THE FRONT LOADING CONCEPT: AN APPRAISAL OF THE FUTURE OF CIVIL LITIGATION IN THE HIGH COURTS WITHIN THE APPLICATION OF THE NEW RULES

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THE FRONT LOADING CONCEPT: AN APPRAISAL OF THE FUTURE OF CIVIL LITIGATION IN THE HIGH COURTS WITHIN THE APPLICATION OF THE NEW RULES.

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Abstract

Judicial process in every civilized society is regulated by procedural rules constantly adopted and reformed to suit the changing needs of the society. In any State where the rules of procedure remain unchanging, the possibility of qualitative dispensation of justice is a dream not striven to be realized. Hence the euphoria that greeted the enactment of **Anambra State High Court (Civil Procedure) Rules 2006**, two years after the introduction of similar High Court Rules in Lagos State. This the writer considers to be an enviable innovation in a country where operative procedure in most States are still redolent of colonial imprint.

The new rules in a nutshell introduced a number of progressive innovations amongst which is the pre-trial conference scheduling and the front loading concept, which makes it mandatory for litigants through their counsel to file, along with the originating processes, all documents and evidence that they intend to rely upon for the prosecution of their case or defense.

The philosophy behind these innovations, as evidence from the rules itself, is to ensure the just, efficient and speedy dispensation of justice; to dramatically reduce to the barest minimum, the amount of time spent in the prosecution of cases in our High courts.

The question therefore is: How far has the application of front loading system by the courts achieved its objective in our High Courts?

Introduction

Front loading as a concept in civil litigation practice in Nigeria was first incorporated into the **High Court of Lagos State (Civil Procedure) Rules, 2004** as part of the overall framework for bridging the time it takes to commence actions and the time within which the actions are disposed off. The same is also of the concept of active case management incorporated into the pre-trial conference procedure under **Order 25 of Lagos 2004 Rules.**[1] It literarily involves bringing to the court, at the time of filing an originating process or defence all that a party requires in order to prove his claim or defence as the case may be.

Prior to the introduction of the front loading concept, all that a party who requires to commence an action will do, is to file an originating process; writ of summons, originating summons, originating motion or petition as the case may be.[2]

[1] Similar procedure under Order 25 of Anambra State High Court (Civil) Procedure Rules, 2006.
[2] As contained in Order 5 Rule 1 of the defunct High Court (Civil Procedure) Rules of Anambra State 1988.

What is Front Loading?

The meaning of the term Front Loading is not specifically provided for in the High Court rules. A definition of it would appear to be impossible. However despite the paucity of legal literature on the definition of Front Loading, which ironically, occurs constantly in almost every civil litigation, it is no justification for the view that the term front loading as a concept is impossible to define. It could therefore be defined as a requirement in civil litigation whereby both the plaintiff and defendant are compulsorily expected to reveal their entire case before trial.

The High Court (Civil procedure) Rules of Anambra State 2006 makes it mandatory for litigants (or through their counsel if they wish) to file along with the originating process, all documents and evidence that they intend to rely upon for the prosecution of their case or defence. Consequently, while filing his writ of summons, a plaintiff is required to also file his statement of claim, list of witnesses to be called at the trial, witnesses statements on oath and all documentary evidence or exhibits that will necessarily be needed to prove the case. A defendant in return is also required to file his statement of defence along with his list of witnesses to be called at the trial, witnesses statements on oath and all documentary evidence. This concept of front loading is no doubt a revolution in our civil litigation practice and procedure.

Order 3 Rule 2 of the High Court (Civil Procedure) Rules of Anambra State 2006 prescribes the mode of beginning civil proceedings. By that Rule, all the proceedings commenced by writ of summons must now be accompanied by:

a. Statement of claim

b. Written Statements on Oath of the witnesses

c. List of Witness

d. Copies of every document to be relied on at trial.[3]

Similar provision is contained in the Lagos and Abuja Rules of 2004. However, **Order 4 Rule 17 of the Abuja Rules** provide that a certificate of pre-action counseling signed by counsel and the litigant, shall be filed along with the writ, where proceedings are initiated by counsel showing that the parities have been appropriately advised as to the relative strength or weakness of their respective cases, and the counsel shall be personally liable to pay the cost of the proceedings where it turns out to be frivolous.

The essence of the concept of front loading is that in initiating and defending an action, the parties are obliged to place before the court all documentary and potential oral evidence that they intend to rely upon to prosecute and defend the action at the time of filing the originating process or lodging a defence to the action. This is aimed at ensuring that only actionable cases and defence are brought before the court and possibly avail parties with a view to enabling them to decide whether to compromise or otherwise resolve the matter out of court. Front loading is also relevant in preparation of parties and the court for the pre-trial conference.

The moral of the front loading concept is that counsel for both the claimant/ plaintiff and defendant must receive adequate briefing and must be given access to all witnesses and relevant documents at the time of instruction. It is pertinent to note that **Order 3 Rule 3 of Anambra**

[3] A Similar provision is contained in Order 3 Rule 2 of the Lagos Rules 2004. But in Abuja High Court (Civil Procedure) Rules 2004 there is a little difference between it and that of Lagos and Anambra Rules. In the Abuja Rules, Order 4 Rule 15 provides for the front loading requirement but did not include list of witnesses as contained in Anambra and Lagos Rules. However Or. 4 R.17 Abuja Rule provides for an additional document called pre-action counseling certificate which is meant to show that the lawyer has advised his client on the weakness or strength of his case before coming to court.

Rules empowered the Registry of the High Court to refuse any writ and statement of defence not accompanied with the aforementioned processes and documents.

Evolution and Origin of Front Loading.

The incorporation of front loading concept into the **High Court of Lagos State (Civil Procedure) Rules 2004** did not start on that date. The process leading to the enactment of the new Rules started in 1997, when the then Chief Judge of Lagos State, Hon. Justice S.O Ilori, in conjunction with the British Council Department for International Development, commissioned the Nigerian Court Procedure project. At that time, the civil court process in Nigeria and Lagos in particular had degenerated considerably, due to acute congestion and inadequacies in the procedural rules. It took an average of six years for a case to progress from initial filing to final judgment.

The process gained momentum in August 2000, when the Attorney General and Commissioner for Justice in Lagos State, Professor Yem Oshibajo, SAN convened the 1st summit of stakeholders in the Administration of Justice. The summit was attended by the then Chief Justice of the Federation, Honourable Justice M. L. Uwais (Rtd), the then Attorney General of the Federation and Minister of Justice, late Chief Bola Ige, SAN, and several State Attorneys-General and eminent legal practitioners from across the country. The gathering closely reviewed amendments to the civil procedure rules. Following this, Professor Oshibajo set up a Rules Preview Committee, which developed a communiqué for presentation to participants at the next summit of stakeholder. The second summit, which eventually held in February, 2002, concentrated solely on the review of the civil procedure rule.

In composing the new rules, the committee considered the contributions and memoranda submitted by various authors, jurists and legal practitioners as well as the final communiqué of the second summit. However, the old Lagos High Court Rules still formed the basic working document but the committee had, in addition, the two main models which were submitted for review at the second summit. Most importantly, it also had the Woolf's Report[4] on which the new High Court Rules was based. All these reports, communiqué and memoranda put together culminated in the 2004 Rules of Lagos which as earlier noted introduced the concept of front loading for the first time in Nigeria. Similarly, some States have since adopted this concept by making similar provisions in their High Court Rules.[5]

Objectives of Front Loading.

The overriding objectives of the Rules on the concept of front loading are clearly stated in **Order 1 Rule 1(4)**[6] which provides that the application of these Rules shall be directed towards the achievement of a just, efficient and speedy dispensation of Justice.

The English equivalent of the overriding objective of their Rules from where we borrowed[7] our Rules, is in **Order 1 Rule 1.1 (2) (d) of the English (Civil Procedure) Rules 1998** and it provides inter alia that the courts should ensure that cases are dealt with expeditiously and fairly.

The 1988 Anambra State High Court (Civil Procedure) Rules, which was the operative Rules prior to the coming into force of the 2006 Rules was a product of Military Administration and

[4] Lord Woolf MR, Access to Justice: Final Report, London HMSO,(1996) 286. Woolf's Report is the report of the committee set up to review the English Civil Procedure Rules. The current Civil Procedure Rules of England was based on the Woolf's Report. And it is this report that first introduced front loading concept. The Lagos Rules is far ahead of the English Rules because the latter do not require written depositions at the time of filing.
[5] It is contained in Order 4 R.15,17 of Abuja Rules 2004,Or.3 .R.2 of Anambra State Rules.
[6] Anambra State High Court (Civil) Procedure Rules, Order 1 Rule 1 (2) of 2004 Lagos State High Court (Civil) Procedure Rules.
[7] Op. Cit.

without doubt, it lacks the modern case management techniques. Consequently, the procedures under the old Rules have become too slow and inadequate to meet the needs of commercial interests in a predominantly commercial State like Anambra, resulting in the apparent failure of the civil justice system.

The emergence of the 2006 Rules in Anambra State thus ushered in fundamental change to the manner in which civil litigation would henceforth be conducted in Anambra State High Courts. The essence of these changes is underscored by **Or. 1 Rule 1 (4)** of the said Rule which states that "Application of these Rules shall be directed towards the achievement of a just efficient and speedy dispensation of justice". The provision is appreciative of the fact that Justice is not simply a matter of achieving the right result but also about expeditious way of achieving the result in that justice delayed is justice denied[8]. It is expected that in applying the Rules, the courts will ensure that the interpretation and application of the Rules are in consonance with this objective.

In the context of similar reform in England, it was held in **Hannigan v Hannigan**[9] that the civil procedure law is entitled (referring to the Civil Procedure Rules of England 1998) to end "the old truth war between Solicitors over technicalities" and create "a new climate in which the emphasis is upon the achievement of Justice."

The reason *d'etre* of **Order 1 Rule 1(4) of the Rules** is therefore to ensure that the typical game of hide and seek between counsel of the opposing sides are not allowed to defeat the end of expeditious determination of cases. The objectives of front loading could be itemized as the following:

i. To discourage the filing of weak or frivolous cases.

[8] Stuart Sime, A Practical Approach to Civil Procedure, 7th Edition (Oxford University Press, 2004)p.1
[9] 2002 2FCL 650 Court of Appeal at 659.

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 issue from the onset and thus avoid the tendency to dissipate energy on irrelevances.

iv. To minimize the incidence of amendment of pleadings

There are however possible perversions of the front loading concept. According to Oba Nsugbe [10]QC one of the downsides of front loading may be that in response to the full disclosure requirements at case commencement and the tight deadliness which accompany them, the parties may "overload" their cases, throwing the issues and documents that are irrelevant to the issues in hand on the basis that they can always be pruned down later on. He continued that while this may impress the client, it is bound to complicate the process of litigation by increasing the work load of judges and counsel.

Nevertheless, the disadvantages or otherwise that may arise as a result of front loading cannot be compared to the positive improvement, which it has introduced into our civil litigation by process.

Front Loading and Civil Litigation.

The concept of front loading has radically changed the style of civil litigation practice in our courts. Having a look at the relevant provision of the rules that embodied the front loading

[10] Oba Nsugbe QC,*High Court of Lagos (Civil Procedure) Rules 2003 culture change or culture shock*, being a paper delivered at the special Training for judges of the High Court of Lagos State, November 2003.

concept, by **Order 3 Rule 2 of the Anambra Rules**, all civil proceedings commenced by writ of summons must be accompanied by the aforesaid documents.

Thus all processes, testimonies and documentary evidence to be relied upon are front loaded into the court before the commencement of proceedings.

In the same vein **Order 3 Rule 8 (2) Anambra Rule** requires that an originating summons must be accompanied by a whole load of documents. They are:

a. an affidavit setting out the facts relied upon;

b. all the exhibits to be relied upon and

c. a written address in support of the application.

In the same spirit, the defendant who is served with an originating process is expected to file a statement of defence accompanied by:

a. copies of documentary evidence;

b. list of witnesses and

c. witnesses written statement on oath.[11]

This the defendant must do within 42days of service on him of the originating process and accompanying documents.[12] The pattern thus becomes clear. Counsel must be fully briefed

before approaching the courts and it does not really matter whether or not the action is instituted by writ of summons. In cases commenced by originating summons, the defendant is obliged to

[11] Order 17 Rule 1 Lagos and Anambra Rules
[12] Order 15 Rule 2 of Lagos and Anambra Rules

file a counter affidavit together with all the exhibits he intends to rely upon and a written address within 21days after service of the originating summons.[13]

Similar preconditions apply in summary judgment proceedings, where the defendant intends to defend. While the applicant for summary judgment accompanies his application with a written brief in accordance with **Order 11 Rule 1** the defendant who intends to defend the action is also required to file a written brief in reply to the application for summary judgment in accordance with **Order 11 Rule 4**. Like any other defendant, he also files the deposition of his witnesses and exhibits to be used in his defense. The front loading philosophy pervades the 2006 Rules with the effect that the particulars in support of every application must be made clear to the court and to the other parties.

Aside from the instances discussed earlier, front loading applies to the following processes:

1. Application for summary judgment, (**Order 11 Rule 1**).

2. Application to add a plaintiff or defendant, (**Order 13 Rule 17**).

3. Application to call additional witnesses, (**Order 30 Rule 10**).

4. Application to amend pleadings, (**Order 24 Rule 3**).

5. Application for Judicial Review, (**Order 40 Rule 3 (2)).**

6. Interlocutory applications, (**Order 39 Rule 1**).

Therefore, with front loading, a lot of known practice have to give way. Counsel for the plaintiff must now be fully briefed before going to court and counsel to the defendant must be fully

[13] Order 17 Rule 6 of Lagos and Anambra Rules

briefed before entering a defense. This practice alone is enough to force parties to reflect on the strength and weakness of their respective cases and to focus on the real areas of dispute.

By the provision of **Order 25 of Anambra Rules**, argument as to the admissibility of documentary evidence, if any, now arise more at the per-trial conference. At the trial, witnesses will not be asked elaborate questions during examination-in-chief. They only need to get in the witness box, identify and adopt it as their written deposition (which is already served on the other party and the court) and be turned over for cross-examination. With this, cross-examination can now be planned at the leisure of the other counsel, since he had advance notice of the witness testimony.

The essence of adoption of witness statement that is already on oath by the witness is to bring the document properly before the Court. In as much as the document is in the Court's file, it does not form part of the record of the proceeding in respect of the case in question. Secondly the witness needs to confirm the document as the deposition he made in respect of the case. Furthermore**,** **Order 32 R1(3) of Anambra Rules,** provides that "oral examination of a witness during his evidence-in-chief shall be limited to confirming his written deposition and tendering in evidence all disputed documents or other exhibits referred to in the deposition".

Having seen the impact of the front loading concept on the civil litigation process, let us consider the consequence of failure to comply with the front loading requirements by the parties.

Consequencies of Failure to Front Load.

Failure by a party to comply with the Rules as it relates to front loading will have a far devastating effect. In the case of a plaintiff who fails to comply with the front loading requirements, the case cannot even begin as **Order 3 Rule 2 (2)** states that his process will not

be accepted for filing by the Registry. However, where the incomplete documents inadvertently slips through the Court Registry, **Order 5 Rule 1** lays an ambush. It provides that where in beginning or purporting to begin any proceeding there has, by reason of anything done or left undone been a failure to comply with the requirements of these Rules, the failure shall nullify the proceedings. This is of course, a radical rule as a nullity cannot be remedied.

Failure to front load must therefore be distinguished from failure to comply with requirement as to time, place, manner, or form of proceedings, all of which may be treated as a mere irregularity[14]. In the case of a defendant, failure to accompany his statement of defence with all the necessary documents would necessary mean that he has not filed a valid defense. Besides, such failure would often be an indication that the defendant is substantially unprepared to participate in pre-trial conference, which might justify final judgment being entered against him[15].

In discussing the consequences of failure to front load, we must pay particular attention to **Order 32 Rule 4** which provides that:

> Unless, at or before trial, a judge for special reasons otherwise orders or directs, no document, plan, photograph or model shall be receivable in evidence at the trial of an action unless it has been filed along with the pleadings of the parties under these rules.

[14] Order 5 Rule 2 Anambra and Lagos Rules

[15] Or. 26 R.6(b) says that at the pre-trial conference, a judge can enter final judgment against a defendant who fails to attend the pre-trial conference or one who has not appeared in good faith.

Under this rule, it is possible for a court to reject evidence which was not properly front loaded at the right time. When such document is admitted upon application of the applicant, the court will most probably award costs to compensate the other party.

From the foregoing we have seen that failure to comply with the rules as regards front loading is an irregularity that cannot be remedied, as such failure shall be treated as a nullity.[16] Such non-compliance renders the suit incompetent. In **Emmanuel Osita Okeke v Alhaji Umaru Yar-Adua & 34 Ors**[17] a case on election petition, the petitioner did not file the list of his witnesses, no written statement on oath and no copies or list of documents to be relied on for the hearing of the petition in accordance with the front loading requirements as contained in **Electoral Tribunal and Court Practice Directions, 2007**[18] the Court of Appeal, per Abba Aji JCA held thus:

"-----the list of witnesses the petitioner intended to call in proof of his petition, the written statement of witnesses on oath, and the documents the petitioner intended to rely on, were not attached to the petition. In the circumstances------ the petition was incurably defective and should be struck out.[19]

The Court continued that although the petitioner has the locus standi to present the petition by virtue of **Section 144(1) (a) of the Electoral Act, 2006**, nonetheless, the petition as presently constituted is not only defective but incurably defective and ought to be struck out[20]. The petition was struck out for being incompetent.

[16] Order 5 Rule 2 Anambra and Lagos Rules
[17] 2008 6 NWLR (Pt 1082) 37
[18] Paragraph 1 (1) (a),(b),(c) and (2) supra
[19] Ibid p 64 para D-E
[20] Ibid, p.64 para E-F

Case Management Concept

This is the concept of transferring the control and management of a case from the legal practitioner to the Judge. Before the advent of the new Rules, the style is that legal practitioner handling a case has a field day determining how a case should progress. The judge is expected to be a dumb umpire who should not descend into the arena. This gives the counsel virtual freedom to dictate not just the business for the court but also the pace at which such business is transacted. This is manifested in several ways;

1. Filing of interlocutory application which deal with peripheral issues rather than the core dispute before the court.

2. Padded pleadings with little relevance to the specific claims before the court.

3. Calling of several witnesses to testify to the same allegation of fact.

4. Several applications for adjournment in the middle of trial to amend pleadings or for one reason or another.

The writer is of the view that the new rules have radically shifted our civil procedure from adversarial to a "managerial system". A judge is now expected to actively manage the case towards the achievement of a just, efficient and speedy dispensation of justice. A judge is empowered to determine what amount of front-loaded material is necessary for the determination of the issues which arise in a case.

The major challenge before us is the acceptance of the revolutionary change from that of "party and counsel control" to that of "Judge-control" of cases directed at a just efficient and speedy dispensation of justice. A learned author had opined that….delay was a particular problem for

commonwealth courts precisely because of the British heritage which they share---- in fact what they share is not a heritage of British justice and a British colonial legal system but the heritage of British Colonial legal system. The learned author went on to observe that "the principle of party control of litigation seen by the English as the central characteristics of the (adversarial) common law procedures places the Bar in a position of strength and discourages reform initiative from the judiciary------"[21]

According to Professor Carl Barr, while the English closed out the twentieth century by abandoning the principle of party control in favour of the Lord Woolf's approach to civil procedure, the Bar in many Commonwealth Countries has reached levels of power unknown in the mother country, regarding appropriate and needed change[22]. The empowerment of a judge to take an active control of all proceedings and police the parties in a suit is further illustrated by the provisions of **Order 27 Rule 13 of the Anambra Rules 2006** which provides that:

> If it shall appear to a judge that there is any undue delay in the prosecution of any proceedings, the judge may require the party having the conduct of the proceeding or any other party, to explain the delay and may thereupon make such order with regard to expediting the proceedings or the cost of the proceedings as the circumstance of the case may require; and for the purpose aforesaid any party may be directed to summon the persons whose attendance is required, and to conduct any proceeding and carry out direction which may be given.

This gives the pre-trial conference judge the responsibility of ensuring that cases are disposed of within a reasonable time whether by settlement, trial or otherwise.

[21] Professor Carl Barr, *Delay in Administration of Justice*, being a paper delivered at the Commonwealth Magistrates and Judges Association Conference in Accra Ghana, 31-7-2005 to 4-8-2005.
[22] Professor Carl Barr. Ibid

It does away with the ancient practice in England of trial by ambush where parties take themselves by surprise at the trial, example by introducing documentary or other evidence, the identity and gravity of which are not reasonably foreseen from pleadings. This practice has the potential of giving rise to a high incidence of application for amendment by the victim parties of such surprise and invariably leads to avoidable delays. On the other hand, case management demands transparency which leads to the early identification of issues in a matter. This, thus facilitates an expeditious resolution of a case whether by settlement or trial. It has been observed that:-----by exercising its case management powers, the court is expected to curb the parties tendency to take appropriate steps or to prosecute the case in an oppressive, disproportionate, inefficient and unfair fashion.[23]

Pre-trial Conference and Scheduling

The introduction of pre-trial conferences and scheduling can perhaps be described as the most substantive reform, set up by the new Rules.[24] This provision replaces the summons for direction contained in the defunct **Anambra Rules of 1998**[25] which has become too weak and ineffective to serve intended purposes. With the pre-trial conferences, the Rules allow more thorough investigation to be conducted with resultant revelations which are in turn rationalized to assist better understanding and the expeditious determination of the disputed issues. Apart from offering the opportunity to hear and determine all interlocutory applications at once, the Rules also provide opportunity for early settlement of disputes between the parties particularly through a less formal Alternative Dispute Resolution (ABR) Forum.

[23] Neil Andrews, *English Civil procedure, Fundamentals of the New Civil Justice system,(*Oxford University Press 2001)p.308 para 13.13
[24] Order 25 of the Rules of Anambra and Lagos State.
[25] Similar provision is contained in Order 27 of the 1994 Rules of Lagos (now defunct).

Having regard to the provisions of **Order 25 Rule 1 (2)** and other related provisions, the pre-trial conference and scheduling is enacted to facilitate:

a. disposal of non-contentious matters which can be dealt with during the conference.

b. giving directions as to the future course of the action in a manner to secure its just, expeditious and economical disposal.

c. promoting amicable settlement of the cases through alternative dispute resolution.

At the pre-trial conference, the judge is under obligation to consider and take appropriate action with respect to such of the following as may be necessary or desirable;

i. formulation and settlement of issues,

ii. amendment and further and better particulars

iii. the admission of facts, and other evidence by consent of the parties.

iv. control and scheduling of discovery, inspection and production of documents.

v. narrowing the field of dispute between expert witness by their participation at pre-trial conference or in any other manner,

vi. giving orders or directions for separate trial of a claim, counter claim, set off, cross- claim or third party claim or of any particular issue in the case.

vii. settlement of issues, inquiries and account under **Order 27**

viii determining the form and substance of the pre-trial order,

ix. such other matters as may facilitate the just and speedy disposal of the action[26].

Pursuant to this pre-trial conference, by **Order 27 Rule 1 of the Anambra Rules**, within 7days after the close of pleading, issues of fact in dispute must be defined and filed by each party and if the parties cannot agree, the pre-trial judge may settle the issues. Then within 14days of the close of pleading, the plaintiff is required to apply for pre-trial conference notice as in Form 17.

By **Order 27 R. 1 (1)**, Hearing Notice (Form 17) is issued and the notice informs the parties of date of the pre-trial conference hearing and its purpose. Issued along with the pre-trial conference Hearing Notice is a pretrial information sheet (Form 18) which must be completed and returned to the Court 7days before the first conference. The pre-trial information sheet features a series of questions designed to elicit such facts as will enable the court and the parties to concentrate on the case and plan before hand what needs to be done at the conference.

Effect Of The Rule Of Frontloading

The objective of achieving a just, efficient and speedy dispensation of justice and resolving preliminary issues and narrowing down contentious or disputed issues for trial which front loading was set out to achieve has been considerably blocked by the rule that objection to documents should be taken in *limine* . This is a cardinal rule of evidence and of practice, which we inherited from England as part of the received English Common Law [27] that in civil as well as

[26] Order 25 Rule 3 (a) –(k) Anambra Rules

[27] By received English law we mean those aspects of English law that forms part of our corpus juris through the instrumentality of our local enactments as opposed to the English laws that applied to Nigeria with their own force and vigour (Osita Nnamani Ogbu) Modern Nigeria legal system (1st Ed.)CIDJAP Press Enugu (2002) p.44

in criminal cases, that an objection to the admissibility of evidence (document) sought by a party to be put in evidence is taken when the document is offered in evidence.

When written depositions and documentary evidence are filed along with the writ of summons, the new Rules expect that when hearing commences, it should be disposed of as quickly as practicable. The evidence –in-chief of the plaintiff witnesses which usually take a lot of time to conclude, sometimes years have been reduced to a written form and the witnesses adopting same in court as his statement, the aim was to conclude trials speedily and expeditiously . With all this innovations, most if not all factors that causes delay in trial process has drastically been removed.

The writer is of the opinion that this objectives of front loading will not be realized unless objections to the admissibility of documentary evidence which is taken in *limine* is seriously reviewed. The rule as it stands today places a very serious barricade to expeditious disposal of cases. It is itself another agent of delay which unless something is done, will continue to block the objectives of front loading. These objections to admissibility of documents sometimes take days, weeks and even months for counsel to finish their argument and for the judge to prepare his ruling. While this argument rages on, the substantive suit is delayed until after the objection is disposed off.

Even after the court's ruling on the objections raised, which can either be to uphold the objection or refuse it, that may not be the end of the matter as the aggrieved party can decide to go on appeal. While the interlocutory ruling is on appeal, the substantive suit suffers. Most times the aggrieved party will apply for stay of proceedings at the trial court pending the determination of his appeal against the interlocutory ruling. If the stay is granted, the appeal may travel up to the

Supreme Court, as this goes on, years fly by. At the end the Supreme Court will either dismiss the appeal and affirm the ruling of the trial court or it will allow the appeal and set aside the trial court's ruling. Either way, the parties will return to the High court and continue from where they stopped. Sometimes, the trial court may have retired, transferred or even died and the matter will start de novo, and there is no guarantee that another objections to admissibility of document will not arise.

A counsel who wishes to frustrate the proceedings of the court will always hide under this practice and he will be legally protected. The introduction of the case management concept notwithstanding, such a mischievous legal practitioner would still have his way as the judge cannot validly stop him from appealing against an interlocutory ruling because appeal is a constitutional right.[28]

Conclusion

The writer, in the course of this work, discussed the vital the provisions of the new High Court Rules, with a view of bringing forthwith to the forelight those provisions that aim to expeditiously advance the trial process in our courts. It is this expeditious dispensation and determination of matters that forms the main objective towards the introduction of the front loading concept and other similar provisions of the new Rules.

The writer observed that notwithstanding these innovative provisions in the new Rules aimed at speedy and expeditious determination of cases, there are still delays in the trial process.

[28] Section 241 (1) (a) of the 1999 constitution of Nigeria.

Recommendation:

The writer therefore recommend the following measure as a panacea towards reducing these delays in the judicial process:

1. **Effective use of per-trial conference and scheduling**.

Under the old Civil Procedure Rules, there was nothing to compel parties in court to present their cases at the earliest opportunity. Consequently, there was little or no chance for the judge to zero in on the areas of real dispute before trial or to discourage frivolous and time wasting contests. Front loading concept was introduced to solve this problem and this is complemented by the adoption of pre-trial conferencing, an occasion for the parties and the lawyers to sit with the judge for the purpose of reviewing the case and determining its future conduct. This gives the pre-trial judge the responsibility of ensuring that cases are disposed of within a reasonable time whether by settlement, trial or otherwise.

Regrettably, there is an under utilization of these provisions by the legal practitioners and the court. The provisions of the pre-trial conference are seldom used. At best, what happens is that after the close of pleadings the plaintiff files Form 17 and Form 18 pursuant to **Order 25 R 1(2)** of the new Rules and the matter will be set down for hearing. The filing of Forms 17 and 18 is just seen as a customary process to be observed in accordance with the Rules not that any purpose is meant to be achieved.

With this type of non-chalant attitude being exhibited both by the bench and bar towards effective utilization of the pre-trial conference provisions, the litigation process is robbed

of the laudable innovations introduced by the new Rules to hasten the disposition of matters.

The writer recommends that those who apply the Rules should adhere to its provisions and respect same as the success or attainment of the objectives of the new Rules can only be realized if properly applied. It is one thing to have the Rules but another thing to utilize them. It is only their proper utilization by judges and lawyers that can derive maximum benefit from them in advancing the cause of justice.

2. **Co-operation between the bench and bar.**

The measure of the success of the Rules in achieving their overriding objectives will be a feature of a co-operative and competent Bar working with a diligent and reform minded Bench.

3. **Provisional Admission of Documents.**

The writer boldly recommend this reform initiative despite the envisaged opposition to it and the already existing judicial precedent on the rules of admissibility. In addition to full utilization of the pre-trial conference provisions, there should be provisional admission of documents. By so admitting these documents provisionally either by consent of parties or by the court's directive and or even by a legislative intervention, parties will not loose the right to object where necessary. Such objections, if any, should be taken at the time of final address after which the judge will then give his ruling (s) and judgment at the same time. An aggrieved party can then appeal either against the ruling on admissibility or the substantive judgment itself. This procedure will considerably reduce the time wasted during trial especially on documentary evidence.

The writer's view interestingly has the support of the Court of Appeal per Ekpe JCA in **Ita & Anor v Ekpenyong & Anor**.[29] where the court stated:

…….. I will say straight away that even though such a procedure (provisional admission) is not highly commendable in all cases, it should not be condemned outright. It can be used depending on the circumstances of each particular case especially where there is need for urgency and expeditious hearing and determination of a case. The important thing is that the trial court (as in the instant case) should eventually take argument from counsel for the parties on the admissibility of the document provisionally admitted in evidence and decide on it one way or the other before writing his judgment and making use of it in the judgment, if he decides that it is admissible……[30]

[29] 2001 1 NWLR (PT.695)587
[30] Ibid, at p.613