

PRACTICE & PROCEDURE

PRACTICE & PROCEDURE – RIGHT OF FIRMS TO SUE AND BE SUED IN FIRMS NAME – Under the High Court Rules such a firm can sue or be sued under the firm's name – IYKE MEDICAL MECHANDISE V PFIZER 2001 87 LRCN 1553.

PRACTICE & PROCEDURE – FINAL JUDGEMENT & INTERLOCUTORY ORDER – HOW DETERMINED See JUDGEMENT & ORDER P. 295.

PRACTICE & PROCEDURE – NEXT FRIEND – The right procedure is that the name of the infant should take the forefront while that of his next friend should follow, labeling each correctly as infant and next friend respectively – SOFOLAHAN FOWLER 2002 96 LRCN 823.

PRACTICE & PROCEDURE – REPRESENTATIVE ACTION – DEATH OF REPRESENTATIVE – Death of the person suing as a representative does not serve as a bar to the action. He can be substituted – OKOLI V S.G. ANABRA STATE 2002 98 LRCN 1126.

PRACTICE & PROCEDURE – FEDERAL HIGH COURT – APPLICATION FOR JOINDER TAKEN IN CHAMBERS – The F.H.C Rules does not permit it, so the proceedings are null and void – MAERSK LINE V ADDIDE INVEST 2002 98 LRCN 1282.

PRACTICE & PROCEDURE – ACTION – CAPACITY TO SUE & BE SUED – A person who is made a party to an action must be a legal person or a body vested by law with power to sue or be sued – AGBONMAGBE BANK LTD V G.B OLLIVANT LTD 1961 ANLR 116; MAERSK LINE V ADDIDE INVEST 2002 98 LRCN 1282.

PRACTICE & PROCEDURE – SUMMARY JUDGEMENT – FACTS SHARPLY IN DISPUTE – NOT PROPER – F.S.B INT V IMANO NIG 2000 80 LRCN 2533.

PRACTICE & PROCEDURE – NON SUIT – Where the plaintiff although has failed to prove his case he should in fairness not be denied an opportunity of re-litigating the case – OKEGBE V OKOROEMUME 2000 80 LRCN 2724.

PRACTICE & PROCEDURE – SETTING ASIDE SALE OF PROPERTY PURSUANT TO WRIT OF EXECUTION – Applicant must prove material irregularity in sale and substantial injury sustained by such irregularity – ALJ. NAKYAUGA V ALJ. MAIKIMA 1977 6 S.C. 51; AKPUNONU V BEAKART 2000 80 LRCN 2754.

PRACTICE & PROCEDURE – CIVIL MATTER – ALLEGATION OF FRAUD – Must be proved beyond reasonable doubt- AKPUNONU V BEAKART 2000 80 LRCN 2877.

PRACTICE & PROCEDURE – EXTENSION OF TIME TO APPEAL – REQUIREMENTS – ALSTHO S.A V SARAKI 2000 80 LRCN 2950.

PRACTICE & PROCEDURE – COUNTER CLAIM AS A SEPARATE CLAIM – OGBONA V A.G IMO STATE 1992 7 LRCN 221; 1992 1 NWLR Pt. 220 647; OBMIAMI BRICK & STONE NIG LTD V A.C.B LTD 1992 9 LRCN 585; 1992 3 NWLR Pt. 229 260; DABUP V KOLO 1003 9 NWLR Pt. 317 254; JERIC NIG LTD V UBN PLC 2000 82 LRCN 3259.

PRACTICE & PROCEDURE – RESTING ONE’S CASE ON THAT OF ADVERSARY – FAILURE TO LEAD EVIDENCE – They must swim or sink with the adverse party – CHIME V CHIME 2001 83 LRCN 340.

PRACTICE & PROCEDURE – ACTION – IN REPRESENTATIVE CAPACITY – NO COURT ORDER OBTAINED – Failure to obtain leave of court to sue and be sued in a representative capacity is not fatal – YOUNG JACK V WHYTE 2001 85 LRCN 845; BULAI V OMOYAJOWO 1968 1 ANLR 72; DOKUBO V BOB MABUEL 1967 1 ANLR 113; MBA NTA V ANIGBO 1972 5 S.C. 156.

PRACTICE & PROCEDURE – ACTION – REPRESENTATIVE CAPACITY – EVIDENCE OF AUTHORISATION – There must be evidence of authorization by the persons being represented – OLOWO OKUKUJE V ODEJENIMA IBEZIM 2002 99 LRCN 1568.

PRACTICE & PROCEDURE – STANDARD OF PROOF IN CIVIL CASES – Burden is on the plaintiff to prove his case and not to rely on weakness of defendant’s case. Burden is on balance of probabilities – ADELEKE V IYANDA 2001 88 LRCN 2162.

PRACTICE & PROCEDURE – ACTION – REASONABLE CAUSE OF ACTION – DETERMINATION – Court will restrict itself to the plaintiff’s statement of claim without recourse to the statement of Defence – ALADEGBEMI V FASANMADE 1988 3 NWLR Pt. 81, 129; 7 UP BOTTLING CO. V ABIOLA 2001 88 LRCN 2214.

PRACTICE & PROCEDURE – REPRESENTATIVE ACTION – NEED TO OBTAIN COURT ORDER – Failure to obtain a court order before filing the

suit may not vitiate the action where there is evidence that the parties have capacity YOUNG JACK V WHYTE 2001 85 LRCN 845; WIRI V WUCHE 1980 1 – 2 S.C. 1.

PRATICE & PROCEDURE – CONSENT TO WRONG CIVIL PROCEDURE – Where the procedure is neither unconstitutional nor a nullity but merely irregular, and no injustice or miscarriage of justice is caused, the consenting party cannot complain – INTERNATIONAL BANK V IMANO 2001 85 LRCN 995; OKWECHIME V IGBINADOLOR 1964 NMLR 132; AYANWALE V ATANDA 1988 1 NWLR Pt. 68 22; OBA IPINLAIYE II V OLURROTUN 1996 39 LRCN 1023; 1996 6 NWLR Pt. 453, 148.

PRACTICE & PROCEDURE – COURT RAISING ISSUE [SUO MOTU](#) – Court should not raise a point *suo motu* and resolve same, without hearing the parties – ABIMBOLA V ABATAN 2001 86 LRCN 1061; COMPTROLLER NPS V ADEKANYO (2002) FWLR Pt.120,p.1660 at 1682 SEE *SUO MOTU*.

PRACTICE & PROCEDURE – PARTIES – SUBSTITUTION OF DECEASED PARTY – Where the cause of action survives a deceased party, the court can allow a new party to be substituted – OSAGUNNA V MIL GOV EKITI STATE 2001 86 LRCN 1106.

PRACTICE & PROCEDURE – CAUSE OF ACTION SURVIVING DECEASED PARTY – NEED TO SUBSTITUTE – OSAGUNNA V MIL GOV EKITI STATE 2001 86 LRCN 1106.

NON COMPLIANCE WITH RULE OR ACT – EFFECT – Non compliance with the provisions of an Act is fatal but non compliance with rules of court may be a procedural irregularity. Both have different effects – JOE

SURAKATU V HOUSING DEVELOPMENT SOCIETY LTD. (1981) 4 S.C;
OGBOMOR V THE STATE (1985) 1 NWLR Pt.2, p.223.

PRIORITY OF APPLICATION TO REGULARIZE A PROCESS – Courts should give priority to motion to regularize a process, such that if the motion to regularize succeeds, the other motion to determine the proceedings will be withdrawn – NALSA & TEAM ASSOCIATES V NNPC (1991) 8 NWLR Pt.212, p.652; MOBIL PRODUCING NIG. UNLIMITED V MONOKPO (2004) ALL FWLR Pt.195, p.575 at 629.