**OSUN STATE CIVIL PROCEDURE RULES, 2008**

**Order 3 – OSUN STATE CIVIL PROCEDURE RULES, 2008**

FORM AND COMMENCEMENT OF ACTION

Rule 1 - Proceedings which must be begun by writs

Subject to the provisions of these rules or any applicable law requiring any proceedings to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings;

(a) where a plaintiff claims:-

(i) any relief or remedy for any civil wrong or

(ii) damages for breach of duty, whether contractual, statutory or otherwise, or

 (iii) damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.

(b) where the claim is based on or includes an allegation of fraud, or

(c) where an interested person claims a declaration.

Rule 2 - Mode of beginning civil proceedings

(1) All civil proceedings commenced by writ of summons shall be accompanied by:

(a) statement of claim;

(b) list of witnesses to be called at the trial;

(c) written statements on oath of the witnesses and

(d) copies of every document to be relied on at the trial.

(2) Where a plaintiff fails to comply with Rules 2(1) above, his originating process shall not be accepted for filing by the Registry.

Rule 3 - Form of Writ: Civil Form 1

Except in the cases in which any different forms are provided in these Rules, the writ of summons shall be in Form 1 with such modifications or variations as circumstances may require.

Rule 5 - Proceedings which may be begun by originating Summons

Any person claiming to be interested under a Deed, Will, Enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.

Rule 6 - Construction of enactment

Any person claiming any legal or equitable right in a case where the determination of the question whether he is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination of such question of construction and for a declaration as to the right claimed.

Rule 7 - Discretion of the Judge

A Judge shall not be bound to determine any such question of construction if in his opinion it ought not to be determined on originating summons but may make any such orders as he deems it.

Rule 8 - Forms of originating summons

(1) An originating summons shall be in the Forms 3, 4, or 5 to these rules, with such variations as circumstances may require. It shall be prepared by the applicant or his Legal Practitioner, and shall be sealed and filed in the Registry, and when so sealed and filed shall be deemed to be issued.

(2) An originating summons shall be accompanied by:

(a) an affidavit setting out the facts relied upon;

(b) all the exhibits to be relied upon;

 (c) a written address in support of the application. (3) The person filing the originating summons shall leave at the Registry sufficient number of copies thereof together with the documents in sub-rule 2 above for service on the respondent or respondents.

See See OLANIYAN v UNIVERSITY OF LAGOS [1985] 2 NWLR (PT. 9) 599 at 626 –per Oputa, JSC and NZE v NIGERIA PORTS AUTHORITY [1997] 11 NWLR (PT. 528) 210 at 221

ALABI v ALABI [2009] 9 NWLR (PT. 1039) 297 at 314 and MOROHUNFOlA v KWARA STATE COLLEGE OF TECHNOLOGY [1990] 4 NWLR (Pt. 145) 506]

FORM OF COMMENCEMENT OF ACTION (ORIGINATING PROCESSES)

**FORM OF COMMENCEMENT OF ACTION (ORIGINATING PROCESSES)**

Actions are commenced in the High Court through four different processes viz

1. Originating motion
2. Originating summons
3. Petition
4. Writ of summons

**ORIGINATING MOTION**

This is used only when provided for by a statute or a rule of court

**EXAMPLES OF ACTIONS TO BE COMMENCED** by this way is

1. Application for habeas corpus,
2. Order for mandamus,
3. Prohibition or certiorari,
4. Application for judicial review**.**
5. Action for the enforcement of fundamental rights under the Fundamental Rights Enforcement Procedure rules 2009

Where a statute provides that action be commenced by application but does not specifically provide the procedure**, originating motion should be used.**

**-Akunnia v AG (Anambra) [1977]**

**ORIGINATING SUMMONS**

This is used whenever there is interpretation of a written law, etc

It is **USED** generally for non-contentious matters i.e. those maters where the facts are not likely to be in dispute.

**EXAMPLES OF ACTIONS TO BE COMMENCED BY THIS MODE ARE**

1. Action for interpretation of a written law, documents,
2. Company proceedings
3. Interpretation of any instrument or deed,
4. Will, contract agreement or some other question of law.

**PETITION**

 It **is only used where a statute** or the rule of court provide for its use.

**EXAMPLES OF SUITS TO BE COMMENCED BY PETITION INCLUDE**

1. Dissolution of marriage-matrimonial proceedings,
2. Election petitions,
3. Winding up of companies under the CAMA

In a petition, the parties are referred to as PETITIONER AND RESPONDENTS.

**WRIT OF SUMMONS**

Writ of summon is used to commence every action**EXCEPT**if particular rule or law, provides otherwise:

The writ is **the main mode** of commencing actions in the High Court. For contentious matters.

**A writ of summons shall be the form of commencing all proceedings** **where the claimant claims;**

* Any relief or remedy for any civil wrong
* Damages for breach of duty, where contractual, statutory or the
* Damages for personal injuries to or wrongful death of any person
* Where the claim is based on or includes on allegation for fraud
* Where an interested person claims declaration.

**ENDORSEMENT OF A WRIT OF SUMMONS**

* Before filing, one should **ensure that it is properly endorsed at the back side of the writ** stating the reliefs which the Plaintiff/Claimant is seeking from the defendant.
* A writ is**endorsed** when it contains a concise statement of the complaint and the relief or remedy to which the Plaintiff considered himself entitled.

**THERE ARE TWO TYPES OF ENDORSEMENT ON A WRIT** which are:

**(A) GENERAL ENDORSEMENT OF A WRIT OF SUMMONS**

This means the **reliefs sought will be briefly stated in the Writ,** while **the facts giving rise to the cause of action will be detailed in the Statement of claim of the Plaintiff.**

**(B) SPECIAL ENDORSEMENT OF A WRIT SUMMONS**

Here the writ will contain **the full particulars of the claim and the reliefs sought.**It is a writ endorsed with the statement of claim, but in view of the frontloading concept, it is no longer of much relevance.

**EFFECT OF NOT FILING THE REQUISITE DOCUMENTS ALONG WITH THE WRIT**

**But in Olaniyan v Oyewole (2008):**the court of Appeal held that it may be treated as an irregularity –

**FUNCTION OF A WRIT**

A writ commands the defendant to enter appearance in an action instituted against him and warns that if he fails to do so within the time limited for entry of appearance, that plaintiff or claimant may proceed to enter judgment against him.

**CONTENTS OF A WRIT OF SUMMONS**

1. Heading of the court where action is brought showing the court and the judicial division where the suit is brought
2. In certain actions, the heading of the matter (e.g. fundamental rights enforcement)
3. Suit No.
4. The names and descriptions of the parties and the capacities in which they sue or are sued
5. To the (Name of defendant and defendant’s address) within the jurisdiction of the court
6. YOU ARE HEREBY COMMANDED TO —–  (time within which the defendant is commanded to enter appearance)
* Consequences of not entering appearance within the time stipulated
* Life span of the writ
* How the defendant may enter appearance i.e. either personally or through solicitor.
* Nature of the claim (particulars) against the defendant and reliefs sought (should be on the reverse side)
* Signature, Name and address of plaintiff’s solicitor within jurisdiction
* Address of plaintiff
* Date of the writ and place of hearing (return-place) <https://motun911.wordpress.com/2020/12/16/form-of-commencement-of-action-originating-processes/>

COMMENCEMENT OF ACTIONS IN THE HIGH COURT

Place of Commencement: Or 2 HCLCPR. Matters are commenced where they arose, or are to be performed or where the defendant resides or does his business (in land matters where the land is situate).

* Company actions are commenced in the jurisdiction of the head office-Union Corporation**V**LRC.
* An action started in the wrong venue will continue until a counsel objects and the Judge (in his discretion) directs that it should be taken elsewhere rather than nullify-MBA**V**Owoniboys Tech Services. 2 NICAct, Or 2 Lagos, Or 1 NICR

THE FRONTLOADING CONCEPT: all relevant documents must be filed with the originating process or the registrar will reject the originating process- Or 3 (Lagos) or the writ would not be issued-(Or 4 Abuja). Or if action has commenced, it can be dismissed (except document was sufficiently pleaded) – Or 5 R 1 Lagos. Frontload, pay requisite fees, serve other party, registrar gives suit number and enter suit in cause book-UBA**V**Mode.

ORIGINATING PROCESSES: Henceforth, frontloading means that it should be accompanied with Statement of Claim, List of Witnesses (to be called at trial), written statement on oath of witnesses (except witnesses on subpoena, copies of every document to be relied on at trial, Pre-action Protocol form 01 (or in the case of Abuja Pre-action Counselling Certificate). i.e. to show that client has been advised of strengths and weaknesses of his case and counsel would pay costs where it turns out to be frivolous.

* MODE OF COMMENCEMENT. See generally, Order 1, 2 and 3 HCRFCT, HCLLagos.
* – Writ of Summons: default mode (except a law provides otherwise). Form 1. Or 1 R 1 Abuja Usually for contentious matters and requires filing of pleadings and frontloading Doherty**V**Doherty 1968 NMLR 241.
* – Originating Summons: Where statutory provisions mandate its use. Usually for interpretation of documents or law. Or 3 Lagos Or 1 Abuja. E.g. Human Rights enforcement. Where confused or the facts of the case are likely to be disputed, use writ of summons-NBN Ltd**V**Alakija [1978] ANLR 231, Inakoju **v** Adeleke.

– Originating Motion: where statute/rules mandates its use. usually for prerogative orders (habeas corpus, mandamus, prohibition and certiorari) Fundamental rights (Or 2 FREPRules) 2009.

– Petition: Where law mandates. For election (133 EA), matrimonial, company winding up proceedings/causes.

Originating summons and originating motion should be backed by affidavit, exhibit, written address, and pre—action protocol form Order 3 Rule 8 Lagos.