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Collective Redress & Class Actions 2025

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Nigeria: Law and Practice & Trends and Developments

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NIGERIA

Law and Practice

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Streamsowers & Köhn is a reputable full-service law firm with more than 16 years of history and a team of more than 50 skilled lawyers. Its head office is in Lagos, with branch offices in Abuja and Port Harcourt, Nigeria. The firm specialises in various practice areas, including arbitration, aviation, banking, insurance and IP. Leveraging its intellectual capabilities, managerial expertise, technological proficiency and extensive networks, Streamsowers & Köhn provides valuable legal services to its diverse clientele. Notably, the firm acted as co-counsel for more than 85 of the victims of the EAS Airlines aviation accident of May 2002. In addition, one of its partners was team lead representing the victims of the Pfizer Trovan clinical drug trial in Kano, Nigeria in Abdullahi v Pfizer 2005, which reached the US Supreme Court before a settlement was achieved. Streamsowers & Köhn also represented subscribers in a class action against First Bank of Nigeria in 2007 concerning the Hybrid public offer.

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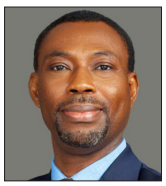

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1. Policy Development of Collective Redress/Class Action Mechanisms

1.1 History and Policy Drivers of the Legislative Regime

Class actions have evolved in Nigeria through court rules and judicial decisions. However, the concept is still evolving in Nigerian jurisprudence and is restrictive in nature.

Historically, the class action procedure existed under Order 13 Rule 15 of the High Court of Lagos State (Civil Procedure) Rules of 1972 (the "Lagos 1972 Rules") and continues to be retained in subsequent re-enactments of the Lagos Rules in later years. Order 15 Rule 13 (1) of the High Court of Lagos State (Civil Procedure) Rules 2019 (the "Lagos 2019 Rules"), which are the extant rules, provides for class action in various areas of law (see **2.2 Scope of Areas of Law to Which the Legislation Applies** and for details).

Other High Courts in the various states in Nigeria also mirrored the Lagos Rules by providing for class actions in their various rules of court.

The emergence of the class action framework at the federal level in Nigeria can be traced back to the Federal High Court (Civil Procedure) Rules 2009 (the "FHC Rules 2009"), which provided for a class action procedure specifically for IP rights cases. The Federal High Court (Civil Procedure) Rules 2019 (the "FHC Rules 2019"), which are the extant rules, provide for class action with a limited scope – namely, only for disputes involving trade marks, copyright or patents and designs. This is in line with the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the "Nigerian Constitution"), which vests the Federal High Court with the exclusive jurisdiction to entertain IP-related actions.

Order 13 Rule 11 (5) of the National Industrial Court Civil Procedure Rules 2017 provides for class actions in terms that are in pari materia with the rules of the various High Courts of the Nigerian states and those of the Federal High Court.

The major policy drivers/reasons for class actions in Nigeria have been aptly identified by the Supreme Court in the case of *Adedeji v CBN* (2022) LPELR – 57809 SC. Although the action is a representative action, the rationale proffered by the Supreme Court of Nigeria is apposite to the discourse concerning class actions. The apex court held that it is a salutary and common-sense provision (in the rules of court in Nigeria) that, where there are numerous parties, it will be extremely cumbersome and frustrating if all those interested parties are joined as a named party. The Supreme Court of Nigeria held in this case that it would be difficult to determine a case justly by insisting that everyone interested should be named on the writ as a party. For the sake of convenience, the courts in Nigeria therefore approve of representative actions. Thus, given a common interest or a common grievance, a representative action is in order if the relief sought is in its nature beneficial to all whom the named plaintiffs propose to represent. Class actions enjoy a broader perspective, as class members need not have the same interest.

1.2 Basis for the Legislative Regime, Including Analogous International Laws

Generally, just as the principles of common law and equity were inherited from England, so also were the rules of the old Supreme Court of Nigeria fashioned out of those applicable in the English county courts. When the old Supreme Court was federalised, giving way to High Courts in each of the Nigerian regions and in what was then the Federal Capital of Lagos, these High Courts made their individual rules of court; these rules were substantially based on those of the defunct court. The rules of each High Court in the country therefore derived from the rules of procedure of the county courts in England.

However, it is interesting to note that - with regard to class actions – it does not appear that provisions in the Nigerian rules of court were modelled after the regime in the UK, as class actions are not allowed in the UK.

In the USA, Rule 23 of the Federal Rules of Civil Procedure (Fed R Civ P 23) ("Rule 23") is the principal source of law relating to class actions in US federal courts. Most US states have enacted standards analogous to Rule 23 that govern class action proceedings in their respective state courts. However, in 2005, the US Congress passed the Class Action Fairness Act (CAFA) (28 USC Section 1332 (d)). This marks a salient difference from the Nigerian regime, in which there is no legislation passed by the National Assembly (Parliament or Congress or legislative arm of government) that legislates solely for class actions.

The provisions of the Nigerian rules of court and Rule 23 in the USA are similar. However, some of the provisions of Rule 23 in the USA that are not contained in the Nigerian rules of court are as follows.

- The court must be satisfied that prosecuting separate actions by or against individual class members would create a risk of:
  - (a) inconsistent or varying adjudications with regard to individual class members that would establish incompatible standards of conduct for the party opposing the class action; or
  - (b) adjudications with regard to individual class members that, as a practical matter, would be dispositive of the interests of the other members not party to the individual adjudications or would impair or impede their ability to protect their interests.
- There is a provision for a certification order whereby the court certifies the action as a class action, defines the class members, appoints the class counsel who must meet certain requirements, defines the class and the class issues, claims or defences. Such an order may be amended before judgment.

1.3 Implementation of the EU Collective Redress Regime

Nigeria is not an EU member state and is therefore not subject to the EU collective redress regime. Nigeria's jurisdiction operates under its own legal framework and regulations for class action lawsuits.

2. Legal Framework

2.1 Collective Redress and Class Action Legislation

There are currently no principal laws governing collective redress/class actions in Nigeria. However, these types of action are recognisable and permissible by virtue of the provisions of existing civil procedure rules of the High Courts of the various states in Nigeria, the Federal High Court, and the National Industrial Court of Nigeria.

2.2 Scope of Areas of Law to Which the Legislation Applies

The applicable civil procedure rules of various courts in Nigeria determine the areas of law such rules permit for class action lawsuits. Some of these are mentioned here.

Order 15 Rule 13 (1) of the Lagos 2019 Rules provides that class actions can be instituted in the following areas of law:

- the administration of estates;
- properties subject to a trust;
- land held under customary law as family or community property; and

- the construction of any written instrument, including a statue.

As mentioned in **1.1 History and Policy Drivers of the Legislative Regime**, Order 9 Rule 4 (1) of the FHC Rules 2019 provides that class actions can be instituted with regard to trade marks, copyright or patents and designs.

Order 13 Rule 11 (1) of the National Industrial Court of Nigeria Civil Procedure Rules 2017 (the "NICN Rules") empowers one person or more to sue or be sued on behalf of or for the benefit of persons so interested with regard to labour and employment law matters. The NICN Rules do not expressly refer to such actions as class actions but as actions by numerous persons with same interest in a suit.

Order 13 Rule 15 (1) of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 expanded the scope of the class action regime for suits instituted in the Federal Capital Territory by providing that class actions can be brought for proceedings concerning:

- the administration of estates;
- property subject to a trust;
- land held under customary law as family or community property;
- the construction of any written instrument, including a statute;
- torts; or
- any other class action.

For an order of class action to be granted, Nigerian courts must ascertain that the class of persons cannot be ascertained (or readily ascertained) or be found.

2.3 Definition of Collective Redress/Class Actions

There is no statutory definition of a class action or collective redress save for the provisions in procedural rules of the various courts in Nigeria. The common denominator in the various rules of court is that class actions are actions where one or more persons are appointed by the judge to represent that person(s) or class or members of the class in a lawsuit where the person, class or some members of the class interested in the lawsuit cannot be ascertained or cannot readily be ascertained – or, if ascertained, cannot be found - or for purposes of expediency and efficiency if they can be ascertained or found.

Nigerian courts have also interpreted what constitutes a class action. In the cases of *Abraham Adesanya v President of Federal Republic of Nigeria* (1981) 5 SC 69 and *Gallaher Ltd & Another v British American Tobacco Co Ltd & Others* (2015) 13 NWLR (Part 1476) 325, it was held that a class action must be centred on the principle of commonality – ie, the claims and defences of the representative/s must arise from common factual questions or legal interests shared with the larger group in order for the larger group to be protected.

In the case of *Babalola v Apple Inc* (2021) 15 NWLR 193, the appellate court - in accordance with Black's Law Dictionary – defined a "class action" as "a lawsuit in which the court authorises a single person or a small group of people to represent the interests of a larger group, specifically, a lawsuit in which the convenience either of the public or of the interested parties requires that the case be settled through litigation by or against only a part of the group of similarly situated persons and in which a person whose interests are or may be affected does not have an opportunity to protect his or her interests by appearing personally or through a personally selected representative, or through a person specially appointed to act as a trustee or guardian".

In this case, the appellate court further pronounced on the peculiarity of class action as follows: "In a class action, the class must be so large that individual suits would be impracticable. There must be legal or factual questions common to the class. The claims or defences of the representative parties must adequately protect the interests of the class."

3. Procedure for Bringing Collective Redress/Class Actions

3.1 Mechanisms for Bringing Collective Redress/Class Actions

In Nigeria, class actions can be commenced at the Federal High Court and at the High Courts of the various Nigerian states. Inasmuch as these actions can be commenced in these courts, the rules guiding the causes of action are different under the various rules of court, such as:

- by the provisions of Order 15 Rule 13 (1) of the Lagos 2019 Rules, the institution of class actions is restricted to proceedings concerning the administration of an estate, property that is the subject of a trust, land held under customary law as family or community property, or the construction of any written instrument (including a statute) (see **2.2 Scope of Areas of Law to Which the Legislation Applies**);
- by virtue of Order 9 Rule 4 (1) of the FHC Rules 2019, a class action may be brought in any matter concerning trade marks, copyright or patents and designs (see **1.1 History and Policy Drivers of the Legislative Regime**); and
- by Order 13 Rule 15 (1) of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, class actions can be brought for proceedings concerning the administration of estates, property subject to a trust, land held under customary law as family or community property, the construction of any written instrument (including a statute), torts, or any other class action.

In all the foregoing stipulated provisions, where the court is satisfied that it is expedient to do so, it may appoint one or more persons to represent a person, a class or members of a class where:

- the person, the class or some members of the class interested cannot be ascertained or readily be ascertained; or
- the person, the class or some members of the class interested – if ascertained – cannot be found.

There is no exclusive procedure or mechanism for commencement of collective redress/class action under the rules of the various courts. This is because the mechanism for commencement of a class action under the various rules of court does not differ from the mechanism for commencement of other types of civil actions. These are usually commenced by way of a writ of summons or by originating summons and must be accompanied by relevant documents as specified by the rules of court (see **3.2 Overview of Procedure** for further details).

3.2 Overview of Procedure

Under the High Court rules of the various Nigerian states and the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, there is no exclusive procedure for the commencement of a class action. However, Order 43 Rule 1 of the Lagos 2019 Rules provides that, where any application is authorised to be made to a judge, such application must be made by a motion that must state the rule of court or law under which the application is brought and which may be supported by an affidavit. The application must also be accompanied by a written address.

According to the provisions of the various procedural rules of court, the procedure for commencing a class action is as follows.

- The action may be brought by way of writ of summons or originating summons, subject to the provisions of the rules of court, and must be accompanied by the relevant documents as specified by the rules of court.
- An application by way of motion ex parte (without notice to the other parties) must be made to the judge seeking leave to appoint one or more persons (named in the originating process filed) to represent a person, class, or some members of the class in a subject-matter suit.
- The motion ex parte will contain an order to advertise/publicise the action in the interest of the persons, class or some members of class in a subject matter so as to be aware of the pendency of the action, with the option for any members of the class or any person(s) to opt in/out.
- Upon hearing an application, the judge appoints one or more persons to represent the class or some members of the class.

3.3 Standing

In Nigeria, persons who have standing to bring collective redress/class action suits are persons with an interest in the suit, which may be commenced or defended by one or more such persons for the benefit of other interested persons. In a class action, it is sufficient for members of the class to have common issues without necessarily having the same interest.

By Order 13 Rule 15 (1) of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018, Order 15 Rule 13 (1) of the Lagos 2019 Rules and Order 9 Rule 4 (1) of the FHC Rules 2019, a judge is empowered to appoint one or more persons to represent the a person, members of a class, or class of persons interested in a class action.

3.4 Class Members, Size and Mechanism – Opting In or Out

In Nigeria, the determination of persons who belong to a relevant class for the purposes of collective redress/class action litigation is dependent on whether the persons have an interest in the subject matter of the suit. There must also be legal or factual questions common to the class.

Limits on the Size of Classes

In the Nigerian legal regime, there are no limits on the number of persons who constitute a class. The rules of the various High Courts in Nigeria recognise that a class may be made up of persons interested in a class action – some of whom:

- cannot be ascertained;
- cannot be rightly ascertained; or
- if ascertained, cannot be found.

This presupposes that there is no restriction on the number of persons in a class or the size of classes.

Mechanism for Joining an Action (Opting In/Out)

Order 9 Rule 4 (3) and (4) of the FHC Rules 2019 provides that a person or member of a class may, in any class action proceedings, apply to the court or a judge in chambers to opt in or opt out of the class action. The court or the judge in chambers may then, based on good and justifiable cause, permit such person or member of a class to opt in or opt out of the class action.

The application to the court or the judge in chambers is by a motion that sets out the grounds that the party making the application intends to rely on, supported by an affidavit setting out the facts that the party making the application intends to rely on, as well as a written address. Generally, all motions are to be made on notice to any party affected by it. However, motions ex parte (without notice to the affected party) are granted by the court if it is satisfied that to delay the motion until notice is given to the affected party would entail irreparable damage or serious mischief to the party making the application.

There are no specific provisions in the relevant rules of Nigeria's various High Courts and the Federal Capital Territory stating the procedure for opting in or out of a class action proceeding. However, generally, applications are allowed to be made to a court for the grant of any orders.

By making an application to opt in during the course of proceedings, a class member takes formal steps to be bound by any decision made in the suit. By applying to opt out, a class member would not be bound by the outcome of the suit and is at liberty to commence an individual action.

3.5 Joinder

Generally, under the rules of the various High Courts in Nigeria, any application to add a plaintiff/claimant or defendant to any suit pending before the court may be made to a judge by a motion on notice. Such application must be accompanied by the proposed statement of claim or defence (as the case may be), all the documents intended to be used and the depositions of all the witnesses. The same procedure is applicable while seeking to add further parties to a collective redress/class action.

3.6 Case Management Powers of Courts

Unlike some other jurisdictions, Nigeria does not have a well-laid-out case management system for class actions, especially as there is a dearth of provisions under the rules of various courts to guide the court in the management of class action cases. However, in

relation to case management for class actions, Order 56 Rule 8 of the FHC Rules 2019 provides that the court shall adopt such procedure in similar rules of court or such procedure as will in its view do substantial justice to the parties.

The general provisions stipulated in the rules of various court rules for the filing of originating processes are applicable for class actions. The timeframe varies according to the various processes and the courts. Upon the service of the originating processes and accompanying documents on the defendant, the defendant is mandated to file its defence within the time prescribed by the rules of court. The claimant/plaintiff may then file any reply to the defence filed by the defendant. Once these processes are filed, pleadings are deemed closed and a pre-trial conference will be held by the pre-trial judge, who will try to settle the matter amicably or narrow down the issues for trial. Where the claims cannot be settled amicably, the matter would be assigned to a trial judge and the trial would commence. After the close of trial, the defendant files its final written address, followed by the plaintiff's final written address - after which, the defendant files a reply. The judgment is delivered at a later date.

3.7 Length and Timetable for Proceedings

In Nigeria, the average length of legal proceedings for various types of actions can vary significantly based on the complexity of the case and the jurisdiction in which it is being heard.

For instance, under the Lagos 2019 Rules, claims involving liquidated monetary amounts of NGN100 million or more, mortgage transactions, charges, or other securities - as well as liquidated monetary claims by non-Nigerian nationals or non-residents in Nigeria – can be commenced in the fast-track court. In this specialised court, litigation must conclude within nine months from the date of commencement, and the presiding judge is required to deliver judgment within 60 days after the trial is concluded.

To ensure timely progression of cases, the civil procedure rules of various Nigerian courts have established specific timelines for actions preceding the commencement of trials. Under the Lagos 2019 Rules, which are mirrored by other rules of court, a defendant has 42 days after being served with a claim in which to file a statement of defence, and the claimant has 14 days to file a reply. After pleadings have closed, a case management conference follows within three months, whereby the case management judge decides whether the matter should proceed to settlement or trial.

In cases without technical objections, the period from action commencement to trial should ordinarily not exceed six months. Nevertheless, delays may occur due to late filing and congested court dockets, leading to trials being scheduled up to nine months later or more. In some instances, it may take a year or more from commencing proceedings to the actual trial.

Furthermore, some common timetabling aspects in Nigeria's legal system include the following.

- Case management conferences - these are meetings between the parties and the case management judge to discuss the case's progress, attempt settlement, narrow down the issues for trial, and set deadlines.
- Discovery deadlines - parties are given specific timeframes to exchange evidence and information.
- Trial scheduling - courts allocate dates for trials based on their availability.

3.8 Mechanisms for Changes to Length/Timetable/Disposal of Proceedings

The average duration of a civil proceeding in Nigeria typically spans two to three years from commencement to conclusion. However, expedited civil trial procedures are available across Nigerian courts. Notably, there is the summary judgment application/undefended list summary trial procedure, suitable for uncontested matters and monetary claims.

Where any of the parties are unable to meet the timelines set by the rules of the court, the party by motion can apply to the court to extend the time to accommodate the delay or late filings. However, there are default fees and penalties - calculated per diem – that must be paid by the party in default of filing. The amount payable as default fees differs according to the rules of various courts.

At the Magistrates' Court level, states such as Lagos have introduced small claims courts that specialise in resolving matters involving sums up to NGN5 million efficiently within a few months. These expedited procedures - combined with statutory timelines and specific rules – contribute to the efficient management of legal proceedings in Nigeria, ensuring that cases are resolved in a timely manner.

3.9 Funding and Costs

There is no general rule or legal framework guiding costs and funding for collective redress/class actions. Class actions are typically funded collectively by the members of the class or by one or some of them.

In some cases, where parties are not able to fund the action, a third party or an uninterested party in the class action (eg, a non-profit organisation) can assume responsibility for the action as an investment such that – if judgment is delivered in the favour of the claimants - the third party would receive certain percentage of the judgment sum awarded to the claimants.

Parties may also choose to enter a contingency fee agreement with their lawyer where payment is made for legal representation upon a successful conclusion of the case. Under this type of agreement, however, the lawyer is not allowed to advance the cost of litigation except as a matter of convenience and subject to reimbursement.

3.10 Disclosure and Privilege

The Nigerian judicial system accepts that parties to litigation should share documents and other information prior to trial. Parties must plead and provide in advance ("front-load") all documents they require as proof of their case.

During the trial, any party can apply to the court or the judge in chambers for an order directing the other party to make discovery – that is, to disclose on oath the documents that are or have been in its possession or power. Similarly, any party can ask written questions required to be answered by the other party to clarify matters of fact and help to determine in advance what facts will be presented at any trial in the case. These questions are referred to as interrogatories.

Failure to make discovery of documents or to produce the disclosed documents for inspection or to answer the interrogatories, when ordered by the court, is contempt of court rendering the defaulting party liable to committal.

The exception to the above-mentioned disclosures is where they are privileged from production or there are any other legally recognised grounds excluding their production. Privileged information includes:

- documents that are self-incriminating;
- documents created or shared by a party for the purpose of assisting a party or for use by the party's legal representative in an existing or contemplated litigation (except information shared between a client and a legal practitioner in furtherance of or exposing any illegal or criminal purpose, or if such disclosure is in the interest of public policy or national security);
- documents owned by a third party; and
- letters or other documents marked "without prejudice".

3.11 Remedies

Collective redress/class actions in Nigeria offer remedies that could be obtained by parties during the pendency of the suit and/or at the final judgment. In the pendency of the suit, the reliefs are in the form of interim and interlocutory orders, which are provisional in nature and are usually in the form of injunctions that restrain a party from performing an act or that mandate a party to act in a particular way. Interim orders are expected to last between seven or 14 days, depending on the applicable court rules, or as directed by a court pending the hearing of an application that seeks to sustain the injunction until the determination of the suit motion or the occurrence of a particular event. Interlocutory orders usually take effect until the judgment is delivered in a suit.

The remedies available in class actions are set out here.

Declaratory Relief

Declaratory relief is where the court makes findings and pronounces on a legal issue that has been brought to its attention. It merely confirms or denies a

legal right or an entitlement or the position of the law but contains no specific order to be carried out by the successful party or enforced against the unsuccessful party. Declaratory relief is discretionary and granted only in circumstances where the court is convinced by credible evidence. Thus, declaratory relief is not given either in default of defence or on admissions without the court hearing evidence and being satisfied by such evidence that the plaintiff is entitled to the declaration sought.

Injunctive Relief

Injunctive relief is a readily available remedy in the private law field for preventing the commission of an unlawful act such as a tort or a breach of contract. However, in the public law field, it is a remedy available against a public authority to prevent the commission of or continuation of unlawful acts. The remedy would not be made available to a litigant who does not have a legal right to the subject matter of the action. The types of injunctions available are:

- mandatory injunctions, which are granted by the court to compel a party to do a specific thing or action;
- prohibitory injunctions, which seek to prevent someone from engaging in a particular act pending the determination of the case; and
- perpetual injunctions, which are an ancillary relief granted to protect an established legal or equitable right - where the substantive right has not been established, no injunctive relief would be granted.

Damages

Whether the matter complained about is a breach of contract or a tort, the primary theoretical notion is to place the plaintiff in as good a position - as far as money can - as the plaintiff would be in had the matter complained about not occurred. The principle envisages that a party that has been injuriously affected by the act complained of must be put in a position in which they would have been if they had not suffered the wrong for which they are being compensated. Damages awarded from a class action are in two categories: compensatory damages and punitive damages.

Compensatory damages are awarded to compensate for direct or actual loss suffered such as illness, loss of life or pain and suffering and could be further categorised as follows.

- General damages are compensation for losses that the law will presume to be the direct, natural or provable consequence of the act complained of, flowing naturally from the act of the defendant and which the plaintiff need not specifically set out or prove in their pleadings.
- Special damages are compensation for the exceptional, quantifiable losses suffered by the plaintiff that are the actual result of injury or harm complained of (eg, hospital bills already paid) and must be specifically claimed for and proved.

Punitive damages, on the other hand, are a form of exemplary damages postulating a punishment for the defendant and not mere compensation for the plaintiff. In addition, punitive damages must be specially claimed for the court to grant them.

3.12 Settlement and ADR Mechanisms

Settlement

Settlement of claims in a collective redress or class action is similar to settlement in individual civil claims brought before the court. Although the rules of various High Courts do not explicitly address the management of settlements or settlement agreements, the courts are enjoined to promote and encourage amicable settlement of claims filed by the parties. Parties involved in the proceedings may choose to pursue an out-of-court settlement. In such cases, where settlement is agreed, the terms of settlement are drawn up and filed in the court, which then adopts them as a consent judgment in the action. For a consent judgment to be granted, the parties must be in agreement, their consent must be voluntary, and the terms of settlement must be filed with the court. Once a consent judgment is issued, none of the parties have the right of appeal except with the leave of the court and only on limited grounds such as conspiracy or fraud.

ADR

There is no specific ADR mechanism exclusively designed for collective redress or class actions. Instead, general procedural law governs these pro-

cesses. ADR methods that may be employed include mediation or informal without-prejudice roundtable meetings between the class representatives and defendants. Legal practitioners are generally required by the Rules of Professional Conduct for Legal Practitioners to inform their clients about alternative options to litigation that are reasonably available. However, the decision to engage in ADR ultimately rests with the parties, and there is no mandatory requirement to do so.

While the various High Court rules make provisions for ADR methods such as arbitration and conciliation/mediation, they do not explicitly address how class actions should be handled. Some High Court rules mandate the use of settlement mechanisms before commencing actions in court. By way of example, the Lagos 2019 Rules and the High Court of Lagos State (Expeditious Disposal of Civil Cases) Practice Direction (No 2) of 2019 on Pre-action Protocols require parties to:

- exchange sufficient information;
- attempt to settle the issues without litigation;
- consider ADR to facilitate settlement and reduce costs; and
- treat litigation as a last resort.

Similarly, Order 5 Rule 8 of the Lagos 2019 Rules mandates that – upon the filing of originating processes - the registry of the court must screen the processes for suitability for ADR. Where it is considered appropriate, the chief judge may refer the case to the Lagos Multi-Door Courthouse or other appropriate ADR institutions or practitioners. Similar provisions are made in Order 2 Rule 7 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018.

Once an action has commenced, the court has the authority to order the parties to attempt an amicable resolution of the dispute. In deciding whether to exercise this power, the court will consider the circumstances, including whether any party has refused amicable resolution. The court may also propose potential solutions for amicable resolution at any stage of the proceedings. Throughout the proceedings, parties are encouraged to explore the possibility of ADR and settlement. The overriding objective of the rules of various High Courts is to actively manage cases by encouraging parties to use an ADR procedure if the court deems it appropriate and by facilitating the use of such procedures.

For instance, Order 19 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 provides for ADR and arbitration as alternative means of resolving disputes. Similarly, Orders 27 and 28 of the Lagos 2019 Rules make provisions for referring suitable actions to the Lagos Multi-Door Courthouse or any other ADR centre.

3.13 Judgments and Enforcement of Judgments

The judgment in a collective redress or class action is considered final and enforceable, unless successfully appealed. This judgment applies to all parties involved in the dispute, including the class members who were part of the action at the time the judgment was made. These class members consist of individuals who have claims or obligations that fall within the defined scope of the class action as determined by the court.

In Nigeria, it is currently recognised that - in a representative action – both named and unnamed plaintiffs and/or defendants, along with those they represent, are considered parties to the action. However, the named representative plaintiffs and/or defendants hold a dominant role until the case is resolved. This means that, when an action is initiated in a representative capacity, it is not solely against or carried out by the named parties but also includes those whom they represent (even if they are not specifically mentioned by name). It is important to note that claimants who choose to opt out of the proceedings will not be bound by the judgment. The withdrawal becomes effective once the court receives notification of the withdrawal.

Enforcement of Judgments

There is no specific mechanism in place for the enforcement of judgments in collective redress or class actions. Instead, the usual procedural rules govern the relevant enforcement mechanisms. These may include attachment, charging, sale and possession orders, as well as potential committal proceedings. The mechanisms for enforcing judgments in Nigeria, including procedures, are outlined here.

Writ of attachment and sale (writ of fieri facias)

A judgment sum becomes immediately due and payable upon a pronouncement in a judgment. A writ of fieri facias (fi fa) is issued for execution against the goods, chattels and immovable property of the judgment debtor for the recovery of any sum of money payable under a court judgment in the event of default or failure of payment. The writ is obtained by completing the praecipe form at the registry of the court.

The writ empowers the sheriff of the court to seize and sell the judgment debtor's property within the jurisdiction to satisfy the judgment debt (except the clothing and bedding of the judgment debtor or their family and the tools and implements of their trade, to the value of NGN10). The proceeds from the sale are used to cover sale expenses and offset the judgment debt, with any remaining balance being given to the judgment debtor.

In cases where the court ordered the judgment sum to be paid in instalments, the writ can only be issued after the default in payment of some instalment, and execution may be for the remaining sum and costs then unpaid or for a part of it as the court may order (either in the judgment or subsequently).

Also, unless they are perishable in nature or the judgment debtor requests so in writing, the seized property cannot be sold until the expiry of a period of at least five days from the date of seizure.

Garnishee proceedings

This is a method of enforcing a monetary judgment by recovery through third parties (garnishees) who are in custody of the judgment debtor's funds or indebted to the judgment debtor. The judgment creditor steps into the position of the judgment debtor to collect such funds. In most cases, the garnishees are bankers of the judgment debtor.

The judgment debtor files an application ex parte (without notice to the judgment debtor and the garnishees) and, upon being satisfied that the case is deserving, the court would make an order nisi (initial order) directing the garnishees to disclose the amount standing to the credit of the judgment debtor in their custody and show cause why such sums should not be attached and paid to the judgment creditor in satisfaction of the judgment. The order nisi is served on the garnishees, and each garnishee is expected to file affidavits in court disclosing the judgment debtor's monies in its custody, if any.

Upon disclosure by the garnishees, the order nisi is made absolute against the garnishees. This mandates them to pay the judgment debtor's funds disclosed as being in their custody to the judgment creditor, in satisfaction of the judgment sum.

Bankruptcy/insolvency proceedings

In this mode of enforcement, where a judgment debtor defaults in payment of the judgment sum, the judgment creditor is at liberty to commence an action against the judgment debtor under bankruptcy proceedings in the case of an individual debtor or winding-up proceedings in the case of a company. However, it must be shown that the judgment debtor is unable to pay its debt in all instances.

Generally, it involves filing a petition and providing evidence of bankruptcy or insolvency. Once the judgment debtor is declared bankrupt or insolvent, their assets are liquidated and the proceeds are distributed among creditors according to their priorities.

Writ of possession

This is issued for the recovery of premises where the judgment of the court is for the recovery of land, or for the delivery of possession of land, in an action other than an action between landlord and tenant. An application for a writ of possession is made by filing a praecipe form.

Writ of sequestration

This is issued upon application to a judge against the property of a person who has had an order or warrant of arrest, commitment or imprisonment made against them but cannot be found, or where a person is taken and detained in custody without obeying the judgment of a court. An application for a writ of sequestration is made to a judge in the prescribed form.

Writ of delivery
A writ of delivery is issued for the enforcement of a judgment for the delivery of goods. An application for a writ of delivery is made by filing a praecipe form.

Judgment summons
This is issued by the court upon application by a judgment creditor where a judgment debtor defaults on payment of a judgment sum or any instalment. The judgment debtor is summoned to appear before the court for examination on oath as to their means. An investigation into the judgment debtor's means is conducted and the court may make an interim order for the protection of any property applicable or available in discharge of the judgment debt. Upon the conclusion of investigations, the court may make one or more of the following orders:

- an order for the commitment of the judgment debtor to prison;
- an order for the attachment and sale of the judgment debtor's property;
- an order for the payment of money by instalments or otherwise by the judgment debtor; or
- an order for the discharge of the judgment debtor from prison.

4. Legislative Reform

4.1 Policy Development
The Nigerian law with regard to class action has remained stagnant. Although the rules of various Nigerian courts provide for the procedure to institute class actions, there is no law or legal precedent that addresses the same holistically. Of the few recent class action cases in Nigeria, none have been fully litigated and concluded with the final judgment delivered at the Supreme Court.

The slow pace of the class actions filed in various courts, which are now pending at the appellate courts, coupled with the lack of legislation on the subject has made Nigerian courts unattractive for class action matters. Where possible, parties largely forum shop for favourable jurisdictions for their class action matters. A good example is the case of *Abdullahi v Pfizer Inc*562 F.3d 163, which began in Kano, Abuja and New York and went up to the US Supreme Court before a settlement was achieved.

4.2 Legislative Reform
Besides possible amendments to the rules of various courts, which provide for the procedure for instituting a class action, no major legislative reform has been initiated in relation to the matters mentioned in the foregoing sections. However, there has been a clamour for the development of the class action regime to cover fundamental human rights and consumer rights violations in Nigeria.

5. Key Trends

5.1 Impact of Key Trends
There are no recent trends or changes in Nigeria with regard to either the regulatory or substantive aspects of class actions. There are also no recent court decisions on the issue.

Trends and Developments

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Streamsowers & Köhn

Streamsowers & Köhn is a reputable full-service law firm with more than 16 years of history and a team of more than 50 skilled lawyers. Its head office is in Lagos, with branch offices in Abuja and Port Harcourt, Nigeria. The firm specialises in various practice areas, including arbitration, aviation, banking, insurance and IP. Leveraging its intellectual capabilities, managerial expertise, technological proficiency and extensive networks, Streamsowers & Köhn provides valuable legal services to its diverse clientele. Notably, the firm acted as co-counsel for more than 85 of the victims of the EAS Airlines aviation accident of May 2002. In addition, one of its partners was team lead representing the victims of the Pfizer Trovan clinical drug trial in Kano, Nigeria in Abdullahi v Pfizer 2005, which reached the US Supreme Court before a settlement was achieved. Streamsowers & Köhn also represented subscribers in a class action against the First Bank of Nigeria in 2007 concerning the Hybrid public offer.

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A Nigerian Perspective on Collective Arbitration

Arbitration has long been recognised as one of the most effective methods for resolving commercial disputes. Compared to litigation, arbitration offers privacy, procedural flexibility, and efficiency. Traditionally, arbitration has been limited in scope because it usually arises from a bilateral agreement and requires the consent of the parties. This concept, however, raises a critical question: can arbitration evolve to accommodate disputes involving multiple or grouped parties?

In litigation, courts have developed tools such as class actions and representative suits to manage such complexities. Arbitration, however, remains constrained by the requirement that only parties bound by the same arbitration clause in the same agreement may participate. This creates a friction between the efficiency that group arbitration could offer and the consent-based nature of arbitral proceedings.

This article therefore examines the evolving concept of group or collective arbitration, with a particular emphasis on how Nigerian law addresses the above-mentioned challenges.

The concept of group arbitration

Group arbitration arises from the same economic rationale that underpins class actions in litigation - that is, the need to make dispute resolution accessible and cost-effective for parties with relatively low-value claims. When individual arbitration is financially impractical, claimants may benefit from combining their efforts in a single proceeding, thereby sharing costs and streamlining the process.

Beyond cost efficiency, group arbitration offers additional advantages. It reduces the risk of inconsistent awards, avoids duplicative procedures, and allows for the selection of a neutral with subject-matter expertise. Compared to class litigation, group arbitration also provides greater procedural flexibility and facilitates enforcement across jurisdictions.

It is essential to distinguish between two forms of group arbitration. Collective arbitration, which is the focus of this article, involves similarly situated claimants jointly pursuing related claims in a single proceeding often through joint, consolidated or concurrent arbitration. In contrast, class arbitration is initiated by a representative party on behalf of a broader group, including absent members. Whereas collective arbitration binds only those who opt in, class arbitration binds absent parties unless they opt out.

Collective arbitration under the Arbitration and Mediation Act 2023

As part of its efforts to strengthen dispute resolution mechanisms, Nigeria has replaced the Arbitration and Conciliation Act (ACA) with the more comprehensive Arbitration and Mediation Act 2023 (AMA). The AMA introduced key innovations designed to accommodate collective arbitration - notably, through provisions that allow for consolidation of related proceedings, concurrent hearings, the resolution of deadlocks in appointing arbitrators, and the joinder of additional parties.

Consolidated/concurrent arbitral proceedings

Section 39 of the AMA introduced a framework for the consolidation of arbitral proceedings and the conduct of concurrent hearings. This is an innovation absent

under the ACA and it reflects a growing recognition of the need for procedural efficiency in multiparty disputes, particularly where claims arise from interconnected contracts or share common legal and factual issues.

Under the AMA, consolidation or concurrent hearings may be pursued where proceedings are sufficiently related - whether by virtue of originating from the same legal relationship, involving similar questions of law or fact, or being otherwise connected. Article 32 of the Arbitration Rules in the First Schedule to the Act (the "Rules") also permits an arbitral tribunal to consider consolidation or concurrent hearing where either:

- the same arbitrators have been appointed in more than one arbitration;
- all claims arise under the same arbitration agreement; or
- different arbitration agreements give rise to disputes that share common questions of law or fact and relate to the same transaction or series of transactions.

However, the tribunal's authority to consolidate or conduct concurrent hearings is strictly limited by the principle of party autonomy. Such procedural co-ordination can only occur with the express consent of all parties involved.

The requirement of parties' consent presents practical limitations. In reality, even a single party's refusal can derail efforts to consolidate proceedings, resulting in fragmented arbitrations that are inefficient and potentially inconsistent. Without prior contractual arrangements or arbitration clauses that anticipate and permit consolidation or submission agreements, parties may find themselves unable to pursue a collective resolution of disputes.

A party seeking consolidation is required by the Rules to submit a formal request containing detailed information, including:

- the identities and contact details of all parties and arbitrators involved;
- copies of the relevant arbitration agreements and underlying contracts;
- a summary of the claims and reliefs sought; and
- legal arguments supporting the request.

The request must also address the composition of the tribunal in the event consolidation is granted. Any dispute regarding the sufficiency of the request is to be resolved by the tribunal itself.

Thus, even though Section 39 of the AMA marks a progressive step towards harmonising multiparty arbitration, its effectiveness depends heavily on how parties structure their arbitration agreements and whether they proactively provide for consolidation mechanisms at the drafting stage.

Procedure for appointment of arbitrators

The appointment of arbitrators in multiparty disputes presents unique procedural challenges, particularly when parties are unable to agree on how to constitute the tribunal. In traditional bilateral arbitration, where parties opt for a three-member tribunal, each party typically appoints one arbitrator and the two appointees jointly select a third. However, this model becomes problematic in multiparty settings, where multiple claimants and respondents may each seek to nominate their own arbitrator - potentially resulting in an unwieldy and unbalanced tribunal.

Section 7 (3)(c) of the AMA addresses this issue by introducing a mechanism to resolve deadlocks in arbitrator appointments. Where multiple parties fail to agree within 30 days on how to organise themselves into two sides (claimants and respondents) for the purpose of constituting the tribunal, the responsibility for appointment shifts to an agreed appointing authority. In the absence of such designation, any arbitral institution in Nigeria or the court may be approached to constitute the tribunal upon application by any party.

Also, with regard to consolidated proceedings, per Article 33 of the Rules, once consolidation is ordered, all parties are deemed to have waived their right to nominate arbitrators. In such cases, the director of the Regional Centre for International Commercial Arbitration Lagos assumes responsibility for appointing the tribunal for the consolidated proceedings. Furthermore, parties are precluded from challenging the validity or enforceability of any award rendered in the

consolidated proceedings on the basis of the consolidation itself.

Joinder of parties

Another innovative provision of the AMA is the joinder of additional parties. In multiparty commercial disputes, it is possible for parties who were not originally named in a contract to become affected by the disputes. By way of example, in a construction project, a subcontractor engaged by the main contractor may be responsible for executing a portion of the project. If the main contract between the employer and the contractor contains an arbitration clause, particularly one with an umbrella provision stating that "any dispute arising under or in connection with this contract shall be resolved by arbitration", the subcontractor may seek to rely on this clause to resolve disputes that arise from or relate to their scope of work.

Section 40 of the AMA permits an arbitral tribunal to join a third party where there is preliminary evidence that the arbitration agreement binds that party. This threshold is intentionally low at the initial stage, allowing the tribunal to admit the party without making a final determination on jurisdiction. The tribunal retains the authority to revisit and rule on jurisdictional objections at a later stage in the proceedings.

The Rules also provide procedural guides on how applications for joinder are made. Where an existing party to an arbitration wishes to bring another party into the proceedings, the existing party must submit a formal request to the arbitral tribunal. This request should clearly identify all parties involved, including the proposed additional party, and must outline the legal and factual basis for the joinder. It should also specify the relief or remedy being sought and confirm that all relevant parties and the tribunal have been served with the request.

Upon receiving a request for joinder, the proposed additional party is required to respond within 15 days. Their response must include their contact details, any objections to the tribunal's jurisdiction over them, and their position on the claims and remedies outlined in the request. If the additional party has any claims against existing parties, these should also be stated. The response must be served on all parties and the tribunal.

In some cases, a third party may independently seek to be joined to the arbitration. Such a request must be submitted to the tribunal and must comply with the same requirements as those applicable to requests initiated by existing parties.

Once a request for joinder is made, the other parties to the arbitration are expected to submit their comments within 15 days. These comments may include jurisdictional objections, responses to the claims and remedies sought, and any counterclaims against the proposed additional party. As with other submissions, confirmation of service on all parties and the tribunal is required.

When a new party is joined to the arbitration, the proceedings in relation to that party are deemed to commence on the date the tribunal receives the request for joinder. Furthermore, all parties existing and newly joined are considered to have waived any objections to the validity or enforceability of any award made by the tribunal on the basis of the joinder.

However, the practical application of joinder remains fraught with challenges. A third party may resist being joined on the basis that they never consented to arbitration or that the arbitration clause is too narrowly drafted to encompass them. Even where a contractual nexus exists, the language of the arbitration agreement may not be sufficiently broad to support joinder.

These concerns raise important questions about due process and the enforceability of arbitral awards involving joined parties. If a tribunal proceeds without a clear basis for jurisdiction over the additional party, any resulting award may be vulnerable to challenge or refusal of enforcement.

Outlook

The AMA represents a significant advancement in Nigeria's arbitration framework, particularly in its recognition of the complexities inherent in multi-party disputes.

Looking ahead, further legislative and institutional reforms may be necessary to bridge the gap between procedural innovation and practical implementation. By way of example, clearer guidance on opt-in mechanisms for collective arbitration, default rules for tribunal constitution in multiparty settings, and model clauses that anticipate consolidation and joinder could enhance predictability and reduce procedural friction.

The success of collective arbitration in Nigeria will depend not only on statutory provisions but also on how parties draft their arbitration agreements. Greater awareness and adoption of arbitration clauses that expressly contemplate multiparty and multi-contract dynamics will be crucial. Arbitral institutions also have a role to play in developing best practices and procedural rules that support efficient and fair resolution of group disputes.

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