From Knowledge to Wisdom

US-CHINA LAW REVIEW

VOLUME 10, NUMBER 5, OCTOBER 2013

ISSN 1548-6605 (Print) ISSN 1930-2061 (Online)

ARTICLES

ESSAYS

DAVID PUBLISHING

David Publishing Company
www.davidpublishing.com

US-CHINA LAW REVIEW

VOLUME 10, NUMBER 5, OCTOBER 2013 (SERIAL NUMBER 95)

David Publishing Company
www.davidpublishing.com

Publication Information:
US-China Law Review is published bimonthly in hard copy (ISSN 1548-6605) and online (ISSN 1930-2061) by David Publishing Company located at 3592 Rosemead Blvd #220, Rosemead, CA 91770, USA

Aims and Scope:
US-China Law Review, a bimonthly professional academic journal, commits itself to promoting the academic communication about laws of China and other countries, covers all sorts of researches on legal history, law rules, legal culture, legal theories, legal systems, questions, debate and discussion about law from the experts and scholars all over the world.

Manuscripts and correspondence are invited for publication. You can submit your papers via Web Submission, or E-mail to law@davidpublishing.com. Submission guidelines and Web Submission system are available at http://www.davidpublishing.com or http://www.davidpublishing.org.

Editorial Office:
3592 Rosemead Blvd #220, Rosemead, CA 91770, USA
Tel: 1-323-984-7526 1-323-410-1082
Fax: 1-323-984-7374 1-323-908-0457
E-mail: law@davidpublishing.com; jurist@davidpublishing.com.

Abstracted/Indexed in:
HeinOnline, W.S.Hein, USA
Database of EBSCO, Massachusetts, USA
Chinese Database of CEPS, Airiti Inc. & OCLC
Chinese Scientific Journals Database, VIP Corporation, Chongqing, P.R.China
Ulrich's Periodicals Directory
CSA Social Science Collection, Public Affairs Information Service (PAIS), USA
ProQuest, USA
Summon Serials Solutions
Universe Digital Library S/B, Malaysia
Norwegian Social Science Data Services (NSD), Norway

Subscription Information:
Print $450, Online $320, Print and Online $600 (per year)
David Publishing Company
3592 Rosemead Blvd #220, Rosemead, CA 91770, USA
Tel: 1-323-984-7526 1-323-410-1082
Fax: 1-323-984-7374 1-323-908-0457
E-mail: order@davidpublishing.com

David Publishing Company
www.davidpublishing.com

US-CHINA LAW REVIEW

VOLUME 10, NUMBER 5, OCTOBER 2013 (SERIAL NUMBER 95)

CONTENTS

ARTICLES

ESSAYS

FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES 2009: A PARADIGM SHIFT IN HUMAN RIGHTS PROTECTION IN NIGERIA?

Onakoya Olusegun[*]

Human rights are natural and inalienable to human beings generally, irrespective of tribe, creed, colour, sex and whatever description. The 1960 Independence Constitution of Nigeria introduced a pivot provision into the constitution of the country by expressly providing for items classified as "Fundamental Human Rights", which other subsequent constitutions, namely, Constitution of the Federal Republic of Nigeria 1963, 1979 and 1999 were modeled after. The Rights, that is the fundamental human rights which is presently contained in Chapter IV of the constitution of the Federal Republic of Nigeria 1999 is no doubt a lofty provision which traverse almost every areas of human activities which should ordinarily be protected. However, since it is generally believed that "a law is no law except it is capable of being enforced", the Fundamental Rights (Enforcement Procedure) Rules was enacted with the sole purpose of serving as a directive which spelt-out the procedure an aggrieved person must follow in enforcing the relevant provisions on fundamental human rights where same are violated. It is instructive to note that even though the earlier Fundamental Rights (Enforcement Procedure) Rules of 1979 and 2008 were adopted for the purpose of giving life to the relevant provisions of the constitution yet not much was achieved in this area particularly with respect to the commencement of actions bothering on violation of fundamental rights by the aggrieved persons, not to mention the expensive costs of litigations. The previous fundamental rights (enforcement procedure) rules of 1979 and 2008 respectively appear to have diminished the loftiness of the rights enshrined in chapter IV of the constitution due to the technicality, awkwardness and bottlenecks in its application. This paper, however focuses on the critical examination of the Fundamental Rights (Enforcement Procedure) Rules 2009 which has its main overriding objectives of (i) expansive and purposeful interpretation, access to justice; public interest litigation, abolition of objections on ground of locus standi; and expeditious trial of human rights suits among others. The empirical findings of the study and analysis reveal that the 2009 Rules being the thrust of this paper is not only a clear departure from the previous Fundamental Rights (enforcement procedure) Rules but specially designed to enhance human rights protection in Nigeria particularly under the current democratic dispensation.

[*] LL.B, LL.M{Ife}, lecturer , Private and Business Law Department, Faculty of Law, University of Ibadan. Research field: Corruption/Corrupt practices in Public Sector in Nigeria.

INTRODUCTION

The 1960 Independence Constitution of the Federal Republic of Nigeria introduced a pivot provision into the constitution of the country by expressly providing for the items classified as "Fundamental Human Rights" in its chapter IV which appears to be modeled after the Universal Declaration of Human Rights (1948).

This constitution was distinctively a total departure from previous constitutions in Nigeria. For the first time in the history of the Nigeria Constitution Development, Provisions were made for the guaranteed inalienable rights of the citizens.

The rights as provided for in the chapter IV of the 1960 Independence Constitution are so fundamental that the law provides for the procedure for enforcement of the said rights by an aggrieved person.

By section 46(1) of the constitution, any person who alleges that any fundamental rights provided for in Chapter IV of the constitution has been, is being or likely to be contravened in any state in relation to him may apply to either the High Court of that state or to the Federal High Court sitting in that state for redress. The High Court is conferred with the original jurisdiction to hear and determine any of such application.

It may also make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that state of any rights to which the application may be entitled under the chapter. The relief may be damages, injunction, declaration, compensation or even public apology from "the appropriate authority or person".[1]

I. Fundamental Rights

Fundamental Rights are natural but inalienable rights of "every person" in Nigeria. Chapter IV of the constitution[2] provides for right to life[3]; right to dignity of person[4]; right to personal liberty[5]; right to fair hearing[6]; right to private and family life[7]; right to freedom of thought, conscience and religion[8]; right to freedom of expression and the press[9]; right to peaceful assembly and association[10]; right to freedom of movement[11]; right to freedom from discrimination[12]; right to acquire and own immovable property anywhere in Nigeria[13], while section 44 provides that the government shall not compulsorily acquire the property of any person or express interest therein without payment of compensation.

All the aforementioned rights, however ideal require following laid down procedure for its enforcement before an aggrieved person can take benefit of the provisions.

II. Procedure for Enforcing the Rights in Charter IV of the Constitution

Fundamental rights are in the realm of domestic law and they are fundamental because they have been guaranteed by the constitution and other legal instruments especially African Chapter on Human and Peoples'

---

[1] Sections 35(2) (6); 46(2) of the constitution of the Federal Republic of Nigeria, 1999.
[2] Except where otherwise stated, constitution in the text shall mean CRFN 1999.
[3] Section 33.
[4] Section 34.
[5] Section 35.
[6] Section 36.
[7] Section 37.
[8] Section 38.
[9] Section 39.
[10] Section 40.
[11] Section 41.
[12] Section 42.
[13] Section 43.

Rights Adopting the concise definition as contained in the Fundamental Rights (Enforcement Procedure Rules 2009 Rules).

Order 1 Rule 2 states thus:

> Fundamental Rights means any of the rights provides for in Chapter IV of the constitution, and includes any of the rights stipulated in the African Charter on Human and people's Rights (Ratification and Enforcement) Act.

It is important to state from the onset that the concept of Fundamental rights and Human rights are used interchangeably within the purview of 2009 Rules. Order 1 Rule 2 admits the definition of Human Rights to "includes fundamental rights".

The definition of the fundamental rights in the 2009 Enforcement rules improves the similar provision in the 1979 constitution which limits the scope of the "rights" to that which was provided in chapter IV of the said constitution.

The Supreme Court of Nigeria further underscores the importance of the Fundamental rights by examining the nature of fundamental rights in *Ransome-Kuti & Ors. v. Attorney-General of the Federation*[14] when the court held as follows:

> This is no doubt a right guaranteed to everyone including the appellants by the constitution. But what is the nature of a fundamental right? It is a right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence and what has been done by our constitution, since independence constitution, that is the Nigeria (constitution) Order in Council 1960, up to the Present Constitution, that is, the constitution of the Federal Republic of Nigeria, 1979 (the latter does not in fact apply to this case: It is the 1963 constitution that applies) is to have these rights enshrined in the constitutions so that the rights could be "immutable" to the extent of the non-immutability of the constitution itself.

III. A Review Fundamental Human Rights (Enforcement Procedure) Rules 2009

The new Fundamental Rights Procedure Rules, 2009 is innovative, bold and encouraging in a number of respects. This is, however not surprising given the fact that the former Chief Justice of Nigeria[15] involved wide range of professionals and stake-holders, namely, human rights lawyers, academics and civil society organization at every state of the drafting off the rule.

---

[14] (1985)6 SC 245 at 276-277.

[15] Honourable Justice Idris Legbo Kutigi.

It is instructive to note that this is the first Fundamental Rights Enforcement Procedure Rules with a preamble.

The preamble comprising of paragraphs 1-3 clearly spelt-out the overriding objectives which parties and their legal representatives have an obligation to help the court achieve or further.

The legal status of preambles in enactments is that they serve as aids to statutory interpretation.[16] *In Braithwaite v. GDM*[17], the Court of Appeal highlighted the uses to which they can be put in construing an enactment. The Court held that a preamble gives a ready access as it were to the mind of the law maker, since the preamble describes the scope of the enactment. However, it should be noted that if a substantive provision in an enactment is inconsistent with the preamble, it would be given effect for the provisions of the preambles to be rendered powerless they must be in conflict with a substantive provision.

It is arguable that what the new rules call preamble is not really a preamble. The "preamble" in the new rules, as we intend to give exposition to, goes beyond merely describing the scope of the enactment which is the settled meaning of a preamble. The substantive provisions on locus standi, expeditions trial etc. is submitted which should not be treated as preamble. They are substantive provisions which our courts must give effect to hearing and disposal of fundamental rights cases.[18]

IV. Objectives of the Fundamental Rights (Enforcement Procedure) Rules 2009

As earlier noted the earlier rules of 1979 and lately 2008 were not as all-embracing as the present rules (2009 rules) in its objectives and procedures.

The rules contain four main overriding objectives namely, expansive and purposeful interpretation; access to justice; public interest litigation and abolition of objections on ground of locus standi; and expeditious trial of human rights suits.

An overriding objective can be defined as a fundamental objective, a breach of which is not permissible or which is null. The fact that the overriding objectives are contained in the preamble of the rules fortifies our

[16] Aturu Bamidele, *Taking Human Rights Seriously through the Fundamental Rights (Enforcement Procedure) Rules 2009*, The Guardian, Tuesday, May 4, 2010, at 78.
[17](1998) 7 NMLR Pt. 557, at 307.
[18] Aturu Bamidele, *Taking Human Rights Seriously through the Fundamental Rights (Enforcement Procedure) Rules 2009*, The Guardian, Tuesday, May 4, 2010, at 78.

earlier argument that the preamble enjoys an enforceable status and is essentially more than a preamble.

It should be duly observed that the dichotomy that hitherto existed as distinguishing Fundamental Rights and Human Rights is no longer tenable within the ambit of 2009 Rules.

Order 1 Rule 2 defines Human Rights to "include fundamental rights". Moreso, Fundamental rights transcend beyond rights specifically provided in Chapter IV of 1999 constitution and it incorporates rights guaranteed under the African Charter on Human and Peoples' Rights.

It is important to state that most of the provisions in the African Charter on Human and Peoples' Rights are captured in Chapter IV of 1999 constitution; it therefore becomes imperative to make robust references to the two enactments in this discourse.

The usual and fanciful distinction between Fundamental rights and Human rights in a celebrated case of *UZOUKWU & ORS V EZEONU II & ORS*[19] has been overtaken with the coming into effect of the Fundamental Rights (Enforcement Procedure Rules) 2009.[20]

In that case the Court of Appeal held as follows:

> Due to the development of constitutional Law in this field distinct difference has emerged between "Fundamental Rights" and "Human Rights". It may be recalled that human rights were derived from and out of the wider concept of natural rights. They are rights which every civilized society must accept as belonging to each person as a human being. These were termed human rights. When the United Nations made its declaration, it was in respect of "Human Rights" as it was envisaged that certain Rights belong to all human beings irrespective of citizenship, race, religion and so on. This has now formed part of International Law. Fundamental Rights remain in the realm of domestic law. They are fundamental because they have been guaranteed by the fundamental law o the country; that is by the constitution.

However, it is instructive to note that both concept, that is "Fundamental rights" and "Human rights" can be used interchangeably within the purview of 2009 Rules.

V. Liberal and Purposeful Interpretation

The rules lay down as guide for interpreting the constitution and the African Charter advancing and realizing of the rights and freedoms

[19] (1991) 6 NWLR Pt. 200 Pg. 708 at 761.

[20] Alobo J. E., *Exposition & Notable Principles on Fundamental Right (Enforcement Procedure) Rules 2009* 4 (Josim Publishing House, Abuja 2010).

contained in them and affording the protection intended by them. The two statutes are to be expansively and purposefully interpreted.

The courts, in plethora of judicial decisions have always recognized that the constitution should be liberally or expansively construed.

One, very significant inference that can be drawn from the foregoing as one of the major innovations to the 2009 rules is that not in construing only Chapter IV of the constitution when dealing with fundamental rights and issues relating thereto but the African Charter shall also have the force of the constitution of the extent of its relevance to human rights issue.

Also, the purpose of construction in human rights cases now must be to advance and realize the rights contained in the constitution and the Charter. Thus, it is submitted, whenever there is a doubt in construing those rights, they must be resolved in favour of the applicant.

However, to state that the African Charter is wider in scope is an understatement. It is gratifying that the 2009 Rules widen the scope of instruments to be cited in the enforcement of fundamental rights. It clearly provides in paragraph 3(b) as follows:

> For the purpose of advancing but never for the purpose of restricting the applicants rights and freedoms, the Courts shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include:
>
> (i) The African Charter on Human and Peoples' Rights and other instruments (Including protocols) in the United nations human rights system.

The Fundamental Rights (Enforcement Procedure) Rules 2009 is therefore a platform for enhancing and advancing the protection of fundamental rights in Nigeria. It is a paradigm shift from dogmatic and technical requirement in enforcing perceived breach of fundamental rights of Nigerian citizens.

Also, quite significantly the 2009 Rules serve as fulcrum for advancing the struggle for justice and human rights of Nigeria as well as the social and economic development of the country.[21]

VI. Access to Justice

Unlike the previous rules[22] which provides that application under the rules must fall strictly within the ambit of chapter IV of the constitution, that

[21] Alobo J. E., *Exposition & Notable Principle on Fundamental Rights (Enforcement Procedure) Rules 2009* 7 (Josim Publishing House, Abuja 2010).

[22] 1979 and 2008 Rules.

is from section 33 to section 44 same cannot be said of 2009 Rules pre-2009 Rules application founded on a claim outside the provisions of chapter IV is not contemplated by section 46 and therefore any such claim if brought under the Fundamental Rights (Enforcement) Rules cannot be said to have been brought by the appropriate procedure.[23] Accordingly, the court before which such a case is brought is not properly seized of the claim[24].

The 2009 Rules impose a duty on the court to pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated and the unrepresented. This is no doubt a laudable objective.

VII. Public Interest Litigation and Abolition of Locus Standi Objection

A remarkable innovation in the 2009 rules is to the effect that court shall encourage and welcome public interest litigations in the human rights field in order to prevent human rights case from being dismissed or struck out for lack of requisite locus standi that had hitherto been responsible for getting ordinarily but meritoriously public-spirited cases struck out, to the embarrassment of several public spirited individuals who had sued government on various public interest issues. It is important to reproduce these innovative provisions.

Paragraph 3(e) of the 2009 Rules, provides thus:

> The court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, governmental organizations, may institute human rights litigation, the applicant may include any of the following:
>
> (i) Anyone acting in his own interest;
>
> (ii) Anyone acting as a member of another person;
>
> (iii) Anyone acting as member of, or in the interest of a group or class of persons;
>
> (iv) Anyone acting in the public interest;
>
> (v) Association acting in the interest of its members or other individuals or groups.

The abolition of objections to human rights applications on the ground of locus standi is welcome and would help to make public interest litigation a mechanism for popular participation and remediation.

---

[23] Chief (Dr.) Mrs. Olufunmilayo Ransome Kuti v. Attorney-General of the Federation (1985) 6 SC 246 at 341.

[24] Nwadialo F., Civil Procedure in Nigeria 1088-1089 (2nd ed, University of Lagos Press, 2000).

Under the 1979 Rules, the competent person who can validly institute action for enforcement of fundamental rights is the person whose rights have been infringed or likely to be violated otherwise the jurisdiction of the court will not be properly invoked. The courts have always been eager to adopt the restrictive technical approach to legal standing as held by the Supreme Court *in Abraham Adesanya v. The President Federal Republic of Nigeria.*[25]

However, with the introduction of the Fundamental Right (Enforcement Procedure) 2009, the Courts' approach to the issue of locus standi has changed radically.

The Supreme Court has spear headed the liberal approach in the interpretation of locus standi. In the celebrated case of *Fawehinmi v. Akilu*[26] the Supreme Court observed as follows:

> The comment that it will be a sad day in the country if anybody is allowed to bring any spurious investigations is therefore uncalled for it is universal concept that all human beings are brothers and are assets to one another. All human beings living in the same country are more closely related to one another and are in truth and in fact each other's keeper than those living in countries separated by great distances. The death of one is a loss to the other whether by natural or felonious means.

Eso JSC (as he then was) further held in the same case[27] as follows:

> The issue of locus standi has always been held as one of the utmost importance, by this court for in effect, it is one that delimits the jurisdiction of the court, for in the interpretation of the constitution,, it is to be hoped that the courts would not possess acquisitive instinct and garner more jurisdiction than has been ascribed to it by the organic law of the land. It is that I think it has inhibited your Lordships and rightly too, in being careful, as your Lordships and rightly too, in being careful, as your Lordships should be, in threading carefully on the soil of locus standi I think again with respect that it is a departure from the narrow attitude of this court in the Abraham Adesanya case and subsequent decision. My humble view, and this court should accept it as such, is that the present decision of my learned brother, Obaseki JSC, in this appeal has gone beyond the Abraham Adesanya case. It is the view of my learned brother Obaseki, which I fully share with respect, that "it is the universal concept that all human beings are brothers and assets to one another". He applies this to ground locus standi. That we are all brothers is more so in this country where the Socio-cultural concept of "family" and "extended family" transcend all barriers. Is it not right then for the court to take note of the concept of the loose use of the word "brother" in this country?

[25] (1981) 5 SC 112. *See* also AGUDA T., A PRACTICE & PROCEDURE OF THE SUPREME COURT OF APPEAL AND HIGH COURTS OF NIGERIA 662 (M. J. Publishers, Lagos 1995).
[26] (1987) 4 NWLR (Pt. 67) 797 particularly at 825.
[27] *at* 846-847.

"Brother" in the Nigerian context is completely different from the blood brother in English Language.

VIII. Statute of Limitation Not a Bar to the Enforcement to Fundamental Rights

This arguably is a remarkable innovation to the effect that statute of limitation is not applicable to action on fundamental rights. For the avoidance of doubt Order III expressly provides that:

> An application for the enforcement of Fundamental Rights shall Not be affected by any limitation of statute whatsoever.

It is important to note that when an action is statute-barred in Law, it means such an action has exceeded the time permitted for such an action to be commenced before courts or tribunals.

It is observed that under the 1979 Rules it would appear that fundamental rights was affected by Limitation of statute to the effect that Order 1 Rule 3(1) of 1979 Rules provides that:

> Leave shall not be granted to apply for an order under these Rules unless the application is made within twelve months from the date of the happening of the event, matter, or act complained of, or such except where a period is so prescribed, the delay is accounted for to the satisfaction of the court or judge to whom the application for leave is made.

In contradiction to the 1979 Rules, the 2009 Rules is a clear departure from the provisions of the former.

The Supreme Court of Nigeria in Federal Republic of Nigeria v. Ifegwu[28] underscored this position when it rejected an attempt to invoke the provisions of the Public Officers Protection Act (Cap 379) Laws of Federation of Nigeria, 1990[29] to prevent the enforcement of fundamental right to fair hearing.

The Court held as follows:

> At this stage, I think I can briefly dispose of the argument in respect of the section 2 of the Public Officers Protection Act (cap 379)Laws of Federation of Nigeria relied on by learned senior advocate that the respondent's action was statute barred. It would be an argument carried too far to say that the public officers protection act applied to bar a relief sought in connection with an error committed in purely judicial capacity. It does not. The remedy sought is to enforce a constitutional right contravened by a court acting judicially. The time within which to seek that remedy is not subject to the time limit prescribed by the

[28] (2003) 45 WRN 27 at 69.
[29] Presently LFN 2004.

public officers protection act, there is no reason.

It is important to note that given the economic situation of this nation and high level of poverty, it is usually difficult for an aggrieved person to provide the cost of litigation for the enforcement, which includes the fee for filing court processes and payment for professional fees for their choiced attorney.

It is to the advantage of an aggrieved person to bring an action to enforce his right where breached whenever the resources to do so, is available to him.

IX. Expeditious Trial of the Human Rights Cases

The previous trend in the Nigerian court system where cases takes longer than necessary before their completion is fast giving way to expeditions trial of cases now being adopted by courts particularly with the introduction of a process known as "front-loading"[30] in our rules of court.

However, notwithstanding the aforesaid, hearings of cases are still delayed to the disadvantage of the parties to the suits and even the presiding judges.

It is therefore a laudable innovation that the 2009 Rules seek to ensure speedy and expeditious disposition of fundamental rights actions.

The 2009 Rules is specifically designed to avoid technicalities and to accelerate speedy disposition of fundamental rights actions.

Paragraph 3 of the Preamble provides as follows:

> Human rights suits shall be given priority in deserving cases. Where there is any question as to the liberty of the applicant or any person, the case shall be treated as an emergency.

While Order IV also underscores the issue of speedy disposition of fundamental rights actions.

Order IV Rules (1) and (2) provide thus:

> (1) An application shall be fixed for hearing within 7 days from the day the application was filed.
>
> (2) the hearing of the application may from time to time be adjourned where extremely expedient, depending on the circumstances of each case or upon such terms as the court may deem fit to make, provided the court shall always be guided by the urgent nature of the applications under this Rules.

This provision is quite unlike what obtains under the 1979 Rules

[30] Process where every documents or court processes being sought to be used or relied on in a case are placed before the court at the time of instituting the action.

particularly Order 2 Rule 2 which provides that:

> The motion or summons must be entered for hearing within fourteen days after such leave has been granted.

Whereas, the 2009 Rules expressly jettisoned the need for seeking and obtaining leave for enforcement of Fundamental Rights.

Order II Rule 2 provides thus:

> An application for the enforcement of the Fundamental Right may be made by any originating process accepted by the Court which shall, subject to the provisions of these Rules, lie without leave of Court.

It is instructive to note as a matter of practice that Fundamental Rights cases are treated with a sense of urgency because of its peculiar nature. The court has consistently acknowledged the urgency woven around fundamental rights litigation to the effect that pre-action notice is not required[31].

In *Agbakoba v The Director of State Security Service*[32] the Court succinctly captured the essence of Fundamental Rights (Enforcement Procedure) Rules where it held thus:

> The end purpose of the Rules is to ensure, where infringement of fundamental rights has been complained of or threatened, a speedy enforcement of such rights and simplification of procedure for dealing with such complaints.

The Court of Appeal delivering judgment in *Nigerian Union Teachers (NUT) and 3 Ors v. Conference of Secondary School Tutors, Nigeria (COSST) and 5 Ors*[33] on enforcement of fundamental rights under the 1979 rules held as follows:

> The special procedure stipulated for the enforcement of Fundamental human rights is different from the normal proceeding instituted by writ of summons. A combined reading of section 42(i) of the constitution, 1979 and the Fundamental Human Rights (Enforcement Procedure) Rules 1979 clearly shows that the only procedure now available to a Party who brings an action for the enforcement of fundamental right is by the 1979 Rules made by the Chief Justice of Nigeria. This procedure must be adhered to strictly.

The court posited further by re-producing the applicable provision as follows:

> Order 1, Rule 2(2) of the Fundamental Rights (Enforcement Procedure)

---

[31] Alobo J. E., *Exposition & Notable Principles on Fundamental Rights (Enforcement Procedure) Rules 2009* 22 (Josin Publishing House, Abuja 2010).
[32] (1994) 6 N.W.L.R Pt. 351 P. 475 at 500.
[33] (2006) All FWLR Pt. 295 P. 656 at 673 paras. A-C.

> Rules provides that: No application for an order Enforcement within that state of any such rights shall be made Unless leave therefore has been granted in accordance with this rule thus, while an applicant can approach the High Court in a state where the infringement of his rights occurs or is likely to occur for redress [see Order1, Rule 2(1) (supra)] he has to obtain leave of the appropriate High Court before he can apply to enforce his rights. In this case, the respondents approached the court by way of originating summons, contrary to the provisions of Order 1, Rule 2(2) of the rules (supra).

It is therefore submitted that, the commencement procedure under the 2009 rules is a clear departure from the previous rules and a laudable innovation.

It is now beyond doubt that matters concerning the enforcement of fundamental rights of citizens are so important that the mode of access to courts to enforce these basis rights should not be restricted to one particular means or the procedure used in the attainment of the enforcement of these basic rights should be made cumbersome and technical. A citizen's access to court to secure the enforcement of any alleged infringement of any of Fundamental Rights provided for in the constitution is not restricted only to the mode prescribed by the Fundamental Rights (Enforcement Procedure) Rules.

This is the position of the court in *Tofi v. Uba*[34] which in a nutshell represents the reality under the 2009 Rules and it rested the raging controversy emaciated above as to the mode of commencement of action for enforcement of fundamental rights. The applicant is at liberty to make his choice of commencement of action under the rules.

X. Simplified Service of Court Process

Order V of the 2009 Rules for all intent and purposes is designed to accommodate several modes of services of Court processes. The personal service is explicitly provided for in Order V Rules 2.

It states as follows:

> The application must be served on all the parties directly, so long as a service duly effected on the Respondent's agent will amount to personal service on respondent.

The court in the case of *Ugwumadu v. University of Nigeria, Nsukka*[35] emphasizing the importance of effecting "personal service" on the respondents in its reaction to the respondents' counsel who had argued that

[34] (1987) 3 NWLR (pt. 62) 707.
[35] (No. 2) NPILR 907 at 913.

the hearing of the motion on notice could not proceed on the ground that personal service had not been effected on his clients, observed as follows:

> I agree with the learned Senior Advocate of Nigeria that by virtue of Order 2 Rule 1(3) of the Fundamental Rights (Enforcement Procedure) Rules service of the originating processes ought to be served on the persons affected personally. The purpose is to get them notified of the action against them.

It is imperative to note that the 2009 Rules is no doubt liberal on the issue of service of Court process. Specifically, Order v Rule 9 cures the cumbersome nature of affidavit of service by the applicant which result on hardship and denials of reliefs sought. It provides as follows:

> If on the hearing of the application the Court is of the opinion that any person who ought to have been served with the application has not been served, whether or not the person is one who ought to have been served, the Court may adjourn hearing on such terms, if any, as it may direct in order that the application may be served on that person.

XI. JURISDICTION

Generally in law, the issue of jurisdiction is taken very seriously particularly in litigations. The Supreme Court of Nigeria has garbed the importance of jurisdiction in our judicial system in the case of *Inakoju v. Adeleke*[36] in the following words:

> Jurisdiction is a radical and crucial question of competence for if the Court has no jurisdiction to hear the case, the proceedings are and remain a nullity ab initio, however well conducted and brilliantly decided they might be, as defect in competence is not intrinsic but rather extrinsic to the entire adjudication. Jurisdiction is the nerve centre of adjudication, it is the survival of an action in a court of law; in the same way blood gives life to human beings and animal race.

The lingering controversy as to the appropriate Court where action for enforcement of fundamental rights should be commenced has now been laid to rest by virtue of Order 1 Rule 2 which provides thus:

> In these Rules "Court" means the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.

The Court of Appeal also confirm the above provision in the cases of *Governor, Kwara State v. Lawal*[37] where their Lordships held as follow:

> It is clear again that the main claim is a matter for the Kwara State Government and that joining the Commissioner of Police as a Respondent is

[36] (2007) All FWLR Pt. 353 P. 3 at 87 paras B-D.
[37] (2006) All FWLR Pt. 336 p. 313 at 30-342, paras. H-F.

mainly ancillary to the main claim. It was settled issue that the Federal High Court has concurrent jurisdiction with the State High Court on matters of fundamental rights enforcement under section 46 of the 1999 Constitution of the Federal Republic of Nigeria, which means that lower court is perfectly correct to assume that stance.

The court further held that:

> Unlike the Federal High Court which jurisdiction is limited and special, the High Court of a State has unlimited jurisdiction by section 272 of the 1999 Constitution. The position is that there are more than one claim and some concern themselves with fundamental human rights and the constitution does not specifically confer jurisdiction on the Federal High Court, then the latter cannot assume jurisdiction. In other words, the Federal High Court does no have jurisdiction to entertain a claim that do not fall within any of the matters enumerate under section 251 (1) of our constitution. That being the case, and in any case where some reliefs and others do not, then the matter ought to have gone to the State High Court that would have jurisdiction in respect of all the reliefs. It would be ridiculous and nonsensical for the Federal High Court to separate or sift out and try cases concerning fundamental human rights and leave others for a competent court to entertain. Or to transfer the rest claim to the High Court for Trial.

Also, on the issue of jurisdiction, the courts have also held that the main reliefs being sought must be the ones that fall within the ambit of chapter IV of the 1999 constitution and or the African Charter.

The Court in Governor, Kwara State v. Lawal[38] held as follows:

> How then does the court determine whether or not the claim for the enforcement of fundamental rights constitutes the main plank on which the applicant's rests? Here again, we are not without guide. Looking at the authorities, I would say this: If the applicant's complain relates primarily to the violation of any of his rights guaranteed under chapter IV of the constitution, then the enforcement of fundamental rights is the main plank of the action and such action may be brought under section 46 of the constitution in either the Federal High Court in the state where the violation took place or in the High Court of the state. A ready example of this is provided by The Minister of Internal Affairs & Ors v. Darman (1982) 3 NCLR 915.

It is therefore clear from the above quotation that the Fundamental Rights (Enforcement procedure) Rules 1979 (repealed) and 2009 do not permit "forum-shopping"[39].

---

[38] Supra.

[39] The choice of jurisdiction where an action may be instituted as the Applicant may desire and not where the Rules specify.

XII. Limitations to Fundamental Rights

Fundamental rights though inalienable are not absolute. Hence, they are subject, from time to time, to all manners of derogations and restrictions in the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons. Section 45 of 1999 Constitution clearly captures the restrictions and derogation from Fundamental rights.

For ease of reference, section 45 of the constitution is reproduced as follows:

> (1) Nothing in section 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that reasonable justifiable in a democratic society:
>
> (a) in the interest of defence, public safety, public order, public morality or public health; or
>
> (b) for the purpose of protecting rights and freedom of other persons.
>
> (2) An act of the National Assembly shall not be in validated by Reason only that it provides for the taking during the period of emergency, of measures that derogates from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency.

Conclusion

The 2009 Rules is no doubt a clear departure from the previous rules. Several innovations introduced to the rules will no doubt enhance the enforcement of fundamental right by aggrieved people.

The rules allowed for court approaching "rights" issue liberally.

However, notwithstanding the new ideals newly embedded in the Fundamental Rights (Enforcement Procedure) Rules 2009, it cannot be said that the aggrieved persons have less to do, particularly when the cost of litigations is considered in this country, vis-a-vis the level of poverty in the nation.

The question may also be asked as to the implication of clause 3(b) of the rules viewed against unenforceability of treaties not domesticated pursuant to section 12 of the constitution. It appears that clause 3(b) merely enjoins the court to use the bills as aid to constructions for the purpose of advancing human rights and not for validating otherwise unenforceable treaties.

In spite of noticeable shortcomings in the 2009 rules, it could still be concluded legitimately that it is clearly designed to enhanced human rights protection in Nigeria, whose purpose is already being felt in the nation.