# A CASE REVIEW OF APC VS. BASHIR SHERIFF[1] ON THE MODE OF COMMENCING PRE-ELECTION MATTERS: ELEVATING TECHNICALITY OVER SUBSTANTIVE JUSTICE IN NIGERIA

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## Abstract

*Commencement of civil actions in the High Court is regulated by procedural rules of court. The rules often lay down conditions or circumstances where a particular mode may be adopted. Where the rules or any other law has provided for a specific procedural mode, such mode must be complied with to avoid attracting penal consequences. The sanction could either be dismissal or striking out of the action. The objective of this research is to review the decision of the Nigerian Supreme Court in the case of APC vs Sheriff in view of the sole mode of commencing pre-election matters. It also aims at ascertaining the relevance of the Practice Direction issued by the court and the consequences of non-compliance. This work adopted the doctrinal research methodology. It was discovered that the judgment does not comply with the Practice Direction in the pre-election matter at hand. This research recommends that the courts should strictly adhere to the practice and procedure enshrined in the Practice Direction with regard to the mode of commencing a pre-election matter. It further recommended that the Practice Direction should be amended to accommodate other modes of commencing a pre-election matter to avoid unpleasant appellate surprises.*

**Keywords**: Primary Election, Pre-Election Matter, Mode of Commencement, Rules of Court, Independent National Electoral Commission, Civil Action

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[1] SC/CV/1689/2022

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## 1.0 BACKGROUND TO THE STUDY

The established principle of law across the globe is that there are laid down procedures for commencing or initiating civil action(s) in the court of law. This helps in formalizing the way and manner in which a litigant approaches the court to air his grievance for redress. The procedure for instituting a civil action in the court of law is referred to as modes of commencing a civil action. This is one of the elementary principles that forms part of the legal education curriculum.

The formalization of the mode of commencing an action is to avoid using different approaches in instituting an action. In the build-up to the Nigeria 2023 general elections, the Independent National Electoral Commission (hereinafter referred to as INEC) issued a timetable for primary elections by the political parties. Pursuant to the Electoral Act, INEC, by its timetable, directed the political parties to conduct their senatorial primary elections in the year 2022.

Usually, the primary election of political parties comes with a lot of legal issues. The legal issues arising from the outcome of the primary often result in legal battles in the form of litigation. In preparation for the anticipated legal battle(s), the Federal High Court, under the hand of the Chief Judge, made a practice direction.[2]. The said Practice Direction, amongst others, provided for the mode of commencing a pre-election matter before the court.

The mode for commencing a pre-election matter pursuant to the extant Practice Direction is by Originating Summons. Tracing backwards, it is said that the originating summons as a mode of commencing action in court was introduced in the English legal system with the Chancery Procedure Act, 1852. It replaced the old bill process for certain cases.

[2] Federal High Court (Pre-Election Matters) Practice Direction, 2022

It was officially first used in the Rules of the Supreme Court 1875, which was later revised in 1883. This procedure, as introduced, is purpose-driven. One of which to allow a legal action to be initiated and concluded without a full trial of disputed facts.

## 2.0 GENERAL FORMS OR MODES OF COMMENCING ACTION AT THE FEDERAL HIGH COURT

The Federal High Court (Civil Procedure) Rules, 2019 are explicit on the forms or modes of commencing an action. It is to the effect that actions intended to be filed in the Federal High Court must be commenced via either writ of summons, originating summons, originating motion or petition. Order 3 Rule 1[3] stipulates thus:

> *"Subject to the provisions of any enactment, civil proceedings may be begun by writ, originating summons, originating motion or petition or by any other method required by other rules of Court governing a particular subject matter."*

It is evidently clear that an action of whatever kind shall be commenced in accordance with the laid down forms or modes; otherwise, it will contravene the laid down rules of court.

### 2.1.1 Writ of Summons

It is a formal document addressed to the defendant requiring him/her to appear before the court if he/she wishes to defend himself/herself against the plaintiff's claim. A writ is usually accompanied by an endorsement of the claim or a statement of claim so that the defendant is made aware of the claim against him/her[4]. It is an official order for

[3] Federal High Court (Civil Procedure) Rules, 2019

[4] https://www.elitigation.sg/_layouts/IELS/ELITWebHelp/Other_Case_Types/Writ_of_Summons/Writ_of_Summons.htm#: ~:text=The%20Writ%20of%20Summons%20(WOS,

someone to appear in a court of law when they have been accused of committing an offence against someone.[5] A writ of summons is an official legal document "summoning" a person to appear in court.[6]

The writ of summons is the mode of commencing all proceedings where a plaintiff claims any relief or remedy for any civil wrong or damages for breach of duty, whether contractual, statutory or otherwise, or damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property. It is also used where the claim is based on or includes an allegation of fraud, or where an interested person claims a declaration.

The rules[7] of court specifically provides for the proceedings which must be begun by writ. It is stipulated thus:

"Subject to the provisions of these Rules or any applicable law requiring any proceeding to be begun otherwise than by writ, a writ of summons shall be the form of commencing all proceedings where -

(a) a plaintiff claims: -
(i) any relief or remedy for any civil wrong, or
(ii) damages for breach of duty, whether contractual, statutory or otherwise, or
(iii) damages for personal injuries to or wrongful death of any person, or in respect of damage or injury to any person, or property.
(b) the claim is based on or includes an allegation of fraud, or

himself%20against%20the%20plaintiff's%20claim. Accessed on 27 November 2025 by 12:09pm.
[5] https://dictionary.cambridge.org/dictionary/english/writ-of-summons. Accessed on 27 November 2025.
[6] https://www.hhrlaw.com Accessed on 27 November 2025.
[7] Federal High Court (Civil Procedure) Rules, 2019, Order 3 Rule 2(a)(i)(ii)(iii), (b) and (c).

(c) an interested person claims a declaration.

Where any civil proceedings are commenced by way of a writ of summons, it shall be accompanied by a statement of claim, copies of every document to be relied on at the trial, list of non-documentary exhibits, list of witnesses to be called at the trial; written statements on oath of witnesses; and an affidavit of non-multiplicity of action on the same subject matter.[8] The rules unequivocally lay down the instances where civil actions may be initiated via the instrumentality of the writ of summons.

### 2.1.2 Originating Summons

This is a mode of initiating civil action in the High Court for interpretation of a written law, enactment, deed, will, and all other instruments. Generally, originating summons is used for non-contentious actions, that is, those actions where the facts are not likely to be in dispute (a question of law rather than disputed issues of fact).[9] It is enshrined in the rules of court that a person claiming to be interested under a deed, will, enactment or other written instrument may apply by originating summons for the determination of any question of construction arising under the instrument and for a declaration of the rights of the persons interested.[10] The rules of court also provide that a person claiming any legal or equitable right in a case where the determination of the question whether such a person is entitled to the right depends upon a question of construction of an enactment, may apply by originating summons for the determination

[8] Ibid, order 3 Rule 3 (1)(a) - (f).
[9] https://wingrass.blogspot.com/2013/03/mode-and-procedure-of-commencement-of_1.html Accessed 29 November 2025 at 2:05pm.
[10] Federal High Court (Civil Procedure) Rules, 2019, order 3 rule 6.

of such question of construction and for a declaration as to the right claimed.[11]

Admittedly, it is unequivocally stated that a judge shall not be bound to determine any such question of construction where in the Judge's opinion it ought not to be determined on originating summons but may make such orders as the Judge deems fit.[12] This agitates the mind in different ways. For instance, where obviously the practice direction has provided a particular mode or form of initiating an action, can the judge *suo motu* adopt a different procedure? Where the practice direction did not provide for an alternative mode of instituting an action, should the judge's opinion supersede it?

### 2.1.3 Originating Motion

An originating motion in Nigeria is a specialized legal tool used to initiate urgent civil proceedings, particularly in cases involving constitutional rights, administrative law, and public interest matters. The process involves drafting a motion paper, paying filing fees, serving respondents, and attending hearings, distinguishing it from other commencement methods like writs of summons. It is governed by specific statutory provisions and case law that support its use for enforcing fundamental rights and other urgent legal matters.[13] In an application for prerogative orders of certiorari, prohibition, mandamus, *Habeas Corpus,* or enforcement of Fundamental Human Rights, an originating motion may be used.[14] In the case of *Broron Oil & Gas Ltd v. Petromarine (Nig) Ltd,* [15] it was held that an originating

[11] ibid order 3 rule 7 Ibid
[12] ibid order 3 rule 8 Ibid
[13] https://www.scribd.com/document/868147679/Originating-Motion-Detailed-Legal-References Accessed on 28 November 2025 at 10:15pm
[14] https://wingrass.blogspot.com/2013/03/mode-and-procedure-of-commencement-of_1.html Accessed on 28 November 2025 at 10:45pm.
[15] (2023) LPELR-61012 (Pp. 42-43 paras. E-E) CA.

motion is used to initiate a legal proceeding or application in Court, often seeking a specific order or remedy from the Court. It is commonly employed in matters such as enforcing constitutionally guaranteed fundamental rights, applications for judicial review, applications for injunctions or pre-emptive orders, or other types of non-contentious applications.

### 2.1.4 Petition

A petition is a written application like a pleading setting out a party's case in detail and made in open court. It is, however, only used where a statute or the Rules of Court prescribe it as such a process.[16] Petitions are special prayers framed in a special form supported with facts and often adopted in election, divorce and winding-up proceedings.[17] The rules of court often make specific provisions for circumstances where a petition would be adopted as a mode of commencing a civil action in court. For the Federal High Court, the rules[18] stipulate that a petition can be used to begin civil proceedings.

The above are the renowned modes of instituting action in the Federal High Court in regular civil proceedings. Aside from the express mention of the forms of instituting a suit, it is also worth mentioning that an action can also be instituted by any other method required by other rules of court governing a particular subject matter. In this instance, the particular subject matter is the pre-election matters, being the outcome of the political party primaries. Notably, they are special

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16 https://www.bing.com/search?q=petition%20as%20a%20mode%20of%20commencing%20action&qs=n&form =QBRE&sp=-1&ghc=1&lq=0&pq=petition%20as%20a%20mode%20of%20commencing%20action&sc=12-39&sk=&cvid=AB7077AC962E4FB2B4A85B0DE0FD4996. Accessed on the 29 November 2025 at 12:07pm.

17 https://www.learnnigerianlaw.com/learn/legal-system/procedures Accessed on the 29 November 2025 at 12:18pm.

18 Federal High Court (Civil Procedure) Rules, 2019, Order 5 Rules 1

cases due to the timelines that must be kept before the general elections. In view of the timelines, the Chief Judge of the Federal High Court made the Practice Direction.[19] The practice direction provided and restricted the mode of commencing a pre-election matter via originating summons. The said pre-action direction did not provide for an alternative form of instituting a pre-election matter(s). This brings to mind the latin maxim *expressio unius est exclusio alterius* which to the effect that the express mention on thing is to the exclusion of others.

It is imperative to mention that both the Federal High Court (Civil Procedure) Rules, 2019 and the Federal High Court (Pre-Election) Practice Directions, 2022 were made by the Chief Judge.[20] of the Federal High Court in the exercise of the powers conferred on him. In accordance with the Rules[21] the Chief Judge is clothed with the authority to give practice directions either generally or in respect of a particular case for carrying out any of the rules in these Rules.

The Supreme Court held in the case of *APC vs Bashir Sheriff.*[22] presently under review, thus:

> With the allegations of fraud, coupled with other irreconcilable conflicts in the numerous affidavits, counter-affidavits and further affidavits filed by the parties, it becomes crystal clear that there is palpable dispute on the facts which make the proceedings hostile and unsuitable for adjudication under the Originating Summons procedure.

[19] Federal High Court (Pre-Election) Practice Directions, 2022.
[20] Constitution of the Federal Republic of Nigeria, 1999 Cap C20, Laws of the Federation of Nigeria. (as amended) s. s 254, 285(9), (10) and (14); Electoral Act, s 29(5) and 84(14)
[21] Federal High Court (Civil Procedure) Rules, 2019, Order 1 Rule 3(4)
[22] SC/CV/1689/2022

The above decision by the Supreme Court in the instance is not in tandem with the extant Practice Direction regulating the mode of commencing pre-election. There should have been no wrong to be suffered by the 1st Respondent for his counsel commencing the action via originating summons. Had it been the 1st Respondent's counsel begun the matter via writ of summons, would he not have contravened the extant Practice Direction? Rules of court are meant to be obeyed, and non-compliance attracts the sanction of incompetency, striking out or dismissal.[23] It is trite law that rules of practice are meant to be respected and obeyed.[24] A Practice Direction is a laid down procedure giving direction, particularly by the appropriate issuing authority, stating the mode, form and manner a specific rule(s) of court is to be applied, observed, complied with or obeyed.[25] Non- compliance with the Practice Direction is fundamental as it vitiates all steps taken at the trial, resulting in nullity. [26] Our courts have been definite on the role and effect of practice directions in judicial proceedings. It was held in the case of *Ladipo v. Oduyoye*[27] …that what the practice direction does is to guide and regulate compliance with and the observance of the said rules governing the practice and procedure in election Tribunals by setting out how and when things are to be done. This helps to avoid absurdity in the application of the rules. The practice directions, as Rules of Court promulgated for the purpose of making the rules more efficacious, must be complied with and should not at any time be circumvented. No favour should be shown for non-compliance with the practice directions.

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[23] Adesola & Anor v. Falade-Fatila & Ors (2014) LPELR-23800 (CA) (Pp. 28 paras. B).
[24] Ezegbu v. F.A.T.B. Limited (1992) 1 NWLR (Pt. 220) 699
[25] *University of Lagos v Aigoro* (1984)11 SC 152.
[26] *Nwankwo v Yar'adua* (2010) 12 NWLR (Pt.1209) 518.
[27] (2004) 1 EPR pg. 705. See also Ojugbele v. Lamidi (1999) 10 NWLR pt. 621, pg. 162 at 177.

Practice Direction has its root and derives its legitimacy from the Constitution. The Constitution[28] legally clothed the Chief Judge of the Federal High Court with the powers to make rules to regulate the practice and procedure of the Federal High Court or any other special matter.

Pursuant to the statutory duty and in exercise of the powers conferred on the Chief Judge of the Federal High Court, he made and issued a practice direction known as the Federal High Court (Pre-Election) Practice Directions, 2022. The purpose of the Practice Direction was to provide for a fair, impartial and expeditious determination of pre-election cases, to ensure that in all election matters the parties focus on matters which are genuinely in issue, minimize the time spent in dealing with interlocutory matters, ensure that the possibility of settlement is explored before the parties go into hearing, and to minimize undue adjournments and delay in the conduct of matters.[29] Were these objectives and guiding principles judiciously applied? What is the effect of not adhering to and applying the said objectives and guiding principles? These fantastic objectives as outlined in the Practice Direction were complied with in some of the cases, while in others there was non-compliance.

The Practice Direction[30] is mandatorily issued to apply to every pre-election matter. Pre-election matters are matters as contemplated by the Constitution and the Electoral Act. Section 285(14)(a)-(c)[31] specifically defines and delineates the scope of matters that qualify as

[28] Constitution of the Federal Republic of Nigeria, 1999 Cap C20, Laws of the Federation of Nigeria, 2004. s 254
[29] Federal High Court (Pre-Election) Practice Directions, 2022.
[30] Ibid Rule 2 (1)
[31] Constitution of the Federal Republic of Nigeria, Cap C20, Laws of the Federation of Nigeria, 2004.

a pre-election matter. In the same vein, section 84(12)[32] accords an aspirant who complains that any of the provisions of the Act and the guidelines of a political party have not been complied with to approach the Federal High Court and seek redress.

Imperatively, it is important to note that the provisions of the Practice Direction are to be applied despite the provisions of the Federal High Court (Civil Procedure) Rules, 2019. This brings to bear the fact that, having provided for a lone mode of initiating a pre-election matter before the Federal High Court, other forms of commencing action in the court would not be adopted.

On the specific mode to be adopted for challenging the outcome of the political party's primaries, Rule 4[33] unequivocally stipulates as follows:

I. Every pre-election matter shall be commenced by an Originating Summons as specified in Form 3, 4 or 5 of Appendix 6 to the Federal High Court (Civil Procedure) Rules, with such variations as circumstances may require.
II. The Originating Summons shall be accompanied by:

a. an affidavit setting out the facts relied upon;
b. copies of exhibits to be relied upon;
c. a written address;
d. an affidavit of non-multiplicity of action on the same subject matter.

The 1st Respondent Counsel religiously complied with the letters and spirit of the extant Practice Direction. The pre-election matter was

[32] Electoral Act, 2022. See also s 29(5) of the Electoral Act, 2022.
[33] Federal High Court (Pre-Election) Practice Directions, 2022.

commenced through the lone mode that is, Originating Summons, as encapsulated in the Practice Direction. The above provision of the Practice Direction is quite unambiguous and needs no net to go fishing for the meaning. The words are crystal clear, which does not require a mischief or golden rule of interpretation to ascertain the intention of the Chief Judge who issued the rules. The most appropriate rule of interpretation applicable in this instance is the literal rule. The Supreme Court in the case of *Nwobike v. FRN*[34] held that the literal rule of interpretation is the oldest & is followed by Judges all over the world. The rationale behind the Literal Rule is that it prevents Courts from making biased decisions when the issue relates to sensitive and political matters by sticking to the dictionary meaning without discretion (without expansion or contraction) of the very words used in the statute. Thus, when the words of the statute are very clear, plain and unambiguous without equivocation, then the Courts are bound to give effect to that meaning irrespective of the consequences.

## 3.0 THE CRITIQUE/CRITICAL ANALYSIS OF THE JUDGMENT

In the matter[35] under review, the Supreme Court held thus:

It is thus clear to me that the judgment of the trial court and the lower court on the first respondent's Originating Summons, which they reached on disputed depositions in affidavits, were perverse and occasioned miscarriage of justice and so liable to be set aside. This must be so for where the procedure adopted to ventilate grievances is wrong, the processes ought to be struck out. Odiase and Anor. v. Agho and Ors.[36]

[34] (2021) LPELR-56670 (SC) (Pp. 66-67 paras. D)
[35] *APC v. Bashir Sheriff & 2ors*. SC/CV/1689/2022 (Unreported)
[36] [1972] 1 All NLR (pt. 1) 170, 177.

It is the most respectful view of this research work that the said decision was arrived at *per incuriam*[37]. This decision does not reflect the trite position of the law via a plethora of authorities. A case is decided per incuriam where a statute or rule having statutory effect or other binding authority which would have affected the decision had not been brought to the attention of the Court.[38] In the decided case of *Murtala & Anor v. INEC & Ors*[39] held that typically, a decision made per incuriam could occur if a Court overlooks a binding precedent, statute, or relevant legal authority that should have been taken into account in reaching its decision. It may also refer to a decision that was made mistakenly or inadvertently due to a procedural mistake, misinterpretation of facts, or misunderstanding of the applicable law.

The Court of Appeal in the case of *PDP v. Atiku Abubakar*[40] held that when an action is wrongly commenced by originating summons, the trial court may either strike it out or convert it to a writ of summons and order pleadings. The decision in the case of Abubakar supra is in agreement with the ratio decidendi of the Supreme Court. The case of *Odiase and Anor v. Agbo and Ors*[41] relied on by the Supreme Court to arrive at its decision was decided in the year 1972.

It is a settled principle of law that where an action is commenced wrongly by originating summons, the court is not expected to strike it out. Whenever the court is faced with such a circumstance, the trial court is expected to order pleadings to be filed so that the action can proceed to hearing and not to dismiss it or pronounce on the merit. The Supreme Court in the case of *Adeyelu II & Ors v. Oyewunmi & Ors*[42]

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[37] Blacks' Law Dictionary 9th Edition, 290
[38] *Rossek & Ors v. ACB Ltd & Ors* (1993) LPELR-2955 (SC) (Pp. 154 paras. C).
[39] (2024) LPELR-62523(CA) (Pp. 72-73 paras. B-B)
[40] [2007] 3 NWLR (Pt. 1022) 515 at 541.
[41] Supra
[42] (2007) LPELR-167 (SC) (Pp. 16-17 paras. F).

held that the proper order a trial court should make where it finds that the action before it was wrongly commenced by way of originating summons is to order pleadings and not to dismiss such action or pronounce on the merit of the case.

Considering the judgment of the Supreme Court, it adopted the option of striking out the matter. The Court is equally not expected to pronounce on the merits of the case. The Supreme Court ought to have converted the matter from an Originating Summons to a Writ of Summons.

The above submission is hinged on the fact that the issued Practice Direction made provision for only Originating Summons. Would the 1st Respondent not have run afoul of the practice direction if he had commenced this action by writ of summons? Should the 1st Respondent be at the receiving end of a practice direction he did not issue or contribute to its issuance? If the 1st Respondent contributed to the issuance of the practice direction, he would have been a victim of contributory negligence.

The essence of practice directions, amongst others, is to provide for fair, impartial and expeditious determination of pre-election cases and to ensure that in all election matters the parties focus on matters which are genuinely in issue.[43] The originating summons as a form of commencing the pre-election matters has immensely contributed to the expeditious determination of the matters before the general elections. As a result of the timelines enshrined in the practice direction, the parties equally streamlined their issues for determination and focused on them without unnecessary prevarication.

[43] Federal High Court (Pre-Election) Practice Directions, 2022, rule 1(1) (a) and (b).

## 4.0 CONCLUSION AND RECOMMENDATION

The decision of a person to file an action to challenge the outcome of a primary election is always aimed at setting aside the election. To achieve the desired goal, compliance with the laid down regulations as enshrined in the extant rules. The Practice Direction as issued in 2022 to regulate the practice and procedure of pre-election matters was not made to mislead parties. The mode as stated in the Practice Direction is aimed at fast-tracking the process in view of the timelines. The Practice Direction was not strictly adhered to in some of the pre-election matters, particularly the case discussed. It is recommended that the courts should strictly adhere to the practice and procedure laid down in the Practice Direction. It is recommended that the Practice Direction should be amended to accommodate other modes of commencing a pre-election matter.