



A CRITIQUE OF THE PRACTICE DIRECTIONS FOR REMOTE HEARING OF CASES IN THE LAGOS STATE JUDICIARY



4th May 2020

1. As a measure to impede widespread infection in the Covid-19 pandemic a peremptory order was given for the closure of all courts in Nigeria by the Chief Justice of Nigeria. But since it remains essential even in an emergency (perhaps especially so) that the administration of justice continues to guarantee law and order, courts across the world have adopted remote hearings to reduce the impact of movement restrictions imposed as a result of the pandemic.

2. On 21st April 2020, a draft Practice Directions for the remote hearing of cases in the High Court of Lagos State and the State Magistrate Courts was circulated in public media and on the 27th of April 2020, it was signed and set to commence on the 4th of May 2020. This publication is a step in the right direction and signals that the Chief Judge of Lagos State wishes to ensure continued access to Justice and the expeditious disposal of cases especially during a time such as this.

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3. However, we consider that these Practice Directions do not reach the basic standards for fair and efficient Remote Hearings such as have been widely adopted in other countries.

4. Remote hearing is a novel concept in our Judicial system and guidelines will require as much flexibility as possible because conduct of proceedings may vary from case to case. Elaborate provisions will be required to guide the roll out where many participants may not be familiar with technology solutions. This is the basis for this article which will highlight below certain areas of the Practice Directions upon which we believe more light should be shone.

Paragraph 1 of the Practice Direction

5. In paragraph 1 of the Practice Direction, the scope of the cases to which the Practice Direction applies is restrictive. It provides thus;

“...This Practice Direction applies to: new cases where there is urgency; pending cases involving urgent or important and time bound interlocutory applications such as bail applications, Fundamental Human Rights where the applicant is in custody, adoption of addresses, rulings and judgments or any other matter as the Chief Judge may approve.”

6. The scope of the cases to which the Practice Directions apply should not be limited to cases which are urgent or time bound as stated in the preamble.

The scope should include all hearings as the delays which may be occasioned by the lockdown will have far-reaching effects on the justice system if not dealt with and it is necessary, at this time, to think not just of the present but of the future of the administration of justice system in Nigeria. Priority may however be given to cases of urgency.

7. Paragraphs 6 – 13 which provide for Electronic filing of processes and service of Electronic processes are commendable however, there are certain issues which must be considered.

8. In paragraph 7, it provides as follows;

“The Registry will receive documents for filing electronically. All documents to be filed must be scanned or converted to an appropriate PDF format and forwarded to the Registry via designated email address or WhatsApp. Where documents are filed by counsel, each process shall be signed and sealed by such counsel.”

Given that documents may be filed electronically, provision should also be made for the use of Electronic Signatures especially in cases where a party is unable to sign physically.

9. Paragraph 12 provides that Service in paragraph 11 constitutes proper service and goes further in

paragraph 13 to specify how such service may be proved. It provides thus;

" Service of processes shall be proved by filing an affidavit exhibiting a printout from the electronic device used in sending the process and showing the date and time of receipt of same by the other party"

Electronic service is quite different from physical service and though these provisions to some extent cater to this novel form of service, it is necessary to provide elaborate guidelines on where electronic service fails; where service is effected on a platform that has been used by the party in recent times; maintenance of a hyperlink to give parties and the Court access to documents virtually till the case is settled or has ended etc. to ensure that it is being used properly.

10. Paragraphs 17 of the Practice Direction limits the conduct of remote hearings. It provides thus;

"Remote Hearings shall be by Zoom, Skype for business or any other video communication method approved by the Chief Judge."

11. The guidelines need to be more technology neutral. There are numerous available platforms and parties should have an input as possible on the most accessible. In addition, allowance must be made for Remote hearings by different methods be it audio or video communication. Not all cases require video hearings.

12. Also, it is unnecessary for the Chief Judge to approve the mode of each hearing to be conducted by Judges in various courts in respect of various cases. This would cause undue delay.

It should suffice if this approval is granted by the presiding judge on a case-by-case basis. Rather, the method in which the Remote Hearings will be conducted should be as directed by the Court in accordance with the Constitution of the Federal Republic of Nigeria 1999 (as amended), applicable Laws, Rules and this Practice Direction.

13. In paragraph 19, the issue of notice of Remote Hearings is dealt with rather sparingly. It provides as follows;

“Notice of a Remote Hearing shall be stated on the Cause List and the Judiciary website and shall be communicated to the counsel and/or parties by email, WhatsApp or any other electronic means as the court may direct.”

14. It is necessary for guidelines to be put in place in respect of Notice of a remote hearing as it forms an integral part of proceedings. For instance, the content of the Notice especially in cases where the parties are self-represented.

15. The provisions for conduct of remote hearings in paragraphs 20 and 21 are scanty and lack necessary details to guide. Although directions concerning remote hearings may differ in each case, there are basic principles which must apply which have not been provided in respect to proceedings in general. These include provisions on witnesses, processes and documents which have been physically filed in court but cannot be accessed amongst other things.

16. The provisions on recording remote hearings in paragraphs 22, 23 and 24 are not adequate to safeguard proceedings. It is essential that more detail be given as well as notifying the parties and the public that anyone who records without Court’s approval would be held in Contempt of Court.

17. In addition to the sparse provisions for adoption of written addresses in paragraph 25, provisions should be made for the possibility of opting out of oral arguments with the consent of parties. This would also help to reduce the amount of cases that the Judge would have to attend to in a day. This is, especially, as studies show that remote hearings have proven to be more exhausting than physical hearings. As such, it is imperative that the Judges’ conditions are given proper consideration. The guidelines also must provide for an increase in document only hearings and the resolution of most interlocutory processes without oral submission.

18. On the issue of Judgment and Rulings, paragraph 26 of the draft Practice Directions provides thus;

“The Court shall, through the Registry notify Counsel and/or Parties by email or WhatsApp of the date reserved for the delivery of Judgment and/or Ruling.”

19. This is the only provision dealing with Judgement and Rulings, and it is inadequate to guide. In the past parties have wasted much time sitting in court waiting for or listening to judgment in open court. This is a pointless exercise.

Provisions may be made to deliver Judgments/ rulings in summary form i.e. 10- 15 minutes and to make the full judgment or ruling available simultaneously to the parties upon request which would be delivered to their email address and published on the Court's website.

20. Public Access. It is noteworthy that no provisions have been made with regards to public access. Section 36(3) of the Constitution of the Federal Republic of Nigeria 1999 (as Amended) guarantees the public right to access to court proceedings except in some criminal proceedings and so Courts must ensure and accommodate public attendance at court hearings. In order to do this, elaborate provisions must be made with respect to public access by open platforms and full reporting of proceedings.

21. From the foregoing, it is clear that while the Practice Directions would greatly enhance the access to Justice in Nigeria, certain basic principles have not been identified which may affect the smooth running of Remote Hearings.

Accordingly, the following recommendations are being made;

- a. To set up a committee which would include IT professionals to guide the Chief Judge as to how Remote hearings would work and make provisions for it in line with the Rules of Court and enabling laws.
- b. To conduct a more detailed research on the conduct of Remote Hearings and schedule Mock hearings to test its practicality and make findings.
- c. To conduct virtual trainings for the Judges, Clerks with the IT Specialist hired for each court to ensure its effectiveness. Many of these are available free online.
- d. To proceed with remote hearings and perfect the conduct of proceedings along with periodic updates.
- e. To provide periodic information guidelines on various modes of remote hearings using various software on the court's website.



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