

**SAFE CUSTODY OF COURT RECORDS AND EXHIBITS**

**A PAPER PRESENTED**

**BY**

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**AT THE WORKSHOP FOR REGISTRARS, COURT  
CLERKS AND BAILIFFS,**

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# SAFE CUSTODY OF COURT RECORDS AND EXHIBITS.<sup>1</sup>

A PAPER PRESENTED BY MR. NDUCHEBE, IKECHUKWU M. SENIOR STUDIES FELLOW OF THE NATIONAL JUDICIAL INSTITUTE, AT THE WORKSHOP ORGANISED, FOR REGISTRARS, COURT CLERKS AND BAILIFFS, ON 11TH SEPTEMBER, 2019.

## PREFACE

I consider it a great honour and privilege to be called upon to be part of this intellectual gathering of judicial staff. A great debt of inestimable gratitude is owed the National Judicial Institute and the Management team which is presently organized under a highly resourceful jurist and dedicated Administrator<sup>2</sup> – Hon. Justice R.P.I Bozimo (OFR) for finding me worthy to make this presentation.

In all sense of humility, I wish to state that the content of this paper has by no means addressed all the areas under review, it is only aimed at stimulating your minds, as I look forward to your contributions to further enrich the paper after this presentation.

## *Abstract*

*Ensuring the safe custody of Court Records and Exhibits are essential to effective justice administration. Little wonder the society has come to accept the most inconvenient reality of having to hear that Court Records and Exhibits presented before a court was tampered with by a court employee; and how the court in this circumstance could tackle the challenges of determining the culpability of a suspect with those tempered records and exhibits. As such, the need for safe custody of court records and exhibits cannot be over emphasized. The advancement in Information Communication Technology has given hope to safe keeping of Court Records and exhibits in Nigeria, what is left are for stakeholders to explore these laudable advantages. To this end, the main thrust of this paper in the face of ensuring the safe custody of Court Records and Exhibits; is to take a leap into what is obtainable in other jurisdiction, Chart a way forward for Nigeria and make recommendations. It is therefore hoped that this paper would be able, within the scope of its analysis proffer informed solutions*

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<sup>2</sup>Michael I.N., *The Imperative of Attitudinal Change By Judicial Workers In The Performance of Work*, being a paper delivered at The Workshop Organized by Enugu State Judiciary, For Secretaries, Court Registrars, Process Clerks And Bailiffs, 2017. P.1

*on how best to guarantee the safe custody of court records and exhibits for effective justice administration in Nigeria.*

## **Key Words**

Safe Custody, Court Records, Exhibits

## **Objective of the Paper**

It is the objective of this paper that at the end of this presentation, participants should be:

- i. Exposed to other means of preserving exhibits and courts records available in other jurisdiction;
- ii. Able to put into effective use the ideas and lessons learnt; thereby positively impact on their schedule of duties and;
- iii.** To make a difference in the quality of judicial services rendered in your various jurisdictions.

## **INTRODUCTION**

The Judiciary is regarded as the last hope of the common, where justice is dispensed without fear or favour. It is the impartial arbiter of disputes between the citizens inter se, and between citizens and the Government.<sup>3</sup> One must therefore, consider working in the court as privilege. As Court Employees you are the engine room that keeps the Nigerian Judiciary running.

Justice rest squarely in the hands of God<sup>4</sup>; as such we should consider ourselves privileged to be working in the court environment where this special recipe is prepared and served. For the court to do substantial justice in all matters that come before it, the management of exhibits and court records must not be compromised. As such, the importance of safe keeping of exhibit and court records attached to any matter cannot be overemphasized. In John Gospel Chapter 8 v 1-11<sup>5</sup>, the story of the adulterous woman in this verse epitomizes the important of exhibit and records.

Indeed, a Court Employee with the right attitude and disposition to work in the temple of justice is regarded by many as an essential resource to the administration of justice. However, while some Court Employees are the pride of the Nigerian Judiciary, some are absolutely not fit for the purpose of working in the court as their performance or attitude leaves nothing to be desired.<sup>6</sup>

As court employees working for the course of justice in the court, you are expected to be dynamic, proactive and consistent to earn public confidence in the discharge of the onerous responsibilities assigned to you.

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<sup>3</sup> Uwais, L. Muhammadu., *The Future of The Judiciary in Nigeria: Challenges and Responses*, UN Production Nigeria Ltd. 2013. P. 4.

<sup>4</sup> Jeremiah 9 v 23 -24 “This is what the Lord said: “Don’t let the wise boast in their wisdom, or the powerful boast in their power, or the rich boast in their riches. But those who wish to boast should boast in this alone; that they truly know me and understand that I am the Lord who demonstrate unfailing love and who bring justice and righteousness to the earth, and that I delight in these things. I the Lord have spoken.” Topical Study Bible, Second Edition. 2006. P. 802

<sup>5</sup> New Living Translation: Jesus returned to the Mount of Olives, <sup>2</sup>but early the next morning he was back again at the Temple. A crowd soon gathered, and he sat down and taught them. <sup>3</sup>As he was speaking, the teachers of religious law and the Pharisees brought a woman who had been caught in the act of adultery. They put her in front of the crowd. <sup>4</sup>“Teacher,” they said to Jesus, “this woman was caught in the act of adultery. <sup>5</sup>The law of Moses says to stone her. What do you say?”<sup>6</sup>They were trying to trap him into saying something they could use against him, but Jesus stooped down and wrote in the dust with his finger. <sup>7</sup>They kept demanding an answer, so he stood up again and said, “All right, but let the one who has never sinned throw the first stone!” <sup>8</sup>Then he stooped down again and wrote in the dust.<sup>9</sup>When the accusers heard this, they slipped away one by one, beginning with the oldest, until only Jesus was left in the middle of the crowd with the woman. <sup>10</sup>Then Jesus stood up again and said to the woman, “Where are your accusers? Didn’t even one of them condemn you?”<sup>11</sup> “No, Lord,” she said. And Jesus said, “Neither do I. Go and sin no more.”

<sup>6</sup>Michael I.N., op cit.

It is instructive to mention here that as you are expected to be accountable, honest; and abide by the provisions of the Code of Conduct for Court Employees as it is vital to your functions at work place. Once again, the environment you work should be considered a privilege as you are assisting Judicial Officers in discharging this divine mandate of justice delivery.

## **Definition of Terms**

### **Court**

A tribunal constituted to administer justice, esp., a government body consisting of one or more judges who sit to adjudicate disputes. < a question of law for the court to decide<sup>7</sup>

### **Exhibit**

1. A document, record, or other tangible object formally introduced as evidence in court. 2. A document attached to and made part of a pleading, motion, contract, or other instrument.<sup>8</sup>

It was further defined by Osborn's Concise Law Dictionary thus:

A document or thing produced for inspection of the Court; or show to a witness when giving evidence or referred to in a deposition; or a document referred to in, but not annexed to, an affidavit.<sup>9</sup>

There are two types of exhibit: documents and non-documentary types of exhibits<sup>10</sup>. Non-documentary exhibits may include perishable items such as foodstuff and in the

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<sup>7</sup> Garner A.B., (2014) "Black's Law Dictionary" Tenth Edition., Thomson Reuters. P. 430

<sup>8</sup> Ibid p. 694

<sup>9</sup> Rutherford L & Bone S., (1993) Osborn's Concise Law Dictionary., Eighth Edition, London – Sweet & Maxwell. P. 139

<sup>10</sup> Rule of Court-Order 35, Rule 22 FCT Civil Procedure Rules 2004 provides 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 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 labeled 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."

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.

## **Record**

A documentary account of past events, usu. Designed to memorialize those events. 4. The official report of the proceedings in a case, including the field papers, a verbatim transcript of the trial or hearing (if any) and a tangible exhibit.<sup>11</sup>

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. 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)<sup>12</sup>. Execution warrants, writs of attachment, auction notices are also records that must be properly kept. To this end, Law Courts are courts of record and their proceedings are recorded or taken down in written form and it is the mirrors through which members of the public view a court of law. There should be utmost care for exhibits and court records left in our custody.

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<sup>11</sup> Op cit. p. 14

<sup>12</sup> Bassi B.M., *Management And Security Of Exhibits And Court Records: Role Of Secretaries, Process Clerks And Bailiffs*. Being A Paper Presented At The Refresher Course For Secretaries, Protocol Officers, Court Registrars, Process Clerks And Bailiffs On 9thmay 2016 At The National Judicial Institute, Abuja. P. 4

## The Role of Court Employees In Ensuring Safe Custody of Court Records and Exhibits

### **Court Registrar**

The Court Registrar usually sits on a slightly raised platform below the judge or magistrate facing the court. They do not wear any special clothes in court, although sometimes in the High Court if the Registrar happens to also be a barrister<sup>13</sup>, they will wear barrister's robes.

More so, he/she is the officer directly in charge of all the staff attached to each court like the court clerk, the bailiff, security guard, messenger, court orderly and cleaner. He/she oversees the day to day running of each court and must ensure that laid down procedures and regulations are meticulously followed by all staff under him.<sup>14</sup> While seated in court he attends to every need of the presiding officers and lawyers. He/she shall ensure that all fines and fees paid are receipted for by the cashier or himself. In addition to the above, his/her duties also include:

- 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;
- Having a list of all the cases before the court for the day (cause list). They call out each case in turn so that the parties can identify themselves to the court.
- To render, (with regard to the Chief Registrar of a Court), monthly returns of cases, revenue and officials under him/her to the Chief Judge or other necessary authority such as the Judicial Service Commission;
- When a witness is called in a case, it is the Registrar who hands the witness the Bible/ Koran and reads out the oath for the witness to repeat;
- He/She has access to court documents (writs, etc.) for each case and hands them to the judge as each case is called;
- When the court makes an order, the Registrar keeps a note of the order;
- At the end of proceeding, it's the Registrar that drafts the orders made by the judge on that day and keeps a record of such order(s);

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<sup>13</sup> Michael I.N., op cite.

<sup>14</sup> Ibid. p. 133.

- 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 keep proper custody of all Wills deposited in Court.
- He deals generally with the administrative procedures necessary for the smooth running of the courts.

## **COURT CLERKS**

Process servers perform a vital function in the American legal system. They notify all parties named in a lawsuit by delivering court documents to them personally. Delivering legal documents to each party is the core function of a process server's job. While it may sound simple, process serving is not always as straightforward as it seems.<sup>15</sup> In Nigeria he/she is directly under the court registrar. The duties though not limited to these include the following:

- a. He/ She shall on the instruction of the court registrar take custody of record books and exhibits.
- b. He/ She shall compile the monthly return of cases, court rulings and judgments.
- c. He / She shall serve as a sworn interpreter to defendant from English language to any native language he perfectly understand; and shall look for interpreter in other language he does not have mastery of.
- d. He/ She shall prepare court's cause list at least one week in advance.

The role of a Court clerk in all these cannot be glossed over as he/She 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<sup>16</sup>.

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

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<sup>15</sup> Scott Morgan, [www.everydaylife.globapost.com](http://www.everydaylife.globapost.com) – Accessed on 08/06/2015.

<sup>16</sup> Ibid

the record of Appeal. In all cases, the Court of first instance is the first point of call for a Litigant. Therefore, Court employees in this circumstance, the: Court Clerks and Registrar, represent the link between the court of first instance, the appellate court and the appellant.

## **BAILIFF**

They are also known as court officers or marshals depending on the jurisdiction in which they serve. They fulfill numerous important functions but primarily serve to enforce courtroom rules and maintain security during trials and other proceedings. He is to serve all court processes on litigants from the writ of summons to motion on notice, statement of claim and statement of defence, orders of injunctions, interim or interlocutory and at the Court of Appeal and the Supreme Court, the Appellant Respondent's brief and the orders of courts.<sup>17</sup> In the case of the order to force open the door or doors of a building normally giving by lower courts, the bailiff must be present to take inventory of the properties in the presence of a police officer.

It is worthy of mention that Bailiffs are important factor in the administration of justice and they are empowered<sup>18</sup> to:

- a. Take inventory of seized goods and ensure they are kept in safe custody,
- b. Keep an up to date Register of all processes issued by the court for service,
- c. Keep duly certified sale accounts where money collected in court is recorded,
- d. Perform such other related duties as may be assigned.<sup>19</sup>

In *Marion Obimonure v. Erinosh and Another*<sup>20</sup> it was held that where service of process is required, failure to serve is a fundamental vice, and the person affected by the order but not served with the process is entitled *ex debito justitiae* to have the order set aside as a nullity. It is a trite law that any judgment obtained against a party who has not been served with a hearing notice is a nullity and most not be allowed to stand. This was also the holding of the court in *Integrated Builders v. Domzaq Vent. (Nig) Ltd.*<sup>21</sup> This is simply the outcome of negligence of duty.

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<sup>17</sup> Op cit., p. 141

<sup>18</sup> S5, Sheriffs and Civil Process Act, Cap S6 LFN 2004

<sup>19</sup> 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.

<sup>20</sup> (1966) 1 All NLR p. 250 at 252 and 253

<sup>21</sup> (2005) 2 NWLR (pt. 909) p. 97

## **Confidentiality**

In all 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.<sup>22</sup> Furthermore, he/she must not disclose to any unauthorized person any confidential information, which may have come to his knowledge in the course of his employment<sup>23</sup>. In other words, registrars, court 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)

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 authorization<sup>24</sup>. 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.

## **The Management And Security Of Court Records**

The safety and proper management of court 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.<sup>25</sup> 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.<sup>26</sup> Safes and drawers should be used also to ensure that documents and exhibits are

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<sup>22</sup> Rule 1(A) (1) Code of Conduct for Court Employees of the Federal Republic of Nigeria.

<sup>23</sup> Rule 1 (A) (3)

<sup>24</sup> Rule 1 (B) (3)

<sup>25</sup> Bassi B.M., op cit.

<sup>26</sup> It is the duty of the Chief registrar to ensure that the repair(s) are done.

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 list<sup>27</sup>, 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.

### **“Exhibits During Trial.**

(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 directives as to how Court records and documentary exhibits should be kept.

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<sup>27</sup> Order 35, Rules (20), (21), (22) FCT High Court Civil Procedure Rules 2004

## **General Observations on Mismanagement of Court Records and Exhibits by Court Employees**

On November 28, 2017,<sup>28</sup> Hon. Justice Opeyemi Oke, the Chief Judge of Lagos State, (as she then was) handed over to the police two officials in the Litigation Registry and a member of the National Youth Service Corps for failing to issue receipts for payments made by court users. This arrest was made barely 24 hours after the Chief Judge, who was only about a month old in office, warned staff to desist from corrupt practices.

Worthy of mention also was that some officials of the Fast Track Section of the Lagos State High Court in Igbosere were grilled also by the police in connection with an alleged fraud of ₦8,411,500, perpetrated in November, 2018. In the same month, the judiciary put out a public notice<sup>29</sup> in the PUNCH declaring a court official<sup>30</sup> wanted for being the mastermind of the alleged ₦8.4m fraud, which also involved a clerk in a chamber. The suspects were alleged to have presented two fake receipts purportedly issued by Alpha Beta, a tax-collecting firm in Lagos State, for the sum of ₦8.4m to the Chief Judge. These incidents show how desperate some court official fleece not only litigants but also the system.

Interactions with lawyers show that it is difficult for a lawyer or litigant to give account of how much he spends in filing and prosecuting a case, because the process is dotted with several unofficial payments made to the court officials, which receipts are not issued. After crossing the hurdles set by the court bailiffs, who do not serve court processes except they are paid unofficially, one has the court clerk, registrars, secretaries and others to deal with next.

## **Role of Corrupt, Inefficient Court Workers In Delayed Justice**

Over the years, Nigerian courts have gained notoriety for being slow. Instances where cases last for two decades or more in court abound. There are cases where litigants die before judgment is delivered. Inefficient court registry and tardy officials share in the blame. Speaking in Lagos on November 22, 2018 at the 11th Annual Luncheon of

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<sup>28</sup> <https://punchng.com/unethical-practices-inefficiency-in-court-registries-shut-justice-door-against-nigerians-2/> A Report by Oladimeji Ramon – Accessed on 13/8/2019

<sup>29</sup> A handsome reward awaits anyone with useful information regarding his (Mustapha's) whereabouts" the public notice signed by the Chief Registrar

<sup>30</sup> Mr. Oriade Olawale Mustapha

SPA Ajibade law firm, a Justice of the Court of Appeal, Justice Abimbola Obaseki-Adejumo,<sup>31</sup> observed thus:

“ .....failure of the bailiff to serve a court process on time or where he serves the process but forgets to put the ‘Proof of Service’ in the case file may result in a case being adjourned and delayed for one year. If the bailiff refuses to serve, for instance at the Court of Appeal, you have lost a whole year; if it is the high court, you have lost three months. Just because somebody did a silly thing – he forgot to put the Proof of Service in the file.”

A Senior Advocate of Nigeria, Prof Fidelis Oditah, has on different occasions decried the Nigerian court registries as a disgrace. According to him, *the officials in the court registries are so disorganized, “they behave like headless chickens.”*<sup>32</sup>

While delivering the first annual lecture of the Body of Senior Advocates of Nigeria in Lagos on June 28, 2018, Oditah noted:

“I have found our court registries to be a disgrace. Our court registries are chaotic, disorganized, dirty and very poorly administered. As a result of the failure of the registry, when you get to court, you will find that the judge is performing the function of a registrar. A judge is saying, ‘You said you filed an application?’ And he’s leafing through a disorganized file. The scene looks very amusing and this is supposed to be a serious business.”<sup>33</sup>

This is not in any way intended to discourage those who are dutifully carrying out their duties; it is however aimed at bringing to the fore people’s perception of what we do; we must therefore be open to constructive criticism.

### **Mafia in Court Registry**

A former Presiding Justice at the Court of Appeal, Lagos Division, Justice Amina Augie (now a Justice of the Supreme Court), while speaking on May 27, 2014 at the 8th Annual Business Law Conference of the Nigerian Bar Association Section on Business Law, gave a detailed explanation about how many court officials had become Mafiosi

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<sup>31</sup> <https://punchng.com/unethical-practices-inefficiency-in-court-registries-shut-justice-door-against-nigerians-2/> - Op cit.

<sup>32</sup> Ibid

<sup>33</sup> Ibid

in a system fraught with corruption. My lord, alluded to the fact that the appellate court was contending with the challenge of inefficiency and corruption on the part of the court management staff thus:

“.....in many instances, some court workers who had remained in the same positions for decades, had become kingpins of a sort, so that over time, lawyers had gradually come to accept that they (the officials) had to be bribed, otherwise files would not be moved and cases would not go on.”

Giving an account of her experience when she was newly transferred to the Lagos Court of Appeal, she said:

“....For five years, I was moved everywhere; from Ibadan to Kaduna to Benin to Enugu back to Kaduna and then to Lagos; and I came to Lagos and met what you call a mafia. I met some that had spent 33 years on Level 6. You imagine a lawyer that left law school 33 years ago and met same clerk still there. And by the time I came and wanted to change things, they sent me a message about how they sent away the person before me and that if I thought I could change anything I was joking; this is Lagos and so on. Some registrars would tell lawyers, ‘You know your case is fixed for next week, if you don’t do anything now it will not go on’. And indeed it would not go on, till lawyers get used to bribing the registrars to ensure that their cases go on. By the time I did a roll call of the staff in the litigation department, we had 73 staff members including the departmental heads. Forty-three of them have been there for over 20 years in the same registry, the same people pushing the files; 16 for between 25 to 30 years in one place, no promotion, nothing, meanwhile they are riding jeeps. The rot in the system is beyond description and I still don’t know how we could get out of it.”<sup>34</sup>

The Chief Justice of Nigeria, Justice Walter Onnoghen, GCON (as he then was) who was chairman at the June BOSAN lecture, admitted that the court registries, including that of the Supreme Court, needed intervention. He said:

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<sup>34</sup> Ibid

“.....When I took over, I was the first CJN to visit the record section of the litigation department and what I found then was unimaginable. The records and all the files were on the floor. So, there was no way you could determine the ages of the cases and then in one large corner, you have the political matters. What do I do? They said they were working on digitalization of the records. How far have we gone? Do we have any back-up; the answers were nothing. So, I directed that shelves should be built for the files lying on the floor. All these talks about cases having been at the Supreme Court for many years are true but there was no way by which we could sort the case files out, because they were dumped together.<sup>35</sup> So, the problem then was when you pressurized the registrars, they go in, may be on a weekend, and try to sort out your case, on conditions. They will bring out your case and it will be listed for hearing.”<sup>36</sup>

A former Lagos State Solicitor-General, Mr Fola Arthur-Worrey, who delivered the 11th SPA Ajibade law firm lecture in Lagos in November, alluded to the fact that due to the ineptitude and unreliability of the court secretaries, many judges have resorted to typing their judgments by themselves. He said:

“....I know for instance that many judges don’t have competent secretaries. They are typing their judgments themselves and it has got to a stage that it is an expectation but it’s not supposed to be. All you require from a judge is his or her intellectual capacity, understanding of the law and a level of efficiency in applying the law.”<sup>37</sup>

Confirming this, Justice Obaseki-Adejumo of the Court of Appeal, while speaking in Lagos during a colloquium organized to mark the 25th anniversary of Kenna Partners, said this of her colleague, “***Justice Yargata Nimpar, was the first to face the reality and other Justices were now joining her.***” She further noted thus:

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<sup>35</sup> You will agree with me that the effectiveness and efficiency of the public service across the range of government functions depends upon the availability of and access to information held in records, which is retrievable on demand.

<sup>36</sup> <https://punchng.com/unethical-practices-inefficiency-in-court-registries-shut-justice-door-against-nigerians-2/> - Op cit.

<sup>37</sup> Ibid

“Out of annoyance or frustration, we have to learn how to type our judgments; at least, we can correct what we have put in. *She added*, “Today, I can actually type 100 pages myself. And very soon, I don’t know whether we will still need secretaries, because the secretaries will just sit down there.”<sup>38</sup>

I know those concerned are not in this gathering but you can convey this message to them.

In *Ede v Mba*<sup>39</sup> The court expressed that Registry Staff by nature of their job ought to be meticulous, sober and dedicated. Therefore, it is a blunder on the part of the Registry Staff of Supreme Court for failing to bring to the attention of the Supreme Court, the applicant’s application for extension of time to file their brief of argument. The Court also held that where litigants have credibly performed his own portion of responsibility of what the law required, he cannot be made to suffer for any failure, blunders or omissions of the Court Registry. In *Co-operative and Commerce Bank (Nig) Plc v A. G Anambra State*<sup>40</sup> where a litigant has performed his responsibility as required by law, he cannot be made to suffer for the omissions of the Court Registry.

### **Food for Thought**

The magnitude of cases that comes to court on daily basis all over the world can only be imagined. Just recently the red chamber summoned the Nigerian ambassador to South Africa to explain the circumstances that led to the alleged murder of the Deputy Director – General of Chartered Insurance Institute of Nigeria, Elizabeth Ndubusi-Chukwu.<sup>41</sup> She was found dead in one of the rooms at the Emperors Palace Hotel and Convention Centre, on June 13, 2019, where she lodged.

It was initially suspected that she died of cardiac arrest. The insinuation was proved wrong, following the autopsy report released on June 20, 2019, by South Africa’s Department of Home Affairs, which indicated in a *Death Certificate* that her death was unnatural and suspected to be murder due to strangulation. The suspicion that she

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<sup>38</sup> Ibid

<sup>39</sup> (2011) 18 NWLR, Pt. 1278

<sup>40</sup> (1992) 8 NWLR 528 SC or 515 -640 Pt. 261

<sup>41</sup> Punch News Paper., Thursday, July, 2019., p. 2 “Senate fumes as number of Nigerian murdered in S’Africa rises to 127”

could have been murdered was further confirmed in a separate document issued by South Africa's Department of Health on June 27, 2019, where it corroborated the autopsy report and revealed that she was strangled. Senator Enyinnaya Abaribe<sup>42</sup> who raised the motion before the house, alleged that the Emperor Palace Hotel and Convention Centre, where she lodged, was reluctant to cooperate with the law enforcement agencies to unravel the circumstances surrounding her suspicious death. Just imagine the puzzle of her death been unraveled and someone in the name of court employee<sup>43</sup> tampers with the exhibit or records; what do you think would be the outcome of such action?

### **Exhibits and Record Keeping in Other Jurisdiction**

In the United Kingdom, Under the Code of Practice issued under part 2 of the Criminal Procedure and Investigations Act 1996,<sup>44</sup> any police officer investigating alleged crimes has a duty to record and retain material which may be relevant to the investigation. As a general rule, the courts entrust the prosecution with the exhibits pending trial and after committal. The prosecution duty is:

- to take all proper care to preserve the exhibits safe from loss or damage;
- to co-operate with the defence in order to allow them reasonable access to the exhibits for the purpose of inspection and examination;
- to produce the exhibits at trial (***R v Stipendiary Magistrate at Lambeth and another, ex p McComb***).<sup>45</sup>

On the general guiding principles in Sections 21 and 22 Police and Criminal Evidence Act 1984 (PACE) deal with police powers to retain exhibits and provide copies and photographs to the defence. Note the restrictions on retention of exhibits where a photograph or copy would be sufficient<sup>46</sup>. If it becomes necessary to dispose of exhibits, e.g. because they are deteriorating, it is wise to give notice to the defence of the intention to photograph and destroy the exhibit (***R v Uxbridge Justices ex p Sofaer and Another***).<sup>47</sup> Normally the court entrusts the exhibits to the prosecution,

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<sup>42</sup> Ibid

<sup>43</sup> A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen, is said to steal that thing. A person who takes or converts anything capable of being stolen is deemed to do so fraudulently if he does so with any of the following intents- an intent permanently to deprive the owner of the thing of it; such an individual activates Section 384 of the Criminal Code Law.

<sup>44</sup> <https://www.cps.gov.uk/legal-guidance/exhibits> - Accessed on 20/8/2019 at about 10:23 am

<sup>45</sup> [1983] 1 All ER 321

<sup>46</sup> Section 22(4) Police and Criminal Evidence Act, 1984

<sup>47</sup> 85 Cr. App. R. 367

usually the police. The court can impose restrictions on the prosecution; where it imposes no restrictions, it is for the prosecution to deal with the exhibits in whatever way it appears best for the purposes of justice. If the prosecution has doubts as to how to deal with an exhibit it may, but is not obliged to, apply to the court for directions ***R v Stipendiary Magistrates at Lambeth and Another, ex p McComb***<sup>48</sup>.

On Firearms Exhibits, CPS<sup>49</sup> staff should not handle firearms (real or imitation), or ammunition. This must be left to the police both inside and outside court. Under no circumstances should firearms or ammunition be stored in CPS offices. Weapons Exhibits are left to the police. On Drugs Exhibits, the storage and transmission of drugs is a matter for the police. Under no circumstances should drugs be stored in CPS offices; while exhibits of Obscene Publications to be received in CPS offices. These exhibits should:

- be secured in locked cabinets;
- be viewed only by those who need to do so;
- be transmitted, eg between CPS offices, by the police;
- never be sent through the post since this would constitute an offence under section 85 Postal Service Act 2000

### **Bulk destruction and representative forensic drug testing**

Investigations carried out by Law Enforcement Agencies, such as NCA<sup>50</sup>, HMRC<sup>51</sup> and the police<sup>52</sup> may result in the seizure of bulk goods<sup>53</sup>, for example drugs. The storage of the seized goods over lengthy periods of time is expensive and may lead to security and Health and Safety related concerns. When reviewing a case involving the seizure of bulk goods, prosecutors should apply the bulk destruction policy and, where appropriate, the representative forensic testing policy. Prosecutors must ensure that

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<sup>48</sup> 1983) All ER 321

<sup>49</sup> Crown Prosecution Service

<sup>50</sup> National Crime Agency

<sup>51</sup> Her Majesty's Revenue & Customs

<sup>52</sup> The Officer in the case (OIC) should seek destruction of the goods by consulting with the prosecutor in the case ahead of the PTPH, to allow the prosecutor to reach agreement with the defence (usually at the PTPH). Where it is not possible to contact the prosecutor in the case, the OICI should contact the Complex Casework Unit /Central Casework Division Head. Early engagement between the prosecution and the defence is an important element of the bulk destruction policy, as is the need for a clear audit trail. Prosecutors should ensure that decisions about bulk destruction and agreements with the defence are recorded in writing, for example the defence recording their agreement on the PTPH form. If the issue cannot be resolved between the parties, it would be appropriate to seek a direction from the judge, at the PTPH or PCMH, as to the timescale in which the defence must inform the prosecution of their consent to the proposed destruction / the reasons for their refusal to consent. The prosecutor must notify the OIC, by email, when an agreement has been reached with the defence about the bulk destruction of the drugs / goods.

<sup>53</sup> <https://www.cps.gov.uk/legal-guidance/obscene-publications> - Accessed on 20/8/2019 at about 10:54 am

potential exhibits in a trial are not destroyed if doing so will prejudice the proceedings or any subsequent appeal.

### **Continuity and integrity of exhibits**

The prosecutor must ensure that all exhibits are kept safely and that there is a clear, identifiable audit trail from the moment that exhibits are seized to the moment they are presented in evidence. This is because the prosecution may have to prove that the exhibit before the court is the same exhibit that was referred to by the witness in his or her statement, or that the exhibit has not been tampered with illicitly while being retained for court proceedings<sup>54</sup>.

In the United State, Custody is with the Clerk. Unless the court otherwise directs<sup>55</sup>, all trial exhibits admitted into evidence in criminal and civil actions will be placed in the custody of the clerk, except as provided in section (b)<sup>56</sup>. However, the Custody of Exhibits Workgroup is considering proposing to the Supreme Court of Pennsylvania the adoption of Pa.R.J.A. Nos. 5101–5106, establishing statewide standards for the custody and retention of trial exhibits. Rule 5102<sup>57</sup>.Role of the Custodian:<sup>58</sup>

(A) The presiding judge shall by local rule of judicial administration appoint a custodian to safeguard and maintain exhibits offered into evidence in all court proceedings.

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<sup>54</sup><http://www.hse.gov.uk/foi/internalops>, See OG: Material and evidence management (collection, retention and disposal) Accessed on 12/8/2019 at about 11:00 am

<sup>55</sup><http://ksd.uscourts.gov/index.php/local-rule/rule-79-3-custody-and-disposition-of-trial-exhibits-sealed-documents-and-filed-depositions/> - Accessed on 23/08/2019 at about 4:00pm

<sup>56</sup>**(b) Custody with the Offering Party.** All exhibits not suitable for filing and transmission to the Court of Appeals as a part of a record on appeal must be retained in the custody of the party offering them, subject to the orders of the court. Such exhibits include, but are not limited to, the following types of bulky or sensitive exhibits: Narcotics and other controlled substances, firearms, ammunition, explosive devices, jewelry, liquor, poisonous or dangerous chemicals, money or articles of high monetary value, counterfeit money, and documents or physical exhibits of unusual bulk or weight. At the conclusion of a trial or proceeding, the party offering such exhibits must retain custody of them and preserve them in their condition as of the time admitted until any appeal is resolved or the time for appeal has expired. The party retaining custody must make such exhibits available to opposing counsel for use in preparation of an appeal and be responsible for their safe transmission to the appellate court, if required. Such party is responsible for documentation of the chain of custody of such exhibits.

<sup>57</sup><http://www.pacourts.us/assets/uploads/Resources/Documents/Custody> - SUPREME COURT OF PENNSYLVANIA Custody of Exhibits Workgroup – Accessed on 23/8/2019 at about 10:40 am

<sup>58</sup> Custodian means the person or persons designated by local rule to safeguard and maintain exhibits offered into evidence in a court proceeding. Custodian shall also include the custodian's designee. It is worthy of mention here that: A "custodian" will either be a member of court staff who is typically present at court proceedings, such as a court reporter or clerk of court, or the proponent of the exhibit. See Rule 5102

(B)The custodian shall safeguard and maintain all exhibits offered into evidence by a proponent during court proceedings, regardless of whether an exhibit is admitted or rejected by the court.

(C)The custodian shall be responsible for ensuring that all exhibits are filed with the records office and made part of the record on appeal no later than five business days after the conclusion of the court proceeding. A local rule of judicial administration will designate a custodian, who will either be a member of court staff who is typically present at court proceedings, such as a court reporter or clerk of court, or the proponent of the exhibit. The local rule will identify the custodian by role in the court proceeding and not by name.

From the foregoing, record keeping is a fundamental activity to effective justice administration, without records there can be no rule of law and no accountability.<sup>59</sup> Records provide a reliable, legally verifiable source of evidence of decisions and actions. They document compliance or non-compliance with laws, rules, and procedures.

Yet, in many countries around the world, record keeping systems are unable to cope with the growing mass of unmanaged records. This is particularly true in countries with limited financial or administrative resources or where records and archives managers lack training or professional development opportunities. This situation impedes the capacity to render effective and enhanced services to citizens. Moreover, the decline, and in some cases total collapse, of record keeping systems makes it virtually impossible to determine responsibility for actions and to hold individuals accountable. All aspects of effective justice delivery depend upon well-kept and well-managed records. As such, badly managed records adversely affect the broad scope of service.

### **Ensuring Safe Custody of Court Records & Exhibits**

- By shunning all corrupt vices that negates your code of conduct,
- Access to court records and exhibits must be restricted,
- You must be discrete in the management of court records,
- Treat every item within your custody with confidentiality,
- To be accountable to your superior and be a-life to your responsibility.

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<sup>59</sup> <http://siteresources.worldbank.org/EXTARCHIVES/Resources/Core%20Principles.pdf> - Managing Records as the Basis for Effective Service Delivery and Public Accountability in Development: An Introduction to Core Principles for Staff of the World Bank and Its Partners; Accessed on 13/8/2019 at about 10:21am

## **Challenges to Safe Custody of Court Records and Exhibits**

The challenges bedeviling the safe custody of exhibits and court records can be said to be audible enough for the deaf and visible enough for the blind. Some of these challenges are either self inflicted or misgivings and distrust from litigants and the society at large. They include:

- a) Accepting inducement from litigants to manipulate Court records or to conceal facts,
- b) The existence of bad eggs among the rank and file of court employees. Some instances of court employees demanding for money before service is rendered have been reported and we even acknowledged some in this paper,
- c) Records of Courts are taken in long-hand, translating these into electronic means takes a long time and resources, especially, where court proceedings, rulings and judgments are kept in electronic means,
- d) Some of the court employees do not have adequate working equipment such as computers, office stationeries among others to aid them in the effective discharge of their duties,
- e) Attitude of some counsel who fail to adhere to lay down procedures,
- f) Some exhibits are bulky and would need special attention to handle,
- g) Absence of sufficient storage facilities,
- h) Difficulty in effecting court process on a defendant.

## **Recommendation**

Advances in information and communication technologies provide the opportunity for governments throughout the world to improve the delivery of information and services to citizen aimed at streamlining public sector functions, and to increase output and the Nigerian judiciary can't afford to be left behind. To this end the judiciary should:

- i. Develop policies, procedures, systems, and structures to ensure the maintenance of the integrated records and archives management programme, as well as migrating from analogue to digital,
- ii. To uphold continuing judicial education to ensure better performance and instill greater confidence in officers of the court,

- iii. 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,
- iv. With the aid of information communication technology, the provision surveillance systems within the court premises,
- v. Development of plans to deal with loss of records and other emergencies, and retrieval of records and information and Establishment of schedules for retention and destruction,
- vi. The court should provide a vehicle or motor bike for the bailiffs, for the purpose of service of court process;
- vii. Enhancement of salary and welfare package will lead to greater job satisfaction and better impact the justice delivery by the Court employees,
- viii. To change from the old order of doing things that have been inimical to effective justice administration and appreciate new innovations that are in line with international best practices.

## **Conclusion**

The list on how to ensure safe custody of Court Records and Exhibits is by no means exhaustive in this paper, as there are still many more areas that are not enumerated. What is however certain is that the general consequences of promoting effective management of Court Records and Exhibits have been outlined for us to appraise, improve on it and adopt; and not to cherry pick.

Consequently, in the discharge of our duties, we cannot allow the judiciary to be subjected to a great deal of public loathing which could lead to the vilification of the judiciary. Our experience as judicial staff has shown that the need for us to adopt international best practices in the discharge of our duties cannot be said to be overstated at this time, we must ensure to move with the tide.

It is often said that *if your absence is not felt, your presence was never needed*. I, urge you all to make your presence count in your service to the Nigerian judiciary and that time is now. As earlier stated, I don't lay claims that this paper is exhaustive. I will only feel fulfilled if at this point I have succeeded in stimulating discussions to further enrich this paper. I can therefore, feel discharged at this juncture and say thank you for your time and attention.