EFFECTIVE CASE-FLOW AND TIME MANAGEMENT TECHNIQUES

PAPER PRESENTED BY HON. JUSTICE (PROF) C.A. OBIOZOR AT THE REFRESHER COURSE FOR JUDGES AND KADIS AT THE NATIONAL JUDICIAL INSTITUTE ON THE 25TH OF MARCH, 2021

PROTOCOLS:

I am exceptionally and profusely thankful to the Honourable the Chief Justice of Nigeria, **Hon. Justice Ibrahim Tanko Mohammad**, CFR, Chairman, Board of Governors of the National Judicial Institute and the very delectable, perceptive and outstanding administrator of the National Judicial Institute, **Hon. Justice R. P. I. Bozimo, OFR**, for the honour of finding me worthy of invitation to share my thoughts on: Effective Case-Flow and Time Management Techniques at this Refresher Course for Judges and Kadis with the theme: The Role of the Judiciary in Promoting Good Governance in Nigeria. I express my profound gratitude and pray that my thoughts are sufficiently incisive and insightful. I also thank the members of the High Table and everybody who is part of this occasion for finding time to share my thoughts with me. Please permit me to stand on established protocols.

INTRODUCTION:

It is beyond doubt as shown in the dictum of **Belgore, JSC** in **NARUMAL & SONS LIMITED V. N.B.T.C. LIMITED (1989) 4 SC (PT. 11) 116** that the primary duty of any court is to do justice by deciding the issues before it and settling the dispute between the parties according to the law. In most cases, as simplified as it may seem,

the exercise of this responsibility predisposes a tall order to the judicial officer. In civil proceedings, the Judge may be ensnared in the technical procedures of a given case and lavish time and efforts unduly, in servitude to the antithesis of prompt justice dispensation. In criminal trials, for instance, a defendant has a right to be given adequate time and facilities for the preparation of his defence. See **OGBOH V. FEDERAL REPUBLIC OF NIGERIA (2002) 4 SC (Pt. 11) 106**. This requirement is also constitutional. See section 36 (6) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered). Certainly, these, inexorably challenge the capacity of the Judge to manage his docket by optimally allotting time within which to dispose each case before the Court. Time, here, must be reasonable; and reasonable time must, in turn, mean the period of time, which, in the search for justice, does not wear out the parties and their witnesses; and which is required to ensure that justice is not only done but appears to reasonable persons to be done. Recall **PAUL UNONGU V. APER AKU (1983) 11 SC 129**. In order to hold the required balance, case law demonstrates the duty placed on the trial court – such as your Lordships – in all proceedings. In **BANNA V. TELEPOWER NIGERIA LIMITED (2006) 7 SCNJ 182, 195**, the Supreme Court had this to say to the trial Judge:

> **The best Judge in trial procedure is undoubtedly the trial Judge. He sees it all because he closely watches the proceedings and all that. He feels the pinch when parties try to dilly-dally the proceedings or adopt tricks to overreach or outsmart the adverse party.**
> **If the trial Judge fails to take a position … and takes**

> **or tows the line of sympathy …, then he will have a plethora or load of cases in his cause list to the extent that he cannot get out of a mounting backlog of cases. That will reflect on him adversely and in these days of continuous assessment of the performance of Judges, he will be in for it. While … a trial Judge cannot throw away the constitutional provision that parties should be given a hearing in matters before the court because of repercussions of performance assessment, a Judge owes the administration of Justice a duty to facilitate and ensure the speedy hearing of a case before him. The notoriety that delayed justice attracts to the judiciary is such that Judges must work towards the speedy dispensation of justice. We do not have a choice in this troublesome matter. Let us do our best and our best is to facilitate the speedy hearing of cases.**

See also **NEWSWATCH PUBLICATIONS V. ATTA (2005) 4 SCNJ 282**; **OGENE V. OGENE (2008) ALL FWLR (Pt. 403) 132**6; **STIRLING CIVIL ENGINEERING NIGERIA LIMITED V. NWOSU (2008) ALL FWLR (Pt. 413) 1399**. Surely, the direction show-cased in the enriching dictum from the Supreme Court in the above case, best typifies the way forward; as foisted on every Judge, particularly by the vagaries attendant on the voluminous docket of the Judge and the shenanigans often-times displayed by counsel to stall the effective determination of disputes with dispatch, usually where their clients appear to have a bad case. Whilst the direction held out by the dictum from the Supreme Court does not in any way seek to propel the employment of overzealous and bloated but empty speedy trials, bereft of the substance of justice; it is instructive that the thrust only enthrones the undeterred necessity for quick or

prompt dispensation of justice. Indeed, the need for prompt dispensation of justice, which is the hallmark of an effective determination of disputes, remains germane in the de-limitations of the duties of the Judge.

At all times, therefore, the capacity of the Judge to manage the very limited time available to the Court to hear and determine disputes, becomes a matter of some significant concern, particularly in climes, such as ours, where proceedings are still conducted by most courts in long hand. I am not unmindful of the innovations thrown up by the prospects for virtual hearings or conduct of cases, seemingly foisted on us all by COVID-19. Nevertheless, without going into the debate on the appropriateness of virtual hearings in certain classes of cases, there is certainly no gain – saying the fact that most courts still do not possess the capacity to deploy the necessary electronic facilities for a robust and fruitful conduct of virtual proceedings. For now therefore, we shall endeavour to be truthful to ourselves and attempt to make optimum use of existing facilities and structures to the best of our abilities.

The aphorism that Justice delayed is justice denied is a truism. Certainly, the enormity of the difficulties presented by the delay in the dispensation of Justice cannot be refuted. Whilst recognizing that some of the difficulties go well beyond the control of the Judicial officer, the plank of this paper is to throw up some of the possible panacea for navigating the seemingly intractable

challenges in case-management, which are within the control of the judicial officer. The idea is to hold out some extant beneficial principles, in the hope that by reiterating them, some reprieve would crystallize.

Now, if the judiciary collapses, the domino effect resulting in the incalculable destruction of our national life cannot be denied. Quite patently, this would bespeak the need for a vibrant, resourceful and robust judiciary. It behoves us therefore, to redouble efforts in the face of the reality check confronting us, by discarding the red-herring in the performance of our functions and profoundly managing the limited time available to us, in order to achieve optimal results in justice dispensation. The topic of this paper therefore cannot be more instructive.

Speaking to the issue, the case load of a Judge is the volume of cases assigned to the Court. The concept of case-flow simply refers to the movement of these cases through the judicial system from the initial filing period through to their determination. The idea of case-management on its own part, relates to the act or skill of dealing with cases in a progressive way by the Court. This would provoke optimal time management, which is devoid of untoward adherence to tabulated legalism and engender the propensity for a robust, liberal and affirmative appraisal of the way in which Courts organize the austere Judicial time expended on dispute determination. Clearly, therefore, time and case – flow management standards, for purposes of this discourse, put simply,

are deliberate reflections on the mechanisms or procedures employed by courts in conducting cases on the court's docket, in order to achieve optimum, seamless, qualitative and expeditious determination of disputes and the dispensation of profound and enduring Justice. This is the focus of this paper.

So much have been said about case – flow management and sufficient literature exist to guide the thoughts on the theory behind this concept. My approach in this paper is slightly different. I do not intend to bore you with the hypothesis behind the concept. My intervention is to offer practical tips, which would guide you as you perform your functions as judicial officers – offering in the process, some 'quick to guide' answers to some of the seemingly intractable situations, which present in the course of proceedings. The idea is to underscore some recourse, which may aid your courts in the journey of prompt determination of disputes. My thoughts propose to intervene from two broad perspectives – the procedural law (taken from case law) and the substantive law. This presentation therefore comprises an assemblage of the two perspectives as may be appropriate. There are four segments, namely, Pre-trial Settlement of Issues, Conduct of Proceedings, Removal of Judicial Officers and the Concluding Remarks. I shall now take the sub-heads, seriatim in order to guide my thoughts and for ease of comprehension.

PRE-TRIAL SETTLEMENT OF ISSUES:

In case- flow management, pre-trial settlement of issues is indispensable. Every court ought to set the time line within which to consummate proceedings in every case. Where a Court simply proceeds as occasion may demand, without setting out targets for itself, the function of litigation becomes analogous to a drifting

vessel at sea without a compass. Direction and control would be non-existent. In such circumstances, all conceivable amorphous variables, including human frailty, would re-position themselves to effusively truncate the prompt and efficacious determination of disputes. The court would be like sheep without shepherd. The opportunity offered by a pre-trial settlement of issues, offers a recipe for orderly conduct of proceedings within a set time-frame. This, in turn, sustains a deliberate struggle to meet set targets.

A Pre-trial Settlement of issues is a prelude to hearing. The parties and their counsel are invited to settle all preliminary issues to pave the way for a purposive hearing on the contending issues – head-on – without the usual fancies of simplistic and sometimes pretended distractions associated with cosmetic litigation. Once the real issue(s) in contest are delimited, it is much easier for the court to apply itself to the issues and promptly resolve them. This is the beauty of Pre-trial Settlement of Issues. Most Rules of Court provide for pre-trial settlement of issues. You will therefore do well to look for it in the Rules of your Court and embrace it as one effective way of abridging the time spent on litigation.

In civil and criminal law litigation, all powers to settle issues between parties are vested in courts and courts must be vigilant to see that genuine issues and controversies only, are settled. See **Belgore JSC** (as he then was) in **ABACHA V. STATE (2002) 11 NWLR (Pt. 779) 437.** If the Court directs that parties file issue(s) for settlement, it becomes mandatory for the court to settle the issues.

See **OBIJURU V. OZIMS (1985) NSCC Vol. 16, 430**. See also **IMB PLC V. S.P.C. LIMITED (2000) 15 NWLR (Pt. 690) 232.**

The issue(s) must be those nominated by the claim or charge/information. The idea is that the claim nominates the issue(s) for decision in a case. See **LONGE V. FIRST BANK OF NIGERIA PLC (2010) 6 NWLR (Pt. 1189) 1, 24**. See also **NKUMA V. ODILI (2006) 6 NWLR (Pt. 977) 587.** As **Oputa, JSC** (as he then was) advised in **ADIMORA V. AJUFO (1988) 6 SCNJ 18**, our trial courts should always insist on settlement of issues after pleadings [in civil law proceedings], before the actual hearing. The practice has a good deal to commend it to all trial courts. Where therefore, according to His Lordship, parties are abreast of the issues in controversy, they will more likely confine themselves to proof of such issues and no more. Matters, which are not in dispute, can then easily be admitted by consent. This will lead to a considerable saving in time and effort. This simplifies the process of civil litigation and abridges time expended on litigation and pose an incentive to efficient case management. In this regard, the hearing is conducted based on the live issues settled by the parties.

Where the Court raises any issue, suo motu, then the parties are invited to address on it in keeping with the established principles. See **Uwaifo, JSC** (as he then was) in **MOJEKWU V. THERESA IWUCHUKWU (2004) 18 NSCQR 184.**

Rules of Court readily provide for settlement of issues. For the Federal High Court where I come, this is captured in Order 18 of the Federal High Curt (Civil Procedure) Rules, 2019. But then, just how many judicial officers apply it. Yet, it is there; and offers a short cut to prompt dispute settlement. Ideally, parties are requested to file and exchange their respective statements on admitted facts, disputed facts and set out the issues for determination. In keeping with the Evidence Act 2011, all admitted facts would require no further proof. See Section 123 of the Evidence Act, 2011. Again, upon settlement of issues, the germane issue(s) crystallize and, generally speaking, the court is to confine itself to the *lis* or issues raised by the parties. This is so for in our adversarial system, where a party is granted a relief, which it did not seek, the Court would have made an order on a lis not raised. This will be an order made without jurisdiction and therefore a nullity. See **Ogundare, JSC** (as he then was) in **OWENA BANK PLC V. N.S.E. LIMITED (1997) 8 NWLR (Pt. 515) 1.**

There is a duty on the court to resolve all the issues nominated for determination. However, where the issue of jurisdiction is raised and same is determinative of the action, then upon a resolution of that issue, it becomes otiose and academic to dabble in all the other issue(s) raised. See **IKECHUKWU V. FEDERAL REPUBLIC OF NIGEIRA (2015) 7 NWLR (Pt. 1457) 1 (SC).** The idea is that a Court wastes its precious time on causes, the determination of which bears no consequence on the dispute between the parties. Acting in vain never forms part of the court's jurisdiction, and

practice doesn't certainly facilitate that. The court therefore would refuse to engage in the fruitless exercise of proceeding to determine a matter where events have overtaken the issue(s). See **UGWU V. PDP (2015) 7 NWLR (Pt. 1459) 478, 502 (SC).** See also **ABE V. UNIVERSITY OF ILORIN (2013) 16 NWLR (Pt. 1379) 183.** But then, there is also authority for the principle that even where a court finds that it has no jurisdiction, it should still proceed – as a savings in time, in the event of an appeal turning out successful – to address the substantive suit. Usually, this is where the matter is commenced by Originating Summons where the evidence required in determining the merit of the suit is in the form of affidavit evidence. This would allow room for the appellate court to express its view on the decision of the lower court on jurisdiction and the merit of the substantive suit in the event of an appeal. See **LAU V. PDP (2018) 4 NWLR (Pt. 1608) 61, 121 (SC).**

Much as it is the duty of the court to consider all the issues joined by the parties and raised before it for determination – see also **MARINE MANAGEMENT ASSOCIATES INC. V. NMA (2012) LPELR – 20618 (SC)** – save as qualified above – it must also be remembered that so long as there is no departure from the issues nominated by the claim, the court can reframe the issue(s) for determination. See **AWOJUGBAGBE LIGHT INDUSTRIES LIMITED V. CHINUKWE (1995) 4 NWLR (Pt. 390) 379.** This may be for sake of brevity and precision. See **UNITY BANK PLC V. EDWARD BOUARI (2008) 2 SCM 193, 240**. Surely, this saves the time spent in determining a given dispute.

At the pre-trial settlement of issues stage, the court is to set a time frame within which to dispose of the action and must rigidly follow the time table as set, save for unavoidable and justifiable reason(s). At this stage, all preliminary questions – issues pertaining to filing of the action, service of processes, regularization of processes filed out of time and other interlocutory applications are settled. Where witnesses would need to be put on subpoena, the court satisfies itself that same has been duly done.

Again, courts have a duty to encourage the parties to settle their disputes amicably. Consequently, where parties agree, the court may refer the parties to ADR (Alternative Dispute Resolution) function for the settlement of their dispute even over a matter pending before the court. This option, as a saving in time is exploited at the pre-trial stage.

As rightly posited by **S. Kargbo**, "Commercial Arbitration and Settlement of Corporate Disputes", *Modern Practice Journal of Finance and Investment Law*, Vol. 3 No. 2, April 1999, p2, the Nigerian judicial structure is an adaptation of the English - type. See also **OBIORA V. OSELE (1989) 1 NWLR (Pt. 97) 297.** The adjudicatory process is adversarial and disputes are resolved on the relative and competing rights of the parties. This English-type of judicial structure, mainly displaced the traditional mechanism for resolving disputes upon its introduction. Its method of conflict resolution fostered an increase in the volume of claims, many of which created unique and novel situations. See **U.S.F. Nnabue,**

"Promoting Conflict Resolution through Non – Adjudicatory Process", *Abia State University Law Journal, Vol. 1, 1997, p. 57***.** This has resulted in protracted and frustrating litigation.

It is true as represented by **Farrar** and **Dugdale** in their work, *Introduction to Legal Method* (2nd Edition, London: Sweet & Maxwell, 1984) 18 that the courts were and are still, in the main, the primary forum for dispute resolution. Nevertheless, it is not an over-statement that the courts have become inundated with an enormous dispute profile arising from an increased volume of domestic and international commerce, particularly now that the world has become one global village. No doubt, the courts have difficulty in grappling with the challenges brought about by these developments and unfortunately, do not possess the enormous material and human resource to summarily and expeditiously determine all disputes without a reference to some form of compromise resolution method, expressed in ADR (Alternative Dispute Resolution) mechanism. Here, the compromise demands the employment of flexible rules, devoid of technicalities, in the attainment of timely dispute settlement. **Orojo** and **Ajomo** in their text, *Law and Practice of Arbitration and Conciliation in Nigeria* (Lagos: Mbeyi & Associates, 1994) 4 captured this when they posited that the changes in the economic, social and political developments translate into an increased quantum of cases in courts. This, in turn, has made the process of litigation ever more time-consuming and cumbersome. The above premise inspires the search for alternative mechanisms for dispute resolution.

The concept of Alternative Dispute Resolution refers to the systems for the resolution of disputes by way of outright alternatives or supplements to the traditional court system of dispute resolution. The quest for Alternative Dispute Resolution is to find techniques to speed up the resolution of these disputes without going through the rigours of attendant costs and delays, sometimes associated with the regular court procedure. See **T. Oyekunle**, "New Options in Dispute Management", *Business and Property Law Journal*, Vol. 4, No. 15, 1988, p. 104. Indeed. The current trend in most Rules of Court encourages the exploration of alternatives to litigation as a means of relieving the courts of the enormous workload on them. This approach is not different in the United Kingdom, where judges of the Commercial Courts in London have been advised by Practice Direction to urge parties to explore the option of Alternative Dispute Resolution. See **O. Akanle**, "Effective Legal Negotiation and Incorporation of Alternative Dispute Resolution into Legal Practice", *Workshop on Advanced Skills in Civil Practice and Trials Advocacy, Centre for Law and Development Studies, Lagos*, 1998.

Alternative dispute resolution systems include Mediation, Conciliation, Mini-trial, Arbitration, Mediation-arbitration, Negotiation, Valuation and Certification. By far, the commonest and most readily resorted to is arbitration. Although Courts had at some distant past viewed arbitration with some misgivings, this has

since changed. In the words of **Oguntade, JCA** (as he then was) in **OKPURUWU V. OKPOKAM (1988) 4 NWLR (Pt. 90) 544, 561:**

> **The regular courts in the early stages of arbitration were reluctant to accord recognition to the decision or awards of arbitrators. This attitude flowed substantially from a reasoning that arbitration constituted a rival body to the regular courts. But it was soon realized that arbitration may in fact prove the best way of settling some type of disputes. The attitude of the regular courts to arbitration gradually changed…**

No doubt, a valid arbitrator's award on a voluntary reference operates between the parties as a final and conclusive "Judgment" upon the matters referred. When validated in court, it has, for all purposes, the force and effect of a judgment of court of competent jurisdiction. See **RAS PAL GAZI CONSTRUCTION COMPANY LIMITED V. FCDA (2001) 10 NWLR (Pt. 722) 559, 574 (SC).** It is clear from the discussion so far, that Alternative Dispute Resolution mechanism has come to partner with the courts and there is no reason for the courts not to embrace it in their case – flow management, as a dependable ally in the quest to unload some of the heavy work-load of the courts.

Where an arbitration clause, for instance, is contained in a contract – the foundation of the dispute before you – it is important to recognize that the clause is intended to save parties – and indeed the court – the time and expense of a law suit. Such a clause does not generate the heat of ouster of jurisdiction of the court. See **MAGBAGBEOLA V. SANNI (2002) 4 NWLR (Pt. 756) 193,**

205. See also **CONFIDENCE INSURANCE LIMITED V. TRUSTEES OF THE ONDO STATE COLLEGE OF EDUCATION (1999) 2 NWLR (Pt. 591) 373, 386.** It merely postpones the right of either of the contracting parties to resort to litigation, without a recourse to arbitration, as agreed by the parties. As such, where the reference to arbitration is sought, in objection to an action commenced in default of an extant agreement for arbitration; and this is done before the Applicant takes a step in proceedings, Your Lordships may need to recall the provisions of sections 4 and 5 of the Arbitration and Conciliation Act, Cap A18, Laws of the Federation of Nigeria, 2004 on stay of proceedings and must, generally, recognize that a condition - precedent to the exercise of your jurisdiction has been put on the front burner. (However, this applies to arbitration agreements in writing only. It does not apply to oral submissions, which are regulated by the common law or oral agreements under customary law).

Arbitration is usually encouraged because it reduces the burden on the court system to resolve disputes. See **SINO-AFRIC AGRICULTURE & INDUSTRIAL COMPANY LIMITED V. MINISTRY OF FINANCE (2013) LPELR – 22370**. This approach is consistent with the directives of the erstwhile Honourable The Chief Justice of Nigeria, His Lordship, **W. S. N. Onnoghen** in 2017, charging courts to give effect to arbitration agreements entered into by parties.

Case–flow management is intended to fast – track the whole process of settlement of disputes. Pre-trial settlement of issues is a step in the right direction. It is also available in criminal trials. For the Federal High Court, for instance, the extant Federal High Court

(Criminal) Practice Direction, 2013 sets out to establish a system of case management that will provide for a fair and impartial administration of criminal cases, in order to eliminate unnecessary delays and expense for the parties involved in the court justice system. More specifically, the Practice Direction directs that at trials, the parties shall focus on matters which are genuinely in issue, minimize the time spent at trials in dealing with interlocutory matters; ensure that the possibilities of settlement are explored before the parties go into hearing, ensure that the case is fully ready for trial before hearing dates are agreed; minimize undue adjournments and delays, etc. See also the Practice Direction on the Implementation of the Administration of Criminal Justice Act, 2015 in the Courts of the Federal Capital Territory, April 25, 2017; the Court of Appeal Practice Direction 2013 (Applicable to civil and criminal proceedings) and the Supreme Court (Criminal Appeals) Practice Directions, 2013, which establish a specialized systems of case management aimed at fast tracking all decisions. I implore your Lordship to embrace the pre-trial settlement of issues in your case-flow management as a necessary impetus to fast-track justice delivery.

CONDUCT OF PROCEEDINGS:

One of the greatest factors militating against the prompt determination of disputes is that most courts in Nigeria still conduct proceedings, virtually, manually. The time has come for the introduction of information technology into the adjudicatory process. The use of smart devices to enhance productivity in the conduct and determination of disputes cannot be over-stressed. In arbitration, for instance, the time expended on procurement of witnesses is clearly abridged by the use of video conferencing. There is no reason not to introduce this to the court system. Think

about the number of times that cases have been adjourned either because a vital witness was caught - up in a traffic, or perhaps missed his flight. Worse still, evidence is recorded in long hand, particularly in criminal proceedings. Now although most Rules of Court have introduced the idea of front-loading of processes, the concept is not inviolable. As have been held, the law regulating admissibility of documents is the Evidence Act, 2011 not the Rules of Court. So, where a document is pleaded, it may still be admitted although it was not frontloaded. See **DUNALIN INVESTMENT LIMITED V. BGL PLC (2016) 18 NWLR (Pt. 1544) 262, 340; 341; 342 – 343.**

True, e-filing is here with us. Indeed, with effect from July 2018, manual filing of court processes at the Supreme Court became ancient history. This is a welcome innovation but there is need also to introduce electronic recording devices to cut down the time spent on cases. Surely, this, for now, is beyond the control of Your Lordships. However, we cannot continue to over dramatize our shortcomings. Let us count on the gains of what we have until we achieve the ideal. So, in this part of my discourse, I propose to offer some ready-made tips, which could offer quick recourse to your courts in the conduct of proceedings.

The key point about case-flow management is the achievement of expeditious trials. His Lordship **Nnaemeka-Agu**, JSC (as he then was) set the tone for a discussion on this in **USIKARO V. ITSEKIRI COMMUNAL LAND TRUSTEES (1991) 2 NWLR (Pt. 172) 150.**

According to His Lordship, whilst in England, there are provisions for Short Cause List for actions (in the Queen's Bench Division) not expected to take more than two hours; summary judgments for actions where it is believed that the defendant has no defence to the action; judges more regularly make the Order for accelerated hearing on applications for interlocutory injunctions; commercial cases are tried in the Commercial List in the Queen's Bench Division for reasons of expeditious trials; in which cases may be tried only, or mainly, on documents, on Points of Claim or Defence, ordered in place of pleadings – the sum total of which is that causes and matters are disposed of more expeditiously and delays are a matter of months, and can be avoided – the Nigerian position presents a different situation. Lists are very long and the machinery for the disposal of cases is less expeditious. Litigants are at the mercy of courts, in that, except in cases in which accelerated hearing is granted for very special reasons, cases must take their turn in the Cause List. In the midst of such systemic causes of delays, the blame cannot rightly be put on the Plaintiff alone; where both the Defendant, the court itself and the machinery of administration of justice all contribute to the delay in hearing cases.

Now, I propose to offer a few tips to help us navigate some of these challenges -

(i) **Power of Courts**-

The scheduling of cases by a Court and the manner or order in which the matters are heard by a court are in the exclusive domain of the discretion of the court. The court is better placed

to know and appreciate its work-load and how to distribute it for proper, prudent and efficient control of time, a scarce natural resource. See **AHMED V. S.M.B. LIMITED (2015) 13 NWLR (Pt. 1476) 403, 439**. In that regard, where the substantive suit is commenced by way of Originating Summons or Motions or Petition, in which oral evidence is not taken, the principles enjoin the court to take the substantive suit and all intermediate applications together. See **AMADI V. NNPC (2000) 10 NWLR (Pt. 674) 76 (SC).** See also **DAPIANLONG V. DARIYE (NO. 2) (2007) 8 NWLR (Pt. 1036) 332 (SC).** The court may even take a preliminary objection and an application for committal together. See **AHMED V. SMB LIMITED, Supra.**

There is inherent power in the court arising from its discretion and bordering on case management to combine the hearing of an interlocutory application and a petition. See **AFRICAN PETROLEUM V. ADENIYI (2011) LPELR – 3642.** Indeed, a trial judge has the discretion to reserve the determination of a pending application already argued but not determined and combine same with a Petition for hearing. See **TORIOLA V. WILLIAMS (1982) 7 SC 27, 58.** Additionally, the Court has a discretion to make an order to determine two applications filed before the court together and also enjoy inherent powers to vary the order. See **OBIEKWEIFE V. UNUMMA (1957) 2 FSC 70.** Here, the Order to hear two processes filed before one court is a measure adopted for the convenience of parties, for saving time and cost and for the avoidance of a determination of the substantive matter at the interlocutory stage.

For certain, Your Lordship are *dominis litis* as far as the conduct of proceedings in your courts are concerned. See **NABARUMA V. OFFODILE (2004) 13 NWLR (Pt. 891) 599, 617.** As was re-affirmed by the Supreme Court in **ASSAMS V. ARARUME (2016) 1 NWLR (Pt. 1493) 368, 389,** all Judges are masters of their courts. They have jurisdiction to adopt a procedure that serves the ends of justice. So, directing that all applications would be heard with the substantive application or suit, amounts to procedural expediency and there is nothing wrong, according to the Court, with that procedure; if it will not amount to a denial of fair hearing or justice. Here, the judge, would be taken as merely setting the Procedure by which the parties would be heard.

It is clear that there are no rooms for excuses. Your Lordships must assert your positions in course of proceedings and a good case-flow management in your Courts would entail the employment of procedural expediency, which must not allow counsel to dictate the pace for you.

(ii) **Admissibility of Documents-**

Enormous time is expended in determining objections or the admissibility of documents. Sometimes, a judge adjourns for months on end to rule on admissibility of documents. Yet, there are simple tips that may be of help.

Firstly, documents are either public or private documents. See sections 102 and 103 of the Evidence Act, 2011. When a

document is a public document, then the original document is admissible as such. See **ONOBURUCHERE V. ESEGINE (1986) 1 NWLR (Pt. 19) 799.** As it is difficult in most cases to produce the original document, the practice is to admit secondary evidence of the document. Here, the question of certification comes in. This is so for the only specie of secondary evidence of the document, which shall be admissible is the certified true copy and no other. See **KAYILI V. YILBUK (2015) 7 NWLR (Pt. 1457) 26, 68 (SC)**; see also sections 89 (e) and 90 (1) (c) of the Evidence Act, 2011, read together.

It is important to note that whoever procures a certified true copy of a public document is competent to tender it in evidence in proceedings in court. See **AGAGU V. DAWODU (1990) 7 NWLR (Pt. 160) 56, 66.**

In relation to private documents, the general rule is that the document be tendered by the maker. It could also be admitted through the person to whom it is made. See **OMEGA BANK PLC V. O.B.C. LIMITED (2005) 8 NWLR (Pt. 928) 547 (SC).** Even then, Your Lordships should not lose sight of section 83(2) of the Evidence Act, 2011, which allows the Courts to admit a document although the maker is available but is not called, if undue delay or expense would otherwise be caused.

For electronic and computer generated evidence, section 84 of the Evidence Act consecrates two methods of proof – either by

oral evidence under section 84 (1) and (2) or by a certificate under section 84 (4). See **DICKSON V. SYLVA (2017) 8 NWLR (Pt. 1567) 167, 203 (SC).** The only duty of the Court at this stage is to ascertain the authenticity of the device from which the document was produced.

In civil law litigation, once the issue of admissibility of documents arises, the court would ask the following questions –

(1) Is the document pleaded;

(2) Is the document relevant and

(3) Is the document admissible under the extant law on admissibility of documents – the Evidence Act.

See **ANAJA V. UBA (2011) 15 NWLR (Pt. 1270) 377, 404.** See also **ALARIBE V. OKWUONU (2016) 1 NWLR (Pt. 1492) 41.**

In criminal law litigation, the innovations introduced by sections 14 and 15 of the Evidence Act, 2011 must be reckoned with by Your Lordships. As such, evidence obtained improperly or in contravention of a law is admissible unless you find that the desirability of admitting the evidence is out-weighed by the undesirability of admitting such evidence.

(iii) **Adjournments**-

Adjournments generally, are not granted as a matter of course. See **NIGERIA PORTS AUTHORITY V. FASURA (1974) 4 ECSLR 658 (SC).** However, adjournments in murder trials is a matter of right. See **MICHAEL UDO V. THE STATE (1988) 3 NWLR (Pt. 82) 316.** Generally,

the issue of adjournment is a matter within the discretion of the court although the discretion must be exercised judicially and judiciously in the interest of justice. See **TSAKU V. STATE (1986) 1 NWLR (Pt. 17) 516.** See also **ODUBA V. HOUTMANGRACHT (1997) 6 NWLR (Pt. 508) 185,** per **Iguh, JSC (**as he then was**).**

In case-flow management, Your Lordships must recognise the extant principles on adjournments and rise up to the occasion. Adjournments are not for the asking. To demonstrate the seriousness that the matter deserves, the Supreme Court has now ruled that there is a duty on counsel writing a letter of adjournment to formally file same in court – as you file processes – and serve the adverse party. See **REGISTERED TRUSTEES, PC.N V. ETIM (2017) 13 NWLR (Pt. 1581) 1, 40 – 44.** So, the days of frustrating court proceeding with flimsy applications for adjournments are clearly over. Your Lordship must take advantage of this in your case-flow management.

In areas where the Administration of Criminal Justice Act, 2015 applies, it is important to appreciate the fact that the Act has come to engender speedy trials. By section 396, for instance, criminal trials are to be conducted on a day to day basis. Where this is impracticable, the court is enjoined to grant no more than five adjournments to each party provided that the intervals between each adjournment shall not exceed fourteen days. Courts can award costs for frivolous requests for adjournments. Again, by section 306 of the Act, the court shall not entertain

applications for stay of criminal proceedings. The Supreme Court has ruled in **METUH V. FEDERAL REPUBLIC OF NIGERIA (2017) 11 NWLR (Pt. 1575) 157, 178; 182,** that section 306 of the Act is not unconstitutional.

What is more, by section 396 (2) of the Act, objections to the charge or information are to be considered by the court at the substantive stage and a Ruling on the application incorporated in the judgment.

In all, the important thing in dealing with the trial of any case, be it civil or criminal, is to ensure that the procedure of fair hearing is strictly complied with. If that is satisfied, courts are now more concerned with doing substantial justice than clinging to procedural technicalities, by concerning themselves with the substance and not the form of justice dispensed. See **PSYCHIATRIC HOSPITALS MANAGEMENT BOARD V. EDOSA (2001) 2 SC 180.** Substantial justice, which is actual and concrete justice, is justice personified. It is secreted in the elbows of cordial and fair jurisprudence with a human face and understanding. It is excellent to follow in our law. It pays to follow it as it brings invaluable dividends in any legal system anchored or predicated on the rule of law, the life blood of democracy. See Tobi, JSC (as he then was) in **OMOJU V. FEDERAL REPUBLIC OF NIGERIA (2008) 7 NWLR (Pt. 1085) 38.** The collective contemporary wisdom of the superior courts have moved from enforcing technicality in our adversarial system of jurisprudence to determining causes on the

merits. Any procedure that has not adversely affected the decision of the court to cause gross miscarriage of justice can be forgiven so that technicality would not reign over justice. See **AFRICAN TIMBER AND PLYWOOD NIGERIA LIMITED V. DARLING PETROLEUM NIGERIA LIMITED (2015) LPELR – 25585.** See also **AKANDE V. AJANI (1989) 3 NWLR (Pt. 111) 511, 545; NNEJI V. CHUKWU (1988) 6 SCNJ 132, 138 – 140.**

The tripod on which conduct of proceedings under the Islamic law jurisprudence stands are the Area Court Civil Procedure Rules, the Sharia Court of Appeal Rules and the Salam. In **AIKAMAWA V. BELLO (1998) 8 NWLR (Pt. 561) 173, Wali**, JSC (as he then was) asserted that Islamic law is comprehensive and universal. A cursory study of Islamic Law jurisprudence tends to demonstrate an admixture of procedural and substantive law, so ably fused, to address the dispensation of substantial justice. Usually, adjournments are not for more than 15 days at a time and not more than 30 days in all. Even where granted, if the Applicant failed to do what was required of him, the case proceeds without further adjournments for the same reason. The key feature of Islamic law jurisprudence is the deliberate effort at promptly dispensing justice to disputing parties. For certain therefore, Kadis can key into the thoughts expressed in this paper and fine-tune same to soothe the temperament of their assignments.

Your Lordships must not allow the infamies of technicality to dissuade you from performing your primary assignment, which is to

determine the rights and liabilities of the parties before you on the merits of the case. So, a case-flow management style, which is befuddled by and ensconced in technicality, is clearly dead on arrival. You must therefore grow with contemporary times by adopting a case-flow management system, which guarantees substantial justice to the disputants before you. In this way, you acquit yourselves at all times.

REMOVAL OF JUDICIAL OFFICERS – NEED FOR EFFECTIVE CASE-FLOW MANAGEMENT

Section 292 (1) (b) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered) provides that:

292 (1) **A judicial officer shall not be removed from office before his age of retirement except in the following cases.**

(b) **In any case other than those to which paragraph (a) of this subsection applies, by the President or as the case may be, the Governor acting on the recommendation of the National Judicial Council that the Judicial Officer be so removed for his inability to discharge the functions of his office or appointment (whether arising from infirmity of mind or body or for misconduct or contravention of the Code of Conduct).**

It is clear that the National Judicial Council (NJC) is vested with the constitutional mandate to recommend the removal of a judicial officer from office to the Government, whether of the Federation or State, for reason of inability to perform his function, which transcends infirmity, misconduct or contravention of the

Code of Conduct for judicial officers. This vesting of powers in the National Judicial Council is made pursuant to Paragraph 21, Part 1, of the Third Schedule to the Constitution of 1999 (as altered). See **ELELU – HABEEB V. ATTORNEY GENERAL OF FEDERATION (2012) 13 NWLR (Pt. 1318) 423 (SC).** See also **HON. JUSTICE GARBA ABDULLAHI V. THE EXECUTIVE GOVERNOR OF KANO STATE (2014) LPELR – 23079** and **OPENE V. NATIONAL JUDICIAL COUNCIL (2011) LPELR – 4795.**

By the Code of Conduct for Judicial Officers, 2016, the Judicial Officer shall promptly dispose of the business of court. There is a duty on the judicial officer to expeditiously determine matters in court. Except for reasons of illness or inability, for good reason, default on the part of such officer constitutes misconduct. See Rule 3.7. Misconduct has been interpreted by Regulation 3 of the National Judicial Council Discipline Regulations, 2014 as including conduct prejudicial to the effective and expeditious administration of the business of the court or any conduct described as misconduct in the Constitution and the Code of Conduct for Judicial Officers of Superior Courts in Nigeria. It is crystal clear therefore, that an ideal case-flow management of the docket of a judicial officer must be fine-tuned to key into the prescriptions and foster the ideals of the National Judicial Policy captured in paragraph 1.9 of the National Judicial Council, National Judicial Policy, 2016, namely, to promote and ensure the highest possible standard of qualitative justice delivery. Indeed, in its case-flow management policy, which I commend to Your

Lordships, the National Judicial Policy formulates the following guidelines in its paragraph 4, to wit:

4.1 **The judiciary should adopt measures designed to promote flexibility in the handling of cases, while reducing costs, delays and other unnecessary burdens to litigants in the adjudication of cases.**

4.2 **It will be essential to also fix time frames for the disposal of civil and criminal cases. The criminal cases should be given priority because of the sub-human conditions in which persons awaiting trial or undergoing trial are kept. Fundamental Rights cases should also be on the fast-track.**

4.3 **Courts in Nigeria should therefore develop a Case Flow Matrix as well as maintain a Case Tracking Register (where such do not exist) to ensure effective management of the flow of cases within their respective jurisdictions. The Case Flow Matrix and Case Tracking Register could be manual, electronic or both.**

4.4 **All judiciaries within the Federal Republic of Nigeria should ensure that all Courts in their jurisdictions further the overriding objective of justice by actively managing cases.**

4.5 **A Judicial Officer shall always encourage parties before the Court to explore Alternative Dispute Resolution (ADR) procedures where appropriate.**

4.6 **To promote speedy and judicial disposal of corruption, economic crime and high profile cases-**

(a) **There is need to appoint more judicial officers in Nigeria considering the large population. The number of judges to be appointed should be commensurate not only to the population but also**

to the workload in that State or Court, as the case may be.

(b) **Adequate funding for the judiciary, especially at the State level and proper infrastructure and ICT equipment as well as conducive work environment must be provided to complement the improved man-power in each jurisdiction.**

(c) **The Judge should take firm charge of his Court and should be proactive in dealing with interlocutory applications and must not bend to the whims and caprices of counsel.**

(d) **The Judge should give priority to criminal cases and "high profile" cases … where there are a high number of criminal cases, judges should be specially designated to handle such criminal cases.**

Gone are the days when a judicial officer applied himself to his duties as he pleased. To see that judicial officers rise to the challenges of their office, performance assessment criteria have been floated by the National Judicial Council to appraise the Judges. The assessment is carried out through the Performance Evaluation Committee for Judicial Officers of Superior Courts of Records. This Committee is charged with the responsibilities of evaluating, assessing, monitoring and supervising the performance as well as the overall conduct of judicial officers in the performance of their judicial functions and justice administration. In that regard, judicial officers, as you must now be aware of, file quarterly returns of cases disposed of within the period of returns as well as the pending cases in their courts through the use of Performance Evaluation Forms. The Performance Evaluation

Committee appraises the returns and make appropriate recommendations on each judicial officer to the National Judicial Council. God forbid that by poor case-flow management, a judicial officer fails to meet the minimum prescription set by the National Judicial Council! This may constitute sufficient ground for the removal of a judicial officer on ground of inability to perform functions or outright misconduct.

Finally, I need remind Your Lordships of the purview of section 294 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as altered). By this provision, it is mandatory for duly authenticated copies by your Judgments to be issued to parties within 7 (seven) days of their delivery. See **THE MINISTER OF PETROLEUM & MINERAL RESOURCES V. EXPO-SHIPPING LINE (NIGERIA) LIMITED (2010) 12 NWLR (Pt. 1208) 261 (SC).** Now, although it is, at least for the time being, settled that failure to furnish parties with copies of Judgments after delivery thereof does not affect the validity of the Judgment delivered not later than three months of the conclusion of evidence and final addresses – see **ANYAOKE V. ADI (1985) 4 SC (Pt. 1) 213** – the National Judicial Council views the requirements of section 294 (1) of the Constitution as a mandatory provision of the law, which every judicial officer must comply with. At its virtual meeting held on the 11th and 12th of August, 2020, the National Judicial Council directed that Judges be more involved in what transpires in the Registries of their courts, pertaining to the release of copies of signed Rulings/ Judgments to parties within the constitutionally prescribed period of 7 (seven)days after

delivery. All Heads of Court should direct Judicial Officers in their jurisdictions accordingly. You must therefore keep faith and reckon with this development in your case management strategies.

The need for a robust and proactive case-flow management remains a critical tool in the sustenance of your responsibilities and position as judicial officers. Your Lordships must therefore keep this in view at all times as you grapple with the challenges of your dockets.

CONCLUSION:

The idea or notion of the administration of justice, presupposes that justice administered by the Courts, be justice according to law. See **FAWEHINMI V. NBA (No. 2) (1989) 2 NWLR (Pt. 105) 558, per Obaseki, JSC** (as he then was). It is an irony that the law, which is the instrument for administration of justice, has introduced a wide range of procedural challenges in the way of prompt dispensation of justice. This is particularly so in view of certain fundamental norms in the system of administration of justice, which we operate. That system is the adversarial system in contradistinction to the inquisitorial system. In the adversarial system, parties with their counsel and the judge have their respective roles to play. It is the role of the judge to hold the balance between the contending parties and to decide the case on the evidence brought by both sides in accordance with the rules, practice and procedure of the Court. Judicial process

become quite time - consuming as the judge must not be seen to have descended into the arena so that the very sense of justice, which he seeks to dispense, is not obscured. See **OMOREGBE V. LAWANI (1980) 3 – 4 SC 108, 120 – 121.** The enormity of this responsibility of the judge tasks his managerial abilities. So, a judicial officer saddled with the responsibility of administering justice must find a way round the challenges before him, bearing in mind that the empirical element in adjudication is to render justice; and that the law is fashioned out to do what it is conceived to be, i.e. to give people their due recompense or reward, for which the court is vested with constitutional authority. See **DUKE V. AKPABUYO L. G. (2005) 19 NWLR (Pt. 959) 130.**

Justice can only be done in substance and not by impeding it with mere technical procedural irregularities that occasion no miscarriage of justice. **See CONSORTIUM M.C. V. NEPA (1992) 6 NWLR (Pt. 246) 132, 142;** see also **FAMFA OIL LIMITED V. ATTORNEY GENERAL OF FEDERATION (2003) 18 NWLR (Pt. 852) 453.** The axiom 'Justice delayed is Justice denied' holds a valid truth. Law and all of its technical rules ought to be but a handmaid of justice; and legal inflexibility may, if strictly followed, only serve to render justice grotesque or even lead to outright injustice. The court will not endure that mere form or fiction of law, introduced, for the sake of justice, should work a wrong, contrary to the real truth and substance of the case before it. See **SALEH V. MONGUNO (2006) 15 NWLR (Pt. 1001) 316,** per **Tabai, JSC.** In order, therefore, for a judicial officer to discharge the responsibility of dispensing justice

unscathed, a proactive case-flow management strategy becomes indispensable.

The plank of this paper, as observed earlier, is not to formulate or re-state the theory of case - flow management but simply to offer humble tips, which may assist a judicial officer in his quest to dispense justice more expeditiously. Three areas of intervention in case-flow management systems have been isolated – the Pre-trial Settlement of Issues, the Conduct of Proceedings as well as the Case-flow matrix in the National Judicial Policy with emphasis on the oversight functions of the National Judicial Council. I hope that I have been of some help to you!

I thank you for your patience and wish you well.

HON. JUSTICE (PROF) C.A. OBIOZOR
JUDGE, FEDERAL HIGH COURT,
LAGOS DIVISION