

EASY READ

STUDY SHOP



“*KEY QUESTIONS AND ANSWERS*”

Course: Civil Litigation

“*Key questions and answers*”

AREA OF CONCENTRATION

1. PLEADINGS
2. PRE-TRIAL ISSUES
3. SUMMARY JUDGEMENT PROCEDURE
4. APPEAL
5. TRIAL
6. RECOVERY OF PREMISES
7. FUNDAMENTAL RIGHT ACTION
8. ELECTION
9. MATRIMONIAL CAUSES

QUESTION 1 (A)

You are counsel to Mrs. Jenima Alao in an action she instituted against the Sunview Bottling Company Limited at the Lagos State High Court, Igbosere, Lagos breach of contract of supply. She is claiming the sum of N1.5million as money had and received for a consideration which had failed.

Mrs. Alao seeks to rely on the written contract of supply dated February 23, 2013 and the payment receipt dated June 30, 2013. The original copies of these documents were lost when Mrs. Alao relocated from her former house sometime in December 2013 and she cannot find the photocopies in her possession.

Presently, pleadings have been closed in the case and you now wish to comply with some pre-trial proceedings before setting the matter down for trial.

Answer the following questions

- (a) What process will you draft and serve on the defendant for discovery of the documents in this case?

ANSWER TO QUESTION 1 A

I will draft and serve an application in writing on the defendant requesting him to make a discovering on oath of the documents (**inspection of document**) See O. 26 r. 8 Lagos.

- (b) Assuming you are counsel to the defendant in the case, draft the process that you will file in respect to (a) above.

ANSWER TO QUESTION 1 B

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

Suit No. _____

BETWEEN:

JEMIMA ALAO

–

CLAIMANT

AND

SUNRISE BOTTLING CO. LTD

–

DEFENDANT

AFFIDAVIT AS TO DOCUMENTS (O.26 R. 8(3))

I, Jack Daniels, Director of the above named defendant, Sunrise Bottling Co. Ltd., make oath and say as follows:-

- (1) The Defendant has in its possession or power the documents relating to the matters in question in this suit.
- (2) The office copies of the two documents namely the contract of supply dated 23rd February, 2013 and the payment receipt dated 30th June, 2013 are attached and marked Exhibit JD1 and JD2 respectively. 2 marks

Dated at Lagos this ____ day of ____ 2018

DEPONENT

Sworn to at the High Court Registry, Lagos.

This ____ day of ____ 2018

BEFORE ME
COMMISSIONER FOR OATHS

(c) What is the effect of failure to the defendant to take the step in (b) above?

ANSWER TO QUESTION 1 C

Where the defendant fails to answer on oath as stated in (b) above, he shall be liable to attachment (i.e. committal for contempt) for disobedience of the order. Or 26 r 11 Lagos.

(d) After close of pleadings you intend to agree with the defendants on the issue that will go to trial and the elements to be tendered without objection.

(i) At what forum will you do this?

ANSWER TO QUESTION 1 D (i)

I will do this at the Case Management Conference and Scheduling. Or 25 Lagos

(ii) Set out in numbered paragraphs the procedure you will adopt to set in mention the forum in d (i) above

ANSWER TO QUESTION 1 D (i)

The procedures I will adopt to set the Case Management Conference in motion are:

- 1) As counsel to the claimant I shall apply for the issuance of a Case Management Conference Notice in Form 17 within 14 days after close of pleadings.
- 2) Upon application by the claimant above, the Judge shall cause to be issued to the parties and their legal practitioners (if any) a Case Management Information sheet as in Form 18.

If the claimant does not make the application within 14 days after close of pleadings, the defendant may do so or apply for an order to dismiss the action. Or 25 r. 1 Lagos

(e) Assuming either of the parties participated at the forum in (d) above:

(i) Set out in numbered paragraphs the consequence(s) that may follow such failure under the rules of court

ANSWER TO QUESTION 1 E (i)

Where the parties fail to participate at the Case Management Conference in (d) above the following consequences may follow such failure under the rules of court namely:-

(1) Where the Claimant fail to participate at the Case Management Conference, his claim will be dismissed.

Where the defendant fails to participate in the Case Management Conference judgment will be entered against him where appropriate. Or 25 r. 5 Lagos.

(ii) Set out the likely ethical consequences that may follow from such failure.

ANSWER TO QUESTION 1 E (ii)

The likely ethical consequences that may follow such failure are:-

- (1) The Counsel may be guilty of lack of diligence in handling the client's case and not representing the client competently.
- (2) The Counsel may be liable in negligence
- (3) If the Counsel is reported to the Legal Practitioners Disciplinary Committee, he may face disciplinary measures. **Rule 14(1) RPC, S.9 (1) & 10(1) of LPA.**

- (f) Assuming on the date the case comes up in court you are to appear for the claimant, announce your appearance before the court using Smart as your surname in block letters.

ANSWER TO QUESTION 1 F

May it please the Court, Miss Ronke SMART, appearing for the claimant”

NOTE WHAT TO AVOID:

- i. Ladies must state their status
- ii. Both ladies & men must state their first names or initials before their surnames.
- iii. The use of words like “With due respect”, “With the greatest humility”, “With profound respect and humility” are wrong and will not earn any marks please.

QUESTION 1 (B)

Mr. Tall Tale is a retired banker, who worked for Union Bank Plc until 1998. He used his savings and entitlements to invest in a finance house. in 2012 he collected his investment from the Bounty Finance Limited and decided to invest in real estate. Whilst considering this option, Mr. Ole who used to work with Bounty Finance approached him with a proposal to buy a water bottling company located in Kubwa, Federal Capital Territory, Abuja. Mr. Tale agreed to buy the company on the understanding that he will pay the purchase price of N25, 000,000.00 (Twenty-Five Million Naira) in two equal installments. The first installment was paid on April 13, 2014, and the second was subsequently paid on April 30, 2014. After completing payment Mr. Tale sought to take possession of the factory but was prevented by the security men at the gate. He contacted Mr. Ole who informed him that he had sold it to another group who offered him more money. Mr. Ole stated that he will refund the amount paid by Mr. Tale. It has been 5 months now and Mr. Ole is yet to make the refunds.

Answer the following questions:-

- a. Describe the procedure you will recover the money expeditiously in Abuja.

ANSWER TO QUESTION 1 A

Summary Judgement under undefended list. Order 21 (Abuja)

- b. List the documents you will file for commencing the action in (a)

ANSWER TO QUESTION 1 B

The documents that I would file to commence this action are:

1. writ of summons
 2. affidavit in support of writ of summons
 3. motion exparte
- c. If the transaction had occurred in Lagos, set out in numbered paragraphs the procedure for commencing the action in Lagos.

ANSWER TO QUESTION 1 C

In Lagos, where a claimant believes that there is no defence to his claim, he will commence the action under the summary judgment procedure of Order 11 Lagos. For this purpose he will file the following:

1. writ of summons
2. statement of claim
3. the deposition of his witnesses
4. the exhibits

5. an application for summary judgment by motion on notice which application shall be supported by the affidavit stating the grounds for his beliefs; and
6. a written brief

- d. Assuming that the defendant intends to defend the procedure in (a) above describe the step(s) he is required to take in the matter and the time limit for taking such step(s).

ANSWER TO QUESTION 1 D

A defendant who is served with the processes under the undefended list and intends to defend the action shall file the following processes:

1. Notice of intention to defend
2. affidavit disclosing a defence on the merit

The defendant is required to file his processes at least 5 days before the date fixed for hearing.

QUESTION 2

IN THE FEDERAL HIGH COURT
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO. FHC/LD/22/18

BETWEEN

DR. JAMES EDEM

–

CLAIMANT

AND

EBEANO FURNITURE LTD

–

DEFENDANTS

GOVERNOR BINUTU SMITH

STATEMENT OF CLAIM

1. The Plaintiff is a businessman who resides at No.20 Eko Akete Lane, Ikoyi – Lagos.
2. The 1st Defendant is a Limited Liability Company engaged in the business of furniture making and sales with its registered Head Office at 16, Mcween Street, Lagos.
3. The 2nd Defendant is the Executive Governor of Lagos State of Nigeria.
4. The Plaintiff avers that on January 1, 2018, he signed a supply agreement with the 1st Defendant at the 1st Defendant’s Head Office.
5. By the said agreement, the 1st Defendant was to supply sundry furniture to the Plaintiff on or before the 28th of February, 2018, to enable the Plaintiff execute a Fifty Million Naira (N50, 000,000.00) contract granted by the 2nd Defendant to the Plaintiff to furnish the renovated Governor’s Lodge in Ikoyi, Lagos.
6. Sequel to the terms of their agreement, the Plaintiff made an advancement payment of Ten Million Naira (N10, 000,000.00) with an outstanding balance of N10, 000,000.00 which was to be paid upon delivery of the furniture by the Defendant on the stipulated date.
7. The Defendant did not supply the furniture until sometime in February, 2018 and consequently, the furnishing contract between the Plaintiff and the 2nd Defendant was revoked and re-awarded to another person.
8. The Plaintiff as a result of the facts pleaded in paragraph 7, rejected the furniture supplied by the 1st Defendant and demanded the refund of the advance payment made to the 1st Defendant which the 1st Defendant has up till now refused to refund.
9. The Claimant avers that he gave the 2nd Defendant bride of Fifteen Million Naira (N15, 000,000.00) and the 2nd Defendant has refused to refund the money.
10. Wherefore the Claimant claims as follows:
 - a. A declaration that the 1st Defendant is in breach of the supply agreement entered into between the Plaintiff and the 1st Defendant on January 1, 2018.
 - b. Ten Million Naira (N10, 000,000.00) against the 1st Defendant being the advance payment for supply of the furniture which the 1st Defendant filed supply as agreed.
 - c. Fifteen Million Naira (N15, 000,000.00) against the 2nd Defendant being refund of the bride paid to the 2nd Defendant by the Plaintiff.

Dated this 15th day of March 2018

Mr. A.J. Kotoyo.
Bar Part II Students
For: Nsirim & Associates
Plaintiff’s Counsel

FOR SERVICE ON:

1. 1st Defendant

- 16 Mcwee Street, Lagos State.
2. 2nd Defendant
Government House, Lagos State.

Answer the following questions:

- a. Comment on the jurisdiction of the Federal High Court to hear this suit.

ANSWER TO QUESTION 2 A

The Federal High Court has no jurisdiction in this matter. This is because none of the parties in the suit is either the federal government or any agency of the federal government as to bring the suit which the contemplation of section 25(1) of the constitution (in view of relief 1) which vests exclusive jurisdiction on the Federal High Court while an action involves a declaration against the Federal Government or any of its agencies. NEPA V EDEGBERO

Secondly, the subject matter of the suit is simple contract which has been held by the Supreme Court in Onuorah v KRPC as generally outside the jurisdiction of the Federal High Court under section 251 of the Constitution. The appropriate court in such a case is the State High Court to the exclusion of the Federal High Court. ONUORAH V KRPC

- b. Comment on the propriety of joining the 2nd Defendant in this suit and whether the Court is competent to entertain the suit against him.

ANSWER TO QUESTION 2 B

By virtue of section 308(1) (a) of the Constitution, no civil proceeding shall be instituted or continued against any person holding the office of governor while he is in office.

Also, by section 308(1) (c) of the Constitution, the appearance of such a person cannot be compelled by any process of court.

Therefore, in the instant case, since the 2nd Defendant is an executive governor of a State, he can neither be sued nor can his presence in such proceeding be compelled by any process of the court.

The action against him is therefore incompetent and the court cannot therefore competently entertain same. TINUBU v IMB; FAWEHINMI V IGP

- c. Assuming during the hearing of this suit, Counsel for the 2nd Defendant urged the Court to strike out paragraph 9 of the statement of claim as well as the claim in paragraph 10(c) against the 2nd Defendant, are there any possible ground or argument in law to support this application?

ANSWER TO QUESTION 2 C

Yes, paragraph 9 raises allegation of illegality (bribery) against the 2nd Defendant. The law requires not only that an allegation of illegality specifically pleaded but **particulars ought also to be furnished**. Adesanya V Otuewu.

Paragraph 9 is vague and does not provide sufficient particulars of the alleged bribery, for example, the place and time of the alleged bribery as well as the purpose of the bribery. Since the particulars are not included, this paragraph is incompetent and liable to be struck out.

Being the only averment in support of the claim against the second defendant, paragraph 10(c), the claim ought to be dismissed against the second defendant on this score.

Secondly, the courts are not to enforce contractual claims that are based on illegality or crime as such would be against public policy.

On this ground also, the claim as it relates to the second defendant ought to fail.

d. Comment on the ethical implication of the signing of the statement of claim by Mr. A.J. Kotoyo.

ANSWER TO QUESTION 2 D

It is an offence under the Legal Practitioner Act for a person other than a legal practitioner to generally practice or hold himself out to practice as a legal practitioner. Section 22 LPA.

Also by rule 3(1) of the Rules of Professional Conduct for Legal Practitioner (2007), it is prohibited for a lawyer to aid a non-lawyer in the unauthorized practice of law or to permit his professional services or his name to be used in aid of or to make possible the authorized practice of law by any person not qualified to practice.

The provisions of section 22 LPA have been breached by AJ Kotoyo who is only a student of law and does not qualify as a legal practitioner as defined by section 24 of the LPA. He is therefore not qualified to practice law as he has done in this case.

The law firm and the partners may also be held responsible for breach of rule 3(1) in this case.

e. Given the facts of this case and assuming the matter was pending before the Lagos State High Court, what procedure would you advised the Claimant to adopt in order to obtain speedy judgment in this suit and state the originating processes/documents required to be filed under this procedure?

ANSWER TO QUESTION 2 E

From the facts of this case, the procedure that would ensure speedy judgment is Order 11 of the High Court of Lagos State (Civil Procedure) Rules 2011.

All that is required to proceed under this rule is that the claimant believes that there is no defence to his claim.

The originating process required to be filed under Order 11 are as follows:

- 1) Writ of Summons
- 2) Statement of Claim
- 3) The exhibits to be relied on at the trial
- 4) Deposition of witnesses on oath
- 5) Monition for summary judgment
- 6) Affidavit in support of motion
- 7) Written belief in support of the motion. Order 11 Rule 1 (Lagos)

QUESTION 3

You received the following note from your Office Clerk.

“Evelyn Okafor entered into a contract I Lagos with Bluecafe Plc. with registered office at No.10 Ikoyi Street, Lagos, to supply 500 tons of Coffee Beans worth N10million only to the company (i.e. Bluecafe Plc.) for the manufacture of Coffee drink. The term of the contract was that down payment of N3million will be made before the supply and that the balance will be paid within 21 days after the goods are delivered to the Company. Subsequent to this, Mrs. Okafor received the sum of N3million and supplied the goods to the Company since then the company has refused to pay Mrs. Okafor the balance sum despite letters of repeated demands sent.

However, on 1st June, 2017, Bluecafe Plc. wrote a letter to Mrs. Okafor of its decision not to pay the balance because the goods supplied were inferior to the standard requested for. Mrs. Okafor wishes that the balance of her contract sum be recovered”.

- a. Your clerk has informed you that Mrs. Okafor would visit the office to see you. What additional facts would you want from her? Also advise her with respect to the options open to her.

ANSWER TO QUESTION 3 A

The additional facts I will want from her are:

- (i) Whether there is any agreement as to a particular or specific standard for the goods to be supplied.
- (ii) Where there is an agreement as to who will certify the standard of goods supplied.
- (iii) The date the goods ought to be supplied.

The option open to her is that I will advise her to try and resort to any of the ADR mechanism to settle the matter before resorting to litigation.

- b. List (with reasons) the matters, you will consider before taking any action in court.

ANSWER TO QUESTION 3 B

The matters I will consider before taking any action in court are:

- 1) Jurisdiction of the court
- 2) The parties to the action
- 3) The cause of action
- 4) Remedies/Reliefs available
- 5) Relevant/Applicable Laws
- 6) Statute of Limitation i.e. whether the matter is statute barred
- 7) Whether there is immunity of any kind
- 8) Whether any condition precedent to instituting an action has been fulfilled i.e. Pre-action Notice.
- 9) Alternative Dispute Resolution.

- c. Assuming the Defendant is one Mr. Artfil Dodger of the same address in the scenario above and he is evading service of the originating process, how will you ensure that he is properly served? Draft the necessary application.

ANSWER TO QUESTION 3 C
IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

Suit No. _____

BETWEEN
EVELYN OKAFOR – CLAIMANT/APPLICANT
AND
ARTFILL DODGER – DEFENDANT/RESPONDENT

MOTION EX PARTE

BROUGHT TO ORDER _____ RULE _____ OF THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2004 AND UNDER THE INHERENT JURISDICTION OF THE COURT

1 mark

TAKE NOTICE that this Honourable Court will be moved on _____ the day of _____ 2018 at the hour of 9 o'clock in the forenoon or so soon thereafter as counsel on behalf of the Claimant/Applicant may be heard praying this Honourable Court for the following orders;

- a) An order for substituted service of the originating process in this action on the Defendant/Respondent by registered post to the last known address or alternatively by advertisement in national daily circulating within jurisdiction of this Court.
- b) For such further or other orders as the Honourable Court may deem fit to grant in the circumstance

Dated this _____ day of _____ 2018

A.E Goodhead
Claimant/Applicant Solicitor
No. 8 Ibekwe Lane,
Ikeja, Lagos

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

Suit No. _____

BETWEEN
EVELYN OKAFOR – CLAIMANT/APPLICANT
AND
ARTFILL DODGER – DEFENDANT/RESPONDENT

AFFIDAVIT IN SUPPORT OF MOTION

I, Ladi Okon, Christian, Male, Nigerian, Bailiff of the High Court of Lagos of No. 273 Igbosere Road, Lagos, hereby make oath and state as follows:

- (1) That I am a bailiff of the High Court of Lagos State in the Lagos Judicial Division
- (2) That by virtue of my position above I am conversant with the facts of this case
- (3) That I have the authority of the Claimant/Applicant to depose to this affidavit.
- (4) That I have made 3 attempts on 3/8/9, 6/8/9, and 8/8/9 respectively to serve the originating process on the Defendant/Respondent by personal service but all the efforts at personal service proved abortive.

- (5) That on all the occasions that I attempted to serve personally, the Defendant/Respondent was evading service.
- (6) That it is therefore necessary effect service on the Defendant/Respondent by substituted means in order to ensure that justice is done in the matter.
- (7) That the Defendant/Applicant will not be prejudiced if this application is granted.
- (8) That I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Oaths Act.

DEPONENT

SWORN TO AT THE HIGH COURT REGISTRY
LAGOS.

THIS ____ DAY OF ____ 2018

BEFORE ME
COMMISSIONER FOR OATHS

- d. Within what time must the writ of summons in Lagos be served after the date of issue and what step(s) would the Claimant take if he is unable to serve within that period?

ANSWER TO QUESTION 3 D

A writ of summons is valid in the first instance of 6months in Lagos after which it becomes invalid. See Or. 6 r. 6 Lagos. Where the claimant is unable to serve within the 6months period, he should before the expiration of the 6months bring an application to the court for the renewal of the life of the writ for a further period of 3 months. The court can only grant 2 renewals in each case provided that originating process shall not be in force longer than for a total period of 12 months. Or. 6 r. 7 Lagos.

However, the Supreme Court held in the case of KOLAWOLE V ALBERTO that a writ of summons can be renewed even after it has expired.

- e. Assuming the defendant is resident in the United Kingdom and does not have a place of business in Nigeria, what step(s) will you take to ensure that he is properly served with the originating process? Would this procedure have been necessary if the Defendant had been resident in or carries on business in Nigeria but in a State different from where the action is commenced?

ANSWER TO QUESTION 3 E

Where an originating process is to be served in the United Kingdom, I will have to ask for leave of court for the writ to be issued and served out of jurisdiction in the foreign country and require an endorsement on the writ that is to be served outside the jurisdiction of Nigeria. The originating process shall be sealed with the seal of the court and shall be transmitted by the chief Registrar of the court to the Solicitor general who shall thereafter further transmit it to the appropriate authority in that country for service on the Defendant/Respondent.. It must also be ensured that the Defendant is given not less than 30 days to answer to the writ under S.99 of the SCPA but in Lagos the Defendant here may get up to 42 days since the Lagos rules requires him to appear within the said 42 days.

Where the defendant is resident in or carries on business in Nigeria but out of its jurisdiction of the court, there will be no need for leave to issue and serve the writ out of jurisdiction since the whole of Nigeria is one jurisdiction under the Sheriff and Civil Process Act. See Adegoke Motors v Adesanya. However there will still be need to endorse the writ for service out of jurisdiction and the defendant must be given not less than 30 days to enter appearance, and in the case of Lagos not less than 42 days.

QUESTION 4

Boeing 727 belonging to Solo Air, an airline owned by Solo Nigeria Limited with registered address at No. 1, Solo Arenna, Ikeja, Lagos crashed on the 1st APRIL, 2018 while on a scheduled commercial flight 224 from Abuja to Lagos. All passengers on board died. Investigation revealed that the crash was due to gross negligence of the owners of the plane who allowed it to fly though there was a serious need of repair. Chief Sola Agbe and Dr. James Martins were two of the passengers who died in the crash. Kola Agbe is the eldest son and executor of the estate of Chief Sola Agbe whilst Odu Martins is the eldest son and executor of the estate of Dr. James Martins. On the day of the crash, Fred Fakunle, a Lagos Lawyer went to the scene and persuaded the families of Chief Agbe and Dr. Martins to retain his services for the purpose of claiming compensation from the Airline. The Airline has now refused to pay compensation to the two families without giving any reason. Fred Fakunle has concluded plans to commence proceedings in court against the Airline.

(a) Before which Court will the action(s) be commenced. Explain

ANSWER TO QUESTION 4 A

The Federal High Court. The reason is one of the items that falls under the exclusive jurisdiction of the Federal High Court is aviation and safety of aircraft as provided under section 251 (1) (k). In the instant case, the subject matter borders on aviation and as such it falls under the exclusive jurisdiction of the Federal High Court as a court of special jurisdiction.

(b) Fred Fakunle is not sure whether to commence the claims of the two families in one suit. Advise him.

ANSWER TO QUESTION 4 B

In Civil Litigation, actions may be instituted by one or more plaintiffs or defendants for and on behalf of other parties to the suit. The conditions to be fulfilled or satisfied before a representative action can be sustained are;

- Common interest of all parties involved
- Consent of all parties must be sought and obtained
- The grievances must be the same
- The relief sought must be the same

In the instance case, Fred Fakunle can commence the claim of the two families in one suit as long as the above conditions are complied with.

(c) Assuming Fakunle is to commence proceedings at the Lagos High Court on behalf of the families of all those who died in the crash but he cannot identify all of them at the time of commencing the action, set out in numbered paragraphs the procedure he will follow in commencing the action.

ANSWER TO QUESTION 4C

- Appointment of person or persons that will represent others in the suit.
- Applying to the court by way of motion ex parte for approval to institute a class action on behalf of all both the ascertained and unascertained
- Approval by the court to institute a class action.
- Institution of class action on behalf of all parties involved.

(d) Assuming Fakunle is to commence proceedings at the Lagos High Court on behalf of Chief Agbe's family for N100million as general damages for the loss of their breadwinner, draft the statement of claim of not more than ten paragraphs.

ANSWER TO QUESTION 1D

**IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS**

SUIT NO _____

BETWEEN

KOLA AGBE (Suing on behalf of the

Estate of Chief Solo Agbe) _____ CLAIMANT

AND

SOLO NIGERIA LIMITED _____ DEFENDANT

STATEMENT OF CLAIM

1. The Claimant is the eldest son and executor of the estate of Chief Sola Agbe one of the victims of the ill-fated air crash.
2. The Defendant is an air line Company with registered address at No. 1, Solo Arena, Ikeja, Lagos State.
3. The Claimant avers that on the 1st APRIL 2018, he took his Late Chief Kola Agbe to the Nnamdi Azikiwe International Air Port to catch up with his scheduled flight to Lagos.
4. The Claimant avers that he and his other siblings were worried when they did not receive any phone call from their father as to wheth he had touched down or not.
5. The Claimant avers that it was not until about 6 O'clock in the evening on the same day that he got wind of the information that the Polo Aircraft belonging to the Defendant Company which his father boarded has crashed leaving every passenger on board dead including his father.
6. The Claimant avers that investigation revealed that the crash was due to gross negligence of the owners of the plane who allowed it to fly though there was a serious need of repair.
7. The Claimant avers that it has not been easy for him and his siblings as they now depend on charity and good will from friends and relatives to feed.

WHEREOF the Claimant claims as follows:

8. The sum of N100 million as general demages for the loss of their bread winner.

Dated this 8th day of April, 2018

**SIGNED
CLAIMANT'S COUNSEL
20 OPEBI STREET
IKEJA
LAGOS STATE.**

**FOR SERVICE ON
THE DEFENDANT COY
C/O THEIR COUNSEL
U.O. OBASI (ESQ)
20, KOKO CLOSE
V.G.C.
LAGOS STATE**

(e) Assuming after the service of the originating processes in the action in (d) above on the Airline, the Airline decides to bring in A&G Insurance Plc, the insurers of the Airline into the action for the purpose of claiming indemnity from the insurers, draft the application to be filed on behalf of the Airline for this purpose (without any supporting document).

**ANSWER TO QUESTION 4 E
IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS.**

SUIT NO _____

**BETWEEN
KOLA AGBE _____ CLAIMANT
AND**

**SOLO NIGERIA LIMITED _____ DEFENDANT/APPLICANT
AND
A & G INSURANCE PLC _____ 3RD PARTY**

MOTION EX PARTE

**BROUGHT PURSUANT TO ORDER _____ RULE _____ OF THE COURT RULES AND
UNDER THE INHERENT JURISDICTION OF THIS HONORABLE COURT.**

TAKE NOTICE that the Honorable Court will be moved on the _____ day of _____ 2018 at the hour of 9 O'clock in the forenoon or so soon thereafter as counsel maybe heard on behalf of the Defendant/Applicant praying for the following orders;

1. An order of the court to serve a 3rd party notice on A & G Insurance Plc to appear in this action for the purpose of Claiming indemnity against it.
2. Such further order or orders as the court may deem fit to make in the circumstances.

Dated this 8th day of April, 2018

**SIGNED
APPLICANT'S
COUNSEL
20 KOKO CLOSE
V.G.C
LAGOS STATE**

(f) State the steps to be taken in the case after the application in (e) above has been granted by the Court.

ANSWER TO QUESTION 4 F

The step to be taken is that the court will upon payment of the fees for service on the 3rd party, serve the 3rd party notice on the 3rd party for them to appear in court within 8 days or

any time as the court may order on the notice and the 3rd party upon appearance within the stipulated time, shall apply for 3rd party directions in the prescribed form.

- g. Assuming the Court refused to grant the application in (1e) above on the 1st June 2018 and you were briefed on the 2nd July, 2018 to appeal against the decision, draft the process you will file in order to commence a valid appeal (without any supporting document).

**ANSWER TO QUESTION 1G
IN THE COURT OF APPEAL OF NIGERIA
HOLDEN AT LAGOS**

**SUIT NO: LAG/2018
APPEAL NO _____**

BETWEEN
SOLO NIGERIA LIMITED _____ APPELLANT/APPLICANT
AND
KOLA AGBE (Suing on behalf of the
Estate of Chief Solo Agbe) _____ CLAIMANT/RESPONDENT
A& G INSURANCE PLC _____ THIRD PARTY/ RESPONDENT

MOTION NOTICE

**BROUGHT PURSUANT TO ORDER _____ RULE _____ OF THE COURT OF APPEAL
RULES 2016 AND UNDER THE INHERENT JURISDICTION OF THIS HONORABLE COURT.**

TAKE NOTICE that the Honourable Court will be moved on the _____ day of _____ 2018, at the hour of 9 O'clock on the forenoon or so soon thereafter as counsel may be heard on behalf of the Appellant/Applicant praying for the following orders:

1. An order for extension of time within which to seek leave to appeal
2. Leave to Appeal
3. Extension of time to file notice of Appeal
4. Such further order or orders as the court may deem fit to make in the circumstances.

Dated this 8th day of April, 2018 .

**SIGNED
APPLICANT'S COUNSEL
20 KOKO CLOSE
VICTORIA GARDEN CITY
LAGOS STATE.**

**FOR SERVICE ON
THE RESPONDENT
C/O THEIR COUNSEL
FRED FAKUNLE (SAN)
20 OPEBI STR
IKEJA, LAGOS.**

- h. Comment on the manner Fakunle got the brief in this case.

ANSWER TO QUESTION 4 H

Under the relevant provision of the Rules of Professional Conduct for legal practitioners, it is highly unethical for a legal practitioner to instigate action just because of what he can get instead of

advising on possibility of exploring an alternative dispute resolution. On the issue of approaching the clients for retainership, the act amount to touting which is an example of an improper attraction of business as stipulated under Rule 39 of the RPC. In the instant case, the manner with which Fred Fakunle got the brief is highly unethical as such act brings to disrepute the sanctity of the Legal Profession.

- i. Fakunle intends to call the Minister of Aviation as a witness at the trial of the case in (d) above but is not sure whether or not the Minister is a compellable witness. Advise him.

ANSWER TO QUESTION 4 I

By virtue of section 308 of the constitution of the Federal republic of Nigeria, 1999 as Amended, only the president, the vice president, a State Governor and a Deputy State Governor are covered by immunity from courtactions during the pendency of their office. In the instant case, I advise Fakunle to explore all means to bring the minister to court as a witness at the trial as he is not covered by any kind of immunity and as such he is a compellable witness.

- j. Fakunle has acted for Sole Airline in 2015 and in the course of his engagement, he had replied a query from the Airport Authority of Nigeria on the airworthiness of the plane involved in the crash. Comment on the propriety of Fakunle's appearance for the families.

ANSWER TO QUESTION 4 J

Once of the duties of a Legal Practitioner is duty to accept brief in the principle of the 'cab rank rule'. **Rondell v Worsley**. Where a legal practitioner is briefed to prosecute a civil suit against his former employer, he must first of all disclose such relationship to the new client and whatever confidential information he has about the former client should not be used against the former client in prosecuting the matter for the new client.

In the instant case, Fakunle is under an obligation to disclose to the family about his previous dealings with Solo Airline to afford the family to decide as to whether they can still use him or not.

- k. In the course of trial, Fakunle was called as a witness for the families. He intends to give evidence from the Bar. Comment.

ANSWER TO QUESTION 4 K

Where a legal practitioner is called to testify as a witness in an action, it is a mandatory requirement that he must de-rob himself before stepping into the witness box and it is only inside the witness box that he must testify. In the instant case: Fakunle cannot testify as a witness from the Bar except on a special consideration e.g health ground.

- l. Assuming that it is now over two (2) months since service of the writ and statement of claim on the defendant and the defendant wishes to file a statement of defence, advise the defendant on what will be done. Prepare the necessary documents (without the statement of defence.)

ANSWER TO QUESTION 4 L

The defendant shall file an application for extension of time to file his defence since he is out of time.

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO _____

BETWEEN
SOLO NIGERIA LIMITED _____ DEFENDANT/APPLICANT
AND
KOLA AGBE (Suing on behalf of the
Estate of Chief Solo Agbe) _____ CLAIMANT/RESPONDENT

MOTION NOTICE

BROUGHT PURSUANT TO ORDER _____ RULE _____ OF THE COURT RULES AND
UNDER THE INHERENT JURISDICTION OF THIS HONORABLE COURT.

TAKE NOTICE that the Honourable Court will be moved on the _____ day of _____ 2012,
at the hour of 9 O'clock in the forenoon or so soon thereafter as counsel may be heard on behalf of
the defendant/Applicant praying for the following orders;

1. An order for extension of time to file statement of defence to this suit.
2. Such further order or orders as the court may deem fit to make in the circumstances.

Dated this 8th day of April, 2018

SIGNED
APPLICANT'S COUNSEL
20 KOKO CLOSE
VICTORIA GARDEN CITY
LAGOS STATE.

FOR SERVICE ON
THE RESPONDENT
C/O THEIR COUNSEL
FRED FAKUNLE (SAN)
20 OPEBI STR
IKEJA, LAGOS.

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO _____

BETWEEN
SOLO NIGERIA LIMITED _____ DEFENDANT/APPLICANT
AND
KOLA AGBE (Suing on behalf of the

AFFIDAVIT IN SUPPORT

I, Chester Mani, Adult, Male, a Christian and a Nigerian Citizen and a staff of Solo Nigeria Limited do make oath and State as follows:

1. That I am the secretary to the Applicant Company and also the head of legal department and by virtue of which I am conversant of the facts of the case.
2. That I have the authority of the Applicant Company to depose to this affidavit on its behalf
3. That the originating processes were served on our company on the 15th of May, 2018 through our lawyer.
4. That upon being served with the processes, made frantic effort to get our layer to commence preparation of our defence as to meet up with filing within the statutory period.
5. That to our utmost dismay, our lawyer was out of the country for medical treatment and routine checkup and he just came back 3 day ago.

A copy of the medical report brought by our lawyer is hereby attached to this affidavit and Marked **EXHIBIT A**.

6. That it will be in the interest of justice to grant this application.
7. That I depose to this affidavit in good faith believing its contents to be true and in accordance with the oaths Act.

DEPONENT

Sworn to at the High Court Registry

Lagos this _____ day of _____ 2018

BEFORE ME

COMMISSIONER FOR OATHS

IN THE HIGH COURT OF LAGOS STATE
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO _____

BETWEEN

SOLO NIGERIA LIMITED _____ DEFENDANT/APPLICANT

AND

KOLA AGBE (Suing on behalf of the

Estate of Chief Solo Agbe) _____ CLAIMANT/RESPONDENT

WRITTEN ADDRESS

INTRODUCTION

ISSUES FOR DETERMINATION

**ARGUMENT
CONCLUSION**

Based on the points highlighted above with the authorities both judicial and statutory, I hereby humbly submit that the Honourable Court has the power to grant this application and urge your Lordship to grant same in the interest of Justice.

May it please the Honourable Court.

**SIGNED
APPLICANT'S COUNSEL
20 KOKO CLOSE
VICTORIA GARDEN CITY
LAGOS STATE.**

**FOR SERVICE ON
THE RESPONDENT
C/O THEIR COUNSEL
FRED FAKUNLE (SAN)
20 OPEBI STR
IKEJA, LAGOS.**

QUESTION 5

Mr. Dudu Osu is a commercial Okada (motor cycle) rider who plies Ikorodu Road of Lagos State on hourly basis everyday. On the 10th January, 2016, while riding along Ikorodu Road he was accosted to stop by the security operatives in the convoy of the Lagos State Governor in order to allow the Governor to pass. Having been stopped on highway, he tried to move forward a bit with a view to looking for a convenient place to part. His movement was regarded to be failure to obey the instruction of the security operatives and as such he was mercilessly beaten and later shot in his two legs. Meanwhile, one Mr. Dudu’s colleagues took pictures of the scene with his GSM camera phone. Dudu was later rushed to the hospital and he has been on admission since then with medical expenses of N758,000.00 Chief Gogo Osu (Dudu’s uncle) has decided to enforce the rights of Dudu Osu on his behalf and approached you on 17th July, 2018 to carry out all necessary legal actions.

Answer the following questions: -

- i Draft all necessary processes which you will file in respect of the suit, under the Fundamental Rights Enforcement Procedure Rules.

ANSWER TO QUESTION 5 (i)

**IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS**

SUIT NO _____

**IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS
AND
IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT) PROCEDURE RULES 2009**

BETWEEN

**MR. DUDU OSU (SUING BY HIS
UNCLE CHIEF GOGO OSU).....APPLICANT**

AND

**STATE SECURITY SERVICES
ATTORNEY GENERAL OF LAGOS STATE }RESPONDENT**

MOTION ON NOTICE

**BROUGHT PURSUANT TO ORDERRULEOF THE FUNDAMENTAL RIGHTS
ENFORCEMENT PROCEDURE RULE 2009 SECTION 34 OF THE CONSTITUTION OF THE FRN AND
UNDER THE INHERENT JURRIDISDICTION OF THE COURT.**

TAKE NOTICE that the Honourable Court will be moved on the _____ day of _____ 2012, at the hour of 9 O’clock in the forenoon or so soon thereafter as counsel may be heard on behalf of the Applicant praying for the following orders:

1. An order to enforce the Applicant’s fundamental right to dignity of human person as entrenched in section 34 of the 1999 constitution of FRN as Amended.
2. Such further order or orders as the Court may deem fit to make in the circumstances.

Dated this 8th day of May, 2018

SIGNED
APPLICANT'S COUNSEL
20 KOKO CLOSE
V.G.C, LAGOS.

FOR SERVICE ON
THE RESPONDENTS
C/O A.G.
MINISTRY OF JUSTICE
LAGOS STATE.

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO _____

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS
AND
IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT) PROCEDURE RULES 2009

BETWEEN
MR. DUDU OSU (SUING BY HIS
UNCLE CHIEF GOGO OSU).....APPLICANT

AND
STATE SECURITY SERVICES
ATTORNEY GENERAL OF LAGOS STATE }RESPONDENT

AFFIDAVIT IN SUPPORT

I, Chief Gogo Osu, Adult, Male, a Pegan and Nigerian Citizen of 25 Melany Street Somolu Lagos State do hereby make Oath and state as follows:

1. That I am an uncle to the Applicant and by the virtue of which I am conversant with the facts deposed herein.
2. That I have the authority of the Applicant to depose to this affidavit on his behalf
3. That the Applicant is a commercial Okada (motor cycle) rider who plies Ikorodu Road of Lagos State on hourly basis everyday
4. That the Applicant informed me of the facts deposed here under in paragraph 4a-e which information I verily believe to be true as follows
 - a. That on the 10th January, 2016, while riding along Ikorodu Road he was accosted to stop by the 1st Defendant in the convoy of the 3rd Defendant in order to allow the 3rd Defendant to pass.
 - b. That having been stopped on highway he tried to move forward a bit with a view to looking for a convenient place to park
 - c. That his movement was regarded by the 1st Defendant to be failure to obey the instruction of the 1st Defendant.
 - d. That as a result of the misconception of the 1st Defendant as to the intention of the Applicant, he was mercilessly beaten and later shot in his two legs.

- e. That he was later rushed to the hospital and he has been on admission since then with medical expenses of N758,000.00. the document evidencing the said medical expenses are annexed to this affidavit and marked Exhibits A, B, and C respectively.
- 5. That the Applicant has been in so much pain and it has affected his wife and two children so adversely.
- 6. That it will be in the interest of justice to grant this application.
- 7. That I depose to this affidavit in good faith believing its contents to be true and accordance with the Oaths Act.

DEPONENT

**Sworn to at the Federal High Court Registry
Lagos this _____ day of _____ 2018**

**BEFORE ME
COMMISSIONER FOR OATHS
IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS**

SUIT NO _____

**IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS
AND
IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT) PROCEDURE RULES 2009**

BETWEEN
**MR. DUDU OSU (SUING BY HIS
 UNCLE CHIEF GOGO OSU).....APPLICANT**
AND
**STATE SECURITY SERVICES
 ATTORNEY GENERAL OF LAGOS STATE }RESPONDENT**

STATEMENT, NAME AND DESCRIPTION OF THE APPLICANT

Name:	Mr. Dudu Osu
Place of Birth:	Lagos State
State of Origin:	Benue State
Marital Status:	Married with two children
Age:	36 years of age
Sex:	Male

RELIEF SOUGHT

1. A Declaration that the act of the 1st Defendants amount to an infringement on the Applicant's right to dignity of human person as entrenched in section 34 of the constitution of the FRN, 1999 Amended
2. Sum of N758,000.00 being the cost of medical expense
3. Sum of N5,000,000 as general damages for all the trauma, pains and deprivation caused as a result of the action of the Defendant
4. Such further order or orders as the Court may deem fit to make in the circumstances.

Dated this 8th day of May, 2018

SIGNED
APPLICANT'S COUNSEL
20 KOKO CLOSE
V.G.C, LAGOS.

FOR SERVICE ON
THE RESPONDENTS
C/O A.G.
MINISTRY OF JUSTICE
LAGOS STATE.

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

SUIT NO _____

IN THE MATTER OF AN APPLICATION FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS
AND

IN THE MATTER OF FUNDAMENTAL RIGHTS (ENFORCEMENT) PROCEDURE RULES 2009
BETWEEN

MR. DUDU OSU (SUING BY HIS
UNCLE CHIEF GOGO OSU).....APPLICANT

AND

STATE SECURITY SERVICES
ATTORNEY GENERAL OF LAGOS STATE }RESPONDENT

WRITTEN ADDRESS

INTRODUCTION
ISSUES FOR DETERMINATION
ARGUMENT
CONCLUSION

We humbly submit that the Fundamental Human Right of the Applicant were grossly related and hereby urge your Lordship to grant him the relief he is seeking from the Court in the interest of justice.

May it please the Court.

Dated this 8th day of May, 2018

SIGNED
APPLICANT'S COUNSEL
20 KOKO CLOSE
V.G.C, LAGOS.

FOR SERVICE ON
THE RESPONDENTS
C/O A.G.
MINISTRY OF JUSTICE
LAGOS STATE.

- ii Assuming that you attached copies of the photographs taken with the cell phone to the affidavit and the defendants filed an affidavit in opposition stating that the photographs were doctored, how will you ensure that the photographs are admitted by the Court?

ANSWER TO QUESTION 5 (ii)

By either laying proper foundation for its admissibility since photograph is a secondary evidence or producing the phone with which the photograph was taken or the memory card.

- iii On the day of hearing of the suit, as you intend to announce your appearance, one Barrister Fastnian stood up to announce appearance for and on behalf of Chief Gogo Osu. Barrister Fastinan informed the court that you have been debriefed and that he has taken over the case based on the instruction received from Chief Gogo Osu. Comment on the ethical conduct of Barrister Fastinan in respect of his actions.

ANSWER TO QUESTION 5 (iii)

One of the duties of a Legal Practitioner under the Rules of professional conduct for Legal Practitioner is to respect and protect the interest of his colleague at the bar.

In the instant case, conduct of Barrister Fastinan is ethically wrong as what he ought to have done was to make sure that I have been properly debriefed by making sure that I get all my fees before announcing in open court that I have been debriefed.

- iv List the parties to be made defendants in this case.

ANSWER TO QUESTION 5 (iv)

1. Lagos State Security Service
2. Attorney General of Lagos State.

QUESTION 6

Mr. Susan is a graduate of accountancy from Bayero University Kano and also a chartered accountant. He has since started his own office in Kaduna State. His family has been custodian of Omowo of Onoma, a highly esteemed traditional stool in Onoma Village in Kaduna State. He therefore has been actively participating in all the village activities, particularly politics so that he might be nominated and chosen one day to be the next Omowo of Onoma. Nevertheless, this irritates all the village elders who see him as a threat and obstacle against their full control of village politics and activities.

During one of his visits to Onoma on the 13th of April, 2018 some youths stoned his car calling him “thief, thief”. On reaching the police station to make a complaint the D.P.O informed him of a pending complaint against him by village elders. He was therefore detained in the police station pending when the village elders make decision on him. The village elders made their decision yesterday that the D.P.O should release him on condition that he would never come to the village again, except on their invitation. Mr. Susan is desirous of enforcing his fundamental rights and approaches you for legal advice.

Answer the following questions:-

- a. Enumerate the procedures to follow to successfully enforce Mr. Susan’s fundamental rights.

ANSWER TO QUESTION 6 A

The procedure to be followed in enforcing Mr. Susan’s fundamental rights is as follows:

Step 1: He must first apply for leave to enforce his right. The application is by motion ex parte supported by:

1. A statement setting out the name and description of the applicant, the reliefs sought and the grounds on which the reliefs are sought.
2. An affidavit verifying the facts relied on.

The application for leave to apply to enforce his fundamental rights shall be made within 12 months from the date of the event.

Step 2: The substantive application for enforcement of fundamental rights by notice of motion or by originating summons. The substantive application must also be supported by a statement setting out the name and description of the applicant, the relief sought and the ground on which it is sought and an affidavit verifying the facts. There must be at least 8 clear days between the service of the motion or summons and the date fixed for hearing. Also, the motion or summons must be entered for hearing within 14 days after leave has been granted. See O. 2 R. (1) & (2) Fundamental Rights Enforcement Rules.

Step 3: Hearing of the application. The court can make any of the following orders at the hearing;

1. An order granting the application for bail
2. An order for the production of the applicant before the court
3. Access to Medication
4. Damages

- b. Having heard of Mr. Susan’s success in his application for leave to enforce his fundamental rights, Mr. Susan who is Mr. Susan’s uncle and who contested for Omowo of Onoma last year wants to enforce his right to that title. Advise him accordingly.

ANSWER TO QUESTION 6 B

The procedure for enforcement of fundamental rights is available to a person whose rights under Chapter 4 of the Constitution have been infringed. Chieftaincy matters are not covered by these provisions of the constitution. Consequently, Mr. Susan enforces his right to the title of Omowo of Onoma, because such claim is in extraneous matter which is not a fundamental rights claim under Chapter 4 of the 1999 Constitution. TUKUR V. GONGOLA STATE.

- c. While Mr. Susan's lawyer in (b) above interviewing him, he discovered that a car was snatched from his client by the village elders. He therefore wants to use this opportunity to incorporate that claim to be the main claim under which to bring the claim for enforcement of Mr. Susan's fundamental right. Is this appropriate.

ANSWER TO QUESTION 6 C

No, it is not appropriate for the procedure for enforcement of Fundamental Rights to be applicable the main claim must relate to an infringement of Chapter 4 rights. Therefore in this case where the claim sought to be incorporated in the fundamental right procedure relates to theft, it will be inappropriate to do so. TUKUR V. GOVT OF GONGOLA STATE

- d. Make a case for and against the use of Fundamental Rights Enforcement Procedure Rules to enforce Susan's fundamental right in this case against the use of writ of summons.

ANSWER TO QUESTION 6 D

Generally, procedure under the rules is not the only procedure for seeking redress for infringement of fundamental rights and that such rights may be enforced by any other means by which the court can be approached and this includes by way of writ of summons. Abacha v. Fawehinmi

QUESTION 7

In a recently concluded Governorship Election of Kwara State, Dr. Sulu Ajala of the Peoples Party (PPP) was declared the winner having scored the highest votes of 2,500,302. Senator Goodwill Musa contested for the election under Alliance Amnesty Party (AAP) and scored 705,930 votes while Mallam Yusuf Damson scored 52,783 votes as the candidate for Redeem Party (RD). The result of the election was declared don 4th January, 2013 by the Chief Electoral Officer of the State. Not satisfied with the result of the election, Senator Goodwill Musa of the AAP intends to challenge the result of the election. His grounds are that Dr. Sulu was once convicted of a criminal offence in 2002, that there was mass rigging in about four Local Government Areas with a manifest double voting and that Dr. Sulu has not paid his taxes in the last four years.

Senator Goodwill Musa brief Chief Baguda (SAN) to represent him. In the negotiations on his bills, Chief Baguda (SAN) demanded for the sum of N100million from which about N30million will be used to “settle” members of the Election Tribunal. Chief Baguda (SAN) assured Senator Goodwill of judgment of the Tribunal in his favour as election matters are his special area of practice having won election matters for about five governors in the past. On 24th January 2013, Chief Baguda (SAN) filed the petition on behalf of Dr. Sulu.

Answer the following questions;

- a. What are the ethical issue(s) involved in this case?

ANSWER TO QUESTION 7 A

Two ethical issues are involved in this case and they are:

1. The lawyer collected money to bribe the members of the Selection Tribunal Panel. This is a conduct calculate to corrupt judicial officers and or public officer and in clear violation of R. 15 (3) (a) of the RPC.
2. The layer also gave assurances that he will win the case since election matters are his area of specialization having won several cases for former governors. This amounts to improper advertisement and soliciting for briefs. This is a violation of R. 39(2)(d) which prohibits statement from lawyers about the quality, size and success of their practice or their success rate.

- b. In not more than half of a page, write your submission to the Tribunal’s request to address it on the allegation of conviction and sentence your client (Dr. Sulu) in 2002.

ANSWER TO QUESTION 7 B

Generally, a person convicted and sentenced of a criminal offence involving fraud cannot contest for any political office in Nigeria. However, such conviction must be within the last 10 years of the date of such election to disqualify him.

In the instant case, assuming without conceding that Dr. Sulu Ajala was previously convicted and sentenced of a criminal offence, it is not stated whether the offence was one involving dishonesty or fraud, in the absence of any such proof, the doubt must be resolved in favour of Dr. Sulu Ajala.

Secondly, the alleged offence took place eleven years before the election, a year outside the prescribed period of 10 years. Therefore, Dr. Ajala will not be caught up by this provision. This objection must be thrown into the garbage bin for being misconceived and calculated to deceive and smirch the personality of the 1st Respondent. May it please the Tribunal.

- c. Chief Baguda (SAN) wishes to call two witnesses (who are not his witnesses); Professor G. Kaka to come and tender a document vital to the proceedings and Mrs. Alice Ajibade (an INEC official) to

come and testify on an issue raised during trial, what are the procedure(s) necessary to ensure that they are before the Tribunal?

ANSWER TO QUESTION 7 C

To secure the attendance of Prof. G. Kaka to tender the document on a particular date, Chief Baguda (SAN) will need to apply for subpoena duces tecum.

For Mrs. Alice Ajibade to come and testify in the trial, Chief Baguda (SAN) will apply for subpoena ad testificandum.

- d. The trial of the Tribunal lingers from 24th January, 2013 till 20th July, 2013 when the judgment was delivered in favour of Dr. Sulu, comment on the validity of the judgment.

ANSWER TO QUESTION 7 D

The judgment delivered on the 20th July, 2013 when petition was filed since 24th January 2013 is invalid having gone beyond the 180 days within which judgment must be delivered in election petition. See S 285(6) 1999 Constitution as amended. S. 134(2) Electoral Act, Adesule v Meyowa.

Thus any judgment rendered outside the 180 days is null and void and of no effect. Marwa v Nyanko

- e. Within what time should the Appeal Court determine and dispose the appeal?

ANSWER TO QUESTION 7 E

An appeal involving election matters should be determined and disposed of within a period of 60 days. See S. 295(7) of the 1999 Constitution as amended: Marwa v Nyanko.

- f. The respondent has engaged the services of a new Counsel to take up the matter and disengaged the service of his former Counsel, explain the procedure the new Counsel needs to follow.

ANSWER TO QUESTION 7 F

Ordinarily, counsel should not interfere with a matter when a client is already being represented by another lawyer. **R. 26(4) RPC.**

However, where the client engages the service of a new counsel in a matter being prosecuted or defended by a lawyer, the procedure is that the new counsel must

1. Promptly give notice of his appointment to the former counsel
2. Use all his good endeavours to ensure that all fees owed to the former counsel are paid, and
3. Finally, both counsel should notify the court of the change in counsel. See R. 29 RPC. 2 marks

QUESTION 8

Ife Martins married Aisha Martins at the Ikoyi Marriage Registry, Lagos on March 1, 2015. Since the marriage, Ife Martins has been permanently sad and is already suffering from some mild form of depression because Aisha has steadily and nonchalantly committed adultery with one Alhaji Olowode, a multi-billionaire. Also Aisha has persistently refused consummate the marriage. Recently, Aisha moved out of the matrimonial home and she has moved in with Alhaji Olowode for who she is pregnant at the marriage. Ife wants to dissolve the marriage and has approached you as a counsel for your legal services. He also wants to join Chief Olowode as a party to the suit.

Answer the following questions:-

- a. Advise Ife on the condition(s) precedent to the court assuming jurisdiction in the matter.

ANSWER TO QUESTION 8 A

The conditions precedents to the court assuming jurisdiction in the matter are:

1. The Marriage must be a Statutory Marriage that was contracted under the Marriage Act. *Chukwuma v. Chukwuma*.
 2. The petitioner must be domiciled in Nigeria. S.2 (2) MCA.
- b. Relying on the provisions of S.15 (2) Matrimonial Causes Act, on what fact(s) can Ife Martins rely on to bring an end to the marriage?

ANSWER TO QUESTION 8 B

The facts stated under S. 15(2) MCA on which Ife Martins can rely on to bring end to the marriage are;

1. That the Respondent has willfully and persistently refused to consummate the marriage
 2. That since the marriage, the Respondent has committed adultery and the Petitioner finds it intolerable to live with the Respondent
 3. That since the marriage, the Respondent has behaved in such a way that the Petitioner cannot reasonably be expected to live with the Respondent. **S.15 (2) (a-c) MCA**
- c. State all the documents that you will file in court at the time of commencing the action and their purpose.

ANSWER TO QUESTION 8 C

The documents that I will file in court at the time of commencing the action and their purpose are:

1. **The Petition:** this is the court process by which the action will be commenced
2. **Notice of Petition:** this gives notice to the Respondent that a petition has been filed against her and also gives instructions as to the steps the Respondent may wish to take in the matter.
3. **Acknowledgement of Service:** This is proof that the petition has been served on the respondent. It is also be this means that the Respondent will indicate whether or not she intends to defend the action. All these information will be completed in the acknowledgement of service and returned to the Registrar of the court.
4. **Marriage Certificate:** This is to establish that a valid marriage exists between the parties which is sought to be dissolved.
5. **Verifying Affidavit:** This is to verify on oath the truthfulness of all the facts stated in the petition.

6. **Certificate of Reconciliation:** This shows that counsel had made attempts to reconcile the parties.

- d. Advice Ife Martins on the conditions that must be fulfilled before he can join Alhaji Olowode as a party in the action in view of the adultery committed.

ANSWER TO QUESTION 8 D

Before Ife Martins can join Chief Olowode as a party in the action in view of the adultery committed he must fulfill the following conditions:

1. He must have pleaded adultery as a fact he is relying upon to dissolve the marriage.
 2. He must not have condoned the adultery committed by the Respondent
 3. The adultery must not have been committed for a period of more than 3 years before the date of the petition.
- e. Assuming that during trial Ife Martins want to tender the email correspondence between Aisha and Chief Olowode which he printed from the computer, state the conditions that must be fulfilled before they can be admissible in evidence.

ANSWER TO QUESTION 8 E

The condition that must be fulfilled in order to tender an email correspondence between Aisha and Chief Olowode which was printed from the computer is to lay proper foundation by producing a certificate or oral evidence by a person having control of the computer testifying to the fact that:

1. That the said document was produced by a computer which was, at the material time, in regular use of storing and processing information.
2. That the document was produced by the computer in the ordinary course of business
3. That the computer was in good condition at all material times or to the extent that the computer did not properly work, it had not affected the production of the email/document. **S. 84 Evidence Act, 2011; Kubor v. Dickson**

QUESTION 10

Chief Olowo is the landlord of Onwambe Lodge consisting of 6 flats of 4bedrooms each. Mr. Dauda Kareem is tenant in respect of one of the flats. The three copies of the tenancy agreement were signed by Chief Olowo and Mr. Kareem. The agreement provides that the tenancy shall be a yearly tenancy commencing rom 1st of January every year at a rent of N500, 000 per annual. After paying for the two years in 2005/2006, Mr. Kareem has refused to pay further rents, although still remaining in possession of the house till date. Chief Olowo has now briefed you to take necessary steps for the purpose of recovering possession from Kareem through an action in court.

Answer the following question

- a. In numbered paragraphs, set out the steps you will take to actualize the instruction of chief Olowo.

ANSWER TO QUESTION 10 A

1. To recover possession from Kareem, it is necessary to serve a statutory notice to quit on the tenant.
 2. After the notice to quit has elapsed and the tenant still refuses and/or neglects to give up possession, a notice of the owner's intention to apply to the court to recover possession (otherwise known as 7 days' notice) should be served on the tenant
 3. After service of the notice of intention to recover possession where the tenant refuses to give up possession, the writ or plaint/ claim for the recovery of possession is now filed in the court.
- b. Draft a notice to quit determining Mr. Kareem's tenancy.

ANSWER TO QUESTION 10 B

To Mr. Dauda Kareem,
Onwambe Lodge
1, Olowo Street,
Lagos.

NOTICE TO QUIT

I, _____ as legal practitioner to Chief Olowo, your landlord, and on his behalf, do hereby give notice to quit and deliver possession of the 4-bedroom flat and its appurtenances, situate at Onwambe Lodge, 1 Olowo Street, Lagos which you held of him as a yearly tenant thereof on the 31st Day of December 2009.

Dated this ___ day of ___ 2018

(Name)

Legal practitioner to the landlord,
Chief Olowo
1, Law School Street, Lagos

- c. Can chief Olowo tender his own copy of the agreement as primary evidence in this case?

ANSWER TO QUESTION 10 C

Yes, Chief Olowo can tender his own copy of the agreement since the 3 copies of the agreement were all signed or executed by both parties thereto. The 3 copies having been executed qualify as primary evidence- either as documents executed in parts or counterparts.

See section 94 Evidence Act.

- d. Assuming chief Olowo intends to tender photocopy of the notice to quit served on Kareem, the original of which is that Kareem, what proper foundation must chief Olowo play?

ANSWER TO QUESTION 10 D

The foundation needed in order to give secondary evidence of photocopy of the notice to quit is to show that the original copy is with the defendant, Mr. Kareem. Section 96 & 97 (1) Evidence Act

- e. After accepting chief Olowo's brief, under what circumstance can you withdraw from such brief?

ANSWER TO QUESTION 10 E

After accepting Chief Olowo's brief, counsel can only withdraw for good cause, i.e.

1. Where there is a conflict of interest
2. Where the client insists against counsel's remonstrance, to pursue an immoral or unjust cause
3. When there is disagreement on fee
4. Where the client insists on immoral defence