

**FUNDAMENTAL RIGHTS
(ENFORCEMENT PROCEDURE)
RULES, 2009**

**THE CONSTITUTION OF THE FEDERAL REPUBLIC OF
NIGERIA, 1999**

FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE)

RULES, 2009

UNDER CHAPTER IV OF THE CONSTITUTION

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**THE CONSTITUTION OF THE FEDERAL REPUBLIC OF NIGERIA,
1999**

**FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE)
RULES, 2009**

Under Chapter IV of the Constitution

(1st December, 2009)

Commence-
ment

In exercise of the powers conferred on me by section 46(3) of the Constitution of the Federal Republic of Nigeria, 1999 and all other powers enabling me in that behalf, I, IDRIS LEGBO KUTIGI, GCON, Chief Justice of Nigeria, hereby make the following Rules:

PREAMBLE

1. The Court shall constantly and conscientiously seek to give effect to the overriding objectives of these Rules at every stage of human rights action, especially whenever it exercises any power given it by these Rules or any other law and whenever it applies or interprets any rule.

2. Parties and their legal representatives shall help the Court to further the overriding objectives of these Rules.

3. The overriding objectives of these Rules are as follows:

(a) The Constitution, especially Chapter IV, as well as the African Charter, shall be expansively and purposely interpreted and applied, with a view to advancing and realising the rights and freedoms contained in them and affording the protections intended by them.

(b) For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court shall respect municipal, regional and international bills of rights cited to it or brought to its attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. Such bills include;

(i) The African Charter on Human and Peoples' Rights and other instruments (including protocols) in the African regional human rights system,

(ii) The Universal Declaration of Human Rights and other instruments (including protocols) in the United Nations human rights system,

(c) For the purpose of advancing but never for the purpose of restricting the applicant's rights and freedoms, the Court may make consequential orders as may be just and expedient.

(d) The Court shall proactively pursue enhanced access to justice for all classes of litigants, especially the poor, the illiterate, the uninformed, the vulnerable, the incarcerated, and the unrepresented.

(e) The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:

- (i) Anyone acting in his own interest;
- (ii) Anyone acting on behalf of another person;
- (iii) Anyone acting as a member of, or in the interest of a group or class of persons;
- (iv) Anyone acting in the public interest, and
- (v) Association acting in the interest of its members or other individuals or groups

(f) The Court shall in a manner calculated to advance Nigerian democracy, good governance, human rights and culture, pursue the speedy and efficient enforcement and realisation of human rights.

(g) Human rights suits shall be given priority in deserving cases. Where there is any question as to the liberty of the applicant or any person, the case shall be treated as an emergency.

ORDER 1 – APPLICATION AND INTERPRETATION

1. These Rules may be cited as the Fundamental Rights (Enforcement Procedure) Rules, 2009. Citation.
2. In these Rules – Interpretation.
- “*African Charter*” means the African Charter on Human and Peoples’ Rights;
- “*Applicant*” means a party who files an application or on whose behalf an application is filed under these Rules;
- “*Application*” means an application brought pursuant to these Rules by or on behalf of any person to enforce or secure the enforcement of his fundamental rights;
- “*Constitution*” means the Constitution of the Federal Republic of Nigeria, 1999;
- “*Court*” means the Federal High Court or the High Court of a State or the High Court of the Federal Capital Territory, Abuja.
- “*Defend*” includes react to;
- “*Fundamental Right*” means any of the rights provided for in Chapter IV of the Constitution, and includes any of the rights stipulated in the African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act;
- “*Human Rights*” includes fundamental rights;
- “*Judge*” means a Judge of the Court;
- “*Legal Representative*” means a legal practitioner within the meaning of the Legal Practitioners’ Act.
- “*Notarised*” means endorsed (with signature and stamp or seal) by a legal practitioner appointed as a Notary Public under Notaries Public Act.
- “*Originating Application*” means every application other than an application in a pending cause or matter;
- “*Public Interest*” includes the interest of Nigerian society or any segment of it in promoting human rights and advancing human rights law;
- “*Prison Superintendent*” means the person, whatever his official title, in charge of the prison or any other place in which the applicant is restrained or confined;
- “*Registrar*” means the Registrar of the Court hearing the application or of any Court to which an order is directed;

“Respondent” means a party against whom a human rights case has been instituted under these Rules;

“Rules” mean Fundamental Rights (Enforcement Procedure) Rules and any amendments to them;

“State” means any of the component parts of the Federal Republic of Nigeria, and includes the Federal Capital Territory, and the Government of a State or Administration of Federal Capital Territory where the context allows.

ORDER II – COMMENCEMENT OF ACTION.

Cause of
Action.

1. Any person who alleges that any of the Fundamental Rights provided for in the Constitution or African Charter on Human and Peoples’ Rights (Ratification and Enforcement) Act 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:

Provided that where the infringement occurs in a State which has no Division of the Federal High Court, the Division of the Federal High Court administratively responsible for the State shall have jurisdiction. Form No. 1 in the *Appendix* may be used as appropriate.

Mode of
Commence-
ment.

2. An application for the enforcement of the Fundamental Right may be made by any originating process accepted by the Court which shall, subject to the provisions of these Rules, lie without leave of Court.

3. An application shall be supported by a Statement setting out the name and description of the applicant, the relief sought, the grounds upon which the reliefs are sought, and supported by an affidavit setting out the facts upon which the application is made.

4. The affidavit shall be made by the Applicant, but where the applicant is in custody or if for any reason is unable to swear to an affidavit, the affidavit shall be made by a person who has personal knowledge of the facts or by a person who has been informed of the facts by the Applicant, stating that the Applicant is unable to depose personally to the affidavit.

5. Every application shall be accompanied by a Written Address which shall be succinct argument in support of the grounds of the application.

Applicant's
Written
Address.

6. Where the respondent intends to oppose the application, he shall file his written address within 5 days of the service on him of such application and may accompany it with a counter affidavit.

Respondent's
Written
Address.

7. The applicant may on being served with the Respondent's Written Address, file and serve an address on points of law within 5 days of being served, and may accompany it with a further affidavit.

Applicant's
Address on
Points of
Law.

ORDER III – LIMITATION OF ACTION

1. An Application for the enforcement of Fundamental Right shall not be affected by any limitation Statute whatsoever.

ORDER IV – GENERAL CONDUCT OF PROCEEDINGS

1. The application shall be fixed for hearing within 7 days from the day the application was filed.

Date for
Hearing.

2. The hearing of the application may from time to time be adjourned where extremely expedient, depending on the circumstances of each case or upon such terms as the Court may deem fit to make, provided the Court shall always be guided by the urgent nature of applications under these Rules.

Adjournments.

3. The Court may, if satisfied that exceptional hardship may be caused to the Applicant before the service of the application especially when the life or liberty of the applicant is involved, hear the applicant *ex parte* upon such interim reliefs as the justice of the application may demand.

Ex parte
Application.

4.– (a) The application *ex parte* under this Order shall be supported by affidavit which shall state sufficient grounds why delay in hearing the application would cause exceptional hardship;

(b) A party moving the Court *ex parte* may support the application by argument addressed to the Court on the facts put in evidence;

(c) Where the application is made *ex parte* for interim reliefs, the Court may make the following orders;

(i) Grant bail or order release of the Applicant forthwith from detention pending the determination of the application;

(ii) Order that the Respondent against whom the order for the release of the applicant is sought be put on notice and abridge the time for hearing the application;

(iii) Order the production of the Applicant on the date the matter is fixed for hearing if the Applicant alleges wrongful or unlawful detention.

(iv) Grant Injunction restraining the Respondent from taking further steps in connection with the matter or maintaining *status quo* or staying all actions pending the determination of the application;

(v) Any other order as the Court may deem fit to make as the justice of the case may demand.

Production of Applicant.

5. The order for the production of the applicant detained must state the Court or Judge before whom, and the date on which the applicant detained is to be brought. Form Nos. 2 and 3 in the *Appendix* may be used as appropriate.

Discharge of *ex parte* Orders.

6. Where an order is made on a motion *ex parte*, a party affected by it may within seven days after service of the order, or within such further time as a Court may allow, apply to the Court by motion to vary or discharge it; and the Court may, on notice to the party obtaining the order, either refuse to vary or discharge it with or without imposing terms as to costs or security, or, as may seem just.

ORDER V – SERVICE OF COURT PROCESS

By whom Service is to be effected.

1. Service of the originating application or order of Court shall be done by a Sheriff, Deputy Sheriff, Bailiff or other officer of the Court.

2. The application must be served on all parties directly, so long as a service duly effected on the Respondent's agent will amount to personal service on the Respondent.

Service of Process: How effected.

3. Where an order is made by the Court for the production of the Applicant restrained, such order must be served personally on the party to whom it is directed or an officer in his office.

Service of Order for Production of Applicant.

4. If the order is made against more than one party, the order must be served personally on each of the parties the order is directed to in the same manner or on any officer in their offices.

Service of Order for Production to More than one party.

5. 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 may be served by leaving it with any other officer working in the office of the Police Officer, or office of the Prison Superintendent or of the office of the Public Officer to whom the order is directed.

Service to Police Officer or Prison Superintendent.

6. 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 applicant or any other person responsible for his detention, for the production in Court of the applicant under restraint.

7. Where it appears to the Court, either after or without an attempt at personal service of the Court processes that for any reason personal service cannot be conveniently effected, the Court may order that service be effected either –

Substituted Service.

(a) By delivery of the document to an adult person at the usual or last known place of abode or business of the party to be served; or

(b) By delivery of the document to some person being an agent of the party to be served, or to some other person, on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or the person, come to the knowledge of the party to be served; or

(c) By delivery of the document to any senior officer of any Government agency that has office both in the State where the breach occurred and head office either in the Federal Capital Territory or elsewhere; a service on the agency through its office in any state where the breach occurred will be considered as sufficient service; or

(d) By advertisement in the Federal Government *Official Gazette*, or in some newspapers circulating within the jurisdiction; or

(e) By notice put up at the principal Court House of, or some other place of public resort in the Judicial Division where the proceedings in respect of which the service is made is instituted, or at the usual or last known place of abode, or business, of the party to be served.

Service on
an Employee
of
Government.

8. When a party to be served is in the service of any Ministry or Extra Ministerial Department of Government or of a Local Government, the Court may transmit the document to be served and a copy thereof to any senior officer of the Department of Government in the Judicial Division or place where the party to be served works or resides or of the Local Government in whose service the party to be served is, and such senior Officer, or Local Government shall cause the same to be served on the proper party accordingly.

9. If on the hearing of the application the Court is of the opinion that any person who ought to have been served with the application has not been served, whether or not the person is one who ought to have been served, the Court may adjourn the hearing on such terms, if any, as it may direct in order that the application may be served on that person.

10. Service of the application and other processes, notices, summons, orders and documents whatever shall be effected between the hours of six in the morning and six in the evening.

11. Save in exceptional circumstances and as may be authorised by a Court, service shall not be effected on Sunday or public holiday.

ORDER VI – AMENDMENT OF STATEMENTS AND AFFIDAVITS.

1. No grounds shall be relied upon or any relief sought at the hearing of the application except the grounds and the reliefs are set out in the statement.

Hearing of
Application.

2. The Court may, on the hearing of the application allow the statement to be amended and may allow further affidavits to be used if they deal with new matters arising from the counter affidavit of any party to the application.

3. The application for amendment shall be supported by an exhibit of the proposed application to be amended and may be allowed by the Court upon such terms or otherwise as may be just.

4. Where a party who obtained an order to amend fails to comply with the order within the time allowed by the order of Court, such party shall be deemed to have abandoned the amendment unless he obtains an order of Court for extension of time to file the same.

Non
Compliance.

5. Where the applicant intends to ask to be allowed to amend his statement or use further affidavits, he must put the other party or parties on notice of his intention to amend.

Notice of
Application.

**ORDER VII – CONSOLIDATION OF SEVERAL APPLICATIONS
RELATING TO THE SAME INFRINGEMENT.**

1. The Judge may on application of the Applicant consolidate several applications relating to the infringement of a particular Fundamental Right pending against several parties in respect of the same matter, and on the same grounds.

Order for
Consolidation.

2. Where applications are pending before different Judges, the Applicant shall first apply to the Chief Judge of the Court for re-assignment of the matter to a Judge before whom one or more of the matters are pending.

Application
for Re-
Assignment.

3. The Applicant must show that the issues are the same in all the matters before the application for consolidation may be granted by the Court.

Application
for
Consolidation.

**ORDER VIII – NOTICE OF PRELIMINARY OBJECTION
DISPUTING THE COURT’S JURISDICTION.**

Application
to Set Aside
Proceeding.

1. Where the Respondent is challenging the Court’s jurisdiction to hear the application, he may apply to the Court for an order striking out the suit or setting aside the proceedings.

Respondent’s
Notice of
Preliminary
Objection.

2. The Respondent’s Notice of Preliminary Objection must be filed along with the counter affidavit to the main application.

Counter
Affidavit.

3. Where the Respondent elects, not to file a counter affidavit to the main application, the Court shall presume that the Respondent has accepted the facts as presented by the Applicant.

Hearing.

4. On the date of hearing, the preliminary objection shall be heard along with the substantive application.

Orders.

5. The Court after hearing the application may make any of the following orders:

(a) Striking out the application for want of jurisdiction; or

(b) Setting aside the service of the originating application.

6. Where the Court does not decline jurisdiction, the Court shall go ahead to give its Ruling on the substantive application.

ORDER IX – EFFECT OF NON COMPLIANCE.

1. Where at any stage in the course of or in connection with any proceedings there has, by any reason of anything done or left undone, been failure to comply with the requirement as to time, place or manner or form, the failure shall be treated as an irregularity and may not nullify such proceedings except as they relate to–

(i) Mode of commencement of the application;

(ii) The subject matter is not within Chapter IV of the Constitution or the African Charter on Human and People's Rights (Ratification and Enforcement) Act

ORDER X – APPLICATION TO QUASH ANY PROCEEDINGS

1. In the case of any 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 application 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 hearing the application.

How to
Commence.

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 upon their removal into the Court which heard the application.

Orders.

ORDER XI – ORDER WHICH THE COURT MAY MAKE

At the hearing of any application, under these Rules, the Court may make such orders, issue such writs, and give such directions as it 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 or African Charter on Human and People's Rights (Ratification and Enforcement) Act to which the applicant may be entitled.

ORDER XII – HEARING OF THE APPLICATION

1. Hearing of the application shall be on the parties' written addresses.

Written
Address.

2. Oral argument of not more than twenty minutes shall be allowed from each party by the Court on matters not contained in their written addresses provided such matters came to the knowledge of the party after he had filed his written address.

Oral
Argument.

Adoption of Address.

3. When all the parties' written addresses have been filed and come up for adoption and either of the parties is absent, the Court shall either on its own motion or upon oral application by the Counsel for the party present, order that the addresses be deemed adopted if the Court is satisfied that all the parties had notice of the date for adoption and a party shall be deemed to have notice of the date for adoption if on the previous date last given, the party or his Counsel was present in Court.

Content of Address.

4. The written address shall contain –

(a) The application on which the address is based;

(b) A brief statement of facts with reference to exhibits (if any) attached to the application;

(c) Issue arising for determination and

(d) A succinct statement of argument on each issue incorporating the purport of the authorities referred to, together with full citation of each such authority.

List of Authorities.

5. All written addresses shall be concluded with a numbered summary of the points raised and the party's prayer. A list of all the authorities referred to shall be submitted with the addresses. Where any unreported judgment is relied upon the certified true copy shall be submitted along with the written address.

ORDER XIII – RIGHT OF ANY OTHER PERSON OR BODY TO BE HEARD

Right of Any Other Person to be Heard.

1. Any person or body who desires to be heard in respect of any Human Rights Application and who appears to the Court to be a proper party to be heard, may be heard whether or not the party has been served with any of the relevant processes, and whether or not the party has any interest in the matter.

Amici Curiae

2. *Amici curiae* may be encouraged in human rights applications and may be heard at any time if the Court's business allows it.

ORDER XIV – COMMITTAL FOR CONTEMPT

Nothing in these Rules shall affect the power of Court to punish for contempt. Form No.4 in the Appendix may be used as appropriate.

ORDER XV – TRANSITIONAL PROVISIONS

1. The Fundamental Rights (Enforcement Procedure) Rules 1979 are hereby abrogated.

Abrogation
of 1979
Rules.

2. From the commencement of these Rules, pending Human Rights applications commenced under the 1979 Rules shall not be defeated in whole or in part, or suffer any judicial censure, or be struck out or prejudiced, or be adjourned or dismissed, for failure to comply with these Rules provided the applications are in substantial compliance with the Rules.

Commence-
ment.

3. Such pending Human Rights applications may continue to be heard and determined as though they have been brought under these Rules.

Pending
Application
under 1979
Rules.

4. Where in the course of any Human Rights proceedings, any situation arises for which there is or appears to be no adequate provision in these Rules, the Civil Procedure Rules of the Court for the time being in force shall apply.

Instances not
Covered by
these Rules.

APPENDIX

A. SCHEDULE OF FEES
FILING FEE IN FUNDAMENTAL RIGHTS APPLICATIONS

The Filing Fees for application for enforcement of Fundamental Rights shall be Five Hundred Naira (N500.00);

For a motion, it shall be One Hundred Naira (N100.00);

For an Affidavit, it shall be Fifty Naira (N50.00);

For a written address, it shall be One Hundred Naira (N100.00); and

For any other process, it shall be One Hundred Naira (N100.00).

B. FORMS

FORM NO. 1

NOTICE OF APPLICATION FOR ORDER ENFORCING A FUNDAMENTAL RIGHT (ORDER 2 RULE 1)

Suit No.....

In the Federal High Court/High Court ofState.

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 the Federal High Court/High Court of State will be moved on the day of 20 or so soon thereafter 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 application.

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

DATED the Day of 20

(Signed)

Applicant or his Legal representative

To:

Respondent or his Legal representative

Note: Delete the High Court which is not applicable

FORM NO. 2

ORDER FOR PRODUCTION OF PERSON DETAINED
(ORDER 4 RULE 5; ORDER 5 RULES 3, 4, 5 & 6)

Suit No.....

In the matter of enforcement of a Fundamental Right.

In the matter of detention.....
.....Applicant.....
Prison or to the Superintendent of.....
.....at

We command you that you produce in the Federal High Court at.....
...../or in the High Court of.....
State aton the day and at the time 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
case is legal, and have you there and then this Order.

Witness thisDay of 20

.....
Judge

Note: Delete the High Court which is not applicable

To :

.....
The officer or person against whom
Order is sought.

FORM NO. 3

NOTICE TO BE SERVED WITH THE ORDER FOR PRODUCTION OF PERSON DETAINED (ORDER 4 RULE 5; ORDER 5 RULES 3, 4, 5 AND 6)

Suit No

In the Federal High Court at/or the High Court ofstate 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) command him to have the body 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 day of20..... 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 order).

DATED the Day of 20

(Signed) Applicant or his Legal representative

Note: Delete High Court which is not applicable.

FORM NO. 4

ORDER OF COMMITAL
(ORDER 14)
(HEADING AS IN THE COMMENCEMENT OF APPLICATION)

Suit No

Upon Application this day made unto this Court by Counsel for the Applicant and upon reading (an affidavit) of filed theday of 20 for service on the Respondent a copy of the order of Court dated the day of 20 and notice of this motion).

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

It is ordered that for his said contempt the Respondent 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 Respondent complies with the following terms, namely,

DATED theDay of 20

.....
Judge

MADE at Abuja this 11th day of November, 2009

IDRIS LEGBO KUTIGI, GCON

Chief Justice of Nigeria

Explanatory Note

(This note does not form part of the above Rules
but is intended to explain their purport).

These Rules provide for the rules of procedure to be followed in the Court in applications for the enforcement or securing the enforcement of Fundamental Rights under Chapter IV of the 1999 Constitution and the African Charter on Human and Peoples Right (Ratification and Enforcement) Act.