

## **Legal implications of live telecast of delivery of judgment**

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The live telecast of the delivery of the Judgment of the Court of Appeal, acting as the Presidential Election Petition Tribunal, in the consolidated petitions of General Muhammadu Buhari and the ANPP and of Alhaji Atiku Abubakar and the AC against the election of President Umaru Musa Yar' Adua, few months back and the live telecast of the delivery of judgments of the Governorship Election Petition Tribunals that have followed it, have, thus far, been greeted with a silent approval by Nigerians: lawyers and laymen alike.

It may be recalled that after the telecast of the delivery of the judgment in the presidential election petition, the delivery of the judgments of the States Governorship Election Petition Tribunals, including that of Oyo, Ondo, Kogi and Edo States etc, were similarly telecast. It appears that many regard the delivery of these judgments on air as a welcome innovation, rather than an aberration.

The live telecast has been very popular, such that if the Supreme Court were to decline to follow the footsteps of the Court of Appeal in the live telecast delivery of its expected judgment in the appeal on the presidential election petitions, currently pending before it, many might regard the Supreme Court as being insensitive to the thirst of Nigerians for information.

From our observation, the size of gatherings of persons the telecast commands is only comparable to the crowd of football enthusiasts who religiously converge all over our country these days to watch live telecast of league fixtures of football clubs in European countries and UEFA cup matches. Without any doubt, the live telecast has helped in the dissemination of the tribunals' verdicts, dissolving, contemporaneously with the delivery of judgments, pent-up anxiety over election petitions; unlike before, when people had to rely on the news over the radio, on the television, and in the print media to know the verdicts of the tribunals.

Also in the past, the print media had monopolized the verbatim report of these judgments before they found their way into law reports. The broadcast media has now risen to, or has been made to rise to the challenge, by airing the judgments while they are being read and showing the images of the judges that are reading them.

In this article, we intend to examine, as lawyers always ought to do, this new “method” of delivery of court judgments in Nigeria. We do believe that it is not too early to start asking whether this new mode of delivery of court judgments was informed by a recognition by the Court of Appeal [ and later, by the state governorship election petition tribunals, in association with the pace set by the Court of Appeal] of the need to reach out, through the mass media, to majority of Nigerians, who, not being lawyers, might not, subsequent to the delivery of these judgments, have the time, desire or opportunity to read them.

Nigerians deserve to know whether the decision by the Presidential Election Petition Tribunal or the Court of Appeal [depending on whether the decision was taken by the members of the Panel that decided the consolidated petitions, the Chairman of the Tribunal (acting alone) or the President of the Court of Appeal] to allow a telecast of the Judgment was taken in view of the importance of the determination of the Petitions to democratic governance in Nigeria or informed by expediency- creating a specific episode of adjudicatory transparency-, having regard to the controversy and insinuations surrounding the announcement of the elevation of Justice James Ogenyi Ogebe, Chairman of the Tribunal, to the Supreme Court, an announcement which preceded the Judgment.

With the replication of the live telecast of delivery of the Court of Appeal’s Judgment, Nigerians will also want to know if this new phenomenon is going to be extended to all other determinations of election petitions, and appeals that may emanate from them, now and in the future; or whether this initiative of telecast of delivery of judgments is going to be abandoned after this round of election petitions determination, on the ground that it has fulfilled its informational purpose, or allowed to spread contagiously, overtime, to the entire gamut of the Judiciary and all types of determinations by our courts in all forms of actions.

Most important, Nigerians would want to know whether the live telecast or broadcast of the delivery of these judgments had a Constitutional foundation or a legal anchor; for if it did not, our Judiciary, a custodian of the law and the Constitution, would have goofed terribly.

To the best of our knowledge, the live, trail-blazing telecast of the Judgment of the Presidential Election Petition Tribunal has no precedent in the annals of court judgment delivery in Nigeria. While it is true that in the past and in the present,

certain judicial proceedings, including the delivery of judgments, proceedings of military tribunals, proceedings of judicial tribunals of enquiry, and proceedings of certain judicial functions, had been and are being aired in the broadcast media, there had not been a time in the history of this Country when the delivery of an entire judgment in an election petition or the delivery of an entire judgment in a regular court was telecast live.

We may recall here that during the military era, the opening and verdict sessions of several tribunals were televised in news broadcast. In this regard, we can cite, as examples, the sittings of the Zangon Kataf and Ogoni Civil and Communal Disturbances Judicial Tribunals in 1992 and 1995; the arraignment of General Olusegun Obasanjo & co before the Major-General Arziza-led Military Tribunal at the trial of the General Abacha's first contrived coup de'tat in Lagos in 1995; and the arraignment of General Oladipo Diya & co before the General Malu-led Military Tribunal at the trial of the General Abacha's second contrived coup de'tat in Jos in 1998.

Since Nigeria was returned to civil rule in 1999, there has been a lot of live telecast of sittings and proceedings of the legislature, legislative committees and other bodies established by government. In the Obasanjo years, the sittings of the Human Rights Violations Investigation Panel [Oputa] and that of the Constitutional Conference, the debate on the amendment of the 1999 Constitution [3rd Term] in the Senate, and the Senate Committee Hearing on the Petroleum Trust Development Fund and discussion of its reports on the floor of the Senate enjoyed live telecast.

Since the dawn of the Yar' Adua era in May 1999, live telecast of legislative business has been on the ascendancy: the ministerial nominees screening exercise in the Senate; the Patricia Etteh contract awards, wrestling-ridden, investigation hearing before the House Committee, and the debate of its report and findings, leading to Etteh's resignation; the House Committee's probe of awards of contracts in the power sector; and the ongoing House Committee's probe of the Federal Capital Territory Administration. These live telecasts of legislative businesses might have induced the live telecast of delivery of judgments in this discourse.

The first issue to consider is whether the live telecast of the delivery of these judgments is backed by any law, rule of court or practice direction. A court is established by, and operates in accordance with the law that defines its jurisdiction, powers, practice and procedure; its proceedings are governed by

rules of court, and its conduct is regulated by a practice direction, and by ethics and tradition on the Bench.

We have searched through legislations that could be regarded as relevant to our consideration- Electoral Act, Court of Appeal Act, Court of Appeal Rules (including the election petition practice direction made along therewith), the Supreme Court Act and Rules, the various high court laws and rules, and several practice directions issued by the chief judges of the high courts. Our search, we must report, did not yield a discovery of any legal authorization of live telecast of the delivery of these judgments.

Inevitably, we have to turn to the Constitution, which creates the duty to announce decisions of court in public, and which guarantees the right to freedom of expression and the press. Section 36 [1, 3 & 4] of the Constitution guarantees the right to fair hearing, public trial and delivery of judgment in public.

It provides that “in the determination of his civil rights and obligation, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such a manner as to secure its independence and impartiality”( Subsection 1); that ‘ the proceedings of a court or the proceedings of any tribunal relating to the matters in Subsection [1] of this Section [including the announcement of the decisions of the court or tribunal] shall be held in public’ ( Subsection 3); and that ‘whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal”( Subsection 4 ).

However, Subsection 4 has a proviso or qualification. It states: “provided that [ a ] a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice; ( and that ) [b] if in any proceedings before a court or such a tribunal, a Minister of the Government or a Commissioner of the Government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that ma

tter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.”

Be it noted, in passing, that it is under the above proviso that certain proceedings relating to divorce or dissolution of marriage and related custody of children proceedings under the Matrimonial Causes Act may be held in a judge’s chambers, far away from the prying eyes of interested onlookers in open court. Also, it is under this proviso that government may seek to try certain criminal suspects secretly. The divorce proceedings of Mr. and Mrs Gbenga Obasanjo and the “secret” trial of Henry Okah- the MEND leader- are illustrative of the invocation of this proviso. Be it noted also that rules of court generally permit court proceedings to be held in judges’ chambers, including permit court proceedings to be held in judges’ chambers, including the delivery of rulings and interim preservative order ex parte, such as an interim order of ex parte injunction.

Section 39[1 & 2, excluding the proviso thereof] of the Constitution provides that “every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference”; and that ‘without prejudice to the generality of Subsection 1 of this Section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions”. Section 39 [3], however, qualifies the right to freedom of expression and the press.

“Nothing in this Section’, Section 39 [3] provides, ‘shall invalidate any law that is reasonably justifiable in a democratic society (a) for the purpose of preventing the disclosure of information received in confidence, maintaining authority and independence of courts or regarding telephony, wireless broadcasting, television or exhibition of cinematograph films or (b) imposing restrictions upon persons holding offices under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agency established by law”.

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The focal clauses in the reproduced Constitutional provisions are the law that the announcement of the decisions of the court or tribunal shall be held in public, and the law that every person is entitled to receive and impart information without interference, and to own, establish and operate any medium for the dissemination of information.

The question is, can the constitutional stipulation that the announcement of decisions of court or tribunal must be in public be widely, liberally and elastically interpreted or construed to allow the delivery of court judgments to be telecast live or to be recorded and telecast later; and will such telecast be regarded as information received, imparted and disseminated through a medium pursuant to the right to freedom of expression and the press?

If the answer to this question is in the affirmative, then the live telecast of the delivery of the judgment of the election petition tribunals and their relay on television will be in accord with the rule of law.

It is our considered view that the live telecast or sound broadcast (to the public, of course) of delivery of judgment cannot be validated by the Constitutional provision that mandates that the announcement of the decisions of the court must be held in public. Literal interpretation of the provision will certainly occasion an absurdity, as it may be suggested that the delivery of judgment must not only be broadcast over the radio and on the television, but could also be delivered in a village square, town hall or a city auditorium, outside a court.

Using the golden rule of interpretation, the word “public” in this Constitutional provision, to our mind, is used in contradistinction to “secret”.

In other words, the intendment of the framers of the Constitution is to prevent a secret trial and a secret delivery of judgment and ensure that there is an open trial and delivery of judgment, except in those circumstances permitted by law. The aim is to ensure that members of the public are not barred from watching court proceedings or attending court when a judgment is being read or delivered.

The live telecast of delivery of judgment or radio broadcast of same, however, can be justified by a liberal interpretation of the right to freedom of expression and the press. Announcement of the decisions of the court could be regarded as a piece of information that is received and transmitted or disseminated to the members of the public, as allowed by the Constitution, even if contemporaneously. After all, the print and electronic media report court proceedings and announcement of decisions, pursuant to the right to freedom of expression and the press.

The only difference between live telecast and media report of delivery of judgment is that while live telecast transmits judgment when its delivery is in progress, media report publishes judgment when its delivery is over. The telecast disseminates what is being done in the present, while the report disseminates what was done in the past.

The law in Nigeria today, is that while a court or tribunal may bar or exclude persons from its proceedings, under the proviso in S. 36 (4) of the Constitution as stated above, no court of law can bar the media from reporting or publishing court processes, proceedings and announcement of court decisions. Such a report or publication is not restricted by the law of defamation, once it passes the test of accuracy, as it is covered by the defence of absolute privilege, founded on public policy.

The report or publication is only subject to the law of contempt of court, if it is false, if it is deliberately and maliciously twisted to scandalize the court, if it is a misrepresentation of court proceedings, if it is calculated to interfere with court proceedings and administration of justice, or is likely to prejudice fair and impartial trial in a court of law. It can, therefore, be argued, very plausibly, that broadcast of delivery of judgment is merely an extension of the right to freedom of expression and the press, a right which generally empowers journalists and broadcasters to report and publish court processes, proceedings, rulings, orders and judgments.

While we readily concede that there is no provision in the legislations, rules and practice directions, cited above, that specifically authorizes telecast or sound broadcasting of delivery of judgments, we hasten to point out that there is no provision in these legal instruments also, which specifically forbids such telecast or sound broadcasting. Instructively, no law has been made under Section 39 [3] of the Constitution, restricting the full enjoyment of the right to freedom of expression and the press, for the purpose of maintaining the authority and independence of the courts.

/Unless a law, rule or practice direction is made, prohibiting the telecast or radio broadcast of delivery of court judgment, the only rational opinion to render on it is that it is a lawful and constitutional act. The question remains, however, whether there was a lawful foundation, from the judicial angle, for the authorization of the telecast made so far.