

**AN APPRAISAL OF THE ROLE OF THE MAGISTRATES' COURTS  
IN CIVIL LITIGATION IN NIGERIA**

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**ABSTRACT**

This paper examines the civil litigation in magistrates' court. This paper posits that Civil litigation which is also known as civil procedure is a concept used to describe the deals with the rules, practices, law and procedure; guiding, directing and controlling the conduct of civil proceedings in courts exercising civil power or jurisdiction. The paper therefore posits that civil jurisdiction is the power that the court has to redress, protect and enforce the civil right of a private individual or government. This procedure covers the act of enforcing civil rights and obligations that have been well explained in various substantive law subjects. However, civil procedure rules in Nigeria are derived from the different legal instruments such as rules of court, statutes, constitution, decision of superior courts on civil procedure, practice directions among others. Civil litigation is therefore aimed at focusing on providing orderly, suitable arranged and expeditious means of enforcing claims in civil courts. When a civil suit or claim which can be brought by a private person or court for the court to exercise its civil jurisdiction. It is expected that there must be a civil procedure which encompasses the rules that govern the practices in the civil law courts. This paper articulates the sources of civil jurisdiction in Nigeria and the magistrates' court system. The Magistrates' court is therefore said to be established by the law of the House of Assembly of a state. The state laws which established the Magistrates' courts are also responsible for the provision of their jurisdiction in respect of civil causes and actions. Typically, either criminal or civil, the jurisdiction of Magistrates' courts are limited by the provisions bordering on matters such as value of the damages/relief sought, the degree of seriousness of the offence, the subject matter of the action, territory etc., contained in the operative Magistrates' court law and rules. Although in a Magistrates' court, the civil jurisdictions are specified by these laws.

*Keywords:* Magistrates, Civil Litigation, Laws, Efficacy, Nigeria.

**1. INTRODUCTION**

According to Black's law Dictionary "a Magistrate is a judicial officer with strictly limited jurisdiction and authority often on the local level and often restricted to criminal cases"<sup>1</sup>. This definition implies that a magistrate in a magistrates' court has limited power on any case. In Nigeria however, all the Courts are classified in several ways depending on their jurisdictions. The major classifications are superior courts and inferior courts. Classification can also be done based on records as some courts are known as courts of record and courts

<sup>1</sup> Black's Law Dictionary 9th Edition. Page 1036, Para 4, Bryan A. Garner, Editor in Chief.

other than courts of record<sup>2</sup>. As explained by Professor Obilade, superior courts are described as courts with unlimited jurisdiction. Although no court in Nigeria has unlimited jurisdiction, however, the word "unlimited" jurisdiction ascribed to superior courts means that the limits to their jurisdiction are infinitesimal. Going further, the professor asserted that "they have minimal jurisdictional limits with respect to the type of subject matter but they are not limited in jurisdiction with respect to the mere value of the subject of a case"<sup>3</sup>. Thus, the High court is a superior court because it has this "unlimited jurisdiction" with respect of the value of the subject matter. Inferior courts such as magistrates' courts are said to be inferior courts because of their limited jurisdiction and usually such courts are subject to the supervisory jurisdiction of High courts<sup>4</sup>.

Courts that are said to be court of record may either be a superior court or an inferior court. For instance, in a state, the High Court is a superior court of record while the magistrates' court is an inferior court of record<sup>5</sup>. Therefore, magistrates' courts are known and seen as the grass-root courts. However, the Magistrates are of various grades namely; Chief Magistrate (Grades I & II), Senior Magistrates (Grades I & II) and Magistrates (Grades I, II & III)<sup>6</sup>. This work therefore looks at the the civil litigation in a magistrates' court.

## 2. CIVIL LITIGATION

Civil litigation which is also known as civil procedure is a concept used to describe the deals with the rules, practices, law and procedure; guiding, direct and control the conduct of civil proceedings in courts exercising civil power or jurisdiction<sup>7</sup>. This procedure covers the act of enforcing civil rights and obligations that have been well explained in various substantive law subjects. Civil litigation is therefore aimed at focusing on providing orderly, suitable arranged and expeditious means of enforcing claims in civil courts. When a civil suit or claim which can be brought by a private person or court for the court to exercise its civil jurisdiction. It is expected that there must be a civil procedure which encompasses the rules that govern the practices in the civil law courts<sup>8</sup>. These rules are however applied right from the onset of the trials, actions and judgment to the execution of the appeals and judgment<sup>9</sup>. It therefore becomes necessary for the court itself to have all the necessary legal backing (jurisdiction) to preside over such matters so that the proceedings will be followed in bringing an action. Civil jurisdiction therefore, is believed to be the power that the court has to redress, protect and enforce the civil right of a private individual or government. Jurisdiction is a indispensable requirement in all cases. It is a condition precedent that cannot be waived. For instance, the Supreme Court in the case of *Zakari v Nigerian Army*<sup>10</sup> held on the fundamental nature of jurisdiction of a court that:

Jurisdiction is the blood that gives life to the survival of an action in a court of law without which the action being like an animal drained of its blood,

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<sup>2</sup> Nigerian legal system, Professor Obilade P.169.

<sup>3</sup> (Supra)

<sup>4</sup> (Supra)

<sup>5</sup> *Nuruku V. Police* (1955) 15 WACA 23

<sup>6</sup> The law is for all. Justice Akinola

<sup>7</sup> O. Duru, *Laws and Rules Applicable to Civil Litigation in Nigeria; Jurisdiction of Civil Courts; List of Alternative Dispute Resolution Methods and Relevant Some Case Summaries*. 2015 Retrieved from <http://www.legalempers.com.ng/>

<sup>8</sup> Ewere-Bright "Civil Jurisdiction of Courts in Nigeria"

<http://www.thelidenensonline.com/2015/07/15/civil-jurisdiction-of-courts-in-nigeria>

<sup>9</sup> Imhanobe, S.O. *Lawyers Deskbook*, Vol. 1, 2nd ed., (Abuja: 2010) 1.

<sup>10</sup> (2015) 17 NWLR (Pt 1487)p 77 at 88.

ceases to be alive. Bereft of any blood in it and indeed without life, any effort at resuscitating it remains a futile exercise.

The Supreme Court of Nigeria in the case of *M.P.P v INEC (No.2)* made iteration on the position that when it held:

The issue of jurisdiction is over and above any legal manipulation. It has to be neatly observed and acted upon, whether it was raised in any ground of appeal or not. The jurisdiction of court is a question of law which can be mentioned and raised for the first time in the appellate courts or even in the Supreme Court. There is no need for leave of court to be sought and obtained before it can be said to have been properly raised. No matter in what manner it was raised, it can lawfully be raised as a fresh issue on appeal<sup>11</sup>.

Jerry Amadi, Esq. a learned Author and lecturer asserted about jurisdiction of magistrate while commenting on the case of *LUFADAJU VS JOHNSON*<sup>12</sup> and laid down the following matters arising as follows:

The debate is over. The scope of the jurisdiction of Magistrates' courts has widened in a very material area. This expansion of jurisdiction is however not procured by judicial means, but by legislative prescriptions. In *Lufadeju V. Johnson* the Supreme Court interpreted the effect of section 236 (3) of the Lagos State CPL. It is the statute that conferred the jurisdiction and not their Lordship's decision. In effect, the decision will not apply to extend the jurisdiction of Magistrates' courts in other states nor coat them with power to remand where equivalent provisions have not been enacted in the laws of such States by the appropriate Houses of Assembly. Consequently, it will be holding charge in any other state where the Magistrate in want of jurisdiction remands a suspect. Jurisdiction is without doubt wanting where provisions equivalent to section 236 (3) CPL Lagos state is not contained in the statute book of any state. It is recommended that in order to draw from the policy – laden decision of the Supreme Court in the *Lufadeju's* case, the Houses of Assembly of the other states should incorporate the essence of section 236 (3) of the Lagos state law into their statutes on criminal procedure<sup>13</sup>.

Jurisdiction is essential in every proceeding in any court of law. It is been said that if any court of law adjudicates over a matter in respect of which it has no jurisdiction, its effort is in vain as the proceedings are a nullity.<sup>13</sup> A magistrate therefore has the power to preside over any case within its jurisdiction, brought to its presence. Therefore, Jurisdiction is the power and authority bestowed on a court to adjudicate over matters that are litigated before it. It is upon this basis that a court acts. Jurisdiction is said to be a function of the law. Accordingly, "no litigant can confer jurisdiction on the court where the constitution or a statute or any provision of the common law says that a court does not have jurisdiction"<sup>14</sup>.

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<sup>11</sup> (2015) 18 NWLR (Pt. 1491) p 251 at 255.

<sup>12</sup> (2007) 3 SC (Pt. II) 134

<sup>13</sup> Hon. Justice Marshal Umukoro, Access to justice in the lower courts:- Re-examining the civil and criminal jurisdiction of magistrates' court in Nigeria by Chief Judge, Delta State Nigeria 2016 conference of all Nigeria Judges of the lower courts holding at National Judicial Institute, Abuja 21st – 25th November, 2016

<sup>14</sup> NDAYAKO V. DANKORO (2004)13 NWLR (PT.889) 187

Put differently, it is a question of law whether a court has jurisdiction in a matter or not. This concept of jurisdiction could either be substantive or procedural in nature. Umukoro while differentiating between procedural jurisdiction and substantive jurisdiction affirmed that Procedural jurisdiction "involves issues like pre-action notice and other conditions precedent to the exercise of jurisdiction. It also involves composition and constitution of a court. A litigant may waive procedural jurisdiction". On the other hand, substantive jurisdiction however is a matter of law that covers the issue of subject (person) as well as the subject matter before the court. This cannot be waived<sup>15</sup>. Due to the fact that jurisdiction is fundamental, it must be determined ab initio before any action is commenced. However, Jurisdiction may be by reference to the subject matter that the court may adjudicate upon or the financial limit in such subject matter. It may also be by reference to the constitution of the land or by composition of the court. Jurisdiction may also be decided by reference to the geographical area of where the court operates<sup>16</sup>.

On the other hand, "the criminal jurisdiction of a Magistrates' court is the jurisdiction of the court to entertain a criminal proceeding involving a crime or an offence"<sup>17</sup>. An offence as written in a law is seen as an omission or act punishable by the state. An offence can either be a capital offence (felony), a misdemeanour or a simple offence. Although, magistrates' courts deal with all manner of offences EXCEPT capital offences. Capital offences however remain beyond its jurisdiction. In the Nigerian justice system, a Magistrates' court is a court of lower rank, and as such, it cannot precede over any capital offence. Capital offences are therefore within the jurisdiction of higher and superior courts of record such as the High Court. This means that when a matter of capital offence occurs, the High Court being the court of competent jurisdiction, should be the first court of instance to be approached. However, in Nigeria, "it is a common practice for the Nigerian police to file a charge against a person accused of committing a criminal offence before a Magistrates' court which has no jurisdiction to hear the matter"<sup>18</sup>.

This main reason for this practice is because some of the laid down principles of liberty states that any person who has been put under custody or detained for any alleged offence must be brought to court within a "reasonable time"<sup>19</sup>. However in the legal parlance the term "reasonable time" has always been seen as a relative concept, which is determined by factors, such as the facts of individual cases, the constitutional prescription as it affects civil liberty is one or two days as the case maybe<sup>20</sup>. The Nigerian Constitution in its section 35, provides that any person arrested, must be brought before a court of law within a reasonable time, and the expression "reasonable time" means a period of one day in the case of an arrest in a place where there is a court of competent jurisdiction within a radius of forty kilometers, or two days or longer, in any other case, as considered reasonable by the court<sup>21</sup>.

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<sup>15</sup> Ibid (no7)

<sup>16</sup> Ibid

<sup>17</sup> Ibid

<sup>18</sup> Ibid

<sup>19</sup> S.35(4) of the 1999 Constitution (as amended)

<sup>20</sup> CRIME AND THE CRIMINAL JUSTICE SYSTEM IN NIGERIA – Amadi Jerry, Esq.

<sup>21</sup> Hon. Justice Marshal Umukoro, Access to justice in the lower courts:- Re-examining the civil and criminal jurisdiction of magistrates' court in Nigeria by Chief Judge, Delta State Nigeria 2016 conference of all Nigeria Judges of the lower courts holding at National Judicial Institute, Abuja 21st – 25th November, 2016

### 3. MAGISTRATES' COURT AND ITS SOURCE

The establishment of magistrates' court is well provided for in the Constitution of Nigeria in section 6(2) which created an enabling environment for the establishment of Magistrate as well as District courts in states. Section 6(2) of the Constitution of the Federal Republic of Nigeria provides that: "The judicial powers of the state shall be vested in the courts to which this section relates, being courts established, subject as provided by this Constitution, for a state."<sup>22</sup> Sub section 4 provides inter alia as follows:

Nothing in the foregoing provisions of this section shall be construed as precluding: (a) the National Assembly or any House of Assembly from establishing courts, other than those to which this section relates, with subordinate jurisdiction to that of a High Court<sup>23</sup>.

Finally paragraph k of subsection 5 provides that: "(k) such other courts as may be authorized by law to exercise jurisdiction at first instance or on appeal on matters with respect to which a House Assembly may make laws."<sup>24</sup> As stated by Duru, with its provision in the constitution, the magistrates' court is not a direct establishment of the constitution<sup>25</sup>.

The Magistrates' court is therefore said to be established by the law of the House of Assembly of a state. The state laws which established the Magistrates' courts are also responsible for the provision of their jurisdiction in respect of civil causes and actions<sup>26</sup>. While corroborating this, Duru affirmed that the provisions as well as the laws that establish and guide the magistrates' courts come from each state of the Federation. It is this made laws that stipulate the civil jurisdiction of the courts. For instance, In Lagos State for example the Magistrates' courts Law No. 14 2009 of Lagos State and the Magistrates' court Civil Procedure Rules govern the Magistrates' court system<sup>27</sup>. However, it is trite to note that Magistrates' courts are courts of summary jurisdictions as matters before it, could be heard and determined in the absence of briefs filed by the parties involved or pleading. These courts which are referred to as Magistrates' courts in the South are known as District Courts in the Northern part of Nigeria. A civil action in the Magistrates' court can commence "when the plaintiff applies for a plaint and the court issues an ordinary summons.

However, this summon contains the particulars of the claim and the plaintiff must plead all essential facts in support of his claim"<sup>28</sup>. It is of importance to note that the default summon is different from the ordinary summon as it is used for liquidated sum. Moreover the application for defaulted summons is usually supported by affidavit. It is therefore possible to make use of ordinary summon in cases that involves ordinary debt where the defendant is

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<sup>22</sup> Sections 6 (2) of the 1999 constitution (as amended)

<sup>23</sup> Sections 6 (4) of the 1999 constitution (as amended)

<sup>24</sup> Sections 6 (5) k of the 1999 constitution (as amended)

<sup>25</sup> O. Duru, *Laws and Rules Applicable to Civil Litigation in Nigeria; Jurisdiction of Civil Courts; List of Alternative Dispute Resolution Methods and Relevant Some Case Summaries*. 2015 pp 1-8. Retrieved from <http://www.legalempereors.com.ng/>

<sup>26</sup> In Edo State, the Edo State Magistrates' courts Laws Increased Jurisdiction of Magistrates in Civil and Criminal Proceedings Order 2011, Laws of Edo State is the extant law governing the proceedings in the Magistrates' court. Every State in Nigeria has its own magistrates' court rules.

<sup>27</sup> O. Duru, *Laws and Rules Applicable to Civil Litigation in Nigeria; Jurisdiction of Civil Courts; List of Alternative Dispute Resolution Methods and Relevant Some Case Summaries*. 2015 pp 1-8. Retrieved from <http://www.legalempereors.com.ng/>

<sup>28</sup> T. U. Akpoghome, *Introduction into the Civil Jurisdiction of Nigeria: Court System, Jurisdiction, Legal Proceedings*, 2017. Retrieved from KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques. DOI: 10.5771/2363-6262-2017-3-236

likely to deny the allegation and claim. Such claims include; claims for arrears of rent as a result of actions between landlord and tenant, and recovery of possession; unliquidated damages; money lenders action; and recovery of goods. Besides the ordinary summons, actions may also be commenced using a default summon<sup>29</sup>. The rules of each magistrates' court are peculiar to the state it belongs as each state has its own rules. These rules however determine the jurisdiction of Magistrates with full consideration and respect to financial award made by the courts in favour of the litigant. However, civil procedure rules in Nigeria are derived from the different legal instruments such as rules of court, statutes, constitution, decision of superior courts on civil procedure, practice directions among others. As explained by Duru, (a) Rules of Court: rules of court refers to those procedural rules that are expressly made for the courts in order to guide, regulate the practices of the court as well as the procedure in the conduct of civil proceedings. These rules of the court are usually presented in "Rules" and "Orders". Duru asserts<sup>30</sup> that when actions are taken procedurally, it is referred to as "Rules" while "Orders" can be explained as those actions taken in a court. However, all the courts in Nigeria have their own rules. These include:

(i) Supreme Court Rules 1985 as amended in 1999 made by the Chief Justice of Nigeria pursuant to powers conferred on him by section 236 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and by section 9 of the Supreme Court Act Cap S15 Laws of the Federation of Nigeria, 2004. The practice and procedure of the Supreme Court shall be in accordance with the Rules and the Act creating the Court. (ii) Court of Appeal Rules 2011 made pursuant to the powers conferred on the President of the Court of Appeal by section 248 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and section 8(2) of the Court of Appeal Act Cap C36 Laws of the Federation of Nigeria, 2004 and by section 8(1) of the latter, the practice and procedure of the Court of Appeal shall be in accordance with the rules and the statute creating the court. (iii) Federal High Court (Civil Procedure) Rules, 2009 (as amended in 2013) made by the Chief Judge of the Federal High Court pursuant to the powers conferred on him by section 254 of the Constitution of the Federal Republic of Nigeria 1999, and by section 9(1) of the Federal High Court Act Cap F12 LFN, 2004. The practice and procedure of the Federal High Court shall be in accordance with the rules and orders of the Court and the enabling statute. (iv) High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2004 made by the Chief Judge of the High Court of the Federal Capital Territory Abuja pursuant to powers conferred on him by section 259 of the Constitution of the Federal Republic of Nigeria 1999. (v) High Court of Lagos State (Civil Procedure) Rules 2012; made by the state House of Assembly pursuant to section 32 of the High Court Law of Lagos State.

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<sup>29</sup> The affidavit must state that the defendant is not an infant nor an insane person nor an outdoor worker; the action is not for recovering money lent by a money lender or to recover an assignment of a debt, that the amount is a liquidated sum and finally that the defendant has no defense to the action. It also important to note that a default summon cannot be used against disabled persons, infants, insane persons, government and government departments, an outdoor worker, his wife, children and servant; recovery of money secured by a lender or interest thereon; and a person who is not within the jurisdiction of the court.

<sup>30</sup> O. Duru, *Laws and Rules Applicable to Civil Litigation in Nigeria; Jurisdiction of Civil Courts; List of Alternative Dispute Resolution Methods and Relevant Some Case Summaries*. 2015 pp 1-8. Retrieved from <http://www.legalempers.com.ng/> accessed 12 Dec 2022

(vi) National Industrial Court Rules 2007 (as amended in 2012) made by the President of the National Industrial Court pursuant to powers conferred on him by section 36(1) of the National Industrial Court Act No. 1 2006 and section 254F(L) of the Constitution of the Federal Republic of Nigeria 1999 (Third Alteration) Act, 2010. (vii) Sharia Court of Appeal of the Federal Capital Territory, Abuja (Civil Procedure) Rules, made by the Grand Kadi of the Sharia Court of Appeal of the Federal Capital Territory, Abuja pursuant to powers conferred on him by section 264 of the Constitution of the Federal Republic of Nigeria 1999. (viii) Customary Court of Appeal of the Federal Capital Territory, Abuja (Civil Procedure) Rules made by the President of the Customary Court of Appeal of the Federal Capital Territory Abuja, pursuant to powers conferred on him by section 269 of the Constitution of the Federal Republic of Nigeria 1999<sup>31</sup>.

(b) Statutes: any conducts of civil proceedings are usually regulated either partially or wholly by the statutes enacted by the legislature. However, 'the statute may be one creating the court or other statutes which may either be specifically or specially enacted on procedure or which partially provide for procedure. A short adumbration on these special statutes will suffice'<sup>32</sup>.

i. Sheriffs and Civil Processes Act/Law: For the Federal Act see Cap S6 Laws of the Federation of Nigeria 2004. This law deals with the appointment and duties of the Sheriffs and the service and execution of civil process of courts throughout Nigeria and the states.

ii. Judgment (Enforcement) Rules made pursuant to the above Act/Laws to deal with enforcement of judgments and court orders.

iii. Foreign Judgment (Reciprocal Enforcement) Act 1961 now Cap F35 Laws of the Federation of Nigeria 2004 applicable to the enforcement of foreign judgments before the courts in Nigeria.

iv. Companies and Allied Matters Act Cap. C20 Laws of the Federation of Nigeria 2004. Under this Act, there are certain Rules of procedure enacted for certain specialized matters which are applicable only in the Federation High Court. These are the Companies Winding Up Rules 2001 that set out practice and procedure for winding up of companies and the Companies Proceedings Rules 1992.

v. Companies Income Tax Act, Cap C. 21 Laws of the Federation of Nigeria 2004. Under this Act, the Federation High Court (Tax Appeals) Rules 1992 was enacted for the purposes of providing for the procedure in respect of appeals made from Appeal Commissioners to the Federal High Court.

vi. The Admiralty Jurisdiction Act 1991 Cap A5 Laws of the Federation of Nigeria 2004. The Chief Judge of the Federation High Court made the Admiralty jurisdiction Procedure Rules 1993 pursuant to section 21 of the Admiralty Jurisdiction Act 1991 and the rules apply to every admiralty cause or matter brought before the Federal High Court. vii. Matrimonial Causes Act, Cap M7 Laws of the Federation of Nigeria 2004 and the Matrimonial Causes Rules 1983 regulate practice and procedure for matrimonial causes and this is applicable only in the State High Court

viii. Electoral Act 2010 (as amended in 2011). This statute provides for practice and procedure of Election Petition Tribunals. By section 54 thereof,

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<sup>31</sup> ibid

<sup>32</sup> ibid

the practice and procedure of an Electoral Tribunal in relation to an election petition shall be as nearly as possible, similar to the practice and procedure of the Federal High Court in the exercise of its civil jurisdiction and the Civil Procedure Rules shall apply with such modifications as may be necessary to render them applicable having regard to the provisions of the Electoral Act, as if the Petitioner and the respondent were respectively the plaintiff and the defendant in an ordinary civil action.

ix. Legal Practitioners Act, Cap L 11 Laws of the Federation of Nigeria 2004. By this statute, appeals from the Legal Practitioners Disciplinary Committee go directly to the Supreme Court.

x. Rules of Professional Conduct for Legal Practitioners 2007. This law makes provision for the acceptable professional conduct of legal practitioners during civil litigation<sup>33</sup>.

(c) The Constitution: civil procedure can also derive its source from the constitution. This is possible because it is an enabling law that makes the rules of the court, other rules of practice and procedure<sup>34</sup>. This includes;

the Fundamental Rights (Enforcement Procedure) Rules, 2009 made by the Chief Justice of Nigeria pursuant to the powers conferred on him by section 46(3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended); it also contains provisions on matters of practice and procedure, for example, the provisions relating to fair hearing (section 36 thereof), right and procedure for appeals (sections 233, 240 – 246 thereof) and the jurisdiction of the various courts established under the constitution (sections 232, 233, 239, 240 etc). It is instructive to note the provisions of section 6 and 8 of the Constitution of the Federal Republic of Nigeria Second Alteration Act 2010 which altered the provisions of sections 233 and 246 of the Constitution of the Federal Republic of Nigeria 1999 and sections 24 and 26 of the First Alteration Act, respectively<sup>35</sup>.

(d) Decision of Superior Courts on Civil Procedure: the decisions of the superior courts of law also form a source of civil procedure and this is subject to the rules of judicial precedent (*stare decisis*). These decisions may occur as a result of the interpretation of the rules of court and other laws on procedure. It may also arise from the formulation of a new rule of practice and procedure whenever there is a lacuna in the existing rules<sup>36</sup>.

Other sources include;

- a) Rules of Court e.g. Federal High Court (Civil procedure Rules) 2009, Lagos State High Court (Civil procedure Rules) 2004, Edo State High Court (Civil Procedure Rules) 2012
- b) Other Statutes such as section 78 Companies and Allied Matters Act, Cap C20 LFN 2004 which deals with service of processes on Companies
- c) Judicial Precedents, d) Practice Direction<sup>37</sup>

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<sup>33</sup> *ibid*

<sup>34</sup> *ibid*

<sup>35</sup> *ibid*

<sup>36</sup> *ibid*

<sup>37</sup>T. U. Akpoghome, Introduction into the Civil Jurisdiction of Nigeria: Court System, Jurisdiction, Legal Proceedings, 2017. Retrieved from KAS African Law Study Library - Librairie Africaine d'Etudes Juridiques. DOI: 10.5771/2363-6262-2017-3-236



#### 4. CIVIL LITIGATION IN MAGISTRATES' COURT

The Magistrates' court as stated by HON. Justice Marshal Umukoro, Chief Judge, Delta State "is a court of summary jurisdiction created to deliver efficient and effective local justice and it represents the first level of criminal justice delivery involving the state, in the hierarchy of courts". A court either magistrate or otherwise has the power to exercise civil or criminal jurisdiction. Accordingly, civil jurisdiction is the power of the court to judge or adjudicate over civil matters. As explained by Umukoro, Civil matters include disputes between individuals, disputes between government and individuals as well as between governments, the outcome of which may be the award of compensation, damages, declaration of either "rights or prerogative or equitable remedies". Hence, examining the state territory, the claim, amount, subject matter, and parties involved; and the geographical area, among other criteria determines civil jurisdiction. In conformance to section 6(4) of the 1999 Constitution, the Magistrates' court in a state is created by the state house of assembly in that state, while the Magistrates' court in the Federal Capital Territory is established by the National Assembly. The jurisdiction of every Magistrates' court in a state is sketched out by the Magistrates' court law which is enacted by the state's legislature and the Magistrates' court rules made by the Chief Judge of the relevant state.

Typically, either criminal or civil, the jurisdiction of Magistrates' courts are limited by the provisions bordering on matters such as value of the damages/relief sought, the degree of seriousness of the offence, the subject matter of the action, territory etc. Magistrate judges are most times assigned civil cases, discovery and settlement to manage in their court. Although in a Magistrates' court, the civil jurisdictions are specified by these laws.

Using Lagos State as an example the Magistrates' courts Law No. 14 2009 of Lagos State and the Magistrates' court Civil Procedure Rules govern the Magistrates' court system;

Under the provisions of section 28 of the Magistrates' courts Law of Lagos State, the Magistrate shall have and exercise jurisdiction in the following causes:

- i. All personal actions whether arising from contract or from tort or from both where the debt or damages claimed is not more than N10, 000,000 (Ten Million naira);
- ii. Actions between landlords and tenants for possession of any land claimed under an agreement or refused to be delivered up where the annual rental value does not exceed N10, 000,000 (Ten Million naira) ( Note that Rent Tribunals under the Rent Control and Recovery of Residential Premises Edict of 1997 Lagos State appears to have taken over some of the jurisdiction. See section 1(1) and 7(1) but the Magistrate still sit as the Chairman of the Rent Tribunal on days marked out as tribunal days).
- iii. Action for the recovery of any penalty, rates expenses, contribution or like demand if the amount does not exceed N10, 000,000 (Ten Million naira).
- iv. Appointment of Guardian Ad Litem
- v. Power to grant injunctions or order to stay, waste or alienation or for the detention and preservation of any property or to restrain breaches of contract or tort in actions instituted in the courts.

The foregoing notwithstanding, by the provisions of the Magistrates' court Law under review, the Magistrates' court cannot exercise jurisdiction on the following matters:

- (1) Issue of title to land or to any interest to land; and
- (2) Issue as to the validity of device, bequest or limitations under any will or settlement.

In addition to their general jurisdiction, Magistrates are to observe and enforce the observance of every customary law, which is applicable and is not repugnant to natural justice equity and good conscience or incompatible with any law for the time being in force: section 24, Magistrates' court Law, Lagos. In addition to the two situations highlight above, a magistrates' court has no jurisdiction to entertain the following matters:

- (4) Matters relating to recovery of residential premises, except the rent is within N10, 000,000 (Ten Million naira);
- (5) Marriage (matrimonial causes);
- (6) Family status or guardianship of children
- (7) Inheritance and disposition of property on death.

On the other hand, in the North, when Magistrates' courts exercise civil jurisdiction, they are it called Distinct Courts. In the Federal Capital Territory, Abuja, the District Court Laws are similar to the Magistrates' court Laws. Section 13 of the District Court Act provides for civil jurisdiction of District Courts. Under that provision the senior district judge shall have and exercise jurisdiction in civil matters in the following cases:

- a) All personal suits arising from contracts, tort or both;
- b) All suits between landlord and tenant for possession of a land or house claimed under agreement or referred to be actually delivered up.
- c) Action for recovery of penalty, rate, expenses, contribution or other likely demand which is recoverable by virtue of written law for the time being in force.

Like the Magistrate's Court the jurisdiction of District Courts is excluded in respect of the following:

- (1) Issue as to title to land or to any interest in land.
- (2) Issue as to the validity of any devices, bequest or devolution under any will or settlement;
- (3) Matters that are subject to marriage, family status, guardianship of children, inheritance or disposition of property as death<sup>38</sup>.

For instance in Lagos State, Pursuant to Section 11 of the Magistrates' court Law of Lagos State 2009, all Magistrates' courts in Lagos have uniform criminal and civil jurisdiction, capped at a financial limit of N10,000,000.00 (Ten Million Naira), and are not categorized vertically into grades, while in other states the Magistrates' courts are divided into grades i.e. Chief Magistrate I, Chief Magistrate II, Senior Magistrate I, Senior Magistrate II etc., with

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<sup>38</sup> O. Duru, Laws and Rules Applicable to Civil Litigation in Nigeria; Jurisdiction of Civil Courts; List of Alternative Dispute Resolution Methods and Relevant Some Case Summaries. 2015 pp 33-36s. Retrieved from <http://www.legalemporors.com.ng/>

differing criminal and civil jurisdiction<sup>39</sup>. In civil cases, be it on contracts, debts, landlord/tenant or on administration of estate, the monetary value of the matter will determine whether it is the Magistrates' court or the High Court that has to hear the case. For example, in Lagos state, if the matter involves little or no monetary claim (less than N1,000,000.00), the proper court is the Magistrates' court or Customary Court; however, if the amount is higher than N1,000,000.00 then the person approach the High Court. When the Service fees (usually fixed by law, although differs from state to state) which is the required amount of money paid for serving the court paper to other party of the required amount has been paid, the court registrar will therefore assess the case which is based on the monetary value of the claim (Rule of court) and determines the charges. The case will then be filed. This is usually done by assigning a suit number to the case. Then case will then be taken to the Administrative Magistrate or Judge who in turn assign the case to a Magistrate or Judge and lists it on the General Cause List for hearing. After this, the court will determine a date for the first calling of the case in the court as well as inform you of the date. When it gets to the magistrates' court, the magistrate will mention the case. When a case is mentioned in a magistrates' court, it means the defendant has been informed of the matter that has been filed against him or her and as equally been served with a letter of invitation to appear on the fixed date for hearing.

Usually the individual get notified within eight days depending on the location. After this notification, the individual is given forty two (42) days to submit a duly completed and signed "memorandum of appearance" to the court registry. This will be a confirmatory statement that you will appear before the court on the fixed date. The defendant is also expected to file his/her Statement of Defence together with the following documents; a list of witnesses, the witnesses' statement on oath, copies of all the document(s) he/she intends to use as evidence during the trial.<sup>40</sup> Magistrates' courts therefore are called Courts of Summary Jurisdiction because matters before the court are determined therein without pleadings or briefs by parties<sup>41</sup>.

## 5. CONCLUSION

The paper examined the civil litigation in magistrates' court. It concludes that Civil litigation which is also known as civil procedure is a concept used to describe the deals with the rules, practices, law and procedure; guiding, directing and controlling the conduct of civil proceedings in courts exercising civil power or jurisdiction. It argued that civil jurisdiction is the power that the court has to redress, protect and enforce the civil right of a private individual or government. This procedure covers the act of enforcing civil rights and obligations that have been well explained in various substantive law subjects. However, civil procedure rules in Nigeria are derived from the different legal instruments such as rules of court, statutes, constitution, decision of superior courts on civil procedure, practice directions among others. Civil litigation is therefore aimed at focusing on providing orderly, suitable arranged and expeditious means of enforcing claims in civil courts. When a civil suit or claim which can be brought by a private person or court for the court to exercise its civil jurisdiction. It is expected that there must be a civil procedure which encompasses the rules

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<sup>39</sup> Hon. Justice Marshal Umukoro, Access to justice in the lower courts:- Re-examining the civil and criminal jurisdiction of magistrates' court in Nigeria by Chief Judge, Delta State Nigeria 2016 conference of all Nigeria Judges of the lower courts holding at National Judicial Institute, Abuja 21st – 25th November, 2016

<sup>40</sup> UNODC: United Nations on Drugs and Crimes. Basic Civil Procedure Court Users Guide 5. P.1-2

<sup>41</sup> D.I Efevwerhan; Principles of Civil Procedure in Nigeria. Snaap Press Limited ,Enugu.2ndedn)p.92

that govern the practices in the civil law courts. The Magistrates' court is therefore said to be established by the law of the House of Assembly of a state. The state laws which established the Magistrates' courts are also responsible for the provision of their jurisdiction in respect of civil causes and actions. Typically, either criminal or civil, the jurisdiction of Magistrates' courts are limited by the provisions bordering on matters such as value of the damages/relief sought, the degree of seriousness of the offence, the subject matter of the action, territory etc., contained in the operative Magistrates' court law and rules. Although in a Magistrates' court, the civil jurisdictions are specified by these laws.