



A CASE FOR THE VIRTUAL HEARINGS OF URGENT MATTERS DURING THE COVID-19 PANDEMIC... AND GOING FORWARD!

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INTRODUCTION

At the base of all inventions and innovations lies a golden cord – **necessity**. With the outbreak of the COVID-19 pandemic and the lockdown on public gatherings including court sessions, there is a growing necessity for the Nigerian justice delivery sector to consider the option of virtual hearings to deal with urgent matters and, any necessary matter going forward!

VIRTUAL HEARINGS – BUCKING THE STATUS QUO

The litigation process in Nigeria is adversarial. The parties submit their dispute before a Judge for resolution. The courtroom is the traditional scene for the physical hearing of the dispute. Counsel for each party calls witness(es) and tenders exhibits in proof of their case. The adversary will cross-examine the opposing witness(es). The Judge is tasked with observing the demeanors of the witness(es), make up his mind on who is telling the truth, and accordingly dispense justice.

The limitations of a system where the physical attendance of parties, counsel and witnesses are required in a courtroom is exposed at a time such as this when the major cities and their court

rooms are under lockdown; to the detriment of urgent matters of paramount public importance, or of a nature that could cause grave and irreparable damage to private parties.

The civil procedure rules of some Nigerian courts contain miscellaneous provisions which may be invoked to enable virtual hearings, whereby the evidence of a witness who, for cogent reasons of distant work location, asylum etc., cannot physically attend the hearing. See, for instance, Order 56 rule 1 of the Federal High Court Rules 2009.

Indeed, an anecdotal enquiry shows that some courts have, where parties consented, taken the evidence of witnesses who are out of jurisdiction via video-conferencing. Those instances, however, seem to be in the minority, as the majority of trial/appellate courts seem to prefer the traditional approach of a hearing which involves the physical attendance of the parties/counsel.

THE LOCKDOWN OF NIGERIAN COURT ROOMS

On 23rd March 2020, when it became clear that the COVID-19 virus had gained momentum in Nigeria, the Chief Justice of Nigeria issued Circular No. NJC/CIR/HOC/11631 to safeguard the health of Judges, lawyers and litigants. He directed all heads of courts in the Federal and State Judiciaries to suspend courts activities for an initial period of 2 weeks, save for **urgent** or time-bound matters. While some heads of court have issued similar statements, no jurisdiction has made practice directions or protocols to direct the implementation of the above directive. In many instances, particularly Lagos and Ogun States and the Federal Capital Territory, Abuja where movements were suspended; all court operations were simply suspended.

OTHER JURISDICTIONS

The contagious nature of the COVID-19 virus has caused many jurisdictions to suspend oral hearings, but *not* the court's operations. In many jurisdictions, the courts have opted to deal with urgent (or essential matters) by virtual hearings.

As England went into a lockdown; the UK Supreme Court by statement dated 23rd March 2020 posted on its website announced that it will “hear **all cases** and deliver judgments through video conferencing from tomorrow, Tuesday 24th March 2020”. Similarly, the Business and Property Division of the English High Court simply switched to remote mode by video link for “hearings of all kinds”, and issued a protocol dated 19th March to guide such hearings.

In the wake of India's lockdown, its Supreme Court has heard urgent matters by a video platform called *Vidyo*, with alternative popular media options such as WhatsApp, Facetime and Skype kept on standby. The Judges are seated in a single chamber and lawyers arguing in the listed matters are required to join in the video conference from their homes or offices.

Closer home, in Kenya; the Judiciary sent out notices to lawyers that pending judgments and rulings would be delivered vide Skype video link and be sent by G-mail to lawyers' email accounts. Indeed, on Friday 3rd April, the Kenya Judiciary tweeted the picture of an appellate Judge seated in the confines of her chambers delivering rulings and judgments via video link!

THE ORDER OF THE FUTURE?

A senior lawyer, KV Vishwanathan SC, who argued an application by video link before the India Supreme Court last week (prophetically) commented thus: "It was a very enriching experience and *I think it is going to be the order of the day for the future*".¹

Whilst this article calls on the heads of the Nigerian courts to speedily issue practice directions to deal with the temporary situation of the COVID-19 induced shut-down of court rooms, the Nigerian judiciary should actually get ready for a new order of virtual hearings to salvage the fixture pileup and ensuing chaos caused by the abrupt suspension of court sittings in Nigeria.

Some court rooms already have the necessary hardware (screen, monitors, and internet), and it can be easily procured for others. The current lockdown may just be the turning point to unlock the potential for virtual hearings in the Nigerian justice delivery system, and solve the perennial loss of manhours by lawyers sitting down in a crowded court room to await their turn on a congested cause list. The on-going pandemic challenge presents a good opportunity to the various courts to strengthen the provisions of their civil procedure rules (either by amendment or supplementation by practice directions) to usher in the future of virtual hearing of disputes.

Please note that this article is a general discussion of law and does not constitute legal advice. For further information on this article and area of law, please contact **Kolawole Mayomi, FCI Arb**, mobile (+234.810.725.1110) or email kmayomi@spajibade.com

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¹ See www.barandbench.com/news/litigation/this-is-how-supreme-court-judges-are-using-video-conference-to-hear-urgent-matters, accessed 17th April 2020.