

Class action in human rights litigation in Nigeria: developing or defeated

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Abstract

Human rights litigation in Nigeria has evolved over the years, resulting in constitutional amendments and enactment of statutes to protect Nigerian residents. This paper examined the extent to which class action as a mode of ensuring the protection of human rights in Nigeria has fared so far and while adopting the doctrinal research methodology it was discovered that class action is a veritable tool for the protection of human rights however, the mechanism has hitherto been underutilized due to the lack of awareness amongst litigants and inadequate legal framework for its use. In order to uplift class action to its pride of place as a veritable tool for human rights litigation, the paper recommended the expansion of the list of causes of action that can be subject of class action to include human rights litigation and the amendment of the Fundamental Rights Enforcement Procedure Rules 2009 to incorporate it.

Keywords: Class action, human rights, Fundamental Rights Enforcement Procedure Rules

1 Introduction

Class action, being a legal procedure that permits an individual to institute legal action on behalf of a class of people or group of people

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with a common claim, has not received the kind of attention it deserves in Nigeria; hence the procedure is scarcely used even though there are numerous opportunities for its use in order to protect and preserve the rights and claims of people. The paucity of knowledge and awareness of this legal procedure, coupled with its numerous advantages and the desire to bring this to the consciousness of the Nigerian litigating community remain the researcher's motivating factor. In view of this, this article will attempt to define the concept of class action, highlight briefly the evolution of class action in Nigeria, touch on the institutional framework for instituting class action and also delve into some of the perceived reasons why the procedure is not common in the Nigerian judicial system.

The article will further focus on the categories of matters that qualify for class action and also do an exposition on locus standi for instituting a class action in Nigeria. Finally, the article will highlight the procedure for instituting class action and conclude with the remedies available in class action, while trying to ascertain whether the use of class action for human rights litigation in Nigeria is still developing or already defeated.

2 Conceptual clarifications

2.1 Class action

Class action is a form of lawsuit in which an individual or a group of persons with a common legal claim or injury collectively sue a defendant on behalf of a large class of persons.¹ It is also defined as a legal proceeding in which one or more plaintiffs bring a lawsuit on behalf of a larger group known as the class.² In *Babalola v Apple Inc*, the learned justices of the Court of Appeal assert that:

According to Black's Law Dictionary, Eight Edition, Page 267, class action is defined as a lawsuit in which the Court authorizes

¹ Oghogho Eghusa, Assessing the Efficacy of Class Action Regimes in Nigeria <<https://greymile.wordpress.com/wp-content/uploads/2013/09/download-full-article-here.pdf>> accessed 22 November 2024.

² Adam Hayes, Class Action Definition, Lawsuits, Types, Benefits, Example <<https://www.investopedia.com/terms/c/classaction.asp>> accessed 22 November 2024.

Class action in human rights litigation

a single person or a small group of people to represent the interests of a larger group, specifically a lawsuit wherein the convenience either of the public or of the interested parties requires that the case be settled through litigation by, or against only a part of the group of similarly situated persons and where a person whose interests are or may be affected does not have an opportunity to protect his or her interests by appearing personally or through a personally selected representative or through a person specifically appointed to act as a trustee or guardian.³

To the learned justices of the Court of Appeal, in a class action, the class must be so large that individual suits would be impracticable and there must be legal or factual questions common to the class.⁴ Finally, according to them, a fundamental feature of a class action must see to it that the claim or defences of the representative parties must adequately protect the interests of the class in its entirety.

A class action is permitted in some instances when a litigant has only a minor personal interest but is acting for a large number of persons in a particular situation.⁵ Mulheron opines that a class action is a legal procedure which enables the claims (or part of the claims) of a number of persons against the same defendant to be determined in one suit as it allows one or more persons (plaintiff) to sue on his or her own behalf and on behalf of a number of persons (class) who have a claim to a remedy for the same or similar alleged wrong to that alleged by the plaintiff and who have claims that share questions of law or fact in common with those of the plaintiff (common issues).⁶ In a class action, only the representative plaintiff is a party to the action as the class members are usually not identified, but merely described. It is further defined as a form of

³ *Babalola v Apple Inc* (2019) LPELR – 30986 (CA).

⁴ *ibid*

⁵ *Gallaher Limited v British American Tobacco Co. Ltd* (2014) LPELR (CA).

⁶ Rachael C Mulheron, *The Class Action in Common Law Legal Systems: A comparative Perspective* (Hart Publishing 2004).

lawsuit in which a large group of people collectively bring a claim to court and/or in which a class of defendants is being sued.⁷

On the whole, a class action is a form of legal procedure allowing an individual or group of individuals having a common interest, aggrieved by the same sets of infringements to bring an action against an individual or group of individuals who are alleged to have been complicit in the infringements being sought to be redressed in order to avoid multiplicity of action.

2.2 Human rights

Put simply, human rights are the basic rights and freedoms that belong to everyone.⁸ Nweke defined human rights as ‘privileges and opportunities which a person is entitled to by the simple virtue of the fact that he is a human being.’⁹ The United Nations,¹⁰ on its part, views human rights as ‘rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status.’¹¹ Even though the Constitution of the Federal Republic of Nigeria 1999 (CFRN) did not explicitly define human rights, it listed the rights that constitute human rights.¹² These rights include the right to life,¹³ right to dignity,¹⁴ right to personal liberty,¹⁵ right to fair hearing,¹⁶ right to privacy and family life,¹⁷ right to freedom of thought, conscience and religion,¹⁸ right to freedom of

⁷ Nigerian Institute of Advanced Legal Studies, Communique on the Roundtable on Class Action Litigation in Nigeria, 13 March 2013.

⁸ Irish Human Rights and Equality Commission, Human Rights Explained, <https://www.ihrec.ie/download/pdf/ihrec_human_rights_explained.pdf> accessed 1 February 2025.

⁹ Ogochukwu Nweke, Understanding Human Rights, <<https://www.researchgate.net/publication/342946672>> accessed 1 February 2025.

¹⁰ United Nations Charter 1945.

¹¹ <https://www.un.org/en/global-issues/human-rights> accessed 4 October, 2025

¹² Constitution of the Federal Republic of Nigeria (CFRN) 1999.

¹³ *ibid* s 33.

¹⁴ *ibid* s 34.

¹⁵ *ibid* s 35.

¹⁶ *ibid* s 36.

¹⁷ *ibid* s 37.

¹⁸ *ibid* s 38.

expression and press,¹⁹ right to peaceful assembly and association,²⁰ right to freedom of movement,²¹ right to freedom from discrimination²² and right to acquire and own immovable property in Nigeria.²³ Summarily, the rights highlighted above, according to the CFRN, constitutes human rights in Nigerian parlance. The Constitution went a step further in protecting the rights highlighted above to provide that, where any of the rights is infringed or there is a threat to its infringement, the individual to whom the rights accrue can seek redress for the threat to his enjoyment of the right and protection of same.

Drawing from the above definitions, it can then be said that human rights refer to all the privileges and entitlements that compulsorily and mandatorily accrues to a person for the singular reason of being a human being, of which a threat of its breach or its actual breach is actionable in court and, where successful, entitles the person to remedies.

2.3 Human rights litigation

Litigation is defined as the process of resolving rights-based disputes through the court system, from filing a law suit through arguments on legal motions, a discovery phase involving formal exchange of information, courtroom trial and appeal.²⁴ It is also defined as the process of taking a case to a court of law so that a judgement can be made.²⁵ Drawing from the definitions of litigation and Human rights as earlier espoused, human rights litigation can therefore be defined as the process of instituting a legal action in a court of law for the protection, preservation and/or enforcement of the mandatory and compulsory entitlements and privileges accruing to a person for the simple reason of being a human being.

¹⁹ *ibid* s 39.

²⁰ *ibid* s 40.

²¹ *ibid* s 41.

²² *ibid* s 42.

²³ *ibid* s 43.

²⁴ <<https://law.uc.edu/education/areasofstudy/litigation-alternative-dispute-resolution.html>> accessed on 1 February 2025.

²⁵ <<https://dictionary.cambridge.org/dictionary/english/litigation>> accessed 1 February 2025.

3 Evolution of class action

Historically, it is believed that class action began in the English Court of Equity as a Bill of Peace in the seventeenth century.²⁶ It is also believed in some quarters, that the origin of class-action lawsuits can be traced to Anglo-Saxon and Norse tradition during the medieval times because during this period, towns, villages and hamlets collectively bring their complaints against the government who, at the time, was mostly the monarch. This procedure remained in place from the 1400s till the mid-1800s when the procedure started waning with the enactment of several statutes by parliament to deal with issues of certain organization bringing claims to court.²⁷

It is also submitted that class action procedure was imported into the United States from England with the introduction of the Civil Procedure Rules which expanded and changed the landscape of class action litigation.²⁸ One of the earliest cases of class action in the United States is the case of *West v Randall*.²⁹ The case concerned the estate of General William West, a Revolutionary War General from Rhode Island, who passed in 1814 and there was dispute as to who should be made a party to the lawsuit regarding his estate.³⁰ Justice Joseph Story, who presided on the case, became famous for his decision in the suit for formulating the modern standard for class action when he stated that:

It is a general rule in equity, that all persons materially interested, either as plaintiffs or defendants in the subject matter of the bill ought to be made parties to the suit, however numerous they may be.³¹

The Nigerian experience reveals that there is no law specifically made to cover class action as an adjudicatory procedure for legal wrongs in Nigeria. However, there have been provisions for class

²⁶ *ibid*

²⁷ <https://charlestonlaw.libguides.com/c.php?g=1255231&p=9277567> accessed on the 24 November 2024.

²⁸ *ibid*.

²⁹ (1820) 29 F. Cas. 718 (R. I.).

³⁰ https://en.wikipedia.org/wiki/West_v_Randall accessed on the 24 November, 2024.

³¹ *West v Randall* (n 29) 721

Class action in human rights litigation

actions as a mechanism for ventilating perceived wrongs in the rules of court as far back as 1972.³² To this end, the legislative origin of class action in Nigeria can be traced to the rules of court, even though the procedure has not been effectively and adequately utilized by legal practitioners and litigants in the quantum that it can be said that the procedure has achieved and attained its pride of place.

The reason for the inadequate use of the procedure in litigation in Nigeria may not be easily ascertainable, but that does not derogate from the fact that class action is not unknown to the Nigerian adjudicatory procedures and jurisprudence. One of the reasons that might have been responsible for the lacklustre attitude of practitioners and litigators to the use of class action in the Nigerian adjudicatory processes may not be unconnected with the concept of all man for himself. This concept of all man for himself portends from everyday existential and experiential living, that for an average Nigerian, once the wrong does not affect him personally, he is not perturbed and even where he shows concern, he scarcely does anything judicial to remedy the wrong perceived or committed against the fellow. As a result of the all man for himself concept currently permeating the Nigerian system, nobody really seemed to care so much about the wellbeing and interest of the larger percentage of the people, provided the individual's interest and rights are protected and guaranteed. Further to the above, there is also the perceived notion that litigation in itself is expensive, time consuming and unpredictable.³³ There is, therefore, usually a drawback in the pursuit of seeking redress or enforcement of a common right because, more often than not, there is scarcely anybody that wants to bear the burden of the litigation, either financially or otherwise.

Another reason that might have dealt a heavy blow on the use of class action could also be traced to the lack of awareness and sensitization on the availability of the procedure in seeking redress

³² Lagos High Court Civil Procedure Rule 1972, Order 13 Rule 15.

³³ N S Okogbule, 'Access to Justice and Human Rights Protection in Nigeria' <<https://sur.conectas.org/en/access-justice-human-rights-protection-nigeria/>> accessed 18 June 2025.

for perceived wrongs or infringements of a people's right.³⁴ Despite this lack of awareness and sensitization, the procedure still remains embedded in the Nigerian judicial process for seeking redress in the courts across the Federation of Nigeria.

The popularity of and preference for representative action in the Nigerian adjudicatory process could also be a reason for the scarce use of class action. Though similar, class action and representative action are markedly different in applicability and the preliminary steps for the use of either of the steps may be the reason for the preference of representative action over and above class action as a method for seeking redress. While class action requires appointment of a representative by a judge and notice of appointment, representative action does not have this requirement for the action to be commenced.³⁵ Further to this, in a class action, class members have the option to either opt in or out of the action, while in representative action, persons not captured by the representative cannot opt in.³⁶ Finally, in a class action, members of the class are only required to have interest in the subject matter of the suit and the interest may not be the same while in a representative action, the members must have the same interest.³⁷ To further seal the difference in class action and representative action the Court of Appeal held in *Babalola v Apple Inc* that:

A class action is restricted to interpretation of written instruments, statutes, administration of estates, property subject to trust, and customary, family or communal property. On the other hand, a representative action may be brought on any cause of action. A class action requires appointment by the Judge whereas a representative action does not require leave of court. In a class action, notice of appointment is required, whereas

³⁴ Class Action Lawsuits in Nigeria: How to empower Collective and Legal Action <<https://nigerianlawyerscenter.com/blog/class-action-lawsuits-in-nigeria-how-to-empower-collective-and-legal-action/>> accessed 18 June 2025.

³⁵ O Babalola, 'The Court of Appeal Clears the Air on the Difference between Class Action and Representative Actions' <<https://www.mondaq.com/nigeria/class-actions/892022/the-court-of-appeal-clears-the-air-on-the-difference-between-class-actions-and-representative-actions>> accessed 18 June 2025.

³⁶ *ibid*

³⁷ *ibid*

notice of representation is not required in a representative action. Class members may not be identifiable and ascertainable in a class action, but interested persons are ascertainable in a representative action. In class actions, members are only to have interest whereas in representative actions, members must have same interest.³⁸

Based on the provisions of the various civil procedure rules of the high courts which constitute the legal framework for the institution of class action in Nigeria, certain categories of matters are listed as qualified for class action and they include intellectual property rights, interpretation of written instruments or statutes, administration of estates, property subject to trust and land held under customary law as family or community property amongst others as will be later discussed in this work.³⁹ The limitation placed on the type of causes that can be redressed using class action by the various rules of court is also a reason for the under-utilization of the procedure in adjudication.

Though class action has been embedded in the rules of court since 1972, as earlier pointed out, arguably, the first and successful class action suit on record in Nigeria is *Shell Petroleum Development Company Nigeria Limited v Edamkue & Ors*,⁴⁰ which was instituted sometime in 2001 and concluded in 2010. The action which bothered on the oil spillage concerns in the Niger Delta region of Nigeria, was instituted on behalf of the Ejama-Ebubu Community in Tai Eleme Local Government Council of Rivers State. The oil spillage which occurred in 1970 affected about 256 hectares of land and water areas in Ejama-Ebubu Community. While awarding damages to the tune of 15.4 billion Naira in favour of the plaintiffs, the Supreme Court, amongst other things, held Shell Petroleum liable for the escape of the oil from their pipeline to the plaintiff's farmlands. The Court further held that the accumulation of crude oil in a waste pit by the Shell Petroleum was a non-natural use of land and, hence, Shell

³⁸ (2021) 15 NWLR (Pt 1799) 221 paras F-H; 214 paras A-B.

³⁹ C Uba, M Akinleye, I Reju, I Idris and U Alfred, 'Legal 500 Country Comparative Guides 2025, Nigeria Class Actions,' <<https://www.legal500.com/guides/chapter/nigeria-class-actions/?export-pdf>> accessed 18 June 2025.

⁴⁰ (2009) 14 NWLR (Pt 1160) 1.

Petroleum Development Company was liable for the damage arising from it.⁴¹

A more recent class action suit in Nigeria is the case of *Babalola v Apple Inc*⁴² where the appellant commenced a class action against the respondent for manufacturer's breach of warranty and negligence in respect of I-phone 6 and I-phone 6 plus. The appellant stated in the affidavit in support of his originating summons that on 18 February 2016, he purchased an I-phone 6 plus from an I-store in Lagos State, whose store is one of the respondent's authorized resellers in Nigeria and that there was a breach of manufacturer's warranty arising out of use and negligence by the respondent. But the appellant did not show that he made any complaint to the Consumers Protection Council before he filed his originating summons to commence his action at the trial court. The appellant filed along with his originating summons, two motions *ex parte*. The one for certification of the suit as a class action and the other for leave to serve the originating processes on the respondent in the United States of America. Both motions were granted by the trial court, and the respondent was served with the originating process by courier service in the United States of America on 6 January 2017. In response to the suit, the respondents filed its memorandum of appearance on 6 February 2017 and also filed a notice of preliminary objection.

After hearing the respondent's preliminary objection, the trial court delivered its ruling. It held that every I-phone user has a separate contract of sale; that the appellant did not at any time negotiate as an agent of all I-phone users in Nigeria when the I-phones were purchased or present evidence that he had the right to enforce the contractual rights of other members of the class of I-phones users or that an enforceable trust had been created. Further, the trial court held that the originating summons was not ripe for hearing because the appellant did not comply with the provisions of sections 6 and 8 of the Consumers Protection Council Act as requisite conditions

⁴¹ *ibid* 562

⁴² (2021) 15 NWLR (pt 1799) 193

precedent for commencement of the action. Thus, the trial court struck out the appellant's suit.⁴³

Dissatisfied with the ruling, the appellant appealed to the Court of Appeal. Though the Court of Appeal upon considering sections 6 and 8 of the Consumers Protection Council Act and Order 13 rules 12 and 13 of the High Court of Lagos State (Civil Procedure) Rules, 2012 dismissed the appeal on the ground of non-fulfilment of condition precedent⁴⁴, it is satisfying that the judgement of the Court of Appeal emphatically recognized class action as a judicial process and ultimately differentiated the procedure from representative action. The import of the decision in the Babalola's suit is that class action is gradually gaining the requisite recognition it most certainly deserves.

The case of *Gallaher Ltd v BAT Nigerian Limited*⁴⁵ is another appeal emanating from a class action suit. The 1st and 2nd respondents commenced an action against the 3rd respondent and their claim was for infringement of trade mark and passing off. Their complaint basically was that the package in which the Gold Bond brand of cigarettes was being manufactured and sold by the 3rd respondent was confusingly similar to the package in which their Benson and Hedges brand of cigarettes was being sold. The 1st and 2nd respondents alleged that they had registered as a trade mark the design and colour of the package in which their Benson and Hedges was being sold. The 1st and 2nd respondents also sought, by an *ex-parte* motion, leave to sue the 3rd respondent as representative of a defined class of persons; orders of interim injunction and an Anton Piller order against the 3rd respondent and all those persons on whose behalf the 3rd respondent was sued. The trial court heard the 1st and 2nd respondents' motion, and granted the orders sought but made some variations.

Subsequently, the appellants applied to be joined as defendants and they were joined. They then applied for the discharge of the interim

⁴³ *ibid* 228

⁴⁴ *ibid* 216

⁴⁵ (2015) 13 NWLR (pt 1476) 325.

orders of injunction and the Anton Piller order. The appellants asserted that the 1st and 2nd respondents failed to disclose the material fact; at the time they moved their motion for the injunctive orders and the Anton Piller order, that the appellants had registered Gold Bond and the package design of Gold Bond brand or cigarettes without colour limitation as trademarks. The Court of Appeal while considering Order 9 rule 4 of the Federal High Court (Civil Procedure) Rules, 2009 gave credence to class action and made the following pronouncements:

By the nature of class actions, such as this case, the plaintiff may not know or ascertain the person, persons or members of the class that the defendant has been dealing with; to wit: supplying and receiving infringing or passing off items, outlets where supplied infringing materials are sold, persons engaged in commercial production or sale of infringing materials.⁴⁶

Further to the above, the court of appeal also pronounced on the principles guiding class action thus:

The Federal High Court (Civil Procedure) Rules, 2009, allows a situation where the defendants named or represented in a class action concerning trademarks, copyright or patents and designs, can be flexible to allow defendants to opt in or opt out of the proceedings. It follows from rule 4 (1) and (3) of the Rules that in such class action, neither the named defendant(s) nor the ascertained described person(s), the class or members of the class interested may of necessity qualify as members of the class to represent other members of the class. In other words, by the rules of the trial court, the leave of the court allowing members of a class described in a particular way to be sued does not in any way conclude that they are indeed members of the said class let alone suggest their liability. Accordingly, the description of the appellants and the 3rd respondent on the face of the 1st and 2nd respondents' motion *ex-parte*, which was granted by the trial court did not presume the liability of the appellants and the 3rd respondent before trial or judgment and was justifiable under

⁴⁶ *ibid* 349 paras D-F.

Order 9 rule (4) of the Federal High Court (Civil Procedure) Rules, 2009.⁴⁷

4 Legislative and institutional frameworks for class action and human rights in Nigeria

Even though there is no clear-cut legislative framework in terms of primary legislation such as Statutes and Acts of the National Assembly for the institution of class action in Nigeria, the various rules of court and judicial pronouncements provide a level of insight into the legislative framework for class action in Nigeria.

The Lagos State High Court Civil Procedure Rules 2019 provides that class action can be instituted in the areas of administration of estates, properties subject to a trust, land held under customary law as family or community property and the construction of any written instrument, inclusive of a statute.⁴⁸ The Federal High Court Civil Procedure Rules, 2019,⁴⁹ on its part provides that class actions can be instituted in respect of Trademarks, Copyrights, Patents or Designs while the National Industrial Court of Nigeria Civil Procedure Rules 2017 provides and empowers one or more persons to sue on behalf or for the benefit of persons interested in respect of employment law or labour matters.⁵⁰

The Federal Capital Territory High Court Civil Procedure Rules 2018 (FCT Rules), in recognizing class action provides for a situation where the action is brought by numerous persons. The rule provides:

1. Where there are numerous persons having the same interest in one suit, one or more of such persons may sue or be sued on behalf of or for the benefit of all persons so interested.
2. Where there are numerous persons having the same interest in one suit and they seek to defend the action, the court may allow one or more of such persons to defend the action on behalf or for the benefit of all persons so interested.⁵¹

⁴⁷ *ibid* 349-350 paras F-A.

⁴⁸ Order 15 Rule 13 (1).

⁴⁹ Order 9 Rule 4.

⁵⁰ Order 13 Rule 11 (1).

⁵¹ Order 13 Rule 14 (1) & (2).

The import of the above cited provision is that the rule recognizes class action, even though it did not expressly call so. The FCT Rules further provides that class action can be brought in matters concerning administration of estate, property subject of trust, land devolved under other interest as family or community property, construction of any written instrument, statutes inclusive, torts or any other class action.⁵² The FCT Rules, when compared to other rules of court, did not only expand the categories of matters that can be dealt with under the class action procedure, it also gave an unending latitude to litigants to bring any action they deem fit under the class action procedure by providing thus: any other class action.⁵³

By the provisions of the various rules of court to wit: the various State High courts, National Industrial Court, Federal High Court and FCT High Court, it is evident that the institutional framework for the protection of class action in Nigeria remain in the various courts as highlighted above since they can all entertain class actions. However, the extent of the matters which they can entertain under the class action procedure is limited to the ones expressly stated in their respective rules.

With respect to human rights, the fundamental legislative framework for its protection in Nigeria remains the CFRN, particularly Chapter IV where all the fundamental human rights accruing to every Nigerian is itemized and guaranteed.⁵⁴ Further to the Constitution of the Federal Republic of Nigeria, amongst the legislation is the Fundamental Rights (Enforcement Procedure) Rules 2009 which provides the procedure for the protection and enforcement of the fundamental human rights of citizens. According to the Fundamental Rights Enforcement Procedure Rule⁵⁵, any individual who alleges that their fundamental rights, as provided for in the Constitution and to which they are entitled, have been, are being, or are likely to be infringed, can apply to the court in the state

⁵² Order 13 Rule 15.

⁵³ Order 13 Rule 15(e).

⁵⁴ Constitution of the Federal Republic of Nigeria 1999 ss 33–42.

⁵⁵ Fundamental Rights (Enforcement Procedure) Rules 2009 Order 2 Rule 1.

where the infringement occurred or is likely to occur for redress.⁵⁶ Also, in cases of actual or potential violations of fundamental rights, the affected individual can seek redress or prevention through the courts. As per the CFRN, the High Court (State or Federal) holds jurisdiction over fundamental rights actions, limited to subject matters within the specific court's jurisdiction.⁵⁷ The National Human Rights Commission (NHRC) Act 1995 (as amended) is part of the legal framework for the protection of human rights in Nigeria. The Act established the NHRC as an autonomous body with a mandate to safeguard and advance human rights within the country by raising public awareness about human rights, fostering collaborative efforts with governmental bodies and civil society organizations with respect to human rights matters and advocating for the protection of human rights, amongst other things.

Institutionally, the various courts in Nigeria (State High Courts and Federal High Courts, the Court of Appeal and the Supreme Court), the NHRC, the Nigeria Police Force, the Public Complaints Commission, the Legal Aid Council of Nigeria, to mention a few, remain key institutions established to protect and promote human rights and human rights awareness in Nigeria.

5 Features/categories of matters that qualify for class action

5.1 Class of persons being represented are not ascertainable

A major feature of class action is that the people on whose behalf the suit is brought or being proceeded against are so large that they are unascertainable, cannot be readily ascertained or, if ascertained, cannot be found.⁵⁸ To this end, it follows therefore that, for a suit to qualify for the class action procedure, the persons on whose behalf

⁵⁶ NH Worlu-Okolie and CO Joseph Asoh, 'Legal and Institutional Frameworks for Human Rights Protection in Nigeria: Challenges and Pathways to Effective Enforcement,' (2024) 1(2) *Fountain Univ LJ* 200 -219.

⁵⁷ Adeola Austin Oyinlade, 'The Enforcement of Fundamental Rights in Nigeria' <[https://www.mondaq.com/nigeria/human-rights/1439386/the-enforcement-of-fundamental-rights-in-nigeria#:~:text=The%20breach%20of%20any%20fundamental,from%20sections%2033%20to%202](https://www.mondaq.com/nigeria/human-rights/1439386/the-enforcement-of-fundamental-rights-in-nigeria#:~:text=The%20breach%20of%20any%20fundamental,from%20sections%2033%20to%202>)> accessed 2 February 2025.

⁵⁸ E Uwa, A Aderemi and I. Enigbokan, Collective Redress and Class Action 2024, <<https://www.mondaq.com/nigeria/trials-appeals-compensation/1562012/collective-redress-and-class-actions-2024>> accessed 10 June 2025.

the action is brought or against whom the action is instituted are so large that they cannot be ascertained, readily ascertained or where ascertained cannot be found. Civil rights litigation⁵⁹ qualifies as an example under this head of features and one of the most famous examples of civil rights action in the U.S. is the *Brown v Board of Education of Topeka*⁶⁰ case decided in 1954, where the U.S. Supreme Court struck down school segregation as unconstitutional.⁶¹

5.2 Commonality of interest

For a suit to qualify for the class action procedure, there must be common factual questions or legal interest with the claims or defence of the class of persons being represented or proceeded against. This position has been judicially pronounced on in the case of *Abraham Adesanya v President of the Federal Republic of Nigeria*⁶² where it was held that a class action must be centred on the principle of commonality.⁶³ This means there must be common factual questions or legal interest with the claims and defences of the larger group to be represented or being protected.⁶⁴

5.3 Representation

In a class action, because the class of persons being represented are so large that they cannot be readily ascertained and, where ascertained, cannot be found, it is usually the practice that a person or group of persons are appointed to represent the whole class. In the case of *Babalola v Apple Inc*⁶⁵ the Court of Appeal stated thus:

A lawsuit in which the court authorizes a single person or a small group of people to represent the interests of a larger group,

⁵⁹ Civil rights litigation can be said to arise where a category of persons belonging to the same class, for instance, race, tribe, gender, affinity, group, etc., are so large that they cannot all be ascertained or are scattered abroad in a manner that they cannot be easily found, institute an action for the enforcement or recognition of their civil rights.

⁶⁰ (1954) 347 US 483.

⁶¹ <<https://www.investopedia.com/terms/c/classaction.asp>> accessed 24 November 2024.

⁶² (1981) 5 SC 112.

⁶³ *ibid* 148

⁶⁴ E Uwa, A Aderemi, OB Omaghomi and I Enigboka, 'Collective Redress and Class Actions 2023,' <<https://www.mondaq.com/nigeria/class-actions/1399754/collective-redress-and-class-actions-2023>> accessed 24 November 2024.

⁶⁵ (2021) 15 NWLR 193.

specifically, a lawsuit in which the convenience either of the public or of the interested parties requires that the case be settled through litigation by or against only a part of the group of similarly situated persons and in which a person whose interest are or may be affected does not have an opportunity to protect his or her interests by appearing personally or through a personally selected representative, or through a person specially appointed to act as a trustee or guardian.⁶⁶

5.4 Ascertainment by the Court

For a suit to properly proceed under the class action procedure, the court must ascertain that the class of persons bringing the action or being proceeded against cannot be ascertained, readily ascertained or be found. This is usually done by the party seeking to bring the action filing a motion *ex parte* supported by an affidavit seeking the leave of court to appoint one or more persons named in the originating process to represent the class. It is only when this requirement is met that a suit can validly proceed as a class action. Where the class of persons to be represented are ascertainable and can be found, the suit no longer qualifies as a class action but, at best, a representative action.

6 Locus standi for class action

Locus standi is defined in *NBC v Ezeifo*⁶⁷ as the legal capacity to institute proceedings in court.⁶⁸ The issue of locus standi is so fundamental that it stands at the jurisdictional root of every suit. To this end, the survival or death of any matter instituted before any court is dependent on its ability to pass the jurisdictional test of the competency of the person bringing the action to bring same. When it is settled that the party instituting the action has the legal capacity and competency to institute the action, then it is said that the person has the locus standi to bring the action.

In Nigeria, persons who have the requisite locus standi to institute a class action are persons having an interest in the suit, which may be

⁶⁶ *ibid* 211 A-C

⁶⁷ (2001) 12 NWLR (pt 726) 11.

⁶⁸ *ibid* 28 paras A.

commenced or defended by one or more such persons for the benefit of other interested persons.⁶⁹ In a class action, it is sufficient for the parties to have common issues without necessarily having the same interest.⁷⁰

7 Procedure for institution a class action

As earlier noted, there is no clear-cut statutory provision on the institution and prosecution of class action in Nigeria. However, the various states High Court Civil Procedure Rules provide an insight into how it can be instituted. Using the High Court of Lagos State (Civil Procedure) Rules 2019 as a specimen, the procedure for instituting a class action is highlighted below:

A class action being a process of court for instituting action for redress could be commenced by way of a writ of summons⁷¹ or originating summons⁷² accompanied with the relevant documents as stipulated by the rules of court. Alongside the originating process is also filed an application by way of a motion ex-parte seeking leave to appoint one or more persons named on the originating process to represent the class in the subject matter of the suit.⁷³ Once satisfied that the suit qualifies and meets the requirement for a class action, the court certifies it as such and appoints either a person or group of persons to represent the class in the action.⁷⁴ Once the suit is certified, class members are thereafter notified, either by newspaper publication, advertisement or any other means, of the pendency of the lawsuit, their inclusion in the lawsuit and the option available to them to either opt in or out of the suit as members of the class.⁷⁵ Once the hurdle is crossed, the matter thereafter proceeds to trial or settlement, depending on the disposition of the persons being proceeded against.

⁶⁹ <<https://www.mondaq.com/nigeria/class-actions/1399754/collective-redress-and-class-actions-2023#authors>> accessed 25 November 2024.

⁷⁰ *ibid*

⁷¹ High Court of Lagos State (Civil Procedure) Rules 2019 Order 5 Rule 1.

⁷² *ibid* Order 5 Rule 4.

⁷³ *ibid* Order 15 Rule 12.

⁷⁴ *ibid* Order 15 Rule 13.

⁷⁵ *ibid* Order 25 Rule 15.

8 Remedies/reliefs available in a class action

8.1 Declaratory relief

Declaratory relief is where the court makes findings and pronounces on a legal issue that has been brought to its attention. This form of relief merely confirms or denies a legal right or an entitlement or the position of the law, but contains no specific order to be carried out by the successful party or enforced against the unsuccessful party.⁷⁶ It is also discretionary and granted only in circumstances where the court is convinced by credible evidence.⁷⁷ To this end, declaratory relief is not given either in default of defence or on admissions without the court hearing evidence and being satisfied by such evidence that the plaintiff is entitled to the declaration sought.

8.2 Injunctive relief

Injunctive relief is a readily available remedy in the private law field for preventing the commission of an unlawful act such as tort or breach of contract. However, in the public law field, it is a remedy available against a public authority to prevent the commission of or continuation of unlawful acts.⁷⁸ The remedy would not be made available to a litigant who does not have a legal right to the subject matter of the action. The types of injunctions available are:

- a) Mandatory injunctions, which are granted by the court to compel a party to do a specific thing or action;⁷⁹
- b) Prohibitory injunctions, which seek to prevent someone from engaging in a particular act pending the determination of the case;⁸⁰ and
- c) Perpetual injunctions, which are an ancillary relief, granted to protect an established right in law or in equity, and, where the substantive right has not been established, no injunctive relief would be granted.⁸¹

⁷⁶ *Fawehinmi v IGP* (2007) 7 NWLR (pt 665) 481.

⁷⁷ *CPC v INEC* (2011) 18 NWLR (pt 1279) 493, 576 para G.

⁷⁸ <<https://www.learnnigerianlaw.com/learn/administrative-law/judicial>> accessed 18 June 2025.

⁷⁹ *ibid*

⁸⁰ *ibid*

⁸¹ *ibid*

8.3 Damages

Where the matter complained about is a tort, the primary theoretical notion is to place the plaintiff(s) in a good position, as far as money can, as if the matter complained about had not occurred.⁸² The principle envisages that a party that has been injuriously affected by the act complained of must be put in a position in which they would have been if they had not suffered the wrong for which they are being compensated.

Damages awarded from a class action are in two categories:

- i. Compensatory damages: This is awarded to compensate for direct or actual loss suffered such as illness, loss of life or pain and suffering and could be further categorized as follows:
 - a. General damages: these are damages that the law will presume to be the direct, natural or provable consequence of the act complained of, or damages resulting from loss or harm suffered by the plaintiff, flowing naturally from the act of the defendant and which the plaintiff need not specifically set out in their pleadings.⁸³
 - b. Special damages: are specific and quantifiable financial losses, but not necessarily the result of injury or harm complained of, and which in fact follow such injury or harm as a natural and proximate consequence in the case.⁸⁴
- ii. Punitive damages: This is a form of exemplary damages postulating a punishment for the defendant and not mere compensation for the plaintiff and must also be specially claimed for the court to grant them.⁸⁵

⁸² Learning Nigerian Law, Judicial Remedies <<https://www.learnnigerianlaw.com/learn/administrative-law/judicial>> accessed 19 June 2025.

⁸³ *Chukwu v Makinde* (2007) 9 NWLR (Pt 1038) 195

⁸⁴ *Ajigbotosho v Renolds Const Co Ltd* (2019) 3 NWLR (Pt 1659) 287, 304 paras A-B.

⁸⁵ *Guardian Newspaper Ltd v Ajeh* (2005) 12 NWLR (Pt 938) 205, 230 paras G-A.

9 Applicability of class action to human rights litigation in Nigeria

The procedure for litigating and enforcing human rights action in Nigeria is governed by the Fundamental Rights Enforcement Procedure Rules 2009. Further to this, fundamental rights enforcement actions are *sui generis* and the courts with jurisdiction to entertain same are the High Courts of the various states, High Court of the Federal Capital Territory and the Federal High Court. Going by the definition of class action, as earlier discussed, and the preamble to the Fundamental Rights Enforcement Procedure Rule, 2009, particularly paragraph 3(e) which provides thus:

- (e) The Court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of locus standi. In particular, human rights activists, advocates, or groups as well as any non-governmental organizations, may institute human rights application on behalf of any potential applicant. In human rights litigation, the applicant may include any of the following:
 - i. Anyone acting in his own interest;
 - ii. Anyone acting on behalf of another person;
 - iii. Anyone acting as a member of, or in the interest of a group or class of persons;
 - iv. Anyone acting in the public interest, and
 - v. Association acting in the interest of its members or other individuals or groups.

From the above provision particularly item iii on the list, it can be deduced that class action is highly permissible in the litigation and enforcement of human rights in Nigeria. In aligning with this deduction, Order 13 Rule 1 of the Fundamental Rights Enforcement Procedure Rules, 2009 provides that any person or body who desires to be heard in respect of any Human Rights Application and who appears to the Court to be a proper party to be heard, may be heard whether or not the party has been served with any of the relevant processes, and whether or not the party has any interest in the matter. Further to this, the Court of Appeal in the case of *Babalola v Apple Inc* held that a judge is empowered to appoint one or more persons to represent a person or class or members of the class in

instances where the judge is satisfied that the person, class or some members of the class interested cannot be ascertained and/or found.

It is given that from the above, class action can be used for human rights litigation. However, as at the time of writing this paper, there is no record of the use of the procedure for human rights litigation known to the author and this may not be unconnected with the reasons earlier highlighted as being responsible for the scarce use of class action in Nigeria, particularly the limitation placed by the various rules of court on the type of causes that can be subject of class action.

10 Conclusion

Though not very common in the Nigerian legal jurisprudence, class actions, by its nature, are viable tools for ameliorating regulatory failure, social re-engineering, consumer protection and civil rights activism. A properly developed legislative and institutional framework for class action in Nigeria and effectual utilization of same will serve Nigeria and Nigerians better because the socio-economic rights by way of human rights of the larger class of the oppressed persons can be redressed by way of class action.

Given the spate at which class action is being deployed to seek redress of perceived and alleged wrong in Nigeria lately, it can be said that the procedure is gradually rising to take its pride of place as a veritable tool for social re-engineering. Though as the time of writing, there is no case of the use of class action for human rights litigation known to the author. It is however glaring that the concept is developing and in the fullness of time, if given the necessary attention, publicity and development of the framework for its use, class action will fully take its pride of place. On the whole, the use of class action in redressing human rights violation is not defeated in anyway whatsoever but it still developing.

11 Recommendations

It is clear that class actions as an adjudicatory procedure in Nigeria is not common, despite its recognition by the legislative framework provided for it by the various rules of court in Nigeria. In order to

Class action in human rights litigation

give class action its pride of place, especially as it pertains to human rights litigation, it is expedient that:

1. There should be a great level of awareness and sensitization amongst the litigating populace of the instrumentality of class action as a procedure for seeking redress for a large group of persons who may or may not be ascertainable. With this level of awareness and sensitization, the people become more aware of the existence of class action and its merits and the notion of all man for himself because of the expensive nature of litigation will be reduced drastically and the culture of being each other's brother's keeper will be further entrenched. This sensitization can be effectively done through the National Orientation Agency, National Human Rights Commission and Civil Society Organizations involved in human rights advocacy.
2. There should be an expansion of the list of causes of action that can be redressed using the class action mechanism to include human rights litigation. This can be done by either amending the Fundamental Rights Enforcement Procedure Rules, the principal legislation governing human rights litigation in Nigeria, to recognize expressly class action as a mechanism for human rights litigation.