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**INTRODUCTION**

Criminal procedure refers to either the process by which a criminal case is prosecuted or he body of laws or rules regulating the administration of criminal justice. This aspect of our law is very important in view of the high premium placed on ensuring a free and fair trial for all citizens, irrespective of the offences for which they are charged. The constitutional injunction that every person who is charged with a criminal offence shall be presumed innocent till proven guilty.[[1]](#footnote-1), makes it more desirable that nine guilty men be set free rather than convict one innocent soul.

Civil procedure is the process by which a person whose legal right and interest are adversely affected may have recourse to the court of law for the resolution and determination of the controversy or dispute. It consist mainly of rules of practice and procedure applying to conflicts involving disputes in which legal rights and legal duties are in issue. In a very broad sense, however the term may be used to describe the entire legal mechanism required for the enforcement of such rights, including the court system, the governing rules, the adjudicatory process and the personnel requirements. Civil procedure is the technical rather than the substantive aspect of law; the framework for enforcing, rather than the content private right.

The two major statue governing criminal procedure in Nigeria are the Criminal Procedure Code in force in the Northern states and the Criminal Procedure Act[[2]](#footnote-2) which applies generally in the southern states and throughout the federation in offences against Federal Laws.

Nigerian civil procedure rules are derived from diverse ssources comprising the constitution, relevant statues and subsidiary legislation, judicial precedents and applicable English rules. For instance, the 1979 constitution defines the jurisdictional limits of the superior courts, the qualification and manner of appointing the judicial officers. Convinced on the enormous advantages derivable from uniform rules, the Nigeria law reform commission in 1987 produced the uniform High Court Civil Procedure Rules for adoption in the different state high courts. These rules have since been adopted by virtually all the states of the federation[[3]](#footnote-3).

**QUESTION 1**

**CRIMINAL PROCEDURE AT HIGH COURT**:

Criminal procedure refers to either the process by which a criminal case is prosecuted or the body of laws or rules regulating the administration of criminal justice. The constitutional injunction that every person who is charged with a criminal offence shall be presumed innocent till proven guilty[[4]](#footnote-4), makes it more desirable that nine guilty men be set free rather than convict one innocent soul.

The following includes salient stages of criminal procedure at a High court:

1. Arraignment and plea
2. Plea of guilty
3. Plea of not guilty
4. Prosecution
5. Submission of ‘no case to answer’
6. Defense
7. Closing address
8. Judgement
9. Discharge
10. Finding of guilt and sentence.
11. **ARRAIGNMENT AND PLEA**

This involves calling the accused and reading the charge or indictment to his understanding and asking him to plead thereto. The accused in response is required to plead distinctly to each court as contained in the charge sheet or indictment. This he must do personally and not through a co-accused or his counsel. He may either make a plea in bar, plead guilty or not guilty. Absence of a plea or failure to record a plea may render the whole trial a nullity. But so long as the court is satisfied that the charge has been read and explained to the accused and that he understood the nature of the charge, the mere fact that this is not so clearly stated in the records does not defeat the trial. A plea in bar or special plea, as it is often called, may either be one of pardon*, autre fois acquit* or *autre fois convict* and serves as a bar to further trail on the same set of facts.

Section36 (9) of the constitution provides that a person who has been tried for an offence and either convicted or acquitted shall not again be tried on that same facts. Save upon the order of a superior court. And by sub section (10) no person who shows that he as been pardoned for criminal offence shall again be tried for that offence.

The plea of *autre fois acquit* or *autre fois convict* is only available where the two offences are the same or the facts of the previous offence could have sustained the latter. In the case of R V. Noku[[5]](#footnote-5) the accused had earlier been charged with murder and was acquitted for the prosecution failure to show that the wound inflicted by the accused was the cause of the deceased death. In a subsequent charge of causing grievous harm he entered a plea of *autre fois acquit* basing is plea on the previous acquittalon the charge of the murder. The plea was rejection since the accused could not have been convicted at the formal trial of the offence of causing grievous harm if he had been so charged.

Where the accused stands mute when called upon to make his plea, the court would ascertain whether he does so out of malice or by the visitation of God i.e. Due to a natural handicap. If it his due to malice then a plea of not guilty is entered for him and the trial proceds.where it’s by the visitation of God, the court would further determine his fitness to enter a plea and deal with the situation accordingly.

Should the accused plead guilty to the offence charged, the court is required to satisfy itself that he understands the charge and intends to admit the material fact as true.

The accused may not plead guilty to the offence charged but guilty to another offence. The court in that case may convict him for that other offence where the facts outlined re capable of sustaining it and the prosecution consent there to.

1. **PLEA OF GUILTY**

Should the accused plead guilty to the offence charged, the court is required to satisfy itself that he understands the charge and intends to admit the material fact as true. Furthermore, the facts stated by the prosecution and admitted by the accused must be sufficient to sustain the charge against the accused. The counsel for the prosecution will give the court of summary of the evidence together with the details of the accused person’s background, that is, character and criminal record, if any. After this the counsel for the defense usually makes his allocutus or plea in the mitigation of sentence .The court may therefore proceed to pass sentence on the accused unless the facts, as narrated by the prosecution, are disputed by the accused explanation or they contradict a plea of guilty.

1. **PLEA OF NOT GUILTY**

A plea of not guilty is entered in all capital offences. An accused may enter a plea of not guilty by reason of insanity. In that case the court will commence trial to determine if he committed the offence with which he is charged and if so, his plea of insanity is considered. If he was insane at that time, a verdict of not guilty by reason of insanity is entered. Otherwise, if he was sane at the time then he may be convicted and sentenced accordingly.

**PLEA BARGAINING**

Plea bargaining or plea negotiating and agreeing for an accused to plead guilty to a lesser crime, in exchange in exchange for the dismissal of a serious criminal charge brought against him and for a quick disposal of the entire criminal proceedings.

1. **PROSECUTION**

In the event of the accused pleading the general issue, i.e. denying the charge, issues are said to be joined and the **prosecution is required to prove his case beyond all reasonable doubt.** The prosecution does not, as a matter of practice, give any opening address. It proceeds to call its witnesses. Each is examined in chief, cross-examined and if necessary re-examined. The court may assist an accused person by putting questions to the witnesses or do so to clarify answers. After the prosecution has called all its witnesses it closes its case. The defense may make a no-case submission, rest its case on that of the prosecution, or proceed to make out a defense.

The court is enjoined to discharge an accused person if at the close of the prosecution’s case it appears that a case is not made out against him to require his making a defense. The prosecution must be able to furnish sufficient evidence to establish the *actus reus* and *mens rea* of the offence. Failure to accomplish this will be fatal to the case.

1. **SUBMISSION OF ‘NO CASE TO ANSWER’**

A no case submission is often upheld where the prosecution has failed to adduce vital evidence or the evidence has been so discredited as a result of cross-examination or is so manifestly unreliable that no reasonable tribunal could safely convict upon it. In that case the accused is discharged without more. The defense counsel makes this submission by addressing the court. The prosecuting counsel usually replies. The judge then makes a ruling on this submission.

The judge may accept the submission and make a ruling that the accused has no case to answer. This ruling is a verdict of not guilty and the court may thereupon discharge and acquit the accused on merit, or discharge but not acquit the accused, if the submission succeeded just on a technicality and not on merit.

However, where the judge rejects the no case submission, in his ruling, the trial proceeds and the accused has to state his case by giving evidence in his defense. Where the accused refuses to give evidence in his defense and choses to stand by his ‘No case submission’ which had earlier failed, the court would often usually convict the accused. The reason being that the accused failed to defend himself against prima facie case made out against him.

1. **DEFENSE**

The accused may rest his case on the prosecution‘s case and forego his right to call his own witnesses and adduce evidence or he may choose to make out a defense. The latter opinion is more helpful where the prosecution appears to have a strong case. The accused, upon electing to proceed to defense, may adopt any of three options. He is entitled to know these options where counsel does not represent him but failure to comply would not necessarily affect the proceedings. The options are:

1. Making an unsworn statement from the dock in which case he will not be liable to cross-examination
2. Giving sworn evidence in the witness box and thereby liable to cross-examination
3. Refusing to give evidence.

The defense then closes its case after calling all its witness if any. The prosecution may, after the close of defense, introduce evidence in rebuttal but only with leave of court where the defense had introduced new and unforeseeable evidence.

1. **CLOSING ADDRESS**

Both parties usually address the court at the close of the case unless the prosecutor is not a law officer in which case he has no right to reply. After the close of the case for the defense, the counsel for both sides then make closing speeches by addressing the court from their filed written addresses. The prosecution counsel is always the first to address the court. It sums up or reviews the case on both sides

It points out the strength of the case for the prosecution and identifies the witnesses if any of the defense and then urges the court to convict the accused as charged. However, the general rule of law is that the case for the prosecution must succeed on its own. This is so, for in criminal proceedings the burden of proof on the prosecution is proved beyond reasonable doubt. It must be proved beyond reasonable doubt, but not beyond a shadow of doubt. The case for the prosecution must succeed on its own strength. Thus, the case for the prosecution cannot rely on the witness of the defense to succeed. For this reason, an accused person is not bound to put up a defense and may in appropriate circumstances rest his case on the case for the prosecution.

Next, the counsel for the defense addresses the court. In his address, he points out the weakness for the case for the prosecution. If the case for the prosecution is a pack of lies and a mere fabrication conjecture, imaginative, malicious, and frivolous and an abuse of court process, it calls it so. If a prima facie case has not been made out, or sufficient evidence has not been adduced as required by law to discharge the burden of proof that rest on the prosecution in criminal proceedings, which is proof beyond reasonable doubt. He points it out to the court and finally, he urges the court to discharge and acquit the accused on the charge or charges, as the case may be. The general rule of closing speeches, is that the accused or his counsel is entitled to the last word, that is, it is his right to round up the addresses

8. **JUDGEMENT**

After the closing addresses by counsel for both sides, the judge fixes the judgement for a date provided that it is not a summary trial, and the court rises in adjournment to enable it deliberate, consider, or evaluate the totality of evidence in the case. On the adjournment date the court resumes sitting, the case is called and the judge begins to deliver his judgement on the case. However, where a trial is by summary procedure the judge may deliver judgement there and then, or he may retire to his chamber to consider judgement and resume sitting to deliver it on that same day, as the case may be, or an adjourned date.

In the judgement, the judge sums up, weighs, or reviews the evidence for both sides. He states his reasons for believing and accepting the case for either side and also gives his reason for disbelieving and rejecting the evidence for the other side. The judge may find the accused guilty or not guilty as the case may be. The court may after finding the accused guilty, call for allocutus whereupon the accused may make a plea in mitigation after which sentence is passed. Where the sentence is not guilty, the appropriate order should be one of acquittal.

9. **DISCHARGE**

Where an accused person has not been found guilty, on merit, the judge will dismiss the information or charges and accordingly discharge and acquit the accused persons as provided under the criminal procedure law.[[6]](#footnote-6) On the other hand, if the prosecution failed on a technicality, then the court will usually discharge the accused, but not acquit him.

Where the person has not been found guilty, a court will make one or more of the following orders:

1. Dismissal order; dismissing the information, or charge[s]
2. Order of discharge of the accused on the charge[s]
3. Order of acquittal
4. Order of compensation, as the case may be for the false, frivolous, vexatious or malicious prosecution or false imprisonment of the accused etc. as may be relevant according to the circumstances of the case.

**10.FINDING OF GUILT AND SENTENCE**

When an accused is found guilty, before passing sentence an allocutus, plea for mercy or leniency is usually made by the counsel for the defense. After the allocutus, the judge passes sentence on the accused.

**TYPES OF SENTENCE COURT MAY IMPOSE**

When an accused has been found guilty of a crime, a court may under the Criminal Procedure Act or law pass sentence and make one or more appropriate orders as follows:

1. Imprisonment [usually with hard labor
2. Fine
3. Death sentence
4. Canning
5. Deportation

Other orders a court may make includes:

1. Binding over order [ and suspended sentence and community service in western countries]
2. Order for detention during the pleasure of the President or Governor as the case may be
3. Order for disposal of property
4. Order for costs
5. Award for damages
6. Probation order

**QUESTION 1B**

**REMEDIES AVAILABLE TO AN ACCUSED PERSON AFTER SENTENCE HAS BEEN PASSED**

A sentence is a degree of punishment of the court in criminal procedure. The sentence can generally involve a decree of imprisonment, fine and or other punishments against a defendant convicted of a crime. A criminal sentence is the punishment imposed upon someone who has committed a crime. A judge decides the formal legal consequences once a conviction has been determined.

Post- conviction remedies are a specific and complicated legal proceeding that challenges the legality of some aspects of the criminal trial or sentencing. A criminal defendant has limited opportunities to challenge a conviction or sentence:

1. Direct criminal appeal
2. Sentence modification
3. Clemency
4. Pardon
5. **DIRECT CRIMINAL APPEAL**

Direct criminal appeal are not like trial proceedings, they are completely different, even though they arise out of the same conviction. At the appeal stage, the goal is to convince the appellate court that an error at the trial court made the sentence unfair or contrary to law, warranting a different outcome.

1. **SENTENCE MODIFICATION**

Sentence modification is a separate and quite different process from a criminal appeal. Although both may feel like the same, the court involved, the available grounds that can affect a criminal sentence, and the procedures involved are quite different. While criminal appeals must be filed by strict deadlines, a sentence modification petition can be filed any time while the offender is serving a sentence.

A criminal sentence modification is only available under certain circumstances, and its not available for all cases. However, there are cases in which a modification, may actually be required. Some of these circumstances include:

1. An error been made during sentencing that needs correcting, such as obvious clerical errors.
2. The defendant assisting in another, separate criminal case by cooperating with prosecutors and providing necessary information and testimony
3. The offenders age, such as the offender being too elderly and considered not a dangerous threat to the community
4. The offender having a terminal illness or disability that would cause the offender to be unable to serve their prison sentence.
5. Changes in the state sentencing guidelines, such as reducing fine or prison time
6. The sentence having absolutely no legitimacy, as in failing to adhere to the proper sentencing ranges

Criminal sentence modification can be completed before or after sentencing has started. These modifications can often result in considerable reduction of penalties.

1. **CLEMENCY**

Clemency literally means to be shown mercy or leniency and can only be granted by a public official. It’s a general term for reducing penalties without completely removing a conviction from someone’s record. A good example of clemency is when a governor puts a death penalty on hold and changes a sentence from execution to life Imprisonment. The person is still considered a convict, but the penalty has been significantly lessened.

Clemency is often extended for humanitarian reasons, such as to the aged, ill inmate who needs specialized medical care. It’s also extended to offenders when there is a doubt concerning guilt or when the sentence given is excessive. In some cases clemency may be extended as a favour to an executive’s political friend or cronies.

Clemency must often be requested by application or petition before it is granted. In most jurisdictions, these applications must first be filed with a reviewing agency such as the state board of pardon and parole before being seen by the appropriate government head.

**Those who grant clemency have the power to reprieve or of commutation of criminal sentence and the power to pardon.**

1. **REPRIEVES**

A reprieve is given to suspend the execution of a sentence in order to give the prisoner time to find ways to have it reduced. With respect to capital cases, a reprieve is given to suspend the execution of a death penalty for a period of time to consider whether or not it should be imposed

1. **COMMUTING A SENTENCE**

A commutation of sentence takes place when the sentence, generally one of imprisonment, is reduced to a lesser penalty or jail term. This type of clemency does not voids the conviction.

1. **PARDON**

Pardon is like a fresh start. It completely overturns the conviction and takes it off the person’s record. Because a pardon does that, it is like the crime was never committed at all. A person who has been pardoned is not subjected to any restrictions that other ex-convict are; he or she would not have to register, visit a parole officer or state on job applications that they have been convicted of a crime.

**Other remedies includes:**

4. **REMISSION**: this is the complete or partial trial cancellation of the penalty, whilst still being considered guilty of the said crime. This is also known as REMAND, the proceedings by which a case is sent back to a lower court from which it was appealed, with instructions as to what further proceedings should be had.

5. **RESPITE**: this involves the delay of an ordered sentence, or the act of temporarily imposing a lesser sentence upon the convicted, whilst further investigation, action, or appeals can be conducted.

6. **EXPUNGEMENT**: the process by which the record of a criminal conviction is destroyed or sealed from official repository thus removing any traces of guilt or conviction.

7. **PROBATION**

This is a Period of supervision over an offender ordered by a court instead of serving term in prison. In the case **of R V. DM** the justice held that’

‘ ***probation, by the very Latin roots of the word, means attesting to determine a character and qualification. It is the judicial act of grace and clemency under which the execution of a harsher sentence is suspended and a milder one is substituted on a clear understanding that that the harsher one will be re-imposed if the person being tested fails to honor a certain terms and conditions’***

8. **STAY OF EXECUTION**

This is a term during which no execution can issue on a judgement. It is either conventional, when the parties agree that no execution shall issue for a certain period; or it is granted by law, usually on condition of entering bail or security for the money.

In civil cases, in execution issued before the expiration of the stay is irregular and will be set aside; and the plaintiff in such a case may be liable to an action for damages.

In criminal cases, when a woman is capitally convicted, and she is proven to be enceinte, there shall be a stay of execution till after her delivery.

QUESTION 2

**COMMENCEMENT OF CIVIL PROCEEDINGS IN THE HIGH COURT**

Civil procedure is the body of law that sets out the rules and standards that courts follow when adjudicating civil law suits [as opposed to the procedure in criminal law matters].

A civil action may be commenced in the High court through any of the following processes, depending on the subject matter of the action or the nature of the proceeding contemplated. Essentially there are four modes of commencing a civil action in Nigeria namely:

1. Originating summons
2. Applications/ originating motions
3. Petitions
4. Writ of summons

**ORIGINATING SUMMONS**

Originating summons is one of the ways of commencing civil proceeding in the high court. An action can be commenced by originating summon where the sole or principal question to be determined is the construction of a written law or instrument, deed, will, contract or other documents or where statutory provisions exist for its use. Where there is likely to be a substantial dispute of facts an originating summon would not be advisable. The Supreme Court in the case of ***Nwabueze v. Okoye***[[7]](#footnote-7), in fact, pronounced that this process should apply only in circumstances where there is likely to be no dispute on questions of facts and that, in the event of doubt whether to come by the way of originating summons or not, the plaintiff is advised to come by the way of a writ of summon.

Originating summon initiates proceedings. However a summon in a pending matter does not initiate proceedings but it is used for making interlocutory applications in a pending cause or matter. Generally, originating summons is used for non- contentious actions, that is, those actions where the facts are not likely to be in dispute [a question of law rather than disputed issues of facts]. When the principal question in issue is or is likely to be one of construction of a written law or any instrument or of any will, deed or contract, originating summons can be used for the determination of such question or construction. In the case of ***Director SSS V. Abgakoba[[8]](#footnote-8) ,NBN Ltd. V. Alakija, Doherty V. Doherty, Unilag V.Aigoro*** [[9]](#footnote-9), It was held that originating summons is used where it is sought to correct errors in a judgment. In the case of ***Orianwovo V. Orianwovo***[[10]](#footnote-10), It was held that an action for declaration of title to land ought not to be commenced by originating summons.

In the case of ***Fagbola V. Titilayo Plastic Industries***[[11]](#footnote-11), It was held that where proceedings are commenced by originating summons, pleadings are not used, that is, no statement of claims or defense are filed. Rather, affidavit evidence in support of originating summons and counter affidavit will take the place of pleadings- ***Order 3 R. 5 and 6 Lagos; Order 1 Rule 2 [2] Kano***.

**FORMS OF ORIGINATING SUMMONS**

**LAGOS**

An originating summons shall be in ***Forms 3, 4,and 5*** in the appendix to the rules with such variations as the circumstances of the case may require. An originating summons shall be prepared by the applicant or his legal practitioner and shall be sealed and filed in the court registry. When it is so sealed and filed, the summons shall be deemed to be issued – ***Order 3 Rule 8[1] Lagos***. In Lagos, an originating summons shall be accompanied by :

1. An affidavit setting out the facts relied upon
2. All the exhibits to be relied upon
3. A written address in support of the application- order 3 Rule 8[2], Lagos.

The person filing the originating summons shall leave at the registry sufficient number of copies thereof together with the document in sub- rule 2 above for service on the respondent or respondents- ***Order 3 Rule 8 [3], Lagos.***

**ABUJA AND KANO**

An originating summons shall be in ***Forms 54, 55, 56,57or 58*** in the appendix to the rule as the circumstances of the case require- ***Order 5 R. 1[1] Abuja; and Order 6 R. 2[1] Kano***. Usually, a party taking out an originating summons is described as the ‘Plaintiff’ and the other party as the ‘defendant’. In Abuja and Kano, An originating summons shall be accompanied by:

1. A statement of questions, which the plaintiff seeks determination or directions of the court
2. A concise statement of the relief or remedy claimed with sufficient particulars to identify the course[s] of action.

**APPLICATION/ ORIGINATING MOTIONS**

This is the last of the originating process. Unlike petition, this may be used where a statue has not provided for it. Originating application are used when facts are not in dispute and it is used when the action relates to the interpretation of a document. Application are required for certain proceedings e.g. application for prerogative orders of certiorari, prohibition, mandamus, Habeas corpus or enforcement of Fundamental Human Rights, originating motions may be used. Under the ***fundamental Rights [Enforcement Procedure] Rules 1979***, any person who alleges that any of the provisions of the constitution on fundamental rights has been contravened in relation to him, may come to court by way of application. Significantly, where a state has not provided for enforcing a right conferred by that statue, originating motions should be used – ***Order 40 Rule 5[1] Lagos; Order 43 Rule 5[1] Kano and Order 42 Rule 5[1] Abuja.*** It’s rarely used in the magistrate court.

The use of originating motions was highlighted in the case of ***Chike Arah Akunna v. AG of Anambra State & ors[[12]](#footnote-12),*** it was held that the appropriate method of making an application to court, where a statue provides that such an application may be made but does not provide for any special procedure, is an originating motion. This rule was also re-stated in the case of ***Kasoap v. Kofa Trading Co.***[[13]](#footnote-13) that where it is sought to enforce a right conferred by statue, but in respect of which no rules of practice and procedure exist, the proper procedure is an originating notice of motion.

**PETITIONS**

Petitions are special prayers framed in a special form supported with facts and often adopted in election, divorce and winding- up process. 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. It is however, only used where a statue or rules of court prescribe it as such a process- ***Order 1 R. 2 [3] UCPR***. For example, ***section 410 [1] of companies and allied matters Act ( CAMA) 2004*** provides that an application to the court for the winding up of a company shall be by petition. Also ***section 54[1] of Matrimonial causes Act, 1970*** provides that proceedings for the dissolution of marriages are commenced by petitions. ***The Electoral Act*** also states that petitions are the only modes of procedure in election litigations. An election petition has been said to be similar to pleadings in civil matters as it is in that the practitioner sets out all the material facts he relies on for his petition- ***Egolum v. Obasanjo***[[14]](#footnote-14).

A petition as the Uniform Procedure Rules provides, shall include a concise statement of the nature of the claim made or the relief or remedy required in the proceedings begun thereby at the end thereof a statement of the names of the persons, if any, required to be served therewith or, if no person is required to be served a statement to *that* effect – ***Order 7 R. 2[3] UCPR***

**ENDORSEMENT OF PETITIONS**

**A** petition shall be endorsed with the names and addresses of the petitioner and his legal practitioner, or where the petitioner brings a petition in person and corresponding to those made in the case of a writ, with the endorsements of the name and addresses of the plaintiff and his legal practitioner- ***Order 7 R. 2[3] UCPR.***

1. The address of his place of residence, and if his place of residence is not within the jurisdiction, or if he has no place of residence there, the address of the place within the jurisdiction at or to which the documents for him may be delivered or sent.
2. His occupation
3. An address for service- ***Order 7 R. 2[4] UCPR***

A petition is presented in the court of registry and a day on which its required to be heard is fixed by the registrar - ***Order 7 R. 3 and 4[1] UCPR***. Unless the court otherwise directs, a petition which is required to be served on any person shall be served on him not less than seven days before the day fixed for hearing of it- ***Order 7 R. 4[2] UCPR*.**

The high court rules of Lagos stipulate that a petition shall presented by being left with the registrar and that the party presenting it shall hand a copy to the registrar. These rules further require that the original should be sealed with the seal of the court and filled. Service is effected in the same manner as writ of summons. A respondent normally files a reply to the petition at the trial, oral evidence is taken.

**WRIT OF SUMMONS**

This is by far the most common method of commenting civil actions. This process is recommended for all civil action except where there Is an express legislation prescribing another mode- ***order 3 Rule 1 and 2 Lagos High court Civil procedure rules 2004, Order 1 Rule 2, Uniform [Civil Procedure Rules] [UCPR] and Order 4 Rule 2 Abuja***. By its nature, a writ is an order from the court issuing it commanding the defendant named to cause an appearance to be entered for him in the action within a stipulated time. The defendant may enter appearance, personal or through his solicitor, by handing in the memorandum of appearance at the registry of the judicial division where the action is brought.

The writ bears the name of the venue of the action i.e the name of the high court and the judicial division in which it is being heard, the suit number, names of the parties and other endorsements. The former endorsements required includes: The address of the plaintiff, the address of the legal practitioner [if he is represented by counsel] and the defendant’s current or last known address.

Aside from the required formal endorsements, a writ may contain a general or special endorsement of claim. In a general endorsement, the writ only contains a statement summarizing the nature of the claim and the remedy sought by the plaintiff. Amore elaborate statement of claim will later follow. On the other hand, the plaintiff may dispense with the need to serve a separate statement of claim by specially endorsing the writ. In that case, includes in the writ a statement of claim which would be served on the defendant as part of the summons. In the alternative, the plaintiff may achieve the same end by accompanying the writ with the statement of claim instead of endorsing it. A specially endorsed writ is not permissible in claims involving allegations of fraud, breach of promise to marry, seduction, libel, malicious prosecution and false imprisonment. [[15]](#footnote-15)

A writ has a life span and would lapse 12 months from and including the day of the issue. The writ must be served within that period otherwise any service outside the expiry date is invalid unless the document has been renewed before that date. A writ is issued the moment it is signed and sealed by the court registrar without any further requirement of the leave of court. However, where the writ is to be served outside the state of issue but within Nigeria, the consent or leave of the judge must first be obtained before it is issued. Once it is shown that the intending plaintiff has done all that he is required to do under the law to commence an action then he is deemed to have commenced that action.

**ENDORSMENT OF THE WRIT OF SUMMONS**

All writ of summons must have endorsed on it by the plaintiff, the nature of the claim being made or the relief sought. This endorsement is at the back of the writ of summons. This is to enable the defendant tell at a glance of the nature of the action and the relief claimed against him.

A writ is endorsed when it contains a concise statement of the grounds of the complaints or claim and the relief or remedy to which the plaintiff considers himself entitled. This concise statement of the plaintiff is called the ‘particulars of claim’ and it is required to be endorsed at the back of the writ.

If a party types his claims on a separate sheet of paper and affixes to the writ, that would be an improper endorsement and the writ would be invalid and is liable to be stuck out. In the case of ***Alatede V. Falode*** [[16]](#footnote-16). It was held that typing on a separate paper and then gumming the same to the writ was an irregularity and not in compliance with the rules. Therefore, the writ may be struck out as not being properly endorsed. However, where there has been a valid endorsement on the writ of summons and the space provided is insufficient to accommodate the claims, a separate paper may be used in addition to the writ. It can also be said that ;

1. If the plaintiff sues or the defendant of any of the defendants is sued in a representative capacity, the writ must show it.
2. In probate actions, the endorsements must show whether the plaintiff claims as creditor, administrator, legatee, next of kin, heir – at- law, successor under native law devisee or in any other character
3. In all cases in which the plaintiff desires to have an action taken, the writ must be indorsed with a claim that accounts be taken
4. In actions for libel, the endorsement on the writ must state sufficient particulars to identify the publication which is the subject matter of the complaint- ***Order 4, Lagos.***

In all cases, the party to the action should be correctly described and at the back of the writ, a concise statement of the nature of the claim must be stated. If a person acting under the power of attorney sues on behalf of the donor, it is the name of the donor not that of the donee that should appear on the writ – ***D.J Perera V. Motor and General Insurance Company ltd[[17]](#footnote-17).***

***In conclusion, this paper work has been able to address the definition and sources of criminal and civil procedure, the procedure for commencing criminal action, the remedies available to an accused person after sentencing and the modes of commencing civil action in a high court.***

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