**NAME: ERETAN OLUFEMI PAUL**

**MATRIC NO: 18/LAW01/094**

**COURSE CODE: LPI 204**

**COURSE TITLE: NIGERIAN LEGAL SYSTEM II**

**LECTURER(S): FABAMISE SESAN T. ESQ, AINA, ISEOLUWA TITILAYO**

**QUESTION(S)**

1. Explain the types, appointment, composition and jurisdiction of courts in Nigeria

2. Summarize the appointment and tenure of judicial personnel.

3. What are the factors to consider before commencing civil action?

4. What are the modes of commencing a civil action in the listed Court(s)?

i. Magistrate Court.

ii. High Court.

1. Mr. Ope Owoseni and Mrs. Sefunmi Owoseni have been married for three years, they reside in Abuja and finds it intolerable to live as couple, since the marriage has broken down irretrievably. Mr. Ope approached Mr. Uche a Lawyer to institute an action for divorce in the Court. Mr. Ope commenced the lawsuit using writ of summons at the Federal High Court in Lokoja. The Judge struck out the case for lack of cause of action. Mr. Ope consulted another lawyer Mr. Korede for advise, Mr. Korede said the appropriate Court to institute the action is the Family Court using originating motion

i. Is Mr. Uche’s action appropriate? State reason for your answer

ii. Was the Judge’s action right to have struck out the suit for lack of cause of action? State reason for your answer

iii. Would your answer to question 5ii be the same if the Judge had struck out the suit for want of jurisdiction? Justify your answer.

iv. Considering the advice of Mr. Korede to commence the suit at Family Court using originating motion, justify the action.

v. Kindly give your detailed advice to Mr. Ope on the appropriate procedure(s).

**QUESTION 1: TYPES, APPOINTMENT AND JURISDICTION OF COURTS**

A court is a place where a judge sits to administer justice and the word ‘court’ includes the judge or judges who sit therein dispensing justice according to law. The court is a forum for reconciliation of the legal rights and obligations of parties. The different types of court present in Nigeria are made virtue by *Section 6(5) of the Constitution of the Federal Republic of Nigeria.* The courts are as follows;

* The Supreme Court of Nigeria
* The Court of Appeal
* The Federal High Court
* State High Court
* The Sharia Court of Appeal
* The Customary Court of Appeal
* Magistrate Courts and District Courts

**Supreme Court of Nigeria**

The Supreme Court of Nigeria is the apex court in Nigeria. It is located in Abuja. The Supreme Court of Nigeria consists of the Chief Justice of Nigeria and such number of Justices of the Supreme Court, not exceeding twenty-one, as may be prescribed by an Act of the National Assembly. The Supreme Court is currently made up of the Chief Justice and Twelve (12) other Justices. *Section 230-236 of the* *1999 constitution* provides for the Supreme Court of Nigeria. It was established in 1963 subsequent to the enunciation of the Federal Republic of Nigeria and the 1960 Constitution, which became effective on October 1, 1963. It also succeeded the cancellation of *Section 120*, which repealed the appellate jurisdiction of the Privy Council judicial committee, which was the Nigeria’s Apex Court. Of course, this does not include the powers of the Governor or the President of the country as they can grant a reprieve to any person condemned of an offense under any law in Nigeria. Furthermore, the decision of the Supreme Court may be canceled by legislation and the Supreme Court can even nullify itself. The Supreme Court does not have the original jurisdiction on just any criminal matter. It has original jurisdiction in any dispute between the Federation and a State. In addition, it has the jurisdiction to the exclusion of any other court in Nigeria to determine any proclamation from the Court of Appeal.

**Court of Appeal**

Next to the Supreme Court is the Court of Appeal. However unlike the Supreme Court, the court of Appeal has multiple divisions in various parts of the country in order to bring the administration of justice closer to the people. The head of the Court of Appeal has the title President of the Appeal Court. He is assisted by Justices. Only the appointment of the President of the Appeal Court requires Senate confirmation. The 1999 constitution provides in *Sections 237-248* for the court of appeal. Judgments from the court of appeal court can be appealed to the Supreme Court. It comprises of 49 (forty-nine) judges. The Court of Appeal has the original jurisdiction to the exception of all other courts in Nigeria to determine and hear any question as to whether any person has been validly voted to the office of the Governor or Deputy Governor, the President or Vice-President in Nigeria. It appeals from the High Court of a State, the Federal High Court, the Customary Court of Appeal of a State, Sharia Court of Appeal of the Federal Capital Territory, the High Court of the Federal Capital Territory, the Court Martial, Sharia Court of Appeal of a State, and any other Tribunal.

Below the Federal Court of Appeal are the tier 3 courts. They include:

(1) The Federal High Court

(2) The High Court of a state/FCT

(3) The Customary Court of Appeal of a state/FCT

(4) The Sharia Court of Appeal of a state/FCT.

**The Federal High Court**

The federal high court is third in rank in the types of court. In order to bring the administration of justice closer to the people it has a division in each of the thirty-six states of the country. The Federal High Court is generally a court of original jurisdiction. However, it has appellate jurisdiction from tribunals such as the Tax Appeal Tribunal. It is presided over by a Chief Judge who is assisted by other Judges. The 1999 constitution in *Sections 249- 254* provides for the federal high court.

This Court has original jurisdiction in civil cases, and matters as set out under *Section 251 (1) of the 1999 Constitution*. It should be mentioned that the Federal High Court also has the appellate jurisdiction and all the powers of the High Courts of a State. This court divides the concurrent jurisdiction of the State High Court in matters regarding the interpretation or application of the Constitution, banker-customer relationship, and fundamental human rights enforcement cases.

**The State High Court**

The High Court of the Federal Capital Territory (FCT) / State High Court by virtue of *Section 255 of the 1999 Constitution* provides for the ascertainment of a High Court of the Federal Capital Territory, Abuja. *Section 270* provides for the ascertainment of a High Court for each State of the Federation. The State High Court and the High Court of the Federal Capital Territory particularly are headed by the Chief Judge. The number of judges they contain is prescribed by the State House of Assembly (in respect of the High Court of a State) or an Act of National Assembly (in respect of the High Court of the Federal Capital Territory, Abuja). The High Court has the largest jurisdiction under the 1999 Constitution in civil and criminal cases and has the appellant jurisdiction over decisions of Customary Courts, Area Courts, Magistrate Courts, etc.

**The Sharia Court of Appeal**

*The Section 260 of the 1999 Constitution* provides for an obligatory establishment of the Sharia Court of Appeal of the Federal Capital Territory, Abuja. While Section 275 provides for a dispensable establishment of a Sharia Court of Appeal for any State that claims it is in Nigeria. Actually, both courts are headed by a Grand Kadi and contain a number of Kadis that is prescribed by an Act of the National Assembly for Sharia Court of Appeal of the Federal Capital Territory, Abuja and the House of Assembly of a State for a State Sharia Court of Appeal. Also, both courts exercise the supervisory and appellate jurisdiction in civil cases involving issues of the Islamic personal law.

**The Customary Court of Appeal**

The Customary Court of Appeal of the Federal Capital Territory was established by the *Section 265 of the 1999 Constitution* and caters to the FCT. *Section 280* provides for the dispensable establishment of the Customary Court of Appeal for any State that claims it in Nigeria. In general, both courts are led by the President of the Customary Court of Appeal and contain Judges as prescribed by the National Assembly for the Federal Capital Territory, Abuja and the House of Assembly for any State that claims it. In addition, both courts exercise the supervisory and appellate jurisdiction in civil cases involving issues of the customary law.

**Magistrate Courts and District Courts**

Though not provided for in the 1999 Constitution, Magistrate Courts and District Courts are established by the law of the House of Assembly of a State. As for the Magistrate Court, it is a court of summary judgment as grounds are defined in this court without briefs or pleadings filed by the parties. Actually, in the Southern part of Nigeria, they are referred to as Magistrate Courts, but in the Northern part of Nigeria, they are referred to as District Courts when they sit in their civil jurisdiction. The jurisdiction of a Magistrate Courts is provided for under the different rules of each State establishing them.

**QUESTIONT 2: APPOINTMENT AND TENURE OF JUDICIAL PERSONNEL**

1. **Attorney General**

The Attorney-General is the principal or Chief Legal Adviser of the government, whether at the Federal or State government level. The Attorney General is appointed by the President at the Federal level and by the Governor at the state level, provided in *Sections 150 and 195 of the 1999 Constitution* respectively. The tenure of the Attorney-General is 4(four) years.

1. **Solicitor General**

The Solicitor-General is the second law officer of the state or country. He is the deputy assistant of the Attorney-General. He acts when the Attorney-General is ill or vacant. He is appointed by the President at the federal level and the Governor at the state level. During his tenure, (which is not specific as he is considered a civil servant and is maintained till retirement) the Solicitor-General cannot engage in private legal practices.

1. **Director of Public Prosecutions**

The Director of Public (DPP) is the head of public prosecutions for the State. He is the head of the criminal division of the Ministry of Justice that is, he is the head of all criminal prosecutions in the Ministry of Justice and he supervises the conduct of all public prosecutions. This is purely a civil service office meaning it is a non-political appointment.

1. **Director of Civil Litigation**

This is the counterpart of the DPP. The Director of Civil Litigation (DCL) is the head of the civil division of the Ministry of Justice and he is in charge of undertaking and supervision of all civil litigations. The Director of Civil Litigation is also a non-political appointment.

**QUESTION 3: FACTORS TO CONSIDER BFORE COMMENCING CIVIL ACTION**

1. **Jurisdiction**

This factor is important to decide the court to commence the civil action. Where a matter is filed in a wrong jurisdiction, it is liable to be struck out for want of jurisdiction. Jurisdiction has to do with the subject matter in dispute, the location where the cause of action arose, the court the matter is brought before, the competence of the court to decide on the matter and the composition of the judges sitting in that matter.

2. **Limitation of Action**

There is a limitation period set for almost all actions that can be filed in court. This is to prevent any individual from sleeping on their right and to promptly exercise their legal right when a wrong is done. It is important for the plaintiff counsel to consider whether the cause of action is out of time before venturing into the expense of issuing a process in court.

3. **Cause of Action**

These are the events that gave rise to a civil action. It forms the basis upon which a person is entitled to obtain a remedy against another in Court. The cause of action is founded in the relief or claim sought by the litigant.

4. **Alternative Dispute Resolution (ADR)**

 It is a duty of the counsel to ensure that all alternative dispute resolution methods have been explored before proceeding to file an action in court on behalf of a client. The alternative dispute resolution methods include arbitration, negotiation, conciliation and mediation.

5. **Rules of the Court**

Every court in the legal system has rules that bind the Court, Litigants and Legal Practitioners. It is imperative that the provisions of the Rules are followed strictly when someone is proceeding to file an action in court. The Lawyer has the duty to look upon the rules of that particular court either in the Magistrate, High Court, National Industrial Court or Federal High Court etc. to determine the rules guiding commencement of suits in the court.

**QUESTION 4: MODES OF COMMENCING ACTION IN COURT**

1. **Magistrate Court**
2. By originating application: Actions commenced by originating applications are used when proceedings are authorized to be commenced in Magistrate courts and not required to be commenced otherwise. It is used when facts are not in dispute and must state the order applied for and sufficient particulars showing the grounds for which the applicant makes the application.
3. By claim: the particulars of the claim must be attached
4. **High Court**

An action may be commenced in a High Court by a counsel filing one or a combination of the following papers or originating processes in court;

1. Writ of summons: Writ of summons is used in commencing a civil action against an individual. It is a formal document addressed to the defendant requiring him to appear before the court to defend himself against the plaintiff’s claim. It is usually accompanied by an endorsement of the claim or a statement of the claim so that the defendant is aware of the claim against him. In Lagos state the writ of summons shall be accompanied by the statement of claim, list of witnesses, written statements, copies of every document to be relied on at the trial, written address in support of the action and so forth, otherwise, it will not be accepted for filing at the registry.
2. Petition: Usually necessary in matrimonial proceedings for divorce and so forth, or winding up of a company for its inability to pay its debt in a Federal High Court
3. Originating process: This usually contains the following; names of the parties in the suit such as the name of the defendant and his address, name of the plaintiff and his address and name of the plaintiff’s solicitor and his address and an indorsement of the claim against to the defendant.

**QUESTION 5**

1. The hypothetical situation given borders on the Marriage Act. Under family law, there are a set of causes known as matrimonial causes which are provided for under Matrimonial Causes Act. Mr. Uche is expected to institute an action in any high court of a state of the federation of Nigeria. Mr. Uche’s actions were valid as the cause applicable to this scenario is a proceeding for a decree of dissolution of marriage which is done on the grounds that the marriage has broken down irrevocably/irretrievably as provided for in *Section 15 of Matrimonial Clause Act* hereinafter to be referred to as MCA.
2. The judge is allowed to strike an action on the basis of the court lacking jurisdiction on such matters and not in the basis of the cause of action which was the reality that the marriage had legitimately broken down and the parties wished to separate after the fact.
3. If the judge struck out the case due to want of jurisdiction then the situation regarding the situation has changed because the judge would be justified and backed up by the Constitution, specifically *Sec 251* which does not provide for the federal high court as the first court for matrimonial cases. *Sec 2 of the MCA* rather provides for the hight court as the court of first instance in matrimonial cases.
4. Using Mr. Korede’s advice, it would be impossible for the party to go to family court. This is so because actions instituted in a family court is established under for the Child’s Right Act or Law. It exists solely for the purpose of the child’s act. It holds no jurisdiction over matrimonial matters. Therefore it cannot institute a writ of summons regarding this scenario to the family court.
5. My advice to Mr. Ope as a legal practitioner is to go to the High court of the state as provided in *Section 15 of the MCA* and follow the proceeding of dissolution of marriage on the grounds that the marriage has broken irretrievably.

**REFRENCES**

* Ese Malami, *The Nigerian Legal System,* Juvenile Justice in Nigera, Pg 233, The Courts and the Personnel of the Law, Pgs 188-225.