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Towards A Revolutionised High Court Civil Procedure Rules: Delta State Of Nigeria In Perspective

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Abstract
This article is an investigation of the question whether the innovations introduced by the new High Court Rules of Delta State are meeting the objectives for which they were made or whether the expectations of the rule makers are being met. The article is principally intended to do a survey of certain provisions of the Delta State High Court (Civil Procedure) Rules with a view to critically scrutinising certain applications of the rules which are generating issues and which have posed challenges to the bar and the bench. The article also examines the impact the new Administration of the Civil Justice Law of Delta State 2022 would have on the rules and civil procedure in the High Court of Delta State of Nigeria.

Keywords: Civil procedure, High Court, pretrial conference, default fees,

One of the most conservative areas of law in Nigeria until about two decades ago is adjectival law. Procedural law, unlike other areas of law [1] has only started enjoying the benefit of reform and innovations in the early 2000.[2] At the moment, in Nigeria, civil procedure rules have generally undergone and are still undergoing review[3] in many states[4] and in several courts in

[1] Examples are some substantive laws are electoral laws, Constitutional law, etc. The Criminal Procedure Act and the Criminal Procedure Code were first enacted in 1945 and 1960 respectively but have been repealed by the Administration of Criminal Justice Act 2015. The Evidence Act 1945 was applied throughout Nigeria in spite of the Challenges which it presented until same was repealed only in 2011 by a new Evidence Act. The Uniform High Court Civil Procedure Rules of 1988 which was adopted by several States in Nigeria including the Defunct Bendel State of Nigeria also continued to apply to various states until Lagos State came up with the radical change now popularly referred to as *the front loading system.* Since then, the texture of civil litigation has changed radically in Nigeria.

[2] Since the introduction of the front loading system by Lagos State, several states in Nigeria have felt the need to review their High Court Civil Procedure Rules and have eventually adopted the front-loading system of rules.

[3] As rightly noted 'many of the concept of the new Rules were adopted from improvised rules of other States all of which adopted significant portions of the 1999 review of the Civil Procedure Rules of England and Wales recommended by the Woolf's Committee. See C A Ajuyah, 'The Delta State High Court (Civil Procedure) Rules 2009-The Gains and Challenges' being a text of paper presented at the Nigerian Bar Association, Warri Branch Law Week, 2010, 2. According to Nweze, 'The evolution of what is now known as the regime of new rules in Nigeria dates back to 2004. Following the Woolf Reforms in England and Wales, the prototype enactment which incorporated the major features of the said reforms first emerged in Lagos State in 2004. With time, a number of States in Nigeria evolved opting for innovations which if diligently pursued would result in the restoration of the confidence of the court users. C C Nweze: '*Redefining Advocacy in Contemporary Legal Practice: A Judicial Perspective*' First Chike Chigbue Memorial Lecture (NIALS, Lagos, 2009) 6.

[4] The reform initiatives were begun by Lagos State. After series of stakeholders workshops aimed at addressing the problems, the Lagos State Government came up with the 2004 Civil Procedure Rules. See O L Olimi, 'An Overview of the 2004 Abuja and Lagos Civil Procedure Rule'

Nigeria. The prominent objective behind these reforms is the need for quick delivery of justice and expeditious disposal of cases in an atmosphere that guarantees fairness and equality of right of all parties.[5] As rightly observed by the Court of Appeal in *Diamond Bank Plc. v Alhaji Usman Yahaya & Anor*[6] on the front-loading system, while pronouncing on the Benue State High Court Rules:

> The High Court of Benue State (Civil Procedure) Rules 2007 illustrate the new approach to civil procedure that has been embraced throughout the length and breadth of this country in recent times. The Rules introduce *inter alia,* the concept of front-loading and pre-trial conference for the purpose of achieving a just, efficient and speedy dispensation of justice.

The Court of Appeal in *Olaniyan v. Oyewole*[7] also observed that in "introducing the front -loading system, that is, the upfront filing of all documents to be used at the trial, the intention[s] of the maker of the rules of court is to ensure that only serious and committed litigants with prima *facie* good cases and witnesses to back up their claims would come to court and fewer lame duck claims would find their way into court." The motives of the rule makers appear to be the same everywhere in Nigeria. This is the spirit that led to the review and the eventual introduction of the front- loading system in most States of Nigeria. The High Court Rules of Delta State is the major focus of the articles. These Rules were introduced on the 31st day December 2009 by the then Chief Judge of Delta State (Hon. Justice R.P.I. Bozimo (Mrs.) Rtd in the exercise of the power conferred on her by the Constitution[8] and section 53 of the High Court Law.[9]

Having applied these rules for 13 years, it has become necessary, if not imperative,[10] to assess whether the rules have met the expectations of the rule makers or meeting the objectives for which they were made. This paper therefore is principally intended to scrutinise certain provisions of the Delta State High Court (Civil Procedure) Rules with a view to critically examine certain areas of the Rules which have continued to generate issues and which have posed challenges to the bar and the bench. This work also assesses the gains of the new Administration of Civil Justice Bill of Delta State 2022.

The application of the High Court Rules in Delta Sate (and in some other states) has generated no fewer issues, most of which being interpretative, so much so that certain aspects of the Rules have continued to be applied differently by Judges within the same State, each Judge holding his or her opinion as to what he or she feels is the intendment of the Rule makers on the issue. The areas of the Rules which have led themselves to divergent judicial opinions especially at the early stage of the application of the rules include issues whether written statement on oaths of witnesses should be tendered in evidence or not; whether every application, contentious or not, must be supported by a written address; whether document can be tendered during pre-trial conference; whether pre-trial conference can be waived; whether a party in default of taking a step under the Rules is liable to pay ₦100 additional fee to the Court once and for all or for every day of the default, etc. Some of these legal controversies identified above are largely based on

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[5] See order1 rule 2 of the Delta State High Court (Civil Procedure) Rules, 2009 (hereafter referred to as Delta Rules).

[6] *(2011) LPELR-4036(CA)*

[7] (2008) 5 NWLR (Pt. 1079) 114, 138, paras D-F, Per Ogunwumiju, JCA

[8] See sections 274 and 315 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (hereafter, "the Constitution").

[9] Cap 65 Vol. III Laws of the defunct Bendel State of Nigeria, 1979 as made applicable to Delta State by virtue of s 11 of State (Creation and Transitional Provisions) Decree No. 37 of 1991. It is not immediately clear while his lordship acted under the High Court Laws of Bendel State in 2009 when there was already the Laws of Delta Staten in 2006.

[10]Reason being that some jurisdictions have reviewed their new rules almost shortly after they were introduced. Lagos State, for instance, introduced the new rules in 2004 and reviewed the same in 2012.

the personal practical experience of the writers. Besides, a number of the issues have not found their way to the appellate court for a superior decision. These legal contentions shall now be discussed within the limit of this paper.

The Practice of Tendering Written Depositions on Oath.

First and foremost, one may want to ask as to what is written statement on oath.[11] Under the Uniform High Court Rules[12] trial was by oral examination of witnesses in chief. The other side was never aware of who was coming to testify until he/she was called into the witness box.[13] Even though, the evidence of the witnesses was supposed to be confined to the pleadings, witnesses, more often than not, enjoyed the open- ended liberty of the hide and seek nature of the old Rules to via into facts not pleaded giving cause to the opposing counsel to spring up with objections and interjections each time. One of the most significant innovations introduced by the Rules therefore is the requirement of the frontloading of the written statement of oath of the witnesses and by extension, of the copies of documents to be relied upon at the trial.

It is worthy of note that in some courts in Delta State, written statement on oath of witnesses were tendered and admitted as though they were documents to be relied upon at the trial. Written statement on oath is the evidence –in-chief[14] of the witness which is reduced into writing, sworn to, and which he intends to adopt as his evidence at the trial. It is not a document to be relied upon at the trial. It is the direct evidence of the witness. The Court in *Diamond Bank Plc. v Alhaji Usman Yahaya & Anor*[15] gave an exposition of the concept when it observed as follows:

> It is important to appreciate that the purpose of the new civil procedure rules is not to dispense with oral evidence entirely but to expedite the process of giving evidence in chief, which in the past was often a mere re-hash(sic) of the pleadings. Under the new dispensation instead of repeating the pleadings on oath, a witness merely has to adopt his sworn deposition. This significantly speeds up the process, as valuable time is saved and the adverse party who is already seised of the evidence in chief can prepare questions for cross-examination in advance. The era of a witness remaining in the witness box for several adjournments just to complete his evidence in chief is now a thing of the past. Until the deposition is confirmed and adopted, it remains part of the party's pleadings. The law is that pleadings do not constitute evidence.

There is no law therefore which supports the proposition that written statement on oath should be tendered and admitted as though they were documents before the trial court. In *Etene v*

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[11] For a more comprehensive discussion on frontloading, see I K E Oraegbunam, & R O Onunkwo, 'Frontloading in Civil Litigation Process in Nigeria today Examining the Jurisprudence thereof,' *Journal of Current Issues in Nigeria* (2013) No 1, 24-52. Note that the writer uses the phrase "written deposition on oath" and "written statement on oath" interchangeably to mean the same thing.

[12] By this the writer refers to the system of Rules in the High Court before the arrival of the front-loading system. In 1978 the Nigerian Law Reform Commission came out with a proposed Uniform High Court Rules for the High Courts in Nigeria. Some states adopted these rules with little or no variations except States like Lagos and Anambra which made their own set of rules. The Federal High Court did not also adopt the uniform rules until 2000 with some modifications. The Federal High Court in 2009 eventually opted out of the uniform rules and made completely differently rules following the Lagos and Abuja new Rules of 2004 which have now been widely adopted by some other states e.g Rivers, Enugu, Delta, Edo, etc. An example of the uniform rules is the High Court (Civil Procedure Rules) of the defunct Bendel State 1988 which applied to Delta State until December 2009.

[13] Under the Edo State High Court (Civil Procedure) Rules 2012, by order 3 rule 3(c) the identity of a witness may be concealed by the use of an alphabet.

[14] See section 214 (1) of the Evidence Act 2011 as to what is examination in chief. Evidence in chief flows from examination in chief.

[15] (2011) LPELR-4036(CA). See also *The Administrators/Executors of the Estate of General Sani Abacha (deceased) v. S.D. Eke-Spiff & Ors.* (2009) 7 NWLR (Pt. 1139) 97 at129*; Newbreed Org. Ltd. v. Erhomosele* (2006) 5 NWLR (974) 499 at 545.

Nyong & Ors.[16] the Court laboriously took pain to elucidate this point. We find it instructive to set out in *extenso* the holding of the Court of Appeal:

> A deposition may be defined as a witness' out of Court testimony that is reduced to writing (usually by a Court reporter) for later use in Court or for discovery … A Counsel or any other person may reduce a person's testimony in writing as his or her deposition. But to be rendered admissible at the hearing it has to be sworn… Once the deposition is adopted at the hearing that constitutes the evidence of the witness. That is why, subject to any statutory provisions or any paragraphs relating to evidence, any fact to be proved at the hearing of the petition shall be proved by written depositions and oral examination of witnesses in open Court. Sworn depositions are not to be tendered and marked as exhibits before they can be held to have proved facts in issue.

The Court asked further:

> What is the effect of the adoption of a written deposition or statement by a witness in examination in Chief in the trial …? Since there shall be no oral examination of the witness … and the witness is not required to tender the written deposition or statement adopted by him …, the adopted written deposition or statement takes the place, nature and effect of oral testimony of the witness before the tribunal on which, he could be cross examined by the Respondents. So once the written deposition or statement by a witness is adopted by him in the witness box in the course of examination in chief, it becomes his oral evidence at the trial and that is why the provisions of the 1st Schedule to the Electoral Act do not require, that it be tendered either by the witness or Counsel leading him the examination in chief.

In all fairness, it must be admitted that the Delta Rules like most other new high court rules, do not state the procedure for dealing with written deposition on oath. However, relying on practice and procedure,[17] a party or a witness who has sworn to a written deposition is expected to adopt or confirm the deposition on oath in court. He would also identify those exhibits that have been admitted by consent.[18] It is only when he has adopted the written statement on oath that it becomes his evidence in chief in the case. He is not being called upon to repeat the averments therein, but merely to identify the depositions and adopt it as his evidence in the case.[19] After adopting his statement, the opposing party has the option to cross-examine him if he so desires. If a witness does not adopt his written deposition, it means that he has provided no evidence. The Court *Diamond Bank Plc. v Yahaya*[20] has said that 'the failure of the respondents' witness to adopt his written deposition before the court or to tender any document meant that they proffered no evidence in support of their claim for declaratory relief.

Besides, the fact that no law or rule of court supports the practice of tendering and admitting written statement on oath, the practice also raises a myriad of rhetorical questions. One may want to ask: if an objection can be taken to the admissibility of written statement on oath, for

[16] (2012) LPELR-8031(CA). Even though this case bothers on election petition, the principle relating to the issue under consideration remains the same.
[17] The Delta State Rules do not have any provision as to what to do with the written statement on oath, apart from the fact that the rules provide that written deposition be filed along with the writ of summons. Some other jurisdictions appear to have a more comprehensive provision. The Court in *Christian Onyenwe & Anor v. Chief Godwin Anaejionu* (2014) LPELR-22495(CA) had this to say on the Imo State Rules, "Now by the Imo State High Court (Civil Procedure) Rules 2008 Order 32 Rule 1(3) thereof, a party is expected to prove facts pleaded in his or her pleading and Witness Statement on Oath by entering the witness box, sworn to testify and then adopt under Examination-in-Chief, his Witness Statement on Oath which is an embodiment of facts pleaded in the pleadings of the party concerned save that it is on Oath. Upon adoption of the Witness Statement on Oath, all that is contained in the said Witness Statement on Oath becomes the witness's evidence before the court. If there are documents to be tendered he will tender them subject to conditions for admissibility provided in the Evidence Act or other relevant enactment. The witness will then be handed over to his adversary for Cross- Examination on his evidence…"
[18] *Diamond Bank Plc. v. Alhaji Usman Yahaya (supra note 7).*
[19] Ibid.
[20] Ibid

any reason for which objection is normally raised during the admission of documents. If the answer is yes, whether such statement on oath can be marked rejected if the objection succeeds, and if rejected what option is left for the party tendering same. If the written deposition of a witness should be rejected in its entirety upon a successful objection taken to its admissibility, can that party calling the witness file another one? The Rules[21] of court require that written deposition be filed along with pleadings. The only situation where written statement may be filed without pleadings is where the witness is an additional witness.[22] These provisions do not inure in favour of a witness who is already named in the list of witnesses and whose deposition is already in court.[23]

On the other hand, if objection cannot be taken to the tendering and admissibility of a written statement on oath, then can it be said that such procedure is legally right? Almost all the questions raised above do not have answers from the rules or even from practice and procedure. They rather suggest that the practice of tendering and admitting written depositions is procedurally wrong. This is the rule enunciated in *Joseph Effiong Etene v Saviour Okon Nyong & Ors.*[24]

Those who favour the practice of tendering written statement on oaths have predicated their reasons for justifying the procedure on the occasional situation where written statement on oath in the court's file are found to be different from the one with the party who filed same or from the one in the opposing party's file, a practice which is sometimes occasioned by honest mistake of lawyers and some other time by the deliberate attempt of some depraved lawyers to hoodwink the court and the opposing side. But for whatever reason, it does not appear that the tendering and the admissibility of written depositions has the panacea for curing any anomaly or injustice that may be occasioned by either the mistaken or the intentional act of filing different versions of written statement on oath. This is because, it is possible to have different versions of a written statement on oath even after tendering a copy. If the opposing party is not meticulous enough, he may allow the admissibility without objection and this brings us back to the same problem. The law is trite that the court's record is supreme.[25] The implication is that if a party has filed a written deposition in court, the document in the court's file is the correct document. If the party who filed has a different version from the one in court's file, so be it. The opposing party must therefore ensure that the documents in the court's file are the same with his own. Where doubt exists, a better way to do this is by applying for the certified true copy of all the written depositions of the other side before hearing begins.

The Pre-Trial Conference Controversy

Another innovation brought about by the new rules is the concept of Pre-Trial Conference.[26] Pre-trial conference is a case management mechanism ensured for the purpose of enabling the judge to clear the way for effective trial or dispose of the matter at that stage. It has been described as a meeting which is not a formal one where opposing counsel consult with the judges, to work toward how to deal with the case by deliberating on what issues to be tried. The conference takes place shortly before trial and ordinarily results in a pre-trial order.'[27] Though, the concept is no longer new in most jurisdictions in Nigeria, the application is still shrouded in controversies. Some of the issues associated with the practice of pre-trial conference in Delta State may be summarised as follows: (1) whether documents can be legally admitted during pre-trial conference, (2) whether pre trial conference notice (i.e. Form

[21] See order 3 rule 2 (2) of Delta Rules.
[22] See order 30 rule 10, Ibid.
[23] Though such a witness can file additional depositions if new facts are introduced either because of amendment of pleadings or upon filing of reply. The additional depositions are expected to accompany such amendment or reply.
[24] (n16).
[25] See *Okereke v State* (2013) LPELR-21875(CA) where the court re-emphasized that "The record of the proceedings of a court are sacrosanct and must be presumed to be correct unless a party challenging its accuracy successfully shows that it is not accurate in certain particulars."
[26] Hereafter referred to simply as PTC.
[27] *Afribank Nigeria Plc v Ubana Ebri Ubana* (2011) LPELR-3632(CA)

18 under Delta Rules) should be issued when the defendant is in default of filing pleadings, (3) whether pre-trial conference can be waived at all, etc. These shall be discussed seriatim.

Admitting Documents during Pre-Trial Conference

Some courts particularly in Delta State admitted documents during pretrial conference where the opposing side had no objection to the admissibility. For all intent and purposes, pre-trial conference is not trial. Pre-trial is limited in scope of matters that can be transacted in it. Moreover, pre-trial proceedings precede trial. Thus, one may want to ask: can a court of law legally admit a document in evidence outside trial? The answer should be in the negative. The Delta State High Court Rules[28] sets out the agenda for pre-trial thus:

> At the pre-trial conference, the Judge considers and takes appropriate action including the following:
> a) Narrowing the field of dispute between expert witnesses, by their participation at pre-trial conference or in any other manner;
> b) Hearing and determination of objection on point of law;
> c) Giving orders or direction for separate trial of a claim, counter-claim, set-off; cross-claim or third party claim or of any particular issue in the case;
> d) Settlement of issues, inquiries as to accounts;
> e) Securing statement of special case of law or facts;
> f) Determining the form and substance of the pre-trial order;
> g) Such other matter as may facilitate the just and speedy disposal of the action.

From the above agenda, where can one possibly place the procedure of admitting documents to which there is no objection at the pre-trial conference? Paragraph (c) allows the Judge to consider *the admission of facts, and other evidence by consent of the parties* during pre-trial conference. The article argues that paragraph (c) relates to admission of facts and other evidence by consent of the parties.[29] Assuming without conceding that paragraph (c) means something otherwise, can it be argued, even if remotely, that paragraph (c) of order 25 rule 3 supports the practice of admitting documents during pre-trial conference? Can this be the intendment of the rule makers judging the practice against the opening paragraph in order 25 rules 3? Paragraph (c) of order 25 rule 3 provides that "[a]t the pre-trial conference, the Judge shall consider[30] and take appropriate action[31] with respect to such of the following (or aspect of them,) as may be necessary or desirable:

The operating words are '*consider'* and '*take appropriate action.'* The commoner and more favoured practice is the procedure where the Judge, at the pre-trial conference, calls for the originals of the documents listed in the list of documents[32] or whose copies are attached to the originating process. Now, does "taking appropriate action" include admitting such documents? Is the admissibility of documents an *appropriate action* at pre-trial conference? By established practice and procedure, the only time evidence (documentary or oral, by consent or otherwise) can be received in evidence in court is during trial. This is because the witness from whom the document or evidence is being received must be on oath, except certified true copies of document which may be tendered from the bar.[33] Witnesses are not

[28] Order 25 Rule 3 of Delta Rules.
[29] The courts have defined admission as the "voluntary acknowledgement made by a party of the existence of a truth of certain facts which are averse to his claim in an action." See *MTN Nigeria Communications Ltd. v Wigatap Trade and Investment Ltd.* (2013) All FWLR (Pt. 684) 123 at 140. See also *Nigerchin Ind. Ltd. v Oladehin* (2006) All FWLR (Pt. 327)557.
[30] Underlined for emphasis.
[31] Underlined for emphasis.
[32] Note that there is nothing in the Delta Rules which provide for the filing of list of documents as part of the documents to accompany a writ of summons. The practice has evolved not on the basis of rules of court but for ease of reference. It is suggested that further review of the rules should consider the incorporation of the list of document as one of the documents which must accompany a writ of summons.
[33] In *Suleiman Bolakale Salami v Ajadi* (2007) LPELR-8622(CA) the court observed that "… a person including a party to the proceedings who has in his possession a duly certified public document can dispense with the appearance or presence of the public officer who has proper custody or his designated officer. The party may tender the document even though he was not a party to it or even his counsel may tender same

sworn on oath during pre-trial conferences.[34] How then can documents be admitted during pre-trial conferences? It does appear therefore that even if paragraph (c) of order 25 rule 3 can be expounded to include admissibility of documents during pre-trial conference, such practice offends the provisions of the Evidence Act which provide for the swearing of witness before giving evidence.[35] The proper approach therefore is to examine and identify the originals of the documents which parties intend to rely on with the purpose of recording those documents to which opposing counsel has no objection and those to which the opposing side has expressed his intention to contend at the trial. During the trial, the documents to which the opposing side has no objection are admitted straight away. They may be admitted from the bar but during trial. Whether the document is being admitted by the consent of the parties or from the bar it must be in the course of trial. To do otherwise is undermining the right of parties to fair trial.[36] The Court in *Access Bank v Trilo Nigeria Company Ltd. & Ors*[37] had this to say:

> …whatever procedure parties to a suit acquiesce to, such procedure must cohere with the procedural rules of our courts and the Evidence Act. It must be known to our adjectival laws, and, must not be an ingenious contrivance. It is therefore right to state that any procedural agreement or arrangement reached by the parties to a suit and the court that may have the effect of subjugating the fundamental principles of our Evidence Law …, is invalid and cannot be invoked or enforced by any of the parties.

In *Ali v Nigerian Deposit Insurance Corporation*[38] the Court held that It is settled that "a pre-trial conference is an extraordinary procedure before trial where the parties are encouraged to resolve the dispute or settle the case … [the practice is] designed to save precious judicial time, expense involved in a full blown trial, and avoid unnecessary litigation when there are no longer any live issues after a successful pre-trial conference. Successful pre-trial conference reduces drastically a Judge's docket, thereby hopefully ensuring speedy conclusion of contested cases."

When to Apply for Default Judgment under the New Rules

Another live issue arising from the application of the Delta Rules is the question as to which option is open to a claimant when the defendant fails, refuses or neglects to file his statement of defence. To apply for judgment in default of pleadings straight away or to initiate pre-trial conference proceedings and make the application for default judgment during the conference?

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from the bar." See also *Anyakora v Obiakor* (1990) 2 NWLR (Pt. 130) 52; *Agagu v Dawodu* (1990) 7 NWLR (Pt. 160) 56; *Isibor v. The State* (1970) 1 All NLR 248; *Okiki II v Jagun* (2000) 5 NWLR (Pt. 655)19 at 27-28 and *Paul Ordia v Piedmont* (1995) 2 SCNJ 175.

[34] There is no rule of evidence which says that document whose admissibility is not being challenged must necessarily be tendered from the bar? It is a rule of convenience.

[35] In *Famakinwa v Unibadan* (1992) NWLR (Pt. 255) 608 at 623-625, the Court said "I am quite aware that certain provisions of Evidence Act permit certain class of documents to be given in evidence by merely producing them in court. I have in mind here sections 113 and 116 which deal with Official Gazette. Sections 73 and 74 concern taking judicial notice of certain events or matters while section 75 concerns documents admitted by consent of parties as well as section 34 which deals with receipt of deposition in evidence in the absence of the witness who testified during preliminary investigation at the trial of a criminal case in the High Court. Apart from these sections and some others which may escape my attention, there is no authority for reception of evidence both oral and documentary without a witness being summoned to testify to its admissibility under sections 192 and 193 of the Evidence Act." Mentioned must be made that section 75 of the (old) Evidence Act referred to in *Famakinwa v. Unibadan supra* merely states that facts which have been admitted need not be proved. The section does not relate to the tendering from the bar document to which the other side has no objection. It is posited that the mere fact that a document is tendered from the bar does not mean that the opposing side has admitted the content of the document. It only means that the opposing side does not want to challenge its admissibility.

[36] *Mohammed v Kana N. A.* (1968) All NLR 424. See also *Salu v Egeibon* (1994) 6 NWLR (Pt.348) 23; *Mohammed v. Olawunmi* (1990) 2 NWLR (Pt.133) 458.

[37] (2013) LPELR-22945(CA

[38] (2014) LPELR-22422(CA)

The rules everywhere under the pre-trial conference system require a claimant to apply for Pre-trial Conference Notice to be served on all parties within 14 days of close of pleadings.[39] The Delta Rules[40] set out when pleadings are deemed closed as follows: (1) Where a pleading subsequent to reply is not ordered, then, at the expiration of 7 days from the service of the defence or reply (if a reply has been filed) pleadings shall be deemed closed and (2) where the court orders pleading subsequent to reply, pleadings are deemed closed upon the expiration of the time so limited.

In practice, the situation of default of pleadings arises more often than not. Where this arises under the new rules, it leaves behind a modicum of confusion, particularly in some courts in Delta State. Some courts have hinted lawyers who intended to apply for default judgment straight away to first of all apply for Form 18 for the application for judgment to be considered during pre-trial conference. Reasons given are: (1) such application is an interlocutory application, (2) order 25 rule 6 of both Rules gives the Judge power to give default judgment against a defendant who fails to participate in a pre-trial conference. [41] The 'phrase subsequent to reply' presupposes that there is a pleading which is following a reply.[42] The question is: should the Claimant initiate pre-trial conference before he can apply for default judgment when pleadings have not closed? From order 15 rule 33 of Delta Rules quoted above, the two circumstances in which pleadings can be regarded as closed contemplate that a statement of defence must have been filed first. Pre-trial conference must be held based on the specified agenda in the rules. What conference can a court hold before trial where the only pleading before the court is the Statement of Claim? Admittedly, the rules in Delta State do not make arrangement for this scenario, but from practice and procedure, the line of action open to a court where there is default of pleadings or appearance has always been to consider the application of the Claimant for default judgment once there is proof that the application was served on the defendant. The court has this inherent power.[43] The requirement of going into pre-trial conference first amounts to overstretching the provisions of order 25, more so, a defendant who has not filed his statement of defence has nothing and should have nothing to do in a pre-trial conference. Order 25 rule 6 operates subject to order 25 rule 1(1) of the rules. The proceedings need not be ripe for pre-trial conference before entertaining application for default judgment if the defendant is in default. The sanction in order 25 rule 6 is not for default of pleadings but default in attending or participating meaningfully in pre-trial conference. Thus, the issue of pre-trial conference should not arise if pleadings have not closed. It is therefore not surprising when in Kwara State, a trial court was of the opinion that once a pre-trial conference notice has been issued, the claimant is precluded from challenging the issue of non filing of statement of defence since pre-trial conference raises the presumption that pleadings are deemed closed.[44] The article argues that the defence of the defendant ought

[39] See order 25 rule 1 of Delta Rules.

[40] See order 15 rule 33 of Delta Rules. These provisions vary with jurisdiction. Under the Uniform Rules, particularly, by Order 35 rule 1(a) and (b) of the High Court (Civil Procedure) Rules, 1988 of Kano State, pleadings in an action are deemed to be closed:- "(a) at the expiration of 30 days after service of the reply or, if there is no reply but only a defence to counter-claim, after service of the defence to counter-claim; or (b) if neither a reply nor a defence to a counter-claim is served, at the expiration of 30 days after service of the defence." See also *Broad Bank of Nigeria Ltd v. Zamogas Nigeria Ltd*. (2011) LPELR-3892(CA)

[41]By order 25 rule 6, Delta Rules, parties and their legal practitioners must attend the pre-trial conference and obey pre-trial orders or scheduling. Failure to so attend or obey pre-trial order or failure to substantially prepare to participate in the pre-trial conference or participate in good faith can lead to the following: (a) in the case of the claimant, the judge shall dismiss the suit, (b) in the case of the defendant, the judge shall enter final judgment against him.

[42] The ordinary meaning of the phrase 'subsequent to' is "after: following" while the word 'subsequent' means 'happening or coming after something else." See the Oxford Advance Learners' Dictionary (8th Edition, Oxford University Press, 2010). Ordinarily, a reply is the last pleadings and it is filed by the Claimant. The rules, however, contemplate a situation where the court might order a pleading to be filed after the filing of a reply, a situation which is not too clear.

[43] It has been observed that "The new rules have radically shifted our civil procedure from adversarial to managerial system. A judge is now expected to actively manage the case towards the achievement of a just, efficient and speedy dispensation of justice." See C Iguh, 'The Front -Loading Concept: An Appraisal of the Future of Civil Litigation in the Anambra State High Courts' (2013) 5 *Journal of Public & Private Law,* 294.

[44] See *Alhaji Yusuf Adisa v Alhaji Malomo Mohammed* (2013) LPELR-22080(CA)

to have been filed or pleadings ought to have closed before proceeding to pre-trial. Thus pre-trial conference raises the rebuttable presumption that pleadings have closed. In this light the issue of default of pleadings ought therefore not to arise during pre-trial conference since it is the close of pleading that first of all set the stage for pre-trial.

Waiver of Pre-trial Conference in Certain Cases

Admittedly, there appears to be no rule which directly supports the waiver of PTC under the Delta as such some courts have considered the procedure of PTC as very sacrosanct and one which must not be aborted for any reason. Thus, PTC particularly in Delta State, now span between 6 months to 1 year or more in some courts. The objectives of the new rules everywhere allow the judge to exercise power to apply the rules of his court in such manner as to promote quick justice delivery. That the rules are not masters of the court but servant of the court is an old time and honoured principle of civil litigation.[45] In a case where witness on both side is just one each, where there is no indication of settlement nor are there pending applications,[46] it is in the best interest of speedy trial to go into full trial straightaway. This is so as some of the actions taken in pre-trial are repeated during trial. Can we say that all aspect of pre-trial orders are binding? They do not appear so. A party who had indicated no intention to challenge the admissibility of a document at the pre-trial conference can summersault at the trial by raising an objection to the tendering of the very document he had earlier on consented to its admissibility and there is nothing that can be done about it. To refuse such objection on the ground that the party is approbating and reprobating will certainly offend his constitutional right to fair hearing. How sacrosanct therefore is pre-trial conference order, especially if one weighs it against the general argument that PTC helps the court to identify documents which will be admitted by consent of the parties and the one that would pass through objection? Further, if a party files fewer *issues of facts*[47] for determination can he be prevented from raising more issues during the trial? If he cannot be prevented, how has PTC helped in settling the issues of facts once and for all.

Reconsidering the Relevance of the PTC Procedure in recent Time.

Why the PTC has its own merits, the challenge of speedy trial and the limit of speed PTC can offer has ironically turned the same process meant to fast track cases into a delay measure. It is therefore not strange why Lagos State which started the procedure was the first to dispose of it.

Even when Lagos operated PTC, the procedure in the Delta and Bayelsa Rules are different from that which obtained under the Lagos State High Court (Civil Procedure) Rules 2004. Under Lagos Rules of 2004, the pre-trial conference in any particular case must be completed within three months of close of pleadings, and the parties and their legal practitioners were expressly enjoined to co-operate with the judge in working with this time-table. PTC is expected to end within three months. Where it does not, the case may be referred to the Chief Judge (CJ) for further directives. This suggests that only the CJ ought to elongate time allowed for PTC. It was expected that this time limit and supervisory role of the CJ would prevent PTC from becoming another long drawn out procedure.[48] Unfortunately, even this stringent timing of the PTC proceedings did not assist

[45] The Supreme Court has said that "…court rules are meant to be obeyed. They should not however, render Judges subservient to them to the extent of stalling the proceedings of a court. I am surprised that it is a lawyer that is promoting that retrogressive practice when the whole world is fastly adopting to a more progressive and speedier methods of resolving legal disputes." See *Ebe v Commissioner of Police*(2008) LPELR-984(SC)

[46] According to I A Umuzulike, 'Case Management by the Judges under the New High Court of Delta State Civil procedure Rules, 2009' at 14 cited by F O Ohwo, 'The Delta State High Court (Civil Procedure) Rules 2009-The Gains and Challenges" being a text of paper presented at the Nigerian Bar Association, Warri Branch Law Week, 2010, 17-18 '[m]y approach and I may be wrong, is that where none of these applications are present or evident in the process, I schedule and order trial to commence.'

[47] See order 27 rule 1 of Delta Rule.(No similar provisions in Bayelsa Rules for the filing of issues of facts).

[48] See 'Reforming Civil Procedure Rules to Enhance Access to Justice in Nigeria: The Lagos State Experiences' available at *www.justiceresearchinstitute.org/assets/REFORMING-CIVIL-PROCEDURE-RULE.docx,* accessed 30 May 2015.

the procedure in achieving the overall goal of speedy trial in Lagos State. Thus, before the complete jettisoning of the procedure in Lagos State, several jurists and legal practitioners had already been agitating for its removal. Some other jurisdictions, like Edo State, which adopted the front loading system lately did not bother to include PTC procedure. Ohwo J [49] of Delta State Judiciary (of blessed) was right when he made the following observations barely 10 months of the introduction of the Delta Rules. It may also be argued that having successfully established the Multi-door Court House in Delta State, further retention PTC in the Delta rules amounts to wasteful surplusage.

Penal Fees and Cost

The last of these observations has to do with the provisions of the Delta Rules prescribing penal fees and cost for late filing of documents. Order 44 Rule 3 (1) of Delta Rules provides:

> The Judge may as often as he deems fit and either before or after the expiration of the time appointed by these Rules or by any judgment or order of court, extend or adjourn the time for doing any act or taking any proceedings.

There is also a proviso that any party who fails to perform an act within the time allowed shall pay to the court an additional fee of ₦100,00 (One Hundred Naira) and also cost in the sum of ₦100,00 (One Hundred Naira) to the party on the other side for every day of the default.

Umuze[50] succinctly argued the issue of the interpretation to be given to order 44 rule 3 of Delta Rules as follows:

> The operative words here are fee and cost, [the fee is an extra] fee to the court, whilst the cost is to each of the opposing party or parties for each day of such default. It is my submission that the additional fee prescribed in the provision to Order 44 Rule 3 (1) is a fee *simpliciter*, and what enures to the court is a simple additional fee of N100.00 (One Hundred Naira) and no more. The fee is not a penalty but a payment for extension of time prayed to the court. In applying this provision, of additional fee to the court, the courts have subjected it to different interpretation of either a single additional fee of N100.00 (One Hundred Naira) or additional fee of N100.00 (One Hundred Naira) [for every day of such failure to comply.]

Ohwo, instead, appears as suggesting that a party in default is under obligation to pay for every day of the default, i.e. ₦100 to the court and ₦100 to the party or counsel on other side. Ohwo, notes that the conceptual underpinning of these penal provisions is grounded in the declared objectives of the new rules. It is to eliminate all forms of delay associated with doing an act or taking proceedings outside the time frame provided for such act or proceeding. He stated further that both counsel and litigants are expected to sit up, articulate their cases and carry out extensive preparations before rushing to court or pay dearly for the delay associate with filing cases in court before searching for facts and evidence to sustain such an action. To him the additional fee of the ₦100 whether to the court or parties is per each day of default and should be so calculated.[51]

Unfortunately, his lordship did not give the basis for holding this view. More unfortunately, judges throughout Delta State Judiciary were not united in the interpretation to be given to order 44 rule 3. Thus, if a litigant was in default, whether he will pay for every day of his default to the court as well as to the party on the other side was a matter of the court where his case was pending and not the rules. It was more worrisome that in a judicial division with several courts but with one registry, processes as regards cost and penalty were assessed differently based on the judge seised with the case. Thus, there were varying standards of assessment of fees and cost under the said order 44 rule 3 within one Registry. Thus application founded under order 44

[49] Ohwo, (n46) 18.
[50] See Umuze, E. L. "The Application and Scope of Order 44 of the High Court (Civil Procedure) Rules 2009" being a text of paper presented at the Nigerian Bar Association, Warri Branch Law Week, 2010, pp. 1-6.
[51] Ohwo, (n46) 10.

rule 3 were assessed at the registry based the judge who is to hearing the application. If the judge approves of payment of ₦100 to the court for every day, the processes were so assessed.

The issue of cost and fees has been flogged time and time again, and appears now accepted that default fee of the ₦100 is to both court and the opposing party. Besides, this procedure has been unified at the moment by practice direction which is tailored towards revenue interest as against the import of the rules. The article argues that the debate about the provisions of order 44 rule 3 suggests that provisions are not clear, and if the said provisions are not explicit enough while not give the provisions an interpretation that best suits the interest of justice by adopting the golden rule principle of interpretation seeing that the provision itself is punitive.

First of all, the rules provide for additional fee to the court and cost to the opposing party for each day. Costs are usually punitive but not fees. Besides this semantic analysis, does order 44 rule 3 suggests that the court shall receive fee for every day of default? What is the function of the conjunction "and" in the provisions? "And" shows a conjunction of two things. Thus there are two types of payments: one, additional fee to court - two, daily cost to the opposing party. Each phrase can stand and should stand on its own. For instance, the two phrases can be analysed thus:

1. *Additional fee of ₦100,00 (One Hundred Naira) , and*
2. *Cost in the sum of N100,00 (One Hundred Naira) to the opposing party or each of the opposing parties for each day of such default at the time of compliance.*

If the rule makers intended that the phrase *"for each day of such default at the time of compliance"* should apply to the first phrase, it is argued that the couching would have been different. May be, something like:

Provided that for each day of such failure, the party defaulting to perform an act within the time authorised, shall pay:
1. *an additional fee of N100,00 (One Hundred Naira) to the court, and*
2. *cost in the sum of N100,00 (One Hundred Naira) to the opposing party or each of the opposing parties.*

This may have saved the situation from the current linguistic imbroglio. It is therefore apparent that the major part of the challenge the bar and the bench have with order 44 rule 3 is as a result of inelegant or poor drafting. Be that as it may, the courts ought to have stepped in and embark on an excursion into the intention of the rule makers. The court in the case of *Ararume v. INEC* [52] has said that "interpretation in the legal parlance means ascertainment of meaning … to discover the intention of the lawmaker which is deducible from the language used. In the performance of their duty of interpretation the courts are enjoined to give adequate consideration to the words used." Furthermore, the Delta Rules by order 1 rule 1 (2) provides that the application and interpretation of the Rules shall be within the set objectives for making these Rules namely: "To enable the court with the assistance of the parties to deal with cases fairly and justly to achieve substantial justice." The question is: what justice is there in awarding the cost of ₦100 to the court for every day of default? What do the courts suffer when there is default so as to receive cost for every day of default? Assuming that the courts suffer, do the courts suffer as much as the litigants so as to receive the same quantum of compensation? And if what is due to the court is a fee as against cost, why should a fee not be paid once instead of daily? If claimants and defendants are crushed out from the temple of justice as a result of overbearing cost and fees, the courts cannot be said to have played their part in dealing "with cases fairly and justly to achieve substantial justice?" The interpretation given to order 44 rule 3 by the courts is not justified since the general idea is not to generate revenue to the government. The default fee provision is intended to be both punitive and restorative; punitive on the part of the defaulter and

[52] *Ararume v. INEC* (2007) LPELR-8910(CA). See also *Adejumo v. Ministry Governor, Lagos State* (1972) 3 SC pg. 45 *Awuse v. Odili* (2003) 18 NWLR (Pt.851) pg. 116 *Awolowo v. Shagari* (1979) 6-9 SC 51 *Adisa v. Oyinwola* (2000) 10 NWLR (Pt. 674) pg. 116 *Aqua Ltd. v. Ondo State Sport Council* (1988) 4 NWLR (Pt.91) pg. 622 *Bulzari v. Obasanjo* (2005) 2 NWLR (Pt. 910) pg. 241; *Okotie-Eboh v. Manager* (2004) 18 NWLR (Pt. 905) pg. 242 and *Oloyo v. Alegbe* (1983) 2 SCNLR 35.

restorative on the part of the opposing party who spends money from his private pockets to accommodate the weakness of the defaulting party. Though courts suffer some inconveniences as a result of delays which invariably affects interest of justice generally, the courts do not suffer as much as the parties who have been delayed.
Lastly on this, it should be mentioned that order 44 rule 3 of Delta rules create a strict liability offence, such that once a party is in default, the court is not authorised to investigate the reason for his failure as far as the issue of default fee or cost is concerned. Even if part of the reasons for the default is that judiciary workers are on strike, the court is still expected to receive its additional fee of ₦100 or ₦200 per day for the period of the strike, a situation which enables the court to benefit from its own fault. Though, in actual practice some High Court Registries subtract the days of judiciary strikes in the computation of days of default. This is purely an application of morality as the rules do not by themselves provide for this leeway.

The Gains and the Pains of the Delta Rules

As rightly noted by Hon. Justice Oke, "in the past, that is, before the advent of the new rules rules, a Claimant may file a Writ of Summons, serves on the Defendant and goes to sleep for about six months before filing his Statement of Claim after obtaining an Order of Court for extension of time to do so. The Defendant also after being served may also go to sleep, taking no action until he is served with an application for judgment for failure to file pleadings. In circumstances like this, exchange of pleadings may take one or more years before it is closed. The Front-loading system introduced into the 2004 Rules has put an end to this gimmick of filing a case a party does not intend to pursue but just filed to score a point over their adversary."[53]
While the benefits are inherently associated with the Rules, the Delta Rules are yet to produce optimal results in the area of quick dispensation of justice. Though, comparatively, this regime of rules have accelerated the speed of justice delivery, we are yet to clearly arrive at the centre of the objectives of the Rules.
In order to realise these advantages, the rules provide that adjournment of cases shall not be allowed more than five times from the date of filing his originating processes till conclusion of the case.[54] Furthermore, no adjournment shall exceed 30 days at one instance.[55] Also a party has a right to amend his originating processes but not for more than twice during trial and before the close of the case.[56] The rule limiting adjournment to 5 and a number of other provisions in Delta State have hardly been applied.

What is more, court's congestion has not also allowed the Court to insist on the implementation of the 5 times limit of adjournment. Some Courts in Delta State insist on the filing of written addresses to support innocuous application even where the counsel on the other side is not opposed to the application. This does not support speedy trial especially since the Delta Rules require the service of Counter-affidavit on the Claimant/Applicant before he can file his written address unlike in some other states where the applicant must file the written address along with the application.[57] Pre-trial conference procedures are slavishly applied thereby leading to delay rather than acceleration of hearing. Some have argued that the provisions of the rules relating to the filing of written addresses have killed the spirit of advocacy.[58]

The new rules have increases paper work and increased the workload of the Judges and the lawyers. Today, a court can hear up to 10 contentious applications with an hour. Thereafter, the court must deliver its ruling in all the applications. This continues every day. Today, the defence lawyer is at a disadvantage where he is briefed by a client who has been served with a writ of

[53] See O O Oke 'The Lagos State High Court (Civil Procedure) Rules 2004: The Experience so far in its Operation' available at *http://ogunstatebarandbenchforum.org/wp-content/uploads/2013/07/THE-LAGOS-STATE-HIGH-COURT-CIVIL-PROCEDURE-RULES-2004-THE-EXPERIENCE-SO-FAR-IN-ITS-OPERATION-HON.-JUSTICE-OPEYEMI-O.OKEMRS.doc.*
[54] Order 30 rule 6 (a), Delta Rules.
[55] Ibid. Order 30 rule 6(b).
[56] Ibid. Order 24 rule1.
[57] See order 39 rules 1(2) of Bayelsa Rules.
[58] See M M Usman, 'Enhancing Justice Delivery System Through Advocacy" being a paper presented at the Benue Legal Year (2009/2010)' cited in Kenen, E. A. "Cross Examination and Front Loading System in Nigeria" *Journal of Public Law* (2013) Vol.5 at 72.

summons and an interlocutory application at the same time. The defence lawyer must file a memorandum of appearance within 8 days, an affidavit in opposition to the application within 7 days and a statement of defence within 30 days. He is most unlucky if his client is a corporate body which might need to hold several management meetings before deciding on who to be listed as defence witnesses and documents for the defence, thereby reducing the time left to respond to the processes served on the company.

These challenges are not common to Delta Rules anyway. However, where rules of court start generating agitations the indications are that the time for change has come. In Lagos State there were also challenges after the introduction of the 2004 Rules.

1.

The Administration of Civil Justice Bill of Delta State 2022

This Bill if passed will be the most recent instrument on civil procedure in the state. This proposed legislation intends to make far reaching provisions on administration of civil justice in Delta State. It is still not clear why the law makers took this burden upon themselves as against the CJ who is constitutionally empowered to make and review the rules from time to time. By section 3 of the Bill, the Bill applies to all civil proceedings in Delta State and if there is any inconsistency between the proposed Law and the Delta State Rules, the Law shall prevail.[59] The overarching purpose of this Bill is to facilitate the just, efficient, timely and cost- effective resolution of the real issues in dispute and this may be achieved by: (a) the determination by Court, of the proceeding; (b) an agreement of the parties; (c) any other process of dispute resolution which may be agreed upon by the parties or ordered by the Court. Though the Bill anticipates a number of innovations, it does not directly address the issues raised in this article. This is understandable. The Bill is not a product of a review of the existing rules but a complete set of legislation.

Very prominently, the Bill provides for case reference to Alternative Dispute Resolution (ADR).[60] The Bill provides that the Judge may at any point make an order referring a civil proceeding or any part thereof to the ADR. This order may be made during case management meeting (CMM) or at any point. A CMM is like a pre-litigation procedure but unlike pre-trial conference, CMM is held within 30 days of service of statement of claim on all the defendants.[61] The CMM may be conducted in chambers, meeting room within the court's premises or by telephone conference or video conference.[62] The parties are to complete and file questionnaire and serve a file copy on all parties[63] not later than 7 days before the CMM. The Judge and the parties shall consider the response to the questionnaire and the Judge shall list a case for trial except the court is convinced that the matter is ready for hearing.[64] The Bill does not address issues relating to written statement on oath and the handling of documents to be relied on by parties during the CMM. Conversely, the Bill prescribes cost which are very punitive and frightening. For instance, where a party fails to comply with a deadline on the Procedural Timetable and causes an adjournment of a hearing date he shall pay ₦250,000 and if an adjournment of the hearing of an application, ₦100,000.[65] The Bill does not state to whom the penalty should be paid, though there is no indication that the non-defaulting party has a share in that penalty. The Bill is very ambitious and innovative[66] but may not be very effective if it does not take bearing from the rules.

Proposed Reforms/Suggestions

Given the weight of the issues raised above, the following have been proposed as reforms.

1. Order 25 of the Delta Rules relating to PTC should be jettisoned in its entirety.[67] Having tested the procedure for over a decade, the attitude of lawyers and judges to the

[59] Section 3 (2) of Administration of Civil Justice Law of Delta State 2022
[60] Ibid. Section 61.
[61] Ibid. section 48 (1).
[62] Ibid. section 48 (3).
[63] Ibid. section 49(1).
[64] Ibid. section 52.
[65] Ibid. section 51.
[66] Part IX of the Bill provides for electronic recording and transcription of court proceeding.
[67] Ogwo recommends that PTC be restricted to cases which fall into the area of contract and commercial transaction only since these cases are more prone to out of court settlement. See B Ogwo, 'The Justice of

procedure has not only revealed gross inconsistencies in application, it has also shown that the procedure is a far cry from the principles of speedy trial and quick dispensation of justice. Continuing to retain PTC in the Rules is partly antithetical to the main objective of modern rules of civil litigation which speedy trial.

2. The CMM is not an answer either. First, it is unimaginable how the PTC and CMM provisions would apply to the same court. Second, the CMM procedure in the Bill is too complex and may not be anything better than the PTC. It should be discarded too.

3. Order 3 rule 2 (2) (c) of the Rules relate to the filing of a written deposition on oath but does not provide guidelines of the procedure for handling written depositions during trial. It is suggested that the Bill should fill this vacuum.

4. The proviso to order 44 rule 3 (1) of Delta Rules relating to default fees should be modified. The said proviso is in urgent need of attention. The penalties in the Bill are obviously unrealistic and unreasonable. They should not be encouraged.

5. Order 39 of the Delta Rules bothering on motions and applications should be reviewed by incorporating express provisions to the effect that innocuous applications like motions for extension of time should not require the filing of a written address. Some courts initially insisted on written addresses for every application even where the opposing side had indicated that he would not object. It is further recommended that the Rules be reformed to provide for a situation where written addresses will be deemed as adopted on the day fixed for hearing where the addresses have been filed and exchanged, but a counsel who is aware of the hearing date is not in court. This is the practice under the Fundament Right (Enforcement) Rules 2009.[68]

Conclusion

Laws are not perfect nor are they constant because man is not perfect and society is dynamic.[69] Given that civil procedure rules are meant to confront challenges posed by litigants, lawyers, the court itself and the society in general, change is inevitably the watch word. Building more courts room, employing more judges, securing judicial autonomy and proper funding of the judiciary are incredibly fantastic but they may not directly confront the challenges highlighted above, only a pragmatic and innovative set of rules occasioned by the reality of the present socio-legal environment will do, not even a practice direction as it was being clamoured.[70] Lawmakers are

Pre-Trial Conference in our Adjectival Jurisprudence: The Kogi State High Court (Civil Procedure) Rules, 2006 in Perspective' (2013) 5/1 *Kogi State University Journal of Public Law,* 156.

[68] Order XII Rule 3.

[69] According to Wortley, 'if the numerous law were perfect, if social control were automatic, legal scholarship, like the state of Marxists, could be left to wither away.' See B A Wortley, *Some Reflection on Legal Research after Thirty Years*, cited in M. O. U. Gasiokwu, *Legal Research and Methodology-The A-Z of Writing Thesis and Dissertation in a Nutshell* (Enugu, Chenglo Ltd., 1993) p.1. Gasiokwu added "But our laws are not perfect and final, and cannot be so in a dynamic society; they are not always even intelligible, and if intelligible, not always intelligently made." See Gasiokwu, *Legal Research and Methodology, Id*.

[70] Several branches of the NBA in Delta State have been raising a public outcry for the Chief Judge to come out with Practice Directions as a means of resolving some of these divergences in the application of the Delta State High Court (Civil Procedure) Rules, 2009. Practice is our adjectival law, that is, the law regulating procedure, for example of pleading, procedure, evidence, etc. They are rules of civil conduct which declare the rights and duties of all who are subject to the law and who come before the court to seek redress." See *Lawal v Magaji & Ors.* (2009) LPELR-4427(CA). See also *Buhari v INEC* (2009) ALL FWLR (Pt. 459) 419 at 513. "They have the force of law in the same way as rules of court." See *Buhari v INEC* , *supra*, per Sankey, J.C.A. (Pp. 44-45, paras. E-A). It should be noted that Practice Directions have their own limitations. In the first place, although Practice Directions have the force of law and parties must adhere to them as indicated in *Nwankwo v Yar Adua* (2010) 12 NWLR (Pt. 1209) 518, 563, there is an important caveat to this general proposition: obedience to these rules must not be slavish to the point of overriding the justice of the case. It cannot be otherwise for the court users have only one barometer for gauging the pulse of litigation. It comes to the simple question whether, at the end of the litigation process, justice has been done to the parties. See *Abubarkar and Ors v Yar'Adua and Ors* (2008) 4 NWLR (Pt. 1078) 465, 511

therefore enjoined to address the issues raised above vide the Administration of Civil Justice Bill which is about to be passed into law as what is needed is not a complete set of new laws but a modification of the existing rules to accommodate answers to the practical challenges arising from the application of the Rules since their application in 2009.

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paragraph E-F; *Chime v Onyia* (2009) 2 NWLR (Pt. 1124) 1, 52. What is more? Practice Directions take subject to rules of court. The court has said, "From all decided authorities the applicability of the Practice Directions in all situations where conflict does not arise between their provisions and those made under the rules of Court on the same point, issue or subject matter, Practice Directions therefore remain in force having been made with the intention of guiding the Court and the legal profession on matters of practice and procedure. Practice Directions are overridden by the rules of court only where they are in conflict with the rules. But where Practice Directions as issued co-exist harmoniously with the rules of court, a party or Counsel who ignores them does so at his peril." See *Bashiru v INEC & Ors.* (2008) LPELR-3857(CA). See also *N.A.A v Okoro* (1995) 6 N.W.L.R. (pt. 403) 510 at 523.

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