THE CONDITIONS FOR ATTACHING DEBT FOR GARNISHEE PROCEEDINGS.

i. The debt to be attachable must be due and payable to judgment debtor;
ii. It must be a present debt and not a future debt. Salaries and rents are attachable provided they are due.
iii. The garnishee proceedings can only be commenced if the garnishee is indebted to the judgment debtor in the state in which the proceedings are brought.
If the garnishee is outside the state, garnishee proceedings cannot be brought

PLEASE NOTE-

1. An Application for garnishee proceedings can be made even there is a stay of execution of judgment.

PURIFICATION TECHNIQUE, V.A.G LAGOS STATE
NITEL V. ICC
-2. Garnishee proceedings is sui generis (of its own kind) and ought to be differentiated from other modes of enforcement of judgment.

THE PROCEDURE

1. The Garnishor (the judgment creditor) files a **Motion EX PARTE** supported by an Affidavit and a Written Address praying the court for an order nisi. Affidavit is in FORM 25. Can bring garnishee proceedings in a court different from that that gave judgment. If this is done, then attach a CTC of the judgment
2. The Registrar upon receipt of the affidavit shall enter the proceedings in the books of the court.
3. After hearing the motion, the court issues the order nisi in **FORM 26** and it is served on the Garnishee and Judgment Debtor. The court will rely on the facts in your document and order a nisi attaching to the money in possession of the garnishee.
4. If garnishee pays within 8 days of the order, the matter is terminated
5. The registrar will fix a date for hearing not less than **14 days AFTER service.**
6. The garnishee is to come to Court to refute or show **cause** why the order nisi should not be made absolute **within 8 DAYS** by filing an **Affidavit to Show Cause**. Garnishee can file counter affidavit showing reasons why the money should not be used to satisfy the judgment debt
7. After hearing the proceedings the court may cancel the order nisi or may make the garnishee order absolute.
8. Affidavit must include Names, addresses and occupation of judgment debtor and garnishee; that the judgment has been delivered on (date) and the judgment debt has not been satisfied. If some has been satisfied, state the amount paid and that outstanding. State that the garnishee is indebted to the judgment debtor and is within jurisdiction.

EFFECT OF A GARNISHEE ORDER NISI
The effect of an Order nisi is that the **garnishee** cannot **pay** the money in his possession to the judgment **debtor until** the Order is made **absolute** or finally decided.
O.8 JUDGMENT ENFORCEMENT RULES.
See Order 8 Rule 3 JER. CT will ask questions to ensure that the money belongs to the judgment debtor

NOTE:
Where the money is in the custody of a public officer in his official capacity or under the control of a public Authority an order nisi cannot be made **EXCEPT** with the **consent** of the **Attorney General (s84 SCPA)**. -**PURIFICATION TECHNIQUE** v. **A. G LAGOS STATE**. Rationale is that the government allocates money for projects etc. They don't want money to be attached and the project can no longer be done.

If the money is in the custody of the law, then need consent of an officer of the court (e.g. judge)

If money belongs to a public corporation but it is in a commercial bank, no need for leave of AG

EFFECT OF FAILURE TO SERVE GARNISHEE ORDER NISI
Failure to serve the Garnishee and judgment Debtor would nullify the Proceedings.
WEMA BANK V. BRASTERNSTEIN

TIME FRAME FOR FIXING HEARING DATE
The Registrar fixes a date for hearing which shall not be less than **14 DAYS** after service.

FUNCTION OF THE ORDER NISI: The ORDER NISI commands the garnishee to appear in court on a stated date to show cause why he should not be made to pay to the judgment creditor the amount he owes the judgment debtor.

Examples of debts usually attached are monies owned by the judgment debtor in a Bank.
The law sees the Bank as owing or being indebted to a customer to the tune of money standing to his credit and held by the Bank. **YESUFU v. A.C.B**
STEPS TO BE TAKEN BY THE GARNISHEE (BANK) UPON SERVICE OF THE ORDER NISI

1. Upon service of the order, the Garnishee **expected** to draft/file a **counter-affidavit** admitting that he owes the judgment debt and that he shall abide by the court order.

OPTIONS OPEN TO HIM
He may **within 8days of the service of the order on him,**

a. Pay into court the amount alleged to be owed by him to the judgment debtor
EFFECT- the proceedings shall be terminated.
b. The garnishee may appear in court.
NITEL v. **ICC**

CONTENTS OF THE AFFIDAVIT TO SHOW CAUSE/COUNTER AFFIDAVIT

1. The money does not belong to the judgment debtor OR
2. The money belongs to a third party with a lien or charge over it.
3. **Any other fact persuading the court as to why the ORDER NISI should not be made absolute**

EFFECT OF FAILURE TO PAY AFTER A GRANT OF GARNISHEE ORDER ABSOLUTE
Where the Garnishee fails to pay upon an order absolute, judgment would be executed upon him by writ of fifa. -**UBN** v. **BONEY MARCUS IND.**

B. RECOVERY OF LAND
A judgment or order for the recovery of land or for the delivery of possession of land shall be enforced by a writ of possession

PROCEDURE:
1. Application by filing FORM 3 (Sheriff and Civil Process Act). Registrar will issue the relevant writ
2. Where in addition the judgment creditor intends to attach an immovable property then he shall apply to the court by motion on notice for leave to attach the property.

TIME FRAME FOR ISSUING WRIT OF POSSESSION
No writ of possession shall be issued until after the expiration of the day on which the defendant is ordered to give possession of the Land, if no day is fixed, until after expiration of **14 days** from the day on which judgment is given.

C. DELIVERY OF GOODS
A judgment for the delivery of goods shall be enforced by WRIT OF DELIVERY in FORM 67.
Form 67 IS ISSUED AND SIGNED BY THE Judge or Registrar.
It mandates the Sheriff to seize and recover goods of the judgment debtor and handover same to the judgment creditor. In seizing goods, the bailiff cannot seize clothing, beddings and tools of trade. Everything else can be seized provided it is above N10
Form 68: writ of delivery and execution against immovable property

D-LANDLORD/TENANT(RECOVERY OF PREMISES)
PROCEDURE;
1. File **FORM N (warrant of possession)/FORM TL 9**
2. **Apply for writ of FIFA to recover arrears of rent/mesne profit.**

EXECUTION OF DEED AND NEGOTIABLE INSTRUMENTS
1. Where a judgment directs any deed to be executed or any negotiable instrument to be endorsed, and the party ordered to so neglects or refuses to do so,
2. Any party interested in having the same endorsed, may prepare a deed or endorsement of the instrument in accordance with the terms of the judgment
3. The party can tender same to court for execution upon proper stamping.

EFFECT OF EXECUTION BY THE REGISTRAR
The execution by the Registrar shall have the same effect, the execution or endorsement thereof by the party ordered to execute.

REMUNERATION OF SHERIFFS ETC
- Apart from the payment of fees for the writ of execution the Sheriff's office would normally require the **judgment creditor** to deposit further funds towards costs of pocket expenses of hiring of vehicles, labourers, security etc.
- The expenses would be deducted from the sale of the goods.

CONSEQUENCES OF NON-COMPLIANCE WITH COURT JUDGMENTS
a. **JUDGMENT SUMMONS**

This is a procedure that is available for enforcing money judgment against a judgment debtor who can pay the judgment debt but refuses to pay.
The judgment debtor is brought to court to be examined 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. Judgment creditor shall file a praecipe as in Form 13 whereupon the judgment summons shall be issued either in Form 14 or Form 15 as the case may be.

CONSEQUENTIAL ORDERS: At the conclusion of investigation by the court, the court may make any of the following orders.

a. Committal to prison
b. Attachment and sale of judgment debtor's property
c. Payment by instalment
d. Discharge from prison -S **55 – 65 SCPA**

b- **WRIT OF SEQUESTRATION**

- Section 82 SCPA
- Application for sequestration order can only be made **TO THE HIGH COURT** in **FORM 69 JER** -S. **82 SCPA**;
- This order is made against the judgment debtor who has been committed to Prison & yet judgment debt remains unpaid.
- This Writ directs two or more commissioners to seize the IMMOVEABLE property so that it can be used to offset the judgment debt.
- It does not vest title on the commissioners.
- They can only collect RENT/PROFITS to satisfy the said debt
- The order does not entitle sheriffs to sell.

ENFORCEMENT OF JUDGMENT INTRA STATE (within a state e.g. Ikeja and Ikoyi)

A judgment delivered in a judicial division may need to be enforced in another judicial division.

PROCEDURE

1. The registrar in the home court issues a writ of execution together with **FORM 11(WARRANT)** requesting and authorising execution
2. The registrar will forward the documents to his counterpart in the **enforcing court,**
3. The judgment will be executed and the registrar of the **enforcing court will send over all the money realised**
4. He will report back to the home court using **FORM 12**

SECTION 37/39 SCPA
Order 11 R 26(2) & ORDER 28 JER

ENFORCEMENT OF JUDGMENTS OF A COURT OF ONE STATE IN ANOTHER STATE

By S.**287(1)-(3) CFRN** 1999, 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.
This is a Federal matter and is guided by the Sheriffs and Civil Process Act.

THE PROCEDURE

1. Obtain a certificate of judgment from the Court that give Judgment with a court of similar jurisdiction.
2. Write an application to the Registrar of the Court in the other State where it is to be executed to register it in its Register of Nigerian Judgment –**S.105 SCPA**
3. Support the application with an affidavit stating;

(i) That the amount for which process is proposed to be issued is actually due and unpaid; or

(ii) That an act ordered to be done remains undone; or disobeyed the order: **Section 107 Sheriff and Civil Process Act**.

4. The judgment when **registered** is treated as the judgment of the Court of the other State
5. The Court will levy execution first by writ of fifa (against the movable property) then by writ of execution.
S.100-104 of the SCPA and **ELECTRICAL MECHANICAL CONSTRUCTION LTD** V. **TOTAL NIG**. & **ANOR**

EFFECT OF REGISTRATION

Upon registration, that judgment acquires the status of judgment of that court; all processes of execution can be issued it on, by the court.

SCOPE-

This is applicable to both High Court and Magistrates Courts.
NB => One can register a judgment above the monetary jurisdiction of a Magistrate's court in that magistrate's Court.

ENFORCEMENT OF FOREIGN JUDGMENT

Generally speaking, only judgments of superior courts of foreign countries are enforceable in the domestic forum.

THERE ARE TWO METHODS OF ENFORCING FOREIGN JUDGMENTS IN NIGERIA;

a. Enforcement by action at common law
b. Enforcement by registration

BY ACTION AT COMMON LAW

The foreign judgment constitutes a cause of action.
Usually used for **NON COMMONWEALTH COUNTRIES**

PROCEDURE

1. Institute an action in Court in Nigeria
2. Come by way of undefended list (**Order 21 Abuja rules**)/ summary judgment (**Order 11 Lagos rules**) exhibiting the judgment.

3. If the action is successful, the judgment becomes the judgment of the Nigerian Court.

THE CONDITIONS

1. The foreign judgment must be final and conclusive and must have been given by a **SUPERIOR** court of competent jurisdiction.-**PEENOK LTD** v. **HOTEL PRESIDENTIAL LTD**.
2. It must be a judgment for a definite sum of money. It cannot be a **TAX, PENALTY OR FINE**
3. The RES (subject matter/property) must be situate at the foreign country (the country that gave judgment) as at the time of delivery of judgment.

NOTE- KNOW NON COMMONWEALTH COUNTRIES

Under this head, there is no requirement for Reciprocity.=

ENFORCEMENT BY REGISTRATION

A foreign judgment can be enforced in Nigeria by registration by any High Court under the foreign judgment (Reciprocal Enforcement Act).

APPLICATION FOR ENFORCEMENT BY REGISTRATION

1. **YOU MUST APPLY TO HIGH COURT**
2. **STATE IN AN AFFIDAVIT THAT IT IS ONE OF THE COUNTRIES LISTED UNDER the order made by the Minister of Justice under Part I of the Foreign Judgments (Reciprocal Enforcement) Act 2004 (section 9)**

THE CONDITIONS

1. The judgment must be final and conclusive.
2. It must be a judgment of a superior court of the foreign country
3. Must not be a tax, penalty or fine

ELIGIBLE COUNTRIES.

NB=>

- It is only countries which have reciprocal arrangements with Nigeria that their judgments, shall be enforceable in Nigeria.-**SECTION 3(1) Foreign Judgments (Reciprocal Enforcement) Act 2004 (THEY CAN ALSO ENFORCE NIGERIAN JUDGMENT IN ITS COURTS**
- The countries recognised for this purpose are grouped under the common wealth of Nations. - **SECTION 9**
- The minister can advise against registration or appeal against it.

LIMITATION PERIOD FOR ENFORCEMENT OF FOREIGN JUDGMENT

An application of a foreign judgment has to be made within 6 **YEARS** after the date of the judgment or within 6 years of determination of appeal.

Apply by motion on notice supported with an affidavit and written address. If there is an appeal, then wait 6 months before you can apply for the judgment to be registered. Would be registered in Nigeria at the prevailing rate of exchange if judgment is in a foreign currency.

Note: CT cannot order payment by instalment -

SETTING ASIDE OF FOREIGN JUDGEMENT BY REGISTRAR
This can be done by petition

GROUNDS FOR SETTING ASIDE OF FOREIGN JUDGMENT-S.6

a. Where the foreign court had no jurisdiction
b. If the judgment was obtained by fraud
c. If the judgment is contrary to public policy
d. If the matter was originally res judicata
e. There is no reciprocal arrangement with the country
f. If the person who applied had no interest in the judgment

In **WYATT**& **BURCH LTD** v. **DEL POWER SYSTEMS PLC**, the court held that foreign judgment Reciprocal Enforcement Act did not repeal the Reciprocal Enforcement Ordinance. It is only when the A.G makes a provision to that effect.

Cases to note

- Marine and General Assurance Company Plc v Overseas Union Insurance Ltd and anors (2006) 4 NWLR (Pt 971) 622
- Goodchild v Onwuka (1961) All NLR 163

APPLICATION FOR ATTACHMENT/ WRIT OF EXECUTION

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

SUIT NO:

HC/234/014

MOTION NO: _____

BETWEEN
CROWN KITCHEN LTD
……CLAIMANT/JUDGMENTCREDITOR/APPLICANT
AND
K & T LTD …… DEFENDANT/ JUDGMENT DEBTOR/ RESPONDENT

MOTION ON NOTICE

BROUGHT PURSUANT TO SECTION 44 OF THE SHERIFFS AND CIVIL PROCESSES ACT CAP S6 LFN 2004, ORDER 4 RULE 16(2) JUDGMENT ENFORCEMENT RULES 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 for the Applicant may be heard praying this Honourable Court for the following:

1. AN ORDER OF COURT attaching Plot 1 K & T Road, Lagos, Property of K & T Ltd for sale for the satisfaction of the judgment debt of N2,170,000 (Two Million One Hundred and Seventy Thousand Naira) pursuant to the judgment of the court in suit no HC/234/014 delivered on 3rd January 2014.
2. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

Dated this 21st day of February, 2014

_____

Gabriella Ndu, Esq
Counsel for Applicant
Ndu Chambers
5 Leedway Street
Ikoyi, Lagos
TG@Liberty.com
0802222222222

FOR SERVICE ON:
Ajaegbu Kenechukwu , SAN
Counsel for Respondent
No. 6 Lekki Drive

Ikoyi, Lagos

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

SUIT NO:

HC/234/014

MOTION NO: _____

BETWEEN
CROWN KITCHEN LTD …… APPLICANT/JUDGMENT CREDITOR /CLAIMANT
AND
K & T LTD …… RESPONDENT/JUDGMENT DEBTOR/DEFENDANT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR ATTACHMENT OF IMMOVABLE PROPERTY OF JUDGMENT DEBTOR

I, Edu Ututu Adult, Male, Businessman, Christian, Nigerian Citizen residing at No. 5 Banana Island Lagos, do hereby make oath and state as follows:

1. I am the company secretary/ legal adviser of Crown Kitchen Ltd, the Applicant, and by virtue of which I am conversant with the facts deposed to in this affidavit.
2. I have the consent and authority of the applicant to depose to this affidavit.
3. I know that on the 3rd day of January, 2014, the applicant obtained judgment in the High Court of Lagos State, in the Lagos Judicial Division against the Respondent/Judgment debtor for the payment of the sum of N2,170,000 (Two Million One Hundred and Seventy Thousand Naira) as debt owed by the defendant to the applicant. A certified true copy of the judgment is hereby attached as Exhibit A1.
4. The said judgment is still wholly unsatisfied.
5. On the 5th day of January 2014, the applicants applied for a writ of Fieri Facias which was issued to it.
6. Since then, the applicants have made efforts and attempts at searches for moveable properties and goods belonging to the Respondent/Judgment Debtor to levy execution upon and satisfy the judgment debt.
7. All attempts made were to no avail as no moveable property or goods of the respondent/judgment debtor were found.
8. I verily believe that the Respondent/ Judgment Debtor has no moveable property within or outside the jurisdiction of this court.
9. On the 15th day of January 2014, the applicants conducted a search at the Land Registry, Lagos and found that the property located at Plot 1 K & T Road, Lagos belongs to the Respondent/Judgment Debtor. A copy of the search report and certified true copy of the certificate of occupancy in the name of the Respondent/ Judgment Debtor are attached as exhibit A2 and A3 respectively;

10. I verily believe that the respondent/judgment debtor is the owner of the said landed property;
11. I know the judgment debt remains unsatisfied to the tune of N2,170,000 (Two Million One Hundred and Seventy Thousand Naira);
12. I swear to this affidavit solemnly and conscientiously believing its contents to be true and correct and in accordance with the Oaths Act.

_____
DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, LAGOS
This ____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATHS

APPLICATION FOR GARNISHEE NISI
IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO: _____
MOTION NO: _____

BETWEEN
MRS. KAYUBA ADA …… JUDGMENT CREDITOR/ GARNISHOR/ APPLICANT
AND
TRUSTWORTHY BANK PLC …… GARNISHEE/RESPONDENT
AND
AGRICULTURAL BANK PLC …… JUDGMENT DEBTOR/DEFENDANT

MOTION EX PARTE

BROUGHT PURSUANT TO SECTIONS 83 AND 86 OF THE SHERIFF AND CIVIL PROCESSES ACT CAP S6 LFN 2004 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 for the Applicant/Garnishor may be heard praying this Honourable Court for the following:

1. AN INTERIM ORDER OF COURT attaching the Judgment debt of N14,000,000(fourteen million naira) from account no: 20123013344 with account holder: Agricultural Bank Plc with Trustworthy Bank Plc, Ikeja Branch, Lagos.
2. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

DATED THIS 21ST DAY OF FEBRUARY, 2014

_____

TJ GOLD, ESQ
COUNSEL FOR
APPLICANT/GARNISHOR
LIBERTY CHAMBERS
5 LEEDWAY STREET
IKOYI, LAGOS
TG@LIBERTY.COM
0802222222222

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

SUIT NO: _____
MOTION NO: _____

BETWEEN
MRS. KAYUBA ADA …… CLAIMANT/JUDGMENT CREDITOR/ GARNISHOR/ APPLICANT
AND
TRUSTWORTHY BANK PLC …… GARNISHEE/RESPONDENT
AND
AGRICULTURAL BANK PLC …… JUDGMENT DEBTOR/DEFENDANT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR GARNISHEE ORDER

I, Kayuba Ada, Adult, Female, Businesswoman, Christian and Nigerian Citizen residing at No. 50 Lupeway Street, Lagos do hereby make oath and state as follows:

1. I am the Applicant in this application and by virtue of which I am conversant with the facts deposed to in this affidavit.
2. On the 30th day of October 2012, I obtained judgment in the High Court of Lagos State, in an action against the defendant/judgment debtor for the payment of the sum of N7,000,000 (Seven Million Naira) as debt owed and N4,000,000 (Four Million Naira) and N3,000,000 (Three Million Naira) for specific and general damages respectively.
   A certified true copy of the judgment is hereby attached as Exhibit A1.
3. The said judgment is still wholly unsatisfied.
4. The garnishee, Trustworthy Bank Plc, Ikeja Branch Lagos is indebted to the judgment debtor in the sum of N20,000,000 (twenty Million Naira) in the account No: 2012393344 and account holder: Agricultural Bank Plc with Trustworthy Bank Plc, Ikeja Branch Lagos.
5. The garnishee is located at No. 16 Leedway Street, Ikeja, Lagos.
6. I swear to this affidavit solemnly and conscientiously believing same to be true and correct and in accordance with the Oaths Act.

_____

DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, LAGOS
This ____ day of _____, 2014

BEFORE ME

_____

COMMISSIONER FOR OATHS

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

SUIT
NO: .....

BETWEEN:
MRS KAYUBA ADA ……CLAIMANT/JUDGMENT CREDITOR/GARNISHOR
AND
AGRICULTURAL BANK PLC……..DEFENDANT/JUDGMENT DEBTOR
AND
TRUSTWORTHY BANKPLC …… GARNISHEE

AFFIDAVIT TO SHOW CAUSE

I, Kene Ajaegbu, female, Christian, Nigerian of 13, Alonge drive, Ikoyi, Lagos, do hereby make oath and state as follows:

1. I am the branch Manager of the Garnishee and by virtue of my position I am conversant with the facts of this case
2. I have the consent and authority of the applicant to depose to this affidavit.
3. On the 3rd of March, 2014, the garnishee was indebted to Agricultural Bank Nigeria Plc (judgment debtor) in the sum of N20, 010, 000(twenty million and ten thousand naira) in the ACCOUNT NUMBER 0019945532 and ACCOUNT HOLDER: AGRICULTURAL BANK NIGERIA PLC
4. On the 8th of March, 2014, the judgment debtor made a withdrawal of twenty million naira from the above stated account leaving the minimum account balance of N10,000 (ten thousand naira) .
5. The Statement of Account of the Defendant/Judgment Debtor with the garnishee evidencing the above fact is hereby attached and marked “EXHIBIT S1”
6. The debt to the judgment debtor was discharged in good faith by the garnishee without knowledge of any application for a garnishee order.
7. Flowing from paragraph 3, the garnishee will not be able to satisfy the judgment debt.
8. I depose to this affidavit in good faith believing the content to be true and in accordance with the Oaths Act.

.....
DEPONENT

SWORN TO
AT THE HIGH COURT REGISTRY OF LAGOS STATE
THIS __DAY OF __-2014M

BEFORE ME

_____
COMMISSIONER FOR OATHS

APPLICATION FOR REGISTRATION OF A JUDGMENT OBTAINED IN LAGOS TO THE HIGH COURT OF THE FCT ABUJA.

-

NDU CHAMBERS
BARRISTERS AND SOLICITORS
NO. 20 BROAD STREET LAGOS

OUR REF:
DATE: 18 May 2012
The Chief Registrar
High Court of the FCT Abuja
FCT Abuja.

Dear Sir,
CV/101/2010 CROWN KITCHEN LTD V. K & T LTD
APPLICATION FOR REGISTRATION OF JUDGEMENT PURSUANT TO S. 104 -107 SHERIFF AND CIVIL PROCESS ACT.
We are Solicitors to Crown Kitchen Limited of ……..(address) and which shall be referred herein as 'our Client'.

On our client's instruction we apply for the judgment in the above mentioned suit to be registered in the Register of Judgments of this State.

Our client obtained a final judgment against K & T Limited at the High Court of Lagos State sitting at Lagos on the 20 of January 2014 in which our client was awarded twenty million(N 20, 000, 000.00). The judgment debt is yet to be executed and there is no appeal is pending against the judgment.
Kindly find attached the necessary documents.
Your prompt response to our application will be highly appreciated.

Yours faithfully,
Gabriella Ndu Esq.
Principal partner
For: NDU CHAMBERS
ENCL:

1. Affidavit of the judgment Creditor

2. Certificate of the judgment of the Court in the matter

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

SUIT NO:

HC/234/014

MOTION NO: _____

BETWEEN
CROWN KITCHEN LTD …… APPLICANT/JUDGMENT CREDITOR /CLAIMANT
AND
K & T LTD …… RESPONDENT/JUDGMENT DEBTOR/DEFENDANT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR REGISTRATION OF JUDGMENT

1, Edu Ututu Adult, Male, Businessman, Christian, Nigerian Citizen residing at No. 5 Banana Island Lagos, do hereby make oath and state as follows:

1. I am the company secretary/ legal adviser of the judgment creditor/applicant, and by virtue of which I am conversant with the facts deposed to in this affidavit.
2. I have the consent and authority of the applicant to depose to this affidavit.
3. I know that on the 3rd day of January, 2014, the applicant obtained judgment in the High Court of Lagos State, in the Lagos Judicial Division against the Respondent/Judgment debtor for the payment of the sum of N2,170,000 (Two Million One Hundred and Seventy Thousand Naira) as debt owed by the defendant to the applicant. A certified true copy of the judgment is hereby attached as Exhibit A1.
4. I know that the said judgment debt is actually due and has remained unpaid. (This line could also say that: That an act ordered by court to be done remains undone or That the person ordered to refrain from doing an ACT HAS DISOBEYED THE ORDER)
5. It would be in the interest of justice to grant this application.
6. I swear to this affidavit solemnly and conscientiously believing same to be true and correct and in accordance with the Oaths Act.

_____
DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, LAGOS
This ____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATHS
INTERIM ORDERS/APPLICATIONS PENDING APPEAL

An interim order is an order given by the court in the course of proceedings to keep matters in status quo pending the hearing of the substantive application or until a named date.

These are orders are applied for pending the outcome of an appeal.

TYPES

There are 3 main types of interim orders pending appeal viz:

i. Stay of execution
ii. Stay of proceedings
iii. Injunction pending appeal

APPROPRIATE COURT TO APPLY TO

The application for an interim order may be made either to the trial court or the court of appeal. However, such applications are required to be first made to the trial court- **Order 3 Rule 3(4) Court of Appeal rules**

EXCEPTION

The only exception is where there are special circumstances, which make it impossible or impracticable to apply to the court below.

MOBIL OIL LTD V.AGINDIGBI

PLEASE NOTE-

- The jurisdiction of the High court to entertain an application for interim orders pending appeal is limited to any time after the notice of appeal has been filed at the High Court or leave to appeal has been granted but before the Court of Appeal is seised of the case.
- Once the records of appeal has been received by the Appellate Court, it is said that the appeal has been entered. Once an appeal has been entered, all subsequent applications for provisional reliefs should be made to the Court of Appeal.

CONDITION PRECEDENT

For any of these interim orders to be applied for the party applying must have appealed against the judgment or order of court.

EFFECT OF NON-FILING OF NON-COMPLIANCE.

Where a notice of appeal has not been filed, an application pending appeal is incompetent.

INTERCONTRACTORS V. UAC

STAY OF PROCEEDINGS

An order of stay of proceedings is made to suspend proceeding in the lower court pending the outcome of an appeal against RULING/INTERLOCUTORY DECISION or a point made during the proceedings.

ORDER 45 R 1 ABUJA; ORDER 54 R. 1 LAGOS;

PROCEDURE

1. It is applied for by a Motion on Notice supported with an affidavit and a written address to be filed at the trial Court Registry
2. To oppose the Motion, the respondent is to file a counter affidavit and a written address **within 7 days of the receipt of** the Motion.

THE CONDITIONS FOR THE GRANT OF AN APPLICATION FOR STAY OF PROCEEDINGS

1. There must be a valid appeal
2. That the grounds of appeal are likely to succeed
3. That the balance of convenience is in the applicant's favour
4. It is to preserve the nature of the subject matter
5. That security or undertaking for its grant has been given or paid into the Court

PLEASE NOTE:

The grant of this order is discretionary and would depend on the facts of the case.

CBN v. INLAND BANK LTD.

Such discretion must be exercised based on the existence of a valid notice of appeal and grounds of appeal.

S.G.B (NIG) LTD V. I.F.I. LTD

A person cannot apply for a stay of proceedings in an action which he is not a party; **LIYANGE** v. **SAN**.

However, the courts would rarely grant stay of proceedings.

It will be granted if the order can dispose of the substantive matter conclusively.

STAY OF EXECUTION

- It is applied for after a final judgment, which is executory in nature is given.
- The purpose of the application is to preserve the res-subject matter of the judgment pending the outcome of an appeal by the judgment debtor.
- The power to grant stay of execution is inherent and contain in the various statutes guiding courts.

Order 45 Rule 1 ABUJA; Order 54 Rule 1 LAGOS, S. 15 COURT OF APPEAL ACT.

This application is granted or refused at the discretion the court.

SPECIAL CIRCUMSTANCES

Generally the courts are not inclined towards granting an order of stay of execution. This is because the courts don't make it a practice of depriving the successful party of the fruits of his judgment.

However, where there are exceptional and special circumstances warranting such deprivations the court may grant the order of stay of execution.

COMEX Ltd v. N.A.B LTD

SPECIAL CIRCUMSTANCES FOR ORDER OF STAY OF EXECUTION

In granting or refusing an order of stay of execution; the court has to consider the following:

MARTINS V. NICANNAR FOOD CO. LTD [1988]: Supreme CT

a. The chances of the applicant succeeding on appeal, if the chances are non-existent, the stay will be refused.
b. The nature of the subject matter in dispute
c. Whether the applicant will not be able to reap the benefit of the judgment on appeal if the appeal succeeds.

d. Whether there is a reasonable portability of recovering the money or costs from the respondent if appeal succeeds.
e. Poverty is not a ground for granting a stay of execution except if such poverty will deprive him from means of prosecuting his appeal.

NOTE: A stay of execution is not usually available for declaratory judgments.
However, where the declaration judgment is accompanied by executory reliefs the order may be granted.
YARO V. **AREWA CONSTRUCTION LIMITED**.
An order granting stay may be conditional e.g. payment of the judgment fund into court or special account under court's control.

THE CONDITIONS FOR GRANT OF STAY OF EXECUTION:

1. That there are special circumstances warranting the deprivation of the fruits of judgment to the Respondent
2. There must be a valid appeal
3. That the grounds of appeal are likely to succeed
4. That the balance of convenience is in the applicant's favour
5. It is to preserve the nature of the subject matter
6. That security or undertaking for its grant has been given or paid into the Court
Note that the procedure for its application is the same with that of Stay of proceedings.

OPTION OPEN TO PARTIES UPON REFUSAL OF APPLICATION OF STAY OF PROCEEDINGS/EXECUTION.
NB: When an application for stay of proceedings or execution is refused by the trial Court, another application can be made to the Court of Appeal **WITHIN 15 DAYS** of the refusal with the following documents:

1. Motion on Notice supported with an affidavit exhibiting the following:
a. CTC of the Order of the trial Court refusing the application
b. CTC of the judgment of the lower Court
c. The Notice of Appeal
d. The record of proceedings
2. Written address

S. 17 OF THE COURT OF APPEAL ACT 2010
Order 7 Rule 3 & 4 OF THE COURT OF APPEAL RULES 2011.

NB=An appeal in itself without more does not operate as to stay the court's judgment: S. 17 **Court** of **Appeal** Act.

INJUNCTION PENDING APPEAL
This is necessary where;
a. Plaintiff's action was either dismissed or

b. Judgment is declaratory in nature (i.e. cannot be executed) or an interlocutory injunction was earlier refused by court.

PROCEDURE

a. Application by way of Motion on Notice accompanies with Affidavit must first be made to the Lower Court except there are specific circumstances that make it impracticable to do so **MOBIL OIL LTD** v. **AGADAIGHIO**.
b. Where the lower court refuses, similar application can be made to the court of Appeal.
c. Affidavit must state special circumstances warranting the grant of the injunction.

The Affidavit must be accompanied with;

a. A copy of the Notice of Appeal
b. A CTC of judgment appealed against
c. A CTC of the order of lower court refusing the injunction

CONDITIONS FOR GRANT OF INJUNCTION PENDING APPEAL

1. Application must show special circumstance and this could be that the ground of appeal is on a novel point.
2. Notice of appeal must disclose substantial legal issue.
3. It is equitable to maintain the status quo
4. Refusal to grant the injunction will foist on the court on appeal state of helplessness.
5. Refusal may render nugatory the order of the court of Appeal or the Appellate Court – **OYELAMI** v. **MILITARY** . **ADMIN OSUN STATE**.

APPLICATION FOR STAY OF EXECUTION

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

SUIT NO: HC/234/014
MOTION NO: _____
APPEAL NO: _____

BETWEEN
AGRICULTURAL BANK PLC …… JUDGMENT DEBTOR/APPLICANT/ APPELLANT

AND

MRS KAYUBA ADA …… JUDGMENT CREDITOR/RESPONDENT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 54 RULE 1 OF 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 _____, 2014 at the hour of 9 O' Clock in the forenoon or so soon thereafter as the applicant or counsel on his behalf may be heard praying this Honourable Court for the following orders:

AN ORDER granting stay of execution of the judgment of this Honourable Court delivered on the 10th day of February, 2014 pending the determination of the appeal of the Judgment Debtor/Applicant/ APPELLANT filed on the 20th day of February 2014 at the Registry of this Honourable Court, against it at the Court of Appeal, Lagos Division.

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

Dated this 21st day of February, 2014

_____
Gabriella Ndu, Esq
Counsel for Judgment Debtor/
Applicant/ Appellant
NDU Chambers
5 Leedway Street
Ikoyi, Lagos
TG@Liberty.com

0802222222222

For Service on:
Kene Ajaegbu, SAN
Counsel for Respondent
No. 6 Lekki Drive
Ikoyi

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

SUIT NO: HC/234/014
MOTION NO : _____
APPEAL NO : _____

BETWEEN
AGRICULTURAL BANK PLC …… JUDGMENT DEBTOR/APPLICANT/ APPELLANT
AND
MRS KAYUBA ADA …… JUDGMENT CREDITOR/RESPONDENT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR STAY OF EXECUTION

I, Chineme Gboski, adult, male, businessman, Christian, Nigerian Citizen residing at No. 17 Suru Street, Ikeja, Lagos, do hereby make oath and state as follows:

1. I am the company secretary/ legal adviser to the Applicant company and by virtue of my position I am conversant with the facts deposed to in this affidavit.
2. I have the consent and authority of the applicant to depose to this affidavit.
3. I know that on the 10th day of February 2014, the Respondent obtained judgment in the High Court of Lagos State at the Lagos Judicial Division against the Applicant for the payment of the sum of N7,000,000 (Seven Million Naira) as debt owed, N4,000,000 (Four Million Naira) and N3,000,000 (Three Million Naira) for specific and general damages respectively.
4. A Certified True Copy of the judgment is hereby attached as Exhibit A1.
5. I know that the Applicant filed an appeal on the 15th day of February 2014 at the Court of Appeal, Lagos Division. A copy of the Notice of Appeal is hereby attached as Exhibit A2.
6. Ground 2 of the Notice of Appeal states that the Honourable Court ought not to have ruled in favour of the Respondent on the issue of jurisdiction of the trial court as it was clearly affected by limitation of time.
7. Ground 4 of the Notice of Appeal states that the Honourable trial court erred in law by refusing to admit in evidence the standard compliance certificate issued by the Food and Agricultural Organisation of Nigeria showing that the goods supplied by the Respondent was inferior and unfit for its purpose.
8. The Applicant undertakes to bear cost and damages if the appeal fails or turn out to be frivolous.

9. I swear to this affidavit solemnly and conscientiously believing its contents to be true and correct in accordance with the Oaths Act.

_____
DEPONENT
SWORN TO AT THE HIGH COURT REGISTRY, LAGOS
This _____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATH

APPLICATION FOR STAY OF PROCEEDINGS
IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO: HC/234/014

MOTION NO: _____
APPPEAL NO: _____

BETWEEN
AGRICULTURAL BANK PLC …….
NIGERIAN DEPOSIT INSURANCE CORPORATION …
……APPLICANT/DEFENDANT/APPELLANT
AND

MRS KAYUBA ADA …… CLAIMANT/RESPONDENT

MOTION ON NOTICE

BROUGHT PURSUANT TO ORDER 54 RULE 1 OF 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 for the Applicant may be heard praying this Honourable Court for the following:

1. AN ORDER staying proceedings of this court in the matter pending the determination of the appeal filed against the decision/ruling of this Honourable Court delivered on the 14 day of February, 2014 at the Court of Appeal, Lagos Division.
2. AND FOR SUCH FURTHER OR OTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

Dated this 21st day of February, 2014

_____

Ndu Gabriella, Esq

Counsel for Applicant/ DEFENDANT/ APPELANT

NDU Chambers
5 Leedway Street
Ikoyi, Lagos
TG@Liberty.com
0802222222222

For Service on:
Kene ajaegbu, SAN
Counsel for Respondent
No. 6 Lekki Drive
Ikoyi, Lagos

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

SUIT NO: HC/234/014
MOTION NO: _____
APPPEAL NO: _____

BETWEEN
AGRICULTURAL BANK PLC …….
NIGERIAN DEPOSIT INSURANCE CORPORATION …
……APPLICANT/DEFENDANT/APPELANT
AND

MRS KAYUBA ADA …… CLAIMANT/RESPONDENT

AFFIDAVIT IN SUPPORT OF APPLICATION FOR STAY OF PROCEEDINGS

I, Damian Nnotum, Adult, male, businessman, Christian and Nigerian Citizen residing at No. 60 Zik Avenue, Ikoyi Lagos do hereby make oath and state as follows:

1. I am the Director of Legal Affairs in the Nigerian Deposit Insurance Corporation, the Applicant in this case, and by virtue of which I am conversant with the facts deposed to in this affidavit;
2. I have the consent and authority of the Applicant to depose to this affidavit;
3. I know that on the 14th day of February 2014, the Honourable Court made an order dismissing an application to dismiss the claim for being statute- barred. A certified true copy of the ruling is hereby attached and marked as Exhibit A1.
4. Aggrieved by the decision, the applicant filed an appeal against same on the 20th day of February 2014, to the Court of Appeal, Lagos Judicial Division. A Certified True Copy of the Notice of Appeal is hereby attached and marked as Exhibit A2.
5. I know as a fact that the Applicant is challenging the jurisdiction of the court.

6. I have also read the notice of appeal and Ground 4 of the Notice of Appeal states that the trial court wrongly held that the action fell within the limitation of time.
7. I believe that if the appeal is considered, it will likely dispose of the proceedings in the trial court.
8. The Applicant undertakes to bear cost and damages if the appeal fails or turn out to be frivolous.
9. I swear that affidavit solemnly and conscientiously believing its contents to be true and correct and in accordance with the Oaths Act.

_____
DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY, LAGOS
This ____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATHS

APPLICATION FOR INJUNCTION PENDING APPEAL
IN THE COURT OF APPEAL
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO: HC/234/014
MOTION NO: _____
APPEAL NO:_____

BETWEEN
K & T LTD ……
……APPLICANT/APPELLANT/DEFENDANT
AND
CROWN KITCHEN LTD
……RESPONDENT/CLAIMANT

MOTION ON NOTICE
BROUGHT PURSUANT TO ORDER 45 OF 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 for the Applicant may be heard praying this Honourable Court for the following:

1. AN ORDER FOR INJUNCTION RESTRAINING the Respondent/Claimant FROM ACTING ON THE JUDGMENT OR INTERFERING WITH THE PROPERTY PENDING the determination of the appeal against the JUDGMENT of this Honourable Court

delivered on the 14th day of February, 2014 filed against it at the Court of Appeal, Lagos Division.

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

Dated this 21st day of February, 2014

_____

Ndu Gabriella, Esq
Counsel for Applicant/appellants
NDU Chambers
5 Leedway Street
Ikoyi, Lagos
TG@Liberty.com
0802222222222

For Service on:
Kene ajaegbu, SAN
Counsel for Respondent
No. 6 Lekki Drive
Ikoyi, Lagos

IN THE COURT OF APPEAL
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO: HC/234/014
MOTION NO: _____
APPEAL NO: _____

BETWEEN
K & T LTD ……

……APPLICANT/APPELLANT/DEFENDANT
AND
CROWN KITCHEN LTD ……
RESPONDENT/CLAIMANT

AFFIDAVIT IN SUPPORT OF INJUNCTION PENDING APPEAL

I, Chinedu Chima, Adult, Male, Businessman, Christina, Nigerian Citizen residing at No. 3 Buslane Victoria Island, Lagos do hereby make oath and state as follows:

1. I am the company secretary/legal adviser of K & T Ltd and by virtue of which I am conversant with the facts deposed to in this affidavit.

2. I have the consent, authority and approval of my employer to depose to the facts in this affidavit.
3. I know as a fact from my schedule of duties, that on the 14th day of February 2014, the high court of Lagos State, in the Lagos Judicial Division granted judgment in favour of the respondent/claimant for a declaration that the contract and partnership entered into by the parties is still valid and subsisting. A certified true copy of the judgment is hereby attached as Exhibit A1.
4. I also know as a fact that on the 19th day of February, 2014, the Applicant lodged an appeal against the judgment to the Court of Appeal. A copy of the Notice of Appeal is hereby attached as Exhibit A2.
5. I have read the Notice of Appeal and Grounds 2 and 4 are challenging the judgment and the jurisdiction of the court to entertain the claim.
6. The appeal if considered would likely turn out in favour of the Applicants.
7. If this application is not granted, the Respondents would likely take steps in the execution of the judgment Order which would result in undue hardship to the applicant if the appeal succeeds.
8. If the appeal succeeds, it may be most difficult to recover the vehicles from the respondent as the vehicles may have already been disposed.
9. The Applicant undertakes to bear cost and damages if the appeal fails or turn out to be frivolous.
10. It is in the interest of justice that the Application succeeds;
11. I swear to this affidavit solemnly and conscientiously, believing its contents to be true and correct in accordance with the Oaths Act.

_____
DEPONENT

SWORN TO AT THE COURT OF APPEAL REGISTRY, LAGOS
This ____ day of _____, 2014

BEFORE ME

_____
COMMISSIONER FOR OATHS

IN THE COURT OF APPEAL
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

MOTION NO.: CA/SC/205/2012
APPEAL NO.: CA/AP/161/2012

BETWEEN:
CROWN KITCHEN LTD ……CLAMANT/APPLICANT
AND
K & T LTD ……DEFENDANT/RESPONDENT

COUNTER AFFIDAVIT

I, Emeka Ikemson, male, Nigerian Citizen of No. 50 Ahmadu Close Ikoyi, Lagos State do make Oath and state as follows:

1. I am the Director of Administration with the Respondent and by virtue of my position I am conversant with the facts of this case.
2. I have the consent and authority of the Respondent to depose to this Affidavit.
3. It was true that judgment was given in favour of the defendant/respondent in the High Court of Lagos State.
4. It was true that the Applicant's motion for an order of interlocutory injunction restraining the respondent from converting the 2 vehicles for their use was not granted.
5. The applicant's action was dismissed by the High Court for lack of reasonable cause of action after hearing the suit by the High Court.
6. Thereafter, the Applicant brought the motion for an Order of injunction restraining the respondent from the use of its vehicles at the High Court.
7. It is true that the claimant/Applicant has filed an appeal before this Honourable Court challenging the decision of the High Court of Lagos state.
8. The Applicant has no legal right for this application to be granted.
9. The grant of the Applicant's application will deprive the respondent of the benefit of the fruits of the judgment given in its favour.
10. The Applicant's Appeal against the High Court judgment is not based on substantial grounds likely to succeed.
11. The balance of convenience is more in the respondent's favour, as it would be more prejudiced if the applicant's motion is granted to deprive the respondent from the use of its vehicles.
12. The Applicant has not given adequate security for its grant.
13. I pray that the Applicant's motion for an order of injunction pending the appeal be dismissed.
14. I make this affidavit in good faith believing its content to be true and in accordance with the Oaths Act 2004.

……

Deponent

Sworn to at the Court of Appeal Registry Lagos

This___day of ___ 2014

BEFORE ME

……..

COMMISSIONER FOR OATH

WEEK 16- APPEALS

The focus here is appeals from High Court to the court of Appeal. An appeal is an opportunity for a second and higher court to take a look at the proceedings and decision of the trial court or lower court. The right to appeal is statutory as there is no inherent right of appeal: **ADIGUN V. A.G OYO STATE**

An appeal is an invitation to the higher court to review the decision of a lower court to find out whether on the proper consideration of the facts placed before it and the applicable law, the court arrived at a correct decision: **ADELEKE V OYO HOUSE OF ASSEMBLY**

2 questions for the Appeal court to resolve:

- Was there an error made by the court below
- Was the error material enough to occasion a miscarriage of justice

PARTIES WHO MAY APPEAL IN CIVIL ACTIONS ARE (RIGHT TO APPEAL)

1. Parties (these are those whose names appear on the Court processes on a matter) to an action in the lower court who can appeal as of right
2. A person interested in the judgment to appeal with the leave of Court, either he applies to the trial Court or the appellate Court (interested parties) – 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)

S. 243(a) of the 1999 Constitution as amended,
SGBN LTD. V. AFEKORO and FAWEHINMI V. UBA
NB- PROCEDURE FOR INTERVENER/PERSON INTERESTED.

RIGHT OF APPEAL

For a party to appeal against the decision of the High Court he must have a right of appeal.

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

Thus, either the plaintiff or defendant may exercise a right of appeal but the party appealing must have been aggrieved by the decision.

AWOJOB v. OGBEMUDIA

Appeal to the Court of Appeal may be

a. Appeal as of right
b. Appeal with leave

APPEAL AS OF RIGHT
SECTION 241(1) CFRN 1999 (as Amended)

Appeals lie as of right from the High Court to the Court of Appeal in the following circumstances as provided under **S. 241(1)**. These include;

a. **Final decisions** in any civil proceedings before the High Court sitting at **first instance.**

b. Where the ground of appeal involves questions of law alone (could be a final decision or even an interlocutory decision)
c. Decisions on questions as to interpretation of the constitution.
d. Decisions in any civil proceedings on questions as to whether of the provisions of chapters IV of this constitution has been, is being or is likely to be contravened in relation to person.
e. The liberty of a person or the custody of an infant is concerned
f. Where an injunction or the appointment of a receiver is granted or refused.
g. In the case of a decision determining the case of a creditor and the liability of a contributory or other officer under any enactment relating to companies in respect of misfeasance or otherwise.
h. In the case of a decree nisi in a matrimonial cause or a decision in an admiralty action determining liability.

APPEAL WITH LEAVE

Appeal arising from any circumstance not falling within 241(1) would require the leave of court to appeal.

Appeals must be with leave of Court in the following instances:

1. Appeal against Consent judgment
2. Appeal against judgment as to cost alone**: S. 241(2) of the 1999 Constitution as amended**
3. Double appeal e.g. an appeal against a decision of the High Court sitting on appeal from a decision of the lower Courts, see S. 241(1)(a) of the 1999 Constitution as amended
4. Interlocutory appeals on grounds of facts
5. Persons interested in a matter not been a party to the case,
   S.243 of the 1999 Constitution and MAJA V. JOHNSON

NB=>

To appeal a decision of a High Court made with **CONSENT** of the parties (consent judgment) or as to **COST** only, leave of court is required **S. 241(2)(C)**

THERE IS NO RIGHT OF APPEAL IN THE FOLLOWING INSTANCES:

1. Decision granting an unconditional leave to defend an action
2. Appeal from an Order absolute for the dissolution/nullity of marriage in favour of a party who had time to appeal but had not appealed (however, in practice, once decree absolute is made, no right to appeal)

S. 241(2) (A) & (B) OF THE 1999 CONSTITUTION AS AMENDED
NABHAN V. NABHAN.

NB: When leave is required to be obtained before an appeal is filed, the failure to do so means there is no valid appeal. **OGBECHI V. ONOCHIE**.

THE FOLLOWING ARE NOT REGARDED AS DECISIONS FOR THE PURPOSE OF APPEAL
S. 318 OF THE 1999 CONSTITUTION AS AMENDED.

1. Administrative decision to assign cases, **DIKE V. ADUBA**
2. Minority decision especially in the Court of Appeal
3. Obiter dictum, comments made by the Court not forming the ratio decidendi of the Court

AN APPEAL IS SAID TO BE AS OF RIGHT where the leave of court is not required in that instance. The only requirement under this **HEAD** is that the;

- The decision must be a final decision
- From a High Court sitting as a court of first instance
- There is a right of appeal under this head whether the appeal is on grounds of law or fact or of mixed law and fact.

DISTINCTION BETWEEN FINAL DECISIONS AND INTERLOCUTORY DECISIONS

A FINAL DECISION of a court is that which brings the matters to an end and disposes off the rights of the parties finally.

This is to be differentiated from an INTERLOCUTORY DECISION which merely resolves a particular issue brought by a party during the pendency of the substantive suit.

In **OGUNTIMEHIN v. TOKUBO**, the Federal Supreme Court adopted a proper test for determining whether a decision is interlocutory or final as stated in **BOZINS v. ALTRICHAM UDC (1903)1 K.B. 547** to the effect that. Does the order finally dispose of the rights of the parties? If the order is such, then it is final and not interlocutory.

APPEALS PROCEDURE

The procedure on appeal is provided for in the COURT OF APPEAL RULES 2011

ORDER 6 RULE 2

1. File a Notice of Appeal: **Order 6 Rule 1 CAR**

This Notice of Appeal is in FORM 3 of the 1st schedule to the Court of Appeal Rules 2011.

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 appeal from, a notice of appeal.

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

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): **s24(4) CA Act** – Ct of Appeal shall extend time within which to appeal upon being convinced that there are reasons to extend time e.g. time lapse

CONTENTS OF A NOTICE OF APPEAL

A Notice of Appeal shall state the following –

a. The Grounds of appeal
b. Whether it is the whole or part of the decision of the lower court that is complained of Lin the latter case, specify the part.

c. The exact nature of the relief sought
d. The names and addresses of all parties directly affected by the appeal.
e. Address for service
f. Signature of the appellant of his legal practitioner

NB=> The Notice of Appeal must be **signed by the legal practitioners in his name and** not signed in the name of the firm.
The issue of whether a Notice of Appeal is dated or not is immaterial once it is properly filed.
AYODIA v. YAHAYA

THE RELIEF usually sought is for the appellant court to set aside the decision appealed against and enter judgment for the appellant.

GROUNDS OF APPEAL
They are complaints on an issue of fact or law. A party is bound by his grounds of appeal and can only raise issues from them. Issues raised outside the ground of appeal filed is incompetent and would not be allowed except with leave of court. A notice of appeal that does not contain grounds of appeal is incompetent and will be struck out. Grounds of appeal are to be stated concisely without argument and shall be numbered consecutively and must not be vague. Grounds of appeal must contain particulars
The grounds for appealing a decision of the Courts may be on Law, facts (the evidence adduced) or mixed Law and facts.
The grounds of appeal must arise from the decision of the lower Court and it must affect the decision if considered one way or the other. The grounds may allege:

1. Misdirection
2. Error of Law

Both of the above are considered as appeal on grounds of law.
This means that there is an error of Law or its misapplication to settled facts or its misinterpretation. Ideally a ground of appeal should not allege both misdirection and error in law: **Chidiak v Laguda (1964) ANLR 123** (CT said such ground of appeal is incompetent and should be struck out), **Nwadike v Ibekwe (1986) 4 NWLR** (but later case: do substantial justice and see whether the ground makes sense).
Where grounds of appeal allege misdirection or error in law, the particulars and nature of the misdirection or error must be clearly stated: Order 6 Rule 2(2); Silencer and exhaust pipe co Ltd
Duwin Pharmacy v Beneks Pharmacy case: if the issue could only be raised on appeal, then allowed to be raised on appeal (exception to the rule that no new issue should be raised on appeal) e.g. not practicable to get a document during the initial trial, issue of jurisdiction, decision in higher court was given after decision of lower court which has altered the position of the law

3. The omnibus ground of appeal which is that the decision of the trial Court is against the weight- of evidence. It is an attack on the findings of facts at the trial Court.
It is saying that the trial judge did not consider all the relevant evidence.

It is important to include the omnibus ground when the Record of judgment had not been gotten and digested and on receipt of the Records a counsel can file additional ground of appeal. The omnibus ground is: **"That the decision of the lower court was against the weight of evidence".**

Note that the particulars and nature of the ground of misdirection or error must be stated if not the ground of appeal shall be struck out.
It is only the omnibus ground of appeal that can stand alone without particulars.
It is advisable that the passage of the judgment where the misdirection or error is alleged to have occurred should be quoted.
ORAKOSIN V. MENKITI,
OGBERCHI V. IBEKWE
COMEX V. NAB
NB: The grounds of appeal in a Notice of Appeal cannot be both on misdirection and error of Law at the same time. **CHIDIAK V. LAGUIDA.**

NATURE OF THE GROUNDS OF APPEAL

- A ground of 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 court process.
- **AKEREDOLU v. AKINREMI**
- A ground of appeal is like pleadings in the High Court. Its purpose is to give notice to the other party of the cause he is to meet at trial.
- The appellant is bound by its grounds of appeal.
- He shall not be heard on any ground of appeal not contained in his Notice of appeal; he must obtain leave of the Court to amend his ground or file additional grounds.
- **Order 6 r. 4**
- The appellant court shall not be confined to the grounds set forth by the appellant however shall not in allowing the appeal rest its decision on any ground not set forth by the appellant.
- **0.6 r. 5**
- The grounds of appeal should be set out concisely without any argument or narrative and shall be numbered consecutively.
- **0.6 r. 2(3)**
- Vague grounds of appeal are not permitted except the Omnibus or general ground that the judgment is against the weight of evidence.
- **0.6 r. 3**
- A ground of appeal may allege a misdirection or error in law and the particulars and the nature of the misdirection or error shall be clearly stated.
- **0.6 r. 2(2)**

THE TIME LIMIT FOR COMMENCING APPEALS

The time limit to commence an appeal depends on the decision of the Court been appealed against as follows:

1. Appeal against the final judgment of the Magistrate Court to the High Court- within **30 DAYS** of the delivery of the judgment
2. Appeal against the final decision of the High Court to the Court of Appeal- within 3 **MONTHS** of the delivery of the judgment
3. Appeal against the Court of Appeal decision to the Supreme Court- within **30 Days** of the delivery of the judgment
4. For all interlocutory decisions in any Court to be appealed against- within **14 DAYS** of the delivery of the ruling S. **25**(2) (a) of the Court of Appeal Act.

COMPUTATION OF TIME FOR APPEALING

In computing time, the day the judgment was given is excluding.

Further, time does not begin to run against an appellant until he has notice of the decision he is complaining against.

APPLICATION FOR LEAVE

An application for leave may be made either to the High Court or to the Court of Appeal: Order 7 Rule 4 CAR. You have **14 days** to apply for leave.

Wherever an application can be made either to the High Court to the Court of Appeal, it has to be first made to the High Court except in special circumstances.

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.

0.7 r. 3

Any application to the court for leave to appeal shall be by **Notice of Motion FORM 4, which shall be served on the party or parties affected.**

0.7 r. 2

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** 4);
(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

O. 7 r. 7 of the Court of Appeal Rules 2011

NB:

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

ENLARGEMENT / EXTENSION OF THE WITHIN WHICH TO APPEAL

- By filing a Motion on Notice for extension of time to appeal supported with an affidavit.

- Written address is not needed for applications filed before the Court of Appeal. **O. 4 r. 6 of the Court of Appeal Rules 2011.**
- The Court of Appeal is empowered **under S. 24(9) Court** Appeal Act to extend the period for filing an appeal.
- An appeal filed outside the stipulated time without leave of court is not an appeal and ought to be struck out.
  AWHINAWHI v. OTERI
  The power to enlarge time is vested in the Court of Appeal only. A High Court has no power to grant extension of time within which to appeal – **AKPAN v. EKPO.**

TRINITY PRAYER
This is applicable where an appeal requires leave and the appellant is out of time. It is application for leave in the Court of Appeal must contain 3 prayers viz.

1. Extension of time within which to seek leave to appeal
2. leave to appeal;
3. Extension of time within which to appeal.

PROCEDURE
An application for enlargement of time is made by Notice of motion in FORM 4.

- The Notice is supported by an affidavit setting out good reasons for the failure to appeal within time. The Grounds of appeal should be annexed to the affidavit Order 7 r. 10(2).
  - A copy of the judgment that led to the grounds of appeal should also be annexed to the application.
    UNILAG v. **OLANIYAN**

NB=>

- Where a judgment is given without jurisdiction, it can never be too late to appeal against it. As such, the reason for the doing cases to be a relevant factor to be considered in grant or refusing appeal for extension of time within which to appeal.
  - Where enlargement of time is granted, a copy of the order granting the enlargement of time is to be annexed to the Notice of Appeal.
  - An application for extension of time within which to appeal against a judgment is competent, notwithstanding the execution the judgment.
- **DEEN MARK COURT CO. LTD v. ABIOLA**

SERVICE OF THE NOTICE OF APPEAL
An appeal is deemed to have been **BROUGHT** when a notice of appeal has been filed in the Registry of the Court below.
After filing the Notice of appeal, the Registrar of the High Court will cause copies of the Notice to be served upon each of the parties mentioned in the Notice of Appeal. Thus it is served by the registrar of the High Court.

NB=> The Notice of Appeal is the only process of appeal that needs to be served **PERSONALLY** unless the law provides others.

- **Order** 2 **rule** 1
  Upon service, the Respondent shall within **30 DAYS** of the service of the Notice on him, file in duplicate with the Registrar of the Court below a notice of full and sufficient address for service in such number of copies is the Registrar may require. -0.6 r. **10**(1).

  If the respondent **omits** to do this, it shall not be necessary to serve him other processes in the appeal.-
  0.6 r.10(3).

  SETTLEMENT OF RECORDS OF APPEAL
  After the Notice of appeal is served on the respondent, the Registrar shall (after expiration of time to file address for service) summon both parties to attend before him on a fixed dated for the following purposes.

a. To settle the documents to be included in the record of appeal
b. To fix the amount to be deposited by the appellant for preparing and forwarding the record of appeal.

ORDER 8 RULE 2
Where the parties fail to attend, provided the notice has been duty served on the parties, the Registrar shall proceed to settle and determine the maters stated above.
0.8 r. 3.

RECORD OF APPEAL
This is the whole record compiled from the trial Court to be transmitted to the appeal Court in order to enable the appeal Court determine the appeal.

THE CONTENT OF A RECORD OF APPEAL

1. Index
2. Registrar's statement from the High Court giving brief particulars of the case including a schedule of fees paid
3. Copies of the document settled and compiled for inclusion in the record of appeal
4. A copy of the notice of appeal and other relevant documents filed in connection with the appeal
5. Certificate of service of Notice of Appeal
6. A certificate that the conditions of appeal have been fulfilled
7. 20 copies of the record of appeal
8. A case file in the Court below with all the papers/ documents filed by the parties on the case

O. 8 R. 7 OF THE COURT OF APPEAL
RULES 2011

COMPILATION OF RECORD OF APPEAL
It is to be compiled by any of the following:

1. The Registrar of the trial Court within **60 days** of the filing of the Notice of Appeal

2. If the Registrar failed to do so, then the appellant is to do so within **30** days of the registrar's failure
3. If the appellant have done 2. above, then the respondent is to file an additional record within **15** days in case the appellant did not file all the necessary documents especially those not favourable to his case

O. 8 R. 4 &5 OF THE COURT OF APPEAL RULES

When the Record of appeal has been **ENTERED** at the appellate Court i.e. transmitted to the appeal Court and given an appeal number by the Registrar of the Appeal Court, the trial Court will lack the jurisdiction to entertain any application made to it on the case which is now on appeal.

It is the Court of Appeal that has full jurisdiction on the appeal and so all further applications in respect to the appeal must be brought before the Court of appeal.

O. 4 r. 10 & O. 7 r. 11 of the Court of Appeal Rules and OGUNREMI V. DADA.

RESPONDENT'S NOTICE

- This is filed by the successful party/judgment creditor in a case asking the Appeal Court to vary or uphold the judgment on other grounds than the lower/trial Court did: Order 9 Rule 1&2
- **See Forms 10 A & B of the Court of Appeal Rules.**
- Nb=> A respondent who seeks the reversal of an adverse finding can only do so by way of a Notice of Appeal or Cross-appeal.
- **IKEDAMA** v. **ORILSEYE**: Before a respondent's notice to vary can be filed, an appeal must have been filed and served by the unsuccessful party.
  A respondent should not ask for a variation where he is, for example contesting the whole proceeding -**LCC** v. **AJAYI**
  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.
- A respondent's notice to affirm a decision of a lower court cannot co-exist with a notice of appeal (cross-appeal) in the same case. Such would amount to an abuse of court process.
- This a party does when served with a notice of Appeal, as a successful party cannot appeal against a judgment rather he is to defend the judgment of the lower Court.
- This cannot be used in any adverse position to the judgment rather the respondent is to use a cross appeal if he intends to do so.
- 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** days; and
b. in any other case within **thirty** days, after the service of the notice of appeal on the respondent.

O. 9 r. 4 of the Court of Appeal Rules 2011; Williams v Daily Times (1990) 1 NSCJ 15

- **CROSS- APPEAL**

- This is filed by the Respondent in the appeal challenging the judgment too on other grounds. **ELIOCHIN V. MBADIWE**
- A Notice of Appeal is independent so also is a cross Appeal.
- A cross appeal does not strictly depend upon an appeal having been filed. Any person who has a judgment in his fair but wishes to reverse the judgment or parts of it, can cross appeal without waiting to be served with a notice of appeal by the unsuccessful party.-**OGUMA V. IBWA**

CIRCUMSTANCES WHERE CROSS APPEAL IS NECCESSARY

A respondent may usually cross appeal under the following circumstances.

i. There were several causes of action and he is dissatisfied in determination of some of them.

ii. There are several parties and he wishes to contest the decision in respect to some of these parties who have not appealed;

iii. He decides to appeal against a decision affecting only one or other of a number of consolidated quits.

v. He desires to question the jurisdiction of the court below **LCC** v. **AJAYI** (Supra).

1

- The procedure for filing a cross appeal is the same as that 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.

CROSS APPEALS

A respondent served with a notice of appeal may himself appeal against the same decision. This is called a cross-appeal.

NOTICE OF PRELIMINARY OBJECTIONS

This is filed by the **Respondent** in an appeal 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.

The **FORM** used for this purpose is **FORM 11**
0.10

BRIEF OF ARGUMENT

Appeals are heard in the Court by filling and adoption of Brief of Arguments.

Brief writing was first introduced at the **Supreme Court in 1977 by** the Supreme Court Rules 1977 while the Court of Appeal in **1984 INTRODUCED IT BY THE COURT OF APPEAL (AMENDMENT) RULES 1984.**

JOINT BRIEFS OF ARGUMENT

All parties whose interests are identical or joint shall file **joint** briefs, and **separate briefs** may be filed only by those parties whose interests are separate or are in conflict.- **O. 18 R. 1- 8 OF THE COURT OF APPEAL RULES 2011.**

TIME LIMIT FOR FILING BRIEFS OF ARGUMENT

The appellant has **WITHIN 45 DAYS** after the transmission/receipt of the Record of Appeal from the court below to file his Brief of argument.
ORDER 18 RULE 2

The respondent shall **WITHIN 30 DAYS** of the service of the brief for the appellant on him file the Respondent's brief which shall be duly endorsed with an address for service.
0.18 R. 4

The appellant may also if necessary, **WITHIN 14 DAYS** of the service on him of the Respondent's brief file and serve the respondent a **REPLY BRIEF** which shall deal with all the **new points** from the respondent's brief.

Order 9 practice Direction 2013 in relation to interlocutory appeals – required to file appellant's brief within 14 days of transmission/receipt of the record of appeal. Required to file Respondent's brief is within 10 days of the service of the appellant's brief on him

CONSEQUENCE OF FAILURE TO FILE BRIEF

Where the appellant fails to file his brief within the time provided or as extended by the court, the respondent may appeal to the court for the appeal to be dismissed for want of prosecution.
If the Respondent fails to file his brief, he will not be heard in oral argument.
Where an appellant fails to file a Reply Brief within time specified, she shall be deemed to have conceded all the new points arising from respondent's brief.
0.18 r. 10
KRAUS THOMPSON ORG. v. NIPSS

ORAL ARGUMENT

Oral **argument** will be allowed at the hearing of appeal to emphasize and clarify the written argument appearing in the briefs already filed in court.
Unless otherwise directed, **40 MINUTES** shall be allowed for argument on each side.
0.18 R. 9

CONTENTS OF A BRIEF OF ARGUMENT

The Court of Appeal in **ARCHBODE ENGINEERING LTD** v. **WATER RESORUCES HYDRO TECHNIQUE** W.**AG** (1985) set out the contents of a Brief.

1. The court in which the appeal is to be argued
2. Appeal number
3. Parties to the appeal
4. Title of the brief
5. Table of contents
6. Introduction or preliminary statements
7. Issues for determination
8. Statements of facts
9. Legal arguments
10. A numbered summary of the point to be raised and the reasons upon which the argument is founded **– 0.18 r. 3(4).**
11. The conclusion
12. List of authorities
13. The signature of the author of the Brief
14. Addresses for service

THE **ISSUE FOR DETERMINATION** derive from the grounds of appeal. These are questions necessary for the determination by the court and which will normally affect the result of the appeal. They must relate to the grounds of appeal. Several grounds of appeal may raise one issue or one ground may raise an issue.
Where an issue raised in the brief does not relate to ground of appeal, it is incompetent and would be struck out**. OSINUPEBI v. SAIBU.**
If you have 3 grounds of appeal, cannot have 4 issues for determination. You can have less but not more issues for determination. ***Note: state from which ground in the notice of appeal each issue for determination arises from (Supreme CT)***

AMENDMENT OF NOTICES
A Notice of appeal may be amended by or with the leave of court at any time: **ORDER 6 r. 15**

A Respondent's notice may be amended by or with the leave of court at any time: **0.9.R 7.** A notice of appeal **cannot** be amended where the only ground of appeal is **incompetent**. **AKINLOYE V. ADELAKUN**

PROCEDURE
This can be done by filing a **Motion** on Notice supported with an affidavit **exhibiting** the proposed 'Amended Notice of Appeal/Cross Appeal'.
If the Respondent wants to object, he should file a **Counter** affidavit.

WITHDRAWAL OF AN APPEAL
An appellant may **withdraw** an appeal at any time before it is called for hearing.
Where withdrawal is **unilateral**, the appellant shall **serve** on the parties to the appeal and file with the **Registrar** a **Notice** to the effect that he does not intend to prosecute the appeal any further. **FORM 12**
ORDER 11 RULE 1

Where all the parties to the appeal **consent** to the withdrawal of the appeal without an order of the court, the appellant may file in the Registry documents signifying such consent **FORM 13 – 0.11 .r. –2.**

EFFECT OF WITHDRAWAL

Withdrawal of appeal with consent of parties is a bar to further proceedings.

Withdrawal without consent – appeal shall remain on the list and shall come for hearing of any issue remaining outstanding between the parties or as to costs.

NON –APPEARANCE OF THE PARTIES

A party may before hearing, file a **declaration** in writing that he does not need to be present in person or represented by counsel at hearing

FORM.

NB: if lawyer files brief but does not appear on the day for appeal, it is deemed that he has adopted his brief of argument.

COURT OF APPEAL MEDIATION PROGRAMME

For appeals of purely civil nature relating to

a. Liquidated money demand,
b. Matrimonial causes,
c. Child custody etc; any time before appeal is set down for hearing, upon request of any of the parties the Court of Appeal may refer the appeal to **Court of Appeal Mediation Programme (CAMP).**

ORDER 16

FORM 6

When the court refers an appeal to the Court of Appeal Mediation Programme (CAMP) the appeal shall be adjourned to a definite date for the outcome of the mediation between the parties.

0.16 R. 2.

Where any of the ADR mechanism adopted is successful, the court shall adopt the agreement reached by the parties as the judgment of the Court where such ADR mechanism fails, the appeal shall be set down for hearing.

0.16 R. 4

NOTICE OF APPEAL

IN THE COURT OF APPEAL
HOLDEN AT ABUJA

SUIT NO: HC/AJ7/2010
APPEAL NO: ……

BETWEEN:
AGRICULTURAL BANK PLC ……
DEFENDANT/APPELLANT AND
MRS KAYUBA ADA …… PLAINTIFF/RESPONDENT

NOTICE OF APPEAL

TAKE NOTICE that the Defendant /Appellant being dissatisfied with the ruling of the High Court of the Federal Capital Territory Abuja sitting at the Federal Capital Territory, Abuja contained in the judgment of Hon. T. J. Stanley dated the 17th day of October, 2014 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 reliefs 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.

PART OF THE DECISION OF THE LOWER COURT COMPLAINED OF: The whole ruling/ judgment including the award of costs.

GROUNDS OF APPEAL
Ground One
The trial judge erred in law when he held that there was no breach of contract.
PARTICULARS OF ERROR
1. The trial judge held that there was no implied term as to merchantability of the goods supplied.
2. The trial judge failed to evaluate the evidence of the defendant to prove an implied term of merchantability as provided in the Sales of Goods Act 1891.

GROUND TWO
The trial judge misdirected himself in law when he proceeded to award to the plaintiff the judgment sum of ₦14m.
PARTICULARS OF ERROR
1. There was no credible and legally admissible evidence before the Court to justify the award of damages of ₦14m to the plaintiff.
2. The judgment sum awarded to the plaintiff was unreasonable as items of special damages were not sufficiently particularized and proved strictly.
3. The award of the judgment sum of ₦14m to the plaintiff on the heads:
   (i) Contract balance
   (ii) Special damages
   (iii) General damages
   were neither proved nor specially proved by the plaintiff.

GROUND THREE
The learned trial judge misdirected himself in law when he proceeded to enter judgment in favour of the plaintiff to the sum of ₦14m when the plaintiff could not discharge the burden of proof as provided by Section 134 of the Evidence Act 2011.

PARTICULARS OF ERROR

1. Exhibit D (Witness' deposition on oath) was unchallenged by the plaintiff/respondent.
2. PW1's evidence was grossly at variance with the statement of claim.
3. PW2's (expert witness') evidence was inconsistent with his deposition on oath.

Ground Four

The judgment is against the weight of evidence adduced at the trial.

RELIEFS SOUGHT FROM THE COURT OF APPEAL

1. An order setting aside the decision of the High Court of the FCT Abuja delivered by Hon. T. J. Stanley on the 17th day of October, 2014 and thus allowing the appeal.
2. An award of ₦2m as costs of litigation.

PERSONS DIRECTLY AFFECTED BY THE APPEAL

1. Agricultural Bank Plc, No. 25, Hopewell Street, Area 1, Garki, Abuja.
2. Mrs. Kayuba Ada, No. 16, BarigaClose, Wuse, Abuja.

……

NDU GABRIELLAESQ.
FOR NDU CHAMBERS, Lagos.

FOR SERVICE ON RESPONDENT:
Mrs. Kayuba Ada No. 16,
BarigaClose, Wuse, Abuja.

MOTION ON NOTICE FOR EXTENSION OF TIME TO APPEAL SUPPORTED WITH AN AFFIDAVIT

-

IN THE COURT OF APPEAL
HOLDEN AT ABUJA

SUIT NO: HC/AJ7/2010
APPEAL NO: ……..

BETWEEN:
AGRICULTURAL BANK PLC ……..
DEFENDANT/APPELLANT/APPLICANT AND
MRS KAYUBA ADA …… PLAINTIFF/RESPONDENT

NOTICE OF MOTION FOR EXTENSION OF TIME TO APPEAL BROUGHT PURSUANT TO ORDER 7 RULE 10 OF THE COURT OF APPEAL RULES 2011 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 March 2012 at the hour of 9 O'clock in the forenoon or so soon thereafter as Counsel for the Defendant /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 2011.
2. **AN ORDER** deeming the Exhibit B to wit: Notice and grounds of appeal as properly filed and served on the Respondent.
3. **AND FOR SUCH FURTHER OR OTHER ORDERS** as the Honourable Court may deem fit to make in the circumstances**.**

DATED THIS 12TH DAY OF MARCH, 2012

……..
Moses Abu Esq.
Counsel to the Defendant/Appellant
Whose address for service is
Group Eight Chamber

FOR SERVICE ON:
Plaintiff/Respondent

IN THE COURT OF APPEAL
HOLDEN AT ABUJA

SUIT NO: HC/AJ7/2010
APPEAL NO: ……..

BETWEEN:
AGRICULTURAL BANK PLC ……
DEFENDANT/APPELLANT/APPLICANT AND
MRS KAYUBA ADA …… PLAINTIFF/RESPONDENT

AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION FOR EXTENSION OF TIME TO APPEAL I, Edward Igomu, Male, Adult, Nigerian Citizen of no. 15 kent street, Garki Abuja do make oath and state as follows:

1. That I am the Managing Director of Agricultural Bank Plc and by virtue of which I am conversant with the facts of the case.
2. That I have the consent and authority of the Appellant to depose to this affidavit.
3. That the Defendant/Appellant/Applicant retained the services of Ocheme Douglas Esq. who represented the company in the suit at the trial Court.
4. That the Attorney's fees had all been paid for his services.
5. That after the judgment was delivered on the 17th day of October 2011, the Defendant Appellant instructed its Attorney to appeal against the decision of the Court below.
6. That the attorney there after travelled out to the United Kingdom for two months, thus was unavoidably absent.
7. That on his return on the 7th day of January 2012, he was met with a letter of reminder from the Defendant/Appellant on the pending instruction to a[appeal.
8. That knowing that he will not be stable in Nigeria, sent the Defendant/Appellant Letter of his withdrawal on the instruction dated the 15th day of January 2012.
9. That based on the letter received, the Defendant/Appellant started the process of engaging an external solicitor to handle the appeal.
10. That the Board Resolution appointing Moses Abu Esq. to prosecute the appeal was made on the 9th day of March, 2012.
11. That the Defendant/Appellant's grounds of appeal are that the decision of the lower Court was arrived at on an ERROR OF LAW and the Court MISDIRECTED itself at paragraph 45 of the Judgment marked Exhibit A1.
12. That the Notice and grounds of Appeal is annexed to this affidavit as Exhibit B which discloses substantial issues for determination likely to suuceed.
13. That it is in the interest of justice to grant the Defendant/Appellant's Application for `extension of time within which to appeal.
14. That I depose to this affidavit in good faith and believing its content to be true and correct and in accordance with the Oaths Act cap. O LFN 2004

……
DEPONENT

Sworn to at the High Court of FCT Registry Abuja
This ….. Day of March 2014.

BEFORE ME

COMMISSIONER OF OATHS

BRIEF OF ARGUMENT

-

IN THE COURT OF APPEAL
SITTING AT ABUJA

SUIT NO: HC/AJ7/2010
APPEAL NO: ……..

BETWEEN:
AGRICULTURAL BANK PLC ……
DEFENDANT/APPELLANT
AND
MRS KAYUBA ADA …… PLAINTIFF/RESPONDENT

APPELLANT'S BRIEF OF ARGUMENT

1.0 INTRODUCTION/PRELIMINARY STATEMENT

This is an appeal against the judgment of the High Court of the FCT Abuja delivered on 17th October, 2014 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 counselling certificate.

The Notice of Appeal was served on the Plaintiff/Respondent on the 12th day of March, 2012. In the Notice of Appeal, the Appellant raised four (4) grounds of Appeal.

2.0 ISSUES FOR DETERMINATION

My Lords, from the 4 grounds of appeal in the Notice of Appeal, the following issues are humbly submitted for the determination of this Appeal:

1. Whether the trial judge was right in holding that there was no breach of contract by the plaintiff/respondent.
2. Whether the trial judge was right in awarding the plaintiff/respondent the sum of ₦7m as balance of contract sum.
3. Whether the award of ₦4m as special damages and ₦3m as general damages to the plaintiff was proved in evidence.
4. Whether the judgment was not against the weight of evidence adduced at trial.

3.0 FACTS RELEVANT TO THE APPEAL

The plaintiff called two witnesses, an expert witness and her (plaintiff's) secretary. The defendant called one witness, Mr. Tony (the company's sales manager). After adopting his deposition on oath, PW1, the plaintiff's secretary was cross-examined and she testified that she was not in Malaysia when the goods were delivered. PW2, the expert witness, also adopted his deposition on oath but on cross-examination

could not prove his expertise and even posited that "Cashew nuts can be exported while still fresh".

The defendant called one witness, the company's sales manager, who after adopting his deposition on oath and on cross-examination testified that he received notification from the Malaysian company that the goods were not of merchantable quality as specified in the agreement marked as Exhibit A.

4.0 LEGAL ARGUMENTS

4.1 On Issue One

The trial judge erred in law in holding that there was no breach of contract.

It is trite law that for there to be a valid contract, there must be offer, acceptance, consideration and intention to enter legal relations. And that acceptance must be based on the terms of the offer which terms include the implied law position that the goods must be of merchantable quality; that the breach of this implied law term will entitle the innocent party to determine the contract. See the case of **Gonzee (Nig.) Ltd v. NERDC (2005) 13 NWLR (PT 943) p. 634.**

In the instant case, Exhibit A which is the agreement of the contract between the parties expressly provided that the goods must be of merchantable quality. Also, the evidence of DW1 was neither controverted nor challenged.

4.2 ON ISSUE TWO

The trial judge erred in law by awarding the plaintiff a sum of ₦7m as contract balance. Having established the fact that there was a fundamental breach of the implied law term that the goods must be of merchantable quality, a breach of which entitles the innocent party to determine the contract. The plaintiff is not entitled to the balance of the contract sum since the defendant has lawfully determined the contract. See the case of **Gonzee (Nig.) Ltd v. NERDC (supra).**

4.3 On **ISSUE THREE**

The award of ₦4m as special damages and ₦3m as general damages was not proved in evidence. The law is that special damages must be strictly proved while general damages are awarded at the discretion of the Court and such discretion must be exercised judiciously and judicially based on credible evidence and upon a sound assessment. So that where the trial Court acted under a mistake of law and disregarded relevant facts in awarding general damages, such award will be set aside on appeal. See the case of **FBN v. Excel Plastic Industry Ltd (2003) 13 NWLR (Pt 837).**

In the instant case, the plaintiff did not specifically prove any circumstances entitling the plaintiff to the award of special damages. Also, the award of general damages was speculative and sentimental as opposed to a sound assessment based on the evidence adduced.

4.4 ON ISSUE FOUR

The judgment of the trial Court was against the weight of evidence. The law is that judgment should be given based on evidence adduced and in civil cases, the standard of proof is on the preponderance of evidence. See **Section 134 of the Evidence Act 2011.**

In the instant case, the testimony of the plaintiff's expert witness was discredited on cross examination. PW1's testimony on cross-examination was at variance with the plaintiff's statement of claim, whereas the defendant's witness's evidence was unchallenged and uncontroverted.

5.0 CONCLUSION

This Honourable Court is therefore urged to resolve all these issues in favour of the Defendant/Appellant, grant the reliefs sought and allow the appeal in that:

1. The trial judge erred in law in holding that there was no breach of contract.
2. The trial judge erred in law by awarding the plaintiff a sum of ₦7m as contract balance.
3. The award of ₦4m as special damages and ₦3m as general damages was not proved in evidence.
4. The judgment of the trial Court was against the weight of evidence.

LIST OF AUTHORITIES:

JUDICIAL

Gonzee (Nig.) Ltd v. NERDC (2005) 13 NWLR (PT 943) p. 634.
FBN v. Excel Plastic Industry Ltd (2003) 13 NWLR (Pt 837).

STATUTORY

Section 134 of the Evidence Act 2011

DATED THIS ___day of ___, 2014

Gabriella Ndu Esq.
Counsel to the Defendant/Appellant
Whose address for service is
Group Eight Chambers

FOR SERVICE ON:

Plaintiff/Respondent
c/o Counsel, Group 3
Chambers

1. **Assuming that the parties in case study 2 had entered into an agreement and filed terms of settlement which was entered as the judgment of the trial court on the 17th October, 2010 but the defendant has just briefed you today, 9th March, 2011 to appeal against the judgment –**

   a. **Draft all the necessary processes for the proper commencement of the appeal or in opposition to such processes as the case may be: Trinity prayers, notice of appeal**

   b. **Draft your brief of argument in respect of the substantive appeal.**

TRINITY PRAYERS

IN THE COURT OF APPEAL
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

APPEAL NO:……
SUIT NO: LD/24/09

BETWEEN:
K&T LIMITED…….. APPELLANT/APPLICANT
AND
CROWN KITCHEN LIMITED……CLAIMANT/RESPONDENT

MOTION ON NOTICE
BROUGHT PURSUANT TO ORDER 7 RULE 1 and ORDER 7 RULE 10 OF THE COURT OF APPEAL RULES 2011

TAKE NOTICE that this Honourable Court will be moved on the 11th day of March 2014 at the Hour of 9' o clock in the forenoon or so soon thereafter as Counsel may be heard on behalf of the Appellant\Applicant herein praying the court for the following orders:

1. **AN ORDER OF COURT EXTENDING TIME** within which the appellant/applicant may seek leave to appeal against the interlocutory decision of the high court of Lagos state delivered by HON justice XYZ on the 12th day of February 2014 with suit no____
2. **AN ORDER SEEKING LEAVE** of the Court to appeal against the interlocutory order of the Lagos State High Court delivered by Hon Justice XYZ delivered on the 12th day of February 2014 with suit no LD/2012/025
3. **AN ORDER OF COURT EXTENDING TIME** within which the appellant/applicant may appeal against the interlocutory order of the Lagos State High Court delivered by Hon Justice XYZ on the 14th of February 2014
4. **AN ORDER DEEMING** the Exhibit B to wit: Notice and grounds of appeal as properly filed and served on the Respondent.
5. **AND FOR SUCH ORDER OR FURTHER ORDERS** this Honourable Court may deem fit to make in the circumstance.

GROUNDS FOR THE APPLICATION

1. The judgment was delivered on the 12th day of February 2014 by HON JUSTICE XYZ.
2. The applicants time to appeal has lapsed
3. The applicant is thus out of time to file his appeal
4. The CAR rules 2011 permits a party to apply for extension of time in the circumstances.

DATED THIS __DAY OF MARCH 2014.

_____
AILERU YINKA
Appellant's Solicitor
Group Six Chambers
Nigerian Law School
Victoria Island, Lagos.

FOR SERVICE ON:
Victor Osiri SAN
Claimant/Respondent's Solicitor
Group 1 and Co
Nigerian Law School
Victoria Island, Lagos.

IN THE COURT OF APPEAL
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

APPEAL NO:……
SUIT NO: LD/24/09

BETWEEN
K & T LIMITED…… APPELLANT/APPLICANT
AND
CROWN KITCHEN LIMITED…… RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION ON NOTICE FOR EXTENSION OF TIME TO SEEK LEAVE FOR FILING APPEAL

I, Musa Ade Okoro, Male, Muslim, Nigerian, Adult, of 10, Awolowo Road Ikoyi, Lagos State do make Oath and state as follows:

1. That I am a Managing Director of the Appellant, by virtue of which I am conversant with the facts of this case.
2. That I have the authority of the Respondent to depose to this affidavit
3. That the Claimant/Respondent instituted an action against the Defendant/Appellant/Applicant before the Lagos State High Court.
4. The trial Judge in an interlocutory judgment delivered on the 12th day of February 2014, entered judgment against the Defendant/Appellant/Applicant. A Certified True Copy of the judgment certificate is annexed to this motion and marked "Exhibit A".
5. The Defendant/Appellant/Applicant not being satisfied with the judgment was desirous of appealing against same.
6. On the 15th day of February 2014, the director of legal services of the applicant was involved in a ghastly motor accident on the third mainland bridge lagos and was hospitalized at LUTH from the 17th to 27th February 2014 hence he could not instruct the solicitor, Miss Gabriella Ndu to file an

appeal on time on the company s behalf. Attached and marked Exhibit A is a copy of his medical report

7. I was informed by our counsel, miss Gabriella Ndu at_____ at about 12pm whom I verily believe that

a. The appeal is to be filed by the leave of Court in accordance with the provisions of law.
b. The time allowed by the Court has elapsed.

8. The Notice of appeal is herewith attached and marked as “Exhibit B”.
9. It will be in the interest of justice if this application is granted.
10. I make this solemn declaration conscientiously and in good faith, believing same to be true and in accordance with the Oaths Act 2004.

_____
Deponent

Sworn to at the High Court Registry, Lagos State
This……..day of ……2013

BEFORE ME

……..
COMMISSIONER FOR OATH

WEEK 17: RECOVERY OF POSSESSION OF PREMISES

APPLICABLE LAWS

THE APPLICABLE LAWS

ABUJA

- Recovery of Premises Act Cap 544 LFN Abuja 1990
- High Court Rules Abuja.

LAGOS

- **TENANCY LAW OF LAGOS STATE 2011 –** applies to residential and business premises but it doesn't apply to the whole of Lagos (doesn't apply to Ikeja GRA, Victoria Island, Ikoyi, Apapa and houses owned and operated by educational institutions, hospitals, care/hospice facilities, emergency shelters).
- **MAGISTRATES COURTS LAW OF LAGOS STATE 2009**

  S. 28(1)(b)-Gives Magistrates' Courts the jurisdiction over tenancy matter.
- High Court Civil Procedure Rules of Lagos State
- **NOTE:**

  Rent control and Recovery of Residential Premises Law of Lagos State 1997 is no longer applied by the courts even though it was not expressly repealed by the Tenancy Law.

  The Rent Tribunals (and Transfer of Functions) Law 2001 has been expressly repealed by **S. 48 Tenancy Law 2011.**
- **Recovery of Premises Law CAP 118 Laws of Lagos State:** applies to business premises in those areas excluded under Tenancy Law Lagos State 2011
- Common law principles in respect of landlord and tenant and principles of contract are applied in residential area in those areas excluded under Tenancy Law Lagos State 2011
- S2 Recovery of Premises Act Abuja and s2 Recovery of Premises Law Lagos State – land without building (includes vacant land). In some other jurisdictions, their own definition does not include vacant land

SCOPE AND APPLICATION OF THE LAGOS STATE TENANCY LAW 2011

It applies to residential and business premises.

EXEMPTED AREAS

However, it doesn't apply to all areas in Lagos.

1. Apapa,
2. Ikeja GRA,
3. Ikoyi
4. Victoria Island

EXEMPTED PREMISES

Section 1(3)

The law shall not apply to

a. Residential Premises owned or operated by an education institution for its staff and students.
b. Residential premises provided for emergency shelter
c. Residential premises in a care or hospice faculty or in a public or private hospital or a mental health facility.
d. Residential premises for providing rehabilitative and Therapeutic treatment.

The OBJECT of the various laws is to regulate the relationship between Landlord and Tenant and to

a. Prevent arbitrary increase in rent
b. Prevent unlawful ejection of tenants
c. Prevent illegal holding over by tenants

COURTS WITH JURISDICTION

FOR ABUJA,

- Recovery of possession cases go to the (**DISTRICT) COURTS** and **HIGH COURTS**.
- Customary courts do not have jurisdiction in this regard

SECTION 2 RECOVERY OF PREMISES ACT ABUJA

AKPAN V. JULIUS BERGER PLC

FOR LAGOS;

The courts with jurisdiction are the

- Magistrate courts
- High Courts.

WHAT DETERMINES JURISDICTION

The determining factor is the **Annual Rental Value where** the annual rental value is within the jurisdiction of the Magistrates Court,

It can entertain the matter **EVEN THOUGH THE CLAIM FOR ARREARS AND MESNE PROFIT IS HIGHER THAN THE COURT'S JURISDICTION**

WHO IS A TENANT?

A tenant includes a sub-tenant or any person occupying any premises whether on payment of rent or otherwise but does not include a person occupying under a bonafide claim to be owner.

S. 2 Recovery of Premises Act

S. 17 TL

Stated to be too wide a definition as appears to include squatters

A SUB-TENANT is deemed for the purposes of the Law to be the tenant of the Landlord.

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.

WHO IS A STATUTORY TENANT

He is a person who holds over premises after his tenancy has expired.

SULE V. NIG. COTTON BOARD

A SERVICE TENANT could servant or any employee given residential accommodation in his official capacity as long as he is still in the service of his employer.

Whether a **service tenant** or service occupant, he is a **LICENCEE** and no need to serve him notices: **CHUKWUMA v. SPDC**

DIFFERENCE BETWEEN A SERVICE TENANCY AND SERVICE OCCUPANCY

Service occupancy is when a premise 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,

cf. S. 13 of the Tenancy Law which provided for **7 days Notice of owner's intention to recover the premises** and recourse to the Courts to recover same- **ODUYE V. NIG. AIRWAYS** .

TYPES OF TENANCIES

TENANCY AT WILL

Here the tenant stays in a property with the consent of the landlord for no fixed time. It could be determined at anytime by the landlord.

ODUTOLA V. PAPERSACK (NIG.) LTD.

TENANCY AT SUFFERANCE

The tenant is initially lawfully occupying the premises but later holds it without the consent of the Landlord because the tenancy has been determined.

The tenant can be evicted by the Landlord and treated as a trespasser. In that case, he cannot sue the landlord for wrongful/unlawful ejection.

PERIODIC TENANCY

It is a tenancy for a fixed term, e.g. yearly, monthly, weekly etc. It has an inherent renewal at the expiration of the term granted.

It can only be determined by issue of Notice to quit.

S. 13 OF THE TENANCY LAW OF LAGOS STATE

S. 8(3) OF THE RECOVERY OF POSSESSION OF PREMISES ACT

GAND V. JUBBER.

STATUTORY TENANCY

This is a person/tenant staying on a premise under the protection of the Law. Example is a licensee entitled to 7 days Notice of owners' intention to recover possession of premises.

This usually arises when the agreed term of tenancy has expired and the tenant retains possession.

S. 13 of the Tenancy Law

PAN ASIAN AFRICAN CO. LTD V. NICON

AP V. OWODUNMI.

TENANCY BY ESTOPPEL

Here a person, who takes premises from another as a landlord, is stopped from denying that fact that a landlord/tenant relationship exist. **UDE** V. **NWARA**

LICENSEE

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.

CHUKWUMA V. SHELL PETROLUEM DEV. LTD

NWANO V. FCDA

A LICENCEE is **not a tenant within the meaning of the law** and is therefore not entitled to the statutory notices or the protection by the recovery law

TYPES OF LICENSEES

A licensee may be any of the following types:

a. Bare license

He is to be given 7 days Notice before the property in his possession is recovered.

b. Contractual license

   This is regulated by the agreement of the parties

c. License coupled with an interest

   The license cannot be terminated until the condition or interest on which it was made has been satisfied or exhausted.

PROCEDURE FOR THE RECOVERY OF PREMISES

1. Lawyer should get instructions in writing. Obtain written letters of authority from the landlord to act: **COKER V. ADETAYO (1992) and BALOGUN V. LEBD**
2. Issue a Notice to Quit to the tenant: the length of the notice (s13 Tenancy Law Lagos 2011, s7 Recovery of Premises law Lagos, s7 Recovery of Premises Act Abuja and under common law). Form TL2 and Form TL3 (Tenancy Law Lagos). TL2 (if Notice to quit signed by landlord) but TL3 (if notice to quit is signed by legal practitioner or an agent). RPL Lagos: Form B, C, D (landlord, solicitor/agent, landlord asking tenant to quit the lodgings) RPA Abuja: B, C, D (landlord, solicitor/agent, landlord asking tenant to quit the lodgings). If parties did not make any contrary agreement, if a tenant at will, then a week's notice; if monthly tenant, a month's notice; if quarterly, 3 months notice; if half yearly 3 months notice; if yearly, 6 months; if above a year 6 months notice
3. If the tenant still retains possession, serve him with a Notice of Owner's Intention to recover possession

   NB- The procedure **for recovery of premises is technical and strict**, a breach of it will result in a **nullity of the proceeding**

DETERMINATION OF TENANCIES

NOTICE TO QUIT

It is used to determine a tenancy still subsisting before taking steps to recover the premises. There is no need to serve a Notice to quit on the tenant if the tenancy has expired long ago. See **S. 13 OF THE TENANCY LAW,LAGOS 2011.**.

For example, **a monthly tenant is in arrears for 6 months** so there will no need to serve a Notice to Quit as it has been terminated by operation of Law.

WHO CAN ISSUE NOTICE TO QUIT

a. The Landlord himself

b. An agent of the Landlord duly authorised.

Question =>Is the Landlord's authority required in writing?

Where a Landlord's agent whether a solicitor or not must be authorised in writing by the Landlord.

AYIWOLT v. AKOREDE

Some authorities have held that the requirement of written authority applies only to the notice of intention to recover possession.

NIANOA v. ALAKE

However, **in COKER v. ABETAYO,** the Court of Appeal held that the requirement of written authority applies to both notice to quit and of intention to recover possession.

Any notice issued by the agent without prior authority cannot be subsequently ratified.

S. 2 of the Recovery of Premises Act,

S. 47 of the Tenancy Law

OLUSI V. SOLANA.

FORMS OF NOTICE TO QUIT

It must be in writing and not orally.

The Forms are merely directory and can be modified.

ADEJUMO V. DAVID HIGHES.

FOR LAGOS;

File

FORM TL 2 signed by the Landlord

FORM TL 3 signed by the solicitor

- SECTION 13 TENANCY LAW 2011

FOR ABUJA;

UNDER S. 7 RECOVERY OF PREMISES ACT;

file

FORM B signed by the Landlord himself

FORM C signed by the solicitor

FORM D signed by the Landlord to a person Lodging

WHEN DOES A NOTICE TO QUIT TERMINATE?

IN ABUJA

When a Notice to Quit is given in **ABUJA**, it must terminate **AT THE EVE OF** or **ON THE ANNIVERSARY OF THE COMMENCEMENT OF THE TENANCY.**

EXAMPLE- if the tenancy ends on 31st December, the 6 months notice must be served latest on June 30th so as to cover six calendar months from July to December 30th: **PAPER SACK (NIG) LTD v. ODUTOLA**

IN LAGOS,

IF IT IS 3 MONTHS OR 6 MONTHS NOTICE to quit, the notice need not terminate on the anniversary of the tenancy but may **TERMINATE ON OR AFTER THE DATE OF EXPIRATION** of the tenancy regardless of when it must expire.

-**OYEKOYA V. G.B OLIVANT**.

S.13(4) LSTL 2011

PLEASE NOTE CAREFULLY

- The **last date** to issue Notice to quit for it to be valid **if it is a yearly tenancy is 6 months full before the expiration of the Tenancy.**
- Please do not back date a Notice to Quit.
- Ensure that the statutory period is adequately covered by the Notice to quit. The insertion of a wrong date invalidates the notice.

ADEJUMO V. DAVID HUGIE CO LTD

FOR FIXED TERM, the notice shall expire on the anniversary of the tenancy except the agreement provides otherwise.

OWOADE v. TEXACO AFRICA LTD

A notice to quit is valid even if it is given for more than the prescribed period, so long as it terminates at the one of the anniversary of the current term.

IBE V. HARMMIN NIG. LTD.

EFFECT OF SERVICE OF A NOTICE TO QUIT

The effect of service of a Notice to quit on a tenant puts an end to the relationship of the tenant/ landlord and the tenancy.

THE LENGTH OF NOTICE TO QUIT

i. It may be determined by the **agreement of parties**

ii. If **no agreement is made**, the mode of payment or demand of rent will determine the period of tenancy e.g. yearly, half-yearly etc

THE TIME WILL BE IMPLIED BY LAW AS FOLLOWS:

- **Weekly** tenancy – 7 days Notice
- Tenancy at will – 7 days Notice
- One month tenancy – 1 calendar month Notice
- Quarterly tenancy – 3 months Notice
- Half-yearly tenancy – 3 months Notice
- Yearly tenancy and above – 6 months' Notice

S. 8 OF THE RECOVERY PREMISES ACT

S. 13 OF TENANCY LAW

- The length of Notice to quit cannot be less than is required by Law otherwise it would be invalid.

OCHEII V. AJOSE; UNIVERSAL INS. CO. LTD. V. HAMMOND.

COMPUTATION OF TIME

The date/ time of service of a Notice to quit are very important as it starts counting from the date/time of its service. For example, a Notice to Quit **written** on the **1 of January** but served on the 7 of January is **taken to be served on the 7 of January**.
CHUKWUMA V. SHELL PETROLUEM DEV. LTD

NB: Service tenancy is protected by Law, so to determine it; Notices must be served on the tenants.
S. 13 OF THE TENANCY LAW

INTERPRETATION OF ONE MONTH'S NOTICE
One calendar month includes a whole month and includes the 1st and the last day of the month.
OYEKOYA v. G.B. OLLIVANT (NIG) LTD.
NB- DATE OF SERVICE IS EXCLUDED
Eg. If a month's notice is given to a tenant from today**, the 19th day of March 2013,** the full month will incorporate **the 1st of April up to 30th of April**. Thus, the one month's notice will expire **on 30th April 2013**.

S. 18 interpretation Act
A month is a calendar month reckoned according to the **Gregorian calendar** which must **END A CORRESPONDING DAY IN THE FOLLOWING MONTH LESS ONE DAY.**
Eg. a month's Notice give, on 19th March will expire on 18th April.

Under **THE COMMON LAW,** a month's notice ends on the corresponding day in the following month**. Eg. a month's notice given on 19th March will expire on 19th April.**
Ideally, we should go by s18 Interpretation Act if tenancy states one month. But if it states one clear month, then 1st -31st August (Oyekoya case)

PLEASE NOTE

The law allows parties freedom to contract and thus the Landlord and the tenant may by agreement decide the nature and length of their own notice required to terminate the tenancy

AFRICAN PETROLEUM V. OWODUNMI

However, where no specific agreement is made, then the nature of the tenancy shall be determined by reference to how rent is paid or demanded.

S. 8(3) ABUJA RECOVERY OF PREMISES ACT

PAPERSACK (NIG) LTD V. ODUTOLA

CIRCUMSTANCES WHEN NOTICE IS NOT REQUIRED

There may be circumstances when notice is not required to be given to the tenant to quit.

1. Where a monthly tenant is in arrears of rent for 6 months or more

S. 13 (2)

2. Where the tenancy is for a fixed term, and has been determined by effluxion of time.

TINILA V. OKON

AP V. OWODUNNI – The Landlord is enjoined to always give notice to quit whether the term is fixed or not.

However, **S. 13(5) TENANCY LAW 2011** no need to give notice to quit **FOR A FIXED TENANCY TERMINATED BY EFFLUXION OF TIME, ALL YOU NEED DO IS TO SERVE HIM 7DAYS NOTICE OF INTENTION TO APPLY TO RECOVER POSSESSION.**

3. **IF A QUARTERLY OR HALF YEARLY TENANT IS IN** arrears of one year rent or more, the tenancy shall lapse, no notice need be given**, the court shall make an order for possession and arrears of rent where successful proved.**

S. 13 (3) TL 2011.

THE CONTENTS OF A NOTICE TO QUIT I:

- Name of the landlord
- Name of tenant
- The nature of the tenancy
- The fact that the addressee holds the premises as a tenant (status as tenant)
- Name of the authorised agent or solicitor
- Brief description of the property
- The date that the tenant should quit and deliver up possession

NOTICE OF OWNER'S INTENTION TO APPLY TO COURT TO RECOVER POSSESSION OF HIS PREMISES

If at the expiration of the notice to quit, the tenant or any person actually still occupying the premises or part of it neglects or refuses to quit and deliver up possession of the premises, a b shall be served on the tenant.

This is the notice of owner's intention to apply to recover possession.
This notice is to be served in FORM E under Recover of Premises Act.
Under Tenancy Law, file either FORM TL 4 or FORM TL 5.

There must be **7 clear days from** the **date of service of the notice to the date of institution of the action** hence it is also known as seven days notice.

In **calculating** the **7days**, **THE DAY THE NOTICE IS SERVED IS EXCLUDED** and it would expire **on the 7th day.**
Even if the action is filled before the expiration of the **7 CLEAR days**, the court would **stay the proceedings for the 7 clear day to expire between the service of the notice and the hearing of the action**.

CONTENTS OF NOTICE OF INTENTION TO RECOVER POSSESSION

a. Name of Addressee
b. Name of Solicitor/agent
c. Name Owner's name (no longer landlord because already given notice to quit)
d. The fact that the addressee is now holding over the premises, his tenancy now being determined (state date it was determined)
e. NB: If under Tenancy Law, then additional information – grounds and particulars of the grounds for which you want to recover
f. Date and signature
g. The tenant is no longer referred to as tenant but OCCUPIER and the Landlord is no longer referred to as Landlord but OWNER.

MODES OF SERVICE OF NOTICES

- It can be served the way Court processes are served.
- It can be by personal service or by a substituted service i.e. by pasting it on a conspicuous part of the premises to be proved by photographic evidence (but **NO**

LEAVE OF COURT is required because it is not a Court process). **CHIWATE V. AMISSAH.**

- However, it is advised that leave of court be obtained**.- section 18 tenancy law 2011**
- It can be delivered to an adult on the premises.
- If it is a company, it can be served on any of the principal officers of the company.
- If any of **the Statutory Notices is served on a Sunday or public holiday** it is still valid but the service will take effect from the next working day, i.e. 6 am the next Monday.

S. 28 OF THE RECOVERY OF PREMISES ACT

S. 17-20/22 OF THE TENANCY LAW OF LAGOS.

S. 19 TL service of notices for business premises

S. 35 TL service of persons in unlawful occupation

S. 22 TL service can be effected in accordance with the rules of court.

EFFECT OF FAILURE TO SERVE NOTICES

The effect of a failure to serve any of the Notices as required by Law **It is a fundamental** issue capable of depriving the Court of jurisdiction over the matter.

GROUNDS FOR THE RECOVERY OF POSSESSION OF PREMISES

This is only provided for in Lagos while in Abuja no reason is to be advanced for recovering the premises**.**

Any of the grounds below must be stated in the **Writ/ Claim** for the Court to grant possession to the landlord.

1. Arrears of rent
2. Commission of intolerable nuisance
3. The premises is to be used personally by the Landlord or any of his children or his parents
4. Landlord wants to carryout extensive renovations where the premises requires substantial repair
5. That there is a breach of a covenant in the lease
6. The premises have been sold or rented out to another person
7. Premises required for public interest
8. Premises is being used for immoral, illegal purpose

9. Premises is unsafe and unsound as such constitutes danger to life

S. 25(2)(a) – (d)OF THE TENANCY LAW OF LAGOS STATE.

COMMENCEMENT OF ACTION IN COURT TO RECOVER PREMISES

The modes of commencement of action for recovery of premises are:

a. A Summons in the District Courts in Abuja/other Northern States

b. A Claim in the Magistrate Court of Lagos State
FORM TL 6 A and FORM TL 6B (Tenancy Law)

c. Writ of Summons in the High Court of Abuja/ Lagos –
FORM F under RPA Abuja, RPL

NOTE THAT the Court to approach will be determined by the amount of rent involved.

S. 22 (3) OF THE TENANCY LAW OF LAGOS

CONTENTS OF A WRIT

1. The heading of the Court where the premises is situate
2. The Plaintiff is entitled to possession of the premises
3. Brief but accurate description of the premises
4. The period of the tenancy and the rent attached
5. Date of expiration or determination of the tenancy under notice to
6. The fact that the statutory notices were served on defendant
7. A description of how the service was effected
8. That in spite of the notice, the defendant has refused to give up possession
9. Claim for possession, arrears of rent or mesne profit.

HPBT

THE RELIEFS/ PRAYERS TO BE SOUGHT BY THE OWNER/LANDLORD IN AN ACTION TO RECOVER PREMISES ARE:

1. Possession of the premises
2. Arrears of rent
3. Mesne profit
4. Damages

ARREARS OF RENT is the rent which the tenant fails to pay which are due and payable during the tenancy.

MESNE PROFIT is the rents which have accrued **from the expiration of the notice of intention to recover possession to the date possession is given up.** - **OSAWARU v. EZEIRUKA**

THE DIFFERENCES BETWEEN RENT, MESNE PROFIT AND ARREARS OF RENT

ARREARS OF RENT refer to the **amount of rent due to the landlord** when the **tenancy has not been determined by serving the tenant with a Notice to quit.**

MESNE PROFIT refers to **any amount that would have been realised from the premises if the tenant had vacated the premises when the tenancy was been determined** and the tenant is still holding possession of the premises.

The amount as **MESNE PROFIT** can be calculated **based on the value of the property** if proved or the last rental value of the premises.

THE FACTS THAT MUST BE PROVED AT THE TRIAL BY THE LANDLORD

1. That there was a tenancy relationship
2. The commencement of the tenancy
3. The rent paid
4. Service of the two statutory notices on the tenant
5. The fact that the tenant is still holding unto the premises

ARBITRATION

References to Arbitration can be made,

S. 30 of the Tenancy Law of Lagos State.

If there is an arbitration clause in the Lease/ tenancy agreement, the parties are bound by the clause.

However the **clause cannot oust the jurisdiction of the Courts if not resorted** to **EXCEPT** that the action is stayed.

The Court referred to here is the **Relevant Court** where the action is instituted.

COUNTER CLAIM BY THE TENANT

It may include:

1. Improvements on the premises by the tenant on a written agreement-**S. 15 OF THE RECOVERY OF PREMISES ACT**

2. Unexhausted rent
3. Wrongful ejection and that his tenancy is still subsisting
4. Damages for trespass to his property through unlawful ejection

POSSIBLE ORDERS THE COURT WILL MAKE UPON HEARING OF AN ACTION FOR RECOVERY OF PREMISES

a. An Order for immediate possession
b. Order for the delivery of possession not exceeding 6 months
c. Order for payment of arrears of rent
d. Order for mesne profit

S. 27 & 31 OF THE TENANCY LAW LAGOS.

WARRANT OF POSSESSION

Where after the hearing, the Landlord is found to be entitled to possession, the court may issue a warrant of **possession notwithstanding that the counter claim is undetermined** or unsatisfied.

S. 20 RPA, S. 39 TENANCY LAW 2011

NB=>

The recovery of possession of premises from a tenant in lawful occupation by a Landlord can only be obtained by **order of the court** in compliance with the stated procedure otherwise; the Landlord may be liable in **TRESPASS FOR FORCIBLE EJECTION** of the tenant.

IHEANACHO v. UZOCHUKWU

ENFORCEMENT OF ORDER OF POSSESSION

It is enforceable after the expiration of **14 days** using **a writ of possession.**

ETHICAL ISSUES

1. Duty not to mix client's money with his personal funds R. 23(2)
2. Duty to represent client within the bounds of the law R. 15

R. 15 OF THE RPC.

An example is a Lawyer back-dating a Notice to quit etc.

Duty to advise the landlord within the bounds of the law and not to resort to self help.

3. Duty to represent Client competently R. 16

Always adhere to the prescribed number of days for Notice

4. Duty to be dedicated and devoted R. 14.
5. Duty to make through investigation into the tenancy agreement R. 25 RPC
6. Duty not to cause an abuse of court process by not filling an action in Court when the solicitor has not first served the statutory notices R. 32 (K)
7. Duty not to aid client in engaging in illegal acts R. 15(3)(1)
8. Duty to disclose a conflict of interest R. 17 e.g. where the solicitor is related to or friends with the tenant who is sought to be evicted
9. Duty to refer client to ADR R. 15(3)(d).

Actions for the recovery of possession of premises are to be instituted within the bounds of the Law,

N.B: LETTER OF INSTRUCTION TO RECOVER PREMISES

3, Ikon Close
Off Mega
plaza Avenue,
Surulere
Lagos.
4th March
2014.

Gabriella Ndu
Ndu chambers
12 A Queens Close,
Lekki Phase 1,
Lagos.

Dear Madam,

LETTER OF INSTRUCTION TO RECOVER PREMISES

I, Chief Olowo, owner of 4 bedroom flat situate at No. 37 Musa-Sadua Street, Surulere Lagos (also known as Koko Lodge), do hereby give instructions to as my solicitor to take all necessary steps to recover possession of the said premises and arrears of rent on the said premises currently in occupation by one Mr. Dauda Kareem who is occupying the said premises as a yearly tenant with whom I wish to terminate the tenancy in existence.

I shall of course pay the necessary fees.
Thank you for your co-operation.

Yours faithfully,

Chief Olowo.

ENCL:
Copy of tenancy agreement. N.B: NOTICE TO QUIT

NDU CHAMBERS

BARRISTERS & SOLICITORS

PLOT 12 A, QUEENS CLOSE LEKKI PHASE 1 LAGOS

TELL: 01-68996543, 01-00865434

Our Ref: ..... Your Ref:.....

28th June 2013

To: Mr. Dauda Kareem
37 Koko Lodge, Musa Sauda Street,
Surulere Lagos.

Sir,

NOTICE TO QUIT

We, the above named legal practitioner as solicitor to Chief Olowo, your landlord and on his behalf give you notice to quit and deliver up possession of the 4 bedroom flat together with the appurtenances thereto situate at No. 37 Musa Sadua Street Surulere Lagos State within the Surulere Magisterial District of Lagos State, which you hold as a yearly tenant to expire on the 31st day of December 2013.

Dated this 28th day of June 2013.

_____

Gabriella Ndu

Solicitor to the Landlord

For: Ndu Chambers

N.B: NOTICE OF OWNER'S INTENTION TO RECOVER POSSESSION

NDU CHAMBERS

BARRISTERS & SOLICITORS

PLOT 12 A, QUEENS CLOSE LEKKI PHASE 1 LAGOS

TELL: 01-68996543, 01-00865434

Our Ref: .....
Your Ref:.....

2nd January 2014

To: Mr. Dauda Kareem
37 Koko Lodge, Musa Sauda Street,
Surulere Lagos.

Sir,

NOTICE TO TENANT OF OWNER'S INTENTION TO RECOVER POSSESSION

We, the above named legal practitioners, solicitors to Chief Olowo, the owner, do give you notice that unless peaceable possession of the premises the 4 bedroom flat together with the appurtenances thereto situate at No 37, Musa-Sadua Street, Surulere Lagos State (also known as Koko Lodge) within the Surulere Magisterial District of Lagos State, which you hold of the owner under a yearly tenancy, which tenancy was determined by a notice to quit from the said 4 bedroom flat given on the 28th day of June 2013 to expire on the 31sth day of December 2013 and which premises are now held over and detained from the said owner, be given to the owner on or before the expiration of the SEVEN CLEAR DAYS from the service of this notice. And furthermore on the grounds that you as tenant refused to pay rent and throw noisy parties in the landlord's premises every week to the annoyance of neighbours.

We shall on the 10th day of January, 2014 apply to the Magistrate' Court, Surulere Magisterial Division for a summons to eject any person from the premises.

Dated this 2nd day of January 2014.

_____
Gabriella Ndu
Solicitor to the Landlord
FOR: NDU CHAM

N.B: must also do a writ of summons (note especially the prayer clause) for the high court

IN THE MAGISTRATE COURT OF LAGOS STATE

IN THE SURULERE MAGISTERIAL DISTRICT

HOLDEN AT SURULERE

SUIT NO:.....

BETWEEN

CHIEF OLOWO ..... CLAIMANT

AND

DAUDA KAREEM ..... DEFENDANT

CLAIM

The claimant is entitled to possession of the four bedroom flat situate at No 37 Musa-Sadua Street Surulere Lagos (also known as Koko Lodge), which the claimant let to the defendant as a yearly tenant at the sum of N500,000.00 (five hundred thousand naira only) per annum in respect of which the claimant has duly served a notice to quit and a notice of owner's intention to apply to recover possession as prescribed by law. The claimant is further entitled to N500,000.00 as arrears of rent for the year 2013 and N100,000.00 as mesne profit accruing for same.

PARTICULARS OF CLAIM

1. The claimant is a businessman residing at No 5, Samuel road Ikeja Lagos State and the Landlord/beneficial owner of No 37. Musa-Sadua Street, Surulere Lagos (also known as koko lodge) comprising of 6 flats of four bedroom.
2. The defendant is a cashier/occupier off the said 4 bedroom flat situate at No 37. Musa-Sadua Street, Surulere Lagos.
3. The claimant and defendant entered into a tenancy agreement from year to year commencing on the 1st of January 2011 at a rent of N500,000.00
4. The defendant had refused to pay further rents after paying the rents of the year 2011 and 2012 , thus he is in arrears of rents. The receipts of the paid rents would be pleaded in evidence.

5. The defendant has been throwing noisy parties on a weekly basis, by this act he has breached the covenant inserted in clause 6 of the Tenancy Agreement prohibiting him from using the premises for non-residential purposes.
6. The noisy parties thrown by the defendant has constituted a nuisance and has elicited complaints from neighbour and fellow occupants of the said premises.
7. The defendant was served a notice to quit through the claimant's solicitor dated 28th June 2013 and a notice of intention to recover possession dated 2nd January 2014 for a period of 7 days owing to the fact that the defendant had refused to give up possession.

WHEREOF THE CLAIMANT CLAIMS as follows:

1. AN ORDER of this court for the recovery of possession of the said premises comprising of 4 bedroom flat situate at No 37. Musa-Sadua Street, Surulere Lagos.
2. AN ORDER of this court for the payment of arrears of rent from 2013 till date with is N500,000.00 (five hundred thousand naira).
3. AN ORDER of this court for the payment of mesne profit up to the time after possession is recovered which is a total of N100,000.00 (one hundred thousand naira).
4. AN ORDER for payment of general damages to the tune of N100.000.00 (one hundred thousand naira).

DATED THIS _____DAY OF _____2014.

_____

Gabriella Ndu Esq.
(Counsel to claimant)
Odutan & Co (Barristers & Solicitors)
12 A Queens Close, Lekki Phase 1,Lagos.

Mr. Dauda Kareem
(Defendant)
No. 37 Musa-Sadua Street Surulere, Lagos.

IN THE DISTRICT COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA

IN THE WUSE DISTRICT

HOLDEN AT WUSE

CLAIM NO…….

BETWEEN:

CHIEF OLOWO …… PLAINTIFF

AND

DAUDA KAREEM …… DEFENDANT

CLAIM AGAINST TENANT OR PERSON REFUSING TO DELIVER UP POSSESSION

The Plaintiff is entitled to the possession of premises of a four bedroom flat situate at No.10 broad street Wuse 2 Abuja which were let by the plaintiff to the defendant from year to year under the Rent which said tenancy was determined by Notice to Quit, given by the plaintiff on the 19th day of March 2012.

The plaintiff did serve on the defendant. a Notice in writing of his intention to apply to recover possession of the said premises on the 29th day of March 2012 (a duplicate of which notice is hereto annexed) by personal service through the plaintiff and that notwithstanding the said notice the said defendant refused to deliver up possession of the premises, and still detain the same.

PARTICULARS OF CLAIM

1. The defendant is in arrears of rent for the year 2010 till date
2. The defendant committed nuisance by hosting noisy parties every week on the premises

THE PLAINTIFF CLAIMS AS FOLLOWS:

1. Possession of the premises detained by the defendant
2. Arrears of rent for a year N1,500,000.00
3. Mense profit of N250,000.00

DATED THE 29TH DAY OF MARCH 2012

……

Registrar

WEEK 18-ELECTION PETITION

THE APPLICABLE LAWS ARE:

- CFRN (Second Alternation) Act 2010
- CFRN (First Alteration) Act 2010
- Electoral Act 2010 (as amended 2011)
- Election Tribunal and Court Practice Direction 2011
- Rules of Procedure for Election Petition (First Schedule to the Act)
- Note: Electoral Amendment Act 2014 (but lecture will not focus on this)

Definition

- The term election was defined in **Peoples Progressive Alliance & Anor v Sarki & Anor (2007)** 17 NWLR (Pt. 1064) 453 as the process of choosing especially by voting. It is not just the process of choosing an actual date of election but a process that starts from nomination of candidates by political parties i.e. goes back to the primaries of political parties. It is democratic process of choosing those to administer the political affairs of the people. (see quote in slides)
- CT held that accreditation is one process of the electoral process.
- See also Ojukwu v Obasanjo & Ors (2004) 19 NSCQR 90 at 139-140
- Election cases are sui generis

NATURE OF ELECTION PETITION

Election petitions are sui generic and thus are distinct. Peculiar and a different character or normal civil proceedings

BUHARI v. INEC;

NWODODO v. ONOH: observed that election petitions are sui generis in several senses

PECULIARITIES OF ELECTION PETITION

1. The procedure for election petition is provided for in the CFRN and other specified statutes and relevant rules unlike other civil proceedings, which are regulated by the Rules of Court.

2. Election petitions are peculiar from the point of view of public policy. It has implication for the democratic nature of governance, while in civil proceedings only the interest of the parties are usually ay stake. In election petition, the interest of the electorate must be considered by the Tribunal or court. Election petitions are important to the well being of a democratic society (democratic nature of governance)
3. The cause of action in civil proceedings is different from the cause of action in election petition because the lint (crux)in an election petition is a compliant of undue return or undue election of the person that was declared the winner: **S. 133(1) Electoral Act 2010 as amended**
4. Election petitions unlike civil proceedings do not deal with the civil rights and obligations of litigants in a strict sense of the word. The electoral dispute is the dispute that arose from the conduct of elections

RESIDENT ELECTION COMMISSION V. NWOCHA (1991)2 NWLR PT 1767 132

OBASANYA V. BABA FEMI (2010)15 NWLR (PT. 689)

5. An election petition is neither civil nor criminal proceedings **AIYUH V. ADASU (1992) S. NWLR (PT. 231) 598.**
6. In normal civil proceedings, amendments are normally made freely to the pleadings, this is not the case with election petition. Right to amend is strictly limited by the provisions of the Electoral Act (e.g. cannot add more facts/grounds for petition or another prayer or another party to the suit)

In addition to providing address for service, rules sometimes require the petition to specify the address of the occupier for service

7. Unlike normal civil proceeding were a person interested in the outcome or whose interest would be affected by the result of the suit may be joined to the sir, no matter how adversely the economic of other intends of a person may be the outcome of an election petition, if he is not a statutory party, he cannot file a petition Right to Amend is limited.

JURISDICTION OVER ELECTION PETITIONS

The CFRN (as amended) has vested jurisdiction in different election tribunals

1. **FOR THE OFFICE OF THE PRESIDENT OR VICE PRESIDENT,**

THE COURT OF APPEAL (SITTING AS ELECTION TRIBUNAL)

It sits only on **Presidential election** (President and Vice President) in its original jurisdiction: s285(7) CFRN.

See s285(1) CFRN

VALIDITY OF ELECTION; CESSATION OF TERM AND VACANCY.

S. 239(1) of the 1999 Constitution as amended.

S. 133(2) ELECTORAL ACT 2010

S. 7 2ND ALTERATION ACT 2010

The composition is **at least 3 Justices** of the Court of Appeal

APPEALS GO AS OF RIGHT TO THE SUPREME COURT(5 JUSTICES SITTING)-S.233

2. **FOR THE OFFICE OF GOVERNOR OR DEPUTY GOVERNOR;**

=> **GOVERNORSHIP ELECTION TRIBUNAL** has exclusive jurisdiction **–S.285(2)**

S. 9 (2) 2ND ALTERATION ACT 2010

APPEALS-GO TO THE COURT OF APPEAL.SUPREME COURT WILL BE THE FINAL COURT

COMPOSITION

-The **composition** of the Governorship and Legislative Houses Tribunal shall be a Chairman and two other members

SIXTH SCHEDULE TO THE 2ND ALTERATION ACT OF THE 1999 CONSTITUTION AS AMENDED.

-The chairman shall be

- a judge of a High Court and
- the two other members shall be appointed from among Judges of a High Court, Kadis of a Sharia Court of Appeal, Judges of a Customary Court of Appeal or

- members of the Judiciary not below the rank of a Chief Magistrate.

QUORUM- The quorum of the election tribunal shall be the chairman and one other member.

S. 9 (4)-S.285(4)

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.**

REMOVAL: by the President

3. **FOR THE MEMBERS OF NATIONAL ASSEMBLY OR STATE HOUSE OF ASSEMBLY**.

=> **NATIONAL AND STATE HOUSES OF ASSEMBLY ELECTION TRIBUNAL**

S. 9(1) 2ND ALTERNATION ACT 2010

S.285(1) CFRN

APPEALS-COURT OF APPEAL IS THE FINAL COURT

NB- AREA COUNCIL ELECTION TRIBUNAL(FCT)-S.135(1) ELECTORAL ACT

AREA COUNCIL ELECTION APPEAL TRIBUNAL- NS.136(20 EA 2010

LOCAL GOVERNMENT ELECTION TRIBUNALS- CREATED BY STATE LAWS

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

MATTERS OF CESSATION OF TERM /VACANCY OF

a. **HOR MEMBERS/SENATORS-**

   S.251(4) CFRN

S.27 FIRST alteration act

S272(3) CFRN: HAS THE GOVERNOR OR DEPUTY GOVERNOR OVERSTAYED: COURT WITH JURISDICTION is the FHC

b. GOVERNOR /DEPUTY GOVERNORS

S.272 (3) CFRN

S.28 FIRST ALTERATION ACT

AGF V. ANPP

QUALIFICATION AND DISQUALIFICATION OF CANDIDATES

1. You must belong to a political party and be sponsored by them
2. You must be a Nigerian citizen
3. Educated up to school certificate
4. You cannot be a lunatic
5. Un-discharged bankrupt
6. Must not belong to a secret society.
7. Not convicted and sentenced for dishonesty or fraud less than 10 years before date of election.
8. Not employed in state/federal civil service **within 30 days before date of election – for presidential elections**

s.65&66-Governorship election; s.106&107-house of assembly; s.177&182-governorship

AGE-

40- PRESIDENT;

35-GOVERNOR;

30 LEGISLATIVE HOUSES

NB-INDICTMENT BY JUDICIAL OR ADMINSTRATIVE AUTHORITY NO LONGER A GROUND FOR DISQUALIFIACTION

TENURE

PRESIDENTIAL AND GOV. ELECTIONS IS LIMITED TO TWO TERMS.

Tenure starts counting from the time of swearing oath of office. Their terms of office will only count if held under a **VALID ELECTION.**

RIGHT TO PRESENT A PETITION

This determines **the locus stand**i of persons applying for a review of election.

For the purposes of **s137(1) Electoral Act 2010 as amended 2011** only two persons or entities are entitled to present an election petition.

a. A candidate in an election: A PERSON NOMINATED AND CLEARED BUT WAS WRONGFULLY EXCLUDED BY INEC CAN FILE PETITION-**S.138(1) (d); PPA V. SARAKI**

b. A political party which participated in the election –**EGOLUM V. OBASANJO**

S. 137(1) ELECTORAL ACT - EITHER OF THE TWO OR BOTH CAN PRESENT A PETITION

MEANING OF PARTICAPATION- NOMINATED AND SPONSORED A CANDIDATE-**PPA V.SARAKI**

PARTIES TO ELECTION PETITION

1. **PETITIONER** who is a person who participated in an election and is aggrieved with the conduct of the election or **a political party, which participated** in the election. -S. 137(3) of the Electoral Act.
2. **THE RESPONDENT** (usually the successful party) who may be:

a. A successful party whose election is complained of or

b. The Electoral Commission which conducted the election.

S. 137(2) of the Electoral Act 2010

BUHARI V. YUSUF (2003)

STATUTORY RESPONDENT: A statutory necessary party to every election petition is the person declared the winner in that election. He must be joined as a statutory Respondent. **S. 137(2)**

NB=> Under the **OLD LAW**, when there is a complaint of misconduct against an Electoral officer, **Presiding or Returning Officer**, you need to join such officer.

However, under the new Electoral Act, it is sufficient if the Electoral Commission i.e. sufficient is INEC is joined only – **(S. 137(3)).** In spite of this provision, if you pointedly accuse an INEC staff of committing a crime (ballot stuffing by the officer in a particular polling unit), you must specifically join that person. Otherwise that prayer will be struck out. Because the court will not allow you to breach that person's right to fair hearing.

NB=> **A security or Police Officer is not an Electoral Officer**, thus **must be joined specifically forcing misconduct alleged against him. It would not be enough to join the Nigerian Police Force or Nigerian Army if you allege criminality against a particular officer**

SUBSTITUTION OF PARTIES UNDER ELECTORAL ACT 2010

S.141 EA

- **DEATH**
- **WITHDRAWAL NOT LESS THAN 45 DAYS BEFORE THE ELECTION**

REPEALED EA 2006 APPLIED IN AMAECHI V. INEC AND UGWU V.ARARUME

STATUTORY CONTENTS OF AN ELECTION PETITION

NB: petition must be headed in the proper tribunal (if not the petition is incompetent)

PARAGRAPH 4 FIRST SCHEDULE TO THE ELECTORAL ACT 2010 (AS AMENDED)

An election petition shall specify (SHOULD BE DIVIDED INTO PARAGRAPH

1. The parties interested in the election petition
2. The petition must specify the right of the petitioner to present the election petition (condition is met if you say the petitioner was a candidate at the election or a political party that sponsored a candidate at the election. Repealed the old requirement that the candidate of the election and had a right to vote and be voted for)
3. It shall state the holding of the election (i.e. date of the holding of the election)

4. It shall state the score of the candidates (plead the scores as declared by INEC i.e. the scores of all parties even for political parties who didn't field a candidate. Otherwise the petition will be incompetent)
5. It shall state the person returned as winner of the election
6. It shall state clearly the facts (succinctly) of the election petition
7. It shall state the grounds on which the petition is based
8. It shall state the relief sought by the petitioner
9. Paragraph 4(2) provides that in addition the petition shall be divided into paragraphs each of which shall be confined to a distinct issue or major facts of the election petition and shall be numbered accordingly
10. Paragraph 4(3) provides that each election petition shall (a) conclude with a prayer for instance that the petitioner be declared validly elected. If you want the election to be nullified, must include prayer for conduct of another election or that your candidate should be returned as the winner or the prayer is incompetent (decision in Lagos State tribunal on Ambode's case. Ct's reasoning was that you're asking CT to grant prayer that will leave administration in limbo)
11. It shall be dated
12. Signed by the petitioner or all petitioners or by the solicitor (If the petition is not signed, it is a worthless paper, see NWANKWO V. RAYMOND.

    ORIZU V. UZPEGWU: However that will be deemed waived when the Respondent takes steps in the matter.

    After signing the election petition, tick your name (because there are many lawyers in an election petition). If not, it is as good as not being signed
13. Address of the petitioner for service and (Paragraph 4(4)) its occupier. This requirement for service of occupier, it is no longer fatal to the petition
14. Address of the respondents and the occupier

DOCUMENTS TO BE FRONTLOADED

THE ELECTION PETITION SHALL BE ACCOMPANIED BY –

a. List of witnesses

b. Witnesses written statements on oath

c. Copies or list of every document to be relied on at the hearing of the petition

PARAGRAPH 4(5).

However, Paragraphs 1 & 2 Election Tribunal & Court Practice Direction 2011 provides that the requirement **as to List of Witnesses referred to in paras 4(5)(a) 1st Schedule to the Electoral Act 2010** as amended shall be deemed complied with where the identity of witnesses are represented by initials, alphabets or a combination of both.

ACN V. LAMIDO

NB=> Same requirements also apply to the **respondent's REPLY to the Petition**.

DOCUMENTS- a. List of witnesses b. Witnesses Statements on oath c. Copies of documents to be relied upon at the trial

If such documents are not admitted, tribunal may refuse or refuse to order for INEC officials to produce such documents and for you to inspect document

If you fail to frontload a proper written statement on oath (Notaries Public Act and Evidence Act), then it will not be accepted in evidence. Under the Notaries Public Act, a notary public certifying cannot appear in the case where those documents are to be used.

Paragraph 5(ii): Penalties for non-compliance, the Registrar/Secretary is authorised to refuse to accept the document for filing

GROUNDS FOR ELECTION PETITION

S133 EA 2010 – the main compliant is undue election or undue return.

Must use the language of the Electoral Act. If you don't use the grounds provided for under s133 or s138, petition will not have a competent ground and if no competent ground, petition will be struck out

S. 138 Electoral Act 2010 as amended.

An election may be questioned on any of the following grounds

a. That a person whose election is questioned was at the time of the election, not qualified to contest the election.
b. That the election was invalid by reason of corrupt practices or substantial non-compliance with the Electoral Act e.g. over voting
c. That the respondent was not duly elected by majority of lawful votes cast at the election (COLLATION OFFICER MUST BE CALLED); or
d. That the petitioner or its candidate was validly nominated but was unlawfully excluded from the election. **INIAMA V.AKPABIOKAM** (now most tribunals will tell you this is a pre-election matter)

NB=>

It is not sufficient to allege grounds only, **EACH GROUND MUST HAVE PARTICULARS.**

NB-The ground for the election petition must be confined/ restricted to the grounds stated in the Electoral Act otherwise it will be struck out.

UNDUE INFLUENCE NOT A GOOD GROUND- **OJUKWU V. OBASANJO**

Can choose one or more of the grounds but some of them together are inconsistent. If alleging cases of snatching of ballot boxes, pleading this simply is not valid (must add particulars)

THE PRAYERS /RELIEFS TO BE SOUGHT BY THE PETITIONER MAY BE:

1. That the election be nullified
2. That the petitioner be declared the winner of the election

S. 33 OF THE ELECTORAL ACT,

PARAGRAPH 4(3) (A) OF THE 1ST SCHEDULE TO THE ELECTORAL ACT 2010.

Note that a **contradictory prayer is not allowed**.

If made by a petitioner, the petition will be dismissed as there is no prayer before the Court.

IGE V. OLUNLOYO

OPIA V. IBRU.

However if the prayers are made in the alternative, the Court will determine the appropriate one to grant.

PROCEDURE FOR ELECTION TRIBUNALS

The procedure for election petition is similar to the procedure under the Lagos State High Court Civil Procedure Rules.

1. **PRESENTATION OF ELECTION PETITION**

S. 9(5) 2ND ALTERATION ACT 2010. S

An election petition by an aggrieved party is to be presented **within 21 days after the declaration of the election results. S. 285 (5) of the 1999** Constitution.: Udokpo v Archibong. The date of declaration of the results is excluded from computation: s15(2) Interpretation Act.

The period for the presentation cannot be extended. **MARWA V. NYANKO and FALAE V. OBASANJO.**

Petition is presented to the Secretary of the election tribunal

In Yusuf v Obasanjo (2003) FWLR (Pt 185) 507: at the time, Electoral Act specified 30 days. Election took place 22nd April 2003 and the Supreme CT held that 30 days will be calculated frim 23rd April to end on 22nd May 2003 in compliance with s15(2)(a) Interpretation Act

Where the last date for presentation of election is a Sunday, Sunday is a non-juridical day according to Interpretation Act and petition competent if filed on next Monday: **Kabir & Anor v ACN (2012) All FWLR (Pt 647) 638**

Conflicting decision in **Omisore v Aregbesola**: Sunday is not specified as a non-juridical day and held that Sunday should be computed along with it. Perhaps because Registry of election tribunals work around the clock and sometimes open on Sunday. Perhaps knowledge of opening of Sunday was the reason for not excluding Sunday. No SC decision on this point

IF AN ELECTION PETITION IS PRESENTED OUT OF TIME, IT WILL BE STRUCK OUT.

FILING OF THE PETITION

To file an election petition, the petitioner or his counsel must be **physically present** when filing it and the **prescribed** fees are paid.

The petitioner shall pay upon presentation of the election petition, a requisite fee for service, publication of the petition, and for certifying the copies of the petition.

In **default** of the payment, the petition **shall be deemed not to have been received; unless the Tribunal or Court orders otherwise.**

PARAGRAPH 3 FIRST SCHEDULE TO THE ELECTORAL ACT

THE NUMBER OF COPIES OF THE PETITION TO BE FILED

1. A copy for each of the Respondents and

2. **10 copies to the Registrar/secretary to be preserved.**

SIGNING OF THE ELECTION PETITION

- It is to be signed by the petitioner or his legal practitioner at the foot of the petition.
- It must be signed in the presence of the secretary/Registrar of the Tribunal.

THE PLACE FOR THE PRESENTATION OF AN ELECTION PETITION

- It will be at the Registry of the Election Tribunal/Court.
- It must be at the appropriate Registry, otherwise it will be taken that there is no petition before the Court. **OLANIYONU V. PROF EME AWA**.
- It has been held that after a wrong service/filing, it cannot be transmitted to the right Registry of the Tribunal/ Court.

EXTENSION AND ABRIDGEMENT OF TIME AT THE HEARING OF THE PETITION

Either of this can be allowed with the leave of Court. The procedure for application for extension of time is by Motion on Notice while that for an abridgement can be made by a Motion ex parte. **PARAGRAPH 45.1ST SCHEDULE** (subject to s134: thus no enlargement for presenting of petition, when judgment is delivered and when appeal must be disposed of)

2. **ACTION BY SECRETARY UPON PRESENTATION**

PARAGRAPH 7(1) 1ST SCHEDULE TO THE ELECTORAL ACT

a. The secretary shall cause a notice of the presentation of the election petition to be served on each of the Respondents;
b. Post on the tribunal notice board a **certified** copy of the election petition; and
c. Set aside a **CTC** for onward transmission to the persons required by law to adjudicate the election petition.

PARAGRAPH 7(2)

In the Notice of presentation of the election petition, the secretary shall state a time, **NOT BEING LESS THAN 5 DAYS BUT NOT MORE THAN 7 DAYS AFTER THE SERVICE OF THE NOTICE**, wither which each of the respondents shall enter an appearance in respect of the election petition.

SECURITY FOR COSTS

PARAGRAPH 2 FIRST SCHEDULE TO ELECTORAL ACT

PARAS 3 & 4 ELECTION TRIBUNAL AND COURT PRACTICE DIRECTION 2011.

The **petitioner** shall deposit the **SUM OF N200,000.00** as security for costs, at the presentation of the petition.

In addition, there shall be a **further deposit of N200,000.00** to make up for the cost of service of notices, **registered postings and all other expenses** which may be occasioned by the Petitioner.

CONSEQUENCE OF THE NON-PAYMENT OF SECURITY FOR COST is that the Proceedings must be stayed for it to be paid.

NWOBODO V. ONOH

OMOBORIOWO V. AJASIN.

AWOJOBI v. INEC (2012)

SERVICE OF PETITION

After filing the petition and making deposit for cost, the Petition shall be served on the Respondents.

All documents required to be served on the respondent before his entering an appearance shall be served **PERSONALLY.**

Where attempts at personal service fail, the tribunal or court may order substituted service.

PARAGRAPH 8 LIST SCHEDULE TO ELECTORAL ACT.

ENTRY OF APPEARANCE

If after being served, a Respondent wishes to oppose the election petition, he shall enter an appearance by **FILING IN THE REGISTRY A MEMORANDUM OF APPEARANCE not less THAN 5 DAYS and not MORE THAN 7 DAYS OF THE RECEIPT of the Petition.**

THE EFFECT OF THE FAILURE TO FILE A MEMORANDUM OF APPEARANCE BY THE RESPONDENT: all subsequent documents to be served on him **will be pasted on the notice Board of the Tribunal/Court and he will be deemed to be served**

The memorandum of appearance shall state not only the **address for service** of the **respondent/solicitor but also the name of the occupier of that address**.

PARA 9 (1) 1ST SCHEDULE ELECTORAL ACT

EFFECT OF FAILURE TO STATE ADDRESS

FAILURE to state **the address for service** and its **occupiers** the memorandum of appearance shall be deemed not to have been filed **UNLESS** the tribunal or court orders otherwise.

PARA 9(2)

The memo of appearance **shall** be **signed** by the **Respondent or his solicitor**.

He shall leave copies of the **memo for the other parties of the election petition** and **3 copies of the memo to be preserved by the secretar**y.

He shall also pay the fees prescribed.

NB=> However, the **non-filing** of a memorandum of appearance shall not bar the respondent from defending the election petition **if the respondent files his reply** to the election petition **WITHIN A REASONABLE TIME, BUT NOT LATER THAN 21 DAYS FROM THE RECEIPT OF THE ELECTION PETITION.**

PARAGRAPH 10(2)

FILING OF REPLY

The Respondent shall file **HIS REPLY WITHIN 14DAYS OF THE SERVICE OF THE PETITION ON HIM. Para 12(1) First Schedule to the Electoral Act.** The reply shall be signed by the respondent or his solicitor

The Reply shall specify the facts alleged in the election petition, which he admits, which he denies and shall set out the fact on which he relies in opposition to the election petition. Every allegation in a petition is an allegation of substance and reply must be direct and answer each one: **Paragraph 12(1)**

Where the election petition complains of undue return and claiming the seat or office for a petitioner and the Respondent seeks to prove that the claim is incorrect or false.

He shall in his Reply "**SET OUT THE FACTS AND FIGURES CLEARLY AND DISTINCTLY DISPROVING THE CLAIM OF THE PETITIONER". (Means a general traverse, evasive, negative pregnant traverse will not be enough)**

PARAGRAPH 12(2) 1ST SCHEDULE ELECTORAL ACT

FAILURE TO SO PLEAD is deemed an admission and the Respondent has not joined issues with the Petitioner.

NB=> A Respondent who has an objection to the hearing of the petition shall file his Reply and state the objection therein and the objection shall be heard along with the substantive petition.

PARAS 12(5).

Respondent must also comply with requirements of frontloading. For both petitioner and respondent, need not write the full names of witnesses (they can use initials, alphabets or a combination of both). When witness appears to adopt witness statement on oath, will provide his full names and initials (allowed by Electoral Act to prevent threatening/intimidation of witnesses).

If Respondent has an objection, File his reply and state his objection and objection heard with substantive claim. Doesn't mean cannot file preliminary objection based on jurisdiction

THE CONTENTS OF A REPLY

1. Heading
2. Parties
3. The body which contains the general traverse and specific denials
4. Prayers
5. Address for service
6. Signature of the Respondent and date

FURTHER REPLY BY PETITIONER

The Petitioner is to file a **FURTHER REPLY** to the Respondent's **Process Within 5 Days** of the receipt of the process

- if new issues where raised in it or
- he intends to reply on a point of Law.

Note= that the time for the filing of a Reply to the Petition cannot be extended**.**

SHETTIMA V. GONI

MARWA V. NYANKO

SEE PARAGRAPH 9(1)(A-B)

10 (1) OF THE 1ST SCHEDULE TO THE ELECTORAL ACT

AMENDEMENT OF ELECTION PETITION AND REPLY

PARA 14 FIRST SCHEDULE TO THE ELECTORAL ACT

The extent to which an amendment to a Petition/Reply will be allowed is that it is to be done **within 21 days allowed for the presentation of the Petition**.

This is because time is of the essence and election petition cases are sui generis (in a class of its own).

After **the 21 days, no amendment can be made or allowed.**

S. 134 OF THE ELECTORAL ACT,

S. 9(5-7) OF THE 2ND ALTERATION ACT 2010

PARAGRAPH 14(1) OF THE 1ST SCHEDULE,

IGE V. OLUNLOYO

NGIGE V. OBI.

The Civil Procedure Rules relating to amendment of pleading shall apply to an election petition or reply.

After **the expiration of the time limited for presentation of a petition, amendments will not be allowed in the following**;

a. To introduce any of the requirements of the contents of a petition in **para 4(1).**

b. Effecting a substantial alteration of the ground or prayer in petition.

c. Effecting a substantial alteration of facts supporting a ground or prayer except as permitted under the Act.

- **PARAGRAPH 14(2)**

Typographical errors which doesn't alter scores of candidates may be allowed

After period for filing a reply, no amendment shall be made:

Alleging the claim of the seat or office by the petitioner is incorrect or false

Effecting substantial alteration in or addition to the admissions or denials contained in the original reply failed or to the facts set out in the reply.

However, tribunal in Calabar recently allowed an amendment to the respondent's reply after 14 days (unsure about reason for this: is it due to Electoral Amendment Act 2014 or something else. Awaits CTC of judgment)

PRE HEARING AND SCHEDULING

Pre-hearing session is a condition precedent to the hearing of an election petition (see cases)

The Electoral Act 2010 as amended provides for pre-hearing session.

- **WITHIN 7 DAYS AFTER FILING AND SERVICE** of the Petitioner's Reply or receipt of Respondent's Reply, the petitioner shall apply for the issuance of pre-hearing

information sheet as **in FORM TF 008.** Application may be by simple letter, motion ex parte or motion on notice (see cases)

- The tribunal shall issue to the Parties or their counsel a **pre conference notice** as in **FORM TF 008** accompanied by **pre-trial Information Sheet** as in **FORM TF 009.**

PARAGRAPH 18

Some Authorities are of the view that the application should be by ordinary letter, some are of the view that it has to be by **MOTION EXPARTE**; **others say that it has to be by motion on Notice**.

An **application** for **pre-hearing sheet** could be by any form.-**AWOJOBI v. INEC (Supra**).

At the end of the Pre-trial hearing, a **Report** will be given which will guide the subsequent proceedings

DURATION

It is to be concluded **within 30 days** of its commencement.

PARAGRAPH 18 (16) OF THE 1ST SCHEDULE TO THE ELECTORAL ACT AND S.3(9) OF THE ELECTION PETITION PRACTICE DIRECTION 2011.

PURPOSE OF PRE-TRIAL CONFERENCE IN ELECTION PETITIONS

- The disposal of all matters which can be dealt with on interlocutory application
- Giving such directions as to the future course of the petition as appears best adapted to secure its just expeditious and economical disposal in view of the urgency of election petition
- Giving directions on order of witnesses to be called and such documents to be tendered by each party to prove their cases having in view for the expeditious disposal of the petition; and
- Fixing clear dates for hearing of the petition

EFFECT OF FAILURE TO BRING AN APPLICATION FOR PRE HEARING CONFERENCE

- Where the **PETITIONER fails to bring an application for pre-hearing conference,** the **Respondent** may bring the application or the Respondent may by **motion** apply for order to **dismiss** the petition.

  PARA 13(3)
- Where the **PETITIONER AND THE RESPONDENT** fail to bring an application for pre-trial session, **the tribunal or Court** shall dismiss the petition and no application for extension of time to take that step shall be entertained.

  PARAGRAPH 18(9)

  EFFECT OF DISMISSAL

  Dismissal of a petition here shall be final and the tribunal or court shall be functus officio.

  PARA 18(5)

  For scheduling order, **para** 1**8**(6)

  For issues to be tackled at the pre-hearing session; JOINDER ETC **- Para 18(7)**

HEARING OF ELECTION PETITION

- Hearing Notices are to be served on the parties.
- Every election petition shall be heard and determined in an **OPEN** tribunal or court.
- **PARA 19.**
- Hearing shall continue **from day to day** and **no formal adjournment** of the tribunal for hearing of the petition shall be necessary.
- Hearing **may continue on public holidays and Saturdays** if circumstances dictates
- **PARAGRAPH 25**
- **PARAGRAPH 26(3) 1st Schedule**
- **Each party shall have 14 days to prove the case. A party that fails to utilise the 14 days to prove his case cannot complain of denial of fair hearing. It is the duty of a party that tenders bulk documents to tie such documents to his petition and he should not expect the tribunal to carry out that responsibility otherwise tribunal would be doing cloistered justice: Para 16(3) 1st Schedule ACN v Lamido (2012) 8 NWLR (Pt 1303) 560 at 79-580**

There is no longer oral examination-in-chief of the witnesses at the trial but rather they are to be led to adopt their Written Witnesses Statements on Oath.

CONSEQUENCES OF ABSENCE AT HEARINGS

1. If the **both parties** fail to appear for hearing, the petition **will be dismissed and it cannot be re-listed.**
2. If it is the Petitioner that is absent from the hearing, the Respondent is to **apply that the Petition be struck out or dismissed**.
3. Conversely if the Respondent fails to appear for the hearing, the Petitioner can apply for it to be heard and prove his case. The Court/Tribunal shall **enter final judgment on the Petition.**

TIME LIMIT FOR CONCLUSION OF TRIAL

The trial should be concluded **within 180 days of the presentation of the petition and final judgment delivered on the Petition: s285(6) CFRN; Ugba v Suswam**

The time limit for the conduct of the trial cannot be extended. **GONI V. ANPP**

PLEADINGS IN ELECTION PETITION

- **Note** that the statutory content of an election petition must be specifically pleaded.
- **Note** also that it is enough to plead the grounds for the petition.
- Each ground must plead the particulars.

  Eg. A party who alleges corrupt practices may plead falsification of results as particulars.
- He must plead two parallel sets of results.
- 1st set should be what he alleges to be the false result. 2nd set should be what he alleges is the Authentic result.

NWOBODO v. ONOH

OMOBOR v. AJASIN

NGIGE v. OBI

STANDARD OF PROOF

This depends on the allegations made in the petition.

In **NWOBODO v. ONOH,** the Supreme Court stated thus:

General standard of proof (balance of probabilities) and burden on petitioner to prove his case

a. There is rebuttable presumption that the results declared by the returning Officer are correct.
b. Allegation of crime in an election petition must be proved beyond reasonable doubt.
c. The results at the pooling units are the foundation of results at the election.
d. A person who alleges that the results were falsified must plead and prove 2 sets of results – the one you claim to be the correct one and the one you claim to be the falsified one. However, SC held there is a distinction btw falsification and arithmetical correction. A result is falsification when it is altered to give a false or wrong computation. However if in the process of calculation, an error occurs, the person dong the computation can correct himself if there is no intention to defraud or deceive
e. Where the results declared at the polling units are tendered, the tribunal can do the arithmetical calculation of figures contained in the results to determine who won and who lost.
f. If the main allegation is crime, fraud, petition is dismissed or paragraphs alleging crime will be struck out if cannot be proved beyond reasonable doubt. Possible to have some paragraphs alleging crime and other paragraphs not to carry such implication. Under the doctrine of severance, if you sever the paragraphs that allege the commission of a crime and the remaining are still sufficient to sustain the petition, then you sever the paragraphs that allege commission of crime from the others. If petitioner proves the remaining on balance of probabilities, his case can still succeed (see cases)

TENDERING OF ELECTION RESULT FORMS

TORTI v. **UKPABI** – **Election result Forms** whether counterparts or original are all good to be tendered.

The Petitioner in proving his case **shall have 14DAYS to do so** and the Respondent shall have **14DAYS to reply**.

PARAGRAPH 16(3) 1ST SCHEDULE TO THE ELECTORAL ACT.

In practice, the tribunal may abridge the time for each set of Respondent.

A party who fails to utilise **THE 14 DAYS** given by the tribunal cannot complain of denial of fair hearing. **ACN V. LAMIDO**)

WRITTEN ADDRESS

This is to be filed by the parties after the close of evidence.

THE ORDER FOR FILING IT DEPENDS ON IF THE RESPONDENT LED EVIDENCE OR NOT AS FOLLOWS:

- If the Respondent called evidence in the trial,

  The Respondent is **to first file his written address within 10 days of the close of evidence** and the Petitioner is **to reply within 7 days of the receipt of the Respondent's address**.

  The Respondent can **respond to the Petitioner's reply address on point of law within 5 days**
- If the Respondent did not call any evidence in support of his case,

  The Petitioner is **to first file his address within 10 days of the close of evidence** and the **Respondent is to reply within 7 days.**

  S. (11) & (12) OF THE PRACTICE DIRECTION ON ELECTION PETITION 2011.

JUDGMENT

In election petition cases**, judgment is to be delivered in writing within 180 days FROM THE DATE OF THE FILING OR PRESENTATION OF THE PETITION.**

S. 9(6) 2ND ALTERATION ACT 2010. See cases

The Court/Tribunal **can deliver its judgment and reserve the reasons** to be delivered later. **S.285(6) of the 1999 Constitution as amended**

GONI V. ANPP (CANNOT BE GIVEN A DAY OR AN HOUR MORE)

THE POSSIBLE ORDERS THE COURT /TRIBUNAL CAN MAKE

1. Nullification of the election
2. Return the petitioner as duly elected
3. Dismiss the petition as being frivolous
4. Order for a bye-election

S. 140 OF THE ELECTORAL ACT 2010

An Order declaring the second highest owner of lawful votes as the winner can no longer be made. The only option is for the Court/Tribunal to Order for a fresh election. **- S. 33 of the Electoral Act 2010.**

COMPUTATION OF TIME FOR RERUN ELECTIONS- S.135(2) A EA 2010

ORDER FOR SUBSTITUTION OF PARTIES CAN NO LONGER BE MADE-S.141 EA 2010.

A person who did not participate cannot be made a winner.

APPEALS

A NOTICE OF APPEAL challenging the judgment of a Court/Tribunal on election petition cases is to be presented **within 21 days of the receipt of the Judgment**.

S. 143 of the Electoral Act 201

S. 285(7) of the 2nd Alteration Act to the 1999 Constitution as amended.

EXTENSION OF TIME

There is no enlargement of time within which to file an appeal as time is of the essence in election petition cases.

The Notice of Appeal is to be **filed at the Registry of the Court/Tribunal** that heard the petition.

TIME LIMIT FOR HEARING OF APPEALS

An appeal is to be heard and disposed of **within 60 days from the date the judgment was delivered at the tribunal/Court** as the time limit cannot be extended. **MARWA V. NYANKO**.

THE EFFECT OF AN APPEAL ON AN INCUMBENT POLITICAL OFFICE HOLDER

If the incumbent **was not declared the winner of the election** and he appealed, **he is to remain in office until the appeal is determined.**

However, **if the incumbent failed to appeal or his appeal has been exhausted**, he is to remain in **office for 21 days and will then cease to hold the office.**

S. 143 of the Electoral Act.

DRAFTING OF ELECTION PETITIONS

FAILURE TO PAY ATTENTION TO DETAILS IN DRAFTING THE PETITION OR REPLY IS FATAL

The following should he borne in mind:

1. The heading of the Tribunal or Court
2. The Parties to the Petition
3. The Right of the Petitioner to present the petition
4. The holding of the election, the scores of the candidates who participated in the election.
5. The name of the person returned as winner
6. Grounds of the petition.

NB=> S. 140 ELECTORAL ACT AS amended provides for the nullification of election and ordering of a fresh election. The Court of Appeal has declared this as unconstitutional.

ETHICAL ISSUES

1. Do not use fictitious names as witnesses
2. Do not forge the signature of witnesses
3. Inappropriate relationship with members of the tribunal should be avoided.
4. Duty not to be negligent
5. Duty to be competent in handling the matter
6. Duty to represent client within the bounds of law

QUESTIONS

1. Can a candidate who contested and election and lost be made a respondent?

No. – **BUHARI V. YUSUF**

2. Under what circumstances can an Electoral officer, Returning officer, Presiding officer or such other officer be a necessary party.

=> It is no longer necessary to join, it suffices to join INEC. The political party which sponsored a candidate is not a statutory respondent and need not be joined.

3. Assuming it has been proved that a party which sponsored a successful candidate engaged in election malpractice, would this invalidate the election of the candidate?

=> No, it would not vitiate the election. In addition, the petitioner has to prove that the candidate authorised the party to do so.

JUJU V. IGBINEDION

4. How do you prove that there was ballot box stuffing in an election

=> The petitioner is supposed to bring the ballot box before the Tribunal, open the box and show the ballot papers stuffed into the ballot box.

BUHARI V. YUSUF

5. What is the time limit for amendment of election petition?

6. Can there be an extension of time to file an election petition

The tribunal or court shall have power to enlarge time for doing any act as required by the Act (**Paragraph 45 First Schedule to Electoral Act) but this is subject to s134 Electoral Act so no extension of time to file petition**

7. Can a party obtain an order of extension of time appeal against decision in an election petition?

=> Applications for extension of time to appeal in an election petition cannot be entertained.

ABUBAKAR AUDAU V. IDRIS WADA & ORS

8. Which is the final court for appeal from Governorship & Election Tribunal?

=> The Supreme Court

9. How many days does the Court have to decide such an appeal.

=> Within **60DAYS FROM THE DATE OF DELIVERY OF THE JUDGMENT** of the tribunal.

S. 9(2) CFRN 2nd Alteration Act 2010

10. Can the Court of Appeal in deciding an appeal from a Tribunal give its decision and then reserve its reasons for another day?

S. 285 (8)

S. 9

An appeal from a Governorship Election Tribunal to the Court of Appeal is not a final appeal as it would still go to the Supreme Court. **Thus, the answer is No**.

PDP V. OKOROCHA

11. For state House of Assembly, National Assembly & Governorship election petition => It is TRIBUNAL; for President & Vice President election petition => It is **COURT OF APPEAL**.
12. If a Tribunal determines that the candidate returned was not validly elected, how many days does he have to leave office?

    S. 143(1)(2) ELECTORAL ACT

    The candidate is entitled **to remain in office for 21days**, where he appeals, he is to remain in office until the appeal is determined.

13. What is the time limit for filling a Reply to an election petition

    => **14 DAYS OF SERVICE OF PETITION**

    For a Respondent who did not enter appearance = **21days**

14. How many days to files a Reply to a Respondent' Reply

    5 DAYS AFTER RECEIPT OF RESPONDENT'S REPLY – Para 16(1)

15. How many days does an election tribunal have to determine a petition

    => **180 days** from filing of petition

    S. 285(6) CFRN as amended

16. What is the composition & Quorum of Governorship E.T.

    => Composition is Chairman and 2 members

    Quorum is chairman and one member

17. For the Court of Appeal, the quorum is 3 Justices.

For the Supreme Court, **the quorum is 5 Justices but in practice, when hearing an election petition, the CA sits 5 and the SC sits 7.**

NB=> This is because Constitutional issues are always likely to arise

WAMIMI EMI v. IGALI (2008)11 NWLR (Pt. 1097) p. 123

BELLO v. YAKUBU (2008)14 NWLR (Pt. 1106) 104 (a) 121

CLASS ACTIVITIES

The following are the issues arising for determination from the above scenario.

1. The constitutionality of the arrest and detention of Chief Dodo for 14 days by the police under the instructions of Chief A. A. Amah

2. Whether or not Dr Dodo can be deemed to have participated in the election notwithstanding that he was in detention when the election took place
3. Whether or not he has cogent ground to challenge the election on the ground of irregularity.
4. Whether or not the indictment of Chief Pius by the EFCC constitute a ground for disqualification from election.
5. Whether or not the previous conviction of Chief Pius for the offence of receiving stolen property by the Onitsha High Court in 1995 constitute a ground of disqualification.

ISSUE 1

The constitutionality of the arrest and detention of Chief Dodo for 14 days by the police under the instructions of Chief A. A. Amah;

The detention of Chief Dodo by the police at the instigation of Chief A.A Amah constitute a violation of the Constitutional right to liberty of Chief Dodo.

Section 35 of the 1999 Constitution (As Amended) guarantees the right of citizens to liberty. The right to liberty of citizens is a fundamental right which can only be deprived on the grounds recognized by the constitution. These grounds are

a. In the execution of the sentence or order of a court in respect of a criminal offence.
b. Failure to comply with a court order
c. For the purpose of bringing a person before a court on the suspicion of his having committed a criminal offence.

Notwithstanding the enumerated instances where a person's right to liberty may be deprived, there are additional safeguards in place to ensure further protection for a person whose right to liberty has been lawfully deprived. One of such safeguards are right to be informed in writing of the offence committed within 24 hours (**Section 35(3) of the 1999 Constitution)** , right to be granted bail where the offence is a bailable offence, right to be brought before a court within one day of arrest (**Section 35(4 & 5) of the 1999 Constitution).**

In the instant scenario, Chief Dodo was detained for fourteen days without being informed of the offence he has committed, nor is he brought before a court for the purpose of charging him for committing any offence. The effect of these violations is that Chief Dodo can bring an action against his detractors for violation of his constitutional right to liberty. **Section 35 (6)** of the constitution provides that a

person who has been unlawfully detained is entitled to be compensated for the unlawful detention in addition to a public apology.

Thus Chief Dodo can bring an action to claim compensation from the police authorities and he can also bring an action for false imprisonment against Chief A.A Amah.

ISSUE 2

Whether or not Dr Dodo can be deemed to have participated in the election notwithstanding that he was in detention when the election took place.

The principle of law as far as election matters are concerned, and for the purpose of bringing an election petition is that the petitioner must either be a political party or a candidate that participated in the election. **Egolum v Obasanjo [1999] 7 NWLR (pt.611). Section 137** of the Electoral Act 2010 provides that an election petition may be brought by either

a. A candidate in an election
b. A political party which participated in the election

For the purpose of this section, it is sufficient if the political party has nominated a candidate for the election and in such instance notwithstanding the absence of the party or its members on the election date, they will be deemed to have participated in the election. **PPA V Saraki [2007] 17 NWLR (pt. 1064) 453.**

In the instant case the detention of Dr Dodo by the police notwithstanding he is deemed to have participated in the election for the purpose of bringing a petition or challenging any matter relating to the election. Since Chief Dodo has already been nominated by his party for the election, it is not necessary that he be physically present on the day of election before he can be deemed to have taken part in the election.

ISSUE 3

Whether or not Chief Dodo has cogent ground to challenge the election.

The Electoral Act 2010 contains the grounds upon which an election may be challenged by a petitioner. **Section 138** of the Electoral Act contains the grounds upon which an election may be challenged. These grounds are

a. That the person whose election is being questioned was being questioned was not qualified to contest the election.
b. On the grounds of irregularity or non-compliance with the provisions of the Act.
c. That the respondent did not score the majority of lawful votes cast.

d. That the petitioner was validly nominated but was unlawfully excluded from the election.

Narrowing it down to the given scenario, Chief Dodo has **cogent grounds** for bringing the petition. One of his grounds for challenging the election is on the ground of irregularity and disqualification of the person declared winner of the election. These clearly come within the defined categories in **Section 138** of the Electoral Act

ISSUE 4

Whether or not the indictment of Chief Pius by the EFCC constitute a ground for disqualification from election.

One of the recognizable grounds on which a person may be disqualified for contesting an election is on the ground of indictment for an offence.

However subsequent to the indictment the indicted person must have been prosecuted by the regular courts and duly convicted in respect of the indictment before it can be a ground for disqualification. **Amaechi v INEC [2008] 5 NWLR (pt.51) 457. NB THE CONSTITUTIONAL PROVISIONS IN THIS REGARD**

In relation to the given scenario, the indictment of Chief Pius by the EFCC is not enough ground of disqualification and as such will not be a good ground for bringing the petition.

ISSUE 5

Whether or not the previous conviction of Chief Pius for the offence of receiving stolen property by the Onitsha High Court in 1995 constitute a ground of disqualification

One of the conditions for which a person's election may be challenged is on the ground that he is not qualified to contest the election. **Section 138** of the Electoral Act. The 1999 Constitution in **Section 182** contains the ground on which a Gubernatorial Candidate to an election can be disqualified. One of such ground is conviction for an offence involving dishonesty within a period of ten years before the date of the election. In the instant scenario the conviction of Chief Pius for the offence of receiving stolen property by Onitsha High Court in 1995 is an example of an offence involving dishonesty which may lead to disqualification.

However the conviction to matter, it must be within ten years of the date of the election concerned. In the instant case, the conviction took place in 1995 which was

16 years before the election date. In such instance, the conviction will not operate as a ground for disqualifying Chief Pius from contesting the gubernatorial election.

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF ANAMBRA STATE OF NIGERIA
HOLDEN AT AWKA

PETITION NO: EPT/GOV/001/20

RE-RUN ELECTION TO THE OFFICE OF THE GOVERNOR OF ANAMBRA STATE OF THE FEDERAL REPUBLIC OF NIGERIA HELD ON 12TH OF APRIL 2011

BETWEEN

1. **DR. CHARLES DODO**
2. **NATIONAL NIGERIAN PARTY**

PETITIONERS

AND

1. **CHIEF CHRIS PIUS**
2. **UNITY CONGRESS PARTY**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION (INEC)**

RESPONDENTS

PETITION

THE PETITION OF DR. CHARLES DODO OF NO. 64, NWEKE STREET, AWKA NORTH LOCAL GOVERNMENT AREA, ANA23MBRA STATE, WHOSE NAME IS SUBSCRIBED

1.0 Your 1st Petitioner Dr. Charles Dodo, was a candidate at the above election and your petitioners state that the election was held on the 12th day of April, 2011, where the 1st Respondent was a candidate.

1.1 Your 1st Petitioner contested under the platform of the 2nd Petitioner (National Nigerian Party). The 1st Respondent contested under the platform of the 2nd Respondent (Unity Congress Party).

1.2 The results as released by the 3rd Respondent were as follows (despite the fact that there were no elections in 15 out of the 21 Local Government Areas in Anambra State)

CANDIDATE	PARTY	VOTES
Chief Chris Pius	UNITY CONGRESS PARTY	950,000 Votes
Dr. Charles Dodo	NATIONAL NIGERIAN PARTY	850,000 Votes

1.3 Your 1st Petitioner states that the Respondent, Chief Chris Pius, was then returned as the elected candidate and or winner of the election (despite the

fact that there were no elections in 15 out of the 21 local government areas in Anambra State)

2.0 GROUNDS FOR THE PETITION:

Your petitioners state that the grounds on which they rely for the petition are as follows:

a. The return of the 1st respondent as winner of the re-election for the office of the governor of Anambra State which held on the 12th of April 2011 was invalid by reason of non-compliance with the provisions of the Electoral Act 2011 and was marred by irregularities and corrupt practices.

b. The 1st Respondent was not duly elected as a majority of lawful votes cast at the election, as no lawful votes were cast in 500 polling stations making up 15 aout of the 21 local government areas in Anambra State.

3.0 **FACTS IN SUPPORT OF THE PETITION:**

1. Your petitioners state that elections did not take place in 500 polling centres making up 15 out of the 21 Local Government Areas in Anambra State on the 12th April 2011.
2. Your petitioners state that the 3rd Respondent deliberately hoarded the election materials and released some of the election materials particularly the result sheet them to agents of the 2nd Respondent (Unity Congress Party) who used the said result sheets to enter the figures manufactured outside the polling units in the most reckless manner.
3. Your petitioners state that the 3rd respondent did not supply the following election materials in 500 polling centres making up 15 out of the 21 Local Government Areas in Anambra State on the 12th April 2011:

a. Voters register for use in 500 polling centres making up 15 out of the 21 Local Government Areas in Anambra State on the 12th April 2011.

b. Result Sheets (FORM EC84A1) for the Gubernatorial Election at the respective polling units in Anambra State.

4. Your petitioners state that the 3rd Respondent failed to display copies of the voters' register for each Local Government, Area Council or ward in Anambra State for public scrutiny.
5. Your petitioners state that the 2nd Respondent and his agents prevented the 1st and Respondent from free use of the media, designated vehicles, mobilization of political support and campaign at an election by causing the 1st Petitioner to be arrested by the police and detained for 14 days without telling the 1st respondent what offence I committed.

6. Your petitioners state that in the 6 Local Government Areas were elections held, the voters were compelled by force by the agents of the 1st Respondent to refrain from voting the 1st respondent and vote for the 1st respondent or be killed and some voters refrained from voting based on the threat.
7. Your petitioners state that the total number of voters as presented in Forms EC8A, EC8B, EC8C, EC8D, EC8F, EC8G, the voters registers used in the 6 local Government Areas where elections were held was 100,000 (one hundred thousand) persons and the number of accredited voters on the day of election was 63,751 (sixty three thousand seven hundred and fifty one) persons.
8. Your petitioners state that the total number of votes cast as presented in the result sheet Form R1 is 1,800,000.00 (One million eight hundred thousand) persons and this is untenable in keeping with the number of accredited voters for the election on the 12 April 2011.
9. Despite the gross irregularities and the fact that no results were collated by the 3rd respondent, the 1st respondent was declared winner of the election by 6.30 pm at the Secretariat of the 3rd respondent.
10. The 3rd respondent are hereby given notice to produce at the hearing of the petition the following documents

a. Ballot papers and ballot boxes purportedly used during the election.
b. All forms EC8A, EC8B,EC8C, EC8D, EC8E, EC8D allegedly used in the election on the 12th April 2011
c. The comprehensive voters register for all the polling booths in the country.
d. Comprehensive list of the polling clerks, presiding officers, supervisory presiding officers, ward returning officers and the constituency returning officer that were scheduled to work at the said election.
e. The declaration of election result sheet Form R1
f. All other documents allegedly used during the election.

PRAYERS:

Wherefore, your petitioner prays the Tribunal for the following reliefs:

1. **DECLARATION** that the 1st Respondent, CHIEF CHRIS PIUS was not duly elected and returned as winner of the rerun election to the office of the Governor of Anambra State held on the 12th of April 2011.
2. **AN ORDER DECLARING** the rerun election to the office of the Governor of Anambra State held on the 12th of April 2011 was null or void.

Dated ..... day of April, 2011.

J.O. Akanbi Esq.

(Petitioner's Counsel)
J.O. Akanbi & Co.
No. 10 Nnamdi Azikiwe Road,
Awka, Anambra State.

Signed before me
this . . . . . .day of 2011

. . . . . .
Secretary

FOR SERVICE ON:
1st Respondent
CHIEF CHRIS PIUS
112 Ndubuisi Road, Awka.

2nd Respondent:
Unity Congress Party
State Headquarters
27 Ozumba Mbadiwe Street,
Awka, Anambra State

3rd Respondent:
Independent National Electoral Commission (INEC)
National Headquarters,
12 Aguiyi Ironsi Street, Awka, Anambra State

The Petitioner
C/o His Solicitor of the above address

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF ANAMBRA STATE OF NIGERIA

HOLDEN AT AWKA

PETITION NO: GET/AN/001/11

BETWEEN:

DR. CHARLES DODO……PETITIONER

AND

1. **CHIEF CHRIS PIUS**
2. **UNITY PROGRESS PARTY** **…..RESPONDENTS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**

To The Secretary

MEMORANDUM OF APPEARANCE

Please enter appearance for CHIEF CHRIS PIUS who is the first respondent in the above election petition.

The name and address of his Solicitor are as follows-

……
Mr. Onah Chibueze
No. 10, Law School road,
Victoria Island,
Lagos State.

Dated this……day of……..20……..

……..
Mr. Onah chibueze
Counsel to the 1st respondent

For Service on
the Petitioner
No. 2, Ugwunchara Street,
Anambra West LGA,
Anambra State.
Occupier:
Dr. Charles Dodo.

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF ANAMBRA STATE OF NIGERIA

HOLDEN AT AWKA

PETITION NO: GET/AN/001/11

THE ELECTION TO THE OFFICE OF THE GOVERNOR OF ANAMBRA STATE HELD ON SATURDAY, FEBRUARY 26, 2011.

BETWEEN:

DR. CHARLES DODO……PETITIONER

AND

1. **CHIEF CHRIS PIUS**
2. **UNITY PROGRESS PARTY** } **....RESPONDENTS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**

REPLY TO THE PETITION OF DR. CHARLES DODO 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.

1. The 1st Respondents admit paragraphs 1.0.1. 1.0.3. and 2.0 of the Petition.
2. The 1st Respondents is not in a position to either admit or deny paragraph 1.0.2, and would, at the trial, put the Petitioner to the strictest proof of same.
3. The 1st Respondents deny paragraph 3.0.1 of the Petition.
4. The 1st Respondent denies paragraph 3.0.1.1 of the Petition and state that the said election was conducted in accordance with the provisions of the Electoral Act, 2010, as amended and the 1st respondent was therefore duly returned as the winner of the election.
5. The 1st Respondent denies paragraph 3.0.1.2 of the Petition and states that the resident electoral officer to the third respondent did not manipulate the result to any candidate's favour.
6. The 1st Respondent denies paragraph 3.0.1.3 of the Petition. The 1st respondent avers that the election was free and fair.
7. The 1st Respondent admits paragraph 4.0.1 of the Petition only to the extent that the election did not hold in two polling units in Anambra West LGA of Anambra State due to a heavy storm that lasted for several hours on the election day, but denies every other allegation of fact contained in the said paragraph. The 1st respondent avers that election was conducted in those polling stations the next day.
8. The 1st respondent denies paragraph 4.0.2. of the petition and states that the 3rd respondent did not give any of its electoral materials to the 1st respondent, neither was it given to any person who was not an electoral official in charge of the said election.
9. The 1st respondent denies paragraph 4.0.3 of the petition and further states that, at about 10 am, almost all the polling units in the state had INEC officials present with all the materials needed to conduct the election.
10. The 1st respondent admits paragraph 4.0.4. only to the extent that the 3rd respondent declared the 1st respondent, winner in the said election at about the said time, on the 28th day of February, 2011, but denies every material allegation of fact contained in the said paragraph.
11. The 1st respondent denies paragraph 4.0.5. of the petition and reiterates that every vote contained in the 1st respondent's favour was duly deserved.

WHEREOF, the 1st respondent prays this Honourable Tribunal to dismiss the Petition as it is frivolous, baseless and lacks merit.

.....

No. 89, Anie Road,
Umunwa, Anambra East,
Anambra State.
Occupier:
CHIEF CHRIS PI

……..

Mr. Onah Chibueze

Counsel to the 1st Respondent,

No. 10, Law School road,

Victoria Island,

Lagos State.

ADDRESS FOR SERVICE
PETITIONER,
No. 2 Ugwunchara West LGA,
Anambra State.
Occupier:
Dr. Charles Dodo

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF ANAMBRA STATE OF NIGERIA

HOLDEN AT AWKA

PETITION NO: GET/AN/001/11

BETWEEN:

DR. CHARLES DODO……PETITIONER

AND

1. **CHIEF CHRIS PIUS**
2. **UNITY PROGRESS PARTY** **….RESPONDENTS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**

LIST OF WITNESSES

1. MR. DAVID OGBONNA
2. MR. NATHAN NAPHTALI
3. MR. MILFORD MOORE

……..

Mr. Onah Chibueze
Counsel to the 1st Respondent,
No. 10, Law School road,

Victoria Island,
Lagos State.

ADDRESS FOR SERVICE
PETITIONER,
No. 2 Ugwunchara West LGA,
Anambra State.
Occupier: Dr. Charles Dodo.

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF ANAMBRA STATE OF NIGERIA

HOLDEN AT AWKA

PETITION NO: GET/AN/001/11

THE ELECTION TO THE OFFICE OF THE GOVERNOR OF ANAMBRA STATE HELD ON SATURDAY, FEBRUARY 26, 2011.

BETWEEN:

DR. CHARLES DODO……PETITIONER

AND

1. **CHIEF CHRIS PIUS**
2. **UNITY PROGRESS PARTY** **…..RESPONDENTS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**

WITNESS STATEMENT ON OATH OF THE RESPONDENT WITNESS 1

(MR. DAVID OGBONNA)

I, Mr. David Ogbonna, Male, adult, Resident Electoral Commissioner for Anambra State, Christian, Nigerian citizen of No. 10, Emmanuel Crescent, Awka, Anambra State, do hereby make oath and state as follows:

1. That I am the Resident Electoral Commissioner for Anambra State and by virtue of which I am conversant with the facts of this case.
2. That INEC conducted a re-run election to the office of the Governor, Anambra state on the 26th day of February, 2007.
3. That two days before the said election, all the electoral materials were sent to the State Electoral Commission and the commission was ready to conduct the election.

4. That I personally deployed the electoral officers and electoral materials to all the local government areas in the state.
5. That on the said election day, I visited many polling stations in several local governments to observe how election was being conducted, and I was satisfied that the election was being conducted in accordance with the Electoral Act, 2010, as amended.
6. That in most polling stations that I visited, it was confirmed to me that voting started before 10 am.
7. That the election was not marred in any way by violence, as the electorates voted peacefully.
8. That there was no polling station in Anambra State that election did not hold, except for the two polling stations in Anambra West Local Government, which I learnt that the heavy downpour disrupted the election.
9. That it was promptly announced that the election in those two polling stations was to be re-conducted the following day, and which was successfully conducted.
10. That before 6 pm on that day, I had gotten almost all the results from all the Local Governments.
11. That each of the result sheets from each polling station was counter-signed by all the party agents assigned by their parties to each polling station.
12. That I instructed the Returning Officers in charge of each of the local governments, to deploy a camera man in each of the stations, which they complied with.
13. That I have the video recording of all the events that took place in each polling station in the state, for reference purpose.
14. That I make this Oath in good faith, conscientiously, believing same to betrue and in accordance with the Oath Act.

.....

Mr. David Ogbonna

(Deponent)

Sworn to at the Federal High Court Registry

This……..day of……..20…….

Before me

……

Commissioner for Oaths

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF ANAMBRA STATE OF NIGERIA

HOLDEN AT AWKA

PETITION NO: GET/AN/001/11

THE ELECTION TO THE OFFICE OF THE GOVERNOR OF ANAMBRA STATE HELD ON SATURDAY, FEBRUARY 26, 2011.

BETWEEN:

DR. CHARLES DODO……PETITIONER

AND

1. **CHIEF CHRIS PIUS**
2. **UNITY PROGRESS PARTY** **…..RESPONDENTS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**

WITNESS STATEMENT ON OATH OF THE RESPONDENT WITNESS 2

(MR. NATHAN NAPHTALI)

I, Mr. Nathan Naphtali, Male, adult, Presiding officer, Christian, Nigerian citizen of No. 20 Oraifite Avenue, Awka, Anambra State, do hereby make oath and state as follows:

1. That I am the Presiding officer in one of the polling units in Nnewi North LGA, by virtue of which I am conversant with the facts of this case.
2. That I was given all the electoral materials for the polling unit I was assigned to by the returning offer in charge of the above local government at about 8:45 am on the 26th of February, 2011, and together with other presiding officers in other polling unit in the said LGA, we were each dropped at our polling units.

3. That at my polling unit, election started at about 9:45am, and ended around 4.00.
4. That the election went on smoothly, and no irregularity was recorded.
5. That I came back on the same bus with other presiding officers and none gave any negative report concerning his polling unit.
6. That I make this Oath in good faith, conscientiously, believing same to be true and in accordance with the Oath Act.

……

Mr. Nathan Naphtali
(Deponent)

Sworn to at the Federal High Court Registry
This……..day of……..20…….

Before me
……
Commissioner for Oaths

IN THE GOVERNORSHIP ELECTION TRIBUNAL OF ANAMBRA STATE OF NIGERIA

HOLDEN AT AWKA

PETITION NO: GET/AN/001/11

THE ELECTION TO THE OFFICE OF THE GOVERNOR OF ANAMBRA STATE HELD ON SATURDAY, FEBRUARY 26, 2011.

BETWEEN:

DR. CHARLES DODO……PETITIONER

AND

1. **CHIEF CHRIS PIUS**

2. **UNITY PROGRESS PARTY** **RESPONDENTS**
3. **INDEPENDENT NATIONAL ELECTORAL COMMISSION**

WITNESS STATEMENT ON OATH OF THE RESPONDENT WITNESS 3

(MR. MILFORD MOORE)

I, Mr. Milford Moore, Male, adult, Returning officer for Anambra West LGA of Anambra State, Christian, Nigerian citizen of No. 12, Egede Close, Nnewi, Anambra State, do hereby make oath and state as follows:

1. That I am the Presiding officer in one of the polling units in Aguata LGA, by virtue of which I am conversant with the facts of this case.
2. That I was given all the electoral materials for the polling unit I was assigned to by the returning offer in charge of the above local government at about 8:00 am on the 26th of February, 2011, and together with other presiding officers in other polling unit in the said LGA, we were each dropped at our polling units.
3. That at my polling unit, election started at about 1:00 am, and ended around 4.00.
4. That the election went smoothly, and no irregularity was recorded.
5. That I came back on the same bus with other presiding officers and none gave any negative report concerning his polling unit.
6. That I make this Oath in good faith, conscientiously, believing same to be true and in accordance with the Oath Act.

……

Mr. Milford Moore

(Deponent)

Sworn to at the Federal High Court Registry

This……..day of……..20…….

Before me

……

Commissioner for Oaths

Week 19: MATRIMONIAL CAUSES

THE APPLICABLE LAWS

NB: Marriages in the Marriage Registry generally located in local governments

1. The Marriage Act **2004**
2. The Matrimonial Causes Act 2004. This Law only applies to monogamous marriages contracted under the Act that are valid. (This is because a church marriage is not regarded as a marriage under the Act except it complies with the Marriage Act (Please read the conditions for contracting a valid marriage under the Act in textbooks like Family Law in Nigeria by Margaret). See NWANGWA V. UBANI and S. 33 of the Matrimonial Causes Act (MCA) for the requirements of a valid marriage under the Marriage Act.)
3. Matrimonial Causes Rules **1983**

MEANING OF MARRIAGE

It is a union between one man and a woman for life. **HYDE V. HYDE**

SCOPE-AND APPLICATION OF THE MCA

- The marriage discussed here or relevant here is marriage under the Act otherwise called statutory marriag1e.
- The provisions of the Matrimonial Causes Act only applies to **valid** marriages conducted under the Act **while Church marriages/ blessing of marriage may only be saved by the presumption of Law that the parties intend to conduct a valid marriage.** .

CHURCH MARRIAGE

A church marriage only gives blessing to a customary marriage.

- In **NWANGWU v. UBANI,** the Court of Appeal held that mere celebration of a marriage in a church as was done in the case does not confer statutory flavour to the marriage.
- In order to convert a customary law marriage into a statutory marriage, the parties must consciously take steps and adopt the procedure contained in the Marriage Act.

MARTINS v. ADENUGBA

ANYAEGBUNAM v. ANYAEGBUNAM

HOW IS A VALID CELEBRATION OF MARRIAGE CONDUCTED

a. By the Registrar in the Marriage Registry **S. 27 MA**

b. By a minister of a religious denomination in a licensed place of worship **S. 18 MA**

c. By special licence under the hand of Minister of Internal Affairs **S. 13 MA**

d. By celebration abroad in a Nigerian Diplomatic Mission S. **50 MA**

PLEASE NOTE VERY CAREFULLY

- **Once a person contracts** marriage under the Act, he cannot marry other persons apart from the initial marriage under **the Act is monogamous**.
- Thus, once you are married under the Act, you cannot marry another person under the Act or under Customary Law **S. 47 Marriage Act.**
- A person married under native Law and Custom cannot marry any other person under the Act except the one he married under native law and custom.
  S**. 46 Marriage Act.**
- Note that both customary and Act marriages are regarded as valid marriages but the distinction is for the purpose of the application of the Matrimonial Causes Act.

WHAT ARE THE LEGAL FORMALITIES FOR STATUTORY MARRIAGE

A statutory marriage is one that has complied with the Marriage Act as to the elements of a valid marriage. **S. 33 of the Marriage Act.**

a. Display of notice simultaneous on Notice Board in Marriage Registry and entered into the Marriage Register.

b. If there is no objection after 3 months, Registrar issues the marriage certificate.

c. Ensure that they parties have been **RESIDENT WITHIN THE DISTRICT 15 DAYS** prior to the issuing of certificate.

d. Ensure that the parties are of marriageable age.

e. Registrar to ensure that neither party is married to another person under customary law.

WHAT IS THE INDEX OF PERFECTION OF MARRIAGE CONTRACTED UNDER THE ACT

The marriage is celebrated subsequent to the issuance of marriage certificate.

JURISDICTION

Jurisdiction over matrimonial causes is vested in the State High Courts.

Section 2 MCA

The basis of a Nigerian Court assuming jurisdiction in matrimonial causes is **DOMICILE**.

BHOJWANI v. BHOJWANI

PLEASE NOTE

For the purpose of matrimonial causes, **the High Court is taken to be one Division**.

Thus, once a person is domiciled Lagos State in Nigeria, he may institute proceedings in any High Court whether or not he is resident in that state.

ADEGOROYE v. ADEGOROYE

UGO v. UGO (2008)

S. 2(3) MCA.

i.e. once domicile in Nigeria, can file a petition to dissolve the marriage in any part of the country

However under **section 9 (2) of the MCA**, the Court may transfer a case instituted to a convenient forum upon application by a party.

O. 1 r. 4(1) of the MCR,

ADEGOROYE V. ADEGOROYE

FOLUNRUNSHO V. FOLORUNSHO.

It is an abuse of Court process when two or more different Petitions are filed before different Courts and in that situation the Court can stay proceedings on the matter.

S. 9(1) of the MCA.

DOMICILE

DOMICILE is defined to mean a person's permanent home.

It is different from Nationality. At birth, every person receives a domicile i.e. his domicile of origin.

DOMICILE OF A CHILD

A **legitimate** child acquires the domicile of the **father** at the time he was born.

An **illegitimate** child or a **posthumous** child takes the domicile of the **mother**.

If the parents are **unknown**, the child takes the **domicile** of origin, the **legal** district in which he was found.

Domicile of origin is not merely lost by changing residence.

- There must be intent to acquire a domicile of choice **AND**
- an animus to reside there permanently never to return or at least to stay indefinitely.

OMOTUNDE v. OMOTUNDE

DOMICILE OF A WOMAN

A woman, on marriage, acquires the domicile of her husband. While the marriage lasts, a woman cannot acquire a domicile of her own.

DOMICILE OF A DESERTED WIFE

As a way of protecting women from the effect of jurisdiction being based on domicile; **section 7 MCA** makes special provision relating to women.

- **a DESERTED WIF**E who was domiciled in Nigeria either immediately before her marriage or immediately before desertion shall be deemed to be domiciled in Nigeria.

Section 7(a) MCA

Also, a woman/wife who is resident in Nigeria at the date of commencing the proceedings and **has been so resident for a period of 3 years immediately preceding that date shall be deemed to be domiciled in Nigeria.**

TYPES/RELIEFS UNDER MATRIMONIAL CAUSES

1. Dissolution of marriage
2. Nullity of voidable marriage
3. Nullity of void marriage
4. Judicial separation
5. Restitution of conjugal rights
6. Jactitation of marriage

s.114 MCA

PROCEEDINGS FOR DISSOLUTION OF MARRIAGE,

S. 15 OF THE MCA.

The sole ground on which a decree of dissolution of marriage will be granted is that the marriage has broken down irretrievably.

This means that the petition must contain the fact that the marriage has broken down irretrievably.

S. 15(1) of the MCA,

MEGWALU V. MEGWALU

HARRIMAN V. HARRIMAN.

ANY ONE OR MORE OF THE BELOW FACTUAL SITUATIONS MAY BE GIVEN TO SUPPORT THE GROUND FOR A DECREE OF DISSOLUTION OF THE MARRIAGE THAT IT HAS BROKEN DOWN IRRETRIEVABLY:

1. The respondent has wilfully and persistently refusal to consummate the marriage
2. The respondent committed adultery and the petitioner finds it intolerable to live with him/ her. To prove adultery, it is usually difficult using direct evidence and only circumstantial evidence are mostly available i.e. compromising positions can infer adultery. See AKINYEMI v. AKINYEMI. Supreme CT said one instance of adultery is not intolerable nor two, there must be some other act that makes the adultery intolerable e.g. circumstances of adultery or the person with whom the adultery is committed with. Also for adultery, must prove penetration or maybe children as a product of the adultery, the fact that you photograph a man and woman lying naked on the bed is not enough.

3. Since the marriage, the respondent behaved in a way that the Petitioner cannot reasonably be expected to live with him/her which may include any/ all of the following: (s15(2)(c) MCA)

a. rape, sodomy and bestiality

b. period of not less than 2 yrs, been a habitual drunkard

c. addicted to drugs

d. has committed sexual offences

e. The is imprisoned for a death sentence, etc

f. he does not support his spouse

g. failure to pay maintenance to the spouse

h. he has an unsound mind

i. he is cruel or beating the spouse

j. CT has held cruelty is not expressly provided for, it is a ground for saying intolerable to live with the person

4. The respondent deserted the Petitioner for a continuous period of at least one year before the filing of the petition
5. The parties have been living apart for **2 years with no objection** by the Respondent
6. The parties have been living apart for 3 years regardless of any opposition to that. There will be a constructive desertion if a spouse leaves the other in order to save his life, the violent spouse is deemed to be in desertion. Also there is a constructive desertion when a couple is living together but not relating with each other and can be said to be living apart. Note that the spouse that caused it is deemed guilty of the desertion. -**S. 18 of the MCA.**
7. Failure of the respondent to comply with a decree of restitution of conjugal rights **after one year of the Court Order.**
8. Presumption that **the Respondent is dead because he has been absent for not less than 7 years**. - **S. 164 of the Evidence Act 2011 and S. 16(2)(a) of the MCA.**

S. 15(2) of the Matrimonial Causes Act.

FILING OF A PETITION FOR A DECREE OF DISSOLUTION OF MARRIAGE WITHIN 2 YEARS OF MARRIAGE (THE 2 YEARS RULE).

- The general position of the Law is that ordinarily no petition for the dissolution of a marriage **within 2 YEARS** of the marriage is allowed.
- The rationale is to give the couple the opportunity to settle and be able to live together.
- **FISHER V. FISHER.**
- However if a spouse insist on filing a petition for dissolution of a marriage within the two years of the marriage, the leave of Court must be applied and obtained for the petition to be heard.
- **S. 30 (1) of the MCA.**

APPLICATION FOR LEAVE

- The procedure for the application of leave is to file a **Motion Ex PARTE** supported with an **affidavit exhibiting the proposed Petition for the dissolution of the marriage.**
  O. 4 r. 3 & 4 of the Matrimonial Causes Rules (MCR).
- The affidavit is to disclose exceptional hardship for the petitioner or exceptional depravity on the part of the respondent: **S. 30 (2) of the MCA,**
  AKERELE V. AKERELE
  MAJEKODUNMI V. MAJEKODUNMI.

THE LEAVE OF COURT WILL NOT BE NECESSARY IN MARRIAGES LESS THAN 2 YEARS IN THE FOLLOWING CASES: s15(2)(a), (b) and (c) MCA

1. When there is a wilful and persistent refusal to consummate the marriage
2. The respondent has committed adultery and it is intolerable
3. The respondent committed rape, sodomy, bestiality and other unnatural acts
4. Where the institution of the proceedings is by way of cross-petition.

NULLITY OF A VOID MARRIAGE

The focus of a petition for a decree that the marriage is void is on the valid elements of a marriage under the Act.

A **certificate of Reconciliation** is not needed to be filed.

THE GROUNDS FOR THE GRANT OF A DECREE OF NULLITY OF MARRIAGE

1. Either of the parties at time of marriage was lawfully married to some other person, **S. 33 (1) of the Marriage Act and S. 35 of the Marriage Act; Amobi v Nzewu (2014) 2 NWLR Pt 1392** – trial CT went as far to suggest that the second wife should be arrested and trialled for bigamy.
2. The parties are within the prohibited degree of consanguinity and affinity; see the first schedule to the MCA. Note that those within the prohibited degree of affinity (relations by marriage) can marry if the leave of the Court is sought and obtained. **S. 4 of the MCA.** Consanguinity is relation by blood (an absolute bar). Affinity is relation by marriage e.g. wife's daughter, wife's sister (can apply to court for leave to marry and if they show cause the court may allow them to marry.
3. The marriage is **Invalid** as it failed to comply with the requirements of solemnisation, **S. 33(2) of the Marriage Act** which is to the effect that a marriage will be void if **both parties knowingly and willfully acquiesced in the celebration of a marriage in contravention of these rules i.e. not valid by the law of place of celebration**
   a. In a place other than the office of a Registrar of marriages or in a licensed place of marriage
   b. By a recognised Minister or Registrar of marriage
   c. Under a false name
   d. Without the registrar's certificate of Notice of Marriage
   e. Obtaining a certificate to marry before marriage is performed

   CHUKWUMA V. CHUKWUMA (1996) 1 NWLR Pt 426
   4. There is the absence of real consent of the parties to the marriage because the consent was obtained by:

   a.. Duress or fraud

b. Mistake of the identity of the other party; or
c. Mistake as to the nature of the ceremony to be performed by a person not a recognised minister of some religious denomination or a registrar of marriages

5. Either party is not of a marriageable age **(21 years).** Note that they can marry even if they are not of age with parental consent

S. 3 of the MCA.

NULLITY OF A VOIDABLE MARRIAGE

THE grounds for bringing a petition must all exist at the time of the parties entering into the marriage.

The marriage when conducted is **valid until set aside** by the Court and only a person aggrieved can bring a petition for its nullity-**S. 35 of the MCA.**

A petition **for the decree of nullity of a voidable marriage** can be **made by one of the parties** on the following grounds:

1. Either party at the time of the marriage was incapable of consummating the marriage, **S. 35 and 36 of the MCA**
2. Either party at the time of the marriage is of unsound mind or mentally defective, or subject to recurrent attacks of insanity or epilepsy
3. A party at the time of the marriage is suffering from venereal disease in a communicable form
4. The wife is pregnant for another person other than her husband at the time of marriage

S. 5 (1) of the MCA.

A PETITION FOR NULLITY OF A VOIDABLE MARRIAGE CAN NOT BE MADE/ FILED BY:

1. A party suffering from incapacity to consummate the marriage unless the party was unaware of the existence at the time of the marriage
2. The party suffering from the disease or disability.
3. The wife is pregnant by a person other than her husband

SECTION 35 and 37 OF THE MCA,

THE COURT WILL NOT MAKE AN ORDER FOR THE NULLITY OF A VOIDABLE MARRIAGE WHERE:

1. The petitioner had knowledge of the incapacity at the time of the marriage
2. The conduct of the petitioner since the marriage is unfair; or
3. There was lapse of time as the petition ought to have been filed within **12 MONTHS** of been aware or for any other reason that would be harsh and oppressive to the Respondent or contrary to public policy to make such a decree.

SECTION 36 OF THE MCA,

THE PETITION

PARTIES TO A PETITION

The parties are known as

1. Petitioner,
2. Respondent
3. Cross-petitioner.

EBE V. EBE.

A co- respondent may be added in cases where the Respondent committed adultery with another party been the reason for the petition: Ebe v Ebe (2004) 3 NWLR Pt 860

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.

S. 32(1) of the MCA

O. 9 r. 5 (1) of the MCR

ERHAHON V. ERHAHON.

In **EBE v. EBE (2004)3 NWLR Pt 860** the Court held that it is mandatory to join a person with a party is alleged to have committed adultery in matrimonial proceedings whether the adultery is the basis on which dissolution is sought or not.
NB=> One instance of adultery is not sufficient
In proving adultery, you must prove penetration. The fact that a man and woman are found naked on the bed is not sufficient proof of sex.
ERHAHON V. ERHAHON

NOTE

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**.

THE PLEADINGS TO BE FILED BY THE PARTIES

NB=> 0.5 r. 10(1) MCR

See S. 114 MCA for the definition of Petition and cross petition.
NB=> Petitioner files his Petition, Respondent files his Answer, Petitioner files Reply, Respondent files Rejoinder

1. Petition to be filed by the **petitioner** for any of the proceedings under the Matrimonial Causes Act
2. **Answer** to the **petition** filed by the Respondent showing his defence
3. **Answer** and **Cross**-petition to be filed by the Respondent replying the petition and also petitioning for the dissolution of the marriage or for other reliefs on grounds to be stated therein
4. **Reply** filed by the petitioner in response to the Respondent's Answer if he raised new issues
5. Re-**joinder** filed by the Respondent in **further** reply to new issues raised by the Petitioner in his Reply

THE PROCEDURE FOR FILLING A PETITION FOR A DISSOLUTION OF MARRIAGE

1.Application for Leave to file a Petition for dissolution of a marriage **WITHIN 2 YEARS** by **Motion Ex Parte supported with affidavit stating the followin**g:

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

e. And a copy of the Marriage Certificate will be exhibited on the Affidavit.

2. File the Petition- **Form 6 of the MCA.**

CONTENTS OF A PETITION IN FORM 6 TO THE MCA

1. Heading of the Court/ petition no. with a caption:

   IN THE MATTER OF THE MATRIMONIAL CAUSES ACT
2. Parties with their designation
3. Introduction
4. The date of the marriage
5. Birth of the Petitioner and Respondent
6. Domicile of the parties before and after the marriage
7. If previous proceedings have been made
8. Grounds for the petition
9. Facts in support of the grounds
10. If there have been a connivance, condonation etc in the filing of the petition
11. Reliefs sought
12. Date and address for service HPIDBDPGFCR

DOCUMENTS TO ACCOMPANY A PETITION FOR THE DISSOLUTION OF A MARRIAGE AND THEIR PURPOSES

1. **Notice of Petition (Form 8 or 9/10)**
2. **Verifying affidavit** which confirms the facts stated of which the petitioner has special knowledge and that it is true. **O. 5 r. 10 (1) of the MCR**

   The verifying affidavit is part of the petition and not a separate document **and thus does not need a separate heading of court. Put at the foot of the petition.**
   UNEGBU v. UNEGBU: Compliance with this is mandatory
3. **A form for Acknowledgment of service** which the respondent will use to acknowledge that he has been served with the petition **O. 6 r. 3(1) of the MCR**

4. **Certificate of reconciliation** (but **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**
5. A copy of the marriage certificate to show that it was a valid marriage conducted under the Act.
6. **DISCRETION STATEMENT** to be made by either of the parties who have committed adultery but **still wants a decree of dissolution of the marriage irrespective of** that.

   It states the instances of adultery committed by the party filing it but seeking that the petition for divorce should be granted.

   It is filed in a sealed envelope marked **'Discretion Statement'**. See **ERHAHO N V. ERHAHON.**

THE DOCUMENTS TO BE ATTACHED TO AN ANSWER AND CROSS-PETITION FOR A DISSOLUTION OR NULLITY OF MARRIAGE ARE:

1. Notice of Petition (Form 8)
2. Verifying affidavit
3. Acknowledgment of service, see O. 6 r. 3(1) of the MCR
4. Certificate of reconciliation (but 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. **See Form 3 of the MCA and O. 2 r. 2 of the MCR**
5. Marriage certificate

ADDRESS FOR SERVICE AND SERVICE OF THE PETITION

A party is not entitled to be heard at the trial unless he had previously given an address for service.

O. 1 R. 2 OF THE MCR.

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**.

O. 11 r. 33-34 of the MCR.

SETTING DOWN OF THE PETITION FOR HEARING

The request to set down the petition for hearing is **to be made by the petitioner** by filing **Form 32 i**f the petition is **defended** by the respondent **or Form 31** for an **undefended petition**.

O. 11 r. 39-41 of the MCR.

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.

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 **section 103(1) & (2) of the MCA** did not permit a Court to sit in the chambers to hear matrimonial proceedings .

ORDERS TO BE MADE UPON HEARING THE PETITION-DECREES

A Decree of dissolution of marriage shall be made in the first instance known as a **DECREE NISI. S. 56 of the MCA**.

An aggrieved party can appeal to the Court of Appeal during this period.

S. 241(1) (i) of the 1999 Constitution as amended.

WHEN DOES DECREE NISI BECOME ABSOLUTE

A decree nisi becomes absolute after 3 **MONTHS from the date the decree nisi was made by operation of the law.**

S. 58 of MCA

DEJONWO V. DEJONWO.

There will be **no right of appeal from a decree absolute to any of the parties who** failed to do so when the **decree was nisi**. **S. 241(2) (B) OF THE 1999 CONSTITUTION AS AMENDED.**

When a party **appeals** against a **decree** nisi, it will not become **absolute** until **AFTER 15 DAYS OF THE DECISION GIVEN BY THE APPEAL COURT.**

ANCILLIARY ORDERS

Where children are involved, compulsory conferences were **custody of children**, **settlement of property, maintenance** are discussed and ancillary reliefs can be made upon hearing the petition.

Custody of children is granted based on the interest and welfare of the child.

NZELU V. NZELU.

Maintenance can be requested for by any of the parties to the marriage and it can be made in favour of any based on the income of the spouse.

S. 70(1) of the MCA.

THE EFFECT OF DEATH OR NEW MARRIAGE of either of the parties between the period of a Decree nisi and decree absolute or death after the Decree absolute.

- If a party contracts a marriage during the decree nisi which has not become absolute, the new marriage is null and void.-**AMOBI V. NZEGWU**.
- Also if a party died during the decree nisi, the other spouse can still inherit the deceased as the decree nisi has not become absolute.

S. 58(4) of the MCA, AMOBI V. NZEGWU and DEJONWO V. DEJONWO.

- After the decree nisi becomes absolute, either part is free to contract a new marriage which is valid.

JUDICIAL SEPARATION

It is similar to an Order for dissolution of marriage and the grounds for its grant are also the grounds for the grant of a petition for the dissolution of a marriage.

S. 16(1) of the MCA.

A petition for judicial separation is in **Form 6** of the **MCA**

A decree for judicial separation does not affect the marriage or status, rights and obligations of the parties to the marriage.

The main difference between dissolution of marriage and judicial separation is that such an order does not affect the marriage or the status, rights and obligations of the parties to the marriage.

THE CONSEQUENCES OF AN ORDER FOR JUDICIAL SEPARATION

1. Relieves the petitioner of the duty to cohabit and perform conjugal duties with the respondent while the decree lasts
2. The parties can sue each other in contract or tort
3. The parties can inherit each other's property if either of them died intestate

S. 41 & 42 of the MCA.

The decree of judicial separation shall not prevent either party form bringing a petition for dissolution of marriage. **S. 44**

The court may also discharge a decree of judicial separation where parties voluntarily resume cohabitation and both consent to the order. -**S. 45 MCA**

JACTITATION OF MARRIAGE

SECTION 52 MCA

A petition for jactitation of marriage is based on the grounds that the respondent has **falsely boasted and persistently** asserted that a marriage has taken place between the respondent and the petitioner.

The petition shall state

- the times and places at which the respondent is alleged to have boasted,
- particulars of such boastings and assertions,
- the fact that the parties are not married and
- the petitioner has not acquiesced in the alleged boasting or assertions.

ORDER. 2 & 3 MCR

The granting of the decree is however at the discretion of the court.

A petition will be filed for **jactitation of marriage** praying the Court to **restrain** the respondent from asserting such and to perpetually keep quite.

Form 60 to the MCA,

O. 22 r. 2&3 of the MCR

AYENI V. OWOLABI.

RESTITUTION OF CONJUGAL RIGHTS

This is applied for on the ground that the parties to the marriage whether or not they have at **any time** cohabited are not cohabiting and without a just cause the respondent has refused to cohabit and render conjugal rights to the petitioner.

S. 47 of the MCA.

The petition for the restoration of conjugal rights is **Form 7 in the MCA.**

THIS PETITION FOR RESTITUTION OF CONJUGAL RIGHTS SHALL NOT BE GRANTED UNLESS THE FOLLOWING THINGS ARE PROVED.

a. That the petitioner sincerely desires conjugal rights to be rendered by the respondent.

b. The petitioner is willing in turn to render conjugal rights to the respondent.

c. The petitioner had made a written request for cohabitation in conciliatory language to the respondent before commencement of the process

except there are special circumstances that make it unnecessary to make such a request.

S. 49 MCA

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.

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. **O. 17 R. 4 OF THE MCR**

ETHICAL ISSUES

1. Duty to explore Alternative Dispute Resolution mechanisms, **see R. 15 (3) (d) of the RPC**
2. Duty not to instigate controversy for divorce with a view to be retained as attorney to the party instigated, see **R. 47 of the Rules of Professional Conduct (RPC) 2007**
3. Duty not to falsify documents when prosecuting matrimonial causes, see **R. 15(3) (f) of the RPC**.
4. Duty as an officer of the Court not to mislead the Court

QUESTIONS ASKED IN CLASS

What is a matrimonial cause?

It is suit where the petitioner seeks any of the main reliefs provided for by the MCA.

E.g. action for maintenance is not a matrimonial cause.

Types of marriages recognised in Nigeria

- Statutory, customary, Islamic

c. **What distinguishes statutory from non-statutory marriage**

=> The formal legal requirements for a valid statutory marriage.

d. **What is the marriageable age** => 21 years

What are the grounds for dissolution of marriage?

There is only one ground for dissolution of marriage i.e. that the marriage has broken down irretrievably

Can petition for dissolution be filed within 2yrs of marriage

No. However; the court may grant leave where necessary. Where refusal to grant leave will cause exceptional hardship to the petition or the matter is one of exceptional depravity on the respondent's part.

List the documents to accompany a Petition

a. Verifying Affidavit

b. Notice of petition

c. Acknowledgement of service

d. Certificate of marriage

What is the standard of proof of adultery in matrimonial proceedings

=> The Balance of probabilities

APPLICATION FOR LEAVE FOR DISSOLUTION OF MARRIAGE

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

PETITION NO:

BETWEEN

LYNDA BABA ----------

PETITIONER/APPLICANT

AND

PAUL BABA ---------- 1ST

RESPONDENT

ADA OGUN ---------- 2ND

RESPONDENT

MOTION EX PARTE

BROUGHT PURSUANT TO ORDER IV RULE I OF THE MATRIMONIAL CAUSES RULES 1983 AND UNDER THE INHERENT JURISDICTION OF THIS HONOURABLE COURT.

TAKE NOTICE that this Honourable Court will be moved on the _____ day of _____ 2014 at the Hour of 9 o'clock in the forenoon or so soon thereafter as counsel on behalf of the Applicant may be heard praying this Honourable Court for the following orders:

1. AN ORDER OF COURT granting leave to institute proceedings for the dissolution of marriage within two years of marriage.
2. AND FOR SUCH ORDER OR FURTHER ORDERS as this Honourable Court may deem fit to make in the circumstances.

DATED THIS 17th day of March, 2014.

Gabriella Ndu
Counsel to the Petitioner/Applicant
FOR: NDU CHAMBERS
77, Awolowo Road, S/W
Ikoyi, Lagos.

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

PETITION NO:

BETWEEN

LYNDA BABA ----------
PETITIONER/APPLICANT
AND
PAUL BABA ---------- 1ST
RESPONDENT
ADA OGUN ---------- 2ND
RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION EX PARTE

I, Lynda Baba, female, medical practitioner, Nigerian citizen of No 3, Independence Lane, Asokoro, Abuja do hereby make oath and state as follows that:

1. I am the petitioner in this petition by virtue of which I am conversant with the facts stated in this affidavit.
2. I have a valid marriage with the 1st respondent contracted on the 17th day of January, 2013 at the Holy Cathedral Church, Asokoro, Abuja in accordance with the Marriage

Act. Attached to this affidavit is the Marriage certificate issued by the Registrar of Marriages of the FCT and marked as Exhibit A1.

3. I have been diagnosed to be suffering from severe depression as a result of the constant physical abuse and psychological trauma that the 1st respondent subjected me to.
4. I believe that if my application is not granted, I would continue to suffer undue hardship at the hands of the 1st respondent.
5. If leave is however granted to me by this Honourable Court, the grounds upon which I intend to petition for the decree are as stated in the petition prepared by my solicitor. The proposed petition is hereby attached to this application.
6. No previous application for leave has been made to a Court.
7. There is no child of the marriage
8. Reconciliation attempts have been made by parents and extended relatives of both families but all to no avail as the 1st respondent is recalcitrant in his adulterous ways.
9. I swear to this affidavit solemnly and conscientiously believing its content to be true and correct and in accordance with the Oaths Act.

DEPONENT

Sworn to at the High Court Registry, Lagos.
This ___ day of _____ 2014.

BEFORE ME

COMMISSIONER FOR OATHS

NB: WHEN DRAFTING THIS AFFIDAVIT, TAILOR IT IN LINE WITH THE LEGAL CIRCUMSTANCES UNDER WHICH YOU CAN APPLY FOR LEAVE WITHIN TWO YEARS OF CONTRACTING A STATUTORY MARRIAGE

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

PETITION NO

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT

TO: ABOVE NAMED HIGH COURT

BETWEEN

MRS LYNDA BABA ----------PETITIONER

AND

MR PAUL BABA ---------- 1ST RESPONDENT

MISS ADA OGUN ----------2ND RESPONDENT

1. The petitioner, Mrs Lynda Baba, whose address is at No 3, Independence Lane, Asokoro, Abuja and whose occupation is a medical practitioner petitions the Court for a decree of dissolution of the marriage against the respondent, Mr Paul Baba whose address is No 36, Gozzy Avenue, Maitama Abuja and whose occupation is a businessman. The 2nd respondent is Miss Ada Ogun whose address is No 3, Kutchiko Layout, Gwarinpa, Abuja and whose occupation is a commercial sex worker.

2. MARRIAGE

a. The petitioner, then a spinster was lawfully married to the respondent, then a bachelor, on the 17th day of January 2013 at the Holy Cathedral Church, Asokoro, Abuja which performed the Christian ceremony in accordance with the Marriage Act.

b. The surname of the petitioner immediately before the marriage was Roberts.

3. BIRTH OF PETITIONER AND RESPONDENT

The petitioner was born in 1980 in the United States of America and the respondent was born in 1978 in Lagos State, Nigeria.

4. DOMICILE

The petitioner is within the meaning of the Act, domiciled in Nigeria. The facts on which the Court would be asked to find that the petitioner is so domiciled are as follows: prior to the marriage and since the marriage, the petitioner has resided in Abuja and after the marriage, at No 3, Independence lane, at No 3, Independence Lane, Asokoro, Abuja within the jurisdiction of Lagos State.

5. COHABITATION

Particulars of the place at which and during which the petitioner and the respondent has co-habituated are as follows: Immediately after the marriage, the petitioner and the respondent cohabitated at 3, Parkview Estate, Maitama , Abuja.

The date and circumstances in which cohabitation between the petitioner and the respondent first ceased are as follows: On 14th September, 2013, the respondent relocated to Australia with the intention of never returning to Nigeria for reasons best known to him.

6. CHILDREN

There was no child.

7. PREVIOUS PROCEEDINGS

Since the marriage, there have not been any proceedings in a Court between the petitioner and the respondent.

8. GROUNDS FOR THE PETITON

The marriage between the petitioner and the respondent has broken down irretrievably. The particulars of such breakdown are as follows:

a. Since the marriage, the respondent has committed adultery by making a habit of visiting brothels daily and patronizing sex workers in particular, the 2nd respondent. It is from these visits to brothels that the 1st respondent has contacted sexually transmitted diseases in the form of Gonorrhoea and Herpes which he has rather unfortunately, transmitted to the petitioner.

Hence, the Petitioner has found it intolerable to continue to live with the respondent.

b. Since the marriage, the respondent has behaved in such a way that the petitioner cannot be reasonably expected to live with the respondent. This is as a result of the fact that, the respondent has on several occasions, physically abused the petitioner which more often than not, resulted in admission at the St. Patrick's Hospital, Maitama, Abuja for her recovery from various injuries such as broken ribs, fractured wrists as well as concussions.

9. CONDONATION, CONNIVANCE AND COLLUSION

The petitioner has not condoned or connived at the grounds specified above and is not guilty of collusion in presenting this petition.

10. PROPOSED ARRANGEMENT FOR THE CHILDREN

There is no child.

11. CUSTODY

It is not applicable.

12. RELIEFS

The petitioner seeks the following order:

a. A decree of dissolution of marriage between the petitioner and the respondent on the ground that the marriage has broken down irretrievably.

DATED THIS 17TH DAY OF MARCH, 2014.

Ndu Gabriella
NDU CHAMBERS
77, Awolowo Road, S/W
Ikoyi, Lagos.

This petition was settled by Gabriella Ndu, legal practitioner for the petitioner.
Filed on ____ day of _____, 2014 by Gabriella Ndu on behalf of the petitioner whose address for service is 77, Awolowo Road, S/W Ikoyi, Lagos.

FOR SERVICE ON:

1. 1st Respondent

Paul Baba
36, Gozzy Avenue
Maitama, Abuja.

2. 2nd Respondent
   Ada Ogun
   3, Kutchiko layout
   Gwarinpa, Abuja.

VERIFYING AFFIDAVIT

VERIFYING AFFIDAVIT

I, Lynda Baba, female, medical practitioner, Nigerian citizen of 3, Independence layout, Asokoro, Abuja do make oath and state as follows that:

1. I am the petitioner and by virtue of which I am conversant with the facts stated in the petition.
2. I verify and confirm the facts contained in the petition to be true and correct.
3. Attached to this petition is a copy of the Marriage certificate issued by the Registrar of Marriages of the FCT.
4. I swear to this affidavit solemnly and conscientiously believing its content to be true and correct and in accordance with the Oaths Act.

_____

DEPONENT

Sworn to at the High Court registry, Lagos.

This ___ day of ____ 2014.

BEFORE ME

COMMISSIONER FOR OATHS

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

PETITON NO:

BETWEEN

LYNDA BABA ---------- PETITIONER

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. **DOMICILE**

The petitioner is within the meaning of the Act, domiciled in Nigeria. The facts on which the Court would be asked to find that the petitioner is so domiciled are as follows: prior to the marriage and since the marriage, the petitioner has resided in Abuja and after the marriage, at No 3, Independence lane, at No 3, Independence Lane, Asokoro, Abuja within the jurisdiction of Lagos State.

9. GROUNDS FOR CROSS PETITION

The respondent/cross petitioner petitions the Court for a decree of dissolution of marriage between the respondent and the petitioner on the ground that the marriage has broken down irretrievably.

The particulars of such breakdown are as follows:

Since the marriage, the petitioner has wilfully and persistently refused to consummate the marriage.

10. CONDONATION, CONNIVANCE AND COLLUSION

The respondent/cross petitioner has not condoned or connived at the ground specified above and is not guilty of collusion in presenting this answer.

11. RELIEFS

The respondent seeks the following orders:

a) A decree of dissolution of marriage between the petitioner and the respondent.

DATED THIS _____ DAY OF _____ 2014.

Kene Ajaegbu
Eloquent chambers
4, Fioli Close,
Victoria Island
Lagos.

This cross petition was settled by Ndu Gabriella, legal practitioner filed on ____ day of _____, 2014 by NDU GABRIELLA on behalf of the cross petitioner whose address for service is 4, Fioni Close, Victoria Island Lagos.

FOR SERVICE ON:
The Petitioner
C/o Counsel
Gabriella Ndu
77, Awolowo Road
S/W Ikoyi
Lagos.

The respondent may also respond to the petition by protesting that the Court lacks the jurisdiction to entertain or to wait and file a notice of preliminary objection.

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

PETITION NO.

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT

BETWEEN:

LINDA BABA …… PETITIONER

AND

1.PAUL BABA

2.ADA OGUN …… RESPOPNDENTS

ANSWER UNDER PROTEST

The respondent in answer to the petition in this proceeding, 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 THE 2 DAY OF APRIL 2012

……

Anietie Ekong

Counsel to the respondent/cross-petitioner

Whose address for service is:

Group eight Chambers

Law school Lagos Campus

This answer was settled by Anietie Ekong , Legal Practitioner filed on the 2 day of April 2012 by Anietie Ekong on behalf of the respondent , Whose address for service is at Group eight Chambers Law school Lagos Campus.

FOR SERVICE ON:

The Petitioner

C/o Counsel

Maduka C. J

VERIFYING AFFIDAVIT

I, Mr Paul Baba, Nigeria citizen, Female, Christian, Medical Doctor, residing at 12 Asokoro Road Maitama Abuja, make oath and state as follows:

1. That I am the 1st Respondent/ cross-petitioner in this suit.
2. That I verify the facts stated in my cross-petition by virtue of my personal knowledge of same.
3. That the statements set forth in paragraph I to 9 of my answer and cross-petition are true and correct to the best of my knowledge, information and belief.

_____

Deponent

Sworn to at the FCT High Court Registry, Abuja.
Dated this 2 Day of April, 2012.

BEFORE ME

……

COMMISSIONER FOR OATHS

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

PETITION NO.

IN THE MATTER OF THE MATRIMONIAL CAUSES ACT

BETWEEN:

LINDA BABA …… PETITIONER

AND

1.PAUL BABA

2.ADA OGUN ……. RESPOPNDENTS

CERTIFICATE RELATING TO RECONCILIATION

I, Anietie Ekong Esq certify that I am the solicitor representing the respondent /cross-petitioner and that I have brought to the attention of the respondent /cross-petitioner the provisions of the Matrimonial Causes Act 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 the respondent/ cross-petitioner and the possibility of a reconciliation either with or without the assistance of such organization.

DATED THE 2 DAY OF APRIL 2012

……

Anietie Ekong

Counsel to the respondent/cross-petitioner
Whose address for service is:
Group eight Chambers
Law School Lagos Campus

CASE STUDY 10 B

IN THE HIGH COURT OF LAGOS STATE

IN THE LAGOS JUDICIAL DIVISION

HOLDEN AT LAGOS

PETITION NO. WD. 712/84

IN THE MATTER OF MATRIMONIAL CAUSES ACT

BETWEEN

MRS OLAJUMOKE BENDEL …… PETITIONER

AND

AKINOLA BENDEL ……RESPONDENT

TO: The above-named High Court

The Petitioner Mrs Olajumoke Bendel whose address is at 137, Awofeso Drive, Shomolu,

Lagos Mainland, and whose occupation is an Account Clerk with Telegram Department, Yaba Branch petitions the Court for a decree of dissolution of the marriage against the respondent Akinola Bendel whose address is at 127, Martins Street, Lagos and whose occupation is an Account Clerk with Kilpatrick Limited, Isolo, Lagos Mainland.

MARRIAGE

1. The Petitioner then a spinster was lawfully married to the respondent then a bachelor at St.
   Paul's Church, Shomolu, Lagos Mainland on the 1st day of February, 1976.
2. The surname of the Petitioner immediately before marriage was Miss Tunde.

BIRTH OF PETITIONER AND RESPONDENT

3. The Petitioner was born in 1952 in Lagos and the Respondent was born in 1949 in Oyo State, Nigeria.

DOMICILE OR RESIDENCE

4. The Petitioner is within the meaning of the Act, domiciled in Nigeria, the facts on which the Court will be asked to find that the Petitioner is so domiciled are as follows: Previous to the marriage the Petitioner was residing with Petitioner's Parents at 137 Awofeso Drive, Shomolu, Lagos and has remained within the jurisdiction of Lagos since that date.

COHABITATION

Particulars of the places at which and periods which the petitioner and the respondent have cohabitated are as follows:

Immediately after marriage at 73 Ogunbadejo Way, Shomolu and finally 45 Wereni Drive Palmgrove, Lagos Mainland.

5. The date in which and circumstances in which cohabitation between the petitioner and the respondent first ceased are as follows: On 5th December, 1981, the Respondent threw the petitioner out of the matrimonial home at 75 Wereni Drive, Palmgrove and cohabitation between the parties ceased from that date.
6. Particulars relating to the children to whom order Rule 8 applies are as follows:

(i) Yetunde, female, born on 17th April, 1976.

(ii) Titilayo, female, born on 29th November, 1977.

PREVIOUS PROCEEDINGS:

7. Since the marriage there have not been any proceedings in a Court between the Petitioner and Respondent.

CONDONATION, CONNIVANCE AND **COLLUSION:**

8. The Petitioner has not condoned or connived at the grounds specified above and is not guilty of collusion in presenting this petition.

PROPOSED ARRANGEMENTS FOR CHILDREN

EDUCATION: Yetunde now in Primary iii and Titilayo in Primary **1,** are currently attending Baptist Primary School, Shomolu and will continue in the School and progress to higher institution of learning in future to the best of their ability.

MORAL OBLIGATION: The Petitioner will continue to bring the two children up in the

Christian faith.

MAINTENANCE: The Petitioner has been responsible for the up-keep, School fees and medical expense of the children namely: Yetunde and Titilayo and the Respondent was ordered to bear the responsibility with effect from 1st January 1984 and pay monthly allowance ofN40.00 Naira per child subject to review.

CUSTODY: The children have been residing with the Petitioner and her parents at 137 Awofeso Street, Shomolu and will continue to live with the Petitioner at the same address.

ORDER SOUGHT

10. **THE PETITIONER SEEKS THE FOLLOWING ORDERS:**

(a) A decree of dissolution of marriage on the ground that the marriage has broken down irretrieveably..

(b) Custody of the two children of the marriage now living with Petitioner.

(c) The Respondent be ordered to pay the school fees and maintenance of N40.00 Naira per month subject to review.

(d) Access to the Respondent during school holidays.

The Petition was settled by MATO, Legal Practitioner for the Petitioner.
Filed on the 21st day of February, 2014, by MATO on behalf of the Petitioner, whose address for service is at Western House, (2nd Floor), 8/1 0 Broad Street, Lagos.
PETITIONER

VERIFYING AFFIDAVIT

I, MRS. ELIZABETH OLAJUMOKE BENDEL Nigeria citizen, female, Christian, account clerk residing at No. 137, Awofeso Drive, Shomolu, Lagos State, make oath and state as follows:

1. That I am the Petitioner in this suit.
2. That I verify the facts stated in my petition by virtue of my personal knowledge of same.
3. That the statements set forth in paragraph I to II of my petition are true and correct to the best of my knowledge, information and belief

……

Deponent

SWORN at the Lagos State High Court, Registry
this ..... day of ..... 2014.

BEFORE ME

COMMISSIONER FOR OATHS

NOTICE OF PETITION

NOTICE OF PETITION

TO: Akinola Bendel, 127 Martins Street, Lagos.

1. **TAKE NOTICE** that a petition has been presented to the above-named Court by Mrs. Olajumoke Bendel of 137 Awofeso Drive, Shomolu, Lagos State instituting proceedings for a decree of dissolution and also seeking orders with respect to the children of the marriage.
2. A sealed copy of the petition is delivered to you with this notice.
3. If you intend to consult a solicitor in connection with this proceedings you should take to the solicitor all the documents delivered to you.
4. 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.
5. 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 (d) 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 ..... 2004.

   SIGNATURE

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

SUIT NO;WD.1712/84

BETWEEN:
MRS. OLAJUMOKE BENDEL ……PETITIONER
AND
AKINOLA BENDEL ……RESPONDENT

ACKNOWLEDGEMENT OF SERVICE

1. ..... acknowledge that on ..... , ... day of. 2004 at. .

I 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

..... . and that I am the person to whom the notice of

petition is addressed.

Dated this ..... day of ..... 2004.

SIGNATURE

WEEK 20: FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE

MEANING- -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 of Fundamental Rights (Enforcement Procedure) Rules 2009

NB: Chapter II (fundamental objectives: rights that can not justiciable). However, under the African Charter on Human and People's Rights, these rights are justiciable.

NB: proper citation is Constitution of the Federal Republic of Nigeria 1999 (as amended) and it is against public policy to put in his prayers that the opposing party should pay fees of the applicant

APPLICABLE LAWS

1. Chapter IV of the Constitution of the Federal Republic of Nigeria 1999 (as amended). **S. 46(3): empowers the CJN to make rules for the enforcement of Human Rights & (4) of the Constitution. ;**
2. **S. 254 C (1) d CFRN 1999-(NIC)**
3. Fundamental Rights (Enforcement Procedure) Rules 2009 (FREP Rules)
4. The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

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

COURTS WITH JURISDICTION

Any High Court in Nigeria has jurisdiction over fundamental rights enforcement which has been defined to include **either the Federal High Court or the States High Courts**.

S. 46 of the 1999 Constitution as amended. S. 46(2) for the purpose of enforcing the rights of that person the court may makes such order, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of that right to which the person is entitled.

O. 1 r. 2 of the FREP Rules 2009

GRACE JACK V. UNAM: FHC and SHC have concurrent jurisdiction

The National industrial court also has exclusive jurisdiction over contravention of Chapter IV in relation to employment and labour relations- **S.254 C(1)N D CFRN 1999.**

However, 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.**

S. 251 of the 1999 Constitution as amended,

TUKUR V. GOVERNMENT OF GONGOLA STATE

ADETONA V. IG ENTEREPRISES (2011).

Assuming the infringement span 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.

THE OVERRIDING OBJECTIVES OF THE NEW FUNDAMENTAL RIGHTS ENFORCEMENT RULES 2009 ARE AS FOLLOWS:

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.

1. 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. **ABACHA V. FAWEHINMI**
2. The Courts are to respect municipal, regional and international bills of Rights brought to its attention
3. The court may make any consequential orders it deems just and expedient to promote enforcement of FHR
4. 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.
5. 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.
6. The Courts are to pursue the speedy and efficient enforcement of Fundamental rights of the applicants.
7. Human rights suits are to be given priority in deserving cases e.g. are the liberty of an applicant by the Courts etc. **See Preamble 1 to the FREP Rules 2009.**

SCOPE AND APPLICATION OF THE FUNDAMENTAL RIGHTS ENFORCEMENT RULES

1. Right must fall under CHAPTER IV- S.33 – 45 CFRN
2. Other rights protected by the African charter
3. - 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

NOTE if the right is not within **Chapter IV CFRN,** it cannot properly come under enforcement of fundamental rights. **-GRACE JACK v. UNIVERSITY OF AGRIC MAKURDI**

NOTE THE FOLLOWING CASES

1. SC decision in **LAFIA LOCAL GOVT V. EXECUTIVE GOVERNMENT OF NASSARAWA STATE(2013)**

FACTS- **Governor of Nassarawa State** issued a policy directive that all employees should go to their local government of origin. The 3rd-36th defendants instituted an action on the basis that the policy is a likely infringement of **s.42 CFRN,**

HELD- rights against discrimination are enforceable against the state and not individuals (RIGHT TO DISCRIMINATION ONLY)-**RHODES VIVOUR JSC**

2. **NIC decision in MRS FOLARIN MAYA V. INCORP. TRUSTEES OF CLINTON HEALTH ACCESS INITIATIVE NIG (UNREPORTED)-NIC/ABJ/2013.**

FACTS-Applicant was relieved because she was pregnant.

HELD-Common law rights of an employer to terminate is valid but where it is discriminatory it is invalid. Court granted exemplary and aggravated damages

3. **SANUSI S CASE-**went to **NIC** because **FHC declined jurisdiction.**

WHO CAN INSTITUTE FUNDAMENTAL RIGHTS PROCEEDINGS UNDER THE 2009 RULES

PARAGRAPH 3(e) TO THE Preamble

1. Anyone acting in his own interest;
2. Anyone acting on behalf of another person;
3. Anyone acting as a member of, or in the interest of a group or class of persons;
4. Anyone acting in the public interest: Public interest INCLUDES Interest of Nigerian society; and Interest of any segment of it
5. Association acting in the interest of its members or other individually

NB=>

1. If an NGO institutes fundamental rights proceedings on behalf of a person, the State may object based on **S. 46 CFRN** which restricts this right to the person whose rights was contravened.
2. **THE APPLICANT MUST ALLEGE THAT – s46(1) CFRN**

a. Any of the right is being breached,
b. Is likely to be breached or
c. Has been breached.

MODE OF COMMENCEMENT

Application for the enforcement of fundamental right may be made by any originating process accepted by the court.

Once the court accepts it, application may be commenced by

Writ of summons, (IF BREACH IS CONTENTIOUS- USE WRIT OF SUMMONS- **OLAGHERE V. PP (2013)** –Case deals right to privacy. Defendants took a picture and used it to advertise their paint).

Originating motions,

Originating summons,

O. II r. 2 of the FREP Rules 2009.

However, Originating Motion on Notice is most preferable. -**SAUDE V. ABDULLAHI.**

NOTE- Unlike the **1979** Rules that **required leave of Court**, for the 2009 Rules, **no LEAVE of Court is required. –ORDER II RULE 2.**

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

Disadvantage

- 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.

If the state is not involved in the case, can applicant succeed in the application? International Human Rights Law, state actors are usually joined as it is the state that owes the duty to citizens. Thus unless you can show that the police or any other state agency was standing by and ought to have prevented what happened and didn't, then applicant can have a case against the state. Cannot succeed in an application against a private citizen (this falls into civil proceedings).

Public Officers Protection Act gives only 3 months to prosecute a public officer so seems conflict with no limitation. The Judge states no statutory limitation as the FREP Rules are borne out of the CFRN.

LIMITATION OF ACTION IN FUNDAMENTAL RIGHTS ENFORCEMENT

There is no longer any time limit within which to commence actions for the enforcement of fundamental rights. Such actions can be brought at any time. **O.II R. 1 AND O.III R. 1 OF THE FREP RULES 2009.**

In the old rules, **THE TIME LIMIT USED TO BE 12 MONTHS.**

S. 46(3) CFRN empowers the CJN to make rules for the enforcement of fundamental rights.

Question: Can a **rule of court** limit the application of a statute -**the answer is No.**

PROCEDURE FOR THE ENFORCEMENT OF FUNDAMENTAL RIGHTS

The Applicant (the person enforcing his fundamental rights) is to file the following documents: **(Order II Rule 3)**

1. Originating application supported with
2. A Statement setting out

a. The name and description of the applicant
b. Reliefs sought
c. The grounds upon which the reliefs are sought

3. Affidavit setting out the facts upon which the application is made

4.Written address: Order II Rule 5

NB: only allowed 20 mins for oral address

WHO CAN DEPOSE TO THE AFFIDAVIT

The **Affidavit shall be deposed to by the applicant**,

EXCEPTIONS- where he is not readily available or is in custody and is unable to swear to an affidavit, then it may be deposed to by;

a. A person who has personal knowledge of the facts; or

b. A person who has been informed of the facts by the Applicant

c. In such instance, the affidavit must state the fact that **the Applicant is unable to depose personally to the affidavit and also state how person knows of the facts and where and when (time and place) he was told of the facts**

ORDER II RULE 4

Note that **when asked in the exams to draft the processes to be filed in enforcing the breach of a person's fundamental rights, draft the above1-4 except otherwise stated.**

To OPPOSE the Application filed by the applicant, the Respondent **is to respond within 5 days of the receipt (SERVICE) of the application by filing the following:**

1. Written address
2. And/or a counter affidavit
3. Notice of preliminary objection along if he is challenging the jurisdiction of the Court

THE EFFECT OF THE RESPONDENT not filing a Counter affidavit is that the Court shall presume that he has accepted the facts as presented by the Applicant. -

O. VIII R. 3 OF THE FREP RULES 2009.

If the applicant desires to file **a REPLY** on points of Law, he **MAY DO SO WITHIN 5 DAYS and/or further affidavit**

ORDER II RULE 7

;NOTICE OF PRELIMINARY OBJECTION

If the **RESPONDENT** intends to challenge the jurisdiction of the Court to hear the application, he is to do so by **filing a Notice of Preliminary Objection**

This shall be accompanied by a **written address and a Counter-affidavit** if any

ORDER VIII RULE 1 - 2

The **preliminary objection** shall be heard along with the **substantive application**.

THE POSSIBLE ORDERS THE COURT CAN MAKE UPON HEARING OF THE NOTICE OF PRELIMINARY OBJECTION ARE AS FOLLOWS:

1. An ORDER to strike out the application
2. An ORDER setting aside the service of the originating application

O. VIII r. 5 of the FREP Rules 2009.

GENERAL CONDUCT OF PROCEEDINGS

The application **SHALL BE FIXED FOR HEARING WITHIN 7 DAYS** from the day the application was filed.

ORDER IV RULE 1

ADJOURNMENTS

Adjournment may be granted where **"extremely expedient** provide 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 IV Rule 2

EX-PARTE APPLICATIONS

This is usually made and can be heard if the Court is satisfied that **EXCEPTIONAL HARDSHIP** may be caused to the Applicant **BEFORE** the service of the application on the respondent especially if:

a. The life of the applicant is involved
b. The personal liberty of the applicant is involved
c. It is an on-going breach.

Order IV RULE 3

The **ex-parte application** shall be supported with **affidavit which shall state sufficient grounds why delay in hearing the application will cause exceptional hardship**. In practice, the Ex Parte application is supported with an affidavit and an affidavit of urgency. This is asking for an interim relief

O. IV R. 4(A) OF THE FREP RULES 2009.

THE POSSIBLE ORDERS THE COURT CAN MAKE UPON THE HEARING OF THE EX PARTE APPLICATION ARE AS FOLLOWS:

1. Grant bail or release the applicant from detention fortwith
2. Order that the Respondent be put on Notice and abridge the time for hearing
3. Order the production of the applicant on the date fixed for hearing if the applicant alleges wrongful detention
4. Grant injunction restraining the Respondent from taking further steps in connection with the matter or to maintain the status quo or to stay all actions pending the determination of the case
5. Any other Order as the Court may deem fit to make

THE POSSIBLE STEPS TO BE TAKEN BY A RESPONDENT AFFECTED BY THE ORDERS ON HEARING OF THE EX PARTE APPLICATION ARE AS FOLLOWS:

1. To file a Motion on Notice **WITHIN 7 DAYS OF THE** service of the Order to **discharge** it supported with an affidavit.

The Court may **discharge the Order or vary it** with or without imposing terms as to costs or security as it seems just.

O. IV R. 6 OF THE FREP RULES

SERVICE OF COURT PROCESSES

ORDER V

Service of the processes is to be made by the sheriffs, bailiffs and other officers of the Court. See **O. V R. 2 OF THE FREP RULES 2009.**

The processes are to be served **PERSONALLY** on the parties.

HOWEVER, service on the Respondent's agent (e.g. his Counsel) will amount to personal service on the Respondent.

If it is not possible to serve such processes on a party **e.g. Police, Prison or public officers PERSONALLY**, it may be served by substituted service by leaving it with any other officer working in **the office of the Police, Prison officer etc.** –
O. V r. 7 of the FREP Rules 2009.

Service can be effected **from 6 am to 6 pm.**
O. 5 r. 10 of the FREP Rules 2009.

If an application is to be served on a Respondent who is outside the jurisdiction of the State within which the Court is situated, it must be endorsed that it is for service outside the State.
S. 97 of the Sheriff and Civil Process Act.

AMENDMENT OF STATEMENT AND AFFIDAVIT IN SUPPORT OF THE APPLICATION

Order VI

No ground or relief not contained in the statement shall be relied upon at the hearing of the application.

However, the court may allow amendment of the statement and further affidavits to be used if they deal with new matters arising from the counter affidavit of any party to the application.

ORDER VI RULE 2

Where the party wishes to amend or file further affidavits he shall put the other party on notice.

ORDER VI RULE 5

PROCEDURE-

An amendment to any of the processes filed is to be brought by a Motion on Notice supported with an affidavit **exhibiting** the proposed application to be amended.

O. VI R. 3 OF THE FREP RULES 2009

The purpose of amendment may be to include new facts or reliefs or grounds for the application as any of such not stated cannot be relied upon at the trial. **O.6 R. 1 OF THE FREP RULES**

CONSOLIDATION OF APPLICATIONS

Conversely for an application to consolidate separate applications to be granted, the application must show that it relates to the **same ground, reliefs and facts. E.g. one individual's right is infringed by Police, EFCC and other agencies and he sued all of them differently. Applicant apply for all matters to be consolidated in a particular court**

O. VII OF THE FREP RULES 2009.

HEARING OF APPLICATION

The hearing of the application shall be upon the written

The application is to be set down for **HEARING WITHIN 7 DAYS** from the time of filing of the application.

The hearing is based on the adoption of the parties' written address and oral arguments are allowed **FOR NOT MORE THAN 20 MINUTES** which is restricted to such matters that came to the knowledge of the party after he had filed his Written Address.

O. XII r. 1 & 3 of the FREP Rules 2009

If any of the parties to the action **is absent for** the hearing/ adoption of his written address, the Court will **deem the Written Address filed as adopted**. S

O. XII r. 2 of the FREP Rules 2009.

Also, **AMICUS CURIAE OR ANY PERSON OR BODY** may be heard apart from the parties during the hearing of fundamental rights actions. -**O. XIII r. 1 of the FREP Rules 2009.**

EFFECT OF NON COMPLIANCE

NON COMPLIANCE with the requirement to **time, place, manner or form** in this proceedings shall be treated as an irregularity and may not nullify such proceedings **EXCEPT** the subject matter is not within **CHAPTER IV AND African Charter on Human and Peoples Right.**

ORDER IX

NB-

IF THE MODE INCURABLY BAD OR MATTER IS OUTSIDE SCOPE OF CHAP IV – NULLIFICATION- ORDER IX RULE 1.

REMEDIES UNDER THE FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE

S. 46(2) CFRN

O. IV rule 4(5).

A court may make such orders, give such directives and issue such writs,

IT MAY CONSIDER APPROPRIATE FOR THE PURPOSE OF ENFORCING THE RIGHT OF THE AGGRIEVED PERSON.

1. Release from detention - CT not allowed to take an action that will affect the substantive application. If applicant Order for release must be written and signed by the judge and a production warrant to be served on the

Comptroller of Prison if applicant is in prison custody. If applicant is in court, he walks away.

2. Damages – declaration that rights have been infringed and an injunction that those rights must no longer be infringed and damages automatically follow: Abiola v Abacha.
3. Order for the production of the Applicant
4. Declaratory reliefs - o
5. Injunctive reliefs restraining respondent from further action.
6. Award compensation
7. Issue writ or warrant.
8. Access to medical care and counsel

Damages, declaratory reliefs and injunctive reliefs can only come at the end of the proceedings. Others can come in the interim before the judgment of the substantive application.

Ask for reliefs from highest to lowest – declaration, injunction, special damages, general damages

EFFECT OF DISOBEDIENCE OF THE ORDERS MADE BY THE COURTS

It is a civil contempt which may lead to committal.

O. 14 of the FREP Rules 2009

BONNIE V. GOLD.

PRACTICE TASK

Peter Singer is a Nigerian Artist based in Lagos but performs all over the world. On the 12th March, 2014, while on his way out of Nigeria to perform in South Africa, he was suspected by men of the Nigerian Drug Law Enforcement Agency (NDLEA) at the International Airport, Lagos of having ingested some quantity of heroin for the purpose of trafficking same out of the country. Based on this suspicion, he was arrested and has since been put under observation from the 12th March till date to see if he would excrete any of the substance. All the tests and scans carried out on proved positive that he in fact has ingested hard drugs. However, even though he excreted several times, he has not excreted any hard drugs. Tests carried out on him

on different days while in custody include Body Scan, CT Scan, Colonscopy. He has now decided to apply for the enforcement of his fundamental rights.

ETHICAL ISSUES ARISING FROM ENFORCEMENT OF FUNDAMENTAL RIGHTS

1. Failure to properly advice the client and inform him of his rights or strength of his case before instituting the action**. Rule 14 (2) (e)**
2. Improper attraction of business **– Rule 39 RPC.**
3. Where a case is in court, no complaint or broadcast should be made so as not to mislead the court to taking its decisions in accordance to public comments other than the law and facts before it. **Rule 33 RPC.**
4. Under the Abuja Rules, Counsel may be personally liable for cost for frivolous suit – **Order 4 Rule 17** this is related to **Rule 15 (3) b** which makes it unethical for a legal practitioner to file a suit or assert a position 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.
5. A lawyer shall not handle a legal matter which he knows or ought to know that he is not competent to handle **Rule 16 (1).**
6. A lawyer shall not seek out claimants in respect of personal injuries or any other cause of action with a view to being employed by the prospective client **Rule 47(1) b.**
7. Counsel shall not stand or offers to stand bail for a person for whom he or a person in his law firm is appearing. **Rule 37 (1)**
8. It is the duty of lawyer employed in respect of a Court case to be personally present or be properly represented throughout the proceedings in Court, more so since it involves the fundamental rights of a person. **Rule 14 (4)**
9. Counsel shall not conceal or knowingly fail to disclose that which he is required by law to reveal, knowingly use perjured or false evidence, knowingly make a false statement of law or fact or participate in the creation or preservation of evidence when he knows or ought reasonably to know that the evidence is false. **Rule 15 (3)(e)-(h)**

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE KANO JUDICIAL DIVISION
HOLDEN AT KANO

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.....1ST RESPONDENT**
2. **COMPTROLLER GENERAL OF PRISONS.....2ND RESPONDENT**

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-------, 2015 in the hour of 9 o'clock in the forenoon or so soon thereafter as counsel can be heard on behalf of the Applicant praying for the following orders:

AN ORDER FOR the unconditional release of the applicant

AN ORDER restraining .....

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 12TH DAY OF APRIL, 2013

JOHN OYENIYI
Counsel to the Applicant
Whose address for service is;
Group 10 & Co. Chambers,
House of Lords Zone
Victoria Island
Lagos

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 OF NIGERIA

IN THE KANO JUDICIAL DIVISION

HOLDEN AT KANO

SUIT NO: .....

IN THE MATTER OF THE 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.....1ST RESPONDENT**
2. **COMPTROLLER GENERAL OF PRISONS.....2ND RESPONDENT**

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 12TH DAY OF APRIL, 2013

JOHN OYENIYI
Counsel to the Applicant
Whose address for service is;
Group 10 & Co. Chambers,

House of Lords Zone

Victoria Island

Lagos

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 OF NIGERIA

IN THE KANO JUDICIAL DIVISION

HOLDEN AT KANO

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.....1ST RESPONDENT**
2. **DIRECROR GENERAL OF PRISONS.....2ND RESPONDENT**

AFFIDAVIT IN SUPPORT OF APPLICATION

I, Mrs. R, female, Medical practitioner, Nigerian of no 12, Garki Layout, Kano do make oath and state as follows;

1. That I am the wife of the Applicant and by virtue of which I am conversant with the facts of this case
2. That I have the consent and authority of the applicant to depose to this affidavit on his behalf
3. That the Applicant is in the Federal prisons, Abuja by virtue of which he is unable to depose to this Affidavit himself
4. That on the 12th of July, 2007, the Applicant was arrested by men of security forces under the authority of the 1st Respondent
5. That the Applicant told me and I believe it to be true

a. That he was never informed of the reasons for his arrest and detention

b. That he was tortured throughout the detention to give out some name of the Applicant's friends

6. That the Applicant was never charged before any court of law for over 40 days after his arrest

7. That the efforts to get a Legal representation for the Applicant were frustrated as the men of security forces threatened the Legal practitioner employed for the Applicant, through a letter dated 31st day of July, 2007 to withdraw from the case, which she forcefully obliged. A copy of the Letter is attached to this affidavit and marked EXHIBIT A
8. That the Applicant was charged with terrorism and attempting to overthrow the government
9. That the trial of the Accused was conducted by Mr. T who is the son to the Minister of Justice and a close friend to the President
10. That the Applicant was not represented by any Legal practitioner throughout the entire trial
11. That the trial was conducted in the absence of the Applicant
12. That the Applicant was found guilty of all charges and sentenced to 20 years imprisonment with hard labour.
13. That since then, the Applicant has been held in an over-crowded prison and confined to a cell with a 250 watt electric bulb left on day and night under the authority of the 2nd Respondent
14. That I depose to this affidavit in good faith believing its content to be true and in accordance with the Oaths Act.

_____

DEPONENT

SWORN TO AT THE FEDERAL HIGH COURT REGISTRY

THIS 12TH DAY OF APRIL, 2013

BEFORE ME

_____

COMMISSIONER FOR OATHS

IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE KANO JUDICIAL DIVISION

HOLDEN AT KANO

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.....1ST RESPONDENT**
2. **DIRECROR GENERAL OF PRISONS.....2ND RESPONDENT**

APPLICANT'S WRITTEN ADDRESS IN SUPPORT OF THE APPLICATION

1.0 INTRODUCTION

1.1 This is an Application brought pursuant to Order 2 Rule 3 of the Fundamental Rights (Enforcement Procedure) Rule, 1999 for a redress of the breach of his fundamental. The application is supported by a Statement containing the Name and particulars of the Applicant, Reliefs sought and grounds for reliefs sought. The application is also supported by a 14 paragraphs affidavit

2.0 FACTS RELEVANT TO THE APPLICATION

2.1 On the 12th of July, 2002, the Applicant was arrested by the security forces acting under the authority of the 1st Respondent and taken to the Mushroom Police Headquarters for questioning. No reason for the arrest was given to the Applicant. In the detention, the Applicant was tortured severally to obtain confessions from him.

2.2 The Applicant obtained the services of a Legal practitioner who was however forced to withdraw from the case by the security forces through a threat letter dated 31st of July, 2007

2.3 The Applicant was charged before Mr. T whose father is currently the Minister of Justice and a very close friend of Mr. President who has an interest in the case evidenced from his speech in a news conference on the 13th of August, 2007 where he said hoped that the Applicant would be given a long and harsh sentence so that people like him would learn a lesson

2.4 The Applicant was not represented by a legal practitioner at all throughout the trial and trial was also held in his absence. The Applicant was found guilty on all the charges, convicted and sentenced to 20 years imprisonment with hard labour and was taken to one of the most over-crowded prisons and confined to a 250 watt electric bulb left on day and night.

3.0 ISSUES FOR DETERMINATION

3.1 Whether in the circumstances of the case, the arrest and detention of the Applicant for over 40 days without being charged to a court does not constitute a breach of the fundamental human right of the accused to personal liberty and freedom of movement by the 1st Respondent

3.2 Whether the failure to inform the Applicant of the reason for his arrest does not constitute a breach of the Applicant's fundamental human right to fair hearing

3.3 Whether the torture carried out on the Applicant does not amount to breach of his fundament human right to dignity of human person

3.4 Whether the threat to the legal practitioner of the Applicant on the authority of the 1st Respondent resulting in her forceful withdrawal from the case is not a breach of the fundamental human right of the accused to fair hearing

3.5 Whether in the circumstances of the case, the trial of the case against the Applicant by Mr. T is not a breach of the fundamental human right of the accused to fair hearing

3.6 Whether in the circumstances of the case, the trial of the Applicant where he is not represented by a legal practitioner is not a breach of his fundamental human right to fair hearing

3.7 Whether the trial of the Applicant in his absence is not a breach of his fundamental human right to fair hearing

3.8 Whether the imprisonment of the accused in an over-crowded prison and his confinement to a cell with 250 watt electric bulb left on day and night is not a breach of his fundamental human right to dignity of human person

4.0 ARGUEMENTS

4.1 ISSUE ONE

4.1.1 My Lord, the Applicant in the affidavit deposed on his behalf by Mrs. R stated in paragraphs 4 and 6 that the applicant was arrested by the men of the security forces on the 12th of July, 2007 and was detained for over 40 days without being charged to court

4.1.2 My Lord, it is the provision of **section 35(1) CFRN** guarantee the right of a person to personal liberty. **Section 35 (4) CFRN** provides for where a person in arrested for a criminal trial, such person should be brought before a court of law within a reasonable period which by virtue of **section 35(5) CFRN** is 2 or 48 hours as the case may be.

4.1.3 It is our submission that detaining the Applicant for a period of over 40 days without bringing him before a court of law is contrary to the provisions of the constitution and therefore unlawful amounting to a breach of the fundamental human right of the accused

4.2 ISSUE TWO

4.2.1 The Applicant in the affidavit supporting this application sworn on his behalf by Mrs. R in paragraph 5 stated that he was never informed of the reasons for his arrest and detention.

4.2.2 My Lord, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) stated in **section 36(6)(a)** that any person charged with a criminal offence must be informed promptly and in details the nature of the

offence he is alleged to have committed. In the case of **Maja v State (1980) 1 NCR 212** the court held that such person must be informed at the time of his arrest and not later than when he was arraigned

4.2.3 It is therefore our submission my Lord, that the failure of the accused to be informed about the offence alleged is a breach of his fundamental human right.

4.3 ISSUE THREE

4.3.1 My Lord, the affidavit in support of the Application stated in paragraph 5 that the Applicant was severely tortured under the authority of the 1st Respondent in order to give confessions and implicate some other persons

4.3.2 My Lords, **section 34(1)(a) CFRN** stated that no person shall be subjected to torture or to inhuman or degrading treatment as every individual is entitled to respect for the dignity of human person.

4.3.3 My Lord, it is our submission that the torture carried out on the Applicant under the authority of the 1st Respondent is a breach of the fundamental human right of the Applicant as enshrined under the constitution

4.4 ISSUE FOUR

4.4.1 My Lord, the affidavit in support of the Application stated in paragraph 7 that the efforts to get a Legal representation for the Applicant were frustrated as the men of security forces threatened the Legal practitioner employed for the Applicant, through a letter dated 31st day of July, 2007 to withdraw from the case, which she forcefully obliged.

4.4.2 My Lord, **section 36 (6)(c) CFRN** provides that a person charged with a criminal offence shall be entitled to defend himself in person or by legal practitioners of his own choice. See also **Udozinma v COP (1982) 1 NCR 27**

4.4.3 It is therefore our submission that by causing the forceful withdrawal of the legal practitioner employed representing the applicant under the authority of the 1st Respondent, there is a breach of the Applicant fundamental human right to have a defence counsel representing him.

4.5 ISSUE FIVE

4.5.1 My Lord the affidavit in support of the Application stated in paragraph 9 that the Trial was conducted by Mr. T, who is a sun to the Minister of Justice and a friend to the President who has a personal interest in the case.

4.5.2 My Lords, it has been a principle of law guaranteed by the provision of **section 36 (4) CFRN** that a person charged with a criminal offence must be afforded fair hearing in public. Also, it is a generally accepted principle of the law that justice must not only be done, but must be seen to have been done. The supreme court in the case of **Garba & Ors v University of Maiduguri (1986) 2SC** held that if a Judge presides over a case in which he has an interest, his decision will be nullified and it is immaterial that he was not actually biased.

4.5.3 From the above flows the conclusion my Lord, that the fundamental human right of the accused to fair hearing was breached when he stood a trial which was adjudicated upon by a Judge who had an interest on the case.

4.6 ISSUE SIX

4.6.1 My Lords, it was established in the affidavit in support of the Application in paragraph 10 that the Applicant was never represented once by a legal practitioner, either or his choice or otherwise, throughout the entire course of the proceedings

4.6.2 My Lord, **section 36 (6)(c) CFRN** provides that a person charged with a criminal offence shall be entitled to defend himself in person or by legal practitioners of his own choice. See **Awolowo & Ors v Minister of Internal Affairs & ors (1962) LLR 177**. See also **Udozinma v COP (1982) 1 NCR 27**

4.6.3 It is therefore our submission that since the Applicant was denied representation of a legal practitioner during the entire course of his trial, there is a breach of his fundamental human right as provided for in the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

4.7 ISSUE SEVEN

4.7.1 The affidavit in support of the application in paragraph 11 stated the fact that the trial was conducted in the absence of the accused throughout the entire proceedings

4.7.2 Following the decision of the court in the case of **Adeoye v State (1999) 4 S.C (Pt 11) 67,** trial in absentia is unknown to our law in Nigeria. As such, any person who is charged with a criminal offence must attend his trial from the day he is arraigned to the day he is sentence. Failure to ensure the presence of the accused at trial is a breach of his fundamental human right to fair hearing

4.7.3 The above principle of law points to our submission that having failed to ensure the presence of the Applicant in the entire trial, that is, conducting the trial in the absence of the Applicant at the trial is a breach of the fundamental human right of the accused.

4.8 ISSUE EIGHT

4.8.1 In the affidavit in support of the Application, it was stated in paragraphs 12 and 13 that the Applicant was convicted and sentenced to 20 years imprisonment with hard labour and that the Applicant has been held in an over-crowded prison and confined to a cell with a 250 watt electric bulb left on day and night under the authority of the 2nd Respondent

4.8.2 My Lords, **section 34(1)(a) CFRN** stated that no person shall be subjected to torture or to inhuman or degrading treatment as every individual is entitled to respect for the dignity of human person

4.8.3 My Lords, putting the Applicant in an overcrowded prison and confinement to a cell with a 250 watt electric bulb left on day and night under the authority of the 2nd Respondent is a breach of the fundamental human right of the Applicant

5.0 CONCLUSION

My Lord, we humbly submit that this Honourable court grants the reliefs sought by the Applicant for the following

1. 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

2. 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
3. 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
4. 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
5. 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
6. Declaration that the trial, conviction and sentencing of the Applicant is unconstitutional and a breach of the fundamental human right of the Applicant
7. 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 s2nd Respondent is unconstitutional and a breach of the fundamental human right of the Applicant
8. An order compelling 2nd Respondent to release the Applicant from the prison and confinement forthwith
9. ₦250,000,000.00 (Two-hundred and fifty Million naira) damages for unlawful arrest, detention, torture

6.0 LIST OF AUTHORITIES

6.1 CASES

1. **MAJA V STATE (1980) 1 NCR 212**
2. **UDOZINMA V COP (1982) 1 NCR 27**
3. **AWOLOWO & ORS V MINISTER OF INTERNAL AFFAIRS & ORS (1962) LLR**
4. **ADEOYE V STATE (1999) 4 S.C (PT 11) 67**

5. **GARBA & ORS V UNIVERSITY OF MAIDUGURI (1986) 2SC**

6.2 STATUTES

1. **SECTION 35(1) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**
2. **SECTION 35 (4) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**
3. **SECTION 35(5) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**
4. **SECTION 36(6)(a) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**
5. **SECTION 34(1)(a) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**
6. **SECTION 36 (6)(c) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**
7. **SECTION 36 (4) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**
8. **SECTION 36 (6)(c) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**
9. **SECTION 34(1)(a) CONSTITUTION OF THE FEDERAL REPUUBLIC OF NIGERIA, 1999 AS AMEMDED**

DATED THIS 12TH DAY OF APRIL, 2013

JOHN OYENIYI

Counsel to the Applicant

Whose address for service is;

Group 10 & Co. Chambers,

House of Lords Zone

Victoria Island

Lagos

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 HIGH COURT OF KANO STATE
IN THE KANO JUDICIAL DIVISION
HOLDEN AT KANO

SUIT NO: .....

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009
AND
IN THE MATTER OF AN APPLICATION BY INCORPORATED TRUSTEES OF CITIZEN RIGHTS SUING FOR AND ON BEHALF OF MALLAM AHMED FOR AN ORDER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS

BETWEEN

CITIZEN RIGHTS OF NIGERIA (SUING FOR AND ON BEHALF OF MALLAM AHMED).....APPLICANT

AND

1. **THE NIGERIAN POLICE FORCE.....1ST RESPONDENT**
2. **DEPARTMENT OF STATE SECURITY.....2ND RESPONDENT**
3. **ATTORNEY GENERAL OF KANO STATE.....3RD RESPONDENT**

ORIGINATING MOTION

BROUGHT PURSUANT TO SECTIONS 35 (3) & (4),34(1) (a) AND 36 (4), (5)& (6) (c) OF THE 1999 CONSTITUTION AS AMENDED AND ORDER II RULE 1 -5 OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009 AND WITHIN THE INHERENT JURISDICTION OF THIS COURT

TAKE NOTICE that the Federal High Court of Nigeria will be moved on the 15th day of April, 2013 or so soon thereafter as counsel cam be heard on behalf of the Applicant in terms of the reliefs sought in the statement accompanying the affidavit in support of the application

AND FOR SUCH FURTHER OR OTHER 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 there in referred to

DATED THIS 12TH DAY OF APRIL, 2013

NDU GABRIELLA
Counsel to the Applicant
Whose address for service is;
NDU Chambers,
House Zone
Victoria Island
Lagos

For Service on:

1ST Respondent
The Nigerian police force
Police Command Headquarters,
Abuja
2nd Respondent

JUDICIAL REVIEW

Judicial Review is the means by which a High Court supervises and controls inferior courts/administrative panels to ensure they keep in line with jurisdiction and the rules of court. (didn't follow fair hearing procedure)

It is used by the High Court to supervise and control administrative agencies of the government especially where such agency is acting in a quasi-judicial capacity.

Judicial review is also used to question the manner in which a public officer came by his position.

SOME RELIEFS UNDER JUDICIAL REVIEW INCLUDES: (prerogative writs)

a. Mandamus –to command a public officer to perform a public duty – to secure performance of a legal duty
b. Prohibition – bias or likelihood of bias even where magistrate hasn't gone into the matter but prohibits the magistrate from going into the matter because of the bias
c. Certiorari – used too review action of inferior courts
d. Quo warrant – used to question how a public officer came by his position.
e. Habeas corpus – release from unlawful imprisonment (bring the body) e.g. know they have taken the person away but not sure where he is being imprisoned

=**SEE ORDER 40 HCCPR LAGOS,**

ORDER 42 HCCPR ABUJA

There are aspects of enforcement of fundamental rights that can be accommodated by the rules of judicial review, though, judicial review is wider.
In other words, recourse may be heard to the rules of judicial review where there is no allegation of breach of fundamental rights.
NB=> A writ of certiorari is applicable to quash an irregularly conducted judicial proceedings.

❖ A writ of prohibition is available when proceedings are pending. But if the proceedings have been concluded, the remedy is certiorari

RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND JUDICIAL REVIEW

NB=> The old rules on enforcement of fundamental rights were virtually lifted from the rules of Judicial review then in force.

Hence, the seeming similarities between the two procedures.

NB=> There is no express mention of any of these remedies under the 2009 rules.

NB- S.46(6) CFRN AND ORDER X AND XI

Even where the relief sought is available under Judicial Review and Fundamental Rights Enforcement, both proceedings cannot be combined.

Once you proceed under the Fundamental Right (Enforcement Procedure) Rules, there is no need to satisfy the conditions listed under Judicial Review.

For FREP Rule, that is the commencement of the action. For judicial review, even though you start application before High CT, it is for something that happened in the lower court or administrative body etc.

FREP Rules leave is not required but in judicial review, leave is required (no leave is required in Rivers State)

APPLICATION TO COURT – THIS IS IN RESPECT TO WHEN THE JUDGE IS SITTING IN OPEN COURT.

APPLICATION TO JUDGE – IN RESPECT OF WHEN THE JUDGE IS IN HIS CHAMBERS.

PROCEDURE FOR JUDICIAL REVIEW

1. **STATEMENT** containing the
   a. Name of applicant
   b. Reliefs sought
   c. Grounds for the relief sought
2. Verifying affidavit
3. Written address in support of the application for leave.

NB=> Abuja Rules do not make for written address, but in the spirit of front loading, such written address is required.

NB=> LEAVE OF COURT IS REQUIRED FOR JUDICIAL REVIEW.

In Judicial Review, leave cannot be granted except the applicant shows sufficient interest in the application.

Where leave is granted, the substantive application can be initiated either by originating motions or originating summons.

In ABUJA, there must be **AT LEAST 10DAYS** between service and the date for hearing.

In LAGOS; there must be **AT LEAST 7DAYS** between service and the date fixed for hearing.

In both jurisdictions, the judge in granting leave, can either enlarge or abridge the time.
The statement used by the applicant in support of the application must be served together with the motion or summons.

The originating process must be accompanied by an affidavit

The RESPONDENT who intends to contend the matter should also have filed his processes within the time between service of application and date for hearing i.e. 10 days in Abuja and 7days in Lagos.

NB=> Proceedings initiated by summons, motions, affidavit, witnesses are not usually called to testify.

The Applicant _____ in the summons and affidavit and refers the court to his arguments in his written address.
The Respondent also makes references to his address and counter affidavit if any.
Applicant replies where he filed a REPLY

=> Witnesses are called only in exceptional circumstances in proceedings conducted based on Affidavit Evidence. This happens where there are conflicting averments in the affidavit and counter affidavit. The court would call oral evidence in order to resolve the conflict.

LIMITATION OF TIME
0.40 R. 4 Lagos
Applications for judicial review **MUST BE BROUGHT WITHIN 3 MONTHS** of the act complained of
0.42 r. 3 Abuja provides 3 months **but does not appear to be an absolute bar in the sense that there is room for explanation for the delay. The time bar here applies only to certiorari.**

READ

MEMI v. A.G. LAGOS (19961)10 SCN J.I; (1996)NWLR (Pt. 452)

WHAT ARE THE SIMILARITIES AND DIFFERENCES BETWEEN JUDICIAL REVIEW AND FUNDAMENTAL RIGHTS ENFORCEMENT PROCEDURE.

SIMILARITIES

1. They are both constitutionally provided for
2. They have similar reliefs

3. Both applications are accompanied by similar documents – affidavit, statement, written address.

DIFFERENCES

1. Time bar in judicial review, no time bar in TR enforcement
2. Leave is required in judicial review; no leave is required for fundamental right.
3. Locus Standi is not applicable to Fundamental right whereas Locus Standi is applicable to judicial review
4. HCCPR guides judicial review whereas Fundamental Rights (Enforcement Procedure) Rules guide fundamental rights enforcement.
5. Fundamental rights focuses on breach of chapter IV CFRN and ACHPR while judicial review is wider.
6. Time to respond to the Fundamental Right applicants is not expressly stated but we can refer to time for responding to a motion **which is 7days in Lagos and 10days in Abuja.**

SANCTIONS AND COSTS

Sanction is a punishment for acts of the parties or counsels, which may also include an order to pay costs. Conversely, cost is the monetary cost in prosecuting a case. Usually the award of cost follows the event, which means the party losing a case (the judgment debtor) is awarded cost to be paid to the winning party. **See ROCKSHELL V. BQS (2009).**

Costs may also arise from the misconduct or negligence of a party/counsel. See **O. 49 r. 12 of the High Court of Lagos Civil Procedure rules 2004.**

CIVIL PROCEEDINGS SANCTIONS AND COSTS (COMPOSITE TABLE)

NO.	FAULT/SUBJECT	LAGOS	ABUJA
1	**Irregular Proceedings (non-compliance with the rules of court)**	The court may set it aside or award costs. Order 5 r 2(1) – NB difference btw compliance that is a mere irregularity and that that is fundamental	May set it aside wholly or in parts and award cost – Order 2 r 2(a)
2.	**Late Appearance (filing memorandum of appearance out of time)**	A defendant shall pay an additional N200 for each day of default of late appearance. **O. 9 R. 5**	Not specific but general cost or based on the discretion of the court – Order 52.
3.	**Frivolous action/suit (NB: pre-action counselling certificate in Abuja, Pre Action Protocol Form 01 in Lagos)**	It is not expressly specified but general provisions on award of cost against legal practitioner for certain defaults. Questionable cases and abuse of process sanctioned under the rules of professional conduct R.24(2) & (3)	Counsel may be personally liable for costs. – Order 4 Rule 17 Questionable cases and abuse of process sanctioned under the rules of professional conduct R.24(2) & (3)
4.	**Improper incurrence or waste of time of proceedings without reasonable cause.**	Cost may be ordered against or disallowed against counsel subject to court's discretion. Order 49 Rule 14	Cost may be awarded against a counsel where any of his faults affect matter by delay. – Order 52 Rule 8.
5	**Failure to default fess**	Court will not hear the matter	
6	**Failure to make reply to a statement of defence**	Court deems that plaintiff admitted to new matter raised in the statement of defence	Court deems that plaintiff admitted to new matter raised in the statement of

			defence
	Failure to apply for service to issue processes out of jurisdiction		Process would be a nullity
	Defendant puts a fictitious address for service in his memorandum of appearance	Order 9 Rule 3 Court may set aside such appearance	Order 12 Rule 3 Abuja court may set aside such appearance
	Where court grants order for amendment of pleadings and failure to do it within period specified by court		
	Default of appearance in court	Order 10 Rule 3-8: action may proceed Rule 10 Rule 5-6 Judgment may be given or claimant appear for cost Order 20 Rule 9	Order 13 – action may proceed. Order 13 Rule 1-2 Court may also give judgment
	Failure to file notice to defend **Failure to participate in case management conference**	Order 25 RULE 5 action will be dismissed. If failure on part of defendant entry of final judgment	Order 21 Rule 4 judgment may be given
6	**Costs**	O. 49 R. 10. Costs when ordered becomes payable and shall be paid within 7 days of the order.	Not specified.

Denial what ought to be denied: Abuja Order 23 Rule 19 costs may be ordered

Failure to amend pleadings after order to amend elapses: the amendment becomes void in Abuja, payment of N200 per day in Lagos

Failure of claimant to appear or obey summons: Order 43 Rule 8 Lagos (interpleader), they will be barred from putting up that rival claim. Order 26 Rule 8 Abuja: same sanction

Non-compliance with orders for interrogatories or answers: Order 26 Rule 7 Lagos: court will give an order requiring the person to answer and if he fails, contempt of court. Order 26 Rule 12 Lagos: legal practitioner may be liable for contempt Order 30 Rule 20 Abuja: Order for committal. Order 30 Rule 22 Abuja: Legal practitioner will be liable to pay costs

Non service of motion: Order 39 Rule 8 Lagos: ct may adjourn hearing of the motion for service to be effected. Order 7 Rule 22 Abuja: court may strike out such a motion or adjourn for service to be effected

Refusal of witness to answer lawful question: Order 32 Rule 10 &12 Lagos – witness may be dealt with for contempt. Order 38 Rule 24 Abuja – cost awarded against the witness

Order costs in the cause – meaning leave the issue of costs to the end of the case. If the opposing party wins, then costs will be added at the end with the money for judgment