

S.I. 1 of 1979

THE CONSTITUTION OF THE FEDERAL
REPUBLIC OF NIGERIA, 1979

Fundamental Rights (Enforcement Procedure) Rules, 1979

Date of Commencement : 1st January, 1980.

In exercise of the powers conferred by section 42 subsection (3) of the Constitution of the Federal Republic of Nigeria, the Chief Justice of Nigeria hereby makes the following Rules:—

ORDER 1

1.—(1) These Rules may be cited as the Fundamental Rights (Enforcement Procedure) Rules, 1979.

(2) In these Rules—

“application” includes an application for the leave of the court.

“Constitution” means the Constitution of the Federal Republic of Nigeria, 1979.

“Fundamental Right” means any of the Fundamental Rights provided for in Chapter IV of the Constitution.

“Court” means the Federal High Court or the High Court of a State.

“judge” means the judge of the Court.

“legal representative” means a person admitted to practice in the Supreme Court of Nigeria who has been retained by or assigned to a party to represent him in the proceedings before the court.

“originating summons” means every summons other than a summons in a pending cause or matter.

“Prison Superintendent” means the person in charge of the prison or any other place in which the complainant is restrained or confined.

“registrar” means the registrar of the Court hearing the application or of any Court to which an order is directed.

“Rules” means these Rules or any amendment thereto and includes the Forms appended to these Rules.

“State” means one of the component parts of the Federal Republic of Nigeria.

Application for leave

2.—(1) Any person who alleges that any of the Fundamental Rights provided for in the Constitution and to which he is entitled, has been, is being, or is likely to be infringed may apply to the Court in the State where the infringement occurs or is likely to occur, for redress.

(2) No application for an order enforcing or securing the enforcement within that State of any such Rights shall be made unless leave therefor has been granted in accordance with this rule.

(3) An application for such leave must be made *ex parte* to the appropriate Court and must be supported by a statement setting out the name and description of the applicant, the relief sought, and the grounds on which it is sought, and by an affidavit verifying the facts relied on.

(4) The applicant must file, in the appropriate Court, the application for leave not later than the day preceding the date of hearing and must at the same time lodge in the said Court enough copies of the statement and affidavit for service on any other party or parties as the Court may order.

(5) The Court or judge may, in granting leave, impose such terms as to giving security for costs as it or he thinks fit.

(6) The granting of leave under this rule, if the Court or judge so directs, shall operate as a stay of all actions or matters relating to, or connected with, the complaint until the determination of the application or until the Court or judge otherwise orders.

Time for applying for leave

3.—(1) Leave shall not be granted to apply for an order under these Rules unless the application is made within twelve months from the date of the happening of the event, matter, or act complained of, or such other period as may be prescribed by any enactment or, except where a period is so prescribed, the delay is accounted for to the satisfaction of the Court or judge to whom the application for leave is made.

(2) Where the event, matter, or act complained of arose out of a proceeding which is subject to appeal and a time is limited by law for the bringing of the appeal, the Court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

ORDER 2

1.—(1) When leave has been granted to apply for the order being asked for, the application for such order must be made by notice of motion or by originating summons to the appropriate Court, and unless the Court or judge granting leave has otherwise directed, there must be at least eight clear days between the service of the motion or summons and the day named therein for the hearing. Form No. 1 or 2 in the Appendix may be used as appropriate.

(2) The motion or summons must be entered for hearing within fourteen days after such leave has been granted.

(3) The motion or summons must be served on all persons directly affected, and where it relates to proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein, the motion or summons must be served on the registrar of the court, the other parties to the proceedings and, where any objection to the conduct of the judge is made, on the judge.

(4) An affidavit giving the names and addresses of, and the place and date of service on, all persons who have been served with the motion or summons must be filed before the motion or summons is listed for hearing, and, if any person who ought to have been served under paragraph (3) has not been served, the affidavit must state the fact and the reason why service has not been effected, and the said affidavit shall be before the Court or judge on the hearing of the motion or summons.

(5) If on the hearing of the motion or summons the Court or judge is of the opinion that any person who ought to have been served with the motion or summons has not been served, whether or not he is a person who ought to have been served under paragraph (3), the Court or judge may adjourn the hearing on such terms, if any, as it or he may direct in order that the motion or summons may be served on that person.

Statements and affidavits

2.—(1) Copies of the statement in support of the application for leave under Order 1 rule 2 (3) must be served with the notice of motion or summons under rule 1 (3) of Order 2 and, subject to paragraph (2) of this rule, no grounds shall be relied upon or any relief sought at the hearing of the motion or summons except the grounds and relief set out in the said statement.

(2) The Court or judge may, on the hearing of the motion or summons allow the said statement to be amended, and may allow further affidavits to be used if they deal with new matter arising out of any affidavit of any other party to the application, and where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must give notice of his intention and of any proposed amendment of his statement to every other party, and must supply to every such other party, copies of such further affidavits.

(3) Every party to the application must supply to any other party copies of the affidavit which he proposes to use at the hearing.

Several applications relating to the same infringement

3. Where several applications relating to the infringement of a particular Fundamental Right are pending against several persons in respect of the same matter, and on the same grounds, the applications may be consolidated by order of the Court or judge hearing the applications.

ORDER 3

Application to quash any proceedings

1.—(1) In the case of an application for an order to remove any proceedings for the purpose of their being quashed, the applicant may not question the validity of any order, warrant, commitment, conviction, inquisition or record *unless* before the hearing of the motion or summons he has served a certified copy thereof together with a copy of the application on the Attorney-General of the Federation or of the State in which the application is being heard as the case may be, or accounts for his failure to do so to the satisfaction of the Court or judge hearing the motion or summons.

(2) Where an order to remove any proceedings for the purpose of their being quashed is made, in any such case, the order shall direct that the proceedings shall be quashed forthwith on their removal into the court which heard the application.

ORDER 4

Application for production and/or release of person restrained

1.—(1) In an application where the applicant complains of wrongful or unlawful detention, the Court or judge to whom the application is made *ex parte* may make an order forthwith for his release from such detention, or may—

(a) direct that an originating summons as in the Form 2 in the Appendix be issued or that an application therefor be made by notice of motion, as in the Form 3 or

(b) adjourn the *ex parte* application so that notice thereof may be given to the person against whom the order for the release of the applicant is sought.

(2) The summons or notice of motion must be served on the person against whom the order for the release of the applicant is sought and on such other persons as the Court or judge may direct, and, unless the Court or judge otherwise directs, there must be at least five clear days between the service of the summons or motion and the date named therein for the hearing of the application.

(3) Every party to an application under rule 1 must supply to every other party copies of the affidavits which he proposes to use at the hearing of the application.

2. Without prejudice to rule 1 (1), the Court or judge hearing an application where the applicant complains of wrongful or unlawful detention may, in its or his discretion, order that the person restrained be produced in court, and such order shall be a sufficient warrant to any Superintendent of a Prison, Police Officer in charge of a police station, police Officer or Constable in charge of the complainant, or any other person responsible for his detention, for the production in court of the person under restraint.

3. Where an order is made for the production of a person restrained, the Court or judge by whom the order is made shall give directions as to the Court or judge before whom, and the date on which, the order is returnable.

4.—(1) Subject to paragraphs (2) and (3), an order for the production of the person restrained must be served personally on the person to whom it is directed.

(2) If it is not possible to serve such an order personally, or if it is directed to a Police Officer, or a prison Superintendent or other public Official, it must be served by leaving it with any other person or official working in the office of the police Officer, or the prison or office of the Superintendent or the office of the public official to whom the order is directed.

(3) If the order is made against more than one person, the order must be served in manner provided by the rule on the person first named in the order and copies must be served on each of the other persons in the same manner.

(4) There must be served with the order (in the Form 4 in the Appendix) for the production of the person restrained a notice (in the Form 5 in the Appendix) stating the Court or judge before whom, and the date on which the person restrained is to be brought.

Return to the Order for release

5.—(1) The return to an order for the release of a person restrained must be endorsed on or annexed to the order and must state all the causes or justifications of the detainer of the person restrained.

(2) The return may be amended, or another return substituted therefor, by leave of the Court or judge before whom the order is returnable.

Proceedings at hearing of motion or summons after order has been returned

6. When a return to the order has been made, the return shall first be read in open courts and an oral application then made for discharging or remanding the person restrained or amending or quashing the return, and, where that person is brought up in court in accordance with the order, his legal representative shall be heard first, then the legal representative for the State or for any other official or person restraining him. The legal representative for the person restrained will then be heard in reply.

7. An order for the release of a person restrained shall be made in clear and simple terms having regard to all the circumstances.

ORDER 5

Right of any other person or body to be heard

Any person or body who desires to be heard in respect of any application, motion, or summons, under these Rules, and appears to the Court or judge to be a proper person or body to be heard, shall be heard notwithstanding that he or it has not been served with the copy of the application, motion, or summons.

ORDER 6

Orders which the court can make, and effect of disobedience

1.—(1) At the hearing of any application, motion, or summons under these Rules, the Court or judge concerned may make such orders, issue such writs, and give such directions as it or he may consider just or appropriate for the purpose of enforcing or securing the enforcement of any of the Fundamental Rights provided for in the Constitution to which the complainant may be entitled.

(2) In default of obedience of any order made by the Court or judge under these Rules, proceedings for the committal of the party disobeying such an order will be taken. Order of Committal is in the Form 6 of the Appendix.

APPENDIX

FORM No. 1

NOTICE OF MOTION FOR AN ORDER ENFORCING A
FUNDAMENTAL RIGHT [ORDER 2 RULE 1 (1)]

In the Federal High Court/High Court of.....State.

In the matter of an application by.....for
an order for the enforcement of a Fundamental Right
and

In the matter of.....Applicant

Take notice that pursuant to the leave of the Federal High Court at...../
High Court of.....State (or the Honourable Justice.....)
given on the.....day of.....19....., the.....
High Court will be moved on the.....day of.....19....., or so soon there-
after as counsel can be heard on behalf of.....
(for an order that.....)

..... (in terms
of the relief sought in the statement accompanying the affidavit in support of the applica-
tion for leave to apply for the order) on the grounds set out in the copy statement served
herewith used on the application for leave to apply for such order.

And take notice that on the hearing of this motion the said
will use the affidavit of.....and the
exhibits therein referred to.

(And also take notice that the.....
High Court (or the Honourable Justice.....)

B 6

by order dated directed that all proceedings in (or on) the said be stayed until after the hearing of this motion or further order).

DATED the day of 19

(Signed)
Applicant or his Legal Representative

To

Respondent or his Legal Representative.

Note:—Delete the High Court which is not applicable.

FORM No. 2

ORIGINATING SUMMONS

[Order 2 rule 1 (1), and Order 4 rule 1 (1)]

In the Federal High Court at /High
Court of State Division
Suit No.

(in the matter of)
Between A.B. Plaintiff

and
C.D. Defendant
To C.D. of in the of

Let the defendant, within 14 days (or if the summons is to be served out of the jurisdiction, insert here the time for appearance fixed by the order giving leave to issue the summons and serve it out of the jurisdiction) after service of this summons on him, inclusive of the day of service, cause an appearance to be entered to this summons, which is issued on the application of the plaintiff of

By this summons the plaintiff claims against the defendant (or seeks the determination of the Court of the following questions, namely, or as may be).

If the defendant does not enter an appearance, such judgment may be given or order made against or in relation to him as the Court may think just and expedient.

Dated the day of 19

Note : This summons may not be served later than twelve calendar months beginning from the above date unless renewed by order of the Court.

This summons was taken out by
of
the solicitor for the plaintiff whose address is

..... (or where the
plaintiff sues in person this summons was taken out by the said plaintiff who resides at
.....
.....

DIRECTIONS FOR ENTERING APPEARANCE

The defendant may enter an appearance in person or by a solicitor by handing in the appropriate forms, duly completed, at the Federal High Court at.....
 or the High Court of.....State
 sitting at.....
 (Delete Court which is not applicable).

For Service
 on

JUDGE

.....
 Defendant or Solicitor acting for him.

FORM No. 3

NOTICE OF MOTION FOR AN ORDER FOR THE PRODUCTION
 OF PERSON DETAINED (Order 4 rule 1 (1))

In the Federal High Court at...../the
 High Court of.....State.

Suit No.

In the matter of A.B.

and

In the matter of an application for the release of person detained.

Take notice that pursuant to the direction of the Honourable Justice.....
of the Federal High Court at...../or
 of the High Court of.....State the
 High Court will be moved on the.....day of.....19....., or so
 soon thereafter as counsel can be heard on behalf of.....
 for an order directed to.....to have the body of
 the said.....before the High Court
 at.....at such time as the Court or judge may
 direct upon the grounds set out in the affidavits of the said.....
and.....and the exhibits therein
 respectively referred to used on the application to the Honourable Justice.....
 (or the High Court) for such order, copies of which affidavits and exhibits are served herewith.

B 8

And take notice that on the hearing of this motion the said.....will
use the affidavits of himself and the said.....

.....and the exhibits therein referred to.

DATED the.....day of.....19.....

Signed
Applicant or his Legal Representative

Note.—Delete the High Court which is not applicable.

To

.....
The officer or person who has
custody of person detained.

FORM No. 4

ORDER FOR PRODUCTION OF PERSON DETAINED

[Order 4 rule 4 (4)]

Suit No.

In the matter of the Enforcement of a Fundamental Right.

In the matter of the detention of.....

.....Applicant

To the Superintendent of.....prison or
other person having custody of.....

.....at.....

We command you that you produce in the Federal High Court at.....

...../or in the High Court of.....

State at.....on the day and at the
time specified in the notice served with this order the body of.....

.....being taken and detained under your custody as is said,
together with the day and cause of his being taken and detained, by whatsoever name he
may be called therein, that Our Court (or Judge) may then and there examine and determine
whether such cause is legal, and have you there then this order.

Witness this.....day of.....19.....

Judge

Note.—Delete High Court which is not applicable.

To

.....
the officer or person against whom order
is sought.

FORM No. 5

NOTICE TO BE SERVED WITH THE ORDER FOR THE
PRODUCTION OF PERSON DETAINED

[Order 4 rule 4 (4)]

Suit No.

In the Federal High Court at...../or the High Court of
.....State at.....

In the matter of the application of.....

(If in a cause already begun, here insert the title, not otherwise).

Whereas this Court (or the Honourable Justice)
has made an order directed.....(or other person having the
custody of.....if so) commanding him to have the body of
.....before the said Court at
on the day and at the time specified in the order together with the day and cause of his being
taken and detained.

Take notice that you are required by the said Order to have the body of the said.....
.....before this Court (or before the judge aforesaid) on the.....
day of.....19.....at.....o'clock and make a return to the said
Order. In default thereof the said Court will then, or so soon thereafter as counsel can be
heard, be moved to commit you to prison for your contempt in not obeying the said Order
(or if in vacation application will then be made to one of the judges of the said Court for a
warrant for your arrest in order that you may be held to answer for your contempt in not
obeying the said writ).

DATED theday of19.....

(Signed)

Applicant or his Legal Representative

Note :—Delete High Court which is not applicable.

FORM No. 6

ORDER OF COMMITTAL

[Order 6 Rule 1 (2)]

(Heading as in Action)

Suit No.

Upon motion this day made unto this Court by counsel for the plaintiff and upon reading
(an affidavit of.....filed the.....
day of.....19....., of service on the defendant.....
of a copy of the order of the Court dated the.....day of.....19.....,
and notice of this motion) :

And it appearing to the satisfaction of the Court that the defendant.....
has been guilty of contempt of court in (state the contempt) :

B 10

It is ordered that for his said contempt the defendant do stand committed to Prison to be there imprisoned (until further order).

(It is further ordered that this order shall not be executed if the defendant.....
.....complies with the following terms, namely,
.....)

DATED the.....day of.....19.....

Judge

MADE this 5th day of December, 1979.

A. FATAYI-WILLIAMS,
Chief Justice of Nigeria