

**JUDICIAL CAPACITY OF COURT ADMINISTRATORS:
EXPLORING THE PROVISIONS OF THE HIGH COURT
CIVIL PROCEDURE RULES.**

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INTRODUCTION

I consider it a great privilege and honour to be given this opportunity to present a paper at this very important training for Chief Registrars and Court Administrators of the various Courts at this great citadel of learning. I do not take this privilege for granted and I say thank you to the Hon. Justice R.P.I Bozimo OFR for this opportunity. I feel so humbled.

AIM OF THIS PAPER

I have been asked to present a paper on Judicial Capacity of Court Administrators: Exploring the provisions of the High Court (Civil Procedure) Rules.

This paper is meant to examine the provisions of the High Court (Civil Procedure) Rules with respect to the Duty, Position and Role of the Court Administrator for the purpose of ensuring effective Justice delivery which is the fundamental reason of our gathering today.

It is common knowledge that the Court Administrator is the engine room of the Judiciary; it is my prayer therefore, that at the end of the day we will truly understand the strategic role which the Court Administrator performs in the course of Judicial proceedings as provided by the High Court (Civil Procedure) Rules.

To fully understand this topic, it is pertinent to define some key terms which are as follows:

- i. Court
- ii. Administrators
- iii. High Court (Civil Procedure) Rules
- iv. Court Administrator
- v. Judicial Capacity

COURT: Collins dictionary defines a Court as “a place where legal matters are decided by a Judge or Jury or by a Magistrate”

Business dictionary also defines Court as “where persons appointed as Judges or Magistrates officiate administration of justice”.

ADMINSTRATORS

‘A group of individuals who are in charge of creating and enforcing rules and regulations or those in leadership’

THE HIGH COURT (CIVIL PROCEDURE) RULES

These are rules that guide the proceedings of the High Court in civil matters. Each State in the Federation has its High Court (Civil Procedure) Rules which regulates proceedings in the High Courts of the state in civil matters. Suffice it to say however, that the Rules of Court are similar

across jurisdictions within the Federation except for minor differences in some instances which are negligible.

A COURT ADMINSTRATOR

A Court Administrator is an officer of the judicial system who performs administrative and clerical duties essential to the proper operation of the business of a Court, such as tracking trial dates, keeping records, entering judgments and issuing process. A go between for Judges, Attorneys and Clients, the Court administrator essentially runs the court business. The behind the scenes work of this position range from scheduling trial dates to handling all official correspondence. Courts produce volumes of paper, the administrator's office processes them, accepting lawsuits, filings, authenticating court documents and issuing writs and summons.

JUDICIAL CAPACITY

This refers to the duties of the Court Administrator which are backed by law, in this case, the High Court (Civil Procedure) Rules.

This paper is aimed at exploring the activities or duties of Court administrators as enshrined in the High Court (Civil Procedure) Rules. I have earlier made the point that each state of the federation has its own High Court (Civil Procedure) Rules. However, for the purpose of this

presentation, I will be making reference to the Taraba State High Court (Civil Procedure) Rules, 2011 which is applicable in my jurisdiction which is the Taraba State Judiciary. However, by making reference to Taraba State High Court (Civil Procedure) Rules in this presentation, I am confident that you all will be carried along. This is so because as I earlier pointed out, the High Court (Civil Procedure) Rules are similar across board irrespective of the jurisdiction from where they emanate.

The main purpose of this presentation, is to critically analyse the role of court administrators in judicial proceedings in our courts with specific reference to the High Court.

THE ROLE OF THE REGISTRAR IN JUDICIAL PROCEEDINGS

The Registrar is the Court Administrator recognized by the High Court (Civil Procedure) Rules in the course of judicial proceedings. However, the interpretation column of the Taraba State High Court (Civil Procedure) Rules which is similar to other jurisdictions refers to the Registrar to mean the Chief Registrar, Deputy Chief Registrar, Assistant Chief Registrar, Principal Registrar, Senior Registrar, Higher Registrar or any other officer acting or performing the functions of the Registrar by reference. In this presentation, reference shall only be made to the Registrar. However by

referring to the Registrar we are invariably referring to the officers captured above by the High Court (Civil Procedure) Rules.

The job of a Court administrator is so fundamental in the effective dispensation of justice with respect to litigation. This is because the commencement of a civil suit in the High Court is always basically discharged by the Registrar who is a Court Administrator. By the provision of **Order 5 Rule 2** of the Taraba State High Court (Civil Procedure) Rules 2011, an originating process is deemed to be issued upon being sealed by the Registrar.

Order 5 Rule 3 states:

“The Registrar shall, after sealing an originating process, file it and note on it the date of filing and the number of copies supplied by a plaintiff or his legal practitioner for service on the defendant. The Registrar shall then make an entry of the filing in the Cause Book, identify the action with a suit number that may comprise abbreviation of the Judicial Division, a chronological number and the year of filing.”

From the aforementioned, it is obvious that the Registrar plays a key role in kick-starting a judicial process with respect to litigation in the High Court. This is so because, once an originating process is prepared by a

plaintiff or his counsel it remains an ordinary document until it is given the breath of judicial existence upon being filed in the registry. In **IMO STATE V EZE S.B.C ORISAKWE, Suit No FCA/E/169/82**, the Court of Appeal held thus, “A document is deemed properly filed when a paper brought to the registry is assessed and paid for”. Furthermore, it is the duty of the Registrar to ensure that after an originating process is duly issued and properly filed, its service is effected on the parties involved as provided in **Order 5 Rule 4** of the High Court (Civil Procedure) Rules of Taraba State which empowers the Registrar to arrange for personal service of an originating process on a defendant.

Order 6 Rule 1-3 further explains how and who should effect service of originating process.

1. (1). “Service of originating process shall be made by –

a. a Sheriff or Deputy Sheriff, Bailiff, Special Marshall or other officer of the Court: or

b. a Solicitor filing the document who must give a written undertaking at time of filing the document to the Registrar receiving the document that his chambers shall serve the document on the other party or his Solicitor and that he will file

with the Registrar a proof of the service signed by the other party or his solicitor: or

c. the Chief Judge may also appoint and register any law Chambers, Courier Company or any other person to serve Court processes and such person shall be called process server.

(2) When a party is represented by a Legal Practitioner, service of Court process of which personal service is not required, may be made on such Legal Practitioner or on a person under his control.

2. The process server shall serve an originating process by delivering to the party to be served a copy of the process duly certified.

3. No personal service of an originating process shall be required where the defendant has authorized his Legal Practitioner in writing to accept service and such Legal Practitioner enters appearance.

From the forgoing, it is obvious that before a judge assumes jurisdiction over a matter, it must have passed through the Registrar; this therefore, underscores the crucial role the Registrar plays in litigation.

The Registrar also plays a role in Interlocutory Applications such as Motion Exparte and Motion on Notice. This is captured in **Order 10 Rule**

3 of the High Court (Civil Procedure) Rules of Taraba State which states thus:

“The Registrar shall make up, for each day on which there are motions to be heard, a motion list, on which he shall enter the names of each cause in which a motion is made, the party moving and the terms of the order sought.”

In further exploring the provisions of the Taraba State High Court (Civil Procedure) Rules with respect to the role of a Court Administrator, reference is herein made to **Order 34 Rule 5 and 6** of the Taraba State High Court (Civil Procedure) Rules which outlines the role a Registrar plays in transfer and consolidation of suits in the course of litigation in the High Court.

Order 34 Rule 4, 5 and 6 states thus:

4. Where a Judge has in exercise of the powers conferred under the District Courts Law and the High Court Law ordered the transfer of any action or matter from a District Court to High Court or to another District Court, a copy of the order duly certified by the Registrar shall be sent to the Registrar of the District Court who shall forthwith transmit to the High Court or the other District

Court, as the case may be, the process and proceedings in every such case and an attested copy of all the entries in the books of that Court relating thereto and thereupon all proceedings in the actions, cause or matter shall be taken in the Courts to which the transfer is made as if the action, cause or matter had been commenced therein.

5. (1) On receipt by the Court of the document mentioned in rule 4, the Registrar shall notify the party who applied for the transfer or where the transfer was not made on the application of any party, the plaintiff, to attend at the registry and pay the fees for filing the documents. Such payment shall be without prejudice to the question of how costs shall ultimately be borne.

(2) The notification shall be effected by serving a notice personally on the party concerned or where an address for service has been given by such party, at that address.

6. (1) The Registrar shall on payment of the prescribed fees, in any case not later than 7 days, file the documents received from the lower Court and make an entry of the filing in the Cause Book.

(2) The Registrar shall then give notice to the parties to attend in person or by their Legal Practitioners before the Court on the day

and at the time specified on the notice. The fees for the service of this notice shall be borne in the first instance by the party who has paid the fees for filing as provided by rule 5.

From the foregoing therefore, it can be clearly seen that the role of the Registrar cannot be overemphasized in the commencement of a suit. The Registrar has a fundamental duty in ensuring the commencement of suits because without the Registrar a suit cannot commence or even where a suit is transferred in the course of litigation, the Registrar transmits and takes the process to the point of commencement de novo.

PROCEEDINGS AT TRIAL

During trial, the Registrar is expected to be present to make note with respect to details of the said trial. **Order 37 Rule 8** states thus:

“The registrar or other proper officer present at any trial of hearing shall make a note of the time at which the trial or hearing commences and terminates respectively at the time it actually occupies on each day it goes on for communication to the Taxing Officer if required.”

The role of the Registrar is very crucial and sensitive especially during trial. This is so, because the law gives the Registrar power to take charge of every document that is tendered as an exhibit during trial. **Order 37**

Rule 14 of the High Court (Civil Procedure) Rules of Taraba State, states thus:

14. (1) The Registrar shall take charge of every document or object put in as an exhibit during the trial of an action and shall mark or label every exhibit with a letter or letters indicating the party by who 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) and numbered in one consecutive series.

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

(3) The list of exhibits when completed shall form part of the record of the action.

(4) For the purpose of this rule, a bundle of documents may be treated and counted as one exhibit.

(5) In this rule, a witness by whom an exhibit is proved includes a witness in the course of whose evidence the exhibit is put in.

Documents tendered in Court as exhibits more often than not define the outcome of the suit. In **ATANDA V IFELAGBA (2003)** 17 NWLR part 849 at 274 the Court held thus; *“when a document is duly pleaded and admitted in evidence that document becomes the best evidence of its content and therefore, speaks for itself. It is the content of the whole document that are in evidence. That being the case, the Court cannot disregard it.”*

It is trite law that the documentary evidence is the best evidence. **BENDEL STATE V UBA (1986) 4 NWLR part 37 at 547**

From the above judicial authorities, it is obvious that documents as exhibits before the Court are vital instruments in the determination of Suits. By the Rules of Courts, Exhibits can only be kept in the custody of the Registrar. This is a clear indication that the office of the Registrar is a position of trust. This simply means that a man or woman who is deficient in character or integrity cannot occupy the office of the Registrar.

The strategic role of a Registrar is further amplified in **Order 37 Rule 21 (3)** of the High Court (Civil Procedure) Rules of Taraba State which is similar in other jurisdictions, it states thus:

“The record so kept as aforesaid or a copy purporting or to be signed and certified as a true copy by the Registrar shall at all times, without further proof be admitted as evidence of such proceedings and of the statements made by the witness.”

The purport of the above provision is to the effect that every judgment or order of Court or judicial proceedings which are classified as public document by virtue of S. 106 of the Evidence Act must be certified as a true copy by the Registrar. The law has made it mandatory for all public documents to be certified before they are admissible in proceedings in a Court of competent jurisdiction. Where public documents are uncertified the presumption of regularity will not be ascribed to them. The authenticity of their content will be in doubt, they will be divested of their potency and of no use in proceedings in Court; I refer to the case of **OBEYA V FBW PLC (2012) ALL FWLR part 636 at 548 Ratio 6**

It has also been decided in a plethora of judicial pronouncements that Writs of summons and statement of claim filed in a suit once filed in Court become public documents. **PROF. C.N OKEKE V ATTORNEY GENERAL AND COMMISSIONER OF JUSTICE ANAMBRA STATE (1992) 1 NWLR part 215 at 60.**

Order 37 Rule 21, states thus:

“In every cause or matter, the presiding Judge shall take down:

(a)In writing; or

(b)By electronic recording or device, the purport of all oral evidence given before the Court and minutes of the proceedings and shall sign or authenticate the same at any adjournment of the case and at the conclusion thereof.

The provision of **Order 37 rule 21 (1) (3)** is a deliberate attempt by the drafters of the Rules to incorporate the doctrine of separation of power and checks and balances in judicial proceedings because by this provision, a judge who presides over a case and takes down the proceedings in writing is not permitted to keep such proceedings in his custody, it is the Registrar that has that duty to have it in his possession. It is also the duty of the Registrar to certify the document and give it to anyone who needs same upon an application.

EXECUTION OF JUDGMENT

Order 42 Rule 6 states thus:

(1)“The issue of a writ of execution takes place on its being sealed by the Registrar

- (2) A praecipe for the issue of a writ as in Form 36 shall be filed before the writ is issued*
- (3) The Praecipe shall be signed by the Legal Practitioner of the person entitled to execution or if the person is acting in person, by that person.*
- (4) No such writ shall be sealed unless at the time of the tender thereof for sealing:*
- a. The person tendering it produces:*
 - i. The judgment or order on which the writ is to be issued or an office copy thereof;*
 - ii. Where the writ may not be issued without the leave of the Court, the order granting the leave or evidence of the granting it;*
 - b. The Registrar is satisfied that the period, if any, specified in the judgment or order for the payment of any money or the doing of any other act thereunder has expired.*
- (5) Every writ of execution shall bear the day and date on which it is issued.”*

The above law clearly indicates that after a judge delivers his judgment, execution of same is handled by the Registrar. The strategic role of the

Registrar in the administration of civil litigation is further pronounced in the execution of the judgment of a Court. A litigant who benefits from the judgment of a Court as a judgment creditor heavily relies on the Registrar for the execution of the judgment to enable him enjoy the fruit of his judgment. Therefore, the Registrar as a Court Administrator plays a key role even in execution of judgment of Court.

PROBATE AND ADMINISTRATION:

The Registrar has been conferred with an enormous task in respect to probate matters. **Order 50** of the High Court (Civil Procedure) Rules of Taraba State provides for the procedure and grant of probate and the role of the Registrar with respect to same.

Order 50 Rule 1 (1)

Subject to rule 44 and 45 of this Order when any person subject to the jurisdiction of the Court dies, all petitions for the granting of Letters of Administration of the estate of the deceased person, with or without a Will attached with all applications on the other matters connected therewith shall be made to the Probate Registrar of the Court.

This provision clearly indicates that no grant of probate can be made without it routed through the probate Registrar.

Order 50 Rule 4 states thus:

“Any person having in his possession or under his control, any paper or writing of any person deceased, being or purporting to be testamentary, shall forthwith deliver the original to the Probate Registry of the Court. If any person fails to do so within 14 days after having had knowledge of the death of the deceased, he may be liable to a fine of N2, 000.00 as the Court having regard to the condition of such person in default and other circumstances of the case may deem fit to impose.”

CUSTODY OF WILLS

It is also imperative to note that whenever a person makes a will and he decides to deposit same with the Court, it is the probate registry headed by a Registrar that takes custody of such a Will. This is the provision of **Order 50 Rule 14 and 15** of the High Court (Civil Procedure) Rules of Taraba State, which states thus:

14 “Any person may deposit his Will for safe custody in the Probate Registry, sealed up under his own seal and the seal of the Court.”

15 “Every original Will, of which probate or administration with Will annexed is granted, shall be filed and kept in the Probate

Registry in such manner to secure at once its due preservation and convenient inspection. A copy of every such Will and of the probate or administration shall be preserved in the Registry.”

By the provision of **Order 50 Rule 18**, the Registrar plays a key role in ensuring that every application for administration with Will annexed, must be carefully inspected to ensure that the Will is in compliance with the law. This has become necessary because it is at the point of death of the testator that an application for the administration of a Will is made. **Order 50 Rule 17, 18 & 19** states thus:

17. (1) On receiving an application for administration with Will annexed, the Court shall inspect the Will to see whether it appears to be signed by the testator or by some other person in his presence and by his direction and subscribed by two witnesses according the applicable law and shall not proceed further if the Will does not appear to be so signed and subscribed.

(2) If the Will appears to be so signed and subscribed, the Court shall then refer to the attestation clause (if any) and consider whether the wording thereof states the Will to have been in fact executed in accordance with those enactments.

18. (1) Where a Will contains no attestation or the attestation clause is insufficient or where it appears to the Registrar that there is some doubt about the due execution of the Will, he shall before admitting it to proof, require an affidavit as to due execution from one or more of the attesting witnesses or if no attesting witness is conveniently available, from any other person who was present at the time the Will was executed.

(2) If no affidavit can be obtained in accordance with sub-rule (1) the Registrar may, if he deems fit having regard to the desirability of protecting the interest of any person who may be prejudiced by the Will, accept evidence on affidavit from any person he may deem fit to show that the signature on the Will is the handwriting of the deceased or any other matter which may raise a presumption in favour of the due execution of the Will.

(3) If the Registrar, after considering the evidence:

a. is satisfied that the Will was not duly executed, he shall refuse probate and shall mark the Will accordingly

b. is doubtful whether the Will was duly executed, he may refer the matter to Court by motion.

19. If both the subscribing witnesses are dead or if from other circumstances such an affidavit cannot be obtained from either of them, resort for such an affidavit shall be had to other persons (if any) present at the execution of the Will; but if no such affidavit can be obtained, proof shall be required for that fact and of the handwriting of the deceased and of the subscribing witnesses and also of any circumstance raising a presumption in favour of the due execution of the Will.

From the aforesaid, the execution of a will to a large extent depends on what the Registrar makes of it in line with the provisions of the law.

Order 50 Rule 21 states:

“Any appearance of attempted revocation of a Will by burning, tearing or otherwise and every other circumstance leading to a presumption of revocation by the testator, shall be accounted for to the Registrar’s satisfaction.”

This further buttresses the earlier point that the Registrar plays a key role in ensuring that a Will is properly executed.

Even in the case of foreigners the law has made provision that where any citizen of a foreign country dies the probate Registrar shall be responsible for the proper transmission of his assets to the point where it is received in

his country. This is the provision of **Order 50 Rule 44** of the High Court (Civil Procedure) Rules of Taraba State, it states thus:

“Where any citizen of any foreign country dies within the jurisdiction without leaving within the jurisdiction a widower, widow or next of kin, the Probate Registrar shall collect and secure all moneys and other property belonging to the deceased and shall then inform the nearest Consular Office of such country of the death and transmit to him list of the money and property of the deceased.”

Rule 52

- (1) “The Registrar shall not allow any grant to issue until all enquiries which he may deem fit to make have been answered to his satisfaction.*
- (2) The Registrar may require proof of the identity of the deceased or of the applicant for the grant beyond those contained in the oath*
- (3) No grant of probate or of administration with the Will annexed shall issue within 7 days of the death of the deceased; and no grant of administration (not with the Will annexed) shall issue within 14 days of such death.*

May I at this juncture state that by the provision of the Taraba State High Court (Civil Procedure) Rules with reference to **Order 50**, the Registrar is involved at every stage in the administration of Probate either where the deceased died intestate or testate. This shows how important the duty or the role of a Registrar is in probate matters. May I state that these duties are specified by law not by mere practice or convention. Although reference is being made to the Taraba State High Court (Civil Procedure) Rules, 2011, I am aware that other jurisdictions have similar provisions.

CONCLUSION

From our discussion so far, it is unequivocally clear that the Court Administrator plays a vital role in the administration of Justice. It is practically impossible to smoothly run the business of litigation without recourse to the Court Administrator. Although the general public perceive justice from the point of view of a Judge presiding over a matter and ultimately determining same, however, the reality on ground is that the Court Administrator ensures that the process is effectively achieved. In other words, administration of Justice is not complete without the comprehensive input of the Court Administrator. It is therefore, my humble view that Court Administrators are major stakeholders in the smooth administration of Justice in Nigeria.

RECOMMENDATION

- Periodic training of Court Administrators to acquire more experience in effective discharge of their duties
- Digitization of Court registry to conform to modern trend.

REFERENCE

- Collins Dictionary
- Business Dictionary
- High Court (Civil Procedure) Rules of Taraba State
- West's Encyclopedia of American Law 2nd edition
- IMO STATE V EZE S.B.C ORISAKWE suit No FCA/E/169/82
- ATANDA V IFELAGBA (2003) 17 NWLR part 849 at 274
- BENDEL STATE V UBA 1986 4 NWLR part 37 at 547
- OBEYA V FBW PLC 2012 ALL FWLR part 636 at 548 Ratio 6