

MANAGEMENT AND SECURITY OF EXHIBITS AND COURT RECORDS: ROLE OF SECRETARIES, PROCESS CLERKS AND BAILIFFS.

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INTRODUCTION

It is a privilege to have been nominated as a Resource Person for the 2016 Refresher Course for Secretaries, Protocol Officers, Court Registrars, Process Clerks and Bailiffs. My gratitude goes to the Administrator of the National Judicial Institute, Hon. Justice R.P.I Bozimo, OFR, and the Management of the Institute for giving me this opportunity.

The title of this paper "*Management and Security of Exhibits and Court Records: Role of Secretaries, Process clerks and Bailiffs*", is apt as the management of records and exhibits in the courts is not only an important subject in a workshop such as this, but it also provides the platform upon which the entire judicial process is built.

It is pertinent, therefore, to delve into the definition of key terms in order to lay a proper foundation for this paper.

COURTS

It is essential to define a court to properly examine the legitimacy of court staff and personnel charged with ensuring its proper functioning. A Court is an organized body with defined powers, meeting at certain times and places for the hearing and determination of causes and other matters brought before it, and aided in this by its "proper officers" ... to record and attest to its acts, execute its commands and secure due order in its proceedings¹.

EXHIBITS

An exhibit can be defined as **'a paper or document produced and exhibited to a court during a trial (or in the course of)... or an item of physical/tangible evidence that is to be or has been offered to the court for inspection. It could**

¹ Blacks law Dictionary, 6TH Edition, 352-353

also be defined as a document, record or other tangible object formally introduced as evidence in court.²

Exhibits could also be documents attached to and made part of a pleading, motion, contract or other instrument. Furthermore, certain characteristics of exhibits include that such document or object must have been produced or tendered in court. Exhibits deemed admissible and those rejected by the Courts should still be retained along with accepted exhibits³.

Types of Exhibits

There are documents and non-documentary types of exhibits. Non-documentary exhibits may include perishable items such as foodstuff and in the event that a perishable exhibit is tendered in court, the court may make an order for the disposal of the said foodstuff by sale and the proceeds to be deposited with the Court.

SECURITY

The following words may aptly define security to wit; safety, haven, safekeeping, refuge and sanctuary. These words are synonymous with security and may be used interchangeably. Security of a document or safekeeping of same simply means a document is kept in a safe place where it will not be lost or damaged.

Therefore, security of exhibits (whether documents or not) and court records implies the safekeeping of these items where they shall not be damaged.

MANAGEMENT

Management implies the act of running and controlling a business or similar organisation; it could also be the act or skill of dealing with people or situations in a successful way.⁴ There is a need for skill and sound judgment to ensure proper management of court records. Management of court records and

² See generally 'Best Practices in the management and safe keeping of Court Records and Exhibits'; a Paper presented by Ngozi M. Ihiekwe at the National Workshop for Court Registrars & Administrative Staff held at the National Judicial Institute from 10th -14th August, 2009; pages 3 & 4

³ Order 35, Rule 21 FCT High Court Civil Procedures 2004.

⁴ Ibid page 3.

exhibits is the ability and skill to control, supervise and preserve records and exhibits and make them available in justice delivery and thereby accessing access to justice⁵.

RECORDS

Law Courts are courts of record and their proceedings are recorded or taken down in written form. A record is a written account of an event, which is kept for future reference. During a routine court sitting, some of the records required include:

- Record book
- Case/Suit Files
- Certified copies of Rulings and Judgments
- Hearing, Remand Notices
- Production and Discharge Warrants
- Court seals and Affidavits
- Account of witnesses taken during trial.
- The arguments by counsel representing litigants before a court are usually written by the Judge/Magistrate in long hand and kept in a file.

All these accounts recorded by the court eventually form the basis of a court's judgment.

I should state here that there are other documents or records kept in other offices of the court such as the probate registry which will typically have Wills, Letters of Administration, Inventory forms, next of kin forms, bank and death certificates (supplied by applicants to either have a will proved or property valued).

Execution warrants, writs of attachment, auction notices are also records that must be properly kept.

The court records are the mirrors through which members of the public view a court of law. There should be utmost care and consideration for records and

⁵ P.N.C Agumagu 'Management of records and exhibits in the courts' being a Paper delivered at the NJI workshop for Court Registrars 2004.

exhibits so that the confidence in Courts and the judicial process will not be eroded.

WHO IS A COURT REGISTRAR?

A Registrar is an officer of Court, entrusted with the day-to-day administration of Court, subject to the overriding authority of either the Judge or the Magistrate as the case may be.

The following constitute the primary functions of Registrars:

1. To attend at such sittings of the Court as the Court shall direct;
2. To fill up or cause to be filled up Summons, conviction warrants, recognizance (for bail), Writ of Execution and other documents, and submit same for the signature of the Judge;
3. To make or cause to be made copies of proceedings when required to do so by the Judge, and to record the Judgments, convictions and orders of the Court;
4. To receive or cause to be received all fees, fines and penalties emanating from matters before the Court and acting upon such order (or orders) made by the Court; all such monies paid or deposited in respect of proceedings in Court shall be deposited in the Court's account by the Registrar;
5. To render, (with regard to the Chief Registrar of a Court), monthly returns of cases, revenue and officials under him to the Chief Judge or other necessary authority such as the Judicial Service Commission;
6. To certify true copies of Judgments of the Court or orders drawn therefrom for the endorsement of the Judge or Magistrate;
7. To perform or cause to be performed such other duties connected with the Court as may be assigned to him the Judge;
8. To ensure, through the Bailiff of Court, that orders or Judgments are complied with, respected or obeyed (execution);
9. In case of a probate matter, the Probate Registrar must ensure that the proper and necessary steps are taken before the issuance of Letters of Administration, and also keep proper custody of all Wills deposited in Court.

The above-enumerated functions are by no means exhaustive. There are many other duties required of the Court Registrar to make for the smooth management of the Court Registry. The proper management of the Court Registry also amounts to proper management of court records.

SECRETARIES

Secretaries have no statutorily defined duties but work directly with the Judges assisting in administrative and legal tasks. Secretaries are generally responsible for :

1. Keeping and safeguarding confidential files
2. Typing of copies of confidential and top secret documents and judgments
3. Typing of other correspondence such as speeches and letters
4. Performing any other duties that may be assigned to him or her

COURT CLERKS

This is an official in charge of the records of the court. He is tasked with maintaining the schedule of cases, files and documents used by the court. His work is done under the supervision of the Court Registrar and includes:

1. Preparation of the cause list
2. Arrangements for court sitting
3. Mention of cases
4. Keeping in safe custody record books, register of cases filed, exhibits. Cases disposed among others
5. Endorsing case files after court sitting
6. Marking of all exhibits

BAILLIFFS

Bailiffs are indispensable in the administration of justice and are empowered⁶ to

1. Take inventory of seized goods and ensure they are kept in safe custody
2. Keep an up to date Register of all processes issued by the court for service
3. Keep duly certified sale accounts where money collected in court is recorded

⁶ S5, Sheriffs and Civil Process Act, Cap S6 LFN 2004.

4. Perform such other related duties as may be assigned⁷

THE ROLE OF COURT REGISTRARS, SECRETARIES, PROCESS CLERKS AND BAILIFFS IN THE MANAGEMENT OF COURT RECORDS

Care of exhibits and court records is an onerous responsibility, which ought to be undertaken with every sense of seriousness. Any carefree attitude, omission or dereliction of duty on the part of Officers responsible for this task is bound to affect the justice delivery system.

The duty to manage court records and exhibits is set out under the High Court Civil Procedure Rules⁸ and states that;

“ The Court Clerk shall take charge of every document, or object put in as an exhibit during the trial of an action”

The Evidence Act⁹, enjoins every court to ‘ take judicial notice of its records’

By clear implication, Courts are in custody of their records and responsibility for court records and exhibits falls squarely on the Clerks and Bailiffs who are Officers of the Court.

Generally, Court Employees are bound to carry out their functions within the ambit of certain rules and regulations. The following duties are expected of court employees with regard to court records or exhibits that are in their custody to wit;

I. ACCOUNTABILITY

A Court Employee is accountable for the resources, property and funds entrusted to him. Accordingly, he shall use the resources, property and funds under his official control judiciously, transparently and solely in

⁷ See generally, ' Ensuring security within the judicial premises: Role of Secretaries, Court Registrars, Process Clerks and Bailiffs' being a Paper delivered by Mardhiyyah Jaafar (Research Fellow NJI) at a workshop for Secretaries, bailiffs and process clerks in Abeokuta, Ogun State 2015.

⁸ Order 35, Rule 20, High Court Civil Procedure Rules 2004.

⁹ S122, Evidence Act, 2011.

accordance with prescribed financial regulations and other applicable rules.¹⁰

Furthermore, it is important to note here that where the Court Registrar in whose custody exhibits are deposited, converts same for personal use, he shall be liable for criminal liability. The Code provides, ‘ **Breach and/or violation of any rule contained in this Code shall constitute gross misconduct or misbehaviour and may attract disciplinary action, and this shall be without prejudice to the penalty which may be imposed by any law where the breach is also a criminal offence**’.

In addition it is important to note that Court Employees must not collect any form of inducement (financial or otherwise) that might influence the performance of their official duties¹¹. In other words, where a court registrar destroys a court record or an exhibit in a bid to obstruct justice after collecting bribe from a litigant, he shall be liable to discipline by the relevant authorities.

II. CONFIDENTIALITY

A Court Employee is also accountable for confidential information entrusted to him. Accordingly a Court Employee shall not speak to the media or grant interviews in his personal capacity as a free citizen in a way that may be injurious to the collective integrity of his employment.¹²

Furthermore a Court Employee must not disclose to any unauthorized person any confidential information, which may have come to his knowledge in the course of his employment¹³. In other words, registrars, secretaries, process clerks and bailiffs must be discreet in their discussions in public and must not be careless with the information they share in public with regard to official information (especially on matters which are subjudice).

¹⁰ See Rule 1 (A) (1) Code of Conduct for Court Employees of the Federal Republic of Nigeria. The Code of Conduct for Court Employees applies to all categories of employees involved in the day-to-day administration of the Court, other than Judicial Officers.

¹¹ Ibid. Rule 1 (A) (3).

¹² Ibid Rule 1 (B) (1)

¹³ Ibid. Rule 1 (B) (2)

In other words with regard to rulings and/or judgments, secretaries must be careful not to divulge to litigants before a Court the position which a Judge has arrived because most Judges allow their secretaries to type-set these delicate documents for them.

In addition, Court Employees, be it secretaries, registrars, process clerks or bailiffs are prohibited from giving out any official document of the judiciary in any form without authorization¹⁴.

Thus, process clerks, secretaries or registrars which are in the habit of making copies of documents in the court's file and giving same to lawyers, either out of ignorance or for self gratification should desist from such actions.

As Officers of the Court, they must be careful not to falsify, delete or misrepresent contents of an original copy of a document, while making certified true copies.

III. IMPARTIALITY

A Court Employee shall not discriminate on the basis of, nor display by words or conduct, a bias or prejudice based upon tribe, religion, colour, nationality, gender or other protected group, in the conduct of service to the Court and public¹⁵.

It goes without saying therefore that Court Employees must treat Court users including counsel and litigants equally and impartially. A Court Registrar or Commissioner for Oaths in the Court Registry must not attend to a Court User who seeks to depose to an affidavit and has paid the necessary filing fees and joined a queue in a separate manner from another Court user who has for instance given a bribe to jump the due process.

It is also common practice for certain Court Registrars to assess affidavits or other court processes and stamp same with the relevant authorized stamps whilst waiving the fees for the said processes maybe where the beneficiary is a relative, benefactor or friend. This amounts to partiality as well as using the said position as a Court Employee to garner undue advantage.

¹⁴ Ibid. Rule 1 (B) (3)

¹⁵ Ibid. Rule 2 (C) (1)

HOW SHOULD THE DUTY OF MANAGEMENT AND SECURITY OF COURT RECORDS BE UNDERTAKEN?

The safety and proper management of records and exhibits should be of paramount importance considering the role it plays in ensuring the effective administration of justice.

There should be proper security to ensure that such records and documents are free from violation by men and other forces of nature. Records should be kept in a safe place to prevent them from being stolen, mutilated, burnt or torn. One can only imagine the effect of a leaking roof, where water wipes the writings in a record book or important document or destroys it. How can a court of record then speak without records? Proper care should be taken to ensure protection from attack by termites, rats etc.

Safes and drawers should be used also to ensure that documents and exhibits are properly secured. Plastic files or other spill-proof materials should be used.

The proper officers to be in custody of such records and documents should be identified. When an Officer of court engages in the duty of managing and securing the records and exhibits in his custody, he ought to ensure that there is a proper list¹⁶, by fashioning out a filing system that will secure case files and make them easy to identify.

A Registrar in the discharge of his duties must ensure that the records and exhibits, which are in his custody, are properly kept and maintained. He ought to mark every exhibit distinctly and endorse it with;

- a. Title of the suit in respect of which it was tendered
- b. Date and signature
- c. Ensure that it remains in proper custody until the end of the trial

The Federal High Court Rules¹⁷ also provide for,'

“Exhibits during trial.

¹⁶ Order 35, Rules (20), (21), (22) FCT High Court Civil Procedure Rules 2004.

¹⁷ Federal High Court Civil Procedure Rules 2009.

12. (1) The registrar shall take charge of every document or object put in as exhibit during the trial of an action and shall mark or label every exhibit with a letter or letters indicating the party by whom the exhibit is put in (or where more convenient the witness by whom the exhibit is proved) and with a number, so that all the exhibits put in by a party (or proved by a witness) are numbered in one consecutive series.

(2) The Registrar shall cause a list of all the exhibits in the action to be made.”

There should be a clear delineation of old cases and record books that should be appropriately archived.

There should be a Register for exhibits which has (a) type of exhibits (b) identification mark (c) serial number (d) date of admission into evidence

This orderliness is a sign of good management skills and will ensure the proper functioning of the Court. Important records or exhibits that are damaged or misplaced may stall the progress of proceedings or lead to a miscarriage of justice.

It should be mentioned here that the Chief Registrar should provide instruments needed to effectively carry out these duties.

A Judge may also give directions as to how Court records and documentary exhibits should be kept¹⁸.

THE ROLE OF REGISTRARS IN THE COMPILATION OF RECORDS OF APPEAL.

The Rules of court¹⁹ provide that,

“An exhibit shall not be released, after the trial to the party who has put it in unless the period during which notice of appeal to the court of appeal may be given has elapsed

¹⁸ “ The Judge of the court/trial may make any order he thinks fit for the custody, disposal or production of any exhibit...” FCT Civil procedure Rules.

¹⁹ Order 35, Rule 22 FCT Civil Procedure Rules 2004.

without the notice having been given, and then only if the Judge who presided over the trial (or, in his absence, another Judge) grants leave to release that exhibit on being satisfied;

- a. That there will be no appeal**
- b. That the exhibit will be kept duly marked and labelled and will be produced, if required, at the hearing of an appeal in the court of appeal (if any such appeal is lodged) : or**
- c. That the release of the exhibit will not in any way prejudice any other party.”**

Specifically, the following constitute the functions of Registrars on the issue of Appeal from the lower court or the High Court;

1. Preparation of Proceedings for onward transmission to the Appellate Court²⁰.
2. Certification of Proceedings²¹.
3. Prescription of Appeal Conditions on Civil Matters²²-
4. Settlement of Records: Soon after the lodgement of the Notice of Appeal, the parties would at the instance of the **Registrar of Court** be invited for **SETTLEMENT OF RECORDS**.

Settlement of records is a process whereby parties as well as counsel are afforded the opportunity of determining for themselves issues of particular significance, which they would want embodied in the Record of Proceedings. For instance, there may be need to identify which **exhibits** are material to the Appeal. In a nutshell, Settlement of Records is a process whereby parties to a dispute ascertain what comes up on Appeal.

5. Enforcement of Court Orders²³.
6. Take custody of deposits;
7. Certification of Judgment of Appellate Court;

²⁰ Or. 44 R.3 (1)- Osun State High Court Rules

²¹ Or 44 R. 25 (i) & (2)- Osun State High Court Rules

²² Or 44. R.3 (1) Osun State High Court Rules

²³Or. 44 R. 26 & 27 Osun State High Court Rules

8. Generally ensure compliance with Court Orders.

Upon the receipt of the Notice of Appeal duly filed and all requirements fully satisfied, the Registrar will proceed to register the Notice of Appeal in the Appeal Register Book and open a temporary file for such a Notice of Appeal duly filed. He then issues the Conditions of Appeal and this includes the bond for the cost of Appeal. He also gives the period during which the conditions of the appeal shall be perfected usually within thirty days from the day of receipt.

After the payment of the said prescribed deposit and the Appellant has entered into bond, the Registrar will then proceed to issue a '*Civil Summons Form 3*' to the parties to settle the Records of Appeal. The Registrar must ensure that parties agree on what to include and what not to include in the record.

The Rules enjoin the Registrar of the High Court and parties to an Appeal to reduce the bulk of the Record of Appeal as much as possible and practicable. Copies of the records and exhibits in the proceedings, before the lower court which are superfluous to the appeal should not be included in the record. Efforts should be made by the Registrar to confine the record to the documents that are material to the determination of issues raised on Appeal.

Furthermore, the Registrar charts the relevant papers of the file(s) supplied by the court (process) clerk and the proceedings in the record book for compilation, including the Judgment. He then supervises the typing of the record to detect if there is any error, omission or mix-up. Thereafter, it should be cyclostyled or photocopied neatly, properly arranged and bound. The Registrar then prepares the certificate of service of Notice of Appeal as well as the Preparation of certificate of Registrar that the conditions of service have been perfected.

The Registrar (Appeal) shall then ensure the correctness of the following appeal papers, which must accompany the record of appeal to the Court of Appeal to wit;

- a. Index;
- b. The Registrar's statement stating brief particulars of the case and fees paid;
- c. The Notice of Appeal;

- d. Bond of Appeal;
- e. Certificate of Service of Notice of Appeal form;
- f. The Certificate of Registrar that the Conditions of Appeal have been perfected;
- g. The cost of record of Appeal.

Thereafter, the Registrar in charge of Appeal must prepare a letter to the Court where the Appellant has appealed to and copies of Record of Appeal compiled, Exhibits and original Suit File(s) forwarded for the use of the Honourable Justices of the Court of Appeal.

THE ROLE OF PROCESS CLERKS IN THE COMPILATION OF RECORDS OF APPEAL.

The role of a Court clerk in all these cannot be glossed over as he keeps and updates the case file. A case file should tell a story of how and when the suit was filed, what steps have been taken so far in the course of its pendency in Court up to Judgment.

It is expected to be a folder that has a full story to tell. An attribute of a case file is that it is supposed to be numbered in term of pages.

As documents are filed, they are to be paged by the Court Clerk because he receives any newly filed court processes and files same in the Court's file(s). In that way, a confirmable paper trail is laid of how processes and documents are filed in the Registry of the Court.

Any error made by the Court Clerk either as to the filing or paging the process or processes properly will have a long negative effect on the compilation of the record of Appeal.

In all cases, the Court of first instance is the first point of call for a Litigant and so is the Court Clerk (as well as the Registrar). In other words, Court employees, in this instance the Court Clerks and the Registrar, represent the link between the court of first instance, the appellate court and the appellant. These two persons (Court Clerk and Court Registrar) are the center- point of Appeal. Diligently put, the Court Clerk as well as the Registrar can make or mar an Appeal.

CHALLENGES TO EFFECTIVE MANAGEMENT AND SAFE-KEEPING OF RECORDS

There are many constraints to proper management and security of court records such as;

Lack of adequate training on management of records lifecycle from case initiation, active case maintenance, case disposition and post disposition procedures.

Lack of modern storage facilities and functional archives

Poor salary and welfare packages

SUGGESTED IMPROVEMENTS

1. Continuing judicial education to ensure better performance and instil greater confidence in officers of the court.
2. Enhancement of salary and welfare package this will lead to greater job satisfaction and better impact the justice delivery by the Courts.
3. Ensure all tools are available for proper management and safe custody of records and exhibits such as establishment of modern and functional archives to ensure effective coordination
4. There should be modern storage facilities and the use of information technology.
5. Development of plans to deal with loss of records and other emergencies, and retrieval of records and information.
6. Provision and upgrading of surveillance systems within the judicial premises.
7. Establishment of schedules for retention and destruction.

CONCLUSION

Access to justice is one of the pillars of the rule of law and in this quest for justice, Litigants place reliance on court records and exhibits to prove their cases and get justice.

Exhibits and records assist the court in no small measure, to arrive at decisions. There should be proper management of court records by registering, preserving and producing upon demand the documents needed by the court.

The Judiciary is a public resource and is meant to be a vehicle which delivers justice to the people; the common man's hope. It is hoped that this cadre of Court Employees which are the target audience of this Workshop shall be given their due regard as they are indeed the engine room of the Judiciary and cannot be dispensed with.

While this paper cannot lay claim to having exhausted the role of Officers of the court in proper management and security of court records, I hope it has ignited a debate and the distinguished Participants will share their wealth of experience and thoughts in the ensuing discussions.

Thank you for your attention.