INNOVATIVE FEATURES OF THE FUNDAMENTAL RIGHTS (ENFORCEMENT PROCEDURE) RULES of 2009: AN APPRAISAL

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Abstract

This paper examined the innovations heralded by the Fundamental Rights (Enforcement Procedure) Rules of 2009 (2009 Rules) which replaced the 1979 Rules. It appraised the impediments which existed under the 1979 Rules and the manner the 2009 Rules have overcome or cured these impediments to herald a more efficacious and timeous rights enforcement regime in Nigeria. The paper also discussed some practical steps to the enforcement of fundamental rights in Nigerian courts. The authors adopted the analytical and comparative research approach wherein relevant statutes, rules, instruments and scholarly materials were assembled and analysed. The paper proffered recommendations that, if adopted, would engender a better fundamental rights enforcement dispensation in Nigeria.

KEY WORDS: Court, Enforcement, Fundamental Rights, Rules, Procedure

1. Introduction

Every scholar of constitutional law would notice and admire the consistency with which the various constitutions of the Federal Republic of Nigeria have made provisions for fundamental rights since the 1960 Constitution.[1] The 1960 Constitution was the first Nigerian Constitution

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which made provisions for fundamental rights, following the recommendations of the then Willinks Commission.[2]

Eso, JSC in the case of *Ransome-Kuti v. Attorney- General, Federation*[3] stated that fundamental right is "A right which stands above the ordinary laws of the land and which in fact is antecedent to the political society itself. It is a primary condition to a civilized existence." Fundamental rights are civil and political rights, otherwise referred to as first generation rights or liberty-oriented rights. They are about the earliest recognised rights and they have not only been enshrined in the constitutions of most countries, but they have also been internationalised by various international human rights instruments.[4] For example, while chapter IV of the extant 1999 Constitution of Nigeria makes provisions for about 12 justiciable fundamental rights, ranging from the right to life to the right to acquire and own immoveable property anywhere in Nigeria, the Universal Declaration of Human Rights of 1948 (UDHR) and the International Covenant on Civil and Political Rights of 1966 (ICCPR) have equally provided for enforceable rights for citizens of the nations that are signatories to the instruments.

However, as laudable as this constitutional recognition of fundamental rights platform is, the Constitution did not expressly provide for the procedure for enforcing these rights in the event of their violation by state actors and non-state actors. Rather, section 32(3) of the then 1963 Republican Constitution of Nigeria gave the Nigerian Parliament the power to make rules guiding the practice and procedure of fundamental rights enforcement in Nigeria. Similarly, the 1979 and the extant 1999 Constitutions did not provide for express rights enforcement procedure. However, unlike the 1963 Constitution, the 1979 and 1999 Constitutions gave the Chief Justice of Nigeria (rather than the Parliament) the power to make rules regarding the practice and procedure guiding rights enforcement procedure in Nigeria. It was pursuant to this power that the former Chief Justice of Nigeria, Fatai Williams, made the 1979 Fundamental Rights (Enforcement Procedure) Rules which held sway in the practice and procedure of fundamental rights enforcement in Nigeria, until 2009.

Also, in 2009, the former CJN, Idris Legbo Kutigi, in the exercise of the powers conferred on him by section 46(3) of the 1999 Constitution, made the Fundamental Rights (Enforcement

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[1] These rights are currently contained in chapter IV of the Constitution of the Federal Republic of Nigeria, 1999.
[2] See Guobadia, A., "Human Rights in Nigeria: A Historical Perspective" in Kalu, A.U. and Osinbajo, Y.(eds.), (1992), Vol. 12, *Perspectives on Human Rights*, Federal Ministry of Justice Law Series, 59; Oluyede, P.A., *Nigerian Administrative Law*, (Ibadan: University Press, 2002) 8.
[3] (1985) 2 NWLR (pt. 6) 211 at 229.
[4] Yerima, T.F., "From Obstacle to Miracle: The New Fundamental Rights Enforcement Procedure Rules of Nigeria- Prospects for Human Rights Advocates", (2009) Vol. 3, *University of Ado-Ekiti Law Journal*, 271 at 272.

Procedure) Rules, 2009 which repealed the 1979 Rules and have become applicable as far as enforcement of fundamental rights in Nigeria is concerned.[5]

The 2009 Rules have engendered or brought about some epochal changes in the law and practice of fundamental rights enforcement. It would be stating the obvious if one ventures to say that the new Rules amount to a fundamental and welcome innovative development which would lead to a speedier dispensation of justice to victims of rights violation in Nigeria. This paper, therefore, examines the innovations heralded under the 2009 Rules. The paper recommends a liberal judicial disposition in keying into the new legal order introduced by the new rules while also suggesting mass awareness or enlightenment campaign with a view to sensitising members of the public on their rights and the procedure for enforcing same. Before we examine the innovative features of the 2009 Rules, it is germane to first of all have a peep into the enforcement regime under the old 1979 Rules which could best be described as an undue attachment and recourse to technicalities and common law strictness.

2. The 1979 Rules Regime

Under the 1979 Rules, an applicant who wanted to enforce his fundamental rights was required to show that he had *locus standi* (a special interest or right to sue). Such an applicant upon discharge of the burden of *locus standi*, would be required to file an application for leave to apply to enforce his rights. The court would consider the application for leave on its merit and either grant or refuse same. The application for leave was to be by motion ex-parte, supported by (a) a statement setting out the names and description of the applicant (b) the reliefs sought (c) the grounds for seeking the reliefs and (d) a verifying affidavit.

Upon the grant of leave to apply, the applicant would be required to file a formal application for enforcement of his right which application could be by motion on notice (notice of motion) or by originating summons. The formal application was to be filed within 14 days after the grant of leave to apply. However, in *Umoh v. Nkam*[6]*, it* was held that the 14 days timeframe does not include the day the leave was granted but starts counting from the following day. It was further held that the provision of the Akwa Ibom State High Court (Civil Procedure) Rules relating to extension of time does not apply to fundamental rights proceedings. However, with the extant provisions of Order XV (4) of the 2009 Rules, which states that the court can have recourse to the provisions of its Civil Procedure Rules in the event of any lacuna in the 2009 Rules, it is doubtful if the *Umoh case* is still a good law on the issue of extension of time to take any action under the Rules. Under the 1979 Rules, the substantive application was to be heard based on the motion and supporting documents as well as whatever documents/papers filed by the opposing party, after which the court will give its decision.[7]

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[5] See Order XV (1) of the 2009 Rules which has abrogated the 1979 Rules.
[6] (2001)6 WRN 1 at 13; (2001) 3 NWLR (pt. 701) 512.
[7] See Orders I and II of the 1979 Rules.

3. 2009 Rules Enforcement Regime

As earlier noted, the 2009 Rules have introduced some radical or headline changes to the procedure for enforcing fundamental rights in Nigeria. We would now examine these major changes heralded by the new Rules.

a. Abolition of the Requirement of *Locus Standi*

One of the major landmarks of the 2009 Rules is that it has abolished the requirement for *locus standi*. It would be recalled that under the 1979 rules, before an applicant's case would be entertained in court, he must show that he had *locus standi*. The Supreme Court defined *locus standi* in the case of *Inakoju v. Adeleke & Ors*[8] as:

> The legal right of a party to an action to be heard in litigation before a court of law or tribunal. The term entails the legal capacity of instituting or commencing an action in a competent court of law or tribunal without any inhibition, obstruction or hindrance from any person or body whatsoever.[9]

The hardship of the doctrine of *locus standi* could be seen in the judgment of the trial court in the case of *Badejo v. Minister of Education and Ors.*[10] Here, the applicant who was an 11 year old primary school pupil sued the Minister of Education through her next friend (father). Her grouse was that the action of the Federal Government wherein it had different cut-off marks for educationally advantaged and educationally disadvantaged states in Nigeria was unconstitutional in that it was discriminatory against the applicant in her bid to seek admission into the unity school of the government. She contended that she was denied admission whereas some other persons who scored less marks but came from the educationally disadvantaged states were offered admission. The trial court refused to grant the reliefs sought, on the ground that the applicant lacked the requisite *locus standi*. The court stated that she failed to show that she had interest in the subject matter which interest was greater or higher than those of other candidates that were equally affected by the cut-off marks policy. Although the Court of Appeal later upturned this trial court's judgment by holding that the applicant had *locus standi*, the admission process had been concluded in which case, the applicant only got a bare decision in her favour.[11]

Happily, under the 2009 Rules, there is no need to show *locus standi* before one can approach the court for enforcement of fundamental rights, whether for oneself or for others. Hence, paragraph 3(e) of the Preamble to the 2009 Rules expressly provides that:

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[8] (2007) 4 NWLR (pt. 1025), p. 423

[9] See also the case of *Adesanya v. President of Nigeria* (1981) 2 NCLR 38.

[10] Appeal No. CA/L405/88

[11] See also *Attorney –General v. Hassan* (1985) 2NWLR (pt. 8) 483 at 522 where it was held that "He who cannot reach the Court cannot talk of justice from the Court."

> The Court shall encourage and welcome public interest litigation 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 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.

Clearly, the above provisions of the 2009 Rules have widened the scope or class of persons who can litigate on human rights action in Nigerian courts. One would not need to personally suffer the infringement or violation of human rights before one can challenge such violation, i.e, one can seek redress in favour of those who have suffered such violation. Hence, a father can now proceed against a violator of his son's right just as an NGO can now litigate human rights action on behalf of the oppressed segment or section of the society.

This disposition of public interest litigation in Nigerian human rights sector is highly commendable as it follows global trend. For example, public interest litigation has been in operation in India since the 1970s via the instrumentality of judicial activism. Through this mechanism, any public-spirited person in India could bring forth a case before the Indian superior courts even when the person does not have any personal interest or is not seeking any relief for himself but rather prosecuting the case for and on behalf of others. Interestingly, such a person can even initiate a court process through a mere telephone call to the Judge or through a letter addressed to the court.

Hence, in the Indian case of *Unnikrishnan J.P. v. State of Andhra Pradesh*[12] which was instituted by public spirited persons on behalf of the victims of rights violation, the court held that the right to education is implicit in and flows from the right to life guaranteed under Article 21 of the Indian Constitution. The court further held that a child has a fundamental right to free education up to the age of 14 years and that such a right can be enforced in court by other persons on behalf of the child. Similarly, the ECOWAS Court of Justice has also embraced or recognised public interest litigation. Thus, in *SERAP v. Federal Republic of Nigeria*[13], the ECOWAS Court held that:

> Public international law in general, is in favour of promoting human rights and limiting the impediments against such a promotion, lends credence to the view that in public interest

[12] (1993) 1 SCC 7 Scale 487.
[13] (Unreported) Suit No. ECW/CCJ/APP/08/08.

> litigation, the plaintiff need not show that he has suffered any personal injury or has a special interest that needs to be protected to have *standing.*

It is good news that the 2009 Rules have now adopted global best practices in fundamental rights enforcement in this regard. However, we are worried that these laudable provisions of the 2009 Rules are housed in the Preamble instead of the substantive part of the Rules. There is the question as to whether provisions contained in a mere Preamble to a law or regulation are forceful enough to attract judicial enforcement. While, Adeyeye[14] suggests that the provision on abolition of *locus standi* and statute bar should be incorporated into the Constitution to make it more forceful, Iloh[15] is of the view that the use of "may" as against "shall", in the provisions of the 2009 Rules Preamble, with regard to non-dismissal of cases for want of *locus standi*, shows that the courts can decide to dismiss or not dismiss a human rights case on the basis of *locus standi.* In other words, Iloh opines that the Preamble provision on abolition of *locus standi* is directory and not mandatory. While we agree with the authors, we further suggest that even if not incorporated into the Constitution, the preamble provisions should be moved from the preamble section to the substantive part of the 2009 Rules. This way, it would arguably acquire constitutional flavour, since the substantive rules were made pursuant to the provisions of section 46 of the Constitution. Be that as it may, we humbly submit that, a community reading of the preamble under review with the provisions of Order XIII (1) &(2) of the 2009 Rules, which recognise the right of non-parties and *amici curiae* to be heard in fundamental rights proceedings, would reveal that, indeed, the Rules have substantively abolished the requirement of *locus standi.* It is however left for the Nigerian courts to interpret the Rules liberally like their counterparts in India with a view to engendering a better human rights protection regime in Nigeria.

b. Abolition of the requirement for application for leave

Interestingly, the 2009 Rules have abolished the preliminary requirement for application to court for leave to enforce one's fundamental rights. It would be recalled that, under the 1979 Rules, an applicant was required to seek and obtain leave of court before he would be able to make a formal application to enforce his fundamental rights.

The court paid a particular attention and attached much importance to the application for leave and the accompanying documents. Thus, in the case of *Oyawole v. Shehu*,[16] it was held that the absence of an application for leave or any of its accompanying documents like the verifying affidavit was fatal to the entire rights enforcement process, in which case the matter was struck out.

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[14] Adeyeye, J.A., "An Overview and Comparative Analysis of Fundamental Rights Enforcement Procedure Rules of 1980 [sic, 1979] and 2009", (2011), Vol. 4 No. 1, *Confluence Journal of Jurisprudence and International Law*, 26 at 33.

[15] Iloh, F.O., "Fundamental Rights Enforcement in Nigeria: Wearing a New Garb?" (2013), Vol. 5 No.1, *Ebonyi State University Law Journal*, 130 at 139.

[16] (1995) 8 NWLR (pt. 44) 484.

Happily, the 2009 Rules have relaxed this strict adherence to rules by providing in Order II (2) that:

> 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 the Rules lie without leave of court

Hence, an applicant only needs to file his formal application in the form accepted by the court, (e.g., originating summons or motion on notice) without having to apply for leave to make the application.

By Order II(3) of the 2009 Rules, such a formal application, shall, like the 1979 Rules, be accompanied by a statement, setting out the name and description of the applicant, the reliefs sought, the grounds upon which the reliefs are sought as well as a supporting affidavit which must contain the facts that necessitate the application. The affidavit could be sworn to either by the applicant or by another person who has personal knowledge of the facts of the case (where the applicant is in custody and thus cannot swear to the affidavit).

However, unlike the 1979 Rules, there is no longer any need for a verifying affidavit, to verify the facts supporting the application. In other words, instead of the old regime that required two affidavits (supporting affidavit and verifying affidavit), the 2009 Rules only require the filing of the supporting affidavit. Therefore, a case can no longer be struck out, on the basis of the fact that there was no verifying affidavit, as happened in the case of *Oyawole v.Shehu.*[17]

Furthermore, there is no room for using a preliminary objection to dispose off a fundamental right case under the 2009 Rules. There must be a substantive hearing of the case. Thus, Order II(6) provides that where the respondent intends to oppose the application for enforcement of fundamental rights, he shall file his written address and counter-affidavit within 5 days of service of the application on him. While Order VII(2) gives the defendant a right to file a notice of preliminary objection at the same time of filing his defence processes, such a preliminary objection cannot, however, be argued or taken in isolation or before the hearing of the substantive suit.[18]

c. Abolition of Statute Bar

Innovatively, the 2009 Rules have also provided that the doctrine of statute bar or limitation of action shall not apply to fundamental rights enforcement cases. This is a radical departure from the provision of Order 1(1) of the 1979 Rules which provided that an application for leave to enforce fundamental rights must be filed within 12 months from the date of the happening of the event or matter or act complained of. In *Tafida v. Abubakar*[19] which was decided based on the 1979 Rules,

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[17] (Supra).
[18] See Order VII(4) of the 2009 Rules which provides that such a preliminary objection will be heard together with the main suit.
[19] (1992) 3 NWLR (pt.230) 511 at 512.

the court held that though the 12 months period could be extended by the court at the instance of the applicant, the applicant however had the onerous duty to convince the court as to why he did not bring the application within the statutorily stipulated period. Little wonder, therefore, that the court struck out the applicant's application in the case of *Akanbi v. Gnagnatumi*[20] on the ground that the application was not brought within the stipulated time.

However, this requirement to act or sue within a given statutory timeframe has been removed under the 2009 Rules. Order III (1), in no uncertain terms, provides that "An application for the enforcement of Fundamental Rights shall not be affected by any limitation statute whatsoever." One therefore agrees with Falana[21] that,

> Just like time does not run against the state in the prosecution of criminal offences, the application for the enforcement of fundamental rights can no longer be affected by any statute of limitation."

This new regime is in consonance with the reasoning and conclusions of Their Lordships at the Court of Appeal in the case of *Abia State University v. Anyaibe*[22] where it was held that since the Enforcement Rules were made pursuant to the Constitution, it, therefore, has constitutional force which cannot be removed or watered down by a mere statute of limitation.

Thus, the import and purport of Order III(1) of the 2009 Rules is that, even if a victim of fundamental rights violation waits till after 10 years of the right violation, he still can validly activate a right of action against the right violator in court. However, it is submitted that it would not be in the best interest of the victim to wait for too long before seeking redress, so as not to be seen as having slept over his right and delay may have defeated not only equity but the case, which may be lost for want of accurate memory of the relevant facts of the case.

d. Enforcement of the African Charter on Human and Peoples Right and other Human Rights Instruments

The 2009 Rules have also recognised the application of the provisions of the African Charter on Human and Peoples Rights and other regional and international human rights instruments in the human rights jurisprudence of Nigeria. Thus, paragraph 3(b) of the Preamble to the 2009 Rules provides that:

> 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

[20] (1984) 5 NCLR 722.
[21] Falana, F., "An Overview of the New Fundamental Rights Enforcement Procedure Rules 2009", being a text of paper presented at the Nigerian Bar Association Training Seminar on African Regional Mechanism for the Promotion of Human Rights held at Minna, Niger State of Nigeria on 23 March, 2003. 1
[22] Appeal No. CA/PH/105/94.

attention or of which the Court is aware, whether these bills constitute instruments in themselves or form parts of larger documents like constitutions. These 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.

With the inclusion of the African and United Nations human rights instruments in the human rights jurisprudence of Nigeria, the Court is duty bound to ensure that human rights violations are addressed and redressed, with a wider focus on rights provided not only in the Nigeria's Constitution but in other regional and international human rights instruments to which Nigeria is a signatory. Further, it is pertinent to posit that the enforcement recognition of these regional and international human rights instruments in the 2009 Rules must have been influenced by the Supreme Court decision in *Abacha v. Fawehinmi*[23] where it was held that though the provisions of the 1979 Constitution relating to fundamental rights were suspended by military decrees at that time, the respondent's case was still sustainable since the case was rooted not only on the Constitution but also on the African Charter on Human and Peoples Rights which was unsuspended and still in force at the time.

One would be stating the obvious if one says the 2009 Rules have opened a new vista in the law and practice of human rights enforcement in Nigeria. The implication of the foregoing is that individuals and groups can now go beyond the fundamental rights provisions in chapter IV of the Nigeria's Constitution and rely on the African Charter, the UDHR and associated instruments in their bid to seek the enforcement of not only their civil and political rights but also their economic, social and cultural rights contained in those regional and international human rights instruments.[24] One more interesting feature of paragraph 3(b) of the Preamble under review is that the Court has been mandated to apply those regional and international instruments even where parties before the court did not cite the relevant instrument, provided the court is aware of the existence of the instruments.

e. Improved provisions on service of Court Process.

Another area where the 2009 Rules have introduced a salutary change is in the area of service of court processes. Order IV (2) of the 1979 Rules provided that service of the fundamental rights

[23] (2000) 6 NWLR (pt.660) 228.
[24] For detailed discussion on the justiciability of those rights in Nigeria, see Oamen, P.E., "Justiciability of Economic, Social and Cultural Rights in Nigeria: A Call to Follow Global Trends" in the Proceedings of the 5th International Conference on Interdisciplinary Social Science Studies (ICISSS 2016) held at the University of Oxford, St. Anne's College, Oxford, United Kingdom from 14 to 16 November, 2016, 86-98.

enforcement processes shall be by personal service, i.e, the appropriate person complained against must be served personally, not through another person. Hence, in the case Ngige *v. Achukwu*[25], it was held that a motion for enforcement of fundamental right must be served directly on all persons affected. However, the 2009 Rules have now changed the legal position on service of court processes. By Order V (2) & (3) of the 2009 Rules, court processes relating to fundamental rights enforcement may be served personally on a party either directly or through his agent or officer in his office.

Furthermore, under the 1979 Rules, there was the question as to who could effect a personal service of a court process in fundamental right proceedings, i.e, whether either the applicant or the court officials could serve such a process on a party personally. Thus, in *Commissioner of Police & Anor: In Re-Appolos Udo*[26], it was held that there must be an affidavit of service dully sworn and filed by the applicant before the motion for fundamental rights enforcement could be heard or even listed for hearing. Under the new regime, Order V (1) of the 2009 Rules have clearly stated that all originating processes and orders of courts relating to fundamental rights proceedings shall be served by the court Sherriff, Deputy Sheriff, Bailiff or other officer of the court. This new provision in the 2009 Rules has therefore cleared any doubt as to whose duty it is to serve court processes. Under the present Rules, it is doubtful if the "Counsel to Counsel Service" mechanism which is popular among legal practitioners could be accepted as a valid and due service. We humbly submit that, notwithstanding the provisions of the Rules, what the court should be concerned is is whether there is evidence that the party concerned has been served. If he has, the way and manner he was served or the question as to who served him should be seen as irrelevant as same dwells in the realm of undue technicalities.

Still on service, the 2009 Rules have made elaborate provisions for substituted service which the 1979 Rules failed to expressly provide for. By Order V (7) of the 2009 Rules, where it is impossible to effect personal service, the court may order that service be effected by delivering the document(s) to an adult person at the party's usual or known place of abode or business or to his agent or other persons if there is a proof of a reasonable probability that the document(s) will get to him through such a person. The Order also provides that the process can be served "substitutedly" by delivering same to any senior officer of any government agency in the case of service on government or by advertisement in the newspaper or the official gazette of the Federal Government, or by pasting the document(s) in the court premises, or other places of public resort like hotels and beaches.

f. Improved or accelerated Hearing Process.

Another remarkable change introduced by the 2009 Rules is that all fundamental rights applications must now be set down for hearing within 7 days of filing it. This is the import and purport of Order IV (1) of the 2009 Rules. This provision aims at expeditious disposal of cases

[25] (2009) All FWLR (pt. 247) 155.
[26] (1987) 4 NWLR (pt. 63) 120

involving fundamental rights enforcement. Thus, one cannot but state that this speedy dispensation of justice is further buttressed by the combined effect of Order IV (2) and Paragraph 3(g) of the Preamble to the 2009 Rules which provide that, though adjournment may be granted in the hearing of fundamental right cases, the court must constantly bear in mind the urgent nature of fundamental right applications and that such applications should be given priority in deserving cases, especially where the liberty of the applicant is involved. As a matter of fact, the intendment of the maker of the 2009 Rules is that all fundamental right cases should be treated as emergency cases. Thus, Order IV (3) recognises the court's power to hear fundamental right cases on Ex-parte applications in exceptional circumstances.

In order to achieve this speedy dispensation of justice, the 2009 Rules provide that the hearing of fundamental rights cases shall be based on written addresses filed by the parties, though oral arguments of not more than 20 minutes each could be proffered by each party on matters not contained in their written addresses.[27] By Order II (5),(6) and (7) of the 2009 Rules, the applicant shall file a written address alongside his originating processes while the respondent, if he intends to oppose the application, shall file his written address within 5 days of being served with the application processes and he may accompany the written address with a counter affidavit. Further, the applicant may, within 5 days of being served with the respondent's written address, file and serve an address on point of law which he may also accompany with a further affidavit. The written addresses of parties shall contain succinct arguments in support of each party's case. The Rules further provides that if, on the day set for hearing, a party is not in court, his filed written address shall be deemed adopted either on the oral application of the opposing counsel or at the instance of the court, provided the party or his counsel was present in court at the last adjourned date or had notice that the matter would be coming up for adoption of addresses.[28]

4. Applicability of the 2009 Rules to non-fundamental right cases

It should be noted that the 2009 Rules is not applicable to all cases. As the name implies, it is a fundamental rights enforcement procedure rules. So, the innovative features of the Rules can only enure in favour of parties in fundamental rights cases. In other words, before an applicant can be heard under the Fundamental Rights (Enforcement Procedure) Rules, he must establish the fact that his case relates to an infringement, whether actual or intended, of one or more of the rights recognised under chapter IV of the Nigeria's Constitution or other regional or international human rights instruments. Thus, an applicant would not be allowed to explore or benefit from the accelerated hearing regime provided for under the 2009 Rules if his case does not relate to fundamental rights *strictu sensu*. For example, a party to a case of wrongful dismissal or termination of employment, nuisance, negligence or breach of contract cannot have recourse to the provisions of the 2009 Rules in his legal fireworks.

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[27] See Order XII (1) & (2) of the 2009 Rules.
[28] See Order XII (3) of the 2009 Rules.

In the case of *Grace Jack v. University of Agriculture, Makurdi*[29], it was held that:

> An action for wrongful dismissal from employment or breach of contract cannot be brought under the fundamental rights procedure rules. Wrongful dismissal belongs to the common law class of actions which should be commenced by a writ of summons.

Another point that should be noted is that the courts are not strict towards the manner an applicant seeks to enforce his fundamental rights. Hence, where the Rules provide that an applicant should file an originating motion, for instance, if he goes ahead to file an originating summons or writ of summons, his action still would be accommodated by the court without undue adherence to technicalities. What the courts look at is whether the applicant's rights sought to be enforced are cognisable at law. If they are, the court would hear him out not minding the fact that he filed the wrong originating process. This is in line with the equitable doctrine or principle that says *"ubi jus ibi remedium*" (where there is a right, there is a remedy) and the maxim of equity that states that "equity looks at the substance and not the form".

Thus, in the case of *Federal Republic of Nigeria v. Ifegwu*[30], the Supreme Court held that:

> The manner in which the court is approached for the enforcement of fundamental rights does not matter once it is clear that the originating process seeks redress for the infringement of the right so guaranteed under the Constitution…. The concern in regard to redressing a contravention of a fundamental right has been underlined by liberalising the type of originating process without the person affected being inhibited by form of action he adopts. It is enough if his complaint is understood and deserves to be entertained.

5. Conclusion and Recommendations

This paper has discussed the innovative features which the new Fundamental Rights (Enforcement Procedure) Rules of 2009 have introduced. It is the authors' findings that the new Rules have introduced a watershed change in the law and practice of fundamental rights enforcement in Nigeria. The Rules have eliminated the hitherto onerous requirements of *locus standi* and compliance with statutes of limitations. It is also our finding that the Rules have given Nigerian courts the power to rely on regional and international human rights instruments, cited and uncited, in its bid to promote and protect the fundamental rights of citizens and residents of Nigeria. Further to the foregoing discussion, we recommend as follows:

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[29] (2004) 5 NWLR (pt. 865) 208 at 226-227.
[30] (2003) 15 NWLR (pt. 842)133

1. The Nigerian courts should be audacious enough to leverage on the salutary posture of the new fundamental rights enforcement regime by adopting a liberal approach in its interpretative functions, especially where the rights of persons are endangered.
2. The National Human Rights Commission and civil society organisations/Non-governmental organisations should quickly engage in enlightenment or awareness campaign wherein the citizens would be educated not just on their rights but also on the procedure to enforcing such rights under the new Rules.
3. Public-spirited lawyers, individuals and organisations should take advantage of the provisions of the new fundamental rights enforcement procedure rules which encourage public interest litigation. Thus, they should champion the itemisation, systemisation and documentation of human rights abuse and institute human rights protection lawsuits for and on behalf of victims of rights violation who ordinarily cannot afford legal services.