

E- PATH TO EFFECTIVE JUSTICE DELIVERY: THE NIGERIAN COURTS IN PERSPECTIVE

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ABSTRACT

The need to improve the effectiveness and efficiency of the judicial system in Nigeria has necessitated the use of modern information and communication technology (ICT). The conventional method of justice delivery in Nigeria is marred with avoidable delays in the dispensation of justice and lack of transparency.

However, the constraints of conventional methods of judicial system in Nigeria can only be solved by embracing the electronic justice system. Hence, ICT should be employed in conducting most of the activities in Nigerian Courts, considering its successful adoption and use in some other jurisdictions.

This article therefore, aims at examining in extensio a way out from the conventional methods of justice delivery in the area of e-filing of court processes e.g. originating processes, Motions, addresses, briefs and other processes; e-recording of court proceedings; e-archives (to facilitate retrieval of judgments, rulings, etc); and e-probate etc.

In doing so, the paper will focus on towing the path of electronic ways in enhancing effective justice delivery in the Nigerian Courts as an antidote to the delays being experienced in the service delivery associated with the conventional method. To achieve this, reliance has been placed on secondary source, emanating from books, case laws, articles in learned journals, conference papers and other relevant materials.

This paper will enlighten Lawyers, Judges, Litigants and other stakeholders in the justice sector on the need to embrace E-justice delivery with the resultant effect of enhancing the effectiveness and efficiency of the judiciary as an arm of the government in Nigeria.

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I. INTRODUCTION

The world as a whole, Nigeria inclusive, is a dynamic one and, as the world moves on, it changes shape and perspective. Where the situation is such that every other thing gets sharpened by the dynamism of the society, the courts and its arbiters ought not to be left behind even if they are not at the forefront of the movement for change. A law that does not change with the society which it was meant to regulate becomes relevant only for the people that lived in yesteryears and not the present day people, thereby leaving people in the present completely without a law¹.

The increasing nature and advancement of information and communication technology (ICT) due to technological innovations unfolds a new opportunity to significantly improve justice delivery, thereby proffering solutions to the nagging issue of delay in justice delivery in the Nigerian courts which is associated with the conventional method. Undoubtedly, the use of ICT will enhance rapidity, accessibility, accountability and transparency, with the resultant effect of helping the judiciary to provide adequate and quality services.

The availability of web services, the possibility of consulting on-line legislation and case law, the use of electronic filing, the electronic exchange of legal documents, are only some examples that are spurring the judicial administration around the world to rethink their current functions and activities. ICT can be used to enhance efficiency, access, timeliness, transparency and accountability, helping the judiciary to provide adequate services. New possibilities are emerging for the integration and automation of court procedures and practices. In addition, the use of the internet can offer the chance to open the judiciary to the public, providing both general and specific information on its activities, thereby also increasing its legitimacy².

Considering the importance and nature of the judiciary as an arm of the government, due process, impartiality and independence should be carefully taken into account.³ The adoption of electronic means to aid justice delivery cuts across e-filing, e-probate, e-archives, e-recording and so on. E-justice system will enhance minimum use of paper from the moment a case is filed until its disposal. It will make information to be captured and passed on digitally, data exchange will not be fragmented and case histories will be completed and ready on demand. With e-justice system, case management will be automated, correspondences will be exchanged electronically, payments of fees will be made through dedicated websites and forms that simplify and

streamline court proceedings will be available to court users online⁴. Following the electronic path will also reduce storage space and facilitate easier archiving of documents.

It is important to note that in Nigeria, the adoption of e-justice has not gained much prominence. An attempt was made in 2013 by Lagos state to introduce same, but not much has been done in respect of it. However, the adoption of electronic justice in Nigeria presents its challenges; this is due to the fact that the infrastructures and measures that will facilitate its smooth usage are not substantially available. Issues like epileptic electricity power supply, lack of IT skills, virus/hackers etc are part of the constraints to electronic justice in Nigeria.

II. CONVENTIONAL METHOD OF JUSTICE DELIVERY IN NIGERIAN COURTS

It is pertinent to state that the judicial proceeding starts long before a case reaches the courtroom. The administrative personnel of the courts file and keep registers and documents in compliance with codes of procedure, laws and regulations. For example, a civil action is commenced when a plaintiff (or a plaintiff's lawyer) files a writ of summons or a plaint with the clerk of court in any manner prescribed by law, while a criminal cause is commenced by preferring a charge or filing an information, as the case may be. Series of actions are linked to such procedures, such as the collection and formal control of the filed documents by the clerk, the documentation at the time of collection, the registration on a court register of the event and the issuance of a receipt. All these actions require time and resources.⁵

Parties sometimes may be dissatisfied with decision(s) reached by the court in the course or at the end of the proceeding and consequently decide to go on appeal. To start with, such party is expected to file a notice of appeal within the time prescribed by the rules, after which the record of appeal is expected to be compiled and transmitted to the appellate court. Such appeal would not be deemed to be properly before the appellate court until the record of appeal has been properly transmitted. This position has been restated through a plethora of decided cases⁶. It is to be noted that the conventional method of justice delivery makes it practically difficult to compile such record within the stipulated time⁷. For instance, a valid record of appeal is expected to contain the judgment of the trial court which may not be available within time as a result of administrative lapses.

Also, by conventional method, a litigant may wish to apply for a copy of court proceedings, rulings or judgment; the usual method is to apply to the court through the court's Registrar. Notwithstanding the purpose for which such document is needed, the applicant will have to wait for such to be prepared (typed, proofread and re-typed) having paid the necessary fees. This unfortunate scenario and unwarranted delay has been the order of the day since time immemorial.

In relation to probate, an applicant/petitioner for the grant of probate or letter of administration of the estate of a deceased person will apply to the Probate Registrar at the High court. Such an applicant will have to personally complete certain forms manually and return same to the probate Registry. These forms are: application for grant of probate/letter of administration, inventory, schedule of debts due by the deceased and schedule of funeral expenses, oath for executors/administrators, bank certificate and affidavit of freehold/leasehold property left by the deceased. After the forms are returned, the probate registrar is required to calculate and assess the estate duty payable on the real and personal properties of the deceased. Whatever sums arrived at after calculation and assessment will be paid by the legal representatives of the deceased before probate/letter of administration can be granted⁸. The procedure does not end upon completion and return of the said form to the probate registry. For instance, where the deceased has bank account(s), the applicant will have to come back to the probate registry to personally collect a letter for onward delivery to the bank to confirm the status of the said account(s). All these processes are cumbersome and time consuming.

III. CONSTRAINTS OF CONVENTIONAL METHOD OF JUSTICE DELIVERY IN NIGERIA

However, the conventional method of justice delivery in Nigerian courts is cumbersome and time consuming. It increases the use of papers, time spent and cost of service of processes. This is because; all the court processes are filed and served on papers. A litigant or lawyer may be precluded from filing his case where court personnel in charge are not available. The cause lists and other register books of the court are also placed in the clerk's offices and just one office worker at a time can work with it. The followings are some of the constraints of the conventional method:

- i. Difficulty of Filing Court Processes:** It is not a gain saying that court's officials in some courts have made it a tradition not to allow filing of court processes beyond 2pm. Court's Officials have made a habit of disallowing litigants access to the registry to file processes once it is 2pm, a convention not provided for in the rules of Court. The implication is that filing of processes becomes impossible even where the litigants come from a far distance, thereby frustrating many cases.
- ii. Inadequate Working Tools:** Judicial Officers still write in long hands. They have not kept pace with developed countries of the world which make use of electronic equipment to record court proceedings. Since writing in long hands is slow and tedious, it in turn slows down the administration of justice⁹.
- iii. Inadequate Manpower:** As a result of cumbersome method in conducting activities in the Nigerian courts, the number of judicial officers to man the court does not match the large numbers of cases before them. The problem here in the actual sense is not the problem of manpower, but the system adopted, hence, the need for towing the electronic path.
- iv. Insecurity of Court Documents:** Most court documents are kept manually and as a result, they are not well secured. A fire incident can destroy all the documents and there would not be any back up for such. It is also easier for anybody (Court's Staff inclusive) to tamper with some vital documents and such can be fatal to the smooth administration of justice. Although, some judges now adopt the system of having a complementary file wherein extra court processes are being kept in the event of loss of the original file, such additional files are not safe because they are still kept manually in the same court premises. In addition, there are cases of loss of old case files which makes retrieval of judgments or proceedings difficult after some years.
- v. Lack of Transparency:** The conventional method does not give room for transparency, because, only the trial judge, litigants and counsel have access to

the case file. Interested parties may be denied access. More also, it is easier for court documents to be tampered with, for example, where a counsel files a defective process and the other counsel had filed an objection to such process upon being served, it is possible and even common nowadays for the counsel who filed such defective process to withdraw such from the court's file and exchange same with a proper process with the connivance of the court's clerk without the knowledge of the judge and the other counsel who will be taken by surprise whenever he is to move such objection.

It is important to note that, the constraints of conventional method are numerous, there are also issues of inadequate and dilapidated court rooms, inadequate funding, poor condition of service¹⁰, among others, but the above explained constraints tend to pose more problems to the administration of justice.

IV. BENEFITS OF ELECTRONIC SYSTEM FOR THE COURTS

- i. **Transparency:** Adopting electronic system will foster transparency in the justice delivery, first by making the decided cases available and accessible to the public. This allows lawyers and court users to better understand case laws and increases legal predictability. It also helps in putting judges on their toes and more accountable because anyone can comment on and assess the quality of their decisions. In the United States of America, case information including docket sheets and filed documents, are provided online for viewing and downloading by attorneys and the public at any time from locations other than the court house¹¹. Although, something similar is in operation in Nigeria, as there exist some private ICT companies (e.g. Law pavilion and Legalpedia) whose primary business is to make judgments delivered by superior courts available online immediately upon delivery. In addition, it is not an overstatement to say that corruption has crept into every facet of the Nigerian system and the Nigerian judiciary is not an exception. Some businesses, if not all, are becoming increasingly difficult to transact in court without first having to give court officers some money; electronic system will help in reducing corruption where the conventional method is

streamlined and lawyers and parties are less required to file documents in person, there will be less influx or traffic in the court's registry, thereby reducing opportunity for bribery. Of no less importance is the fact that the issue of sharp practices earlier discussed will be reduced if not totally eradicated.

- ii. **Security of Court Documents:** The adoption of electronic method will enhance adequate security of court documents, i.e. processes, record of court proceedings, rulings, judgments and other vital documents. Risks such as loss of documents, cases of missing files and archives destruction can be significantly reduced or eliminated¹². The use of electronic archives will improve archives security and confidentiality. This is because there will be a central database for the storage of the documents and only authorized persons can access them.
- iii. **Easier and Faster Access to Information:** Adopting electronic path will aid easier and faster access to information. Because of the nature of the electronic method, information can be accessed 24/7 without necessarily visiting the court in person. With the nature of electronic method, one can access any information from anywhere and anytime. Electronic retrieval of archives will be easier. Litigants and counsels will be able to apply for court's judgments, rulings and court proceedings notwithstanding the long age of the case.
- iv. **Cost Savings:** Electronic method guarantees cost reduction in terms of money spent, time and energy used, etc. For instance, transportation costs will reduce drastically; it will enhance minimum use of paper from the moment a case is filed until its disposal; lesser time will be used in conducting activities in court because most works are done online. Lawyers will no longer have to dissipate energy in going to courts and as well as exchanging processes manually.
- v. **Space Savings:** Embracing the electronic path will enhance space saving, by eliminating expensive and expansive storage spaces. All documents and archives will be electronically stored and the government will not have to build magnificent storage facilities for court's archives. Even by comparison, 150 gigabytes hardware has storage capacity equivalent to 70 filing cabinets¹³. Most Nigerian courts, especially lower courts now have to keep some of their files in

cabinets outside the court rooms as a result of lack of space, hence the need to go the electronic way.

- vi. **Quick Dispensation of Justice:** Undoubtedly, there are some inherent delays associated with the conventional method(s) which ordinarily are avoidable where electronic path is adopted. For instance, administrative bureaucracy; loss of documents (occasioned by fire incidence and other unforeseen circumstances) in the court files which entails the court having to improvise another file. While all these are going on, the cases are stalled and the litigants have no option than to wait until this has been sorted out irrespective of the urgency of their cases. Simply put, electronic method will serve as panacea for the above stated hitches in the dispensation of justice.

The quick dispensation of justice is not limited to litigation alone. Even in the area of probate, the use of electronic probate will enhance quick grant of probate/letter of administration. The system will enable applicants to fill and submit necessary forms electronically and the probate registry will be able to decide on its grant or otherwise.

However, notwithstanding the above, the workability of electronic system is being faced with several constraints some of which will be discussed *infra*. It must be stated that, the issue with Nigeria as a nation, is not because it is a developing state, but because of its persistent failure to address current pressing issues.

According to Vilquin and Bosio¹⁴, countries like Rwanda and Tanzania have made laudable efforts in implementing electronic system in their courts. These two countries with income per capital below \$1,000 have also started computerizing their courts. Tanzania's project received funds from several donors and provided the judiciary with modern information technology, including computers and digital court recording equipments and training for judges and staff. Rwanda's strategic plan of the Supreme Court has recruited new court officers well trained in the use of information technology. Thanks to donor funds, the country now has an electronic filing system, electronic records management system and legal information portal.

Developed countries like South Korea, U.S.A., Australia etc, are far ahead in the realization of electronic system. Korea for example, was a pioneer in using electronic features to streamline court processes through the launching of electronic case management in the mid 1980's. However, a master plan for creating electronic courts was conceived through the introduction of a web based system in 2010, which allowed external users to search the data base of cases. The electronic filing of cases ensures better recording and faster processing, which enables electronic submission, registration, service notification and access to court's documents. In order to implement this system, Korea had to modernize its information technology infrastructure and amend laws and regulations to shift to paperless approaches. The system has allowed electronic filing of civil, commercial, administrative and family affairs cases. It has also enabled some judges in Korea to adjudicate up to 3,000 cases a year, manage up to 400 a month and hear up to 100 pleas a month¹⁵.

To further streamline procedures, Korea's electronic court system also facilitates payment of all submission fees electronically using credit cards or wire transfers at the time of filing. In addition, users are notified by email or text message of any submission of additional documents by the opposing party. And after the case allocation system assigns cases, the designated judge and the attorneys can view all their cases online, including PDFs of all documents filed in a given law suit¹⁶.

V. CONSTRAINTS OF ELECTRONIC SYSTEM

i. Epileptic Electricity Power Supply

It is not a gain saying that the electricity power supply in Nigeria is an apology. This has affected almost all facets of Nigerian economy, the courts inclusive. It is worthy to note that most sectors in Nigeria depend on electricity to conduct their businesses and the poor state of electricity has led to untold reduction in the outputs of these sectors. The epileptic nature of power supply in Nigeria will affect the success of the adoption of electronic method in Nigerian courts, since most ICT infrastructures depend on electricity to function.

ii. Lack of IT Skills

It is not a gain saying that most judges, lawyers, courts staff, staff of law offices and so on lack IT skills; this is as a result of the fact that most of them did not have the opportunity to be trained in ICT while in their various tertiary institutions. The lackadaisical attitude of some lawyers, Judges and court's officers in ICT has not helped matters, as some of them have willingly refused to acquire necessary ICT skills. All these are threats to a full realization of the electronic system.

iii. Network Dysfunction

This is also a major threat to the effectiveness of electronic method. The telecommunication industries in Nigeria are the major internet service providers. It is obvious that their services most times are inefficient. Electronic method will depend on good internet network to function effectively and where the service provider cannot guarantee same, then, the electronic method will not be effective.

The situation of the internet network in Nigeria is such that even in the urbanized cities, one may not be able to get connected to the internet as a result of network fluctuation. Sad enough, there are still areas that one may not even be able to sight network (even in the urban area). Invariably, where a subscriber is unable to connect to the internet, he will be denied access to electronic method.

iv. Virus/Hackers

There are more than fifty thousand different types of computer viruses, internet malicious program and Trojans. Software like Trojan horses can easily take up password on the web browser or any cached information on operating system¹⁷. These viruses can be introduced into the website, with no exception to the court's website, with the intention to destroy vital information stored on the site.

v. Inadequate Relevant Legal & Regulatory Framework

The relevant laws and rules of court in Nigeria are not fashioned in a way to provide for electronic system. Most of the extant laws were made several years back and they do not envisage ICT innovations. Most of the various rules of the courts which are

meant to regulate proceedings in courts are not better either. However, quite recently, the Section 84 of the Amended Evidence Act, 2011 has now recognized computer generated documents. Unfortunately, by the same said Act the requirement for the admissibility of such documents is quite cumbersome, and this in way still makes for a set a back on the issue of electronic evidence.

In addition is a more recent development in the Court of Appeal (Fast Track) Practice Directions 2014. On electronic service and signatures, Paragraph 14 of the said Practice Directions provides thus:

- (1) A requirement that a document should be signed is satisfied if the signature is printed by computer or other mechanical means.*
- (2) A document served by electronic means is deemed to have been signed by the person who owns or subscribes to the electronic source account if its signature appears on the document or its cover message as the sender.*
- (3) Examples of electronic source accounts are email addresses and fax numbers.*

While the provision in the new Practice Directions is commendable, a lot more has to be done in terms of adoption and adaptations by the justice sector in the use of the electronic system. And until laws are made in this regard, the applicability of the electronic method will remain a mirage.

- vi. Inadequate Funding:** There is no disputing the fact that resources at the disposal of the government are limited. The Judiciary as the third arm of government competes with the other two arms, namely, Legislative and Executive in relation to provision of funds to execute their project. Over the years, the judiciary has not been given the necessary priority by successive governments vis a vis funding¹⁸. This poses a serious challenge to the realization of the electronic method, because the implementation of ICT will involve huge funds for procurement of infrastructures, training and re-training of judicial staff. There has been serious agitation for judicial autonomy in recent times and one of the arguments for this protest is due to poor

funding of the third arm of government. It is expected that judicial autonomy will guarantee its adequate funding.

VI. CONCLUSION AND RECOMMENDATION

This paper is by no means conclusive of the measures required to bring justice delivery in Nigerian courts in tandem with the present reality, especially as it relates to electronic justice delivery vide the adoption of ICT. It is important to note that attempts have been made to show the constraints inherent in the conventional methods of justice delivery, which cut across issues like difficulty of filing of courts processes, inadequate working tools, insecurity of court's documents and the like. All these impediments lead to unnecessary delays in the administration of justice.

Although, Nigeria is a developing country and as such, is not yet advanced in ICT innovations, but such may not prevent the adoption of electronic method of justice delivery. The electronic method will bring about transparency, security of court's documents, quick dispensation of justice, to mention but a few.

However, the successful implementation and adoption of electronic method may be challenged by epileptic electricity supply, network dysfunction, lack of IT skills, absence of relevant legal framework and other defects as earlier stated.

Therefore, the following are hereby recommended to facilitate the successful implementation and adoption of electronic method:

- i. One of the crucial ways to improve the economy of any nation is provision of stable electricity supply. Virtually all the sectors, without exempting the judiciary, need electricity to perform effectively. Therefore, government should have the political will to provide stable electricity supply.
- ii. Acquisition of IT skills by Lawyers, Judges, Litigants, Court Officers (i.e. Clerks, Registrars) and other stakeholders must be made mandatory. In doing this, it is essential to incorporate acquisition of ICT into various programmes organized both by the Nigerian Bar and the bench. This is achievable, for instance, through

the inclusion of same as one of the courses to be taken during the mandatory continuing legal education.

- iii. The issue of network dysfunction should be looked into, first by making the service providers more effective. The regulatory body, in particular the Nigerian Communications Commission (NCC) is required to monitor the activities of the service providers by putting up a robust mechanism to keep them on their toes. It is also not impossible for the Government to make provision of internet service a basic amenity, as this will make embracing electronic methods easier and attractive to citizenry. Countries like India, Malaysia and United Kingdom (to mention but a few) have made remarkable success in this regard.
- iv. Security in form of encryption keys should be provided to restrict access to courts' website. Powerful antivirus software should be put in place to prevent virus attack.
- v. There is need for amendment of various laws and courts' rules to accommodate electronic method in conducting activities in courts. A lot can be learnt from Korea and other developed countries who have fully embraced electronic method.
- vi. The electronic system should also be user friendly, that is, it should not be cumbersome to operate. This can be done by putting in place online help centers that will help in providing answers to frequently asked questions.
- vii. Electronic method should be less expensive, by way of financial incentives which will attract people to adopt the system. In Korea, court's fees were cut down by 10% for lawyers who use electronic filing¹⁹. Although, Lawyers and court's officers who are fond of unwholesome practices and benefiting from vices associated with the conventional method may be reluctant in towing this path.
- viii. To prevent abuse of the method, the users should be provided with accreditation number having registered online and obtained personal identification number (PIN) which should be renewable upon payment of annual practicing fee, as prescribed by the Nigerian Bar Association and/or relevant regulatory bodies.

This will lay to rest the argument on whether or not court's archives can be accessible by every tom and harry.

- ix. It is also recommended that the judiciary should be well funded like other arms of government (i.e. Executive and Legislature). Better still, the issue of agitation for autonomy of the judiciary should be well considered, perhaps, such independence will guarantee better funding with the resultant effect of quality delivery of services by the judiciary in that, it will, among other benefits, facilitate the smooth adoption and implementation of electronic method.

Notes and References

- ¹ Yusuf O.A, SAN. (2010). The Nigerian Evidence Act & Electronically –Generated Evidence: A Need to Fast Track The System. *Contemporary Issues in the Nigerian legal Landscape*. A Compendium in Honour of Prince Lateef Fagbemi, SAN. Pp. 66-99
- ² Velicogna, M (June 2007), *Justice Systems and ICT: What can be learned from Europe?* Retrieved from http://www.utrechtlawreview.org/Volume_3issue_1 Pp. 129
- ³ (Velicogna 2007)
- ⁴ Vilquin J & Bosio, E; *Improving court efficiency: the Republic of Korea's e-court experience*. Retrieved from <http://www.doingbusiness.org/~media/GIAWB/Doing%20Business/Documents/Annual-Reports/English/DB14-Chapters/DB14-Improving-court-efficiency.pdf>
- ⁵ (Vilquin and Bosio)
- ⁶ For Example, see the case of **Governor of Zamfara State & 3 Ors v Alh. Suleiman Moh'd Gyalange & 12 Ors (2013) ALL FWLR. (658)821@848, Para F-G**, where the Supreme Court dismissed an appeal for failure to compile and transmit the records. See also **Shodehinde & Ors v The registered Trustees of the Ahmadiyya Movement –in –Islam (2001) FWLR (58) 1065@1073, Paras B-C**.
- ⁷ Absence of court personnel; sometimes the Litigants would have to tip the Court Officials to fast track the work
- ⁸ Fashakin, Y. (2007). Probate and Administration of Estate. In Afolayan A.F. & Okorie, P.C. (Ed.). *Modern Civil Procedure Law*. (Pp529-562) *Dee-Sage Nigeria Ltd*, Lagos Nigeria.
- ⁹ Olopade, O. (2004, August). *Access to Justice- Factors militating Against and Solutions Thereto*. A paper presented at the 18th international conference of the international society for the reform of criminal law-keeping justice system just and accountable: A principled approach in challenging times, at Hotel Omni Mont-Royal, Montreal, Quebec, Canada, from 8-12., <http://www.isrcl.org/papers/2004/2004/Olopade.pdf>
- ¹⁰ Olopade, O. (2004) Pp. 11
- ¹¹ (Vilquin and Bosio) Pp. 69
- ¹² (Vilquin and Bosio) Pp. 68
- ¹³ Mcmillian, Pettijohn and Berg 2012, Cited by Vilquin and Bosio) Pp. 70.
- ¹⁴ (Vilquin and Bosio) Pp. 69
- ¹⁵ (Vilquin and Bosio)
- ¹⁶ (Vilquin and Bosio)Pp. 68
- ¹⁷ Goyal V, *et al*, *Mobile Banking in India: Practices, Challenges and Security Issues*, International Journal of Advanced Trends in Computer Science and Engineering. Volume 1, No.2, May – June 2012, *ISSN No. 2278 -3091*. Retrieved from <http://www.warse.org/ijatcse/info.html>
- ¹⁸ Olopade, O. (2004) Pp.11
- ¹⁹(Vilquin and Bosio), Pp. 67