CONSTITUTION AMENDMENT BILL NO. 19, 2022 AND SWIFT ADMINISTRATION OF JUSTICE IN NIGERIA: A COMMENTARY. [1]

The Constitution of the Federal Republic of Nigeria (Fifth Alteration) Bill No. 19, 2022 ("the Bill") sought to amend Chapter VII, Part IV of the Principal Act (the 1999 Constitution), by inserting after the existing section 287, a new section '287A', that will comprise 10 (ten) clauses.

Clause 2 of the Bill proposed to mandate every trial superior court of record to deliver judgment on a matter before it, within 270 days (about nine months) from the date of the filing. Electoral matters are however exempted by this clause since such matters are specially regulated by other constitutional provisions.[2] Clause 2 also proposed to mandate trial inferior courts of record[3] or tribunal to deliver judgment on any matter before it within 210 days (about seven months) from the date of the filing of the matter.

Clause 3 (a) however gives latitude to a trial superior court of record to deliver its judgment within 330 days (11 months) where the circumstances of a particular matter warrant. Such circumstances could be the complexity of the matter, number of parties and witnesses, number of documents, or other exceptional circumstances.

Clause 4 mandates all appellate courts to hear and determine appeals within 180 days (about six months) from the date of the filing of the appeal or such number of days not exceeding 270 days (about nine months) if the circumstance of the appeal so warrants.

None of the clauses in the Bill define what constitutes a complex matter nor does it stipulate the exact number of parties, witnesses, documents, or other exceptional circumstances that will constitute a mitigating factor. Indeed, this presents an example of a provision where the exceptions render the general rule useless or superfluous. The nebulous exceptions leave the entire provision at the discretion of the judge, which is largely subjective.[4] One can already glean plausible reasons why the Bill was rejected at the House of Assembly.

Existing Jurisprudence

For criminal proceedings in Nigeria, the Administration of Criminal Justice Act, 2015 (ACJA)

1 **The Bill may be cited as the Constitution of the Federal Republic of Nigeria (Fifth Alteration) Bill No. 19, 2022.**

2 **See Section 285 (5), (6), (10), (11) of the Constitution of the Federal Republic of Nigeria, 1999 as amended.**

3 **The Constitution does not list out the courts in this category. However, an application of the *expressio unius est exclusio alterius* rule of interpretation to the provisions of Section 6 (3) read together with Section 6(5) (a) - (i) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) would reveal that only the courts mentioned in Section 6(5) are to be considered superior courts of record. See the decision of the Supreme Court in *Erhunmwunse v. Ehanire* [2003] 13 NWLR [Part 837] SC page 377 paras C-G, where it was held that customary courts are not superior courts of record, and no pleadings are filed in them.**

4 **Regard may be had for the Latin maxim, *actus curiæ neminem gravabit*, meaning that the act of the Court shall prejudice no one. This maxim becomes applicable when a situation is protected because the Court is under an obligation to undo the wrong done to a party by the Court's own act. In the United States' Case of *Mitchell v. Overman*, 103 U.S. 62, 26 L.Ed. 369, 103 U.S. at pages 64, it was held that where the delay in rendering a judgment or a decree arises from the act of the court, that is, where the delay has been caused either for its convenience, or by the multiplicity or press of business, either the intricacy of the questions involved, or of any other cause not attributable to the laches of the parties, the judgment or the decree may be entered retrospectively, as of a time when it should or might have been entered up. In such cases, upon the maxim *actus curiae neminem gravabit*, which has been well said to be founded in right and good sense, and to afford a safe and certain guide for the administration of justice, it is the duty of the court to see that the parties shall not suffer by the delay.**

has provisions that encourage speedy trials.[5] However, some of those provisions are either impracticable or unconstitutional, the seemingly noble intentions notwithstanding.

For example, in a recent decision of the Supreme Court in *Ude Jones Udeogu v Federal Republic of Nigeria* [2022] 3 NWLR [Part 1816] SC 41, the provision of Section 396 (7) of ACJA, which provides that a dispensation may be given to a judge elevated from the High Court (or Federal High Court)[6] to the Court of Appeal, to conclude a part-heard criminal matter was held to be unconstitutional as it conflicted with the constitutional provisions of Section 253 and 290, that permit only the Judge of that High Court to exercise jurisdiction over a matter before it.[7] This excludes judges who have been elevated and who are no longer judges of the High Court, having subscribed to the judicial oath proper to their office as justices of the Court of Appeal.

Similarly, for civil proceedings, the AMCON Practice Directions 2013, by providing for updated terminology and special debt recovery procedures, ensures that court proceedings are concluded as speedily and efficiently as possible. Part V for example provides that all proceedings initiated by an AMCON claim should hold every working day of the week with the aim of concluding the trial and the hearing of final addresses within 3 months from the date the claim was started. The justification for such a speedy process is clear. AMCON, being a time-bound institution, cannot enjoy the luxury of overextended adjournments and hence, requires an urgent approach.

The Practice Directions also minimize the significance of technical irregularities, a core root of delayed litigation in Nigeria. Under the Practice Directions, formal defects that may ordinarily cause a suit to be thrown out, may, upon direction and at the discretion of the Judge, be amended and regularized.[8] In a similar manner, a claim filed in the wrong jurisdiction is not immediately invalidated and the presiding Judge may choose to proceed with the matter regardless.[9]

The court may also validate substituted service done without appropriate permission[10] and proof of service may also not be necessary. For example, where the party or counsel to be served admits to service or appears in court in response to the served document and is in possession of it, the requirement to file an affidavit, certificate, or statement as to service may be negated.[11] All these special procedures are set in place to ensure justice is attained speedily.

Further, in response to protracted election petitions that disrupted the political equilibrium in the country, the 1999 Constitution was amended to 180 (one hundred and eighty) days to limit and delineate the periods within which election cases should be filed, tried and concluded, including the appeal proceedings.

More recently, the Federal High Court under the leadership of Honourable Justice Tsoho and in line with the recently amended Electoral Act of 2022 has issued new Practice Directions for speedy determination of pre-election matters with a goal "to minimize the time spent in dealing with interlocutory matters, ensure that the possibility of settlement is explored before the parties go into hearing; and minimize undue adjournments and delays in the conduct of matters".

The Practice Directions provide that upon the close of exchange of processes between the parties, the Court shall within 7 (seven) days, set down the matters for hearing and shall continue to accord priority to all pre-election matters until judgment is delivered.[12]

Comparatively, in Kenya, though there are no set timelines for the completion of civil or criminal matters, claims are classified, and, in those classifications, the number of parties, witnesses, and quantum of damages sought are identified as

5 **See sections 1, 306, 396 of the ACJA, *inter alia.***
6 **See section 494 of the ACJA**
7 **The referenced case pertained to a judge elevated from the Federal High Court to the Court of Appeal.**
8 **AMCON Practice Directions, Part 7**
9 **AMCON Practice Directions, Part 6.2**
10 **AMCON Practice Directions, Part 3.2 (5)**
11 **AMCON Practice Directions, Part 8.12**
12 **Practice Directions of the Federal High Court on Pre-Election Matters 2022.**

determinable factors for what will constitute small claims, fast track or multi-track matters.[13] Notwithstanding, a judge in any matter must deliver judgment within 60 days from the conclusion of the trial.[14]

Recommendations

Though the Bill was rejected by the National Assembly, the issue of long trials lingers.[15] The rejection of the Bill also corresponds with the difficulty in finding a jurisdiction with a similar provision, in a bid to compare the success of its passage having regard to the timelines proffered. In our view, the timelines proffered by the Bill seem idealistic with no regard for the current realities that plague our jurisprudence. The AMCON Practice Directions for example, did not merely proffer timelines but tackled the root of delayed justice, i.e., technical irregularities and excessive adjournments. The Bill in comparison leaves too much to the discretion of the judge and as such would have not been effective in fulfilling its objectives.

As important as timely justice is, there is also the issue of hurried justice which poses a serious threat especially in criminal matters which are delicate and need thorough exploration to be determined. The sensitivity of criminal matters was not given its due consideration by the Bill as both criminal and civil matters appeared to have been lumped together in deliberation. Notwithstanding the above, there is no gainsaying that concerning time spent in litigation, Nigeria is comparatively worse off than many other countries, and as such, dire measures must be put in place to checkmate the dilemma.

Given that no two cases are the same and each case presents special circumstances, it seems that solving the problem of reducing the time spent in litigation does not merely depend on setting a time frame for the completion of trials or the delivery of judgments. Rather, it depends on identifying those bottlenecks that affect most cases. We recommend that, instead of setting timelines that do not tackle the root of delayed justice, some issues which have bedeviled the speedy administration of justice, should be addressed. These are:

- Adjournments: An amendment can be made in a bid to curtail the boundless discretion of the court when granting adjournments. The law could be amended to stipulate the number of adjournments that are permissible in a pending case. For example, a provision stating that adjournments cannot be granted more than twice at the instance of each of the parties may be enacted. Adjournments should also not be granted by the Court except where necessary and where no other course of action exists for a judge.

- The non-usage of technology: Digital technology is gradually making an incursion into the judiciary to enhance greater efficiency and convenience in the administration of the justice system by helping to remove some of the limitations in the old way it functioned. Several manual procedures in courts have been phased out and replaced by digital/electronic processes in North America, Europe, and a few Middle East countries like Qatar and the United Arab Emirates, while China is expected to digitalize its courtrooms by 2025. Note-taking by judges, the maintenance of court records, filing of pleadings and orders, and the emergence of state-of-the-art courtrooms for the presentation of evidence are important aspects of the judicial system that have been impacted by digital technology. If properly implemented, this innovative deployment of technology, would, to a large extent, reduce the high volume of pending

[13] **See the Kenyan Civil Procedure Rules 2010; http://kenyalaw.org:8181/exist/kenyalex/sublegview.xql?subleg=CAP.%2021#doc-0**

[14] **chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/viewer.html?pdfurl=http%3A%2F%2Faip-advocates.com%2Fwp-content%2Fuploads%2F2017%2F09%2FProcedure-and-timelines-for-civil-litigation-in-Kenya.pdf&clen=321701&chunk=true accessed on 14 July 2022**

[15] **The vote to reject the bill was cast on 01 March 2022.**

cases, cut trial length, enhance accessibility to judicial services, and significantly improve the pace and quality of justice in Nigeria.

- Stay of proceedings: Stay of proceedings is a clog in the wheel of speedy disposal of cases. Section 40 of the Economic and Financial Crimes Commission Act provides that an application for a stay of proceedings in respect of any criminal matter brought by the Commission before the High Court shall not be entertained until judgment is delivered by the High Court. This provision is commendable as it gives full support to the intents and purposes of section 36 of the Constitution. It is recommended that an application for a stay of proceedings in a criminal matter, should not be entertained. The Administration of Criminal Justice Act 2015[16] has already blazed the trail in this regard.[17] This will propel the Appellant to diligently prosecute the substantive appeal.

- Trial de novo: Transfer of officers within the judiciary from one territory to another could be reduced to the barest minimum, to curtail the possibility of a trial commencing *de novo*. It would also be good if judicial officers were given up to one (1) year notice to clear up all outstanding matters before them, that have been part-heard.

- An overworked judiciary: There are circumstances where a judge has seventeen (17) matters on a cause list in a day. This is without prejudice to their duty to prepare judgments and rulings within a specified timeline. This does not encourage a timeous delivery of detailed and well-considered judgments and rulings.

- A case for an introduction of more competent hands in the judiciary: The appointment of experienced lawyers who have been in practice, to the bench, is ideal. The recent call from certain quarters, to have Senior Advocates of Nigeria, elevated to the Bench, is laudable.

When these recommendations been given due contemplation, we opine that they would make for a more realistic and effective legislation viable to be passed by the lawmakers.

Disclaimer

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[16] **Applicable in the Federal Capital Territory and in the Federal Courts.**

[17] **See Section 306 of the Administration of Criminal Justice Act, 2015.**

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