Judgment Writing: Style and Guiding Principles

By:

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1. **Introduction.**

I must necessarily start by thanking the eminent Administrator of the National Judicial Institute (NJI), Hon. Justice R. P. I. Bozimo, OFR, the Deputy Director of Studies, NJI, Abidulazeez Olumo, esq, as well as the other directors and the entire workforce of the Institute for selecting me to lead in this very important national discourse. I also thank the Chairman of the session and other VIPs on the high table for being there to fill in the gaps that may, at intervals, emerge in the course of the discussion.

To the distinguished participants in these proceedings, that is, honorable judges of Area/Sharia/Customary Courts of the various states of the Nigerian Federation, I say, welcome. I wish you a very enjoyable workshop outing. I urge you to pay attention to all

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the lectures and other activities as built into the workshop. By so doing, you will make maximum gains out of the auspicious skill building project that the workshop has become.

2. **The Importance of the Topic.**

Judgment writing is so important and can be rightly described as the ultimate essence of every judicial proceeding where parties are contending for rights and obligations. Judgment writing is thus the very end product of every such judicial proceedings. In fact, judgment writing is the very reason parties approach the courts to hear their cases. Consequently, if any such proceedings does not result in a decisive judgment, the parties are thoroughly disappointed and their confidence in the judicial system completely eroded.

Experience has also shown that on no other misconduct have judicial officers been more severely sanctioned than the misconduct of not delivering judgments as promptly as constitutionally provided for by section 294 (1) of the Constitution, FRN, 1999 as amended[1].

The importance of judgment writing is also underscored by the diligence by which NJI constantly builds in discussions on it in virtually all the conferences and workshops it puts together for judicial officers of all categories in Nigeria. I think that the essence is to keep calling attention to the fact that judgment writing is the soul of every judicial proceedings. It is to litigation, what the heart is to a living being. Take out the heart and all you

[1]. It requires that every Superior Court of Records must deliver Judgment within 90 days of conclusion of final addresses.

have left is an inanimate carcass. In the same vein, take out judgment from a court proceeding and all you have left is empty debate and noise making.

3. **The Definition of Judgment.**

Judgment writing is so important that the Nigerian Constitution deliberately defines it as an aspect of decision thus: **"decision"** "**means in relation to a court, any determination of that court and includes judgment, decree, order, conviction, sentence or recommendation[2]"**.

In giving effect to the constitutional definition which is in **pari material** with the definition of the earlier 1979 Constitution, the Supreme Court[3], in **Williams vs. Daily Times of Nigeria Ltd[4],** held **interalia** thus:

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

As earlier hinted above, one thread that runs through all court decisions is a conclusive pronouncement of the courts on causes and matters handled by them. Whatever nomenclature used to describe it, every written pronouncement of a court after a trial proceeding is judgment. That is what all parties look up to as they debate their motions or tender evidence in proof of their cases.

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[2] . Section 318, 1999 Constitution, FRN, **1999 (as amended)**

[3] . **Of Nigeria.**

[4] . (1990) NWLR, (pt 124) 1 at 24.

Also, we decipher the essence of judgment or decision, etc from its basic essentials. Again, the Supreme Court brought them out clearly in **Oredoyin vs. Ariwole**[5] thus:

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

From this decision of the Supreme Court on the essence of court judgments, the following are distilled out as the basic essentials every court judgment should reflect. They are:

(a) The judgment must be the authoritative pronouncement of the court with requisite jurisdiction.

(b) The judgment or decision must be strictly on the rights and claims of the parties for which they approached the court for settlement.

[5] (1987) 3 NWLR (pt 114) 172 at 211.

(c) It must be able to resolve conclusively the dispute that ensued between the parties concerning their claimed rights and obligations.

(d) It must reflect the conclusion of the court on the law upon the facts of the case as established by credible evidence on record.

4. **Different Types of Judgment.**

Given the foregoing description of what judgment consists of, it is obvious that judgment includes decisions taken at the various stages of court's proceedings. It includes decisions taken on motions and other applications wherein parties pray for several reliefs which they make on presumed rights and privileges. To that end, we agree with his honour, Docivir Yawe[6], who in his paper on judgment writing[7], identified different types of judgment as final, interlocutory and consent judgments.

I need to add that there could also be exparte decisions made on motion expartes on emergency situations to preserve the res or avoid deterioration of public peace, pending the hearing of a motion on notice wherein the parties are permitted to ventilate in full, their conflicting interests in the matter.

The point must also be stressed that whatever type or colouration of judgment is involved, it must derive from the evidence, facts and circumstances of the case or application decided upon. As

[6] Chairman, Customary Court FCT, Abuja (as he then was as at, March, 2019)

[7] Which he presented at the 2019 National workshop for Area/Sharia/Customary Court Judges as organized by the NJI, March, 2019.

rightly stated by his Lordship, Hon. Justice Mojeed A. Owoade, JCA, **"In the assessment of facts, while the paramount consideration is the truth, the judge is not permitted to search for the truth by any (other) means"[8].**

His Lordship cited in support of that dicturn, the following judicial authorities which I wish to re-echoe here on this occasion.

(a) **Ogbudu vs. Odogha[9] and Evoyom vs. Daregbe[10]**
In those cases, the Supreme Court re-emphasized that the judge must discover the truth from evidence presented by the parties and that he cannot call a witness whom he thinks may throw some light on the facts of the case.

(b) **Mohammadu Duruminiya vs. COP[11].**
There the court[12], pointed out that, **"a trial is not an investigation and investigation is not the function of a court. A trial is the public demonstration and testing before a court of the cases of the contending parties. The demonstration is by assertion and evidence and the testing is by cross-examination and argument. The function of a court is to decide between the parties on the basis of what has been so demonstrated and tested".**

His Lordship, Justice Owoade, JCA explained that dictum by stating that **"the relevance of this (the dictum) is that the mind**

[8] See, Hon. Justice M.A Owoade, JCA, **"Art of Judging",** in, Proceedings of the Induction course, for Judges and Kadis by NJI, 2010) 14th – 25th June, thereof.
[9] (1967) NMLR,221
[10] (1968) NMLR, 389
[11] (1962) NMLR, 70 at 73 - 74
[12] Per Bate, J.

of the trial judge must be totally detached from the possibility of forming any opinion outside the case file and the record book"[13].

6. Area, Sharia and Customary Courts as Courts of facts and not of pleadings.

Area, Sharia and Customary Courts in Nigeria are specially designed and created as grassroot courts. They are erected on the philosophy of substantial justice. The aim is for them to be readily and cheaply available to the vast majority of Nigerians at the grassroot level who approach them for justice.

To achieve the set objectives, technical pleadings are deliberately excluded from their proceedings. This is unlike what obtains in the High Courts where pleadings are strictly and technically followed. In the Area, Sharia and Customary Courts, the aim is to provide summary trial and simplify proceedings to arrive at the truth of the matter in litigation. To that end, pleadings in the form of Statement of Claim, Statement of Defence, Reply, etc are not contemplated or expected. See, for instance, Order 9, Rules 1, 12, and 13 of the Customary Court Rules of Enugu State, 2011. It provides for a very loose mode of trial procedure in the customary courts of the State.

Over and above the various local statutes on the none – pleading characteristics of Area, Sharia and Customary Courts, the Nigerian Supreme Court has repeatedly held that pleadings are not

[13] Owoade, op. cit, (see note 8 above)

necessary in such courts. The locus clasicus on that principle is **Ekpa vs. Utong**[14]. There, the Apex Court held **interalia** thus:

> In dealing with judgments from customary, district or native courts, an appellate court should not limit the scope of the issue in controversy to what appears on the writ, but should go beyond it and ascertain from the entire evidence before that court and the real issues of the dispute and law involved.

In view of the foregoing therefore, judgments from Area, Sharia and Customary Courts in particular should be able to address all issues deducible from evidence adduced before the courts in order to solve all conceivable live quarrels between the parties as much as evidence on record can support.

7. **Proper and Effective Evaluation of Evidence, Very Important For Good Judgment Writing.**

Unless a trial court effectively and properly evaluates evidence adduced before it in a case, it cannot enter a good and effective judgment that is capable of resolving live issues in dispute between the parties. This is even more instructive for Area, Sharia and Customary Courts which are structured to discover the truth in the cases they handle in order to do substantial justice in their judgments.

The law has, no doubts, crystallized that where a trial court fails or neglects to properly evaluate the evidence adduced before it by parties and their witnesses, the appellate court is under obligation

[14] (1991) 2 NSCC, 278.

to, in the interest of justice, do that which the trial court neglected, failed or refused to do. The authorities of **Adebayo vs. Adusei**[15] and **Basil vs. Lasis Fajebe**[16], etc have been the **locus classicusses** on this principle.

In order not to render judgments that are vulnerable to easy nullification to their own embarrassments and frustration of litigants, trial courts, especially Area, Sharia and Customary Courts must develop the special skill for effective weighing and evaluation of evidence in their course of judgment writing. To this end, I humbly re-echoe again herein, the formula on how to weigh evidence as enunciated by the Supreme Court, per Eso, JSC in **Vincent Bello vs. Magnus Emeka**[17]. He said.

> In short, a trial judge in a civil case before him sets out the issues joined by the parties in the pleadings, assembles the evidence adduced by either side on the issues so joined, weighs that evidence on an imaginary scale and finds out which evidence outweighs the other by the quality or probative value of the testimony of the witnesses and documents.

Again, in **Adeyeye vs. Ajiboye**[18], the Supreme Court, per Oputa, JSC reiterated on the matter in the following lucid passage:

> I regard the judgment of the learned trial judge in this case as very well written. I had in the past

[15] (2004) 4 NWLR (pt 886)
[16] (2011) 11 NWLR (pt 725) 599
[17] (1981) 1SC, 101.
[18] (1987) 3 NWLR (pt 61) 432 at 451.

> criticized some judgments of our trial courts which begin by citing and discussing a multitude of decided cases without first laying the factual foundation on which those decided cases will stand or fail. See Stephen vs. The State (1985) 5 NWLR (pt 46) 978 at 1006. The proper approach for any trial court is to first set out the claim or claims, then the pleadings then the issues arising from those pleadings. Having decided on the issues in dispute, the trial Judge will then consider the evidence in proof of each issue then decide on which side to believe and this has got to be a belief based on a preponderance of credible evidence and the probabilities of the case. After this, the judge will record his logical and consequential finding of fact. It is after such findings that the trial court can then discuss the applicable law against the background of his findings.

From this authoritative dictum has emerged the following components and chronological order of an ideal judgment. They are:

(a) The claim or claims in the case clearly set out.

(b) The pleadings (where applicable) and the issues arising therefrom.

(c) The evidence in proof of each issue well set out.

(d) State which side to be believed on their evidence in relation to the identified issues; which believe must be based on a preponderance of credible evidence.

(e) Clear statements on the court's findings of fact as revealed by properly evaluated evidence.

(f) The discussion and application of the relevant laws, customs and principles (as the case may be) on the facts as found in the case.

There can be no doubt that any court (or Judge) who painstakingly follows this template will navigate its judgment to the shore of the much desired substantial Justice. Such a judgment will not leave any gap to confuse or perplex the parties or researchers who may stumble on it in future – or even the appellate courts that may have to sit on appeal over such a judgment.

7. **Judgment Writing, Any Compulsory Style?**

Judgment writing, like any other form of writing or expression of opinion or thoughts, must not follow a particular style. This assertion does not contradict what has already been stated above on the essentials of a good judgment or the components of an ideal judgment. What have been discussed under those sub headings are about templates and standards. Styles of conforming to the said templates and standards can be as varied as the personalities and unique features of individual judges and courts differ.

His Lordship, Sankey JCA stated it better in the following lucid dictum:

> … every judge is entitled to adopt his own style of writing judgments, whether sitting as a trial court or as an appellate court. Nonetheless, what is accepted as universal and indeed settled law is that every judge adjudicating in a matter before his court has a duty to pronounce judgment on all issues placed before him for resolution[19].

All that is required is that every court or judge should follow the standard for best practices as already laid down by superior courts, especially the Supreme Court. In **Duru & anor vs. Nwosu[20]**, the Supreme Court per Nnaemeka – Agu, JSC laid down one such standard that needs to be echoed and re – echoed again and again for the proper guidance of the rest of our courts. To that effect, it is reproduced once again herein[21]:

> In my respectful opinion, these are true and correct statement of the law. This is why I think it is now too late to say that there is not set standard or set approach to the writing of judgments. For over the years, not only have definite parts of good judgments emerged although they remain usually unnamed, but in particular there is now only one method for evaluation of evidence in civil case. Every good judgment begins with an introduction of the parties and the nature of the

[19] See, E.D. **Tsokwa & ors vs. Alhaji Mijinyaw & ors CA/YL/26/2012, as quoted and cited by A.A. Nwobodo, J.** "The Science and Art of Judgment Writing. Exploring the Best practices at the 2018 Refresher Course for Judges by NJI.

[20] (1989) 4 NWLR (pt 113) 24 at 34.

[21] His Lordship, M. O. Owoade, JCA had cause to also quote it in extenso in his paper, **"Art of judging", op. cit. (note 8 above).**

> action, states the issue in controversy, sums up the evidence called by each party, resolves the issues in controversy, and based upon such solution of issues, reaches a verdict and makes consequential orders. More recently, it is now settled that the only method of evaluating evidence called by both parties in a civil case is to put each set of evidence on either side on an imaginary balance and weigh them together. Whichever outweighs the other in terms of probative value ought to be accepted. I wish to seize this opportunity to emphasize that this is the only proper method of evaluating evidence in a civil case. In the process, if on an issue, one of the parties fails to call evidence, the evidence called by the other side on the issue ought normally to be accepted unless it is of such a nature and quality that no reasonable tribunal will accept it. The onus of proof in such a case is discharged on a minimal of proof. See **Nwabuoku vs. Ottih** (1961) 1 ALNLR, 478.

The standard as quoted above is sincerely recommended to our courts for good judgments as water is recommended to all humans for life.

8. Summaries, recommendations and conclusion.

8.01: Summaries.

We can sum up this presentation with the following concise points:

(a) That judgment writing is the soul of any judicial proceedings.

(b) That every court or judge must be very sensitive to judgment writing so as to always get it right at that auspicious stage of any proceedings.

(c) That every court or judge must always be conscious of the essential elements of judgment writing as highlighted above so as to always get it right and boost the confidence of court users and the entire society in judicial processes.

(d) That the key issue in effective and good judgment writing is effective and judicious evaluation of evidence, without which the eventual judgment can be easily set aside and the image of the judge or the court brought down to ridicule. In order to guard against such disastrous possibilities therefore, our judges and courts must develop skills for effective evaluation of evidence as highlighted above.

(e) That the practice of constantly building in topics on judgment writing in the training workshops of and by the National Judicial Council is good to constantly train and re – train judicial officers on the all important skill of judgment writing.

(f) That no particular style of judgment writing is compulsory, provided that any style adopted brings out all the basic essentials of an ideal judgment that resolves all issues and disputes presented by the parties in a case.

8.02: **Recommendations.**

In view of all that has been discussed in this paper, we hereby recommend as follows:

(a) That in order to bring out the very best in our judges especially of the Area, Sharia and Customary Courts, their conditions and perquisites of office be deliberately reviewed upwards.

(b) That our judges, especially of the Area, Sharia and Customary Courts be ever conscious of the fact that both court users and the general public are constantly judging them and forming impressions about their judgment writing skills and performances and thus always work hard to leave good impressions and positive perceptions for their assessors.

(c) The importance of our judges being absolutely incorruptible cannot be over emphasized. Nothing can lead to good judgment writing better than judges being holistically incorruptible.

(d) That upon the appointment of judges, they should be immediately subjected to thorough drilling on judgment writing, given its fundamental and foundational importance in judicial proceedings.

8.03: **Conclusion.**

I humbly conclude by once again thanking the authorities of the National Judicial Institute for providing this golden opportunity for this very important national discourse. In the same vein, I thank

you, the esteemed participants for the privilege of enjoying your equally esteemed audience. I apologize for all the defects, mistakes and other ways and manners the presentation has inconvenienced you. Thank you all.

Hon. Justice Emmanuel N. Nnamani, PhD, FICMC.