Civil Procedure
29th November 2024





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An Examination of the Innovations in the New Supreme Court Rules, 2024[1]

1. Introduction

On 15th August 2024, the Supreme Court Rules 2024 (the new rules) came into effect after it was approved by the former Chief Justice of Nigeria, Hon. Justice Olukayode Ariwoola. The new rules repealed the Supreme Court Rules of 1985 as variously amended ("the old rules"), which previously governed practice and procedure at the Supreme Court of Nigeria. The new rules contain novel provisions that seek to ease the tedium and rigor of practice and procedure before the Supreme Court, bring them in line with the demands of the 21st Century court system and hopefully ensure the speedy disposition of cases before the country's apex court.

This article will identify and review the most significant of these novel provisions and examine how they could contribute to a more efficient and effective justice delivery system. In doing this, there is no better place to start than with the definition of terms.

2. Definitions of Terms

The new rules define or redefine various terms applicable across the board to all proceedings before the Supreme Court**.** For example, **Order 1 Rule 3** of the new rules redefines "Appeal" as "*entry of Appeal after the record of appeal has been transmitted from the Court below*". This is different from the definition under Order 1 Rule 2 of the old rules which provided that *"'Appeal' includes an application for leave to appeal*". This change of definition of an appeal will have significant impact on the practice under the old rules where applicants for orders of stay of execution and injunctions pending appeal relied

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on the pendency of an application for leave to appeal to satisfy the requirement that there must be a pending appeal before such post-judgment applications are brought. It appears that under the new rules, parties who require leave to appeal may not be able to obtain an order of stay of execution or injunction pending appeal until they have obtained leave to appeal, filed their notice of appeal and have the records of appeal transmitted to the Supreme Court.

Also, **Order 3 Rule 1** of the new rules expands the definition of address for service to include *"electronic mail address, a GSM telephone number or any other available mode of communication where notices, summonses, warrants, proceedings and other documents, etc may be left, sent, posted or transmitted if not required to be served personally."* This address may be in Nigeria or outside Nigeria. The expanded definition of address for service allows for the use of modern high-speed means of telecommunication like emails, WhatsApp as address for service. This ensures a near instantaneous service of court processes and dispenses with the need to engage relatively slower courier service providers to effect service on parties outside the court's jurisdiction.

3. Electronic Records

Order 2 Rule 7(2) of the new rules enjoins the Chief Registrar to send all processes filed to the Electronic Unit of the Court's Registry, within 15 days of filing, in order to enable the unit to create electronic records. This will ensure that there is a proper backup for the Court's records and hopefully eliminate any incidence of missing records or documents.

4. Administrative Powers of the Chief Registrar

Order 2 Rule 8 of the new rules empowers the Chief Registrar of the Supreme Court to administratively set aside any act or orders made by him upon the complaint of any person aggrieved by such act or order. This is different from **Order 2 Rule 26** of the old rules, which provided that it is the Chief Justice of Nigeria that could set aside any act or order of the Chief Registrar. This rightly accords the Chief Registrar powers over matters that are obviously administrative and ensures a quicker resolution of any administrative complaint that may arise in the course of interactions between the Court's registry and litigants.

5. Restriction on Number of Counsel to Appear in a Matter

Order 2 Rule 13 of the new rules limits the number of counsel that can appear in a matter as follows: SANs cannot appear with more than 5 additional counsel. If more than one SAN are appearing together for a party, then the total number of counsel, including the

SANs cannot exceed 8. Other learned counsel cannot appear with more than 4 other counsel.

6. Service of Notices of Appeal

Order 3 Rule 2 of the new rules provides that a notice of appeal can be served personally, through the respondent(s) counsel at the lower court, by electronic mail and other electronic means. This is different from **Order 2 Rule 3(1b)(2)** of the old rules which provided that notices of appeal must be served personally in the same manner as a writ of summons issued by the Federal High Court. This gives an appellant more readily available and easy options to serve a notice of appeal on the respondent to an appeal, especially in situations where the respondent is based outside jurisdiction or is trying to evade service.

7. Duty of Legal Practitioner who no longer Represents a Party

Order 3 Rule 3 of the new rules enjoins a legal practitioner who is served a process on behalf of a party whom the legal practitioner no long represents to inform the Registrar of the Court within 7 days after service of the process, failing which such legal practitioner may be liable to any cost occasioned by such omission. The omission may also be treated as a professional misconduct by the legal practitioner concerned. This is in line with the provisions of **Rule 14(5)** of the Rules of Professional Conduct, 2023 **('the RPC")** which states that any negligence by a lawyer in handling a client's affairs may amount to a professional misconduct and **Rule 32 (3)** of the RPC, which enjoins legal practitioners to comply with known local customs of courtesy or practice of the Bar or of a particular tribunal.

8. Written Address to Accompany Motions

Under **Order 4 Rule 1** of the new rules an application or motion is now required to be accompanied by a written address, along with a supporting affidavit. This is unlike the old rules, before its amendment, which required an application to be supported by an affidavit only.

9. Page Limits and Timelines for Applications

Order 4 of the new rules stipulates that the page limits for written addresses shall not exceed 10 pages, while a reply address shall not exceed 5 pages.

Additionally, a respondent to a motion is required to file a counter-affidavit and written address in opposition within 14 days after service of the motion on him, while the applicant is required to file a reply address within 7 days. The new rules do not expressly make

provision for the applicant to file a further affidavit in response to any new issue that may be raised in the respondent's counter-affidavit. This suggests that the applicant may be required to obtain the leave of court before he can file a further affidavit.

10. Notice of Non-Contention and Notice of Preliminary Objection

Order 4 Rule 12 of the new rules empowers the Court to hear an uncontested application in chambers, provided that the respondent files within 14 days of service on him of the application, a notice of non-contention stating that he does not intend to oppose the application. This is a commendable provision which will ensure that uncontested applications are determined speedily.

Furthermore, by **Order 4 Rule 13** of the new rules a respondent intending to rely on a preliminary objection at the hearing of an appeal shall give the appellant not less than 5 days' notice of the objection and shall include arguments in respect of the objection in the brief of argument. However, where briefs have already been filed, the respondent shall file a written address along with the notice of preliminary objection.

11. Extension of Time Before the Supreme Court

Order 4 Rule 15 of the new rules introduced three instances where time to take steps under the rules will be extended. In the first instance, and upon a default (that is failure to act or file a process within the prescribed time), there is an automatic extension of time by the same number of days. If the default continues, the time will be further extended for the same period upon payment of penalty for default and no application for extension of time shall be entertained thereafter except in an appeal against a death penalty. This means that if a party has 5 days to file an application, the time will be automatically extended for another 5 days. If that party is still in default, the time will be further extended for another 5 days provided that defaulting party pays penalty for the days of default. After that, the court will not grant an extension of time, unless in an appeal against a death sentence. The Chief Justice of Nigeria Hon. Justice Kekere-Ekun in a recent memo dated 19th November 2024 further clarified that the effect of **Order 4 Rule 15** is that there is no more provision for applications for extension of time in criminal and civil appeals, except in an appeal against a death sentence.[2]

Additionally, Order 4 Rule 16 of the new rules allows the Supreme Court to go ahead to grant leave to appeal to a party without hearing an application from him, if from the records

[2] See, https://thenigerialawyer.com/cjn-clarifies-order-4-rule-15-of-2024-supreme-court-rules-emphasizes-strict-timelines/ [accessed on 26 November 2024].

of proceedings before the Court, it is of the view that the interest of justice does not require the oral hearing of an application.

12. Records of Appeal

Order 6 Rule 2 of the new rules provides that the records of appeal must be kept in physical and electronic copies. Both the physical and electronic records constitute the records of appeal. This is consistent with the provisions of **Order 2 Rules 6 & 7** which mandate the Registrar of the Supreme Court to keep appeal books in physical and electronic forms and to furnish to the Electronic Unit of the Registry of the Court, copies of the filed processes in an appeal or a suit to enable the Electronic Unit to prepare an electronic file which shall be uploaded and stored for access by the Justices of the Court. Furthermore, the old rules required the Chief Registrar of the Court of Appeal to compile and transmit physical records of appeal to the Supreme court within 6 months from date of filling the notice of appeal.[3] However, by **Order 6 Rule 4** of the new rules the Chief Registrar of the Court of Appeal has 3 months from the date of filing of the notice of appeal to transmit both the physical and electronic copies of the records of appeal to the Supreme Court. Additionally, **Order 6 Rule 7** of the new rules provides that if the Chief Registrar fails to compile and transmit the records of appeal within 30 days after the filing of the notice of appeal, the appellant must within 30 days thereof compile and transmit the records of appeal to the Court.

13. Entry of Appeal and Stay of Proceedings Pending Interlocutory Appeals

Under **Order 7 Rule 1** of the new rules, an appeal is deemed to be entered at the Supreme Court when the records of the court below are transmitted to the Registry of the Supreme Court within the time prescribed by the rules or as extended by the Court, whereupon the supreme court becomes seised of the matter and all applications must be made to it.[4] Additionally, **Order 7 Rule 2(2)** of the new rules prohibits the staying of proceedings in matters before the Court of Appeal in order to await the outcome of an interlocutory appeal to the Supreme Court.

14. Brief of Argument

The timeframe within which to file briefs of argument has been changed as follows: the Appellant's Brief of Argument shall be filed within 45 days of receipt of records of appeal,[5]

[3] See, Order 7 Rule 4 of the old rules.
[4] See, Order 7 Rule 2(1) 1 of the new rules.
[5] See, Order 16 Rule 2 of the new rules.

rather than the 10 weeks under the old rules.[6] On the other hand, the respondent's brief of argument shall be filed within 30 days of receipt of the Appellant's Brief of Argument[7] instead of 8 weeks under the old rules.[8] Similarly, the Applicant's reply brief dealing with all new points raised in the appellant's brief of argument shall be filed within 14 days of receipt of the appellant's brief of argument,[9] instead of 5 weeks under the old rules.[10]

According to **Order 16 rule 7(1)** of the new rules parties whose interests are identical or joint, shall file joint briefs. This means that the parties can only file different briefs, if their interests are separate or in conflict. However, whenever appellants file different briefs, the time for the respondent to file his reply brief starts to count from the day he is served all the appellants' briefs.[11]

15. Diligent Prosecution

The new rules take a sterner approach towards lack of diligent prosecution of an appeal. Where an appellant fails to file his brief within the time prescribed by the rules or within an extended time, the court, upon receiving a certificate to that effect by the Chief Registrar or upon the application of the respondent may dismiss the appeal in Chambers without hearing any arguments.[12] Whereas under **Order 6 rule 9** of the old rules, the respondent had to apply to the Court for the appeal to be struck out for want of diligent prosecution.

16. Costs

Perhaps, in a bid to introduce a more realistic and reasonable costs regime, **Order 12 Rule 4** of the new rules stipulates minimum amount of costs to be awarded by the Supreme Court in various instances in civil appeals, as follows: the costs to be awarded to a successful party in a civil appeal is a minimum of ₦2,000,000.00; the costs to be awarded against a party for delaying the hearing of a civil appeal on the day the appeal is fixed for hearing is a minimum of ₦1,000,000.00; the costs for any application in a civil appeal heard in open court is fixed at a minimum of ₦500,000.00; and the costs to be awarded where the Supreme Court finds that there has been an abuse of its process is fixed at a minimum of ₦2,000,000.00.

Furthermore, in the case of abuse of the court's process by **Order 12 Rule 3**, punitive costs may be awarded personally against any counsel responsible for the abuse. **Rule 5**

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[6] See, Order 6 Rule 5(1)(a) of the old rules.
[7] See, Order 16 Rule 4 of the new rules.
[8] See, Order 6 Rule 5(2) of the old rules.
[9] See, Order 16 rule 4 the new rules
[10] See, Order 6 Rule 5(3) of the old rules.
[11] See, Order 16 Rule 7(2) of the new rules.
[12] See, Order 16 Rule 9 of the new rules.

of Order 12 further adds that personal costs may also be awarded against a counsel representing any government or governmental department in Nigeria. Where costs are ordered to be paid personally by counsel, it must be paid within 90 (ninety) days of the order and a counsel who fails to comply with the order shall cease to have the right of audience in any court in Nigeria until compliance. The Chief Registrar is also mandated to serve a notice of such default on all superior courts of record in Nigeria.

17. Electronic Filings and Virtual Hearing

Order 17 of the new rules introduces a system of electronic filing at the Supreme Court which shall only come into effect on a date to be announced by the Chief Justice of Nigeria. Once the system of electronic filing is in place, all processes and documents required to be filed at the Supreme Court shall be filed through the Nigeria Case Management System (**NCMS**) E-filing portal in accordance with the procedure provided in the new rules and no other method of filing shall be valid.

Also, **Order 18** of the new rules empowers the Supreme Court to conduct its proceedings virtually where it deems appropriate. All rules of practice and decorum during physical hearing shall be observed by counsel and parties during virtual hearing.

The Chief Justice of Nigeria is empowered to periodically issue practice directions to regulate the manner and form of electronic filings and virtual hearings.

18. Conclusion

From our review of the new rules, it can be gleaned that the aim of the innovations in the new rules is to modernise and expedite the practice and procedure at the apex court in Nigeria. Although some of these innovations have in fact existed in practice and in rules of other lower courts in Nigeria, they will undoubtedly make for much needed change and hopefully help to speed up the turnaround time for appeals to, and at the Supreme Court of Nigeria.

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