JUDGEMENT WRITING IN THE AREA/SHARIA/CUSTOMARY COURT: BEING A PAPER PRESENTED AT THE NATIONAL WORKSHOP FOR AREA/SHARIA/CUSTOMARY COURTS AT THE NATIONAL JUDICIAL INSTITUTE, ABUJA FROM 18TH – 22ND MARCH, 2019

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APPRECIATION:

Let me begin by expressing a deep appreciation to the Administrator of the National Judicial Institute, the Honourable Justice R.P.I. Bozimo (OFR) for extending an invitation to my humble self to serve as a resource person at this auspicious workshop. May God continue to give Her Lordship the guide to steer the affairs of the Institute to remarkable heights. I must also without hesitation express my very sincere thanks to His Lordship, the Honourable Justice M.A Sadeeq, the Honourable President, Customary Court of Appeal, Abuja and the entire management of the Customary Court of Appeal, Abuja for granting me permission which made my attendance and presentation of this paper possible in the first place.

INTRODUCTION:

Four things belong to a Judge

To hear courteously

To proceed wisely

To consider soberly

To decide impartially

Socrates.

Constitutionally, a judgment is classified as, "a decision" by Court which means "any determination of that Court". This includes "judgment, decree, order, conviction, sentence or recommendation"[1]

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[1]S.318 (1) Constitution of the Federal Republic of Nigeria 1999 as amended.

The Sheriffs and Civil Process Act (SCA)[2] Laws of the Federation of Nigeria, 2010 has a similar definition which includes "Order".

The apex Court in **WILLIAMS V. DAILY TIMES OF NIGERIA LTD**[3]gave vent to this when it held thus:

> "A decision of the Court means any determination of that Court and it includes judgments, decrees, orders, sentences, or recommendation. It is in-material whether the expression order, judgment or ruling is used, each is a decision of the Court".

Still on issue of definition, His Lordship Justice Allahabad[4] defined a judgment as a reassured pronouncement of a Judge on a disputed legal question which has been argued before him. It may be regarded as a literary composition, but a composition subject to certain convention. It possesses its own characteristics and its standards of merit. The art of composing judgment is not taught; it is acquired by practice and by study of models provided in the innumerable volumes of law reports in which are recorded the achievements of past masters of the art.

Decision/Judgment is an important aspect of adjudication and judgment writing is an essential part of the role of a judge as a neutral and independent arbiter. No doubt, parties who have presented their case and arguments to a judge reasonably expect that after weighing those facts and evidence, the Judge inform them of the outcome. This outcome is not limited to the parties alone as members of the public and members of the legal profession stand to benefit from such outcomes in terms of providing guidance (precedent) for similar cases in the future. Inescapably, that outcome is the judgment. Simply

[2] S.19 Caps 56

[3] (1990) NWLR (pt 124) 1 at 24

[4] At a lecture at the Judicial Training Institute 2005

put therefore, judgment is the result of evaluation of facts and evidence submitted to (by) the Court.

Judgement is an expression of the ultimate opinion of the judge which he renders after due consideration of evidence and arguments advanced before him[5].

Of significant importance is that judgment is the end product of trial in a case and until it is determined, the paramount duty of a judge is not accomplished. Whilst the Judge may make interlocutory orders, judgment is determined at the conclusion of a case. In **OREDOYIN V. ARIWOLE** [6]The Supreme Court gave further explanation as follows:

> "A judgment is an official and authoritative decision of a Court upon the respective rights and claims of the parties to an action or suit therein litigated and submitted to the determination of the court. It is the decision of a Court resolving the disputes between the parties and determining their rights and obligations. It is a conclusion of law upon facts and found or admitted by parties. It is a conclusion given by the court upon matters submitted to it. It is the application of law to the pleadings and facts as they appeared from the evidence in the case as they are found by the court or jury or admitted by the parties as deemed to exist upon default".

A judgment procured on the bench is regarded as an intellectual product, It stands in a class of its own. The Judge speaks with authority and what he says

[5] Hon. Justice Mohammed Rafiqi; Judgment writing and communicating effectively through judgment
[6] (1987) 3NWLR (pt 114) 172 at 211

should therefore, be spoken with befitting dignity. He should not pander to grandiloquence but he should be impressive. The strength of a judgment lies in the reasoning and it should be convincing enough.

The primary function of a good judgment are, at least three fold. First it resolves the dispute raised by parties in the proceedings before the court where the losing party is for the judge a primary focus of opinion. The judgment must at an on set clearly state its navigation course and a clearly reason basis for its conclusion. Secondly, a good judgment should be mindful of the intervention of appellate court. A good judgment therefore makes available reasons for an appellate court to consider. A careful trial judge should make certain that his judgment presents sufficient reasons for the appellate Court to act on. Thirdly, a judgment serves as communicative function which should be of immense benefit to the society as a whole, representing as it does the transparent and openly democratic functioning of our legal system[7] This last function should be by no means underestimated. If judgment is to be accepted as a judicial essay in communication, then it behoves on a judge to write it in a manner that is understandable. This is because such judgment is of no value where a judge employs high level erudition of the law and language completely lost on Counsel and litigants.

Today like in most areas of our lives, the art of writing judgment (and a quality one at that) remains a huge challenge. This can be attributed to heavy work load in terms of increasing number in litigation. As a consequence, this gives rise to backlog of cases, poor infrastructural facilities not to mention inadequate research facilities. We must also acknowledge the fact that even where these facilities are available, writing and delivery of good quality judgment is contingent on the knowledge, skills and expertise of the judge. It

[7] See Mr. Justice Nicholas Kearns; "Some thought on judgment writing" the Irish Times vol.10, 2008

involves to some extent not only the close attention of the judge but also the experienced professional court staff to assist the court in delivering judgment devoid of ambiguities if any, to help advance jurisprudence. Challenges which judgment writing pose could be rather mulitidunal and at times be a burden of considerable weight especially as judges are under the added pressure of filing monthly or quarterly return of cases to their various Judicial Service Commissions (JSC) as the case may be.

TRENDS IN JUDGMENT WRITING

Judgment of court must be regarded as an essay in communication. This communication is not just to the learned counsel appearing in the matter who is learned and do understands the language of the law. The judgment should expand its scope to cover litigants who are basically the beneficiaries of the judgment passed so that they can understand it without any interpretation of same by their Counsels, the reasoning of the court in the case. Notice should also be placed that the public at large are also the beneficiaries of the judgment of courts.

This point cannot be over emphasized enough. This is because, the judiciary as an arm of the government does not command an army. It has no security of its own. The judiciary, it must be noted thrives on public confidence in its work. If the judiciary is to continue to enjoy this show of confidence in the public, then the end product of its work which is judgment must be made easy to be understood by members of the public as well. The timing of the delivery of judgment is also very important.

The time for the delivery of judgments have constitutional backing. The constitution of Nigeria 1999 as amended[8] has made this sacrosanct. It states that every superior court must deliver judgment within ninety days from the

[8]S. 249 (11)

date of the adoption of written addresses while a certified true copy of a judgment must be made available to parties within seven days from the date judgment was delivered.

The object behind this constitutional provision, I want to believe, is to enable the trial judge to have a clear recollection of the events that occurred at the trial, that is, the testimony of witnesses particularly their demeanour and the attitude of litigants throughout the conduct of the case. These are aspects of the case that resides in the heart and mind of the judge and not on paper. The more the time that efflux from the date of trial, the more the unwritten memories ebbs of events which would have aided the judge in the writing of his judgment.

It has been asserted that judgment writing is a matter of style; that the style a judge adopts is usually a function of, "… the total development of the judge and understanding of the case before him[9]. It must however be pointed out that notwithstanding that there are a variety of styles of judgment writing, that is not to say there is no minimum acceptable standard which a judgment must conform. Late Hon. Justice Oputa JSC in **ADEYEYE V AJIBOYE[10]** the proper approach for any trial court is to first set out the claims, then the pleadings, then the issues arising from the pleadings; consider the evidence led in proof of each issue, decide on which side to believe; record his logical and consequential findings of facts and then discuss the applicable law against the background of findings of facts. Hon. Justice **NNAEMEKA– AGU JSC** was to later in **DURU & ANOR V NWOSU[11]** set out five main components of a good judgment as follows:

1. The introduction;

[9] See Ogbuagu JSC in Garuba V. Yahaya (2007) All FWLR (pt 375) 862 at 882
[10] (1973) 3 NWLR (pt 61) 432
[11] (1989) 4 NWLR (pt. 113) 24

2. The summary of the issues;
3. The statement of the narrative or the adjudicative;
4. The analysis of the issues and the applicable principles of law; and
5. Conclusion.

These trends in writing judgments are simply put, measures which are necessary to make judgments better to read and understand by all and sundry in the administration of justice. Each judge has his style of writing. However, there must be that thing which remains constant in every judgment and that is lucidity.

LENGTH OF JUDGMENT

In writing judgments, a good attention must be paid to the length of the judgment in terms of the number of pages. Gone are the days where judgments consist of a volume of pages. While there is no actual limit as to the number of pages a judgment may contain; it would seem the fewer the number of pages, the better. The reason for this is not far-fetched. The tendency usually is that too many pages, chances would be that there would be unnecessary attention devoted to irrelevancies and consideration of avoidable issues at the expense of the essentials. It is important to note that more pages in a judgment do not automatically translate to the quality of the judgment or the erudition of the judge. A number of factors makes a judgment unnecessarily lengthy. I am afraid some of us may unwittingly be guilty of this. The first is usually when the judge decides to reproduce verbatim evidence or testimonies of witnesses. The second is when judges resort to lengthy quotations of previous authorities of appellate courts. And third, lengthy reproduction of pleadings tends to enlarge the length of a judgment. These three instances cited must be avoided if one has to produce a judgment that has the hallmark of a quality judgment. But I must quickly add a caveat that

thoroughness should not be sacrificed on the altar of brevity. The trend is to make a judgment as short as possible without leaving out any important area untouched. A former Chief Justice of Nigeria captured this aptly when he said:

> "A judgment must therefore be full. Not meagre
> And not too full either … A judgment may be short
> or long depending on the nature of the case and the
> issues to be resolved. And a judgment should
> essentially be to issues only. There should be no
> embarkation on a 'voyage of discovery' as it were … a
> judgment must contain the point for determination,
> the decision thereon and the reasons for the
> decision"[12].

AVOID USE OF LATIN OR OTHER FOREIGN WORDS AND PHRASES.

There is no doubt that law as a cause of study and profession has some of its tradition steeped in Latin as a language. Lawyers and judges may therefore possess some proficiency in these foreign languages to be able to apply them in the course of administering justice. It must be understood however that in modern times, judgments of court are not meant for lawyers alone. Litigants and other courts users as immediate beneficiaries of these judgments and other interested persons must necessarily be made to understand what the court has passed down in cases that affect them.

USE SIMPLE AND SHORT SENTENCES

If one of the purposes of judgment is to communicate, then it becomes crucially important to employ the use of short sentences. Short sentences are more striking. They are not complicated; not confusing and not susceptible to creating any confusion. The advantages of short sentences cannot be

[12] The Art and Science of Judgment writing – November 1990 Judicial Lectures

overemphasized. They are easy to follow and understand. All these cannot exactly be said of long sentences. A major danger a long sentence poses is that a reader would likely have forgotten some of the contents by the time he gets to the end of the sentence. The reality again is that in employing the use of long sentence or verbose lines, there is no assurance that all members of the legal profession would understand the essence of the pattern of the judgment not to talk of laymen.

There is a saying which has recently gained ascendancy amongst non-lawyers that: Every Lawyer will say the law is very clear on this but the same lawyers will spend hours or days trying to come to terms with what they have all said the law is clear on. I cannot conclude this aspect without saying in so far as English is the language of expression, particularly as it is the official medium of expression; the judge is called upon to demonstrate a good command of English language. He must be articulate. It is recommended that the judge must imbibe the reading culture of notable judgments of articulate Judges. A Judge must express himself in a simple manner so that he can always be comprehensible. Inappropriate metaphors or illustrations which are incongruous to the point being made should be avoided.

I.A. Auta, the now retired Chief Judge of the Federal High Court made this point quite clearly;

> "It is a sin that is almost unforgiveable for a trial Judge to go through the rigours of a full trial only to now write a sloppy or a judgment full of grammatical errors. This obviously will defeat the purpose of his judgment. A judge must personally make conscious efforts to develop his mastery of English language".

BREVITY

The quality of the judgment does not make the judgment outstanding. What is important is that it must be ell encompassing, detailed and accurate. It should not be brief to the extent that it discountenances parties' submission and evidence. However, it must not be unduly long, repetitive or touching on irrelevant points which are not useful for the determination of the real issues in controversy.

TYPES OF JUDGMENTS

The most common form of judgment even known beyond the judicial circles is "final judgment". A court's final judgement decides and disposes of all issues in contention in a suit for the last after which the court will be considered as acting "functus officios" should the case be re-opened after judgment (except for correction of clerical mistakes or omission).

In some legal parlance, it is also referred to asfinal appealable judgment, final decision, final decree, definitive judgment or final appealable order.

INTERLOCUTORY JUDGMENT OR ORDER

These particularly relates to decision made by the court pending the final determination of a substantive case. It determines a subordinate point or plea without a final discharge of the case.

CONSENT JUDGMENT

Often times, parties in a suit may voluntarily decide to settle to dispute amicably out of court. Once this is successfully done, parties may elect to enter into written terms of settlement which they may wish it to be entered as consent judgment by the court. Upon filing of such terms of settlement, duly executed by Counsel and or their respective Counsel, parties may approach the Court by applying that the terms of settlement is to be enrolled as "Consent Judgment".

The Court in enrolling a consent judgment as a judgment of the court more or less assumes an administrative role as the court does not have any input in the writing of the judgment. Consent Judgment are on the same scale as judgment heard on the merit hence the principles for setting it aside and its enforcement are the same as final judgment. A party cannot apply to unilaterally set aside a consent judgment.

In writing judgments, it is advisable that a judge must not descend into the arena. The judge should always remember his role as adjudicatory to the facts before him. In doing this, a judge must restrict himself to the reliefs sought by a litigant. There is the often repeated cliché that the court is not a "Father Christmas", hence it can only give less or what is sought from him. He is not expected to give more or order that which is not sought as a relief.

Flowing from this, there is a tendency for judges to worry that their judgments would be set aside on appeal. Every judge should realise that a judgment is always open to scrutiny on appeal. A judge should remember that he is first human before being appointed as a judge. As humans, there is always a chance that he will make mistakes. It is such mistakes that are corrected on appeal. In any case, every trial judge has the potential to one day rise to appellate position. The important thing is to do your job to the best of your ability, without fear or favour and in accordance with his judicial oath.

There is a need to emphasize that the demand placed on a judge in the Sharia Courts are not radically different from what is obtainable under the common law. Abdul Karim Az Zaidani in his book "Administration of Justice"[13] noted

> "the judge or his scribe taking the order from
> From him (the Judge) to record, shall put down
> In writing (the Judgment) with full details of the

[13]Abdul KarimAzZaidani: Administration of Justice

Complaints, causes, claims and evidence in support of the litigants and how they occupied it in his documents that Jurists referred to as 'Al Mahdar'. He shall record all the facts, submissions for and against, he shall also record his decisions in terms of orders, rulings and sanctions (Judgment). He shall thereafter produce copies for himself, the litigants and the Court registry".

From the above, it is quite clear that the conventional Court judge and the Khadi share same responsibility in the discharge of their duties as it relates to delivering judgments. The style adopted by each Khadi just as in the conventional courts may vary but the ultimate outcome is very similar.

QUICK NOTES AND SUMMARY ON JUDGMENT WRITING

It is commonly said that there is no such thing as good writing, there is only good re-writing. Preparing a draft judgment is hard work. But the hardest work begins when the draft judgment is finished. Good editing ensures that the judgment is lucid, thorough, coherent, concise and has transparent reasoning. It identifies flaws, such as the use of discriminatory language. Editing is a manifold task that should include the following checklist:

- Ensure that the judgment embraces all that it should and that all issues are resolved.
- Check names, dates, figures and other data for accuracy.
- Prune down lengthy quotations of law, passages of transcript or extracts from affidavits or documents tendered in evidence.
- Remove explanations that are obvious.
- Check the use of punctuations to avoid ambiguity.
- Scrutinise the length and content of paragraphs.

I cannot conclude this robust intellectual engagement without drawing up a diagram on how the opening format of a judgment looks like. Below is one which could be useful to our need.

- Date the judgment is delivered.
- The name of the court and the jurisdiction which the court is sitting.
- The Coram or Panel of the Judges if more than one.
- Suit Number of the case.
- Names of the parties i.e.
- Mr. A.B.C. ---------- Plaintiff/Petitioner

  AND
- Mr. X.Y.Z. ---------- Defendant/Respondent
- Names of Counsel appearing if any.
- Name of the Judge delivering the judgment

CONCLUSION

There is no hard and fast rule for judgment writing.

a. As a Judge grows in the art of judgment writing, the judge becomes accustomed to his own style.

b. Plain, simple language must be employed in writing judgments and the overriding watch word is **clarity.** No need to resort to sarcasm, unnecessary criticism so that the reverence and sanctity of the law will be preserved.

c. Judgments should be articulate, full of reasoning, clear and impartial notwithstanding the Judge's personal views or perceptions. The law should always be a Judge's guide.

d. Remember, time is of the essence in delivering justice. Delay in handling down the decision increases litigants agony and frustration.

For most judges, writing judgment is the most demanding, challenging and even stressful part of judicial life. Paradoxically, it can be the most creative and full filling. Judgment writing is no doubt tasking, but writing clearly within and effective structure and style, lets Judges leave a lasting trail.

Thank you all for listening.