

ORDER 5 - MODE OF BEGINNING CIVIL PROCEEDINGS IN HIGH COURT

Mode of beginning civil proceedings

1. Subject to the provisions of any statutory provision or of these Rules, civil proceedings in the High Court may be begun by writ, originating summons, originating motion or petition.

Proceedings which must be begun by writ

2. Subject to the provisions of any statutory provision or of these Rules by virtue of which any proceedings are expressly required to be begun otherwise than by writ, the following proceedings must, notwithstanding anything in rule 4, be begun by writ that is to say, proceedings-

- (a) in which a claim is made by the plaintiff for any relief or remedy for any tort, other than trespass to land;
- (b) in which a claim made by the plaintiff is based on an allegation of fraud;
- (c) in which a claim is made by the plaintiff for damages for breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statutory provision or independently of any contract or any such provision), where the damages claimed consist of or include damages in respect of the death of any person or in respect of personal injuries to any person or in respect of damage to any property;
- (d) in which a claim is made by the plaintiff in respect of the infringement of a patent.

Proceedings which must be begun by originating summons

3.- (1) Proceedings by which an application is to be made to the High Court or a judge thereof under any statutory provision must be begun by originating summons except where by these Rules or by or under any statutory provision the application in question is expressly required or authorised to be made by some other means.

(2) This rule does not apply to an application made in pending proceedings.

Proceedings which may be begun by writ or originating summons

4. - (1) Except in the case of proceedings which by these Rules or by or under any statutory provision are required to be begun by writ or originating summons or are required or authorised to be begun by originating motion or petition. proceedings may be begun either by writ or originating summons as the plaintiff considers appropriate.

(2) Proceedings-

- (a) in which the sole or principal question at issue is or is likely to be one of the construction of a statutory provision or of any instrument made under a statutory provision or of any deed, will, contract, or other document, or some other question of law, or
- (b) in which there is unlikely to be any substantial dispute of fact,

are appropriate to be begun by originating summons unless the plaintiff intends in those proceedings to apply for judgment under Order 14 or Order 86 or for any other reason considers the proceedings more appropriate to be begun by writ.

Proceedings to be begun by motion or petition

5. Proceedings may, be begun by originating motion or petition if, but only if, by these Rules or by or under any statutory provision the proceedings in question are required or authorised to be so begun.

Right to sue in person

6. – (1) Subject to paragraph (2) and to Order 80 rule 2, any person (whether or not he sues as a trustee or personal representative or in any other representative capacity) may begin and carry on proceedings in the High Court by a solicitor or in person.

(2) Except as provided by paragraph (3), or under any other statutory provision, a body corporate may not begin or carry on any such proceedings otherwise than by a solicitor.

(3) A body corporate may begin and carry on any such proceedings by an employee if—

(a) the employee has been authorised by the body corporate to begin and carry on proceedings on its behalf; and

(b) the Court grants leave for the employee to do so.