RECORDING EVIDENCE, JUDGMENT WRITING, CONVICTION AND SENTENCING IN THE LOWER COURTS

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Protocol

My gratitude is to God the Almighty for keeping us in good health to witness this historic function and the ability to be part of it. It is indeed a rare honour and privilege for the National Judicial Institute (NJI) to call upon me to share my knowledge and experience with the participants of this august assemly. Let me sieze this opportunity to convey my appreciation and gratitude to NJI for the opportunity accorded to me to to present this paper on this well chosen topic that would certainly have sufficed if there were no other to be presented.

The topic is wide in scope but I will try to be as brief as possible and focus reference on the Criminal Procedure Code (CPC) in comparative analysis with the Criminal Procedure Act (CPA). As the topic deals with daily procedure of trials, the elementary aspect of dictionary definitions will, as much as possible, be skipped except perhaps in the last chapter that deals with the most onerous task of every judge; judgment writing.

1.0 INTRODUCTION

When a person is arrested whether by a police officer or a private person, the accused person may be searched especially when there is a reasonable suspecion that he possesses any-

(a) stolen articles; or

(b) instruments of violence or poisonous substance; or

(c) tools connected with the kind of offence which he is alleged to and all articles other than necessary wearing apparel found upon him may be kept place in safe custody:

The person arrested may also be admitted to bail forthwith pending investigations. The accused person has certain rights from the time of his arrest.[1] An officer is required to read the following rights before any questioning of a suspect:

> **You have the right to remain silent and refuse to answer any questions, anything you do say may be used against you in the court of law, you have the right to consult an attorney before speaking to the police and have an attorney present during questioning now or in the future, if you cannot afford an attorney one will be appointed for you before any questioning if you wish, and if you decide to answer questions now without an attorney present you will still have the right to stop answering at any time until you talk to an attorney.**

The law enforcement agencies are saddled with the onerous task of curbing crimes. To achieve this objective, the judiciary is the arm of government that adjudicates on every case presented to it by the procedure of arraignment.

[1] https://en.wikipedia.org/wiki/**Criminal_charge**, ***ibid***

2.0 ARRAIGNMENT

Arraignment is the process of bringing accused persons to court in order to formally accuse them of a crime or crimes.[2] Arraignment ignites criminal trial, which in a successful prosecution ends with a sentence. When an accused person appears in court, the First Information Report is read to him where the proceedings are conducted under the CPC. Under the CPA the Charge shall be read and explained to him to the satisfaction of the court.

The Charge is usually read to the accused person by the Registrar of the court in the language he understands. He shall thereafter be asked to plead to the Charge under the CPC and the trial commences with the plea by the accused person. In the case of **Adio v. State** (1986) 6, S.C.119, the Supreme Court held that a criminal proceeding is commenced once the accused person pleads to the Charge before the court, even without taking evidence. In determining whether an accused person was accorded his fundamental right to fair hearing within a reasonable time, time only begins to run from the moment of plea. Section 215 of the CPA provides that:

> **The person to be tried upon any Charge or Information shall be placed before the court unfettered unless the court shall see cause otherwise to order, and the Charge or Information shall be read over and explained to him to the**

[2] Sections 215 of Criminal Procedure Act (CPA) and 161(1) & 187(1) of Criminal Procedure Code (CPC)

satisfaction of the court by the Registrar or other officer of the court and such person shall be called upon to plead instantly thereto, unless where the person is entitled to service of a copy of the Information he objects to, the want of such service and the court finds that he has not been duly served therewith.

Whenever the accused appears in court, the charge or F.I.R, as the case may be will be read to the hearing and understanding of the accused person. Thereupon, the trial Magistrate or Judge must follow the following procedure:

(i) the charge was read to the accused and it was explained to him in the language he understood;

(ii) that the trial Judge was satisfied that the accused understood the charge;

(iii) that the accused was then asked to plead and his plea was recorded.

Whatever the accused says in answer to that question is carefully recorded by the court which at that stage is focussed on discovering whether the accused admits the facts alleged against him. If he does not, the court then will find out the nature of his defence. The accused need only answer 'the information is true' or 'it is true' or 'I did not do it' or 'I have a defence" and cannot be pressed to give further details. After this answer the court then

considers whether, if the accused has clearly admitted facts which constitute the offence alleged. Note that the short summary trial procedure is adopted by the court only in respect of minor offences otherwise termed as misdeamenors. If the court finds the accused person guilty, it will be so pronounced and conviction follows before the sentencing procedure.

3.0 SUMMARY TRIAL IN THE LOWER COURTS

The summary trial procedure conducted in the Magistrates' Court has worked well in two types of procedure. These are:

1. The short summary trial procedure
2. The ordinary summary trial procedure

3.1 The Short Summary Trial Procedure

The short summary trial procedure is normally adopted in trials of non-capital offences and when the accused person, voluntarily and freely, pleads guilty upon reading the charge os F.I.R. The accused person place before court unfettered.

When the accused appears or is brought before the court, the particulars of the offence of which he is accused, as contained in the F.I.R, shall be read and explained to him in English language or in the language he properly understands if he does not speak English He shall then be asked if he has any cause to show why he should not be convicted.[3]

[3] Criminal Procedure Code, section 156

If the accused admits that he has committed the offence of which he is accused his admission shall be recorded as nearly as possible in the words used by him. He will then be asked if he has cause to show why he should not be convicted and if he shows no sufficient cause why he should not be convicted the court may convict him accordingly, and in that case it shall not be necessary to frame a normal change.[4] This is the short summary trial procedure.

3.2 The Summary Trial Procedure

If the accused shows cause why he should not be convicted or if he does not admit the truth of the allegation against him as contained in the F.I.R, or if the court decides not to convict the accused under section 157 of the CPC the court shall proceed to hear the complaint, if any, and take all such evidence as may be produced in support of the prosecution.

This is the longer or ordinary summary trial procedure. It is a system of criminal trial in the lower courts and even in the superior trial courts with some differences that will be discussed later in this paper. The procedure under the CPA where the accused is arraigned on charge is also different from the procedure under the CPC where the charge is drafted by the court upon establishment of *prima facie* case predicated upon the evidence adduced by the prosecution witnesses and exhibits tendered. In other words, the charge is drafted after taking the evidence of the prosecution

[4] Section 157(1) *ibid*

witnesses where the court considers that a *prima facie* case has been made out by such evidence. See **OKEKE V THE STATE**[5]

It is worthy to note that *prima facie* evidence that calls for drafting a charge against an accused person is different from and short of proof beyond reasonable doubt.

3.3 Taking Of Evidence

The court has a duty to ascertain from the complainant the names of any person(s) likely to be acquainted with the facts of the case and to give evidence before the court such of them as the court thinks necessary.

The accused shall be an adequate opportunity to cross-examine the witnesses for the prosecution and, if he does so, the prosecutor may re-examine them.

This is the questioning of a party's own **witness** under oath, at **trial**.

Witnesses are introduced to a **trial** by their direct examination or examination-in-chief, which is when they answer questions asked by the lawyer representing the party which called them to the stand.

After their examination-in-chief, the other party's lawyer can question them too and this is called **cross-examination**

The **examination-in-chief** is one stage in the process of adducing evidence from witnesses in a court of law. It is the

[5] *Infra* at page 11

questioning of a witness by the party who called him or her, in a trial.

If upon taking all the evidence referred to in section 158 and making such examination, if any, of the accused as may be made in accordance with section 295 the court finds that no case against the accused has been made out which if not rebutted would warrant his conviction, the court shall discharge him.[6]

The court may discharge the accused at any previous stage of the case, if for reasons to be recorded by the court it considers the charge to be groundless. A discharge at this stage of the proceedings is not a bar to further proceedings against the accused in respect of the same matter.

When the evidence referred to in section 158 and the examination referred to in section 159 of the Criminal Procedure Code have been taken and made or at any previous stage of the case the court is of opinion that there is ground for presuming that the accused has committed an offence, which the court is competent to try and punish, the court shall frame a charge declaring with what offence the accused is charged and shall then proceed to try him.

If, the court, at any stage before the signing the judgment it appears to the magistrate that the case is tirable by the High

[6] Section 159 *ibid*

Court, the Magistrate will then frame a charge against the accused and complete the procedure for inquiry into cases triable by the High Court up to the framing of the charge and thereafter commit the accused for trial to the High Court.

An accused person cannot be committed for trial to the High Court until all witnesses for the prosecution have been heard, and if he so desires, has had an opportunity of calling evidence for his defence, though he may reserve his defence until trial at the High Court.

If the court is of opinion that the offence is one which it is triable by itself, the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has any defence to make.[7]

4.0 THE CHARGE

A criminal charge is a formal accusation made by a governmental authority asserting that somebody has committed a crime. Charge may take different forms depending on whether it is framed under the CPA or CPC and whether it is a charge in a Magistrate Court, State High Court or Federal High Court. Under the CPA a charge in a Magistrate Court is one paragraph. The form of a charge in the Federal High Court is also contained in one paragraph where the Court sits since the CPA is applicable nationwide for criminal trials.

[7] Section 161 *ibid*

See **Abiola v Federal Republic of Nigeria** [1995] 1 NWLR (Pt 370) 155.

However, each charge under the CPA in State High Courts is in two paragraphs: The first paragraph contains the Statement of Offence, and the second paragraph called the 'Particulars of Offence'. Both paragraphs constitute a count.[8]

Discussion under this subtopic will be focussed on the unique procedure under the CPC where charges are always drafted by the court in trials and preliminary investigations (P.I) conducted in the lower courts.

In the High Court the charge, except in cases coming through P.I, is framed by the D.P.P of the Fedration or State as the case may be and is only filed in court with leave of the court. The veave is usually granted if the court is satisfied the proof of evidence attached to the application for leave has disclosed the probabily of commission of an offence under an existing law.

In the lower courts, when the evidence referred to in section 158 of the CPC and the examination referred to in section 159 have been taken and made or at any previous stage of the case the court is of opinion that there is ground for presuming that the accused has committed an offence triable under this chapter, which such court is competent to try and which in the opinion of the court could be adequately punished thereby, the court shall

[8] Oluwatoyin Doherty, Criminal Procedure: A Study Guide, Blackstone Press Ltd London 2001, p 101

frame a charge declaring with what offence the accused is charged and shall then proceed as hereinafter provided.[9]

If, in proceedings in a magistrates' court, at any stage before the signing of judgment in the trial of a case under this chapter it appears to the magistrate that the case is one which ought to be tried by the High Court, he shall in like manner frame a charge against the accused and, in so far as he has not already done so, shall complete the procedure laid down in chapter XVII for inquiry into cases triable by the High Court down to the framing of the charge and the magistrate shall thereafter observe the procedure prescribed in that chapter to a followed after the framing of the charge.

No person may be committed for trial to the High Court under this section until all witnesses for the prosecution have been heard, and until the accused, if he so desires, has had an opportunity of calling evidence for the defence, though he may reserve his defence

If the court is of opinion that the offence is one which having regard to section 160 it should try itself, the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has any defence to make.

If the accused pleads guilty, the court shall record the plea and may in its discretion convict him thereon.

[9] Section 160 of the CPC, *op cit*

The Court shall before convicting on a plea of guilty satisfy itself that he accused has clearly understood the meaning of the charge in all its details and essentials and also the effect of his plea.

If the accused pleads not guilty or makes no plea or refuses to plead, he shall be required to state whether he wishes to cross-examine or further cross-examine any, and if so which, of the witnesses for the prosecution whose evidence has been taken. The Supreme Court in the case of **OKEKE V THE STATE** (2003) 5 S.C.M 131, the apex court held thus:

> **The accused must be placed before the court unfettered, the charge must be read to him in the language the accused person understands, and if he is represented by counsel, there is no objection to the charge and a plea is taken from the accused person. The charge must be read and explained to the accused, and if there is no objection by counsel or the accused person, there is clear presumption of regularity that all that must be done to let the accused know the charge against him has been done. In that wise it is presumed the accused understood the charge which has been read and explained to him and the court was equally satisfied the charge was understood by the accused. All these conditions**

must be satisfied (Kajubo v. The State (1988) 1 NWLR (Pt. 73) 721; Eyorokoromo v. The State (1979) 6 – 9 S.C 3; Ogodo Ebem v. The State (1990) 7 NWLR (Pt. 160) 113. In Erekanure v. The State (1993) 5 NWLR (Pt. 294) 385, where the accused person did not understand English language and it was not clear on the record whether the charge was read and explained to the accused in the language he understood. In the case presently at hand the appellant spoke in English throughout – from arrest to arraignment and throughout the hearing.

The accused must be placed before the court unfettered when the charge is read to him in the language that he understands. Upon reading and explaing the charge, the accused's plea is taken. There is a presumption of regularity that all that must be done to let the accused understand the charge against him has been done. The accused is presumed to have understood the charge read and explained to him. See **Kajubo v. The State** (1988) 1 NWLR (Pt. 73) 721; **Eyorokoromo v. The State** (1979) 6 – 9 S.C 3; **Ogodo Ebem v. The State** (1990) 7 NWLR (Pt. 160) 113; **Erekanure v. The State** (1993) 5 NWLR (Pt. 294) 385.

5.0 <u>THE PLEA</u>

If the accused pleads guilty, the court shall record the plea and may in its discretion convict him thereupon. However, the

Court shall before convicting on a plea of guilty satisfy itself that he accused has clearly understood the meaning of the charge in all its details and essentials and also the effect of his plea.[10]

A plea of guilt must be clear and unequivocal. Thus, if the accused pleads not guilty or makes no plea at all or refuses to plead, a plea of 'not guilty' must be entered for him. He shall be then be required to state whether he wishes to cross-examine or further cross-examine any, and if so which, of the witnesses for the prosecution whose evidence has been taken.[11]

If the accused wishes to cross-examine or further cross-examine some witnesses, such witnesses named by him shall be recalled for further cross-examination and re-examination as requested by the accused or his counsel.[12]

The court then takes the evidence the remaining witnesses for the prosecution in the according to the procedure for taking evidence in court. Thereafter the accused shall be called upon to enter his defence and adduce his evidence. If the accused puts in any admissible document, the court shall mark it as an exhibit in the like manner as exhibits tendered by the prosecution. Accordingly, the complainant or prosecutor may cross-examine

[10] Subsection (3} *ibid*
[11] Section 162, *ibid*
[12] Subsection (2) *ibid*

any witnesses produced for the defence and the accused may re-examine them.

The accused may apply to the court to issue process for compelling the attendance of any witness for the purpose of examination or the production of any document or other thing and the court shall issue such process unless for reasons to be recorded in writing, it considers that the application is made for the purpose of vexation or delay or of defeating the ends of justice.[13]

In the 70th and 80th government was paying for witnesses expenses in all courts as it was an item in the budget. However, since it no longer forms part of government budget, the court may before summoning any witness on will require that reasonable expenses incurred by such witness in attending for the purposes of the trial be deposited in court.[14]

6.0 THE VIRDICT

If in any case in which a charge has been framed the court finds the accused **not guilty**, it shall record an **order of acquittal**. However, where the court finds the accused **guilty,** it shall announce its finding and shall thereupon convict the accused as charged and proceed with the sentencing procedure. For instance, "I hereby find you AB guilty of the offence of XY

[13] Section 163, *ibid*
[14] Subsection (2) *ibid*

punishable under section X of the penal code and convict you as charged"

7.0 SENTENCING PROCEDURE

Upon conviction, the accused may call witness to his character. The court shall also, with or without producing character witnesses, ask him if he wishes to make statement in mitigation of punishment.[15]

If the convict makes any false representation regarding his character or criminal record, it is open to the prosecution to show record of the accused person's previous convictions, if any. if it has not already been put in evidence, shall be produced and if necessary proved by the police.

Thus, in a joint trial different persons convicted jointly may still end up with different sentences for the same offence. Also courts are required to consider a plea of 'guilty' entered at the earliest opportunity and to reciprocate by a conderable reduction of any fine or sentence. Sentencing options include an absolute discharge or probationary order.

Thus, conviction simpliciter does not necessarily dictate sentencing the person convicted. The court may, in its discretion decide to take no further action against the convict. This favour must be excercised juducially and judiciously when the court finds the

[15] Section 164, *ibid*

ingredients of the offence technically proved to but but that there is no moral culpability.

The court can also sentence the convict to a short term community service of between 40 and 240 hours. However, if the convict does not consent to it he may well get prison term in the stead thereof. Before the court can impose a community service order there must be obtained a pre-sentence report. This may occasion an adjournment.

The convict's report of good character counts even after sentencing. Thus, under law[16] the court may direct the release of a prisoner before completion of the sentenced earlier imposed where the Comptroller-General of Prisons makes a report to the court recommending that a prisoner:

(a) serving his sentence in prison is of good behaviour; and

(b) has served at least one third of his prison term, if he is sentenced to imprisonment for a term of at least fifteen years or where he is sentenced to life imprisonment, the court may, after hearing the prosecution and the prisoner or his legal representative, order that the remaining term of his imprisonment be suspended, with or without conditions, as the court considers fit, and the prisoner shall be released from prison on that order.[17]

[16] Section 468 of the Administration of Criminal Justice Act 2015
[17] *Ibid*

A prisoner released under this procedure shall undergo a rehabilitation programme in a Government facility or any other appropriate facility to enable him to be properly reintegrated in to the society. The Comptroller-General of Prisons shall make adequate arrangement, including budgetary provision, for such facility.[18]

7.1 Character evidence

These are the last to be called. Basically their function is to say what a good upstanding member of the community you are, in order to try to influence the court in your favour. It might be worth calling a character witness but they must be of good character themselves ('good character' in this context meaning having no criminal convictions) and obviously the more respectable they look, the better.

Whenever, the convict produces a character witness, the prosecution has the right to impugn his supposed good character by raising any previous convictions he might have, which otherwise can't usually be mentioned until he is convicted. For convicts with criminal records, character witnesses are best avoided.

If any of the witnesses can't be in court personally, the convict's counsel can submit a statement from them to be read out in court. It is called, a section 9 statement and can only be read with

[18] Subsections (2) and (3) *ibid*

the consent of the prosecution, which must not be denied unless the prosecutor is armed with theconvict's record of previous conviction.

In the closing speech, the convit's counsel has his final chance to sum up the legal or moral elements of the convict's defence, to highlight the whole evidence, and to invite the court to be extremely linient in sentencing the convict or suspend the sentence as a probative measure on the convict. Most convicts feel grovelling to the court and prefer not to say any more after conviction rather than merely ask for liniency mostly by giving them an option to pay fine.

7.2 McKenzie friends

Unrepresented accused persons have the right, in the United States to have a 'McKenzie friend' in court with them. This person can sit with the accused, take notes, and offer quiet suggestions, but is not allowed to address the court. This right was established in a case called **McKenzie v McKenzie**, but since many courts are not familiar with the case, or with unrepresented accused's rights, it's better to have a copy of the judgement in court should an unrepresented accused wish to have a McKenzie friend in Nigeria. Even if the accused is confident about his defence, it can be very useful to have someone with him to take notes, leaving him free to concentrate on the on-going proceedings in court.

8.0 JUDGMENT WRITING

The word "**Judgment**" which is the final verdict or resolution of any matter in the process of adjudication has been defined [19] as:

> **"The official and authentic decision of a court of justice upon the respective rights and claims of the parties to an action or suit therein litigated and submitted for its determination. The final decision of the court resolving the dispute and determining the rights and obligations of the parties. The law's last word in a judicial controversy, it being the final determination by a court of the rights of the parties upon matters submitted to it in an action or proceedings."**

It has also been defined by the superior courts in a plethora of cases. We shall look at the nature or skeletal framework of **judgment writing** in both civil and criminal cases especially the latter. In ***Michika L. G. v N.P.C.***[20] The Court of Appeal painstakingly set the parameters of what a good judgment in a civil action should be, thus:

"Every good judgment must contain the following ingredients:

(a) An **introduction** of the parties and the nature of the actions;

[19] Black's Law Dictionary 6th Ed. Pp. 841 - 842
[20] (1998) 11 NWLR (PT. 573) 201 at 218 para. B

(b) The **issues in controversy**;

(c) **Summary of the evidence** called by each party;

(d) **Resolution of the issues** in controversy; and

(e) A **verdict** and a consequential order or orders."

The Supreme Court in the case of **Stephen *v* *State***[21] Per Oputa, JSC highlighted the necessary ingredients of a good judgment in a criminal case as follows:

> **"Judgment in a criminal matter should contain thus:**
>
> 1. **If the plea of the accused person is 'guilty', no issues arise and no evidence is required. The trial court can proceed straight to judgment. But if the plea is not guilty, then all the constituents of the offence or offences charged are put in issue.**
> 2. **After leading evidence in proof or in defence of the offence or offences charged, the trial court will deal with the perception and evaluation of facts, belief or disbelief of witness and finding and conclusion based on the evidence accepted by the court.**
> 3. **At this stage, the trial court will briefly summarise the case of either party. This does not mean**

[21] (1987) 5 NWLR (PT. 46) 978

reducing verbatim the evidence of the prosecution witnesses, or the defence witnesses one by one but it does mean using such evidence to tell a coherent and connected story. Having done this, the trial court will then decide the story to believe. Here it is important to emphasize that the over-worked expression 'I believe' or 'I do not believe' have no intrinsic magic power or potency. There is nothing wrong in believing one side and disbelieving the other if either the belief or disbelief is in consonance with the natural draft of evidence and the probabilities, which on the totality of that evidence it is natural to expect.

4. **Having exercised his prerogative to believe or disbelieve, having made his finding of fact, the trial court would then discuss the applicable law against the background of the fact as found.**

In brief the judgment should contain the following:

1. **A brief statement of the offence being adjudicated upon;**

2. **Setting out the offences in full or in part;**

3. **A review of the evidence led;**

4. **Appraisal/evaluation of such evidence;**

5. **Finding of facts therefrom;**

6. **Consideration of the legal submission made and/or arising and finding of law on them;**

7. **Conclusion, which is the verdict and order(s).”**

The two procedural codes CPA and CPC have similarly defined “judgment” or its format by specifying the basic components or contents of a judgment in criminal proceedings. Section 245 of the criminal procedure Act[22] provides thus:

> **“The Judge or Magistrate shall record his judgment in writing and every such judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed by the Judge or Magistrate at the time of pronouncing it.**
>
> **Provided that in the case of a Magistrate in lieu of writing such judgment it shall be sufficient compliance under this section if the magistrate records briefly in the book his decision thereon and where necessary his reasons for such decision and delivers an oral judgment.”**

The proviso to this section does not seem to conform to the principles and norms of judgment writing, which essentially must be written and pronounced. Thus, to produce and pronounce any

[22] CAP C. 41 L.F.N. 2004 (hereinafter referred to as the CPA)

part of a judgment orally is not only a misnomer but is clearly unconstitutional. The Constitution of the Federal Republic of Nigeria 1999 [23] provides [24] that:

> **"When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any person authorized by him in that behalf shall be entitled to obtain copies of the judgment in the case within seven days of the conclusion of the case."**

By the above constitutional provision, a judgment must be written and cannot be delivered orally. The phrase "**shall keep record of the proceedings**" signifies a mandatory duty on the court to keep the entire record including the judgment in writing. Moreover, the *proviso* is superfluous in nature in view of the provision in the law[25], which states that "**the judge or magistrate shall record his judgment in writing**".

The Criminal Procedure Code Act,[26] it is submitted, provides a more precise and concise definition, format and contents of a judgment. Section 268[27] provides thus:

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[23] Hereinafter referred to as "the Constitution."
[24] Section 36 (7) *Ibid*
[25] *Op cit* section 245 of the CPA
[26] Cap 491 L.F.N. 1990
[27] *Ibid*

> **"(1) The judgment in every trial in a court shall be in writing and shall be pronounced, and the substance of it explained in a language understood by the accused in open court either on the day on which the hearing terminates or at some subsequent time of which due notice shall be given."**

A Judge or Magistrate must therefore write and pronounce judgment in any criminal case in the open court to the hearing and understating of the accused who must be in court at the time of delivering the judgment except if the court, for sufficient cause, dispenses with his appearance. Subsection (2) of section 268 so provides:

> **"If the accused is in custody he shall be brought to hear the judgment delivered; if he is not in custody he shall be required to attend to hear the judgment delivered unless his presence is dispensed with by the court."**

It is pertinent to note that a judgment delivered by a court will not be voided by the mere fact that it was so done in the absence of the accused or his counsel or due to any defect in service of hearing notice on the parties or their counsel regarding the day or place of delivery of the judgment.[28]

[28] *Ibid* subsection (3)

Section 269 of the Criminal Procedure Code Act [29] has in clear and unambiguous terms spelt out the skeletal requirements or contents of a judgment as follows:

> **"269 (1) every judgment shall contain the point or points for determination, the decision thereon and the reasons for the decision and shall be dated and signed or sealed by the court in open court at the time of pronouncing it."**
>
> (2) if the judgment is a judgment of conviction it shall specify the offence of which and the section of the Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced.
>
> (3) if the Judgment is a judgment of acquittal it shall state the offence of which the accused is acquitted and direct that he be set at liberty."

If the accused is convicted the judgment must specify the offence, the law creating it and the punishment imposed.[30] When the accused is acquitted the judgment must state the offence in respect of which the acquittal order is made and direct that the accused be set at liberty.

[29] Hereinafter referred to as the CPCA
[30] *Ibid* Section 269 (2)

An accused person convicted shall be informed of his right to appeal and the time frame within which he may exercise such right. The law[31] provides thus:

> **"When a judgment of conviction is one from which an appeal lies the court shall inform the convicted person that he has a right to appeal and of the period within which if he desires to appeal his appeal is to be presented."**

As soon as Judge or Magistrate delivers judgment he becomes *functus officio*. He cannot review or alter such judgment except for purposes of correcting minor slips or clerical errors.[32] The accused is entitled, *ex debito justie*, to be given a copy of the judgment concerning him free of charge once he applies for it. If the accused does not understand English language he shall be entitled to a translated copy of the judgment in his own language or a language he understands fluently, and these services must be rendered free of costs.[33] The original judgment signed by the Judge or Magistrate shall be filed with the record of proceedings.[34]

By what we have seen, judgment in either criminal or civil proceedings is characterized by the following components:

1. good comprehension of the nature of the action in civil or of the charge in criminal proceedings.

[31] *Ibid Section 274*
[32] *Ibid* section 275
[33] *Ibid* section 276
[34] *Ibid* section 277

2. an analysis or appraisal of the case of each party based on the evidence adduced or put forward during the trial proceedings.
3. a consideration of the applicable law or laws.
4. a finding in respect of every issue in the case, and conclusion arrived at by the court, and
5. reasons supporting or justifying the conclusions arrived at.

The Supreme Court in **Osafile vs Odi**[35] stated what constitutes a good judgment in civil proceedings in the following terms:

> **"A judgment in a civil case is made up of more or less five distinct parts:**
>
> (a) **introduction of the issues in controversy between the parties;**
>
> (b) **the case of either side in support of its case**
>
> (c) **the resolution of the issues of fact and law put forward by each party;**
>
> (d) **the courts conclusion based on the resolution of the issues;**

[35] (1990) 3 NWLR (pt. 137 130

(e) **the opinion of the court."**

These points were aptly captured by the Court of Appeal in the case of **Chiroma v Ali and Ors**[36] where it was similarly held that;

"A good judgment should:

(a) **set out the nature of the action before the court and the issues in controversy;**

(b) **review the case for the parties**

(c) **consider the relevant laws raised and applicable to the case;**

(d) **make specific findings of fact and conclusions;**

(e) **give reasons for arriving at those conclusions."**

A trial court must therefore appraise the issues raised before it, and also analyse the evidence adduced alongside the applicable statutory provisions and make a finding on each and every issue raised. The sum total of such findings and reasons will automatically dictate the decision or verdict, which is the concluding part of the judgment. The Court of Appeal in the case of **Nigerian Bottling Co. Plc v Okwejiminor**[37] has held that:

[36] (1992) 2 NWLR (pt. 590)
[37] (1989) 8 NWLR (pt. 561) 295 at 306 paras. B-C

"A trial court must in its judgment show a clear resolution of all the issues that are for decision in the case and end up with a verdict which follows logically from the facts as found."

8.1 WRITING STYLE

Judges may differ in their style of judgment writing. The difference in style, creativity, activism or artistry is normal. However, the important thing is the ability of a judge to make proper findings and arrive at a sound decision on the law and facts in any particular case before him. A judge must have a good command of the English language, and should use simple, straightforward and unequivocal expressions in the judgment. One learned Jurist[38] has aptly so remarked in the following terms:

"First and foremost, a Judge must have a good command of the official language in use. However sound his reasoning, however masterly his exposition of the legal principles, if he writes in a poor, inexplicit grammar, obscured with colloquial expressions, the judgment will be mediocre; it may

[38] M.B. Belgore, CJ, "The Echo of a Judge" 1st Edition 2006 at p. 38

not be clearly understood by the parties. Language is the tool a judge uses to explain his decisions and to lay down any principle of law. Whatever official language the court uses, the judge must have a good command of its grammar and vocabulary; colloquial expressions or pidgin is not the language of the court. Judgments written with Latin terms may sound 'learned' but these terms are mere clichés of general principles, which must be explained or interpreted before they are understood. When composing a judgment, a judge must choose his words carefully because inappropriate words may be misconstrued. A principle must not be expressed in general terms. The language must be noble, not vulgar; polite not scandalous[39]. Metaphors may be used, but not

[39] Emphasis supplied.

hyperbole, as there is no room for exaggeration in a judgment.

The judge should analyse the facts clearly. Each side of the evidence must be considered and reasons for preferring one to the other must be clearly stated. The exposition of the law must be knowledgeable, well reasoned and well researched. The principle the judge is using to make his decisions must be clearly shown. The reasons for not following an earlier decision must also be clearly stated, as cases may be similar but not necessarily identical. There should be a lucid exposition of the legal considerations involved, both legislative and judicial. A judge should be aware of the legal precedents relating to the case in hand. He is supposed to be learned in law but ignorant of facts except those presented to him during trial."

The Court of Appeal in ***Attorney General of Rivers State v Ohochukwu***[40] has held that:

> **"There are no hard and fast rules on the writing of judgments. Each tribunal or Judge must have his or her own peculiar way of writing his judgment, the important factor being the highlighting by the Judge of the important features of the evidence given, proper evaluation of such evidence and supportable findings based on facts before the court and the law as at the time of writing such judgment. The style adopted by a Judge is always peculiar to the Judge, the important thing being the dispensation of justice to the parties. In the instant case, the court made full evaluation of the evidence before it, there was therefore no denial of fair hearing in the circumstance. Although the court adopted an unorthodox and inappropriate approach, that**

[40] (2004) NWLR (pt. 869) 340 at 356 paras A-C;G

alone is not sufficient to set aside the entire judgment."

A Judge must be able to properly draft his judgment according to the facts, evidence and applicable law in each particular case to the best of his ability. He may in the process be making an error, but it is human to err and that informs the reason for putting the appellate courts in place to review decisions of lower courts according to law. The Court of Appeal in the case of **Hart v T.S.K.J. Nig Ltd** [41] held thus:

"There is, however, no doubt that he had jurisdiction to make a decision based on the order and rule one way or the other. It mattered nothing that such a decision be wrong afterwards. But whether wrongly or rightly decided, it was for the appellate court to say."

8.2 TYPES OF JUDGMENTS

Apart from conventional judgment in fully contested cases, there are situations in which judgment is entered without going into trial, like in undefended cases or where the defendant has failed to appear to defend the case against him. While in the

[41] (1998) 12 NWLR (t. 578) 391 para D

former case the judgment is one on the merits because affidavit evidence was adduced, in the latter case the judgment is default. The procedure for setting aside these two judgments by the court that grants it or by an appellate court will be discussed later. There may also be entered a judgment by consensus of the parties to the litigation called 'consent judgment'. The guiding principles for writing these types of judgments will be discussed hereunder.

8.2.1 DEFAULT JUDGMENT

A default judgment is one entered in default of appearance of the defendant, after being duly served with the writ of summons or other initiating processes in the action against him.

By Order 13 Rule 1 (1) of the Rules of the High Court of the Federal Capital Territory 2004[42] where the writ is specially endorsed for a liquidated demand and is duly served on the defendant, the court may enter judgment for the plaintiff for a sum not exceeding the sum endorsed on the writ together with interest at the rate claimed or at 6% per annum if no rate has been specified. This rule, however, does not apply to an action by a moneylender or an assignee for the recovery of money lent by a moneylender.[43]

Where the plaintiff is making a claim against several defendants some of which appear in court while others fail to appear, a court may enter judgment in favour of the plaintiff against those that

[42] Hereinafter referred to as "the rules" similar provisions exists in other jurisdictions under the uniform civil procedure rules

[43] O. 13 R. 1 (1) of the rules

have not appeared, if the court is satisfied that they were served with all necessary processes, and may issue execution upon such default judgment without prejudice to his right to proceed against those who have appeared by calling evidence to establish his claim against them.[44]

In an action for recovery of land, where the defendant fails to enter appearance within the limited time frame, the plaintiff will be entitled to ask and have judgment entered for him. However, if the appearance is entered but the defense is partial, then the plaintiff will be entitled to have judgment entered for him to the extent of the undisputed part of his claim, and the part covered by the partial defense will be proceeded with by normal litigation process.[45]

The plaintiff may also simply, with leave, obtain summons and have judgment entered for costs where, though the defendants have failed to appear, they have effected payment or have in anyway satisfied the judgment or the nuisance complained of has been abated [46]

The court, however, reserves the discretion [47] to set aside or vary its default judgment on such terms as may be just.

The Supreme Court has, in the case of **Maja v Samouris,**[48] distinguished the procedure for applying for default judgment

[44] *Ibid* rule 3 (1)
[45] *Ibid* rule 3 (2)
[46] *Ibid* rule 4
[47] *Ibid* rule 5

depending on whether the plaintiff's claim is for liquidated damages or otherwise, where it held thus:

"Under Order 24 and Rule 2 of the High Court of Lagos State (Civil Procedure) Rules, 1972, where the plaintiff's claim is only for a debt or liquidated demand, and the defendant fails or neglects, within the time allowed for that purpose or any extension of time granted to him by the court, to file a statement of defence in answer to the plaintiff's statement of claim, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed with costs. However, the plaintiff's claim under Order 24 Rule 2 must be in respect of a debt or liquidated demand; that is to say an ascertained or specific amount. The judgment entered thereunder would necessarily be a final judgment for there is nothing more that needs to be further done to determine the quantum or extent of the defendant's liability."

However in normal proceedings other than liquidated claim of damages, the judgment entered is interlocutory and not final. The procedure will then be as follows:[49]

"By virtue of the provisions of Order 24 Rule 11 of the High Court of Lagos State (Civil Procedure) Rules, 1972, in the rest of actions other than those specifically mentioned in the preceding rules 1-10 of Order 24, if the defendant makes default in filing a defense, the plaintiff may apply to the court for judgment on motion and such

[48] (2002) 7 NWLR (pt. 765) 78 at 98-99
[49] *Ibid* at p. 100 paras C-E

judgment shall be given as upon the statement of claim as the court or a Judge in chambers considers the plaintiff to be entitled. Accordingly, it is the statement of claim alone that the court considers for its decision and no evidence is thus taken as the averments in the statement of claim are taken to be admitted by the defendant."

The Supreme Court per Iguh, JSC[50] was apt on this point in the same judgment above, where His Lordship stated:

"Learned counsel for the appellant attempted to justify the judgment of the trial court in favour of the appellant in default of defense in the present case without receiving evidence and in this regard relied heavily on the decision of this court in **Ogunleye v Arewa** (supra). I need only state that the decision of this court in the **Ogunleye's** case, is, with respect, totally irrelevant and inapplicable to the issue under consideration in the present appeal. This is because it will presently be shown, in the first place, that the claim in the present appeal is for an unliquidated pecuniary damages[51] which are covered by the provisions of and does not come within the purview of the provisions under order 24 rule 11 of the High Court of Lagos State (Civil Procedure) Rules, 1972. This is unlike the action for declaration of title to land with which the decision in the **Ogunleye**'s case was concerned and which, not having been covered by the preceding rules 1 to 10 of order 24, clearly comes within the purview of the provisions of

[50] *Ibid* at pp 100-101 paras E-B
[51] Order 24 Rule 4 *ibid*

order 24 rule 11 of the relevant rules of court. In the second place, a consideration of the decision of this court in the **Ogunleye**'s case in 1960 cannot be fully and adequately treated without reference to the much later decision of this same court in **Vincent Bello v Magnus Eweka** (1981) 1 SC 101. In the latter case, this court held, following the decision in **Wallersteiner v Magnus Eweka** (1974) 3 All ER 217 that the court does not make declarations of right either on admission or in default of defense without hearing evidence and being satisfied by such evidence to the plaintiff's entitlement to such a right. See too **Motunwase v Sorungbe** (1980) 4 NWLR (pt. 92) 90. This court further explained that the requirement for oral evidence arises from the fact that the court has a discretion to grant or refuse a declaratory relief and that its success depends entirely on the strength of the plaintiff's own case and not on defence."

8.2.2 CONSENT JUDGMENT

This is the simplest judgment as it is produced by the parties themselves and therefore has an inbuilt guarantee and assurance of satisfying all the parties. The parties being the framers of the judgment have nothing to complain about. It is more often than not the product of an amicable resolution or settlement out of court at the end of which a memorandum is drawn up and executed by both parties without necessarily contesting the case by normal litigation process. Thereafter the parties or even one of

them may apply without objection for entry of same as the judgment of the court.

The judgment though arrived at by mutual agreement of both parties could, however, be challenged on grounds of fraud, misrepresentation or nullity or on any other ground on which the agreement on which it is based could be set aside. The Supreme Court in its judgment in **Vulcan Gases Ltd v G. F. Ind. A. G.**[52] held:

"The court has inherent power to set aside its own judgment when:

(a) It was obtained by fraud; or

(b) For any other reason, it is a complete nullity."

In the above case, counsel to one of the parties in defiance of limit of authority from his client agreed to an order of reference unconditionally disregarding the conditions laid as per his client's instruction. On this it was further held: [53]

"Where counsel has authority from his client to agree to a reference upon certain conditions and he disregards such limitations and agrees to an order of reference unconditionally, the court has a discretion not to enforce such order against the wishes of the client although the limit put by the client on his counsel's authority is not made known to the other side when the reference is argued upon. The court before which the question of setting aside the reference comes is not bound to sanction an

[52] (2001) 9 NWLR (pt. 719) 610 at 655 paras. D. E
[53] *Ibid* at p. 647 paras. F-G

arrangement made by counsel which is not, in the opinion of the court, a proper one."

The Apex Court went further to state as follows:

"Where the authority of counsel has been expressly limited by the client and counsel has in defiance consented to an order or judgment contrary to his client's clear instructions, various considerations would appear to arise. If the limitation of authority is known or communicated to the other side, consent of counsel outside the limits of his authority and in breach of the express instruction of his client will be inconsequential and of no effect. Where, however, the limitation of authority is unknown to the other side that enters into compromise in the belief that the opponent's counsel has the ordinarily unlimited authority of his client; the position in such a case is that the court has power to interfere. But the court is not prevented by the agreement of counsel from setting aside or refusing to enforce a compromise. It is a matter for the discretion of the court, when, in the particular circumstances of the case, grave injustice would be done by allowing the compromise to stand, the compromise may be set aside, even though the limitation of counsel's authority was unknown to the other side, or where clear and unequivocal instructions of limitations have been given."

My lord Uwaifo, JSC has further observed that:[54]

[54] Ibid at pp. 665-666 paras G-A

"It would appear that Abdullahi Ibrahim and Co. were entitled initially to insist on the compromise on the basis that they were not aware throughout the period of negotiation up to the time the terms of settlement were signed by both solicitors that the respondent's solicitors exceeded their authority. That is an argument the appellant might raise and which it has indeed raised in this case. But there are such strong extenuating circumstances which might equally be canvassed and which have been canvassed by the respondent against that argument. First, the appellant's solicitors were apprised early enough of the fact that the respondent's solicitors exceeded their authority. Second, it ought to have been obvious to the appellant that the respondent's solicitors could not have had authority to compromise for an amount of Naira which was certainly far less than the equivalent of the outstanding debt in US dollars. Third, the way the consent judgment was subsequently obtained raised many questions."

The Supreme Court observed that fraudulent misrepresentation relied and acted upon by a representative could be sufficient ground for setting aside a consent judgment in **Afegba v A-G Edo State** [55] where it was held that:

> **"A consent judgment will be set aside on any ground which may invalidate an agreement on which**

[55] (2001) 7 SC part 11 p. 1

it is founded would be rescinded. When therefore, a consent judgment is sought to be set aside on the ground of fraudulent misrepresentations, the same principles apply as would apply were the action one for rescission of a contract. In Huddersfiled Banking Co. Ltd v Henry Lister and Son Ltd (1895-99) All ER Rep 865 it was held that a consent order made by the court to give effect to the compromise of a legal claim by the parties concerned can be set aside, not only on ground of fraud, but for any reason which would afford a ground for setting aside the agreement on which the order was made, for example, on the ground of common mistake regarding a material fact. In that case Linley, CJ, said

> **'The only thing, to my mind, to be done on this point of setting aside a consent judgment is to see whether**

the agreement upon which it was based can be invalidated or not. If the agreement cannot be invalidated, the consent order is good. If the agreement can be invalidated, the consent order is bad.'

In this case the appellant sough to invalidate the consent judgment on the ground of fraudulent misrepresentation. He did not allege common mistake. So we are concerned with the limited question whether fraudulent misrepresentation was established. In this well trodden area of law, the principles that apply in a claim for rescission of a contract for fraudulent misrepresentation need only be stated briefly. First, the representation must be a statement of existing fact. Secondly, the representation must be material and unambiguous.

Thirdly, the representee must show that he has acted in reliance on the misrepresentation.[56] **Where there is no representation of an existing fact it will not be necessary to proceed to consider any question of falsity. Where there is misrepresentation it is essential for the purpose of relief to consider whether it is fraudulent or innocent and whether the representee had acted in reliance on the misrepresentation."**

8.2.3 UNDEFNDED LIST PROCEDURE

This, apart from some cases of consent or default judgment is about the fastest procedure in obtaining judgment. The procedure is very straight forward devoid of undue technicalities. It is provided by the rules of various courts[57] the plaintiff, therefore, has to comply with the provisions of the rules governing undefended procedure. The Court of Appeal has aptly stated what the plaintiff has to do in the case of **Dalko v U.B.N. Plc** [58] thus:

"There are conditions to be fulfilled and procedures to follow by a plaintiff wishing to come under the undefended list procedure, by

[56] Emphasis supplied
[57] See order 21 rules 1-5 of the rules
[58] (2004) 4 NWLR (pt. 862) p. 123 at pp 148-149

the court itself and by the defendant. Until these are followed, no right accrues under the Rules. On the part of the plaintiff, he must –

(a) Make an application to the court for the issue of the writ;

(b) Support the application with an affidavit, setting out the grounds upon which his claim is based; and

(c) State in his affidavit that in his belief the defendant ha not defense to the action.

When the plaintiff has fulfilled these conditions, then the court shall-

(a) Satisfy itself that there are good grounds for believing that there is no defense to the claim;

(b) Enter the suit for hearing on the "undefended list." And

(c) Mark the writ of summons with the words "undefended list" and enter on it a date for hearing as is suitable in the circumstances or the case.

All the foregoing are mandatory."

The claim must, however, be for recovery of debt or liquidated money demand. The Appeal Court went on to say[59]:

> **"Under Order 23 Rule 1 of the High Court of Adamawa State (Civil Procedure) Rules, 1987, the claim which qualifies for a writ of summons under the undefended list is one to recover a debt or liquidated money demand. Where the claim is partly for a liquidated money demand and partly for an unliquidated demand, as where damages or interest is not agreed upon by the parties, an ordinary writ of summons may be issued under Order 5 of the Rules."**

When the defendant is served with the writ which is marked "UNDEFENDED," he has to, if he intends to defend the action, act timeously within the specified time frame to file a notice of intention to defend supported by an affidavit disclosing a defense on the merit. On this the Appeal Court went further to hold [60] as follows:

[59] *Ibid* at p. 146 paras F-G
[60] *Ibid* at p. 149 paras. B-D

"Where a defendant has been served with a writ of summons under the undefended list pursuant to Order 23 or the High Court of Adamawa State (Civil Procedure) Rules, which must be served together with the plaintiff's affidavit, and he intends to defend the action, he must fulfill the following conditions:

(a) **He shall file a notice in writing, not less than 5 days before the hearing date fixed by the court, that he intends to defend the action;**

(b) **He shall accompany the notice with an affidavit when these conditions are fulfilled, the court may then grant the defendant leave to defend on such terms as in its discretion thinks fit and remove the action from the undefended list to the general cause list, order pleadings if it thinks fit to proceed to her the case without pleadings. The court**

may refuse the defendant leave to defend where it finds that there is no affidavit of merit filed by the defendant."

Thus, the suit in an undefended action simply matures for hearing and entry of judgment if:

I. **The defendant, after being served fails or neglects to file a notice of his intention to defend supported by an affidavit disclosing a defense worthy of putting the matter to trial under the general cause list.**

II. **Where the defendant is not granted leave to defend the action, and, in that case the reasons for the refusal must be recorded.**

In either of these two instances the court may enter judgment on the plaintiff's claim without calling on him to adduce evidence in proof of his case. This was the view of the Appeal Court in the same case above[61] where it was held that:

[61] *Ibid* paras. E-F

> **"Judgment can be obtained under the undefended list by virtue of rule 4 of Order 23 of the High Court of Adamawa State (Civil Procedure) Rules, 1987 only after the conditions precedent in rules 1 to 3 have been satisfied. Thus, judgment cannot be obtained under Order 23 rule 4 where an ordinary writ is used."**

Thus, although a judgment under the undefended list procedure may be very similar to default judgment, the two are distinctively different and are entered under different circumstances and for different reasons. In the same case of **Dalko v U.B.N. Plc**[62] the Appeal Court further held:

> **"The procedure for obtaining summary judgment in default of defense where an action is commenced by a writ of summons issued pursuant to Order 5 of the High Court of Adamawa State (Civil Procedure) Rules, 1987 is different from that for suit commenced under the**

[62] Supra at p. 150 paras. A-E

undefended list procedure in Order 23 Rule 1. Where an ordinary writ is issued and served on the defendant and the defendant default in filing a defense within the time fixed by the Rules of the Court for filing same, order 27 of the rules applies. It provides that the plaintiff may apply for final judgment. However, whether under order 23 or order 27, the court has no power to enter judgment against the defendant on it own."

As discussed above in a default judgment the plaintiff applies in default of defense, *ex debito justitie,* for judgment. The Appeal Court in the above case [63] further held:

"A defendant who has been served the writ and statement of claim in a suit has a right to expect that due process and procedures of filing pleadings and other processes guiding proceedings where an ordinary writ has been

[63] *Ibid* at p. 151 paras H-A

issued will be followed. However, if he fails to file his statement of defense, the plaintiff may apply under Order 27 of the High Court of Adamawa State (Civil Procedure) Rules, 1987 for judgment. In the instant case, the respondent did not apply for judgment."

8.3 TIME AND MANNER OF DELIVERING JUDGMENT

As discussed above, judgment in both criminal and civil proceedings is delivered in open court unless the court directs otherwise for sufficient reason(s).[64] Judgment is normally delivered within 3 months after conclusion and close of final address but without prejudice to extension of such time for good cause.

In the case of **Walter v S.N.L.**[65] the Supreme Court pronounced on whether delivery of judgment after three months will result in miscarriage of justice held as follows:

"Appellant's issue (vii) queried the propriety of delivery of the judgment outside the prescribed period of three months. Learned counsel for appellant asked if the delay in the delivery of the

[64] See Order 39 r. 1 of the Rules
[65] (2000) 13 WRN 60 at 99-100 paras 40-15

judgment had not affected the perception of the learned trial judge of the case and occasioned a miscarriage of justice. I agree that a delay for more than 14 months, without ascribing slightest excuse, between the time the judgment was eventually reversed and the time it was delivered is sot only inordinate but most unbecoming. It is inexcusable for a trial Judge not to deliver a judgment in any trial within a period of three months of the last speeches of counsel…"

The court or tribunal delivering the judgment must also legally exist at the time of writing the judgment. However, such judgment even where the court or tribunal ceases to exist could be read by a Judge of the Federal High Court or High Court of a State, as the case may be, where the tribunal was situate when the judgment was written. The Court of Appeal in the case of **Gyang v State** [66] held as follows:

"By virtue of section 2 (6) of the Tribunals (Certain Consequential

[66] (2002) 16 NWLR (Pt.794) 641 at 652-653 paras. D-E

Amendments, Etc.) Decree 62 of 1999, where before the commencement of the Decree, a matter has been concluded in a tribunal and the tribunal was for any reason whatsoever unable to deliver the judgment, the judgment may be delivered by a Judge of the Federal High Court or the High Court of a state as the case may be, provided that the judgment shall have been written. In the instant case, although the case was concluded in 27th May 1999, there is nothing on the record to indicate that the judgment had been written as at 28th May 1999 when the tribunal was dissolved. Furthermore, even if the judgment of the tribunal had been written and was not delivered before 28th May 1999 when it was dissolved, the judgment could only have been delivered by a Judge of the High Court and not by the Chairman of

the Robbery and Firearms Tribunal as was done in this case."

Where the tribunal after its dissolution went ahead to write any judgment such judgment is null and void and the consequential order will be trial *de novo* by a High Court. Thus the Court of Appeal went further in the above case [67] to say thus:

"Where there was a normal trial at the end of which a tribunal proceeded to deliver its judgment without any knowledge that the tribunal had been dissolved by the Tribunals (Certain Consequential Amendments, Etc.) Decree No. 62 of 1999, the only option is to remit the case to the High Court for a trial *de novo* and not to make an order for a discharge and acquittal of the accused persons."

Generally, the courts must consider the case of each of the parties on its merits and can neither speculate nor make out a case for any of the parties. It must act impartially as an independent arbiter. In **Liman v Muhammed** [68] the Supreme Court held:

[67] *Ibid* at p. 653 paras F-H
[68] (1999) 9 NWLR (pt. 617) 116 at 137 para. F

> **"The court is bound to adjudicate between the parties on the basis of the case formulated by them. The court does not formulate cases for the parties otherwise it might fund itself covered by the dust of the conflict."**

A judge or magistrate must limit his pronouncement and consequential orders to reliefs asked for by the victorious party. Though he may grant less than the claim, he has no power to grant more much less granting any relief which has not been asked for. The Supreme Court in **Liman v Muhammed** *(supra)* further held[69] that:

> **"A court will not give to a party a relief that is not claimed. Thus, a court, not being a charitable institution, can award less but not more than what is claimed by a party."**

8.4 WHETHER WRITTEN JUDGMENT MAY BE CORRECTED OR ALTERED

The general principle is that once a court delivers its judgment, it becomes *functus officio* and no longer has confidence to alter

[69] *Ibid* at p. 132 paras C-D

anything therein. However, there are certain mistakes and slips that could be corrected in so far as it does not substantially alter the judgment, in order to correct obvious mistakes and minor slips. The Supreme Court has held that:[70]

> **"Courts are presided over by human beings and being human they are prone to mistakes and slops in the course of execution of their judicial functions. Such slips or errors are not swept under the carpet but are corrected and amended by appellate courts in the interest of justice. It is important to state that generally a court has powers to correct its own technical error or slips of pen. Such powers are exercisable both in criminal and civil proceedings. It must be clearly stated that it is not every slip or error in a judgment that would be allowed to undermine or degrade from an otherwise well-written judgment. This court in exercise of its general powers of supervision of all other**

[70] Odofin v Oni (2001) 1 S.C. pt 1 p. 129

court in this court can invoke the plenitude of its powers under Order 8 rule 16 of the Supreme Rules (as amended in 1999) to correct all clerical errors arising from what are undoubtedly accidental slips. Consequently, by reason of the above provisions of the Rules of this court, I hereby correct the figure 2 at page 10 line 16 of the record to read 3"

The Court of Appeal has also made a similar pronouncement in the more recent case of **Obi v Obi**[71] as follows:

"After a Judge has delivered his judgment, he becomes functus officio in the matter and cannot re-open the matter again in order to take fresh evidence from the parties. Thus, once a Judge has delivered his final judgment in a suit, he ceases to be seized of the matter and cannot reopen the suit for any purpose whatsoever except for making ancillary orders,

[71] (2004) 5 NWLR (pt. 867) 647 at 658-659 paras H-B

such as an order for stay of execution of the judgment or for ordering the judgment debt to be paid by installment."

9.0 CONCLUSION

Judgment writing is the most important and difficult task of adjudication. An attempt was made in the recent years by the Judiciary in collaboration with the United States Center for States Courts to digitalise the work of judges and magistrates throughout Nigeria, with FCT, Kaduna and Lagos as model states. Many more States have followed suit. One may say that tremendous success was achieved at the beginning notwithstanding some hiccups experienced like constant power failure and faulty generating plants, diesel shortages, etc. The judges, magistrates and the supporting staff were trained on the job, and the burden of long hand recording of proceedings in the courts was transformed into an automated machine recording with transcribers fitted into the judges' chambers and the secretaries' offices, which were also equipped with computers fitted with electronic law library and internet connections. That bought the advantage of easing the work of judges including judgment writing by a much faster information technology device. However, it seems the digital system is gradually loosing its vigour instead of the much needed booster it deserves.

It may be suggested that the information technology device be encouraged and expanded to cover all the Federal and States' courts both superior and inferior, to cover all aspects of the courts' operation including registry work. If this is achieved, it will greatly enhance a much speedier and easier dispensation of justice. Filing and service of processes could be done online within the glimpse of an eye instead of the bureaucratic, expensive and time-waste way of doing so. It also ensures a more reliable and prompt proof of service. All these are critical success factors to the work of a judge or magistrate which ends with judgment writing and delivery.

May God the Almighty guide our judges and magistrates' the courage to work righteously with the fear of God. We must, as judges and magistrates, strive to achieve excellence in our onerous task of adjudication with transparent honesty, competence, inspiration and commitment to the selfless service of the people without fear or favour, affection or ill will and recognise that a judicial office is both an honour and public trust.

Thank you for your keen attention. May God bless you and keep you guided righteously.

JUSTICE HUSSEIN MUKHTAR, JCA, Ph.D
PRESIDING JUSTICE,
COURT OF APPEAL,
SOKOTO DIVISION.