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3. Immigration and the Rights of Children in Nigeria
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5. The Role of the Judiciary in the Protection of Fundamental Rights in Nigeria
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6. Criminal Summons: Law and Practice in Nigeria
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Contents

Editorial Advisory Board	vi
Editorial Committee	vii
Citation	vii
1. Law Report and its Relevance to Legal Research	1
<i>Yebisi, E.T.</i>	
2. A Holistic Approach to Addressing Female Genital Cutting (FGC) in Africa: The Relevance of the Protocol to the African Charter on the Rights of Women.....	11
<i>Ebenezer Durojaye, Patience Munge Sonne</i>	
3. Immigrant and Unaccompanied: The Fate of Alien Children in the United States	32
<i>Dr. Foluke Dada</i>	
4. Same-Sex Rights and the Changing Status of Marriage: The Strengths of Diversity Across Boundaries	47
<i>Adeniyi Olatunbosun, Ph.D</i>	
5. Ethical Revolution in the Nigerian Bar Association.....	63
<i>J.E. Idugboe</i>	
6. Applying the Distinction Between Law and Fact in the Nigerian Legal System	79
<i>Etudaiye, Muhtar Adeiza</i>	
✓ 7. Criminal Summons: Law and Practice in Nigeria	91
<i>J. O. Adedoyin-Raji, R. J. Adebimpe</i>	
8. Legislating for Data Protection in Nigeria: Lessons from UK, Canada and India	98
<i>Bernard Oluwafemi Jemilohun</i>	
9. Socio-Legal Analysis of the Relationship Between Crime and Poverty.....	117
<i>E. K. Adetifa Esq.</i>	
10. Legal Justification for Statutory Control of Access to IVF Services in Nigeria.....	134
<i>Yusuff Abdulwasiiu Ojo Akorede, Ph.D</i>	
11. Petroleum Resources Ownership and Control Through Legislations in Nigeria: A Comparative Examination	148
<i>Enobong Mbang Akpambang</i>	

12.	The Nigerian Oil Industry, Political Governance and the Crisis of Socio-Economic Development: Analyzing the Boundaries of Corporate Responsibilities in the Delicate Relationships Between Nigeria and Multinational Oil Companies	180
	<i>Dr. Shehu Abdullahi and Mr. Hemen Philip Faga</i>	
13.	An Examination of Civil Remedies for Victims of Human Trafficking	191
	<i>Gbadamosi, Olaide Abass</i>	
14.	Dismissal Based on Allegation of Crime in Nigeria: A Desideratum ...	218
	<i>Olong Matthew Adefi</i>	
15.	Testator's Last Testament and the Making of a Valid Will	228
	<i>Olateru Olagbegi Ololade, A. (Mrs)</i>	
16.	The Imperatives of Drafting Dispute Resolution Clauses in International Commercial Agreements	238
	<i>Olowokere Emmanuel 'Nimbe</i>	
17.	Competing Interests Over Family Property: The Rights or Plights of the Nigerian Woman	250
	<i>Omolade Olomola</i>	
18.	Women's Reproductive Rights: An Appraisal of Beijing Declaration ..	270
	<i>O. A. Oniyinde</i>	
19.	Policing in the Twenty-First Century: Whither the Nigeria Police?	278
	<i>F.O. Iloh</i>	
20.	The Provision of the Law Prohibiting Forced or Exploitative Labour for Nigerian Child: A Forensic Appraisal	290
	<i>M.A. Ajanwachuku</i>	
21.	Public Participation in Environmental Governance in China: Some Comments on Recent Development of the Environmental Impact Assessment Law	296
	<i>Q.I.N. Tianbao</i>	
22.	The Historical and Organisational Perspectives of the United Nations: Towards an Effective Global Role	315
	<i>J.O. Adedoyin- Raji, Ph.D and E.F. Owolabi (Mrs)</i>	
23.	Legal Analysis of Tax Consultancy Under the Accelerated Revenue Generating Programme in Nigeria	329
	<i>A. A. Ojo (Mrs)</i>	
24.	The Concept of Dual Customary Legal Systems in Nigeria: Facts and Falacies	337
	<i>Edu, Hamzat Oladipupo</i>	

25.	The Function of Arbitration-Need to Re-Visit the Powers of Arbitral Tribunals	347
	<i>C.A. Obiozor</i>	
26.	Environmental Pollution and Sustainable Development: A Case Study of the Niger Delta State of Nigeria	354
	<i>E. F. Owolabi (Mrs.)</i>	
27.	Sustainable Tourism Development in Nigeria: The Past, Present and the Future	362
	<i>Lasisi Isiaka Adesanya</i>	
28.	Trespass to Land: Judicial Attitude in Nigeria	372
	<i>E. Mbang Akpambang</i>	
29.	Nigerian Oil and Gas Tax and Incentives Regime: In a State of Stability?	385
	<i>Morakinyo Adedayo Ayoade</i>	

CRIMINAL SUMMONS: LAW AND PRACTICE IN NIGERIA

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R. J. Adebimpe**

I. Introduction

The first step in criminal proceedings is to secure the appearance of an alleged offender in court which would try him. This may be ensured among other means, by the issuance of a summons.¹ By issuance of summons a trial court can compel the appearance before it of any person(s) accused of having committed an offence in any place, whether within or outside the State provided that such offence may be tried in the State of issue.² This paper examines what Criminal Summons connotes; efforts have also been made to assess the extent and limits of the law as well as the practice and procedure guiding execution of summons.

II. The Nature of Summons

A summons is an order or a document issued by the court to an alleged offender named in it to appear in court of a particular date,³ to answer to the complaint made against him before a Magistrate or a Judge.⁴ The type of summons in this context is entirely different from a witness summons by which a person is called upon to attend a court proceeding for the purpose of testifying thereof as a witness. Rather, it is an alternative to a warrant

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¹ Or by an arrest of the offender with or without warrant. However, in deciding whether a summons should be issued or an arrest made for the attendance of an accused, reference may be made to column 4 of Appendix A to the Criminal Procedure Code for guidance. For instance, it is therein provided that for the offence of keeping on brothel under Section 201 of the Penal Code (Northern Nigeria) (Federal Provisions) Act Cap. P3 Laws of the Federation of Nigeria, 2004 a Magistrate can issue a summons, while for the offence of theft under section 287 of the same Code a warrant is required to compel the appearance of the accused in the court: see S. 154 (1) Criminal Procedure Code Cap. C41 Laws of the Federation of Nigeria, 2004, hereinafter referred to as the CPC. Note however that, the court has discretion as to whether to, upon receipt of a complaint against the offender issue summons to appear or a warrant of arrest, or even to reject the complaint altogether as it thinks fit and give its reasons for so doing: S. 70CPC, S. 81Criminal Procedure Act Cap. C 39 Laws of the Federation of Nigeria 2004 hereinafter referred to as the CPA.

² See S. 79 CPA.

³ Being not less than 48 hours after the service of such summons: s. 83 CPA. A person may however in certain circumstances be required to appear before the court forthwith. This arises for instance, where the complainant also swears to an affidavit either at the time of making the complaint or subsequently deposing to an affidavit that the alleged offender is likely to leave the Magisterial district within 48 hours from the time of making his complaint: S.85 CPA

⁴ See s. 83 CPA *ibid*.

(of arrest), as it is usually issued in respect of misdemeanors or where the alleged offence is a minor one, such as minor traffic offences⁵ or violation of local government bye laws and regulations.

And while a summons must be in writing in duplicate and signed by the issuing Magistrate,⁶ the complaint on which an application for the summons is based need not be on oath or in writing unless it is required to be so by the enactment on which it is founded or by any other enactment.⁷ In addition, subject to the rules on joinder of offences in a charge, a summons can not be issued for more than one offence, although it shall not be avoided by describing the offence or any material act relating thereto in an alternative word (s) according to the language of the enactment constituting such offence.⁸

III. Who May Complain

A summons is usually preceded by a complaint laid before a Magistrate or a Judge.⁹ Any person, whether a police officer or not, who believes, from a reasonable or probable cause that an offence has been committed by another person whose appearance a Magistrate has power to compel, may make a complaint about this offence. Indeed, a victim or any other person has a legal duty to reveal the commission of an offence. In fact, the right of complaint to the court that an offence has been committed is given to any person whether or not he is the victim of the offence, except however, where the law creating that offence reserves the right to complain on a particular person or class of persons.¹⁰ In practice however, complaints are usually made by a police officer. And in the case of an allegation of assault, a police officer may make a complaint notwithstanding that the victim refuses or declines to do so.¹¹

IV. Who May Issue Summons

A summons to appear before, or to attend, a court may be issued against any suspect,¹² by any court competent to inquire into that offence or by any Justice of the Peace, after considering the complaint. However, a court or Magistrate has discretion in deciding

⁵ In which case, a police officer may for instance simply apprehend a motorist contravening a less serious road traffic regulation, extracts from him all necessary particulars, including his name and address. In due course an application is made by the officer to a Magistrate to issue a summons to the offender calling upon him to attend the court for the trial of the offence.

⁶ S. 87 CPA.

⁷ See s. 60 (1)-(2) CPA.

⁸ S. 60 (a) CPA; see *Odede v Akiri* (1958) WRNLR 116 where it was held that a single complaint alleging four different offences was bad for duplicity.

⁹ For what a complaint is: see s. 2 CPA; see also s. 1CPC.

¹⁰ See s. 59 (1) CPA; see also the case of *Hellel v Assistance Commissioner of Income Tax* (1952) 14 WACA where it was held that since the Income Tax Ordinance (now repealed) did not prescribe any particular person or class of persons who could make complaint about the commission of offences created by the ordinance, it was open to any person to make such complaint. The same principle was also held applicable to an offence created under the Appointment and Recognition of Chiefs Law, 1954 (now repealed) of the former Western Region: see *Odede v Akiri* (1958) WRNLR 116.

¹¹ See s. 59 (2) CPA.

¹² S. 80 CPA; see also 471(1) CPC.

whether to issue summons or a warrant or to reject the complaint altogether,¹³ although the court must give its reasons when a complaint is rejected.

A court may issue summons even if it has no jurisdiction to try the offence, provided a court within that State has jurisdiction.¹⁴ A summons to appear may also be issued on any day including a Sunday or public holiday.¹⁵

V. Contents of a Summons

A summons must be in writing, in duplicate and state as concise as possible the substance of the complaint against the accused person,¹⁶ his name, the date the summons was issued, a command to the accused to appear before the Magistrate at a particular date, time and place not less than forty eight hours of service of the summons on him,¹⁷ and signed or seal by the court or the justice of the peace.¹⁸

VI. Service/Execution of Summons

There are two manners of service of summons, namely personal service and substituted service of summons. The summons should be served personally, but in exceptional circumstances, and with the leave of Court, summons may be served by means of substituted service.

(a) Personal Service of Summons

A summons may be served by a police officer or any other officer of the court¹⁹ or any other public servant to authorized by any law.²⁰ And service should where practicable, be personal, that is, by delivering or tendering to the person named in the summons one of the duplicates of same. The person summoned should be required to sign on the back of the other duplicate to acknowledge receipt of service of the summons, and retained by the officer after writing the date and time of service near the summoned person's signature and sign by the summons server himself.

Where the service is effected by any other method other than the aforesaid, the person effecting service should endorse on the duplicate the particulars of the method,²¹ or otherwise signify receipt of the summons,²² but if the alleged offender refuses to

¹³ See s. 81 (1) CPA and s. 154 (1) CPA.

¹⁴ See s. 79 CPA and s. 139 CPC.

¹⁵ See s. 82 CPA and s. 24 CPC.

¹⁶ A summons should avoid the use of technical terms and give sufficient details in single language so as to inform the accused of the offence with which he is charged.

¹⁷ Sections 81 and 83-87 CPA and ss. 47(2) and 87 CPC. See also the case of *Goodman v Evans Ltd* (1954) 10B 551, (1954) 1 ALL ER 592.

¹⁸ Would rubber stamp suffice as signature? See *Goodman v Evans Ltd* (supra).

¹⁹ E.g. a Court-member, Registrar or Messenger.

²⁰ See s. 48 CPA; s. 88 CPC.

²¹ See s. 94 CPA; s. 49 (2) CPC.

²² See s. 89 (2) CPA; S. 49 (1) CPC. The summons-server must satisfy himself that he has found the right person.

receive it or to sign the receipt, then by showing the summons in the original.²³ Where the person to be served is unable to sign or mark the back of the duplicate copy of the summons, the summons can be served to him or left with him in the presence of a witness.²⁴

Service of a summons on a company or other incorporated body may be effected by service of same on the director or secretary, the chief agent of the corporation, a local manager or other principal officer of the corporation in that State.²⁵ Or alternatively, it may be left in its place of business.²⁶ Service of a summons on a local government authority may be served in accordance with the Local Government Authority Law.²⁷

If the person summoned is a civil servant the court issuing the summons may address it to the head officer of the department in which such person is employed for the purpose of being served on him especially if it appears to the court that it may be most conveniently so served. The head officer shall thereupon cause the summons to be duly served and shall return the duplicate to the court under his signature and with an endorsement as to the manner in which the summons was served.²⁸

A summons may be issued and served on defendant on any day, including a Sunday and a public holiday.²⁹

(b) Substituted Service of Summons

Where a person summonsed can not, by the exercise of due diligence, be found or traced in the ordinary manner, service may be effected by affixing one of the duplicates of the summons to some conspicuous part of the residence or homestead of the individual to be served ordinarily resides³⁰ and the summons would be deemed to have been duly serviced.³¹ Substituted service may also be effected by leaving one of the duplicates with some adult male member of his family³² who must acknowledge receipt of the summons by signing the duplicate which the police officer or process-server retains.

The server must also endorse on the duplicate that the service was effected by substituted means³³ by swearing to an affidavit that service was effected in this way.³⁴

²³ See *Sudan Government v Ali Hakim Shawish* (1963) SLJR 10. A person served with a summons, who refuses to acknowledge receipt, may be arrested by the person serving the summons, and detained in custody for a period not exceeding 14 days as the court may think fit: see s. 95 CPA.

²⁴ S. 53 CPC.

²⁵ S. 50 CPC.

²⁶ S. 89 CPA.

²⁷ S. 51 CPC.

²⁸ S. 91 CPA.

²⁹ S. 82 CPA.

³⁰ S. 90 CPA; S. 52 CPC. Under the CPA the leave of the court must first be obtained in order to execute substituted service of summons and this may be obtained, by an oral *ex parte* application by the police showing what attempt has been made to find out the person, pains taken to find him out or the enquiry made about his whereabouts.

³¹ S. 90 *ibid*.

³² Section 52 CPA; Section 52 CPC. Service of summons upon his wife or mother or daughter is neither sufficient nor permissible.

³³ S. 94 CPA.

³⁴ S. 55 CPC.

VII. Service of Summons Outside Jurisdiction

Service of summons outside jurisdiction may mean either of two things. It may imply that both courts are within different magisterial district or parts of the same State. In other words, the summons is issued within one district, but the person to be served is in another district, in such a way that in order to secure attendance of such alleged offender, the summons has to be executed on him outside the district of issue. It may also imply that both courts are not within the same State or that the summons is to be served outside the State of issue or in another State.

Where the person summonsed by court is though in the same State to which the court issuing the summons belonged, but resides or is in a different judicial or magisterial district, the summons must first be sent in duplicate to another court within the division or district in which the person resides or is to be served.³⁵ Then the court within whose district or division the person summonsed is present or resident will take over from there. That court shall direct service of the summons as if it had issued the summons.³⁶

The procedure for executing process of court outside the boundaries of a State is contained in Chapter XII of the Criminal Procedure Act. The section deals with service and execution of criminal processes of a court in one state to be served or executed where necessary in another State. The provisions of that section are of country wide application and necessarily a federal provision.³⁷ Furthermore, by Section 7 (b) of the Criminal Procedure Code, the provisions of the Chapter relating to service and execution of processes throughout Nigeria are applicable to the Northern States of the Federation as well. Therefore, there is a uniform procedure to be followed in effecting service of processes outside the States of issue in Nigeria.

A summons issued in one State may subject to the rules of court in force under the CPA be served directly on the person to whom it is addressed in the State where the alleged offender is to be found, and in the same way as it could be served within the State where the summons was issued.³⁸ Service so effected has the same effect as if it had been served in the State of issue and consequently proceedings may be taken as if service had been effected in the State in which the summons had been served in the State in which the summons was issued.³⁹

VIII. Consequences of Disobeying a Summons

If the accused on whom a summons has been served fails to answer to the summons by appearing before the court in response thereto (and of the time specified), and the court is satisfied that he has been duly served and has no justification to be absent, the court may issue a warrant for his arrest and cause him to be brought before it.⁴⁰ If a person served in another State fails to appear in court or at the time specified, proceedings may be taken as

³⁵ S. 92 CPA, s. 54 CPC.

³⁶ See s. 92 CPA, S. 54 CPC.

³⁷ i.e. the provisions of the chapter apply throughout the Federation of Nigeria.

³⁸ S. 478 (3) CPA.

³⁹ S. 478 (3) CPA.

⁴⁰ S. 96 CPA; 478 CPA and s. 70 CPC.

if service had been served in the State in which the summons was issued.⁴¹ In the same vein, the provisions of Section 94-95 of the CPA as to arrest and detention of such a person on his refusal to sign the receipt also apply to a summons served outside the State of issuance.⁴²

Similarly, the person against whom the summons was issued must acknowledge receipt of it. If he fails to acknowledge receipt he could be arrested by the officer serving the summons and taken into custody for a period not exceeding fourteen (14) days.

IX. Proof of Service

Before a warrant can be issued for disobeying a summons, the service of the original summons must be proved. Such prove may be by evidence on oath of the officer who served the summons⁴³ or by endorsement on the duplicate of the summons to say that the service has been done,⁴⁴ or by affidavit of the serving officer sworn to before a Magistrate or other prescribed person.⁴⁵ In the case of a summons executed on a person in the service of government through the head of his department, the signature of such head of department on the duplicate of the summons is evidence of service.⁴⁶

X. Irregularities in Summons

A summons is not invalidated by any irregularities or illegality in the process of issuing it from a court such as failure to observe the provisions of the criminal law of Nigeria relating to procedure for its issuance e.g. want of any complaint on oath or any defect in the complaint.⁴⁷ Or defect in the summons e.g. mentioning of a wrong name or of an incorrect offence,⁴⁸ or error in the service of summons. Such irregularities do not for that reason invalidate or void any subsequent act or trial of the offender.⁴⁹

Similarly, if the summons server goes outside the limits of the local jurisdiction of such court and serves the summons on a person there without following the laid down procedure, the subsequent proceedings in the case would not be invalid.⁵⁰ A summons is

⁴¹ S. 478 (4) CPA.

⁴² S. 478 (5). However, if the person is so arrested he should be taken before a magistrates' court of the State where the summons was served.

⁴³ If he is in court: S 55 CPA.

⁴⁴ If he is not present in court and the service is within the division or district of the court issuing the summons: S. 55 CPC.

⁴⁵ The affidavit is admissible as proof of the fact that the summons was properly served and it shall not be necessary to call the process-server to testify that he had served the summons: S. 55 CPC, especially when service has been out of the division or district of the court: s. 91.

⁴⁶ S. 91 CPA.

⁴⁷ S. 101 CPA; s. 382 CPC.

⁴⁸ These can simply be corrected.

⁴⁹ Section 101 CPA, s. 364 CPC. This does not however implies that it can be invoked to exempt police officers either from carrying out their duties under the law in the proper way or, indeed from any civil, criminal or disciplinary responsibility which they might incur by failure to observe the provisions of the criminal law of Nigeria relating to procedure for procuring the attendance of an accused person before a court: see *Okotie v Police* 4 FSC 125, at 126 per Abbott, Ag. CJF.

⁵⁰ S. 382 CPC.

also not invalidated by reason of the person signing or issuing the same dying, ceasing to hold office or no longer having jurisdiction.⁵¹

XI. Dispensing With the Presence of the Accused

When a summons is issued against an accused, the court may dispense with his presence provided he pleads guilty in writing. His counsel can also plead guilty for him under the CPA but in this case, he has to appear in court.⁵² Under the CPC his presence can be dispensed with if he pleads guilty in writing, or is represented by counsel.⁵³

XII. Conclusion

The foregoing has been an attempt to examine the procedural laws of Nigeria regarding issuance, execution and other incidental matters within and outside territorial jurisdiction of a State of issuance of a criminal summons. It is established, references being drawn mainly to provisions of the Criminal Procedure Code, the Criminal Procedure Act and decided cases that notwithstanding some seeming variation⁵⁴ the applicable laws provides for almost identical procedure in both jurisdictions.

⁵¹ S. 103 CPA; s. 383 CPC.

⁵² See s. 100 CPA.

⁵³ See s. 154 CPC. Note that under the CPC the court shall adjourn for the personal attendance of the accused before the he is sentenced: see 154 (3) CPC.

⁵⁴ For instance the provision requiring the summons server under the CPA to obtain leave of court in order to affix the summons on the premises of the accused rather than the better procedure of serving same on an adult member of the accused family as allowed by the CPC.