

**ADVANCING JUSTICE DELIVERY AND
THE INTEGRITY OF THE JUDICIAL
SYSTEM**

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1. Introduction

I feel highly honoured and privileged to be invited to present a paper at this August Summit, and therefore I thank the Chief Judge of Lagos State and the other members of the State Judiciary for deeming me worthy to carry out important assignment at this summit.

There is a popularly saying that nothing is constant and that change is the only permanent thing in nature. Change has indeed been a constant feature of the justice administration system of this country, most especially in Lagos State.

The most significant and fundamental change that the Nigerian Legal System has ever experienced is ofcourse the frontloading concept introduced by the High Court of Lagos (Civil Procedure Rules) of 2004. I shall touch on this later.

However, there had been earlier and significant developments in the administration of justice system which need to be mentioned. Let us take the case of the Written Address or Brief. Before it was introduced by the Supreme Court in 1977, final submissions of Counsel were made orally. The Judge and other Counsel, were hearing the address

for the first time and they had to struggle as best as they could to make notes.

Describing the previous process of oral addresses as very cumbersome and time consuming and afflicted by prolixity and irrelevance, Niki Tobi, JCA, as he then was, continued thus in his book The Brief System in Nigerian Courts:

“The material for the argument ... was never made available to the adverse party. Not even in court. And so neither the court nor the adverse party knew the trend of or likely trend of the argument ... It was all a hidden affair ... This state of affairs necessitated counsel taking down in long hand arguments ... Some of the notes taken down during oral arguments were not accurate, a situation which resulted in further problems. The notes taken however formed the basis of the reply of opposing counsel... It was in attempt to give sufficient notice of line of argument of appeals to the adverse party and the court, and to accelerate hearing of appeals that necessitated the introduction of brief system in Nigeria.”¹

As already noted above, this state of affairs compelled the Supreme Court to introduce the practice of Brief Writing, by Order 9 of the Supreme Court Rules in 1977. The Court of Appeal followed suit in 1984 by introducing Brief Writing by Order 6 of its amended Rules.

Although there was a long interval between 1984 and 2004, when Lagos State introduced it in its Rules, many Courts and Counsel

1. Niki Tobi, The Brief System in Nigerian Courts, pp. 1-2. See also Awa U. Kalu, “The Use of Written Depositions and Addresses in Civil Proceedings,” paper presented at the 2nd Summit of Stakeholders in the Administration of Justice held in Lagos on 19th and 21st February, 2002.

appearing before them, had voluntarily started adopting the written address system in an ad hoc manner.

The Lagos State High Court Civil Procedure Rules constituted the first formal adoption of the system below the Court of Appeal level. Now the Practice Directions issued by the President of the Court of Appeal, since 2003 in relation to election petitions also contain provisions for Written Addresses and Briefs.

This then is one major example of change, which has advanced justice delivery in the Nigerian Judicial System.

There is need to mention some major, positive and unique innovations that have been introduced by the Lagos State Ministry of Justice since 1999. These are

- (i) Citizens Mediation Centre,
- (ii) Office of the Public Defender,
- (iii) Directorate of Citizens Rights,
- (iv) Reform of the Criminal Code, by the Criminal Law of Lagos Bill 2009 with extensive and far reaching reforms.
- (v) The Magistrates Courts Law 2009 in which the jurisdiction of the Magistrates Courts has been increased to Ten million naira. This will attract more cases at that level to be dealt with summarily, thereby de-congesting the High Court. At least one magistrate court will now be available in every magisterial district, to hear matters relating to remand and bail. This enables Lagos State to meet the constitutional requirement of taking arrested persons to court within 24 hours.

The Law includes the following:

- (a) The provision for verbatim court recorders.
 - (b) The provision of a strict adjournment regime which prohibits adjournments exceeding 10 days.
 - (c) Provision of office of the Public Defenders Services in Magistrates Courts.
- (vi) Mortgage and Property Law 2010, whose objective is to encourage subprime mortgage lending and stimulate growth of mortgage finance.

2. Front Loading (0.3(2))

Much has been written on front loading which was introduced by the Lagos State Government in 2004.

Everyone in this audience is familiar with concept and practice of front loading and other aspects of the 2004², Rules which in Nigerian terms were revolutionary. The overriding objective of the 2004 Rules is speedy and efficient dispensation of Justice. Order 1 Rule 1 (2) provides that “the application of these rules shall be directed towards the achievement of a just efficient and speedy dispensation of Justice”.

As one commentator has rightly noted³, the intendment and objectives of front loading are as follows:

2. A comprehensive analysis of front loading was undertaken by erudite jurists at the 2004 Annual Lecture Series of the Ikorodu Branch of the Nigerian Bar Association entitled, High Court of Lagos State Civil procedure Rules, 2004: So Far, So What, now published by the N.B.A., Ikorodu Branch in Honour of Chief Babatunde Benson in 2005.

³ Hon. Justice Adesuyi Olateru-Olagbegi in his paper “Emerging Issues And Challenges in the 2004 High

- i. To discourage the filing of weak or frivolous cases
- ii. To afford parties an opportunity to assess the relative strength and weakness of their cases and thus facilitate settlement at the earliest possible time before too much expenses are incurred
- iii. To identify and focus attention on the main issues from the onset and thus avoid the tendency to dissipate energy on irrelevancies
- iv. To minimize the incidence of amendment of pleadings and I add;
- v. To enable the Court and the rival parties to be fully aware of the case of each party and to avoid ambush tactics.”

Provision is made for pre-trial conference (0.25 R.I, whose purpose is to enable the Court to achieve the following:

1. dispose of all those matters that can be dealt with on interlocutory application;
2. give such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal; and
3. promote amicable settlement of the case or adoption of alternative dispute resolution. (Order 25 Rule 2 (a)).”

Rule 3 of Order 25 gives the Judge considerable powers to enable him settle the dispute outright, encourage alternative system of dispute resolution, narrow the issues, and make Orders for the speedy disposal of the suit, etc.

With many other positive features of the new system which include (i) elimination of oral examination in chief, (ii) penalties for late filing, (iii) tendering of documents from the bar and (iv) ofcourse written addresses inter alia, we should be shouting alliluyah for being freed from the strangulating process of the old system which spurned cases like Araori v. Elemo [1983] 1 SCNLR 1.

However, the soul searching we must engage in this morning must include the question: Have the 2004 Rules achieved their intended purpose?

Recently, a senior member of the bar expressed the following profound insight on the working of the 2004 Rules and I agree with him.⁴ This is what he said:

“In practical terms, today a lot of worrisome delays are still being experienced both in the trial of civil and criminal cases, notwithstanding the provisions of the different procedure rules. The objectives of those rules have largely not been achieved, which is the speedy determination of cases in the courts. I will not attribute the faults to the rules, but I will attribute the faults to practitioners of the rules. No matter how elegant a rule is, no matter how well formulated, a lot depends on the practitioners who are using the rules. The lawyers, as well as the judges, are both culpable.”

⁴ Dele Adesina, SAN, in The Guarndian, Tuesday August 23, p. 81.

Another Senior Advocate who is also a Queen's Counsel in the England, was reported by the present Attorney-General and Commissioner for Justice, Mr. Ade Ipaye as stating that:⁵

"one of the downsides to "Front Loading" may well be that in response to the full disclosure requirements at case commencement and the tight deadlines which accompany them, the parties "overload" their cases, throwing in issues and documents that are irrelevant to the issues in hand on the basis that they can always be pruned down later on.

While this may impress the client, it is bound to complicate the process of narrowing down the contentious issues. It will also add to the cost of litigation by increasing the work load of judges and counsel. One way of combating this is to make the overloading counsel to pay the costs necessarily caused by him. The difficulty with that is that it might be difficult to distinguish between one lawyer who is genuinely trying to cooperate with the spirit of the Rules through disclosure but over compensates, and another who is obviously subverting the process through document overload."⁶

My personal experience as Claimant in a case which my Counsel instituted since 5/6/09 but which has not yet reached the pre-hearing conference stage is a testimony to the fact that the new Rules are not functioning properly because of the human factor.

These are the facts of this particular case.

⁵ See High Court of Lagos State (Civil Procedure) Rules 2004, So Far So What at page 68.

⁶ High Court of Lagos (Civil Procedure) Rules 2003: Culture Change or Culture Shock being paper delivered at the Special Training for Judges of the High Court of Lagos State, November 2003.

The case filed on 5/6/09. The Defendant refused service.

On 23/11/09 the matter came up for the hearing of our ex parte motion to serve by substituted means. The application was granted and the matter was adjourned to 25/01/10.

On 25/01/10 the matter came up for report of service. Both parties were represented. The matter was adjourned to 15/2/10 for mention.

On 15/2/10, both parties were represented. The matter was adjourned to 8/3/10 for further mention.

On 8/3/10 it was adjourned again for pre-trial conference fixed for 21/4/10.

Before 21/4/10, there was restructuring of the judiciary and the Judge was posted out of civil. Matters were to be reassigned.

After several visits to the court, the matter was eventually reassigned to another Judge, and listed for mention on 28/9/10. But the Court could not take matter. It was adjourned to 25/10/10 for mention.

On 25/10/10, the Parties were represented. The matter was again adjourned for mention to 23/11/10.

On 23/11/10 the Court did not sit and no new date was given.

At this stage an attempt to file a pre-trial notice was aborted because the Court Registry stated that this particular Judge insisted on personally approving the application for pre-trial

Shortly after, this second Judge retired and the matter was reassigned to a new Judge.

On 8/6/11, the matter was listed for mention, and further adjourned to 6/7/11.

On 6/7/11, the Court did not sit but a message was pasted on the door stating that new dates would be communicated to us. Up till this minute, no new date has been communicated to us. This case which was first filed in June 2009, is yet to get to the pre-hearing conference stage. If this can happen to me, imagine the fate of the ordinary man in the Agegunle Omnibus.

It is however comforting to learn that the Ministry of Justice constituted a Committee to review the High Court of Lagos State (Civil Procedure Rules) 2004. The review was a response to gaps which had been experienced in the operation of the Rules. The Committee has already submitted its recommendations to the Attorney-General and Commissioner for Justice. Furthermore, I am also informed that the Lagos State Ministry of Justice in partnership with Nigerian Bar Association held a One-Day Civil Procedure Rules Review Summit on Thursday June, 2010. The report and recommendations from the Summit has been transmitted to the Hon. Chief Judge of Lagos State for further action. I believe most of the defects and shortcomings observed in the workings of the 2004 Rules must have been resolved in the process of these extensive reviews of the Rules.

3. Interlocutory Applications

The problems associated with interlocutory applications have become a major source of concern in this country. Indeed we are currently faced with a grave crisis in our justice delivery system because of this cheap vehicle for adjourning justice permanently. The usual means employed by defence counsel who have no defence are, preliminary objections based on lack of jurisdiction, absence of a reasonable cause of action or lack locus standi on the part of the Claimant.. There are many more of such devices.

The game is to engage in appeals on these preliminary objections right up to the Supreme Court, and to start another round when the case returns to the High Court.

In a case in which I was involved as Counsel, the Defendant, a Lawyer, brought an application, seeking security for costs because according to him, his witnesses were to come from abroad. The application was opposed by Plaintiff's Counsel. This interlocutory matter traveled all the way to the Supreme Court, which dismissed the application. This case was first filed by the Plaintiffs on 3rd February 1989 and the issue of security for costs was not disposed of by the Supreme Court until 8 years later in 1997. In sending the case back to the High Court for the hearing on the merits, the Supreme Court state inter alia that:

“The parties, following the order for security for costs and stay of the proceedings granted by the trial court have since been fighting the issue up to this Court at the expense of the expeditious determination of the main suit. Justice delayed, they say is justice denied. Accordingly, it is ordered that this case be remitted to the High Court of Lagos State with a direction that it receives an accelerated hearing before another judge of that court.”

The case came up again at the High Court before Judge 'A', on 12/1/98. After several adjournments, on 18/5/98, the Respondent raised objection the appearance of Professor I.E. Sagay for the Claimants for the first time. At this stage, the matter was transferred to the Court of Judge 'B'.

Between January 1998 and 30/3/2000, i.e., for nearly two years, the case was adjourned on several occasions, largely because of the Defendant's failure to appear in Court, particularly as he was appearing for himself. He by the way is a Senior Lawyer.

On 30/3/2000, the Respondent started moving his motion that Professor I.E. Sagay was not entitled to appear for the Appellants, although the said Professor Sagay was the one who appeared for the Plaintiff to oppose the application for security for costs at the High Court level. The Defendant continued moving his motion throughout 5 (five) clear days, namely 30/3/00, 1/6/00, 7/7/00, 8/3/01 and 17/5/01, but still did not conclude it before Judge 'B' moved to the Ikeja Division of the High Court. When the court tried to end the Respondent's protracted arguments by suggesting that the parties submit written addresses, the Respondent rejected this out of hand.

The case was re-assigned to Judge 'C', on or about 10/10/01. I made several efforts to ascertain the hearing date and it was unfortunate that when the next hearing notice was finally issued, My Office clerk who received it, did not pass it onto me. Was he compromised? We shall never know. The outcome of this was that I was not in Court, on 22/4/2002 when the Defendant, on noticing my absence, quickly concluded his marathon address and obtained instant Ruling in his (Defendant's) favour, all in ONE DAY, in the complete absence of the Plaintiffs and their Counsel, i.e., myself. It should be noted once again, that the Respondent was unable to conclude his arguments for 5 whole days, before Judge 'B', when I was in Court, throughout. The action of Judge 'C' was clearly an act of collusion with the Defendant to pervert the cause of justice.

Judge 'C' did not consider it necessary to adjourn for the Plaintiff's Counsel to respond to the Defendant's address. It is in these circumstances and in the complete absence of the Plaintiff's Counsel that the court ruled on 22/4/02 that Professor I.E. Sagay was not entitled to appear for the Appellants.

It is significant that the Respondent was absent from Court on 8/7/99, 24/1/00, 7/12/00 and 8/1/01; the last two being in the middle of his marathon address before Judge 'B'. Yet although I was present on all these occasions, Defendants motion was not struck out."

Obviously, I appealed against this perverse Ruling to the Court of Appeal. Now instead of responding to my appeal, the Defendant filed a preliminary objection at the Court of Appeal that I had no right of

appeal because the lower court had ruled that I was not the Plaintiff's Counsel on record. And yet that was the substance of my appeal.

The Court of Appeal, per Aderemi, JCA, as he then was, easily dismissed this preliminary objection with the following words:

“When a party who is aggrieved by the decision of a court or tribunal, which decision is appellable, sets out to appeal, that aggrieved party is doing no more than exercising his constitutional right. Nothing must be done or left undone which is capable of frustrating the exercise of that right. The preliminary objection of the respondent is set out to sabotage the exercise of the applicant's constitutional right of appeal. It is calculated to shut him out of the court room by asking this court to peremptorily set aside permanently the application dated and filed on 10th October 2002. It must always be remembered that citizen's accessibility to courts is the hall-mark of a civilized society operating under the rule of law. Nigeria, I believe is not an exception. A society that shuts the doors of its courts of justice against individuals who may wish to vent real or even imagined grievances against other individuals or against the State or its functionaries cannot be said to be operating under the rule of law. And perhaps I should add that one of the basic principles of the rule of law is that a person who feels aggrieved by an act or the decision of an individual or corporate body, or government or its functionaries should have its complaints investigated and justice dispensed. To accede to the prayer contained in the preliminary objection at this stage is to run foul of this sacred principle of the rule of law. It is in the interest of justice that the application of 10th October 2002 be first

entertained. The arguments now being canvassed by the respondent can well be put properly before the court if and when the appeal comes up for argument.”

In concurring with Justice Aderemi’s leading judgment, Justice Dattijo Mohammad, JCA, simply concluded that:

“The Court decided that the firm of Itse Sagay and Co. were not properly instructed and so could not lawfully represent applicants then. The appeal is about this decision. The thrust of the objection to the grant of the reliefs sought by Counsel is substantially on what this appeal promises to be. To fully decide the objection at this level might result in deciding the issues which the appeal would raise. I decline to do just that. I agree with my learned brother Aderemi JCA, that it is premature to do so.”

Distinguished Ladies and Gentlemen, you will not believe this. The Defendant appealed against this Ruling to the Supreme Court. The substance of his appeal is that I have no right of appeal against the High Court Ruling that I was not the Plaintiff’s Counsel on Record.

We do not need much imagination to know what will happen if the Defendant loses again at the Supreme Court as he must. He will now come back to the Court of Appeal to defend the High Court’s Ruling on my status as Counsel. When he loses that, he will appeal again to the Supreme Court, that I was not the Counsel on record.

It is in the light of this blatant type of impunity, this assault on justice and the experience of the Ariori v. Elemo case, which traveled between

the High Court and Supreme Court for 24 years, before being sent back to the High Court for a fresh trial, that the Supreme Court, has been encouraging the lower courts to take interlocutory and substantive matters together to avoid the painful and wasteful experience of cases going up and down the hierarchy of Courts, first on an interlocutory matter and then on the substantive issue, to the serious prejudice and detriment of the parties, justice, the judicial system and the rule of law.

The Following passages from a series of Supreme Court cases firmly establish the direction in which Courts should now move in this matter.

In Captain E.C.C. Amadi v. Nigerian National Petroleum Corporation [2000] 10 NWLR (Pt. 674) 1 at page 100, paragraphs E-H, advocating the hearing of the substantive matters along with preliminary objections to the Courts' jurisdiction, the Supreme Court, per Uwais, CJN, stated as follows:

“The chequered history of this case once more brings to light the dilatory effect of interlocutory appeal on the substantive suit between parties. The action in this case was brought on the 29th day of April, 1987. The motion on notice to strike out the case for want of jurisdiction is dated 15th day of April, 1988; that is about a year after the suit was filed. The ruling of the High Court was delivered on the 20th day of June, 1988. The appeal against the Ruling was delivered by the Court of Appeal on the 16th day of February, 1989. The final judgment on the interlocutory appeal is delivered today [2nd June 2000] by this Court. It has thus taken thirteen years for

the case to reach this stage. With the success of the plaintiff's appeal before us the case is to be sent back to the High Court to be determined, hopefully, on its merits after a delay of 13 years. Surely, this could have been avoided had it been that the point was taken in the course of the proceedings in the substantive claim to enable any aggrieved party to appeal on both the issue of jurisdiction and the judgment on merit in the proceedings as the case might be. I believe that counsel owe it, as a duty, to the court to help reduce the period of delay in determining cases in our courts by avoiding unnecessary preliminary objections as the one here; so that the adage justice delayed is justice denied may cease to apply to the proceedings in our courts." (Underlining added)

In Katto v. Central Bank of Nigeria [1991] 9 NWLR (Pt. 214) 126 at page 149, the Supreme Court held thus (Akpata, JSC)

"While the Supreme Court, being the final Court of Appeal, can afford not to pronounce on other issues placed before it where it finds that the trial court lacked jurisdiction, the Court of Appeal whose stance on jurisdiction may be faulted by the Supreme Court should not ignore other issues raised in the appeal, it should pronounce on them. The position now is that issues which ought to have been resolved by the Court of Appeal in its judgment dated 30th January, 1989, about three years ago, will now have to be sent back to it for hearing and determination."

In Oduba v. Houtmangracht [1997] 6 NWLR (Pt. 508) 185 at pp. 205-6, Belgore, JSC, stated thus:

“I agree with my learned brother, Iguh, JSC, that the main achievement of this matter traveling up to this court was to frustrate the expeditious trial of the substantive case that has been lying dormant for almost nine years due to stay of proceedings the appellant procured. It is true that out of respect for hierarchy of courts, once an interlocutory appeal is entered, the lower court stays proceedings in many cases voluntarily. But whether the stay is voluntary by the trial court or on its being moved so to do, regard must be given to the overriding principle of justice of the case. If the stay of proceedings, by the nature of the case, will tend to stifle the case and cause great inconvenience and/or great loss to the other person who wishes to proceed with the hearing, the trial Court should not stay proceedings unless ordered by superior Court.”

Our Courts must now consider seriously taking interlocutory matters together with the substantive issue, to avoid our cases going up and down the hierarchy of courts for ever and killing justice in the process.

4. The NJC and the Supreme Court

The grave crises presently wracking the judicial system because of the reckless determination of the National Judicial Council to get the Hon. Justice Salami out of the President’s office in the Court of Appeal is a function of two factors:

- (i) The excessive powers granted the Chief Justice of Nigeria under item 1 of the 3rd Schedule of the Constitution and
- (ii) The in-breeding at the top hierarchy of the Judiciary.

On the first issue of excessive powers of the Chief Justice of Nigeria, out of the 23 members of the Council, apart from himself, he is responsible for the appointment of 14 members. So the NJC is really the CJC, i.e., the Chief Justice's Council. Under no circumstances can such a body be objective or independent on any matter in which the Chief Justice has an interest.

The time has now come to re-constitute the NJC by eliminating all serving Judicial Officers from it. Its Chairman and members should be constituted by retired Supreme Court and Court of Appeal Justices, retired Chief Judges of States and the Federal Capital Territory and at least 10 members of the Nigerian Bar Association who must participate at all meetings of the Council, including those concerning the disciplining of Judges. Apart from the NBA members, the other members should be elected by the Body of Benchers.

We should no longer tolerate a situation in which serving Judicial Officers will sit over their own disciplinary proceedings, forming cliques and cabals to promote their interests and the improper political interests of their friends and counterparts in politics.

Regarding the composition of the Supreme Court and Court of Appeal, the in-breeding has resulted in unhealthy law and practices, which are bringing the Judiciary down. Presently, we can know in advance who the next 6 Chief Justices will be. Appointment and promotion is based

on civil service seniority – turn by turn. They move up step by step like the Mogajis of Ibadan.

Law Professors, Senior and experienced Lawyers in legal practice should now be appointed straight to the Supreme Court and Court of Appeal. Indeed, Jurists outside the Supreme Court should now be considered for appointment as Chief Justice of Nigeria. A Senior Law Professor, a serving President of the Court of Appeal, a serving Chief Judge of a State or a Senior Legal Practitioner including a good Attorney-General, should now all be eligible for appointment not only into the Supreme Court Bench, but to the position of Chief Justice of Nigeria. It is clear that the top hierarchy of the Judiciary needs new blood, fresh ideas and a new culture. The present conclave must be disbanded, to allow an inflow of fresh air into the system.

In 1972, Professor Elias was appointed Chief Justice of Nigeria from his post as Federal Attorney-General. In 1975, Justice Alexander, Chief Judge of Cross River State was appointed to replace him, as Chief Justice of Nigeria.

Hon. Justices Nnamani and Dan Ibekwe were appointed at different times from Attorney-Generalship into the Supreme Court.

The present system has clearly failed and the quality of justice has been progressively declining at the apex level. Its time for a drastic change.

Thank you.