

# THE CONSTITUTIONALITY OF VIRTUAL OR REMOTE COURT PROCEEDINGS IN NIGERIA.

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**“The legal market place of tomorrow cannot be immune from the technology that will permeate the socio-economic fabric of society. Paper based practices and practitioners will surely be as extinct as dinosaurs are today.”**

-Honourable Justice Kashim Zannah, Chief Judge of Borno State in his paper titled **“Advancement In Technology: Signpost or Requiem to Legal Practice”**

The efficacy of any judicial system is arguably gauged by “...*its capacity to provide timely and appropriate justice to parties in a dispute...*”. Based on that, the Nigerian Judicial system falls short of the mark.

**The judicial system in Nigeria should benefit from an increased use of technology - for instance, greater access to justice, faster judicial processes and less delays, increased judicial certainty and predictability, amongst other things.**

**Many people have called for technology-based solutions towards those ends; but, by and large, these calls are yet to achieve their desired results.**



**Technology is with us and must be effectively utilized in our dispute resolution processes.**

**Artificial Intelligence (AI) has been at work in law from legal research, E- discovery, case prediction and document automation.**

**Through Artificial Intelligence (AI), lawyers devote more time to more valuable work.**

- ❖ One pertinent area of technology's application to law that has been subject to debate is virtual courts and proceedings.
- ❖ To some legal pundits an amendment of the Constitution is required before the Courts can validly conduct virtual proceedings.
- ❖ Do we need Constitutional Amendment for Virtual or Remote Proceedings to be valid or legal?

## Relevant statistics

- ❖ Nigeria was ranked 106 out of 126 countries. In Civil Justice, Nigeria is ranked 79 out of 126 and in Criminal Justice 76 out of 126.

**World Justice Project (WJP)  
Rule of Law Index;**

- ❖ In Nigeria Continuation of cases of 51,983 awaiting trial inmates have suffered setbacks due to Covid-19 restrictions/lockdown and 70% of all inmates are awaiting trial.

**Nigerian Correctional Service  
(NCS);**

- ❖ SINGAPORE conducted over 219 virtual trials in 2 months alone.



Pending cases as at March 2020:

- F.C.T High Court: 30,582;
- Federal High Courts: over 200,000;
- High Courts of States: 155,757.

Appeal as at the end of the 2018/2019

- Supreme Court: 1,874 cases;
- Court of Appeal: 9,497.

All these cases have at least four interlocutory applications bringing the total number of possibly pending applications to **1,590,840**.

- ❖ There are 16 divisions of the Court of Appeal to serve 36 states of the Federation.
- ❖ Appeals to only one Supreme Court located in the Federal Capital Territory, Abuja.

## Constitutionality of the use of technology in court proceedings:

Let me confess my bias....

- ❑ I am of the firm view that an amendment of the Constitution is not required and I will state my reasons for same.
- ❑ Firstly, it is imperative we understand what a Constitution is and what it should ordinarily contain. In this regard I will rely on the decision in the case of **F.C.D.A. v. Ezinkwo (2007) ALL FWLR (Pt. 393) 95 at 115, paras. C - D** it was held that:

**" The constitution being the organic law of the country and the *fons et origo* from which all other laws derive their validity...no part of it can be described to be adjectival or procedural law...The Constitution is a substantive law."**

- ❖ **Constitutions of Kenya, Canada, India and the United States do not provide for remote or virtual proceedings yet court proceedings are being conducted virtually or remotely in those countries on a daily basis.**
- ❖ **Nigeria cannot be different.**

- ❖ Understood from the standpoint that the Constitution cannot deal with matters of procedure, the next question to then ask is whether there is any provision of the 1999 Constitution (as Amended) that prohibits virtual hearing.
- ❖ My simple answer is that no provision exists in the Constitution prohibiting virtual or remote hearing.

# Constitutional Requirement of Hearing in public:

Section 36 (3) of the 1999 Constitution:

“the proceedings of a court or proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public”

Section 36(4) (a) of the 1999 Constitution provides in respect of criminal proceedings as follows:

“Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. Provided that -

(a) A court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice.”

❑ No reference to a room, building or place designated as court in the constitution.

**“Is the Court a place or service”**

**- Professor Richard Suskind**

What is not prohibited is permitted. See: ANYAEBOSI VS. R.T. BRISCOE LTD. (1987) 3 NWLR (Pt. 59) 108, the apex court, aptly held, inter alia thus:

"It is important to state that a computerized account .... does not fall into the category of evidence absolutely inadmissible by law. In my opinion, it falls within the category of evidence admissible..."

- ❑ Sections 236, 248, 254, 259, 264, 269, 274, 279 and 284 of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended) empowers the various Heads of Court to make rules on practice and procedure in their respective courts.
  
- ❑ Why then should we amend the Constitution again and infuse procedural issues into same?

## What does hearing in public entail?

- Public, used in an adjectival sense according to the Cambridge Dictionary online is:

“Relating to or involving people in general, rather than being limited to a particular group of people.”

Kosebinu & ors v Alimi (2005)  
LPELR-11442(CA), per  
Muhammad JCA opined thus:

“A place qualifies under S.36 (3) of the 1999 constitution to be called “public” ... if it is outrightly accessible and not so accessible on the basis of the “permission” or “consent” of the judge.”

In **NAB LTD V. BARRI ENG. NIG. LTD.**, per Belgore JSC reasoned thus:

**"Hearing in public entails a situation where the public is not barred."**

➤ See also **Edibo v the State** where it was opined that:

**"...a judge's chambers, cannot and will never be, a public place or an "open" and unrestricted place."**

# Need for purposeful interpretation of the Constitution

- ❑ By the provision of section 36 (3) and (4) of the 1999 Constitution, all that is required is purposive interpretation and not constitutional amendment.
- ❑ Lord Denning M.R in the case of **Nortman v Barnet Council** commended the purposive approach of interpreting statutes to all jurist as follows:

**“It is no longer necessary for the judges to wring their hands and say: “there is nothing we can do about it”. Whenever the strict interpretation of a statute gives rise to an absurd and unjust situation, the judges can and should use their good sense to remedy it – by reading words in, if necessary - so as to do what parliament would have done, had they had the situation in mind”.**

See: SUPREME COURT OF INDIA IN Meters and Instruments v. Kanchan Mehta, Criminal Appeal No.1731 of 2017:

“The use of modern technology needs to be considered not only for paperless courts but also to reduce overcrowding of courts. There is need to categorize cases which can be concluded “online” without physical presence of the parties where seriously disputed questions are not required to be adjudicated like traffic challans.”

SEE: D.Y. Chandrachud, J of the Indian Supreme Court IN the case of Santhini v. Vijaya Venketesh (2018) 1 SCC 560:

“There is no reason for court which sets precedent for the nation to exclude the application of technology to facilitate the judicial process. Imposing an unwavering requirement of personal and physical presence (and exclusion of facilitative technological tools such as videoconferencing) will result in a denial of justice.”

In the Canadian case of **Carleton Condominium Corporation No. 476 v. Wong, 2020 ONCA 244**, one of the parties requested for an adjournment to allow for an **in-court oral hearing**, the Court of Appeal for Ontario in refusing the request and giving directive for virtual proceedings held as follows:

**“He expressed a preference for taking the panel through the arguments during an in-court oral hearing at a future date. That preference is understandable, but it is not in the interests of justice. Moreover, it is not in the interests of justice to overburden the court by adjourning matters that can be dealt with fairly, as scheduled. The backlog that will be created by cases that must be adjourned to protect the public and ensure fair hearings will be imposing and it should not be unnecessarily aggravated.”**

In **Alhaji Ibrahim Hassan Dankwambo & Anor v Jafar Abubakar & Ors LER (2015) SC.732/2015**, per Okoro, JSC held that;

“there is nowhere in the legal practitioners act which says that the names enrolled in the roll of legal practitioners cannot be abbreviated or initialed. It is a cardinal principle of law that what is not expressly forbidden, is permitted.”

See the decision of the Supreme Court in the case of **Attorney-General of Bendel State V. Attorney-General of the Federation (1981) 10 SC. 1**; where *Obaseki JSC* emphasized that:

“**words of the constitution are therefore not to be read with stultifying narrowness**”

In the case of **F.R.N V FANI-KAYODE (2010) 14 NWLR (pt.1214) 481 at 503, paras. F-G** their Law Lords opined that:

**“While judges must refrain from attempting to make laws from the bench, they must not shy away from adopting a proactive approach to the interpretation of the law. Judicial officers must not place on themselves, disabilities not imposed by law”**

In the case of **THEOPHILUS V FRN (2012) LPELR-9846** their Law Lords held that:

**“the basic canon of interpretation or construction of statutory provisions remains that what is not expressly prohibited by a statute is impliedly permitted...it is not within the court's interpretative jurisdiction or powers to construe a statute to mean what it does not mean, nor to construe it not to mean what it means...”**

All that is now required is for the Appellate Courts in Nigeria to adopt a purposive interpretation of the Constitution that will take into account the current realities and the fact that by the tenor of the provisions of section **36(3) of the 1999 Constitution (as Amended)** public has not been restricted to the courtroom neither has virtual proceedings been prohibited.

## CONCLUSION:

The Supreme Court of Canada in the case of **Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corporation**, its first virtual hearing stated thus:

**"We are adapting, but nothing is perfect the first time. Just remember that we are here for your arguments, not the angle of your camera or your facility with the mute button. We will get through this hearing, just as we will get through this pandemic."**

**Justice Madan Loukor** (A Retired Justice of the Supreme Court of India and currently a Justice of the Supreme Court of Fiji) opined that:

**“Harnessing technology for the benefit of litigants - seekers of justice - is of utmost importance and this is eminently achievable through visionary leadership.”**

# Our new normal



**Thank you**