A REFRESHER TRAINING FOR MAGISTRATES AT THE NATIONAL JUDICIAL INSTITUTE ABUJA

TRIAL IN MAGISTRATE COURTS: PRACTICE AND PROCEDURE

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27th April, 2017

Preamble:

I must thank the Almighty God for all the journey mercies he granted all the distinguished participants and resource persons to this workshop at the National Judicial Institute. Secondly, my deep appreciation extends to the Administrator of NJI, Hon. Justice R.P.I. Bozimo, OFR, for nominating me to present a paper at this very important training for Magistrates in Nigeria.

The Nigerian Magistrate is one of the indispensable judicial officer in the judiciary whose relevance and or usefulness in the effective administration of justice cannot be undermined. It will not be an exaggeration in my opinion to posit most respectfully that about seventy percent of the pending cases in Nigerian Courts are usually in the Magistrate Courts, thus the need for training and retraining of our Magistrates to enhance speedy, effective, and result oriented trial in the courts where they preside to say the least is an obligation the National Judicial Institute must continue to undertake; it is on this note that I commend the Administrator of NJI for this laudable initiative.

In this paper I shall discuss trial in both civil and criminal proceedings. The paper is by no means exhaustive but shall touch key components of trial in this court to excite your thoughts and create room for incisive deliberations.

The Magistrate and Magistrate Court

The Magistrate is a person appointed by the Judicial Service Commission or committee to serve on the Magisterial bench. He adjudicate on civil and criminal cases. The Magistrate Court where he presides is the closet court to the grassroots. Its jurisdiction is limited by the various laws regulating its operation.

Commencement of Trial in Magistrate/District Court

It is normal that disagreements and offence will occur in the daily interaction of a person against another and they may go unresolved and may need intervention of the court. One of such courts in the hierarchy of courts in Nigeria where such dispute could be heard and determined is the Magistrate Court. This court is also referred to as District Court in the Northern Nigeria while sitting on civil causes. Therefore, the mode of commencing an action in a Magistrate Court depends on where the Court is located. See for instance the District Court Laws of the Federal Capital Territory[1], the District Laws in Benue State[2] and the Magistrate Court Laws of Lagos State[3].

The Magistrate Court (Civil Procedure) Rules of Lagos[4] provide two forms of commencing an action:

1. By a claim: The particulars of the claim must be attached.
2. By originating application: action commenced by originating application are used where proceedings are authorized to be commenced in Magistrates Courts and not required to be commenced otherwise. It is used where facts are not in dispute and must state the order applied for and sufficient particulars showing the grounds for which the applicant makes the application.

In the Magistrate Court in Abuja, trial is commenced:[5]

1. By plaint in form 1, this could be done by way of ordinary or default summons, and is used when facts are not in dispute. The plaint is filed along with the particulars of the claim. The Registrar of the Court then issues a plaint to the applicant, he also issue and serves ordinary summons in form 6 with the particulars of claim to the defendant.
2. By default summons: In form 7: this is used in actions for liquidated money demand which the plaintiff feels the defendant will have no reasonable defence to the claim.

[1] See generally, District Courts Laws of FCT 2009. See also ACJL, FCT.
[2] District Court Laws of Benue State Cap 56, 2004
[3] Magistrate Court Laws of Lagos State 2009. See also the ACJL, Lagos State.
[4] See Order 1 Magistrate Court (civil procedure) Rules 2009.
[5] See generally the FCT Magistrate/District Court Rules 2009.

3. By originating applications by way of ordinary or default summons and is used when facts are not in dispute.

4. Summary summons: This is used when the claimant wants a quick trial or judgment. The claimant will file the claim with the particulars of claim and request through a letter addressed to the Registrar to endorse the claim as a summary summons.

Where a plaintiff is not represented by counsel the Registrar of the Court reduces into writing the grievance of the aggrieved, charges the filing and service fees and other incidental cost as the need may arise. Where counsel is in the matter, he puts in a summary form the claim of the plaintiff and the Registrar after assessing, indicates the fees payable. Fees payable vary depending on the amount of money involved in the claim. A magistrate court shall not entertain an action if it is clear on the face of the record that the correct filing fees have not been paid. If the fault or error or omission is on the part of the plaintiff, a suit may be said to have been wrongly instituted and may be struck out[6]. The correct attitude of the court where the fee is insufficiently assessed by the Registrar, is to order for the balance to be paid[7].

The completion of this process by the plaintiff is followed by the issuing of the writ of summons commanding the appearance of the defendant in Court on the date set in the plaint. For purposes of clarity a plaint is a summary of the substance of the claim of the plaintiff against the defendant[8].

Service of process

Service of Court processes goes to the jurisdiction of the Court to hear a matter. Parties must as a matter of law and practice ensure that the opposing party not only receives and acknowledge service of processes but also that the service is effected properly. Where proceedings are begun where no attempt has been made to serve the defendant any proceedings against him at the Magistrate Court, no matter how well conducted, shall be a nullity. In the case of

[6] Okolo vs. UBN (2004) 1 SCNJ 116 at 122

[7] Lawal & ors vs. Adejumo & Another (1963) 2 ALL NLR 131. But also see contrary holding Fada vs. Naomi (2002) FWLR (pt. 130) 1881. God's Little tenancy vs. NWaigbo Oyakhire (2005) ALL FWLR (pt. 271) 82.

[8] Kasoap vs. Kofa Trading Co. Ltd (1996) 2 SCNJ 235 at 333. Supreme Court held: Suit may be commenced by writ of summons or any other manner prescribed by statute.

Campagnie Generale de Geophysique (NIGLT) *CGG Nig. Ltd vs. Aminu*[9] the Supreme Court, per, Aka'ahs, JSC held:

> "*...although the issue of jurisdiction of the trial court to entertain the suit was raised on appeal, the Lower Court was right to remit to the High Court for hearing denovo since the issue of service of the originating process on the defendant is a condition precedent to any effective adjudication between the parties to the case".*

The upshot of the above is that service of processes on a defendant is very important because it is the process that kick starts the litigation process. Failure to effect proper service is a fundamental lapse and flaw and a person affected by any order where processes were not served is entitled ex-debito justicia to have the order set aside as a nullity[10].

The various Magistrate Court and District Court rules across the country provide the procedure of effecting service on the defendant,[11] where the defendant resides within or outside the jurisdiction of the court. Where the defendant resides outside jurisdiction, the procedure is to obtain leave of the court to effect service. An application of this nature for leave to issue may be made either in the open Court or in chambers since it is ex-parte and it shall show the following:

a. That the plaintiff has prima facie a good cause of action.

b. In what place the defendant is or may probably be found.

c. The grounds upon which the application is made.

d. That the proceedings have been commenced in the nearest court within the district in which;

   i. the defendant or one of the defendants resided or carried on his business at the time of commencing the action; or

   ii. the cause of action or claim arose wholly or in part, or

   iii. the land, person or thing that is the subject matter of the proceedings and the location.

[9] (2015) LPELR – 24463 (SC) see also Madokolu vs. Nkemdilim (1962) 2 SCNLR 342, Nwabueze vs. Okoye (1988) 4 NWLR (pt 91) 664.

[10] National Bank Ltd vs. Gathrie (1993) 3 NWLR (pt 284) page 643 at 659. See also Kida vs. Ogunmola (2006) 13 NWLR (pt. 987) page 377 at 393.

[11] See generally Magistrate Court rules in various courts in Nigeria.

From my experience as Magistrate and High Court Judge, the Magistrate must be diligent to insist on personally having a look at the correspondence file to be sure that the service and in fact proper service has been effected on the defendant(s) before taking the next step. Proof of service is important and the law puts on the plaintiff the onus of verifying that the defendant had in fact been served with the summons.

A writ or plaint which is not served within six month of the issuance and which is not renewed is void[12], see also Mobil Oil Nig. Ltd vs. Ijaiya[13]. In the case of Alao vs. Ominiyi[14] the court held that a writ of summons which was not served within one year of its issuance or offered for renewal before the end of that period is an incurable nullify, dead and buried and for it there can be no resurrection.

It needs to be emphasised that service of process on the defendant is germane to the survival of any proceedings. A Magistrate must not take a careless attitude towards it, he must ensure that the bailiffs effect process on all the parties involved before hearing can effectively commence[15].

Where personal service cannot be affected on the defendant, the Court after being satisfied by affidavit evidence that service can only be effected by substituted means, order that service be effected on any of the following ways:

a. by delivery thereof to some person being an agent of the person to be served or some other person on it being proved that there is reasonable probability that the document would in the ordinary course, through that agent or that other person come to the knowledge of the person to be served; or

b. by advertisement in the Federal gazette or State gazette or in some newspaper circulating within the jurisdiction; or

c. by notice put up at a prominent place in the Court premises or some notable place of public resort of the district where the proceedings in respect of which the service is made have been instituted or at the usual or last known place of abode, or of business, of the person to be served or

[12] Order 111 rule 3. District/Magistrate rules of Cap 33, Laws of Benue State.
[13] Also (1964) LLR 60, also see Suberu & Anor vs. African Continental Bank & ors (2002) LPELR – 12207 (CA)
[14] (1966) NWLR 161, also see Kolawole vs. Alberto (1989) 1 NWLR (pt 98) 382 at 401, 4-16-417 and see TTT (Nig) Ltd vs. Okpori (1989) 2 NWLR (pt. 103) 337 at 344
[15] Dankaro vs. Dankaro (1967) NNLR 111 at 113

d. by affixing the document to the usual or last known place of abode or business of the person to be served; or

e. in such other manner as the court may direct.

Practice and Procedure: Parties to an Action

The Law permits for a situation where more than one person could be plaintiffs in a suit. Therefore all persons may join as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. Similarly, all persons may be joined as defendants against whom the right to my relief claimed exist, whether jointly, severally or in the alternative.

It is important to note that where more than one person have the same interest in one suit, one or more of such persons may, with the leave of the court, be allowed by the other persons interested to sue or to defend in such suit, for the benefit of or on behalf of all parties interested.

Default summons

Default summons instead of an ordinary summons may issue where the claim is for a debt or a liquidated money demand. The grant of leave is a condition precedent to issue the summons. A default summons issued by a District Court Judge or Magistrate without leave is void[16]. The rationale for default summons is to obtain judgment summarily and expeditiously without oral evidence by the plaintiff and witnesses. It is necessary to state that the summons shall be supported with an affidavit in the prescribed form. And same shall be served on the defendant unless otherwise directed by the Court. The District Court Rules of Benue State provides that if the defendant within 16 days after the service of summons, inclusive of the day of service, did not give notice in writing, signed by himself or his legal practitioner of his intention to defend, judgment shall be entered against the defendant for the amount claimed.

Where the defendant gives notice of his intention to defend, same shall be caused to be served on the plaintiff, and the court shall in the circumstance, fix the suit for hearing. The defendant need not show any defence on the merit through an affidavit[17], it is when he appears to defend that his grounds of

[16] Okeke vs. Barclays Bank (1970) NWLR 118
[17] Urhata vs. Menta Ltd (1986) NMLR 55.

defence would be stated in his plea before the court. This is one of the distinguishing features of default summons proceedings in the Magistrate Court or District Court from the undefended list proceedings in the High Court where the defendant is expected to file notice of intention to defend and affidavit showing his defence on the merit within five days of the date fixed for hearing where he intend to defend the suit.

The defendant may fail to give such notice of defence. The District Judge or Magistrate in such situation may allow the defendant to file an affidavit disclosing a legal defence on the merits and satisfactorily explaining his neglect.

Default Judgment

A default judgment may be set-aside on application of the defendant. The power to set aside such judgment is discretionary and that discretion has to be exercised judiciously, guided by consideration of the following principles, as set out in *Mohammed vs. Husseni*[18]

a. The reasons for the applicant's failure to appear at the hearing or trial of the case in which judgment was given in his absence.

b. Whether there has been undue delay in making the application to set aside the judgment so as to prejudice the party in whose favour the judgment subsists.

c. Whether the applicant's case is manifestly unsupportable.

d. Whether the applicant's conduct throughout the proceedings that is from the service of the writ upon him to the date of judgment has been such as to make his application worthy of a sympathetic consideration.

The principle in respect of the right of a court to set aside a default judgment is that unless and until the court has pronounced a judgment on the merit or by consent it retains the power to set its own default judgment.

[18] (1999) 12 SCNJ 136 at 153-154

Jurisdiction

The issue of jurisdiction is very fundamental to adjudication, any suit heard and determined without jurisdiction is a nullity no matter how well conducted. In the case of *Ebuodahe vs. Koyo*[19] the Supreme Court held:

> *"Jurisdiction is a central issue to any case before any court and once it is challenged, the court concerned is duty bound to determine whether it has jurisdiction first before proceeding to entertain it. This is so because any act, orders or prosecution made by a court without jurisdiction is a nullity and remains so for all purposes"*

It is in the light of the above that a Magistrate sitting in a civil court must be mindful of his monetary jurisdiction. In considering whether the court has the jurisdiction to entertain an action, it is the plaintiff's claim as endorsed on the writ of summons and the statement of claim that the court has to consider and not the defence[20].

Trial

On the day appointed for hearing if the plaintiff fails to appear in court and there is no explanation justifying his non-appearance, the Magistrate may strike-out the case as abandoned. However if he is present and the defendant was properly served with processes to enable him appear and he does not attend the court and gave no reasons for such absence the plaintiff may be allowed by the Magistrate to prove his claim and if there was any counter-claim by the defendant it may be struck-out.

If on the date fixed for hearing the parties decide to settle out of court, the court should not hesitate to explore the window of settlement. It is now a best practice in adjudication when parties choose the Alternative Dispute Resolution mechanism (ADR) than going through the rigours of a full trial.

On the other hand if the case is to proceed to trial, the witness to testify enters the witness box while the other witnesses are informed to go out of court and out of hearing limits. However, if a witness remained in court at the time of

[19] (2004) 12 SCNJ 175 at 182. Also see Ndaeyo vs. Ogonnoya (1997) 1 SC 11
[20] Aremo vs. Adekanye (2004) 7 SCNJ 218 at 231

trial his evidence could still be allowed but the weight to be attached to it may be affected.

There is no hard and fast rule as to which witness should first testify nevertheless, in most cases the plaintiff testifies first. The evidence he gives is titled evidence in chief, while the defence intervention at this stage by way of questions is called cross-examination and the plaintiffs questions to the cross-examination in case of ambiguities is called re-examination.

The Magistrate must avoid the temptation of stepping into the arena. The duty of proof is not on the judge. He must therefore remain an independent umpire throughout the proceedings. He may only step in sparingly when it is obvious that such a restraint may hinder the course of justice from being met.

Exhibits tendered in the course of the case must be marked with identification letter A-Z or numbers which should be in serial order as tendered. It is advisable that exhibits be fully and clearly marked by the clerk of Court numerically or alphabetically.

At the end of the evidence by the plaintiff and the defendant, counsel are allowed to address the court. The general rule is that defendant's counsel begins while the plaintiff counsel should follow thereafter after which the case is adjourned for judgment[21].

The Magistrate should not deny any party the right to address. The parties will be at liberty to appeal against such denial if it led to a miscarriage of justice. In fact in *Obodo vs. Odomu*[22] the Supreme Court held that counsel's address forms part of the case and failure to hear the address of one party however overwhelming the evidence, vitiates the trial if that party was unreasonably denied the right of address by the Judge.

For the purposes of this paper I shall not discuss the nitty gritty of judgment and judgment writing since in workshop of this nature papers are most often assigned on this very important topic in our jurisprudence.

The Magistrate equally sits over criminal cases. I shall therefore discuss some areas that are manifestly vital and necessary in criminal trials. The Criminal

[21] See order 25 rule1 (1). District court rules Cap 33, Laws of Benue State.
[22] (1987) 6 SC 15

Procedure Code (CPC) and the Criminal Procedure Act (CPA) and quite recently the administration of criminal justice law regulate criminal trials in the Magistrate Court in Nigeria.

Arraignment

In the Magistrate Court in the North an accused is arraigned by way of First Information Report (FIR) or by private complaint[23]. The FIR is read, interpreted in the language the accused understands if he is illiterate, and the contents thereof are carefully explained to the accused, he is asked whether he understands the allegation, if he does he is asked to show cause why he should not be convicted. The accused may be convicted where the offence allows for summary trial proceedings, where he denies the allegation, the case proceeds to full trial and evidence is called on both sides. In the South, particularly in Lagos, charges are filed by the Police and accused plea is taken without the rigours of going through a first information Report before framing a charge as it is the case in the North. However, in some cases at the end of the prosecution's case accused may raise a defence of no case submission.

No Case Submission

No case submission means there is no evidence so far adduced by the prosecution on which the Court could convict even if it believes all that the prosecution witnesses had said. Credibility or weight to be attached to the evidence is not in issue at this stage. (See *Rex vs. Coker*[24]). A case that is thoroughly discredited after a no case submission will earn the accused a discharge. This discharge has the similitude of an acquittal.

In *Agbo vs. State*[25] the Court of Appeal held that in ruling on a no case submission the court should be brief and should make no observation and the ruling should not be of inordinate length. It is sad to note that some Magistrates engage in evaluation of evidence at the stage of no case submission thus leading to a miscarriage of justice. An appeal against such lengthy rulings in most cases been upheld a lengthy no case submission ruling is acceptable only where it leads to a discharge of the accused person.

[23] Section 143 of the CPC
[24] (1995) 20 WACA, Hubbard J., see also Agbo vs. State (2010) LPELR 4989 (CA).
[25] Supra at 23

Bail Pending Trial

Once an accused has been taken to Court, application for his bail is usually made to a Magistrate. Section 118 of the Criminal Procedure Act and section 341 of the Criminal Procedure Code provide the guiding principle for granting of bail to an accused. The reasons to be considered are usually thus:

(a) Whether the accused will appear to stand trial i.e. whether or not he will jump bail.

(b) If there is likelihood that the accused will repeat the offence, bail may be refused.

(c) Where the accused has a bad criminal record, bail may be refused

(d) The Court will also consider the nature of the offence, the severity of the punishment

(e) The Court will usually refuse bail where the accused cannot produce sureties to fulfill the requirements of bail.

The court must not refuse bail of an accused as punishment[26] hence an accused is presumed innocent until the contrary is proved[27]. Other cases that articulate in detail the principles that should guide the Court in granting or refusing bail includes: *Adamu Suleman& 1 or vs. Cop*[28], *Bamaiyi vs. State*[29], *Dokubo-Asari vs. Federal Republic of Nigeria*[30] *Abacha vs. State*[31].

There is need to emphasize that when it comes to the issue of whether to grant or refuse bail, the Court is enjoined to exercise its discretion judicially and judiciously. In exercising the discretion given to the Court by the Law, the

[26] Dogo vs. Cop (1980)1 NCR 14 Eyu V. State (1982) NWLR (Pt 78) Per Oguntade, JCA (as he then was). See also section 36(5) of the 1999 Constitution .
[27] (2008) 3 SCNJ 1 at 9 – 10
[28] (2001) 8 NWLR (pt 715) 270
[29] (2007) ALL FWLR (pt 375) 558
[30] (2002) 5 NWLR (Pt 761) 638
[31] (1980) I NCR 113

Magistrate is bound to consider the weight of facts deposed to in an affidavit evidence placed before him. Arbitrary grant or refusal of bail is unacceptable.

Process Of Applying For Bail

No specific provision is enacted particularly for the process of applying for bail, nevertheless, section 363 CPA allows for the adoption of the procedure in English Courts in the South. The applicable procedure in England is that application should be by summons, supported with an affidavit. The same process or procedure is followed in the North. In a situation where bail is refused or bail conditions by a Magistrate Court are harsh and manifestly difficult to meet, the accused has clear liberty as by the provision of section 344 of the Criminal Procedure Code to apply to the High Court for review of the bail terms. Section 344 of the C.P.C states:

> *"A judge of the High court may in any case direct that the bail required by an officer in-charge of a Police Station or any Court be reduced".*

See the case of *Obekpa vs. Commissioner of Police*[32] per Idoko, C.J of blessed memory.

Generally, there are instances, where bail applications have been contested both in the Northern and Southern part of Nigeria up to the Supreme Court. Few of such cases include *Abacha vs. State* (supra) and Dokubo-Asari vs. Federal Republic of Nigeria (Supra).

Basic Statutory Provision Regulating Bail

In the North, the Criminal Procedure Code (CPC) regulates the process of bail, they are key sections of the CPC that guide this process. These are Sections 283(4), 340, 341, 342, and 344 of the C.P.C.

[32] Obekpa vs. COP (1980) 1 NCR 113, See Section 341(2) of the C.P.C..

Section 341 of the C.P.C is the provision more frequently relied upon in Magistrate Courts. This section is divided into three paragraphs with each carrying a necessary function. By Section 341(1) of the CPC, no person is to be granted bail who is facing trial for a capital offence. The accused can only enjoy bail under Section 341(3) of the CPC if he proves that there are reasonable grounds for believing that:

(i) He did not commit the offence, and
(ii) There are sufficient grounds for further investigation.

Persons accused of an offence punishable with imprisonment for a term exceeding three years are not ordinarily released on bail except by application of such person to the Court which must be satisfied that:

(a) Proper investigation of the offence charged shall not be prejudiced
(b) That the person accused shall not escape from justice
(c) The person accused if granted bail will not commit any other offence[33].

Sections 342 and 344 of the CPC give powers to the High Court over the applications for bail where bail has been refused by a Magistrate. Section 342(2) of the CPC specifically deals with bail after conviction in cases decided in the Magistrate Courts. It is equally important to note that section 281(4) of the C.P.C empowers a Magistrate to release on bail a convict in custody who has appealed against his conviction.

Bail Conditions

Bail terms are elastic and largely depend on the nature of the offence and the personality of the accused. It may be granted with the following conditions.

[33] See section 3412 of the CPC

(a) It could be granted on self-recognizance in such case no bond and surety is required. It is usually granted to people who are with fixed address, stable integrity or of high standing.

(b) A person could be admitted to bail if he produces one or more persons to enter into a bond for a specified sum; such a person is described as a surety.

(c) Bail could be granted to an accused on the condition that he executes a bond for a fixed sum.

Sentencing

The criminal justice system in Nigeria starts to run with the commission of a crime and straddles subsequent interventions by agencies of the system such as arrest, arraignment trial, and concludes with sentencing and punishment of the offender. The processes are governed by Federal and State Legislations. The Criminal Code Act[34] and the Criminal Procedure Act[35] for the Southern State while the Penal Code[36] and the Criminal Procedure Code apply to the Northern State.

The provisions of the codes are similar in many aspects although there are some significant difference, especially that each of the legislation reflected to some extent the religious and traditional cultures of the different people in the different parts of the country.

Types of Sentences

The conviction of an accused is not the conclusion of proceedings in a criminal trial, the Magistrate must pass a sentence on the convict. This is the most sensitive part in any trial. My years on the bench as a Magistrate and a High Court Judge have shown to me that sentencing is the most sensitive segment in a criminal trial. Occasionally, Judges retire to chambers to take a deep reflection over a case especially in capital offences and other severe cases before returning to open court to pass the sentence. A hasty sentence on a convict may not attract a correct decision. In addition to the above, punishment by way of imprisonment or fine has always been an incident of responsibility.

[34] Cap C 38, Law of Federation of Nigeria (LFN), 2004,

[35] Doherty (of blessed memory): Criminal Procedure in Nigeria: Law and Practice, Blackstone Press Limited, 1999, P. 317.

The state and society as a whole have an unyielding interest in protecting the community from threat of further crimes by those who ought to have prevented or controlled their actions.

It is a universal truth that the first sentence known was imposed by God. When Adam and Eve strayed from the straight and narrow part of rectitude by breaking the first law ever handed down to man, they were promptly tried, convicted and sentenced to a well articulated punishment.

After an accused is convicted, a Magistrate passes a sentence on him. The sentence passed must be one prescribed for the offence under the statute creating it.

Conclusion

In conclusion I recommend the following:

1. Frontloading be introduced in civil matters in the various Magistrate Courts laws across Nigeria to align with current practice in the High Courts.
2. Bail conditions imposed by Magistrate should be less stringent particularly for first offenders.
3. Now that ACJA is being domesticated Magistrates should adopt non-custodial punishment measures in most simple offences to avoid prison congestion amongst other reasons

Thank you all for your time.