

PROCEDURE FOR ENFORCING FUNDAMENTAL RIGHTS IN NIGERIA

Lesson Outcome:

At the end of this topic, you are expected to know:

- What fundamental rights are; the nature of fundamental rights; the legal framework for fundamental rights enforcement; the procedure for enforcing fundamental rights; and available remedies the courts will grant

Nature of Fundamental Rights

- Fundamental rights are those inalienable rights inherent in man by reason of his existence. They are sacrosanct and fundamental, primary, basic, original.
- They are fundamental because they are the basis for civilised existence in human society. They are fundamental because they are guaranteed by the fundamental law of the land (constitution), an absence of which will inevitably lead to a state of perpetual anarchy. They are crucial for a smooth running of every civilised society
- It is a right which stands above the ordinary laws of the land and which in fact is antecedent (pre-condition) to the political society itself

Legal Framework For Fundamental Rights in Nigeria

- **Constitution of the Federal Republic of Nigeria 1999** as amended. Chapter IV of the constitution (Sections 33-44) contains fundamental rights guaranteed by the constitution. These category of rights are justiciable; as such where a citizen's rights has been or is being or likely to be infringed, he or she can go to court and rightfully seek remedy.
- The constitution sets out the substantive rights, but also lays down procedural provisions for enforcing those rights.
 - the rights guaranteed under cap. 4 of the constitution fall within those category of rights known as Civil and Political rights; for the obvious reason that they are basic for the functioning of civil society.
- **The African Charter on Human and People's Rights (Enforcement & Ratification) Act**

Legal framework for Enforcing fundamental HRs cont'd

- Fundamental Rights Enforcement Procedure Rules, 2009 (FREP):
- FREP is the procedural rule book, law, that guides and binds the court and parties in a Fundamental rights proceeding. Consequently, the FREP rules 2009 shall be the fulcrum of this discuss.
- The FREP rules are made by the chief justice of Nigeria pursuant to s. 46 (3) CFRN 1999.

Jurisdiction

- The state High courts or High court of the FCT and the Federal High court have original jurisdiction to hear and determine fundamental rights matters. See s. 46 (1), Ord. 2 r. 1.
- Note however, that the National Industrial Court has exclusive jurisdiction where any of the provisions of chapter 4 is connected with determining an industrial dispute which the court has jurisdiction. See s. 254 C (1) (d) CFRN 1999 as Amended.

Claims that can be made under the FREP Rules 2009.

- A cause must be directly related to core fundamental HRs. e.i those contained in chapter 4 of the constitution or in the African Charter on Human and Peoples rights before it can, be brought for enforcement pursuant to the FREP rules.
- For the court to interfere, the matter must be on an infringement of core FHRs enshrined in the constitution or in the African Charter.

Claims that can be made cont'd

- For example if Teezer's employer terminates his employment, Teezer's remedy will not lie in fundamental rights enforcement action because he has no right not to be sacked by his employer. He may successfully institute an action in the National Industrial Court if the employment was wrongly terminated in breach of his contract agreement.
 - However, where Ms Ragamofin's employer terminates her employment because he discovered she recently converted to Buddhism, she may properly bring an action for enforcement of her fundamental right to freedom of thought, conscience or religion.
- * See ***Mrs Folarin Mayia v Incorporated Trustees of Health Initiative*** Suit no. NIC/ABJ/13/2011 (National Industrial Court); See also ***Lafia Local Government v Executive Governor of Nassarawa State*** (2013) ALL FWLR (pt 668) 956

Who can apply for Enforcement of Fundamental Rights?

- Key Pointer: the issue of Locus Standi
- Pursuant to s. 46 (1) any person who alleges that any of his fundamental rights in cap. 4 of the CFRN 1999 is likely to be, or is being or has been contravened can apply to the courts(with jurisdiction) for redress.
- Also any person who alleges that his rights enshrined in the African Charter on Human and People's Rights (Enforcement and Ratification) Act is being contravened. –see ord. 2 r. 1 of the FREP Rules 2009.

Who can apply cont'd

- Note also that the by implication of paragraphs 3 (e) i – v, the persons who may apply for FHR enforcement has been expanded to include:
 - Anyone acting in his own interest
 - Anyone acting on behalf of another
 - Anyone acting as a member of, or in the interest of a group or class of persons
 - Anyone acting in the public interest
 - Association acting in the interests of its members or other individuals or groups
- * Thus no HR action may be struck out for want of Locus Standi

Commencement of Proceedings

- Conventionally, where the court rules prescribe the manner in which a suit should commence, it is expected that a litigant follow that process strictly. Thus where it is required that a matter be commenced by a writ of summons, and it is commenced with an originating summons, a litigant stands the risk of having his suit struck out. However Fundamental Rights enforcement proceedings can be commenced using any of the permissible originating processes, with all the required accompanying processes. See Ord. 2 r. 1 to 7, FREP Rules 2009

Commencement of proceedings

cont'd

- Those accompanying docs include:
 1. A statement; which sets out the details and description of the applicant, the reliefs sought, and the grounds upon which the reliefs are sought,
 2. An affidavit; to be made(deposed to) by the applicant. Where he is unable to depose to it for some reason, e.g detention, the affidavit can be made by:
 - a) Someone who has personal knowledge of the facts
 - b) Someone who has been informed of the facts by the applicant- stating that the applicant is unable to depose personally to the affidavit

Commencement cont'd (accompanying docs)

- Written addresses; a succinct argument in support of the grounds of the application
- Where the respondent intends to oppose the application, he has within 5 days from the day of service of the applicant's written address on him to file his.

Ex Parte Applications

- This is an application used to move the court, with prayers sought therein, without hearing the other party (respondent).
- It is used where there is urgency, and exceptional hardship may be caused to an applicant if not granted. For instance where an applicant is in detention and ill, he may die or his health may deteriorate further if not granted bail.
- The ex parte application shall be supported by an affidavit stating sufficient grounds why delay in hearing the application will cause additional hardship.

Ex-parte application cont'd

- On hearing the application, if the court is convinced, the court may make the following orders:
 - Grant bail or order release of the applicant immediately, pending when the trial is completed. The reason for granting bail may be so as to secure the release of the applicant and allow the person or authority whom the order is made against get served with the court order. See **Ushae v COP** (2005) 2 NWLR pt. 937) 499
 - Order that the respondent be put on notice and abridge the time for hearing the application

Orders the court can make con'd

- Order the production of the applicant on the date the matter was fixed for hearing
- Grant an injunction restraining the respondents from taking further steps in connection with the matter or maintaining status quo until the matter is completely determined.
- Or any other order the court may deem fit to make as the justice of the matter determines.

Service of Court Processes

- The originating process or order is to be served by the court bailiff or sheriff or any other officer of the court.
- Processes are to be served directly on all parties. Note that service on an agent of the respondent will amount to personal service.
- Where an order is made for production of an applicant, the court process is to be served personally on the person to whom it is directed or to an officer in his offices.

Service of Process cont'd

- Where the order is made to a police officer or prison superintendent, effective service can be done by leaving it with any officer working in the same office where the person to whom the order was made works.
- **Substituted Service:** Where it appears to the court that it will be difficult to achieve personal service, the court may order that service be effected by other means that will make it possible or probable that the respondent gets served.
- *For a detailed and comprehensive understanding of service of processes in **FREP matters**, see **Ord. 5 rules 1 to 11***

Limitation of Action

- An application for Enforcement of Fundamental Right Shall not be affected by any limitation statute whatsoever. –see Ord. 3 r. 1

Conduct of Proceedings/Adjournments

- An application shall be fixed for hearing within 7 days from the date in which the application was filed.
- The rules urge the court to adjourn a matter where it is extremely important that a case be adjourned, depending on the circumstance of the case, however, it must be guided by the urgent nature of the rules. See ord. 4 rules 1 & 2 FREP Rules 2009.

Orders which the Court may Make

- Aside those order which the rules guides a court to grant where an ex parte application is made, the court is given the discretion to grant and make such order it deems necessary in securing and enforcing any of the rights guaranteed by the Constitution and The African Charter on Human and People's Rights (Ratification and Enforcement) Act to which an applicant is entitled to. See ord. 11 FREP 2009.

Thank You.

Further Reading Materials

- Constitution of the Federal Republic of Nigeria 1999 as amended.
- Obiaraeri, N. Onyeka. Human Rights in Nigeria: Millennium Perspective.
- M.M Stanley-Idum, J. A Agaba, Civil Litigation in Nigeria.