AN OVERVIEW OF THE 2004 ABUJA AND LAGOS CIVIL PROCEDURE RULES.[*]

Why New Rules?

It is generally accepted that justice delayed is justice denied. However, for a long time, excessive delay remained an embarrassing feature of the administration justice in Nigeria.

In a survey conducted by Lagos State in 2001, it was reported that the average life span of a case at the High Court of the State was six years[1]. This was just the average! There were cases spanning far more years. Ariori v Elemo[2] was commenced at the High Court in 1960. When judgement was given by the Supreme Court in the case in 1983, a retrial by the High Court was ordered.

Inadequacies in the civil procedure rules and abuse of those rules have been identified as part of the major causes of delay.[3] According to Professor Osinbajo:[4]

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[*] L.O. Alimi, LL.M., Lecturer, Nigerian Law School, Victoria Island, Lagos, being the text of a paper presented at the academic meeting, Lagos Campus, Nigerian Law School, 12th October, 2005.

[1] See Prof. Yemi Osinbajo, in the foreword to Proposal for the Reform of the High Court of Lagos State (Civil Procedure) Rules p.V.

[2] (1983) 1 SCNLR 1; See also Atlas v First Bank Plc (unreported) Suit No LD/25 84 with judgement delivered by the High Court of Lagos State in February 2005.

[3] Ibid

[4] See Prof. Yemi Osinbajo, in the foreword to Proposal for the Reform of the High Court of Lagos State (Civil Procedure) Rules p.V.

"Another policy defect in the application of existing procedural rules is the excessive adherence of judges to the tenets of adversarial litigation. In a bid to hear both sides at every stage and to refrain from descending into the arena, judges routinely indulge counsel, many of whom exploit the system to delay or frustrate proceedings"

After series of stakeholders workshops aimed at addressing the problems, the Lagos State Government came up with the 2004 Civil Procedure Rules. A similar step has been taken with respect to the Federal Capital Territory's High Court Civil Procedure Rules with the introduction of the 2004 Rules.[5] The spirit behind the new rules has been graphically stated by Or.1 r.1(2) of the 2004 Lagos Rules which provide that the rules shall be directed towards the achievement of a just, efficient and speedy dispensation of justice. Towards these ends, certain radical changes have been introduced into the Rules. The overall policy thrust of the 2004 Rules is to provide for "rules which curtail the excesses of counsel and give judges a firmer control of proceedings in their courts".[6] This follows the approach of the

[5] Kwara State Government has also enacted new set of Civil Procedure Rules for the High Court of that State.

[6] See Prof. Yemi Osinbajo op.cit.

English Civil Procedure Rules 1998 which served as a major working tool for the Architects of the 2004 Lagos Rules.[7]

It is proposed in this paper to examine some of the highlights of these rules, the challeges that may be involved in their implementation and how they are likely to impact on the administration of justice in the jurisdictions to which they apply.

Commencement of proceedings and the concept of frontloading.

The concept of frontloading requires that parties must put the totality of their respective cases forward from the beginning. They must put all their cards on the table. Under Or.3 r.2 of the Lagos Rules, "all proceedings commenced by a writ of summons shall be accompanied by (a) statement of claim; (b) list of witnesses to be called at the trial; (c) written statement on oath of the witnesses and (d) copies of every documents to be relied on at the trial." If the claimant fails to comply, the originating process shall not be accepted for filing by the Registry.[8] On the other hand, the defendant is required to file his statement of defence within 42 day of service of the originating process and the statement of defence must be supported by (a) copies of documentary evidence, (b) list of witnesses to be called and (c) their written statement on oath.[9]

Also under Or.4 r.15 of the 2004 Abuja Rules, the writ of summons must be accompanied by (a) statement of claim; (b) copies of documents mentioned in the statement of claim to be used in evidence; (c) witness statement on oath; and (d) a

[7] Order 1 r.1 of the 1998 English Rules (which is impari materia with order 1 r.1(2) of the Lagos 2004 Rules) and the comment of Sir Richard Scott V- C (one of its drafters) in the KPMG Lectures, May 15th 2000. (Quoted in Bullen and Leak and Jacob, Precedent of Pleadings, 15th Edition: London, Sweet and Maxwell, 2004. p. 1

[8] See Or.3r.4, 2004 Lagos Rules.

[9] See Or.17r.1, 2004 Lagos Rules.

certificate of pre-action counselling. The defendant must, within 14 days of service of the writ serve his own statement of defence which must be accompanied by (a) copies of documents mentioned in the statement of defence to be used as evidence; (b) witness statements on oath; and (c) a certificate of pr-action counselling.[10]

Under the Lagos Rules, where a party intends to call a witness whose statement on oath has not been filed with his pleading, he must obtain leave of court. The application for leave must be accompanied by the statement on oath of such witness.[11] Also, where there is an application to join additional claimant or defendant, the application must be accompanied by the statement of claim or defence as the case may be (reflecting the joinder), all exhibits intended to be used and the depositions on oath of all the witnesses.[12] The Abuja Rules are conspicuously silent on these issues.[13]

In Lagos State, where an action is to be commenced by originating summons, the summons must be accompanied at the time of filing by an affidavit, all the exhibits to be relied upon and a written address in support of the application.[14] There is no provision in the Abuja Rules for written address in support of originating summons.[15]

The concept of front loading equally applies to interlocutory applications in Lagos State as all applications must not only be supported by affidavit and exhibits, but

[10] See Or.23 r.2, 2004 Abuja Rules
[11] Or. 30 r.10
[12] Or. 13 r. 17, 2004 Lagos Rules.
[13] SeeOr.10 rr.16&17; Or.35&36, 2004 Abuja Rules.
[14] See Or.3 r. 8, 2004 Lagos Rules
[15] See Or.7, 36 &37, 2004 Abuja Rules.

must also be accompanied by a written address.[16] The respondent must equally file along with his counter affidavit his written address in answer to the application.[17] A claimant who intends to file any application may do so simultaneously with the filing of his originating process.[18] It is no longer necessary to apply for leave to file and serve an application with an originating process as was the position under the old Rules. Under the Abuja Rules, interlocutory applications can also be filed at any stage of an action.[19] This may be at the commencement of the action. However, there is no provision for filing of written address in support of motions under the Abuja Rules.[20]

Service of originating process.

Under the old Rules, service of originating process could be effected only by the Sheriff, Deputy Sheriff, Bailiff, or any other officer of the court. However, by Order 7 Rule 1 of the 2004 Lagos Rules, in addition to the officers of the court, any Law Chambers, Courier Company or any other person may be appointed by the Chief Judge can now serve originating process. These are called process servers. Similar provisions are contained in Order 11 Rule 1 of the 2004 Abuja Rules.

Renewal of Writ of Summons.

Under the old Lagos Rules, the life span of a writ of summons was 12 months. Where a party could not serve within that period he could apply for renewal of the

[16] Or.39 r.1, 2004 Lagos Rules.
[17] Ibid.
[18] Or. 39.r.8, 2004 Lagos Rules.
[19] Or.7, 2004 Abuja Rules
[20] Ibid.

writ for subsequent periods of 6 months either before or after the expiration of the original period of 12 months.[21]

By virtue of Order 6 of the 2004 Rules, the life span of a writ is now 6 months. If a party is unable to serve within that period, he may apply for a renewal. However, the application must be made before the expiration of the writ or renewal thereof. A renewal can only be for 3 months at a time and can only be granted twice. In all, a writ can no longer subsist for more than 12 months in Lagos State.

On the other hand, Order 4 Rule 16 of the 2004 Abuja Rules provide that a writ shall be valid for 12 months in the first instance, but may be renewed for further periods of 12 months upon application made for that purpose either before or after the expiration of the writ. Thus, under the Abuja Rules, renewal of writ is open ended as there is no limit to the number of times a writ may be renewed.

Filing of motions

The Lagos Rules now require that all motion on notice must be served within 5 days of filing and must be accompanied by a written address. A respondent who intends to defend the application must file his counter affidavit and written address within 7 days of service of the motion. The Abuja Rules only provide for the traditional 2 clear days between service and hearing of motion on notice.[22]

[21] See Kolawole v Alberto (1989) 2 SCNJ 1
[22] Or. 39 r.1, 2004 Lagos Rules; Or. 7, 2004 Abuja Rules.

Life span of ex-parte orders

Under the 2004 Lagos Rules, an order of injunction made upon an application ex-parte shall abate after 7 days. However, under the Abuja Rules, the period is 14 days and only applies where there is application to vary or discharge the order which application must be made within 7 days of service of the order unless extended by the court.[23]

Summary judgement procedure

According to Order 11 Rule 1 of the 2004 Lagos Rules:

> **"where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the deposition of his witnesses and an application for summary judgement which application shall be supported by an affidavit stating the grounds for his belief and a written brief in respect thereof"**

Summary judgement procedure under Order 11 of the 2004 Rules applies to any claim "where a claimant believes that there is no defence to his claim."[24] Under the old Rules, certain claims were specifically excluded from the ambit of the procedure. Summary judgement procedure did not apply to cases of libel, slander,

[23] Or. 39, 2004 Lagos Rules; Or.7, 2004 Abuja Rules.
[24] See Or.11 r.1, 2004 Lagos Rules

malicious prosecution, false imprisonment, seduction, breach of promise of marriage or a claim based on allegation of fraud.[25]

The rational for excluding such claims from the purview of the summary judgement procedure under Order 14 of the English Rules (from which Order 11 was copied) has always been that such claims entitle a party to trial by jury.[26] To apply summary judgement procedure to any of such claims would amount to denying a party his right to jury trial.[27] However, since we do not have trial by jury in Nigeria, the exclusion of these claims from the scope of Order 11 can hardly be justified.[28]

Furthermore, there is no basis for insisting that some claims must go to trial even where it is obvious that the defendant has no defence to the claim. In any event, such an insistence would have been antithetical to the philosophy behind the 2004 Rules which is that all cases must be speedily, effectively and justly determined.

A claimant who believes that the defendant does not have a defence to his claim and intends to apply for summary judgement must file the following documents –

(1) Writ of summons
(2) Statement of claim
(3) Depositions of his witnesses
(4) Exhibits referred to in the depositions

[25] See Or.11 r.1 and Or. 4 r. 4, 1994 Lagos Rules.

[26] See The English Administration of Justice (Miscellaneous Provisions) Act, 1933.

[27] See Fidelis Nwadialo, Civil Procedure in Nigeria. p.527

[28] Ibid.

(5) Motion on notice for summary judgement supported by an affidavit

(6) A written brief containing argument in support of the application

It is interesting to note that the old controversy whether to use ordinary writ (Form 1) or specially endorsed writ (Form 2) no longer arises.[29] Under the 2004 Rules, there is only one general form of writ of summons.[30] The only other form of writ is one for service outside jurisdiction.[31]

Again, Or.11 r.1 talks of "an application for summary judgement" without specifying whether the application shall be by way of summons or by way of motion. This is a clear departure from the old Rules which expressly provided that "application for summary judgement shall be by way of summons returnable in chambers not less than four clear days after service".[32]

It is our humble submission that under the 2004 Rules, application for summary judgement shall be by way of motion on notice. This is in view of Order 39 of the same Rules which provides that where any application is authorised by the rules to be made to a judge, such application shall be made by motion and except where an application ex-parte is required or permitted under any law or rules, every motion shall be on notice.[33]

[29] See Ajalyn Shoes v. Akinwande [1991] 2 NWLR (pt.174) 432; Texaco Plc. V. Lukoko [1997] 6 NWLR (pt.510) 651.
[30] See Or.3 r.3, and form 1 in the 2004 Lagos Rules.
[31] See Or.3 r.4 and form 2 in the 2004 Rules.
[32] See Or.11 r.2, 1994 Lagos Rules.

[33] See Or.39 rr.1&3, 2004 Lagos Rules.

It must be remembered that under the old rules, a plaintiff cannot apply for summary judgement unless and until the defendant has entered appearance. Where a defendant failed to appear, all a plaintiff could apply for was judgement in default of appearance under Order 10 of the Rules. This is clearly no longer the position. Under the 2004 Rules, the application for summary judgement must accompany the writ of summons. The claimant cannot wait for the appearance of the defendant. Summary judgement can now be obtained whether or not the defendant appears.

A defendant who intends to resist summary judgement under the 2004 Lagos Rules must comply with Order 11 r.4 which provides that:

> **"Where a party served with the processes and documents referred to in Rule 1 of this order intends to defend the suit he shall, not later than the time prescribed for defence file:**
>
> **(a) his statement of defence,**
>
> **(b) depositions of his witnesses,**
>
> **(c) exhibits to be used in his defence; and**
>
> **(d) a written brief in reply to the application for summary judgement."**

The above documents must be filed by the defendant within forty two (42) days after service on him of the claimant's originating processes and the application for summary judgement, being the time limited by the rules for filling of defence.[34]

[34] See Or.15 r.1(2), 2004 Lagos Rules.

It is interesting to note that the rules conspicuously omit to mention counter affidavit as one of the documents to be filed by the defendant. Under the old rules, a defendant who intends to resist an application for summary judgement was required to file a counter affidavit, though, if he filed a statement of defence instead, the court was obliged to examine the statement of defence in deciding whether or not to allow him to defend.[35]

It is submitted that the omission of counter affidavit under the 2004 Rules is deliberate. A counter affidavit is unnecessary. The rules have already provided that the defendant must file not only a statement of defence but the depositions of his witnesses and exhibits. These are enough materials from which the court can determine whether or not to allow him to defend.

The first step to be taken by the court is to fix a return date for the application for summary judgement. The 2004 Rules is silent on this issue. This is unlike the old rules which specifically provided that the summons for judgement shall be returnable not less than four clear days after service.[36]

It is our humble submission that upon the claimant's filing of the originating processes together with an application for summary judgement, the application must be given a return date by the Registry of the court. The return date must be long enough to accommodate the 42 days after service to which the defendant is entitled to file his defence and other necessary documents.

[35] See Nishishawa Ltd. v. Jethwani (1984) 12 S.C. 234; Macaulay v. Nal Merchant Bank [1990] 4 NWLR (pt.144) 283

[36] See Or. 11 r.2, 1994 Lagos Rules.

Upon the return date, if the defendant has not filed the necessary documents and there is proof of service on him of all the necessary documents in respect of summary judgement procedure, the applicant must be allowed to move his application for judgement. The Court must proceed to enter summary judgement against the defendant unless the interest of justice demands otherwise. Even if the defendant is in court, he should not be allowed to take part in the proceedings unless, again, the interest of justice demands otherwise. In short, such a defendant should be treated like a defendant who has failed to file a notice of intention to defend under the undefended list procedure.[37]

On the other hand, if by the return date, the defendant has filed the necessary documents with a view to defend, and it appears to the judge that the defendant has a good defence and ought to be permitted to defend the claim, he will be granted leave to defend.[38] Where it appears to the judge that the defendant has no good defence, the judge may thereupon enter judgement for the claimant.[39] Where it appears to the judge that the defendant has a good defence to part of the claim but no defence to the other, the judge may thereupon enter judgement for that part of the claim to which there is no defence and grant leave to defend that part to which there is defence.[40]

It appears that under the 2004 Rules, the court is simply to decide whether to enter summary judgement or to grant unconditional leave to the defendant to defend.[41]

[37] 25. See U.A.C. (Technical) Ltd. v. Anglo-Canadian Cement Ltd (supra**);** U.T.C. (Nig.) Ltd. v Pamotei [1989] 2 NWLR (pt.103) 244.

[38] See Or.11 r.5(1), 2004 Lagos Rules.

[39] See Or.11 r.5 (2), 2004 Lagos Rules.

[40] See Or.11 r.5(3), 2004 Lagos Rules

[41] Ibid.

There is no provision in the rules for granting a conditional leave to defend. This is unlike the position under the old rules which allowed the court to grant a conditional or an unconditional leave to defend.[42]

Also, there is no provision in the 2004 rules for entering interlocutory summary judgment in respect of unliquidated damages subject to ascertaining the exact amount due. Again, this is unlike the old rules which allow such judgement under the summary judgement procedure.[38] It is our humble submission that such provision is unnecessary under the 2004 Rules. This is in view of the fact that the claimant must have filed together with his originating processes the deposition of his witnesses and exhibits from which the court can always ascertain any amount due either as liquidated or unliquidated claim. The court should be able to ascertain the amount due from the documents filed by the parties and should be able to give a final judgement as appropriate whether the claim is for a liquidated or unliquidated demand.

There had always been the controversy under the old rules as to whether a summary judgement under the rules was a judgment on the merit or a default judgement.[43] There is no room for such controversy under the 2004 Rules. This is because the distinction between judgements on the merit and default judgements is now of little practical consequence. All default judgements now are as good as judgements on the merit in the sense that they "shall be final and remain valid and may only be set aside upon application to the judge on grounds of fraud, non-service or lack of jurisdiction upon such terms as the court may deem fit"[44]

[42] See Or. 11 r. 6, 1994 Lagos Rules.

[43] See the various arguments in U T C v Pamotei (Supra)

[44] Or.20 r.12, 2004 Lagos Rules.

Undefended list procedure contained in Order 60 of the 1994 Lagos Rules has been omitted in the 2004 Rules. On the other hand, the undefended list procedure under the 2004 Abuja Rules remains substantially the same as the procedure under the old Rules.[45]

Amendment

Under the old Rules, originating processes and pleadings could be amended at any stage of the proceedings before judgement.[46] However, according to Order 24 Rule 1 of the 2004 Lagos Rules "a party may amend his originating process and pleadings at any time before the pre-trial conference and not more than twice during the trial but before close of his case." The application for amendment must be accompanied by a list of any additional witnesses to be called together with their written statement on oath and copies of any document to be relied upon consequent upon such amendment.[47] If a party who has obtained an order to amend does not amend within the time limited by the order or, if no time is limited by the court, within 7 days from the date of the order, such party shall pay an additional fee of N200.00 for each day of the default.[48] The 2004 Abuja Rules retain the position under the old rules. Here, amendment can be made at any stage before judgement and failure to amend within time renders the order for amendment void unless the time is extended by the court.[49]

[45] See Or.21, 2004 Abuja Rules.
[46] See Or.26 r. 12, 1994 Lagos Rules;
[47] Or.24 r.3, 2004 Lagos Rules.
[48] Or. 24 r. 4, 2004 Lagos Rules.
[49] Or. 24, 2004 Abuja Rules.

Pre- trial conference

Under the old Lagos Rules, at the close of pleadings, parties were required to take out summons for direction to enable the judge set the matter down for trial.[50] This procedure has now been replaced by pre- trial conference under Order 25 of the 2004 Rules. According to Order 25 Rule 1 of the 2004 Lagos Rules, the claimant is required to apply for the issuance of a pre-trial conference notice within 14 days of the close of pleadings. If he fails to do so, the defendant may make the application or apply to dismiss the action.

The purposes of the conference are set out in Order 25 Rule 1(2) as follows:
(a) dispose of matters which must or can be dealt with on interlocutory applications;
(b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal;
(c) promoting amicable settlement of the case or adoption of alternative dispute resolution.

The pre-trial conference must be concluded within 3 months of its commencement unless extended by the Chief Judge.[51] After the conference, the judge is to issue a report which will guide the subsequent course of the proceedings unless modified by the trial judge.[52] If the claimant or his legal practitioner fails to attend, participate effectively or obey a scheduling order, the judge shall dismiss his claim

[50] Or. 25 r.1, 1994 Lagos Rules.
[51] Or. 25 r.4, 2004 Lagos Rules
[52] Or 25 .r.5, 2004 Lagos Rules.

and in the case of the defendant, the judge shall enter final judgement against him. Any judgement so entered may be set aside on application within 7 days.[53]

The essence of the pre-trial conference is to reduce trial time as much as possible as only those issues that cannot be resolved at the pre-trial conference will go to trial. What we have under the 2004 Abuja rules is the certificate of pre-action counselling which seeks to achieve a similar objective.[54]

Depositions and affidavits made by illiterate persons

According to Order 1 r.2 (2) of the 2004 Lagos Rules:

> **"(2) where in these Rules depositions and affidavit are required to be made, if the deponent does not understand the English language such deposition or affidavit shall be made in a language he understands and shall be accompanied by interpretation thereof in English language."**

It seems to be settled that affidavits and depositions are matters of evidence and therefore come within the exclusive competence of the Federal Legislature. In line with this, the Evidence Act[55] has made ample provisions for the necessary jurat to be used regarding affidavits by illiterate deponents.

[53] Or.25 r. 6, 2004 Lagos Rules.
[54] See Or. 4 r. 17, 2004 Abuja Rules.
[55] Cap E14 Laws of the Federation of Nigeria, 2004.

It is apparent from section 90 of the Evidence Act that an affidavit deposed to by a person who does not understand English language must still be in English language. All that is required is that the jurat must show that the affidavit had been read and interpreted to the deponent who must have appeared to understand same before signing or marking the affidavit in the presence of the person before whom the affidavit is taken i.e. commissioner for oath or notary public. It must be remembered that the language of the court is English.[56]

Even, assuming that the rule in question has been made by the State as a matter of practice and procedure within the purview of S 274 of the 1999 Constitution (which makes it a concurrent matter), it is still null and void for being inconsistent with the express provision of the Evidence Act, which is a federal legislation validly made on the same subject.[57]

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[56] Ojengbede v Esan (2001) 12 S.C. (pt. II) 1 at 16; Akereja v Oloba [1986]2 NWLR (pt.22) 257.

[57] See footnote 12 above.

Assuming further that the rule is not inconsistent with the Evidence Act, it must still be caught by the doctrine of covering the field and must therefore remain inoperative and unenforceable in view of the provision of the Evidence Act on the same subject.[58] There is no provision similar to Order 1 Rule 1(2) of the 2004 Lagos Rules in the 2004 Abuja Rules.

Proceeding at trial and evidence

One of the most radical provisions made by the 2004 Rules for the purpose of reducing the time spent on trial of cases is contained in Order 32 r.1 (1) & (3) which provide as follows:

> **"(1) Subject to these rules and to any enactment relating to evidence any fact required to be proved at the trial of any action shall be proved by written deposition and oral examination of witnesses in open court …**
>
> **(3) The oral examination of a witness during his evidence in chief shall be limited to confirming his written deposition and tendering in evidence all disputed document or other exhibits referred to in the deposition."**

[58] See A-G Ogun State v A-G Federation (1982) 13 NSCC 1 at 35; A-G Abia State and Ors v. A-G Federation

Apparently, the purpose of this rule is to substantially replace examination in chief of a witness by his written deposition which must have been filed in court and served on the other party thereby reducing the time that would ordinarily have been spent on normal examination in chief.

Also Order 32 r. 1(1) provides that:

> **"(2) All agreed documents or other exhibits shall be tendered from the Bar or by the party where he is not represented by a legal practitioner"**

The purpose of this rule, apparently, is to avoid wasting of time in the process of tendering of documents that are already agreed by the parties by calling witnesses and leading them in evidence for the purpose of tendering the documents through them. Order 32 also empowers the court to limit evidence as may be necessary.

However, a note of caution must be sounded. The fact that a document is agreed by the parties does not make the document automatically admissible. The court must still determine the admissibility of all documentary

evidence.[59] This is important because there are certain documents which are absolutely not admissible and the fact that a party has not objected or has consented to their admissibility cannot render them admissible. Where such a documents is admitted for whatever reason and acted upon by the trial court, it will be expunged on appeal and if its admissibility has occasioned a miscarriage of justice the judgement of the trial court may be set aside.[60]

The whole purpose of speedy trial will be defeated where documents are hastily admitted simply because they are agreed only for such documents to be expunged on appeal and the judgement set aside. This is clearly possible where a party has not been represented by counsel at the trial or even, where he claims mistake of the counsel who appeared for him at the trial.

The 2004 Abuja Rules simply repeated the provisions under the old rules relating to trial proceedings without stating what is to be done with the witness's statements on oath that must be filed along with the originating processes.[61]

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[59] See Olukade v Alade (1976) 2 S.C. 183 at 187-188 per Idigbe J.S.C.; Umar v. Bayero University, Kano (1988) 7 S.C. (pt.II) 1

[60] For further details, see F. Nwadialo op.cit pp 543-562; Olukade v Alade (1976) 2SC 183; Alashe v Olori Ilu (1964) 1 All NLR 390; Minister of Lands W/N v Azikwe (1969) 1 All NLR 490.

[61] See Or.35 & 38, 2004 Abuja Rules.

Written addresses

Compulsory filing of written address has now been introduced under both Lagos and Abuja Rules. Under both Rules, the party beginning shall, within 21 days of the close of evidence, file a written address. Upon being served with the address, the other party shall file his own written address within 21 days. The party beginning has 7 days after being served with that address to file a reply on point of law only.[62] Under the Lagos Rules, each party has 20 minutes of oral argument in adopting his written address. Abuja Rules allow 30 minutes to each party for the same purpose.[63]

Compulsory filing of written address is limited to final addresses in Abuja but extends to interlocutory applications in Lagos.[64]

Costs

According to Order 49 Rule 1 of the 2004 Lagos Rules, the principle to be observed in fixing the amount of cost is that the party in the right is to be indemnified for the expenses to which he has been put in the proceedings, as well as compensated for his time and effort in coming to court. The judge may take into account all the circumstances of the case. When costs are

[62] Or. 30 rr. 13-16, 2004 Lagos Rules; Or 36 r.r. 1-4, 2004 Abuja Rules.
[63] Or. 31 r.4, 2004 Lagos Rules; Or. 36 r. 5, 2004 Abuja Rules.
[64] Or. 31 r. 1, 2004 Lagos Rules; Or. 36 rr.1-7, 2004 Abuja Rules.

ordered, they become payable forthwith and must be paid within 7 days otherwise, the defaulting party or his counsel may be denied further audience in the proceedings. Legal practitioners may now be personally liable to pay costs.[65] Abuja Rules are similar to the above except that there is no provision as to the time within which costs are to be paid and the penalty for failure to comply.[66]

Any party who default in performing an act within the stipulated time must now pay additional cost of N200.00 for each day of default at the time of compliance.[67] There is no similar provision under the Abuja Rules.

Effect of non- compliance

Order 5 Rule 1 of the 2004 Lagos Rules provides that where there is failure to comply with the Rules in beginning or purporting to begin any proceeding, the failure shall nullify the proceedings but non compliance with the requirement of Rules as to time, place, manner or form at any other stage of the proceeding is to be treated as mere irregularity and may not nullify the proceedings. Under the old Rules, non compliance was generally treated as mere irregularity which may be rectified on application and payment of cost.

[65] Or.49 rr. 9&13, 2004 Lagos Rules.
[66] Or. 52, 2004 Abuja Rules.
[67] Or. 44 r.4, 2004 Lagos Rules.

Abuja Rules treat non compliance generally as mere irregularity.[68] The 2004 Lagos Rules is unduly strict in this regard.[69]

Application of the new Rules

According to Order 1 Rule 1 of the 2004 Rules, the Rules shall apply to all proceedings including all part-heard causes and matters in respect of steps to be further taken in such cases. The Abuja Rules is Silent on this but we submit that the position may not be different from that of Lagos, subject to directions that may be given by the court.

Terminologies.

Under the 2004 Lagos Rules, plaintiffs are now known as claimants. Next friends and guardians ad litem suing or being sued on behalf of persons under disability are now replaced by guardians. Minors, lunatics etc. are now generally referred to as persons under disability. Also, courts and judges in chambers have now been replaced by judges.[70]

[68] Or. 2, 2004 Abuja Rules; See Or. 5, 1994 Lagos Rules.
[69] See the comment of Yinka Fashakin, The New High Court of Lagos State Civil Procedure Rules 2004 – An Appraisal., The Advocate, Vol.2, 2003/2004, p4.
[70] Or.1 r.2; Or. 13 rr.9&10; and Or. 50, 2004 Lagos Rules; See also Yinka Fashakin, op.cit.