SUMMARY JUDGMENT PROCEDURES AND THE ATTAINMENT OF JUSTICE UNDER THE RULES OF COURT

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INTRODUCTION:

The well worn anxiom of the legal profession is "Justice delayed is justice denied". Where a litigant is unable, for whatever reason, to conclude a simple case of debt within a reasonable time, it is doubtful whether such a litigant would ever agree that justice is not denied to him.

The best example of a long delay was in the notorious case of **Ariori Vs. Muriano Elemo**[1] where the case was fought from **15th October, 1960** and ended its first phase at the Supreme Court in 1983 only for a retrial to be ordered hardly gives confidence to an "impatient" litigant.

The law has therefore designed certain summary procedures, to ensure that where a defendant to an action has no defence to the claim or where the defende to the claim is a sham or where the defendant fails or neglects to take prompt procedural steps, the plaintiff can be given judgment summarily, if he asks for it.

It is trite that rules of procedure are mean as handmade of justice and it is with this in view that rules of procedure are enacted to aid the attainment of justice in an orderly way.

It is equally trite that where the rules will result in injustice, absurdity, or a traversity of its purpose, the court will not insist on its strict observance

Before the advent of the uniform high Court Civil procedure Rules, the different High Court Procedure Rules, made provisions for different methods of obtaining summary judgments.[2]

In a world now ruled by large scale commercial and industrial transactions, with the attendant super-sonic speed of achieving set targets, the courts cannot afford to be left behind in the human race for faster realisation of social and economic goals.

It is a truism, that time is the soul of business and it behoves the courts to fashion appropriate rules that will cut down on the time that it takes to obtain judgment especially in causes that have their root in commercial dealings and transactions.

The principle of **ex abundati cautela** is well illustrated in the various modes of summary judgments in our rules of court. Thus a defendant that does not take the requisite step to defend an action is deemed by implication to have admitted the claim.

This is the bedrock on which judgments' are given in the absence of a defendant that has failed to avail himself of the opportunity to defend the action on merit.

As noted elsewhere[3], a party that does not take advantage of the rules, to defend an action, cannot turn round to allege that his right to fair hearing has not been observed for law and equity aid the vigilant not the tardy or indolent litigant.

The rules in most cases, assuage the apparent lack of hearing of the other side in most of the procedures for summary judgments by providing that such judgments obtained in the absence of one party may be set aside if that other part acts reasonably and timeously.[4]

As it will be seen later in this paper, there are different types of summary judgment procedures under the rules and the legal implication of each will be examined with a view to bringing out the similarities and differences,

It may be pointed out from the onset, that while it is possible generally to set aside. summary judgments, it is not in all cases that such judgments can be set aside.

The law treats some specie of summary judgments as final and on the merit. Adequate examination of this phenomenon which is net tee clear from controversy will be examined and the rationale examined and explained.

TYPES OF SUPMARY JUDGMENT PROCEDURES:

The rules of court, make provisions for different types of circumstances that can lead the court to award a summary judgment without resulting to a fall scale trial. The circumstances differ and much will depend on the nature of the claim of the plaintiff.

Almost in all cases, where the claim is for a liquidated sum of money summary judgment can be given but where the cause of section is founded in causes of action like land and breach of contract, the procedure is seldom applicable nor used.

We shall now examine the procedure of summary judgment provided for under the rules of court. [5]

In a paper of this nature it is desirable to examine all other methods of obtaining summary judgment even if not provided for in the rules, it is in the light of this, that

default summons procedure will also be examined since it still exists in certain Jurisdiction.[6]

DEFAULT OF PLEADINGS

The rules of court make copious provisions for situations where either the plaintiff or defendant fails to file the requisite pleadings in a claim for liquidated sums of money.[7]

Order 27 in its rule 1 make provision for the dismissal of a plaintiff's case, who has failed to file his statement of claim within time or such extended time as the case may be.

It is submitted that the dismissal under this rule amounts to a striking cut and the judgment obtained cannot ground a plea of res judicata.[8]

In rule 2 sub rule 1 of the order, provision is made for situations where a plaintiff's claim is for a debt for liquidated demand. In such a situation, if the defendant does not file his defence within the time stipulated or such other extended time, the plaintiff is entitle to apply for judgment in the sum claimed with costs.

Sub-rule 2 makes provision subject to order 14 Rule 9(1) for the recovery of money, by a money lender of his assignee, for the recovery of money lent by a lender. Order 14 Rule 9(1) provides:

> "In an action brought by a money lender' or an assignee for the recovery of money lent by a money lender or the enforcement of any agreement or security relating to any such money, an application for leave to enter judgment in

default of appearance shall be made by notice returnable not less than four clear days after service of the notice".

Order 27 Rule 4 allow a plaintiff claiming for unliquidated damages to ask for judgment against a defaulting defendant even though the court is only entitled to assess the damages due with costs.

Claims in detinue are provided for under Rule 5 and it allows judgment to be given for:
(a) The delivery of the goods in specie or
(b) The value of the goods "to be assessed by the court……...".

Where the plaintiff's claim relates to a claim for possession of lands he can ask for judgment in default of pleadings but the plaintiff's counsel must issue a certificate indicating that he is claiming no other relief. Where the plaintiff sues by himself he must swear to an affidavit on the above fact, emphasising that the action is not related to a claim in mortgage.

Rule 8, allows the plaintiff, subject to certain limitations, to ask for judgment in default of defence in certain other classes of claims not specifically provided for as aforsaid.

MUTATIS MUTANDI, a defendant that files a counter-claim can proceed as a plaintiff in case there is a default of an answer to the counter-claim as allowed under the rules.[9]

Significantly, the Order, in Rule 10 provides:

"The court may on such terms as it thinks just,
set aside or vary any judgment entered in
pursuance of this order".

DEFAULT OF APPEARANCE:

Order 14 of the Rules of court, cover situations where there is a default of appearance by either of the parties to the action.

Rule 1 of Order 14, makes provision for situations where a claim is for liquidated sum and the defendant fails to appear.

It allows the plaintiff to ask for judgment in default of the defendant's appearance.

The rule however does not apply to an action by a money lender or his assignee for money or agreement thereto.

Rule 2 allows the plaintiff, where he sues more than one defendant, to obtain judgment against the defaulting defendants in a claim for liquidated sum even though some of the defendants appear thereto.

In actions for recovery of land, with or without other claims, the plaintiff may ask for judgment in default of the appearance of the defendant.

Rule 5 covers other actions not specifically provided for but it enjoins the court to call on the plaintiff to prove his case after such a case has been set down for hearing before judgment can be given, even though the defendant defaults to appear.

Actions begun by originating summons is provided for in Rule 7 and it requires the applicant for the summons to provide a certificate that there has been no appearance by the defendant.

Once this certificate is produced, the judge "shall appoint a time for the hearing of the summons upon such conditions (if any) as it or he thinks fit".

The steps required for default judgment in case of non appearance of an infant or lunacious defendant, are provided for in rule 8sub-rules (1) and (2).
In an action by a money lender or his assignee, where the defendant d defaults to appear, the plaintiff is required to file an application for leave to enter judgment by "notice returned not less than four clear days after service of the notice".

The notice cannot however be issued until the time of "entering appearances has expired, and a proper affidavit of service of the writ has been filed".

Rule 10 exempts the application of Order 14 from all "actions commenced before the coming into operation of these rules".

It is submitted that this is necessitated by the absence of the requirement of entering of memorandum of appearance under the old rules of court.[10]

Rule 6 empowers "the court or judge in chambers to set aside or vary the judgment upon such terms as may be just".
This relates to any judgment obtained pursuant to order 14.

SPECIALLY INDORSED WRIT

The rules of court recognises the existence of the specially Indorsed writ but sadly, makes no special provision for the procedure".[11]

Rule 1 of Order 14 provides in part "where a writ of summons is endorsed for a liquidated demand, whether specially or other-wise.....".

Rule 2 in its opening paragraph provided in **pari materia** like the afore **quoted** rule.
The question then is, what is a specially endorsed writ?.

It is a writ that contains the particular of claim end has endorsed thereon the statement of claim of the plaintiff.[12]

It is our view that a specially endorsed writ could be treated as an ordinary writ for the purposes of asking for judgment in default of appearance or default of pleadings.[13]

UNDEFENDED SUIT

Rules 1 to 5 of Order 23 make provision for the undefended suit procedure.

A plaintiff that intends to initiate his claim for a debt or liquidated money demand under the procedure, will have to fulfil the following conditions before his case can be entered on the Undefended List:

The conditions are:
(a) There must be an application for Writ of Summons.
(b) The application for writ must be accompanied with a verifying affidavit.

Upon the fulfilment of the above, the court on its part, will take the following steps:
(a) Satisfy itself upon the grounds of the application.
(b) Shall enter the cause on the Undefended List after marking same as Undefended List.

Thereafter, the plaintiff shall deliver to the registrar as many copies of the writ of summons as there are defendants to which is attached the affidavit in support.

The Registrar upon receipt of the writ of summons and affidavit shall attach one affidavit to each writ.

One point of importance, is the question; what happens after the plaintiff has fulfiled all the conditions for entering his suit on the Undefended List but the Court or Registrar for whatever reason fails to carry out any of their own duties to perfect the processes?. For example, failure to enter the suit on the Undefended List or mark it as Undefended List?.

It is our view that once the plaintiff does all the things required of him under the rules to have the case treated as Un-defended suit but the Court or Registrar fails to perfect the processes either by failure to mark the writ as Undefended List or to attach the affidavit, to the writ, that will be purely an administrative lapse on the part of the Court or Registrar which it is submitted, will not affect the competence of the suit.

Support for this view, can be found in the old Supreme Court case of **Alawode Vs, Semoh**[14] where it was held that delay in the issuance of a writ, is an administrative lapse which did not concern the plaintiff who has paid the necessary fees with his

application and particulars of claim. It was therefore held that the isseance of the writ was regular notwithstanding the delay engendered by the registry of the Court.

It is trite that a breach of a rule of practice can only render a proceeding an irregularity and mot a nullity. Such irregularity can only be set aside if the party affected takes timeous steps to have it set aside.

NIGER-BENUE-Transport Company Ltd. Vs. Narumal & Sons Ltd.[15]

On the part of a defendant that wants to defend the action he shall:

(a) Deliver to the Registrar a Notice of Intention to defend.

(b) The Notice shall be accompanied with an affidavit disclosing a defence on merit.

(c) The two documents shall be so delivered not later than 5 days before the day fixed for hearing.

It is our view and submission that based on authorities starting with **Federal Administrator General Vs. John Bankole Daniel;**[16] up to the case of **Nishizawa Vs. Jethwani;**[17] 1t is now settled that where a defendant wants to defend, the defence filed must be a defence on merit and not just a sham.

Moreover, the authorities especially **Nishizawa**, is emphatic that notwithstanding any irregularity in the mode of filing a defence, once it is a defence on merit, filed before judgment, the court should not shut its eyes against it.

DEPAULT SUMIONS

Even though the default summons procedure is not provided for under the uniform high court rules but it still exists in some Jurisdiction notably Lagos State where the

old rule is still in use thus the need and necessity to examine its scope and applica-tion[19].

It should be noted as pointed out earlier, that the procedure by default summons, is not the only summary judgment procedure know to the rules of courts in Nigeria.[20]

A plaintiff desiring to bring his action within the default summons procedure must:
(a) File a specially indorsed writ.
(b) File with the writ the statement of claim.
(c) Must also file a verifying affidavit.
(d) Ensure that the defendant is served with all the processes.
(e) Once the defendant fails or neglects to file a defence after entering an unconditional appearance, the plaintiff files a summons with affidavit asking for leave to enter final judgment.[21]

It is submitted that if the defendant is not served or where served enters a conditional appearance or appears, in protest, the procedure will be anated.[22]

A defendant that intends to defend the action can defeat the procedure by:

(a) Showing that the case does not fail within the scope of the applicable rules. The rules it should be noted exempted some actions like libel.
(b) Showing that there have been some procedural irregularities for example, failure to file the statement of claim with the writ of summons.
(c) Filing a defence with an affidavit showing that there is an issue or question worth of been tried.

Until the Supreme Court's decision in **Nishizawa Vs. Jethawini** in 1984, there was a controversy as to whether the mere filing of a statement of defence without an accompanying affidavit will be enough for the purposes of the rule. The Supreme Court in its lead judgment delivered by Obaseki JSC to which the other justices concurred said:

> "when an application for judgment is taken under Order 10, the defendant ought not to file and serve a statement of defence. See **Hobson v. Monke & Anor** (1884) W.N. 8. Although I will not go so far as learned appellant's counsel to say that it is not permissible to file a statement of defence. I will and I do hold that Order 10 does not authorise the filing of a statement of defence against the application for judgment. The question that arises when a statement of defence is filed as in the instant appeal before the consideration of the application for judgment under Order 10 is whether it fulfils the requirements of the rule that the defendant may "show cause" with the guidelines given by Order 10 Rule 3 (a)(b) and (c) in mind a statement of defence simplicitor is not a manner of showing cause against a statement of claim verified by affidavit.
>
> The only problem is whether the Judge or court can shut his or its eyes against the statement of defence. The clear answer is that faced with the difficult task of deciding that the defendant has ne defence to the action he cannot shut

> his eyes against it. This must not be taken as elevating a statement of defence to the requirement of the rule”[23].

It is our opinion that this is a correct approach to the problem, since the court is not only a court of justice but also a court of equity.

It is further submitted that the question whether the court can look at a mere statement of defence as opposed to an affidavit in the circumstances, is a mere technicality which should not deny the defendant the right to be heard. The Supreme Court put this new approach beyond doubt when it held in the case of **Saude Vs. Abdullahi** that:

> “But in any event it has been consistently held by this court over a long line of authorities that this court should not be held up by technicalities. Justice can only be done in substance and not by impeding it with mere technical procedural irregularities"[24].

One final point on the issue, is that, even where the defendant takes the correct step of filing a defence plus an affidavit but it is found that the defence is a sham, the case should be treated as if he has defaulted in filing a defence.

In the **Nishizawa's** case, the defendant in an action brought pursuant to Order 10, only filed a statement of defence which the trial court held was in accord with Order 10 Rule 3(a)(b) and (c) and took the defence into consideration and refused to enter judgment under the rule.

The Court of Appeal took the same view but at the Supreme Court, the learned justices looked at the defence and having found that it was no defence to the action, allowed the appeal and entered Judgment for the plaintiff.

Aniagolu JSC, in his concurring judgment remarked thus:

> "In none of his joggling with words, either in the statement of defence he improperly filed, or in the argument of his counsel before the court of first instance or the Court of Appeal did he meet the case of the plaintiff by a definite answer to the claim. The defendant had clearly not put up a defence, to the plaintiff's demand on the claim.....
>
> Had he put up a real defence to the claim I would certainly, notwithstanding that he might not have come by way of Order 10 Rule 3 have granted him leave to defend. The inconvenience to the plaintiff would, in such a case, have been remedied by costs"[25]

His Lordship, Oputa JSC in the same case laid the matter to rest when he remarked **inter alia:**

> "Again the interest of justice between the parties demands that when a statement of defence has been filed, though irregularly, the learned trial judge would not shut his eyes to the facts alleged therein, and in good conscience shut the defendant out on a mere technical point.....
>
> In the peculiar circumstances of this case and having regard to the primary fundamental duty of the courts to do

> substantial justice by deciding not on a mere technicality at the expense of hearing on merits, I hold that the trial judge was entitled to look at the respondents statement of defence (notwithstanding the fact that it was irregularly filed against the letter of Order 10 Rule 3 but not the spirit of Order 10 Rule 1)) to see if the defendant has thereon disclosed a defence on the merits"[26].

This we submit is the correct position of the law. Not only is it in accord with equity but also with the justiness of the law and justice.

COMPARISON OF THE PROCEDURES

It is easy to discover the common thread between the procedures by way of default appearance and default of pleadings. The rules under which the two are accommodated allow for setting aside of the judgments' obtained, once the defaulting party acts timeously and in good faith"[27].

As for the procedures by way of undefended list and default summons, the differences and similarities are also easy to discern1. We shall now devote some space to the consideration of the differences and areas common to the two procedures because of their far reaching effect.

From all that have been said so far, it is not difficult to discern areas common to the two procedures and other areas where there are clear distinctions.

One feature of the two procedures is that they are summary judgment procedures. They are summary judgment/procedures because once the defendant fails to fulfil

the minimum requirements under the rules, the plaintiff will be entitled to judgment without much-ado.

The use of affidavit evidence is one obvious similar area of operation of the two procedures.

When one talks of similarities and differences of the two procedures, one can hardly do better then to quote in-extenso what Nnaemeka-Agu JSC said in **U.T.C. LTD. VS. PAMOTBI** that**:**

> "The procedures for the two sets of rules are different. Under Undefended List, an application is made to the court for issue of a writ of summons in respect of a claim to recover a debt or liquidated demand. The application is supported by an affidavit which is filed along with the writ, and which sets out the grounds of the claim and states that in the deponent's belief, the defendant has no defence to the action. Once the court is satisfied that there are good grounds for believing that there is no defence thereto, it shall enter the suit for hearing under Undefended Last and it will be marked accordingly. A copy of the affidavit is served with each copy of the writ. If the defendant is not disputing the claim, he does not need to do anything. In that case, on the date fixed for hearing, judgment will be given to the plaintiff without his calling evidence in proof of his claim, unless the court, of its own discretion, in the interest of justice calls for oral or documentary evidence. Such a judgment is one on the merits which can be set aside only on appeal or by another

action, say, in the case of fraud: **U.A.C. Technical Ltd Vs. Anglo Canadian Cement Ltd;** (Supra).

From this state of affairs it is clear that there is some justification for saying that a defendant who allowed a judgment to be entered against him under Undefended List acted deliberately. For even where he takes an improper or insufficient step, such as merely filing a notice not supported by an affidavit, he may get an adjournment to give him a chance to take the proper step to enable the court consider his notice of intention to defend: See; **John Holt &Co, (Liverpool Ltd) Vs, Fajemirokun (1961 ALL N.L.R. 492**.

In the case of summary judgment, the procedure, scope and, in my view effect are different. Provisions therefore in, say, Lagos State follow closely those under Order 14 Procedure in England. It is available for most actions which could be assigned to the Chancery or the Queen's Bench Division in England. The writ must be especially endorsed and be endorsed with or accompanied by a statement of claim. There is similarly an affidavit by the plaintiff. The defendant has equally an opportunity of filing an affidavit to show cause why summary judgment should not be entered against him. But there are two significant differences in procedure between the two. The plaintiff, in case of a summary judgment must file an application by summons for leave for leave to enter final judgment. Also under Order 10 procedure, leave to defend may be given

> unconditionally or upon terms; there is no such provision under Undefended List. Indeed it is recognised that a judgment under the English equivalent of Order 10 is a form of Judgment in ult"[28]

One area that the differences are more noticeable is the legal effect of judgments delivered under each procedure. It is the view of the courts that any judgment entered under the default summons procedure is not a final judgment and can be set aside by the court if the defendant, acting timeously and filing a good defence on merit prays for it to be set aside[29].

On the other hand, a judgment under the undefended list is a final judgment which can only be set aside on appeal and not by the trial court.

That the above position on the legal effect of a judgment under the Undefended List is the correct view, had been given judicial finality in the case of **Bank of the North Ltd. Vs. Intra Bank S. A.** where the court said inter alia:

> "We now come to consider the effect of judgments obtained under the Undefended List. It is clear from the rules (Order 3 Rules 9-14) that judgment entered under this procedure is a judgment on merit. It is not the same as, and the procedure differs from, judgment entered in default proceedings, as in Order XI, Rule 5 of the Rules. In the case of **Leventis Motors Ltd. Vs. G.S.S. Mbonu (1962) NNLR 19.** Reed J. (as he then was) treated a judgment in an Undefended List as a consent judgment although the defendant did not appear and give his

consent. He therefore held that judgment so obtained cannot be set aside by way of motion"[30].

It can be seen that the procedure by way of the Undefended List is less cumbersome than the default summons procedures but it is more advantageous in terms of the 'finality' of the judgment obtained under it.

The purpose and intendment of the two procedures is the quick and straight forward disposal of simple debt or liquidate demand causes where there is no defence[31].

However, it is our view that a judgment under the default summons, should be treated as a judgment on merit. That this is likely to be the effect is borne out by the dictum of ESO JSG in **Lemminkainan** where he said:

> "If a. defendant is served with a writ and a statement of claim, and he enters appearance to the action, yet he files no defence, he cannot be seen to complain later that he has not had a fair trialn[32].

One then is at a loss to marry the above with the dictum of his Lordship Oputa JSC in **Pamotei** when he said:

> "In my humble view, such a judgment is certainly a judgment in default and by default. It is a default judgment and not a judgment on the merits of the case as pleaded in the plaintiff's statement of claim and the defendant's statement of defence[33].

It is humbly submitted that the view of Oputa JSC should not be the correct position of the law. A party who is fully aware of a pending case against him, served with the writ of summons, statement of claim and verifying affidavit but refuses to take any step but wait until judgment is entered under Order 10, before asking for setting aside, should not be allowed to take any advantage of his tardiness.

It is our view that where it is proved that the defendant has ample opportunity to file his statement of defence and affidavit but fails and neglects to do same, any judgment entered under Order 10 should be treated as a judgment on the merits.

A party that fails to submit his case for adjudication, by his failure to take timeous steps, of filing processes cannot complain of lack of fair hearing[34]

It will be a serious error and injustice to a plaintiff, who has done everything required of him under Order 10 and thereafter obtains Judgment due to the failure of the defendant to file his defence only to have such judgment set aside later as a matter of course.

It is our view that rather than embrace the **carte blanc** dictum of Oputa JSC[35] quoted above, each case should be treated on its peculiar facts.

Furthermore, it is our view that a judgment so obtained under Order 10 in which the defendant is shown to be tardy cannot be said to have been given without the court deciding the rights of the parties.

The dictum of Lord Broe in **Copper Vs. Smith** to the effect that:

> "I think it is a well established principle that the
> object of courts is to decide the rights of the parties

> and not to punish them for mistakes they may make in the conduct of their rights..... Courts do not exist for the sake of discipline but for the sake of deciding matters in controversy……"[36].

Will be most inaposite to a judgment entered under Order 10. Such Judgment should be treated as a judgment on the merit until the defendant otherwise shows. Infact, an aggrieved defendant should have his remedy by way of an appeal.

CONCLUSION

It has been shown that under the rules of court, there are different methods of obtaining summary judgments.

One clear issue is that for summary judgments obtained in default of appearance or pleadings, it is beyond per adventure that they can be set aside **ex debito justatie** by the judge that gives them.

We have also seen that at present, the courts treat a judgment obtained vide default summons as a judgment in default that can be set aside upon the presentation of a proper application.

We have however, argued that a judgment given pursuant to default summon procedure should be treated like a judgment on merit due to the very rigorous procedure involved.

We have seen that judgment given pursuant to the undefended list procedure is a judgment on the merit.

It is our view that this is a correct application and appreciation of the procedure.

It is also our view that the consequence that flow from the default summons and undefended list procedures appear to make the procedure of undefended list better and superior to the default summons procedure.

This we submit ought not to be the case.
This view will appear to have got the nod and approval of the Supreme Court in the recent case of **Macaulay Vs. Nal Merchant Bank"**[37] wherein the court considered in detail the provisions of Order 10 of the rules of Lagos State dealing with default summons.

Hon, Justice Ninamani JSC has this to say on the point:

> "It does seem to me that in deciding whether there is a fair dispute to justify letting in the defence, one ought to be fully satisfied that there is no defence, or that there is only a sham defence that would result in delay before refusing leave[38].

As argued earlier, there is no logical reason in law or equity that should disqualify a judgment obtained under the default summons procedure to be treated as being on the merit.

To hold otherwise is a distinction without any difference.

It is our view that what Oputa JSC said in **U.T.C. VS. Pamotei** to the effect that:

> "A Judgment on merits is one rendered after argument and investigation and when it is determined, which party is in

> the right, as distinguished from a judgment rendered upon some preliminary or formal or merely technical point or by default and without trial. A judgment on the merits is one based on legal right distinguished from mere matters of procedure or jurisdiction. A judgment on the merit is thus a decision that was rendered on the basis of the evidence led by the parties in proof or disproof of the issues in controversy between them. Normally, a judgment based solely on some procedural error is not, as a general rule, considered as a judgment on the merits. A judgment on the merits is therefore one arrived at, after considering the merits of the case the essential issue, the substantive right presented by the action, as contra-distinguished from mere question of practice and procedurew[39] .

should be equally applicable to a judgment under the default summons and the Undefended List procedures.

Therefore, there a defendant in a default summons procedure after entering appearance fails to file his defence and affidavit, the judgment thereafter given, should be held as a Judgment on the merit as is the case with a judgment under the Undefended List Procedure.

This we submit should be the logical conclusion having regard to the cumbersome procedure involved in the application for Judgment under Order 10 procedure.

FOOTNOTE

* * * LIM. BL. (NOTARY PUBLIC).

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1. (1983) 1 SCNLR 1.

2. See for example:

(a) High Court (Civil Procedure) Lagos 1973.

(b) High Court (Civil Procedure) Oyo State 1978.

3. See the writer's LLM. Long Essay titled: Jurisprudence. The Nigerian Supreme Court, and the Right to Fair Hearing: 1979-1989. Unpublished. LIM. Long Essay 1990. PP.161-163.

4. More will be said on this when we discuss the types of summary judgments under the Rules.

5. Preferences are to the High Court (Civil Procedure) Rules 1989 of Kwara State

6. Order 10 High Court Rules Lagos State 1973.

7. Order 27 of the High Court (Civil Procedure) Rules 1989 Kwara State.

8. **Cardoso Vs. Daniel & Ors**. (1986) 2 NWLR (pt. 20) 1 at 45.

9. See Order 27 Rule 9.

10. See 1975 Kwara State High Court (Civil Procedure) Rules and Order 13 of the 1989 Rules.

11. See Order 14 Rules 1 and 2 1989 Rules.

12. See paragraphs 6/2, 6/2/1, 6/2/2 of the Supreme Court Practice Vol. 1 1982: PP. 39-40.

13. See Orders 14 and 27 of the Rules.

14. (1959) 4 F.S.C. 29.

15. (1986) 4 N.W.L.R. 117.

16. (1985) 3 F.S.C. PP. 115 at 117.

17. (1984) 12 5C. 234 PP. 286-287 and 292-294.

18. **Nishizawa Supra Ibid**

19. Generally see Order 10 of the Lagos High Court (Civil Procedure) Rules 1973.

20. For example see Order 25A High Court (Civil Procedure) Rules Oyo State 1976. Judgment given in default of pleadings.

21. Order 10 Rules 1 (a) and (b) Rules of Court Lagos State 1973.

22. Sodipo Vs. Lemminkainan OY (1986) 1 NWLR (Pt. 15) 220at 230 per Kayode ESO. JSC.

23. Nishizawa Supra at PP. 256-7.

24. (1989) 7 SCNJ 216 per ESO. JSC at PP. 241.

25. Nishizawa Supra at PP. 280.

26. Nishizawa Supra at PP. 294.

27. See Nihizawa Supra and Order 14 Rule 6 and Order 27Rule 10.

28. (1989) 3 SCNJ 79 at PP. 124-5.

29. Pemotei Supra.30. (1969) 1 ALL NLR 91 per Ademola CIN at PP. 97.

31. Sodipo Vs. Lemminkainan Supra.

32. At Page 231.

33. Pamotei Supra at PP. 120.

34. Oyinloye Vs. Oyeyipo (1987) 1 NWLR (Pt 50) 356 at PP. 370.

35. Pamotei at PP. 120.

36. (1884) ch.D 700 at PP.110.

37. (1990) 6 SCNJ 117.

38. P. 138 of Macaulay Supra.

39. At page 119.