

## NOTEWORTHY CHANGES AND INNOVATIONS OF THE COURT OF APPEAL RULES 2021

Introduction:

*The Court of Appeal Rules 2021 (the new Rules) came into effect on 1<sup>st</sup> November 2021, effectively repealing the Court of Appeal Rules 2016. The new Rules have introduced some noteworthy innovations aimed at encouraging international best practices in the operation of the Court of Appeal, ensure the timeous disposal of appeals. The new Rules have 25 Orders which is an upgrade from the preceding 21 Orders contained in the 2016 Rules.*

*Below are some noteworthy innovations introduced by the Rules*

### **ELECTRONIC FILING:**

The new Rules in Order 20 establishes a 24hr Electronic Filing System in the Registry of the Court which shall be functional in all the judicial divisions of the court (**Order 20**).

The establishment of the Electronic Filing System demonstrates the desire of the Court of Appeal to adopt technological innovations that places it at par with its international counterparts as well as transform to a paperless system.

Whilst the new Rules are relatively new with little to no complaints recorded, it is essential that the applicability of the Electronic-Filing System be adopted with caution so as not to make it a herculean task to file processes which can lead to the denial of justice. Further, it is essential to highlight the fact that there are other likely issues that can be associated with this system such as the fact not every legal practitioner is technologically compliant, the internet bandwidth in certain parts of the country where the Court of Appeal is located may make it difficult to upload documents.

It is important to note that pursuant to the provision as contained in Order 3, Rules 10 of the Rules, any process uploaded into the system after 2pm will be deemed to have been filed the next

day. See Order 20 Rule 3.

### **ELECTRONIC SEAL OF THE COURT:**

The new rules prescribe in Order 3 Rule 4 that the Court shall have an electronic seal when required. To get this done, there is going to be a device or impression which would be approved by the President of the Court of Appeal (**PCA**) and bearing inscription, "**The Court of Appeal**" or an electronic version of it that will be used for this purpose.

This also demonstrates the desire of the Court to transform to a digitalized Court, by not making it necessary for there to be handwritten signature on certain documents.

### **RESPONDENTS NOTICE AND ADDRESS FOR SERVICE**

In the new Rules, the Respondent's Notice and address for service shall be filed within **14 days** as against the Court of Appeal Rules of 2016 that prescribed **30 days**. The Respondent is also required to file 10 hard copies and an electronic copy of a Notice of his full and sufficient Address for Service. The requirement of filing 10 copies reduces the number of hard copies to be filed. See Order 2 Rule 4.

### **APPLICATIONS TO COURT**

The New Rules prescribe that all Applications by way of Motion on Notice to the Court shall be accompanied by a Written Address. In the preceding Court of Appeal Rules of 2016, applicants usually filed a Motion with an Affidavit, whilst the Respondent files a Counter-Affidavit if need be and the Court as it deems fit orders parties to file Written Address on such applications. See Order 6, Rule 1 (a).

The new Rules prescribe a five (5) days time limit within which the Respondent is to reply to an application and prescribes 3 days time limit for the applicant to file a reply (if any) to the processes

of the Respondent.

Furthermore, the new Rules prescribe that a Written Address shall not exceed 5 pages and a reply shall not exceed 3 pages.

This is commendable as these provisions has the propensity to aid the timeous dispensation of cases as all the papers are before the court with no need for unnecessary adjournments to hear an application before the Court orders parties to file Written Addresses. Furthermore, whilst the prescription of pages is commendable, although, if it had also prescribed the font size and spacing size, this would have been more helpful.

### **RECORD OF APPEAL**

The Registrar of the lower court shall within **60days** of the filing of Notice of Appeal, prepare the Record of Appeal, encrypt and transmit it electronically to the court through the official electronic mail address of the Registry, provided that 10hard/physical copies of the Record of Appeal shall also be transmitted for the records of the court. See Order 18 Rule 6(1)(b)(I).

### **SESSIONS AND APPEARANCE OF COUNSELS IN COURT.**

The new rules prescribe that a Senior Advocate of Nigeria shall not appear with more than 5 lawyers appearing with him. In an instance where there is more than 1 SAN representing a party, they shall collectively not appear with more than 5 lawyers. Counsels who are not SAN's are not allowed to appear with more than 2 Junior Lawyers.

This is commendable for various reasons, some lawyers come to court with a lot of junior lawyers and deprive those who have cases to be heard from getting sits in the court room. Additionally, bearing in mind the advent of the novel COVID 19, this will help to a considerable extent with social distancing.

### **COURT OF APPEAL ALTERNATIVE DISPUTE RESOLUTION PROGRAMME.**

The new Rules also take sufficient cognizance of ADR Order through the introduction of the Court of Appeal Alternate Dispute Resolution Programme (CAADRP) replacing the Court of Appeal Mediation Programme (CAMP).

Whilst this is commendable, it is arguable that the provisions for ADR are not robust enough as it has only 3 rules compared to the preceding rules of The Court of Appeal Mediation Programme (CAMP) as contained in the preceding rules of Order 16 of the Court of Appeal Rules of 2016.

It is important to note that the time stipulated for filing of briefs shall not begin to run until any ADR proceedings is finalized.

### **CONTROL OF PROCEEDINGS DURING THE PENDENCY OF AN APPEAL**

By the provisions of Order 4 Rule 11 (3) of the new Rules, there is no requirement for the lower Court to make an order for stay of proceedings or adjourn a matter sine die because of the pending appeal on an issue that may not be impacted or to which the appeal entered in the Court of Appeal does not relate to.

This is also commendable as it will reduce undue delays in the dispensation of justice. Furthermore, it will discourage the behavior of counsels that use the filing of frivolous appeal as delay measures in court.

### **CONSEQUENCE OF FAILURE TO FILE BRIEF:**

Order 19 Rule 10 (3) of the new Rules provide that if the Court is satisfied that a Respondent has been duly served with the Appellants brief but fails to file his brief within the time prescribed by the Rules, or within the time extended by the court, the court shall upon being satisfied that the Respondent was served with a hearing notice, hear the appeal without application by the Appellant to hear the appeal on the Appellants brief alone.

### **VIRTUAL HEARING.**

The new rules in Order 21 Rule 1 provide that the Court may conduct its proceedings virtually by means of audio-visual platform. See Order 21r1

By its provisions, the Registrar shall notify parties when the Court adopts virtual hearings for proceedings in an Appeal.

The Justices of the court and counsel appearing in the appeal shall be fully robbed for the virtual hearing as if they are appearing in Court.

Cases for virtual hearing shall be stated in the cause list of the Court by the Registrar and shall be posted on the official website and Notice Board (manual or electronic) of the court and shall be communicated to the parties either by e-mail or any other electronic means as the court may direct.

### **CASE SCHEDULING AND MANAGEMENT SYSTEM.**

The court shall implement a case scheduling and management system (CSMS) that will be functional in all the judicial Divisions of the court for the purpose of efficient and effective management of caseload and case-scheduling. In the implementation of the CSMS, the court may, at any time, of its own initiative or on notice to the parties, review the progress of an appeal and give directions to facilitate the efficient and timely determination of such appeal.

### **CONCLUSION**

Based on the foregoing, it is clear that the new Rules are aimed at speedy dispensation of appeals, desirous of incorporating technological innovations and cater for the current reality occasioned by the novel COVID-19. The new Rules are worthy of commendation, however, implementation of its provisions of sacrosanct importance in attaining its objectives.

ALBERT  
AKPOMUD  
SAN & PARTNERS

