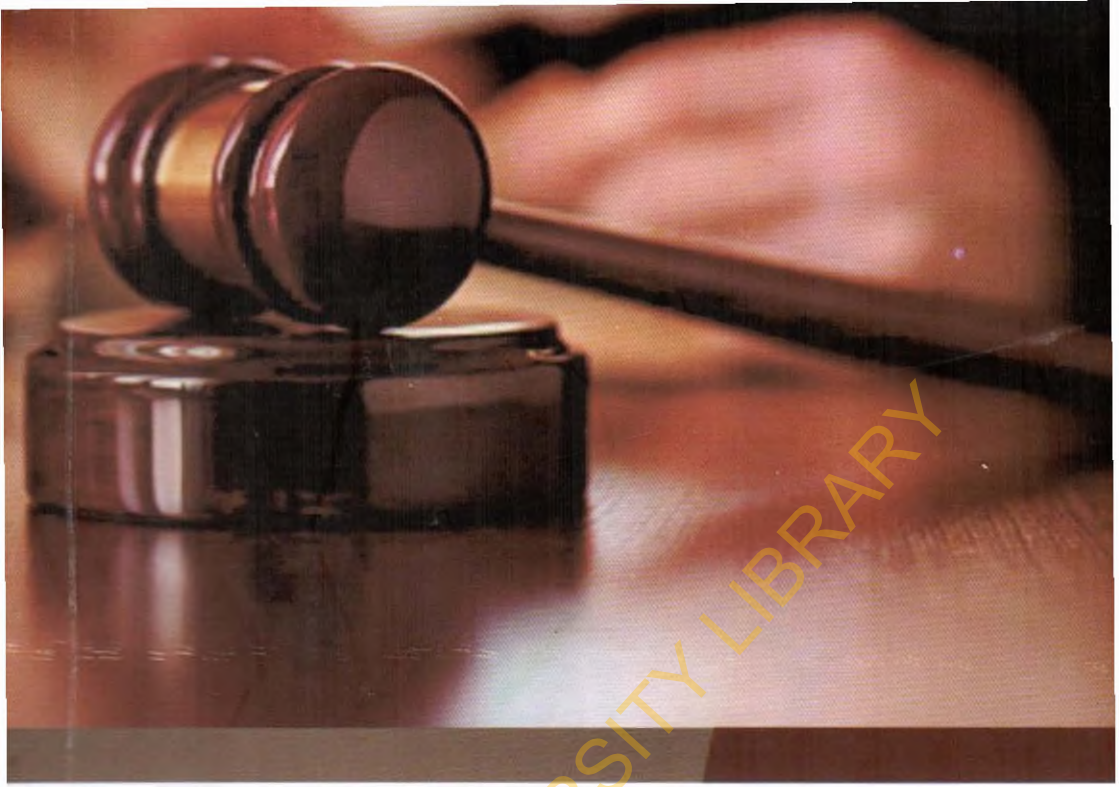



# LAW AND POLICY THOUGHTS IN NIGERIA

Edited by:
**Adeniyi Olatunbosun, PhD**

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# CHAPTER THIRTEEN

## CONCEPTUAL FRAMEWORK OF CIVIL LITIGATION PROCESS IN NIGERIA

S. Akinlolu Fagemi*



### Introduction

Civil litigation is recourse to the ordinary courts of law for the resolution or determination of conflicts or disputes between two or more parties as to their respective legal rights and obligations. It includes the determination by the court as to the status of one or more parties. The recourse of controversy between parties or between parties and authorities to law courts for settlement is a fundamental right of all Nigerian citizens. In Nigeria, people usually approach the court of competent jurisdiction for the enforcement of their individual legal right or to seek redress for violation of their legal rights. According to Oyewo,[1] litigation can be described as enforcement of legal right(s) or redressing of a legal wrong(s), as the case may be, before a competent court or tribunal established by the law. In contrast to criminal proceedings, the ultimate aim of civil litigation is to compensate or grant restitution.

Civil litigation therefore means the process of enforcing, redressing or protecting right and obtaining appropriate remedies in private capacity in Courts. The concept of civil litigation began in late medieval England. At the time, there was a need to separate crimes against the state-criminal matters-and injuries caused to individuals-civil matters. The basic and peculiar characteristic of civil litigation

* Senior Lecturer, Department of Public Law, University of Ibadan.

1 Oyewo, A. T., 2011. *The Principles and Practice of Civil Litigation in Nigeria*, 1st edn, (Ibadan, Jator Publishing Company, ), p.1.

that defines and distinguishes it from other judicial processes such as criminal proceedings will be considered in this study.

**Classification of Civil Litigation**

Civil litigation can broadly be classified into three:

i. Dispute concerning family relations, such as, divorce, custody, maintenance and so on.

ii. Dispute concerning proprietary relations like land matter or tenancy; and

iii. Dispute concerning personal relations such as contract or tort.

Although civil litigation is of three classes as identified above. However, it encompasses a broad spectrum of disputes covering all human endeavours. The types of civil litigation in broader term include: Contract Law dispute litigation, Environmental rights litigation, Landlord/Tenant litigation, Products Liability litigation, Personal Injury litigation, Intellectual Property litigation, Medical Malpractice litigation, Employment & Labour relations litigation, Fundamental Human Rights Enforcement litigation, Real Estate litigation, Anti-Trust litigation, Worker's Compensation litigation, Education Law litigation, Marine Law litigation, Aviation law litigation, Company Law litigation, Family Law litigation, etc.

**PERSONALITIES INVOLVE IN CIVIL LITIGATION PROCESS**

**Parties to Civil Litigation**

In civil litigation, the first stakeholders are the parties themselves. Parties to civil litigation comprises of the person(s) that commenced the case in Court, the person(s) whom the case is commenced against and the person(s) who seeks to be joined or joined by Court base on the dictate of the case. Basically, the parties to civil litigation can be classified as Proper Parties, Desirable Parties, Nominal Parties and Necessary parties. For a civil litigation to be valid, the proper party(s) must be the one suing and the one sued, otherwise, the civil litigation will fail. This is so, because, it is a fundamental principle of law that parties to civil litigation must be the correct parties to enable the court determine the issues between

the parties adequately, effectually, completely, judicially and judiciously.[2]

The nomenclature used to address the parties to civil litigation varies from Court to Court, from territorial jurisdiction to territorial jurisdiction; and depending on the mode of commencement of the civil litigation. For instance, in Lagos State High Court, it is called Claimant and Defendant if the civil litigation is commenced via writ of summons. In the High Court of Federal Capital Territory, Abuja and the Federal High Court, it is called Plaintiff and Defendant if the civil litigation is commenced via writ of summons. Generally, parties to civil litigation commenced by petition are addressed as Petitioner and Respondent. In all appeal civil litigation, irrespective of the Court, parties are addressed as Appellant and Respondent.

Apart from litigants, two other prominent figures in adjudicatory processes are the judge and lawyer. These two are instrumental to the administration of justice. According to Amina Augie,[3] 'they are bound together in some form of symbiotic existence'. Obviously, judge and lawyer play key role in the administration of justice; however, they are supported in their onerous task by other supporting staff. In these categories are: court registrar, court clerk and sheriff. The registrar and court clerk, on one hand, perform



[2] See *Green v Green* (1987)7 S.C.N.J, p. 255; in the case of *Bello v INEC & Anor.* (2010) 3 SCM 1. 'Parties' have been defined as persons whose names appear on the record as plaintiff or defendants while person who may be affected by the suit indirectly or consequently are persons interested. The term 'parties', was given wider definition in the case of *Okukujev. Akwido* (2001) FWLR (Pt. 39) 1487 at 1535,in that case, 'parties' was defined to include not only those whose name appear on the record of proceedings and those who had direct interest in the subject matter of the dispute and had an opportunity to attend the proceedings and to join as a party in the suit, but choose not to do so but were content to stand by and see battle in which their interest is directly in issue fought by someone else or let witnesses testify as to their title to or interest in the subject matter of the action. Thus parties include their privies and those who ought to have been made parties to the proceeding, see the case of *Maya v Oshuntokun* (2001) FWLR (Pt. 11) 1777 at 1800.

[3] Hon. Justice Amina A. Augie JCA, Thursday, 1st June, 2006. 'The Bar and the Bench: Twin Pillars Upholding the Rule of Law in Nigeria'
. After Dinner Speech at the Nigeria Bar Association (NBA) Ibadan Branch held in
Ibadan 140, 181.

administrative duties. The sheriff or the bailiff on the other hand, is saddled with the services of the court processes and execution of courts orders or judgments.

## SOURCES OF CIVIL LITIGATION

Civil ligation is regulated by so many laws. The following laws regulate civil litigation in Nigeria:[4]

a). The constitution of the Federal Republic of Nigeria, 1999 (as amended). The constitution made provisions for the establishment of all superior Courts of records and vests them with judicial power.[5]

b). Statutes enacted by legislator which either wholly or partially regulate the conduct of civil litigation in Nigeria. For example, the Magistrates Courts Laws, State High Courts Laws, the Federal High Court Act, the National Industrial Court Act, the Customary Court of Appeal Laws and Sharia Court of Appeal Laws, the Court of Appeal Act and the Supreme Court Act. These various enactments have provisions regulating civil litigation in Nigeria. In addition to the above statutory provisions are the procedural rules of various courts; judgments and decisions of the Courts interpreting the various rules of Courts also regulate civil litigation in Nigeria and practice direction made from time to time by the head of the various courts. For instance, the Practice Direction made by the president of the Court of Appeal regulates all election petition proceedings in Nigeria.

## COURTS WITH JURISDICTION OVER CIVIL LITIGATION

All Courts in Nigeria have jurisdiction over civil litigation, which may be exercised either as original or appellate jurisdiction. Court jurisdiction is always determined by the subject-matter of the case, the parties involved, type of action, monetary value of claim or the stage of the action such as when the action is being commenced or on appeal. Courts with civil litigation are briefly discussed below.



[4]Afolayan, A. F and Okorie, P. C. 2007. *Modern Civil Procedure Law,* (Dee-Sage Nigeria Ltd, ), pp. 8-9.

[5]See section 6 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended)

**Magistrate Court**

The Magistrates' Courts of the various States and Federal Capital Territory, Abuja, have jurisdiction over civil litigation in accordance with the law that established them. For example, the Magistrates Courts of Lagos State[6] have jurisdiction in the following civil litigation:

(i) All personal actions whether arising from contract or from tort or from both;

(ii) All actions between landlord and tenant for possession of any land or houses claimed under an agreement or refused to be delivered up;[7]

(iii) All actions for recovery of any penalty, rates, expenses, contribution or other like demand which is recoverable by virtue of any enactment for the time being in force;

(iv) Actions to grant injunction or order to stay waste or alienation or for the detention and preservation of any property or to restrain breached of contract or torts.

In addition, the Magistrates Courts of Lagos State have jurisdiction in civil litigation set out in section 28 (2) of the Magistrates Courts Law.[8] The jurisdiction of the Magistrates' Courts in the above mentioned cases is original jurisdiction in nature. However, the Magistrate Court of Lagos State by virtue of section 28 of that law have appellate jurisdiction to hear appeal in civil litigation from Customary Courts.[9]



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[6]See section 28 of Magistrates Courts Law of Lagos State, 2009.

[7]Note that, when Magistrate Court in Lagos assumed jurisdiction over civil litigation involving residential premises, it sit as Rent Tribunal as against non-residential premises civil litigation where it sits as Magistrate Court.

[8]*Ibid*

[9]*Ibid.* In Oyo State, the original and appellate jurisdictions of Magistrates' Courts are governed by sections 19 and 25 of the Magistrates' Courts Law, Cap. 82, Volume III, Laws of Oyo State of Nigeria, 2000. Apart from the original and appellate jurisdiction of Magistrates Courts in Oyo State, the Governor may by order direct that a magistrate's court exercise original jurisdiction in all or any suits which raise an issue as to the title to land or title to any interest in land, validity of a device, bequest or limitation, under will, issue relating to custody of children under customary law, causes or matters relating to inheritance upon intestacy under customary law and matrimonial causes and matters between persons married under customary law etc.

**Sharia Court of Appeal**

The Sharia Court of Appeal of the Federal Capital Territory, Abuja is established under section 260 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The court is vested with appellate and supervisory jurisdiction in civil litigation involving questions of Islamic personal law. These questions of Islamic personal must include questions regarding marriage and dissolution of marriage concluded in accordance with the Islamic law, where all parties to the proceedings are Muslims, questions involving *wakf*, gift, will or succession where the endower, donor, testator or deceased person is Muslim; question involving infant, prodigal or person of unsound mind and maintenance or the guardianship of a Muslim who is physically or mentally infirm; or where all the parties to the proceedings, being Muslims have requested the court that hears the case to determine same in accordance with Islamic personal law.[10]

By virtue of section 262 ofthe 1999 Constitution, the Sharia Court of Appeal shall be duly constituted if it consists of at least three Kadis of that court for the purpose of exercising any jurisdiction conferred upon it. Again, the Grand Kadi is vested with power to make rules for regulating the practice and procedure of the Sharia Court of Appeal.[11]

**Customary Court of Appeal**

The Customary Court of Appeal of the Federal Capital Territory, Abuja is established under section 265 of the 1999 Constitution(as amended). The court is vested with appellate and supervisory jurisdiction in civil litigation involving questions of customary law.

By virtue of section 268 of the 1999 Constitution, the Customary Court of Appeal shall be duly constituted if it consists of at least three Judges of that court for the purpose of exercising any jurisdiction conferred upon it. The President of the Court is vested

[10] See section 262 of the Constitution of the Federal Republic of Nigeria 1999 (as amended),

[11] See section 264 of the 1999 Constitution. See section 277 of the 1999 constitution that conferred similar jurisdiction on the Sharia Court of Appeal of State.

with power to make rules for regulating the practice and procedure of the Customary Court of Appeal.[12]

**National Industrial Court**

The National Industrial Court (NIC) was established during the Military Government under the Trade Disputes Decree No. 7, of 1976. At the inception, the Court enjoyed concurrent jurisdiction with other courts of coordinate jurisdictions such as: Federal High Court of Justice, State High Court of Justice, and the High Court of the Federal Capital Territory, Abuja, Customary Court of Appeal and Sharia Court of Appeal.

In order to streamline the jurisdiction of NIC and make it the specialized court it was designed from the cradle, the Government, in the year 2006, enactment the National Industrial Court Act, 2006 (NICA). The steps taken by the NICA to resolve the problems associated with the jurisdiction of the court are: One, the NICA repealed Part II of the Trade Disputes Act and re-established NIC as court of superior record. Two, section 11 of the NICA, 2006 by *fiat* abated the jurisdiction of the Federal High Court, the State High Court and the High Court of Federal Capital Territory, Abuja to entertain labour or industrial dispute or any matter related thereto, except where such matters are part-heard.[13]

On coming into operation, section 7 of the NICA, 2006 conferred on the NIC exclusive jurisdiction to adjudicate on civil causes and matters relating to labour, industrial trade union and industrial relations and environment and conditions of work, health, safety and welfare of labour and matter incidental thereto amongst others.Section 254 of the Constitution of the Federal Republic (Third Alteration) Amended Act, 2010, has reaffirmed and reinforced the status and jurisdictions of the NIC as contained in the National Industrial Court Act, 2006.[14]

The combined effects of section 7 of the NICA, 2006 and section 254C (1) of the Constitution (Third Alteration) Amendment Act,

[12] See section 269 of the 1999 Constitution. See section 282 of the 1999 constitution that conferred similar jurisdiction on the Customary Court of Appeal of State.

[13] Fagbemi S. A., 2014. "Jurisdiction of the National Industrial Court of Nigeria: A Critical Analysis."*Journal of Law, Policy and Globalisation,* Vol. 28, pp. 54-55

[14] *Ibid.*

2010 is that the jurisdiction of NIC is exclusive to it and cannot be shared with other courts. By virtue of section 254C (1) of the Constitution (Third Alteration) Act, 2010, National Industrial Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters-

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

(b). relating to, connected with or arising from Factories Act, Trade Disputes Act, Trade Unions Act, Labour Act, Employees' Compensation Act or any other Act or Law relating to labour, employment, industrial relations, workplace or any other enactment replacing the Acts or Laws;

(c). relating to or connected with the grant of any order restraining any person or body from taking part in any strike, lock-out or any industrial action, or any conduct in contemplation or in furtherance of a strike, lock-out or any industrial action and matters Connected therewith or related thereto;

(d). relating to or connected with any dispute over the interpretation and application of the provisions of Chapter IV of this Constitution as it relates to any employment, labour, industrial relations, trade unionism, employer's association or any other matter which the Court has jurisdiction to hear and determine;

(e). relating to or connected with any dispute arising from national minimum wage for the Federation or any part thereof and matters connected therewith or arising there from;

(f). relating to or connected with unfair labour practice or international best practices in labour, employment and industrial relation matters;

(g). relating to or connected with any dispute arising from discrimination or sexual harassment at workplace;

(h). relating to, connected with or pertaining to the application or interpretation of international labour standards;

(i). connected with or related to child labour, child abuse, human trafficking or any matter connected therewith or related thereto;

(j). relating to the determination of any question as to the interpretation and application of any-

(i). collective agreement;

(ii). award or order made by an arbitral tribunal in respect of a trade dispute or a trade union dispute;
(iii). award or judgment of the Court;
(iv). term of settlement of any trade dispute;
(v). trade union dispute or employment dispute as may be recorded in a memorandum of settlement;
(vi). trade union constitution, the constitution of an association of employers or any association relating to employment, labour, industrial relations or work place;
(vii). dispute relating to or connected with any personnel matter arising from any free trade zone in the Federation or any part thereof;
(k). relating to or connected with disputes arising from payment or non payment of salaries, wages, pensions, gratuities, allowances, benefits and any other entitlement of any employee, worker, political or public office holder, judicial officer or any civil or public servant in any part of the Federation and matters incidental thereto;
(l). relating to-
(i). appeals from the decisions of the Registrar of Trade Unions, or matters relating thereto or connected therewith;
(ii). appeals from the decisions or recommendations of any administrative body or commission of enquiry, arising from or connected with employment, labour, trade unions or industrial relations; and
(iii). such other jurisdiction, civil or criminal and whether to the exclusion of any other court or not, as may be conferred upon it by an Act of the National Assembly;
(m). relating to or connected with the registration of collective agreements.

**State High Court**

In Nigeria, the State High Courts are first and foremost the creation of the Constitution. Thus, by section 270 (1) of the 1999 Constitution, state high court consists of a Chief Judge and such number of Judges of the High Court, as may be prescribed by a Law made by the State House of Assembly. Before the 1999 Constitution came into effect, State High Court under section 236 of the 1979

Constitution was vested with unlimited civil jurisdiction.[15] However, under the 1999 Constitution, the word unlimited has been removed from the definition of the jurisdiction of the State High Court, hence, its civil jurisdiction are now limited by the provision of sections 251 and 254C of the 1999 Constitution. For example, section 272 (1) of the 1999 Constitution, which confers jurisdiction on the State High provides *inter alia* that: 'subject to the provision of section 251 and other provisions of this constitution, the High court of a State shal have jurisdiction to hear and determine any civil proceedings in which the existence or extent a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue....[16]
In similar vein, section 254C (1) of the Constitution (Third Alteration) Act, 2010, which conferred jurisdiction on NIC provides *inter alia* that: '[n]otwithstanding the provisions of sections 251, 257, 272 and anything contained in this Constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the NIC shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters'
Section 251 of the Constitution gives exclusive jurisdiction to the Federal High Court in certain specified subject, while section 254 C (1) of the Constitution (Third Alteration) Act, 2010 confers on the NIC exclusive jurisdictions on some other specified subjects. The implication of sections 257 and 272 of the 1999 Constitution are that the jurisdiction of the States High Courts and High Court of the Federal Capital Territory, Abuja are limited to the extent of the jurisdictions confer on the NIC and Federal High Court respectively.
The jurisdiction conferred on the State High Court by section 272 (1) of the Constitution covers original, appellate as well as supervisory jurisdiction in civil litigation.[17]For example, the State High Court has appellate jurisdiction in civil litigation appeal from the Magistrates' Court.[18]



[15] See the case of *Savannah Bank Ltd. v Pan Atlantic Shipping Transport Agency Ltd* (1987) 1 SCNJ 87.
[16] See section 257 (1) of the 1999 Constitution that conferred similar jurisdiction of the High Court of the Federal Capital Territory, Abuja.
[17] See sections 272(2) and 257 (2) of the 1999 Constitution (as amended).
[18] Also applicable to High Court of the FCT, Abuja.

**Federal High Court**

The Federal High Court of Nigeria is established under section 249 of the 1999 Constitution. It consists of the Chief Judge of the Federal High Court and such number of Judges of the Federal High Court as may be prescribed by an Act of the National Assembly. The appointment of the Chief Judge as well as Judges of the Federal High Court is made by the President on the recommendation of the National Judicial Council, subject to confirmation of such appointment by the Senate.[19]

The Federal High Court has exclusive jurisdiction over civil litigation that emanates from causes and matters mentioned in section 251 (1) (a) – (s) of the 1999 Constitution. The jurisdiction of the Federal High Courts in civil litigation as stated above is original jurisdiction. The appellate jurisdiction of the Federal High Court is not provided for in the 1999 Constitution. However, appeal from judgment and decision of some tribunals in civil litigation goes to the Federal High Court.[20]

**Court of Appeal**

The Court of Appeal is next in rank to the Supreme Court in the judicial hierarchy in Nigeria. The court was set up by the Court of Appeal Act 1976. The existence of the Court of Appeal is reinforced by section 237 of the 1999 Constitution (as amended). Appointment of a person to the office of the President and Justices of the Court of Appeal is made by the President on the recommendation of the National Judicial Council.[21]

The Court of Appeal exercises both original and appellate jurisdiction over civil litigation. It exercises original jurisdiction in civil litigation that involves questions as to whether-[22]

a). Any person has been validly elected to the office of the President or Vice-President under the Constitution; or

b). The term of office of the President or Vice-President has ceased; or



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[19] See section 250 of 1999 Constitution.

[20] See section 17 of Fifth Schedule of the Federal Inland Revenue (Establishment) Act, 2007, which provides that appeal from the Tax Appeal Tribunal established under the Act, shall goes to the Federal High Court.

[21] Section 238 of the 1999 Constitution.

[22] Section 239 (1) of the 1999 Constitution.

c). The office of the President or Vice-President has become vacant.
The Court of Appeal exercises appellate jurisdiction in civil litigation that emanated from appeal on judgments and decisions from the Federal High Court, State High Court, High Court of the Federal Capital Territory, Abuja, Sharia Court of Appeal and Customary Court of Appeal of a State and from decisions of a court martial and other Tribunals as may be prescribed by an Act of the National Assembly.[23]

**Supreme Court**

The predecessor of the Supreme Court was the Federal Supreme Court set up by the Federal Supreme Court Act of 1960. At that period, the Privy Council was the highest appellate Court for Nigeria, so that the Federal Supreme Court was an intermediate appellate court like the Court of Appeal between the High Courts and the Privy Council.[24]

When appeals to the Privy Council were discontinued in 1963, the Federal Supreme Court became known as the Supreme Court of Nigeria and became the highest Court in Nigeria. The Supreme Court was formally established as the highest court in Nigeria under section 230 of the 1999 Constitution and no appeal from its decision lies to any other person or body.

Appointment to the office of the Chief Justice of Nigeria and to the office of a Justice of the Court is made by the President on the recommendation of National Judicial Council and subject to confirmation by the Senate.[25] The Supreme Court of Nigeria by virtue of sections 232 and 233 of the 1999 Constitution exercises both original and appellate jurisdiction over civil litigation. It exercise exclusive original jurisdiction in civil litigation that involved any dispute between the Federation and a State or between State if and in so far as that dispute involves any questions (whether of law or fact) on which the existence or extent of a legal right depends.[26]



[23] Section 240 of the 1999 Constitution

[24] Fidelis Nwadialo S.A.N 1990. *Civil Procedure in Nigeria,* (Yaba, Lagos: MIJ Professional Publishers Limited, ), p. 617

[25] Section 231 of the 1999 Constitution.

[26] Section 232 of the 1999 Constitution.

The Supreme Court exercises appellate jurisdiction on civil litigation that emanates from appeal on judgment and decision from the Court of Appeal.[27]

## MODE OF COMMENCING CIVIL LITIGATION IN COURT

As noted above, litigation is one of the traditional means through which individuals who are aggrieved often seek redress. There are however fundamental requirements that must be met before a party files an action in the court of law. Failure to consider these preliminary matters may lead to a premature termination of civil action; or a dismissal at the end of what is usually a long and costly trial. Such preliminary matters among others include a cause of action, jurisdiction of the court, *locus standi* and any condition precedent. These are considered briefly below.

### Cause of Action

Cause of action is defined as 'factual situation, the existence of which entitles one person to obtain from the court, a remedy against another person'[28] or 'the facts which constitute the essential ingredients of an enforceable right or claim'.[29]

A suit is filed with the intention to remedy some wrong done to the person suing. There must therefore be in existence a legal right which has been breached or violated; and which is capable of being remedied in law.[30]In the case of *Chevron (Nig) Ltd v Lonestar Drilling (Nig) Ltd,*[31]the Supreme Court held that a cause of action is constituted by the bundle or aggregate of facts which the law will recognize as giving the plaintiff a substantive right to make the claim against the relief or remedy being sought. It is trite that in the determination of cause of action only the facts pleaded in the statement of claim have to be examined. Hence, where there is no cause of action accruing to the claimant, the suit will be struck out.

### Jurisdiction



[27] Section 233 (1) of the 1999 Constitution.
[28] *Egbe v Adefarasin* (1985) 5 SC 50 at 87
[29] *Trower and sons ltd v Ripstein* (1994) AC 254 at 263 per Lord Wright.
[30] Efevwerhan, D. I. 2013. *Principles of Civil Procedure in Nigeria,* 2nd edn, (Enugu:Snaap Press Ltd).
[31] (2007) 7 SC PT2 27

The jurisdiction of a court connotes the limit of its powers to hear and determine the issues between the parties. It is the authority which a court has to decide on matters which are litigated before it or take cognizance of matters brought before it in a formal way for its decision.[32] Jurisdiction may be territorial or geographical .i.e. the location of a court in a locale. It could also be divisional (the judicial division of the court within which to commence an action)[33]
Jurisdiction could also be procedural or substantive. Procedural jurisdiction is usually provided for in the rules guiding a court. Failure to comply with procedural jurisdiction is not fatal to a suit and can be waived. e.g. instituting an action through originating summons rather than by writ of summons. Substantive or subject-matter jurisdiction on the other hand refers to the authority conferred on a court by the constitution or by extant statutes. Such jurisdiction cannot be waived or conferred on a court by agreement of parties and cannot even be expanded by the general or inherent powers of the court.[34]
The issue of jurisdiction is fundamental to adjudication and any proceedings, judgment or order of the court made without jurisdiction becomes an exercise in futility and constitutes a nullity.[35] The fundamental nature of jurisdiction is further evident in that it can be raised at any stage of the proceedings and even for the first time on appeal, sequel to leave being sought and obtained.[36] The court may also raise the issue of jurisdiction suo motu.

***Locus Standi***

In law, standing or *locus standi* is the term for the ability of a party to demonstrate to the court his sufficient connection to any harm from the law or action challenged to support that party's participation in the case.[37] The term "*locus standi*' denotes, 'the right to bring an action or to be heard in a given forum'.[38] The word

[32] *Mobil v LASEPA* (2003) 104 LRCN 240 at 262 per Ayoola JSC
[33] Efevwerhan , D.I. *op cit*
[34] *Ndayako v Dantoro* (2004) 13 NWLR (pt 889) 187
[35] *Galadima v Tambai* (2000) 6 SCNJ 190
[36] *Oshatoba vOlujitan* (2000) 2 SCNJ 159
[37]. Priya, L., 2011. "Expansion of *Locus Standi*: A Path for Development of PIL", Lawyersclubindia, Interractive Platform for Lawyers & Indian Public, p. 2.
[38]. Bryan A. Garner, *op cit,* p. 960.

*locus standi* is used interchangeably with terms like 'standing' or 'title to sue'.[39]

The doctrine of *locus standi* or standing, determines the competence of a plaintiff to assert the matter of their complaint before the court.[40] The doctrine of *locus standi* is a concept whereby only a person who has a legal right or whose rights have been adversely affected, or who may have suffered or is likely to suffer special damage in consequence of an alleged wrongdoing by a public authority can institute proceedings to obtain judicial redress.[41]Where a claimant has no *locus standi,* a court is obliged to strike out his case without going into the merits of the case.[42]

**Conditions Precedent**

The law sometimes requires that certain requirements be met before instituting a suit. These include:

**(a). Pre-Action Notice**

The service of pre-action notices is often required by law in suing statutory bodies. This means that the said statutory body must be issued with notice before instituting a suit against it. The idea behind this requirement is to avoid embarrassing suits and to enable the statutory body evaluate the facts to decide whether to contest it



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[39]. Tumai, M., "Strengthening *Locus Standi* in Public Interest Environmental Litigation: Has Leadership moved from the United States to South Africa? *Law, Environment and Development Journal,* 6/2, (2010),p. 165. *Adesanya v. Federal Republic of Nigeria,* 2 ACLC 1 at 16.See also Oniemola, P. K., and Olowononi, E. O., "Application of the Doctrine of *Locus Standi* in Proceedings for Judicial Review in Nigeria, The Gambia and Canada, vol. 17, No. 1, (2014), *The Nigerian Law Journal,* p 133.

[40] "A Re-Examination of the Case for a Locus Standi Rules in Public Law",available at eprints.bournemouth.ac.uk.2905/1/86.pdf. accessed on 18th July, 2013 at 7.02pm.

[41]. Okany. M. C. 2007. *Nigerian Administrative Law. (*Onitsha, Nigeria: African First Publishers. Africana Academic, ), p.`325; Lawal, I. B and Fagbemi S. A. 2015. "An Appraisal of the Doctrines of Exhaustion, Ripeness and *Locus Standi* as Means to Preventing Frivolous Action Against Administrative Decisions in Nigeria", *Ebsu Law Journal.*

[42]*Senator Abraham Adesanya v President of the FRN and another* (supra)5 at 112

or settle amicably. Any case instituted without the service of such pre- action notice is incompetent and is liable to be struck out.[43]

**(b). Limitation of action (statute bar)**

The law sometimes places limitation in bringing certain actions in court. A cause or matter is, therefore, statute barred if in respect of it the proceedings cannot be brought because the period laid down by the limitation law had elapsed.[44] The limitation period begins to run when the cause of action accrues[45] 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 the date with the date in which the writ of summon was filed.

The following are the limitation periods prescribed by the limitation law.

| | | |
|---|---|---|
| a) | Actions founded in simple contract | 6yrs[46] |
| b) | Actions for damages for negligence | 3yrs[47] |
| c) | Actions for damages for slander | 3yrs[48] |
| d) | Action upon instrument under seal | 12yrs[49] |
| e) | Action by State authority to recover land | 20yrs[50] |

Other Preliminary matters to be considered before commencement of action in both High Court and Federal High Court include: the Rule of Court; cost of litigation, pre-action counseling, availability of ADR mechanism, service of statutory notices on a tenant before action in court.

In relation to Public Officers, Section 2 of the Public Officers Protection Act[51] provides that an action or proceeding shall not lie or be instituted against such a person unless it is commenced within three months next after the act, neglect or default complained of or



[43] *Bakare v NRC* (2007) 17 NWLR (PT 1064) 606
[44] *Ajayi v Military Administrator of Ondo State* (1997) 5 NWLR (PT 504) 237
[45] *Egbe v Adefarasin* (Supra)
[46] See 8 limitation Law cap L67 laws of Lagos State of Nigeria 2003.
[47] See 9 limitation Law (Lagos)
[48] See 10 limitation Law (Lagos)
[49] See 12 limitation Law (Lagos)
[50] See 16 limitation Law (Lagos)
[51] Cap P41 LFN, 2004. See *Ofili v Civil Service Commission* (2008) ALL FWLR PT(434) 1620

in the case of a continuance of damage or injury, within three months next after the ceasing thereof.

## FORMS OF COMMENCEMENT OF CIVIL ACTION IN SUPERIOR COURTS

The main subsidiary legislation on the modes of commencement of civil action in Superior Courts is the Rules of these various courts.[52] Generally, there are four different methods whereby actions are begun in the High Courts and Federal High Court respectively. These are by writ of summons, originating summons, originating motions and petition.

Each of these is referred to as originating process.[53] For instance, the Federal High Court (Civil Procedure) Rules 2009 in Order 3 Rule 1 provides thus:

> "Subject to the provision of any enactment, civil proceedings may be begun by Writ, Originating Summon, Originating Motion or Petition or by any other method required by other rules of court governing a particular subject matter."

It should be noted that the High Court of Lagos State Civil Procedure Rules 2012 and the High Court of Oyo State (Civil Procedure) Rules 2010 only provide forwrit of summons and originating summons[54] as two mode or forms of commencement of action in their courts. Of all the processes that could be used in commencing an action, the writ of summons is the most commonly used. This is so, because the other processes are only resorted to where the Rules or a statute or a rule of practice prescribes the particular process as a means of starting specified type of actions.[55] This is with the exception of the National Industrial Court, which is a specialised court and provides for the use of complaint as the mode of commencing actions in the court.



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[52] See section 6 of the 1999 Constitution for the list of superior courts. However, in this paper, we shall be considering the High Court of Lagos State (Civil Procedure) Rules 2012, High Court of Oyo State (Civil Procedure) Rules 2010, The Federal High Court (Civil Procedure) Rule 2009 and The National Industrial Court Rules 2007

[53] Fidelis Nwadialo, *op cit.*

[54] O. 3 R 1 & 5 (Lagos and Oyo State civil Procedure Rules 2012 and 2010 respectively)

[55] Fidelis Nwadialo, *op cit.*

**Writ of Summon and Frontloading Concept**

Most High court Rules including those of the Federal High Court and the National Industrial Court now require that relevant processes be filed alongside the originating process. This is called frontloading system. The rationale behind the frontloading system has opined by the Court of Appeal in *Olaniyan v Oyewole*[56]*is* to quicken the dispensation of justice. Hence, judges are no longer an adjudicators and/or umpires in the courtroom but are now managerial judges who must effectually utilize the technique and tool of case management and judicial control to achieve just, efficient and speedy dispensation of justice.

Under Order 3 rule 2(1) of the Lagos State High Court (Civil Procedure) Rules, 2012the following documents must be filed along with every writ of summons:

(a). A statement of Claim;

(b). A list of witnesses to be called at the trial;

(c). Written statements on oath of the witnesses except witnesses on subpoena;

(d). Copies of every document to be relied on at the trial;

(e). Pre-action Protocol Form 01.

All the above processes must accompany a writ of summon under the Oyo State High Court (Civil Procedure) Rules, 2010 and the Federal High Court (Civil Procedure)) Rules 2009 exceptthe pre-action protocol form 01. Similarly, under Order 3 rule 4 of the National Industrial Court, every complaint file in the court must be accompanied by:

(a). A statement of facts establishing the cause of action

(b). Copies of every document to be relied on at the trial

(c). List of witnesses to be called.

Where a Claimant fails to comply with the frontloading requirements, the Originating Process shall not be accepted for filing by the Registry. If the registrar accepts a writ for filing which does not comply with the requirements, the court will strike out the writ when it comes before it. Thus, in the case of *Jabita v Onikoyi,*[57]the court struck out both claim and counter claim because the claimant and defendant failed to annex pleaded documents to their pleadings

[56] (2008) 5 NWLR (PT 1079) 114 at 146

[57]2004)All FWLR(pt233)1625 at 1647

and the list of witnesses did not include potential witnesses as required. However, in *Olaniyan v Oyewole,*[58] the Court of Appeal has held that such failure may be treated as a mere irregularity.

**Originating Summons**

An action may be begun by originating summons where the sole or principal question in issue is or is likely to be one of construction of a written law or any instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or there is unlikely to be any substantial dispute of fact.[59] In the case of *Dalhatu v A.G Katsina State,*[60]it was held *inter alia* that 'in actions prosecuted through an originating summons, facts do not have the pride of place in the proceedings as they do in actions instituted by writ of summons, whereby pleadings are ordered by the court and exchanged by parties'. Therefore, an originating summons must be supported by affidavit disclosing the facts of the case. The defendant is then required to file a counter-affidavit. The merits of the originating summons lie in the fact that proceedings commenced there by are expeditiously dealt with since there are no facts in dispute, pleadings, discoveries, interrogatories and other similar interlocutory applications that tends to delay actions begun by writ of summons. However, where a suit ought to have been instituted by writ of summons instead of originating summons, the prescription in the case of *National Bank of Nigeria v Alakija*[61] is that the originating summons be treated as if the case has been commenced by a writ of summons. This position was restated in the case of *Kwara Polytechnic Ilorin v Oyebanji*[62] where the court held that proceedings wrongfully commenced by originating summons may be permitted by the court for parties to carry on as if the suit was carried out by a writ of summons.

Order 3, Rule 8(2) of the Lagos State High Court (Civil Procedure) Rules 2012guide procedures for filing of an originating summons

[58](supra)

[59] Order 3, rules 5 & 6 of the Lagos and Oyo rules; .

[60](2008) All FWLR (PT 405)1651 @1676-1671 paras G-B*; see also Inakoju v Adeleke* (2007) ALL FWLR PT(353) 3;*Famfa Oil ltd vs AGF* (2003) FWLR PT184, 85.

[61] (1978) 9-10 SC 59

[62](2008) All FWLR PG 141 @ 192 paras D-F*; see also Taiwo v Okeowo* (1983) 7 SC 85

and it requires that in addition to the affidavit setting out the facts relied upon by the applicant, the summon shall be filed along with all the exhibits the applicant wishes to rely upon at trial; a written address in support of the application and a pre-action protocol form 01.

The same requirements are also contained under the Oyo State Civil Procedure Rules, National Industrial Court Rules and Federal High Court Rules albeit with the exception of a pre-action protocol form 01. Again, under the Federal High Court rules, an applicant may not accompany his originating summons with written address. Under the Lagos, Oyo and FHC Rules,[63] an originating summons shall be in Forms 3, 4 or 5 to the Rules, with such variations as circumstances may require.

**Originating Motion**

Origination motion is used where it is required or authorized by the rules or a statute. Thus, when leave has been granted to make an application for judicial review, the application itself shall be made by originating motion. It is the accepted mode for applying for prerogative writs such as: certiorari, prohibition, mandamus and habeas corpus. However, its application is wider than that of the petition in that it may be used where a statute has not provided for it. In the case of *Chike Arah Akunnia v Attorney General of Anambra State & Ors.*[64]The Supreme Court highlighted the use of originating motion when it held that the appropriate method of making an application to the court where a statute provides that an application may be made but does not provide for any special procedure is an originating motion. For instance, section 46 (1) and (2) of the 1999 Constitution provides *inter alia* that a person whose fundamental rights guaranteed is breached may apply to the High Court for redress. However, as there were no provisions as to the procedure to be followed for that purpose, an application under this section could be made by the method of an originating motion.[65]



[63] Order 3, rule 8(1) (Lagos and Oyo); Or. 3 R. 9 of FHC rules

[64](1977) 5 SC 161

[65] The Fundamental Human Rights (Enforcement Procedure) Rule 2011 provides that civil litigation for the Enforcement of Fundamental Human Rights must be commenced by originating motion or summons

**Petition**

A petition is a written application in the nature of a pleading setting out a party's case in detail and made in open court.[66] It is one of the processes by which proceedings can be commenced. It is however only used where a statute or rules of court prescribe it as such a process. For example, Section 410(1) of the Company and Allied Matters Act, 1990 provides that an application to the court for the winding up of a company shall be by petition. Also, section 54(1) of the Matrimonial Causes Act provides that proceedings for dissolution of marriage are commenced by Petition. Similarly, petition is the only modes of procedure in election litigations.[67]

**THE ROLE AND IMPORTANCE OF PLEADINGS**

"Pleadings" are statements in writing drawn up and filed by each party to a case, stating what his contentions will be at trial and giving all such details as his opponent needs to know in order to prepare his case in answer".[68]The *Black's Law Dictionary*[69] defines pleadings as "the formal allegations by the parties to a lawsuit of their respective claims and defenses". Pleadings include "Statements of Claim", and where a claim is disputed; a pleading called a "Defence" will be "settled" by the defendant or defendants as the case may be, filed and served on the claimant. If the defendant wishes to bring a claim of his or her own against the Claimant, a "Counterclaim" is filed with the defense. In turn the Claimant may file and serve a "Reply to Statement of Defence", or "Defense to the Counterclaim", or both [70] and in some other cases, further and better particulars.

**Purpose of Pleadings**

The purpose of pleadings is to bring parties to definite issues, to diminish expense and delay and to prevent surprise at the hearing. A party is entitled to know the case of his or her opponent so that he can prepare to meet it. Hence, the sole object of pleadings is to

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[66] See ODGERS; Principle of pleadings and Practice 20th Ed, 360

[67] See 133(1) of the Electoral Act, 2010

[68] Mogha , *Mogha'sLawofPleadings*, 1979 cited by Takwani, C. K., *CivilProcedure,* 2nd edn , (Lucknow: Eastern Book, Co. 1992), p. 126.

[69] Byrant Garner, *op cit,* p. 1151

[70] Jason S. W. 1997., *Civil&CriminalProcedure.* (London: Sweet & Maxwell, ), p. 100.

ascertain the real disputes between the parties, to narrow down the area of conflict and to see where the two sides differ, to preclude one party from taking the other by surprise and to prevent miscarriage of justice[71]. In the case of *Isheno v Julius Berger (Nig) Plc*[72], the Supreme Court stated the law thus:

> The object of pleadings is to enable the adverse party and the court know the case before the date of hearing. Accordingly, once the pleadings are settled, parties cannot move in or out of them, unless by the process of amendment. If parties have the liberty to give evidence on facts not pleaded in the pleadings, there will not only be a state of confusion, but litigation may not be completed in time.

## INTERLOCUTORY APPLICATIONS

'Interlocutory' is a derivative of latin tag *'inter-loquor-quit-locutus-sum'*, which means speaking between, interruption.[73] Interlocutory application therefore means applications made to the court in the course of pending proceedings. The need for an interlocutory application may arise from the occurrence or threatened occurrence of an event while substantive proceedings are still pending in court. Interlocutory applications may be made at any stage of the proceedings to a Judge by motion.[74]

### Motion

A motion is an application made to court for the grant of relief prayed for. It is usually in writing and may be brought during the pendency of an action in which case, it is called an interlocutory motion. Procedurally, an interlocutory application must relate to the subject matter of the substantive suit.[75]except in a motion for judicial review or writ of habeas corpus, when it is brought in the

[71] Takwani, C.K, *op. cit,* p. 127

[72](2008) All FWLR (pt. 415) 1647 paras. F.

[73] Oyewo A. T, *op cit*, p. 69

[74] Order 39, Rule 1 (1) of the Oyo State High Court (Civil Procedure) Rules, 2010; Order 39, Rule 1 (1) of the Lagos State High Court (Civil Procedure) Rules, 2012.

[75]*Gombe v P. W. (Nig) Ltd.* (1995) 7 SCNJ 19.

absence of a pending action or asa mean of commencing an action.[76] An interlocutory application terminates with the substantive suit or appeal as the case may be.[77]

The court is enjoined not to consider issues to be determined in the substantive suit while determining an interlocutory application.[78]An interlocutory application may either be made ex-parte or on notice.

A motion ex-parte is one heard in the absence of the other party, i. e. the other party is not put on notice. Thus, in the case of *Leedo Presidenial Motels Ltd. v. Bank of the North,*[79]the Supreme Court laid down two circumstances under which an application may be brought ex-parte as follows:

1. When from the nature of the application, the interest of the advers party will not be affected. Under this circumstance, application for substituted service, leave to issue or to serve a process out of jurisdiction are made ex-parte as no interest of the adverse pary will be affected;
2. When time is of the essence to the application. A good example of this is an ex-parte application to preserve the *res* (subject matter) in the substantive case.[80]Thus, where irreparable loss or serious mischief may be occasioned by following the due process of putting the other party on notice, ex-parte motion may be filed. In this wise, it is described as a situation of 'real urgency' or 'extreme emergency'.

The product of ex-parte application is an interim order of injunction to leave matters in *status quo* pending when the other party is put on notice to decide any contentious issues before making a proper order on the subject-matter of dispute.[81] Invariably, the court may grant it



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[76] Order 1, Rule 2 (3) of the Fundamental Rights (Enforcement Procedures) Rules, 1999 and Order 40 Rule 1 of the Oyo State High Court (Civil Procedure) Rules, 2010; Order 40, Rule 1 of the Lagos State High Court (Civil Procedure) Rules, 2012.

[77] *Okafor v A. G. Anambra State* (1992) 2 SCNJ 219.

[78] *Akapo v Hakeem* (1992) 7 SCNJ 119 at 139; *Momoh v AB Petroleum Inc* (200) 2 SCNJ 200.

[79] (1998) 7 SCNJ 328 at 353. *Attumah v Anglican Bishop of the Niger* (1999) 9 SCNJ 23.

[80] Order 38, Rule 1 of the Oyo State High Court (Civil Procedure) Rules, 2010; Order 38, Rule 1 of the Lagos State High Court (Civil Procedure) Rules, 2012.

[81] *Nathaniel Kotoye v C.B.N* (1989) 1 NWLR (Pt. 98) 419 at 422.

up till a named date (usually seven days) by which time, all the parties would have been put on notice.

Save the above situations, interlocutory application should be made by motion on notice.[82] A motion on notice, like the name implies, put the other party on notice of the application before court. The other party, called the respondent, is expected to appear in court on the hearing day to either oppose or not oppose the application. Hence, the adverse party is at liberty to oppose the application where the grant of the application will affect his interest adversely by the order.

Except the court otherwise directs, motion on notice should be at least two clear days between the service and date of hearing.[83] In the case of *Loxroy (Nig) Ltd. v Trianan Ltd.,*[84] it was held that a motion on notice that was filed and moved the same day was not ripe for hearing and the order made thereon may be set aside.

**Contents of Motion**

1. A motion must be in the prescribed form and shall contain the heading of the court in which it is brought as well as the name of the parties, indicating which of the parties is Applicant or Respondent respectively
2. It must state whether it is ex-parte or on notice
3. It must state under which law or rule of the court it is brought.[85] However, this provision may not affect the hearing of the application where it fails to disclose under the law or rule of court it is brough.[86]

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[82] Order 39, Rule 3 of the Oyo State High Court (Civil Procedure) Rules, 2010; Order 39, Rule 3 of the Lagos State High Court (Civil Procedure) Rules, 2012.

[83] Order 39, Rule 5 of the Oyo State High Court (Civil Procedure) Rules, 2010; Order 39, Rule 5 of the Lagos State High Court (Civil Procedure) Rules, 2012.

[84] (1989) 12 NWLR (Pt. 557) 252 at 256.

[85] See Order 39, Rule 1 of the Oyo State High Court (Civil Procedure ) Rules, 2010.

[86] See the case of *Uchendu v Ogboni* (1999) 4 SCNJ 64 at 76. In that case, the Supreme Court held that faiure to state the rule or law under which an application is brought is not sufficient to make the application incompetent or the order made thereunder invalid, so long as there is a rule or law vesting the court with jurisdiction to make the order. See also the case of *Maja v Samouris* (2002) 9 NSCQR 546 at 567.

4. It must contain the prayers or reliefs sought by the Applicant and courts are bound by the prayers in the motion paper.
5. It must be dated and signed by the Applicant or his counsel if he is represented by one.
6. It must contain the respondent's address for service.

## SUMMARY PROCEEDINGS

One of the objectives of adjudication is to provide a relatively quick and cost effective procedure for resolving disputes. Summary proceedings is aimed at providing, in appropriate circumstances, judgment at an early stage of the litigation process, thereby avoiding the time and expenses involved in a full-blown trial.

The judge may on application of the Claimant either before or at the pre-trial conference or any other stage in the course of proceedings give judgment and such judgment becomes final and can only be set aside on appeal. Summary proceeding is resorted to in circumstances where it is obvious or at least, it appears to the Claimant that the defendant has no defence to his action. This factor distinguishes summary judgment on merit and default judgment which may be set aside by the same court that gave the judgment.

There are various types of summary proceedings under the rules of Nigerian courts. There is summary judgment based on admission of facts, summary judgment on application of accounts, summary judgement under Order 11 of the Lagos, Enugu, Rivers, Ondo, Oyo, Ekiti and Osun States High Courts Civil Procedure Rules and summary judgment under the undefended list procedure. A consent judgment is another form of summary judgment. However, it differs from others in the sense that it is based on the parties' agreement to settle their case out of court and filing of term of settlement to put into effect their agreement.

Summary Proceedings Under Order 11[87] of the Lagos State High Court (Civil Procedure) Rules, 2012 applies to any claim where a claimant believes that there is no defence to his claim. In this context, a claimant is expected to file with his originaing process (writ of summons) statement of claim, the exhibit to be relied upon at the trial, deposition of his witness and application for summary

[87] Summary Judgement under Order 11 is applicable t and the same under the Lagos, Enugu, Rivers, Ondo, Oyo, Ekiti and Osun States High Courts (Civil Procedure) Rules.

judgments. The application shall further be supported by an affidavit stating the grounds for his belief and a written brief in respect thereof.

Where a defendant after being served with the above process, he shall not later than the time prescribed for defence. For instance, 42 days in Lagos State and 30 days in Oyo State file his statement of defence, deposition of his witnesses, the exhibit he wishes to rely at trial and a written address in reply to the application for summary trial.

On the day of hearing of the application, the judge shall look at the statement of defence and if it appears to him that the defendant has good defence, he shall grant the defendant leave to defend. In which case, the matter will be entered in the general cause list to be tried in full proceedings. However, if it appears to the judge that no good defence has been disclosed by the defendant, the judge may enter judgment in favour of the claimant. Such a judgment is final and can only be set aside on appeal.[88]

**Summary Judgment Based on Admission of Facts**

A defendant or his counsel either in the pleading or later can obtain judgment summarily upon admission of facts before or during the trial of the suit. Summary judgment is also obtainable upon oral admission. The claimant needs not call evidence or tender documentary evidence before obtaining summary judgment upon admission of facts by the defendant. For instance, under section 123 of the Evidence Act, 2011.It is stated that 'no fact needs be proved in any civil proceeding which the parties or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by any writing under their hands, or which by any rule of pleading in force they are deemed to have admitted by their pleadings. Provided that the court may in its discretion, require the facts admitted to be proved otherwise than by such admissions'.[89]Admissions may either be formal or informal.



[88] See *Sodipo v Lemminkainen & Ors* (1980) NWLR (Pt. 15) 220; *Nishizawa Ltd. v Jethwani* (1984) 2 SC 234.

[89]See the case of *A.G. Nasarawa State v A. G. Plateau State* (2012) 6 SCM 1. It was held that fact admitted require no further proof. See further the cases of *Taiwo v Adegboro & Ors* (2011) 6 SCM 159; *Chidoka & Anor v First City Finance Co. Ltd* (2012) 12 SCM 29 *and Offor & 1 Other v The State* (2012) 12 SCM (Pt. 2) 321.

A formal admission is usually contained in the pleading, and fact admitted in a pleading may be taken as established without proof thereof. Such admissions are made by a party to civil proceedings so as to relief the other party of the necessity of proving matter already admitted.[90]

**Undefended List Procedure**

An undefended list action is one in which the defendant is not willing to contest, oppose or defeat the claim made against him by the claimant. In the event, the defendant does not need to do anything and on the date fixed for hearing of the suit, it will be heard as an undefended suit and the court may give judgment for the claimant without his calling witness in proof of the claim. Such judgment is considered to be judgment on merit.[91]

By Order 21 of the High Court of Justice of the Federal Capital Territory, Abuja, 2004, the undefedended list procedure is initiated by an application made to the court for the issuance of a writ of summons in respect of a claim to recover a debt or liquidated demand. The application, which is a motion ex-parte, supported by an affidavit, which is filed along the writ, setting out the grounds of the claim and states that in the deponent's belief the defendant has no defence to the action.

Once the court is of the opinion that there are good grounds for believing that there is no defence thereto, it shall enter the suit for hearing under the undefended list and it will be so marked. A



[90] In *Chief Okparaeke Ndiakene v Egbonu & Ors* (1941) 7 WACA 53, where both parties agreed as to the ownership of piece of land. The counsel to the appellant argued that the agreement was *res judicata* in favour of the appellant by virtue of two judgments of the native court. The acting resident of the province gave the order that the case be heard *de novo* by the provincial court. On appeal, it was held that the learned trial judge was wrong to go into the identity of the said land having been agreed upon by the parties. It further held that since one of the object of pleading is to shorten proceedings by ascertaining what facts are agreed so that evidence need not be led to prove them, the court should have accepted this agreed fact as established without proof. Note that, pleadings that are not supported by evidence are deemed abandoned. See the case of *Olusanya v Osinleye* (2013) 9 SCM 189.Similarly, under section 85 (1) of the Bills of Exchnge Act, Cap. B8, Laws of the Federation of Nigeria, 2004, judgment on a promissory note is automatic as this an admission

[91] *Carleen Nig Ltd v UBA Plc* (2003) FWLR (Pt. 178) 1011 at 1027

defendant wishing to defend a suit brought under the undefended list procedure must file an affidavit showing his defence on the merits with the notice of intention to defend within 5 days of receipt of the writ.[92] Where the defendant's affidavit evidence shows defend on the merit, the suit will be transeffered from the undefended list to the general court list for hearing.

Judgment obtained in action on the undefended list has the effect of a judgment given on merits and it is different from a judgment in a default proceedings.[93]

**Default Judgment**

The word 'default' qualified the noun 'judgment' meaning a judgment obtained by a claimant in reliance on some omission on the part of the defendant in respect of something which he is directed to do by the rules. The procedure for obtaining judgment in default of appearance under Order 10 Rule 2 of the Oyo State High Court (Civil Procedure) Rules is that where any defendant fails to appear after the service of the originating process on him, within the number of days prescribed by the applicable court rules[94] a claimant may proceed by applying for judgment in default of appearance upon proof of service of the originating process. For this principle to be applicable, the endorsement on the writ must be for liquidated money demand and if the defendant or all of several defendants fail to appear, the judge can enter final judgment for any sum not exceeding the sum endorse on the writ together with interest as the judge may order.



## VARIOUS STAGES OF CIVIL LITIGATION

The following are the stages of civil litigation namely:

(i) Filing of the case in Court.

(ii) Filing of defence (if the Defendant enters appearance)

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[92] Order 21, rule 3 of the Federal Capital Territory High Court (Civil Procedure) Rules, 2004; order 12 rule 3 of the Federal High Court (Civil Procedure) Rules, 2009.

[93] *UTC Nig, Ltd v Pamotei* (1989) 2 NWLR (Pt. 103) 244.

[94] 42 days under the Lagos State High Court (Civil Procedure) Rules, 2012 and 30 days in Oyo State High Court (Civil Procedure) Rules, 2010.

(iii) Pre-trial conference (where applicable)[95]
(iv) Hearing of pre-trial/interlocutory applications.
(v) Trial.
(vi) Judgment.
(vii) Interim orders pending appeal (where necessary)
(viii) Appeal (where any of the party decide to appeal).
(ix) Enforcement of judgment (where applicable).

## BURDEN AND STANDARD OF PROOF IN CIVIL LITIGATION

One distinguishing characteristic of civil litigation is the burden and standard of proof required of parties in a civil litigation process. While burden of proof is the legal burden on a party in civil litigation to convince the court as to the truth of the fact in issue, standard of proof refers to the quantum of proof required of the party with the legal burden of proof.

### Burden of Proof

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.[96] The burden of proof rests on the person who asserts the existence of such facts. In the case of *Nigerian Army v Yakubu,*[97] it was held that a party who asserts must prove.

Therefore, if one party 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.[98] The practical effect of these provisions of the Evidence Act is that the burden of proof in civil litigation shifts between parties until the last fact in issue is decided.



[95] Mostly applicable where the civil litigation is commenced via Writ of Summons.
[96] Section 133 (1), Evidence Act 2011
[97] (2013) 5 SCM 209.
[98] Section 133 (2) Evidence Act 2011

**Standard of Proof**

The Evidence Act also clearly provides for the standard of proof in civil litigation. According to the Act, the burden of proof shall be discharged on the balance of probabilities in all civil proceedings.[99] In ascertaining where the balance of probabilities lies, the court puts the evidence adduced by parties in an imaginary scale and determines the side that is heavier based on the quality or probative value of the testimony of witnesses having regard to whether the evidence adduced by one party is admissible, reliable, conclusive and more probable than that given by the other party.[100]

## REMEDIES IN CIVIL LITIGATION

Remedies are the reliefs, which the court will grant in consequence of the unconstitutional acts of the government or individuals. These socially or legally accepted reliefs or remedies provide necessary succor against unlawful, illegal or unconstitutional acts or omissions. In constitutional or administrative laws, the remedies usually asked for are prohibition, certiorari, mandamus, habeas corpus, injunction, declaration, damages and offer of apology. In the criminal law, the aim is to penalize the offender, however, in civil litigation, the objective is to compensate or to grant restitution. It is more or less an axiom under our legal system that rights depend on remedies *ubi jus ibi remedium.* The court in controlling or reviewing the conducts of individual or public authorities may grant any or more of the following remedies to an aggrieved party:

**(a). Declaration of Rights or Declaratory Judgment**

A declaration of rights, also known as a declaratory judgment is the declaration by a court of the legal rights and obligations of the parties in a suit with or without making any consequential order. A declaration of rights is a declaration that one party is right and another party is wrong, that one party has a right and the other party owes an obligation and the making of an appropriate order by court to do justice in the circumstances. It is a judgment declaring the legal rights of a party.[101] A declaration of rights may be made

[99] Section 134 Evidence Act, 2011

[100] *Mogaji & ors. v Odofin & ors.* (2003) FWLR (pt. 165), p. 473 at 494

[101] *Ipadeola v Oshowole* [1987] 3 NWLR pt 59, 18 SC; *Fawehinmi v Abacha & Others* [1996] 5 NWLR Pt. 447, 198 CA

whether or not any consequential relief is sought or could be claimed by the aggrieved party. Other reliefs, such as coercive decrees or other orders may be made by court in addition to a declaratory judgment or a declaration of rights. Lord Sterndale M. R. in the case of *Hanson v Redcliffe Urban District Council*[102] held thus:

> "...the power of the court to make a declaration where it is a question of defining rights of two parties is almost unlimited; I might say only limited by its own discretion. The discretion should of course be exercised judicially, but it seems to me that the discretion is very wide."

A declaratory order merely declares a right or an entitlement. Therefore a person claiming a declaration may also claim for an injunction and damages in the same action.[103] In *Adeniyi v Governing Council, Yaba College of Technology,*[104] following some allegations, the plaintiff/ appellant was retired by the defendant/respondent Governing Council. The appellant brought action that he was not given an opportunity to explain himself and that his retirement was contrary to the rules of natural justice. The Supreme Court held that there was a lack of fair hearing and accordingly the purported retirement of the appellant was null and void.

**(b). Order of Mandamus**

The term 'mandamus' is derived from latin word meaning "we command". A mandamus is an order of court commanding the performance of a public duty which a person or body is bound to perform. Therefore, where an applicant has fulfilled the legal requirements for performance, a court will issue an order of mandamus to compel its performance.[105] The order of mandamus requires the carrying out of a public duty which has been imposed

[102] [1915] 2 K.B. 536.

[103] *Achebe v Nwosu* [2002] 19 WRN 42.

[104] [1993] 6 NWLR Pt. 300, 426 SC;*Olaniyan v University of Lagos* [1985] 2 NWLR Pt. 9, 599 SC

[105] *Fawehinmi v Akilu* [1987] 1 NWLR Pt. 67, 797 SC;*Agbakoba v The Director, SSS* [1994] 6 NWLR Pt. 351, 475 SC

by law. It developed as a means for returning to public office those people who had been wrongfully deprived of such a position.[106]
The duty must be a public one. Not every duty owed by a public body amounts to a public duty.[107] Some public duties are possibly too wide for them to be enforced by mandamus. For example, mandamus has traditionally only been issued where a duty is owed and a request to perform it has been refused. Example of the use of mandamus to enforce performance of a duty include: requiring a tribunal to determine a case which it had wrongfully claimed was outside its jurisdiction, requiring a body to consider matters according to law where a discretionary power had been fettered by overtly rigid adherence to a policy,[108] and requiring a body to exercise a power according to law where the power had been abused.[109] However, where the duty impose on a public officer is discretionary or ministerial, the order of mandamus will not be issued to compel the performance thereof. In the case of *Fawehinmi v IGP,*[110]The Supreme Court of Nigeria held thus:

> Where a duty of an administrative officer in a particular situation is so plainly prescribed that it is free from doubt and equivalent to a positive command, it is so far 'ministerial' that its performance may be compelled by mandamus.

**(c). Order of Certiorari**

Certiorari is a Latin word which means "to be informed of". A certiorari is an order by which a superior court or tribunal calls upon an inferior court, tribunal, public, or administrative authority to produce the record of the proceedings upon which such body based its decision, touching the right of an applicant so that the superior court will examine the record and adjudge the legality of the decision reached. Thus where the act complained of is judicial in nature; certiorari can be made used of. The order of certiorari quashes or nullifies an action or decision.
Certiorari is used to quash the decisions of inferior courts, tribunals, local authorities and other public bodies, government ministers on

[106] *Bagg's case* (1615) 11 Co Rep 93b.
[107] *R v Industrial Court, ex parte A.S.S.E.T.* (1965) 1 QB 377.
[108] *R v London County Council, ex parte Corrie* (1918) 1 KB 68.
[109] *Padfield v Minister of Agriculture, Fisheries and Food* (1968) AC 997.
[110] [2002]23 WRN 1

grounds of illegality, irrationality, ultra vires, lack of jurisdiction, or excess of jurisdiction, procedural impropriety; breach of the rules of natural justice, or lack of fair hearing, where there is error of law and fact on the face of the record, or misdirection of self on fact, irrelevant considerations, uncertainty and vagueness, unreasonableness, and improper purpose or motive, bad faith, corruption and so forth.[111] In *Denloye v Medical and Dental Practitioners Disciplinary Tribunal,*[112] an order of the tribunal striking out the name of the appellant off the Medical Register was quashed and set aside for breach of the rules of natural justice. In that case Ademola CJN reading the judgment of the Supreme Court said as follows:

> In effect, where the unprofessional conduct of a practitioner amounts to a crime, it is a matter for the courts to deal with, and once the court has found a practitioner guilty of an offence, if it comes within the types of cases...then the tribunal may proceed to deal with him under the Act.

The standard of impartiality required of judges is the same as that required of persons who adjudicate in administrative capacity or boards.

**(d). Order of Prohibition**

A prohibition is an order of court restraining an inferior court, tribunal, public or administrative authority from exercising its judicial or quasi-judicial powers. Thus, it is used to prevents or forbids unlawful assumption of jurisdiction by an inferior tribunal or administrative body. Prohibition is used to restrain a tribunal, minister or other public body from proceeding in excess of jurisdiction. In the case of *R v Liverpool Corp., ex p. Liverpool Taxifleet Operators Association,*[113] it was alleged that a local authority had failed to exercise its discretion properly and was about to act illegally in the allocation of taxi cab licenses. An order of prohibition was granted to prevent the authority acting on this invalid decision.

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[111] Ese Malemi: 2012. *The Nigerian Constitutional Law*, 4th edn, (Ikeja: Princeton Publishing Co., ), p. 359.

[112](1968) 1 All NLR 298 at 304.

[113] C.A., 1972.

An order of prohibition is preventive in nature, rather than corrective. It serves to prevent a judicial or quasi-judicial proceedings, or action from commencing at all, or aborts it, while its on course before its completion.

**(e). Habeas Corpus**

Section 35 of the 1999 Constitution (as amended) deals with right to personal liberty. It provides *inter alia* that: 'every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law…'.

Thus, where a person is kept in an unlawful custody, he has the right to ask for his personal liberty by applying for an order of *habeas corpus*. In the case of *Secretary of State for Home Affairs v O'Brien,*[114] Lord Birkenhead described the order as follows:

> It is perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative remedy in all cases of illegal restraint or confinement… It has through the ages been jealously maintained by courts of law as a check upon the illegal usurpation of power by the executive at the cost of the liege.

The writ of *habeas corpus* is normally directed to the person or authority that has the custody of the body. The person to whom the writ is directed shall certify the true cause of the prisoner's detention. This shall be made to the judge who issues the writ.

**(f). Injunction**

An injunction is an equitable remedy. There are many variants of this remedy. An injunction may be propitiatory, perpetual, interim or interlocutory. What is certain is that, whatever variant one has in view, its usefulness lies in the fact that it is an order of court addressed to a party with aim of refraining him from doing or compelling him to do a particular act. A perpetual injunction gives an indefinite order. It has the effect its name suggests. It may serve the purpose of its grants by being perpetual in operation or effect.

[114] [1923] A.C., 603.at 609

It may be interlocutory, in the sense that it is given pending the conclusion of a matter. An interim injunction is usually granted for a short time as in the case of the need for an urgent intervention of the court for an interim order of injunction. The name given to a variant of an order of injunction may relate to the situation of the problem as in the case of a *mareva* or *quia timet*[115] injunctions.

One advantage an injunction has over other remedies is the flexibility of its application and the grounds the judge may consider before granting an order of injunction. Although it is a discretionary remedy, the courts have built sufficiently settled principles round this remedy for the guidance of an applicant who tries to invoke the equitable jurisdiction of the court. Thus, the Applicant must satisfies the following conditions:

a). That there is a serious question to be tried during the hearing of the case;

b). That the balance of convenience is on his side;

c). That damages cannot be an adequate compensation for the loss he would have suffered if he succeeds at the end of the day.

d). The court will also consider the conduct of the parties. For example, he must not be guilty of delay in bringing the application because as equitable remedy, delay defeats equity.

e). That he undertakes to pay damages in the event that his case turn out to be a ruse

**(g). Damages/Compensation**

'Damages' is a remedy, which is available to any person where the court is satisfied that the person has suffered loss or inconvenience. It stands as a ready remedy to be granted to any person who shows the loss or inconvenience he has suffered. It is compensatory. It is

[115] This remedy, which can be of assistance to a party suing for breach of contract, has developed considerably over times. In general terms a court will not grant an injunction to prevent a person disposing of his property merely to assist a person suing, for example, for a debt, to recover his money. However, the Mareva injunction is an exception to that general rule and is granted to resist removal of assets outside the jurisdiction, often by a foreign defendant, where this is a real and serious possibility. The injunction takes its name from the second case in which it was awarded, ie Mareva Companies Naviera SA v International Bulk Carriers SA . It is a valuable addition to existing contractual remedies, particularly when business is now so often conducted on an international scale.

this aspect of its compensatory nature that make it a ready tool for the use by the courts to assuage the feelings of a person who has been wronged by the party who is liable given the circumstances of the case. It developed as a common law remedy.

According to Saulawa JCA. in *Wema Bank Plc v L.I.T (Nig.) Ltd,*[116] damages denotes the sum of money which a party is entitled to be awarded by a court as compensation for the wrong of the defendant. Damages generally is a remedy for breach of contract. The extent of the measurement of damages for breach of contract is the loss that naturally flows from the breach, and is incurred in consequence of the violation complained of. Conversely, the object of damages in tort is to put the plaintiff in the position he would have been if the tort had not been committed.[117] Damages is either special or general. Special damages are damages that were actually suffered, and which are particularly or specifically pleaded and proved by the plaintiff in court. Thus, special damage is a damage which is not presumed by law and must expressly or clearly be pleaded and proved, for the court to award it.[118] General damages are damages which the law presumes have resulted from the harm suffered by the plaintiff and which the plaintiff need not specifically set out in the pleadings. It is damages awarded for injury or loss which are incapable of precise calculation monetarily and which are generally determined by way of estimation. In the case of *Yakubu v Imprest Bakolori Plc,*[119] Ndukwe-Anyanwu JCA stated the law thus:

> "General damages covers all losses which are not capable of exact qualification. It may include all non-financial loss (past & future) and future financial loss. Items of general damages need not and should not be specifically pleaded, but some evidence of such damage is required."

**(h). Offer of Apology**

In appropriate circumstances, a court may order that an apology be made to a plaintiff. The Constitution provides for offer of apology to be made to a person who has unjustly suffered at the hands of

[116] [2011] 6 NWLR Pt. 1244 pg 507, para. H

[117] *James v Mid-Motors Nig Ltd* [1978] 11-12 S.C. 31 and *Agbanelo v Union Bank of (Nig) Ltd* [2000] 7 NWLR (Pt. 666) 534.

[118] *Inyang v Ebong* (2002) 2 NWLR (Pt. 751) 284

[119] [2011] 6 NWLR Pt. 1244.

another person, or public authority.[120] In the case of *Dele Giwa v IGP*,[121] in addition to an award of damages, the court ordered that the applicant was also entitled to a public apology from the police, to be published on the mass media and a copy of it to be served on the plaintiff. The IGP personally complied.

## CRITIQUES OF CIVIL LITIGATION/RECOMMENDATIONS

The major critiques of civil litigation are:

(a) The long period of time to conclude civil litigation; and
(b) The high cost of prosecuting civil litigation.

### The long period of time to conclude civil litigation

Civil litigation like any other class of litigation take long time to conclude. Most often, civil litigation takes a long time to conclude due to congestion of court docket or the non-availability of trial judge or the antics of lawyers. This tends to pose a great danger to the possibility of achieving the objectives of civil litigation, especially in settling urgent civil litigation that emanated from contract, debt recovery and the likes that need quick resolution for the benefit of business and economic activities.

It is therefore suggested that proactive steps should be adopted to curb this problem, such as employing more judges so as to decongest the work load of the Court, proper supervision of the Judges to ensure that they are available in court to handle all civil litigation promptly; and most especially to check the antics of litigants and lawyers that want to prolong civil ligation for their selfish reasons.

### The high cost of prosecuting civil litigation

The high cost of prosecuting civil litigation is a major challenge that hindered litigant(s) from benefiting from the intended outcome/remedy anticipated in civil litigation. The challenge of high cost is most often the cumulative effect of the delay encountered in prosecuting civil litigation in Court. In addition, the attitude of the head of Court or Government seeing litigation as a means of revenue generation is counter-productive to achieving the objectives of civil litigation. It is suggested that a proper framework should be

[120] Section 35(6) of the 1999 Consitution (as amended).
[121] Unreported. Suit No. M/44/83 of July 30, 1984

established to ensure that the cost of civil litigation is within the reach of the every litigant especially the very poor to seek redress via civil litigation.

## CONCLUSION

The above discussion on the nature of civil litigation clearly distinguished it from other types of litigation, most especially criminal litigation, which is a public litigation, with penal sanctions or acquittal as its ultimate outcome. Every party instituting a civil suit does so with the intention of obtaing whatever redress or remedy he desires. The commencement of all actions is crucial to the prosecution of the suit and failure to comply with the appropriate modes of commencement as prescribed by the various rules of courts may be fatal to the case and to the speedy dispensation of justice.

A party instituting a case or his solicitors should ensure proper evaluation of the facts and subject-matter of a suit with a view to applying or adopting the appropriate mode of commencing the action, the relevant conditions precedents to the institution of the action, understanding of the rule of evidence and be conversant with both substantibe law principles and the extant rules of court as well as applicable laws in commencing the action appropriately. The mastery of the applicable civil procedure rules, the law of evicence and other laws is imperative to facilitate expeditions judgment in civil litigation.