

4 October 2024

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TEMPLARS ThoughtLab

Overview of the New Supreme Court Rules, 2024: A Step in the Right Direction?

Introduction

In one of his final official acts as Chief Justice of Nigeria, the Honourable Justice Olukayode Tajudeen Ariwoola, GCON, executed a momentous decision on 1 August 2024 by signing the Supreme Court Rules, 2024 (the "**2024 Rules**"). These new rules effectively repealed and replaced the longstanding Supreme Court Rules of 1985 (the "**1985 Rules**"). While the 2024 Rules came into effect on 15 August 2024 upon publication in the official Gazette, they were not made publicly accessible until 2 October 2024.

This delay has not dampened enthusiasm; indeed, the 2024 Rules have already sparked considerable interest within legal circles, particularly among practitioners in Nigeria's dispute resolution landscape. In light of these developments, this publication seeks to illuminate the key changes introduced in the 2024 Rules, with a particular focus on their implications for the civil appellate jurisdiction of the Supreme Court.

Meaning of Appeal

A significant change introduced by the 2024 Rules pertains to the definition of "appeal." Under Order 1 Rule 2 of the 1985 Rules, the interpretation clause encompassed the notion that "appeal includes an application for leave to appeal." This provision facilitated the ability to seek injunctions pending appeal, or to request a stay of execution of the Court of Appeal's judgment, as well as stays of proceedings, all grounded in an application for leave to appeal.¹

However, Order 1 Rule 3 of the 2024 Rules revises this definition, stating that "Appeal means entry of Appeal after the record of appeal has been transmitted from the Court below." Subject to the Supreme Court's interpretation, this change suggests that an application for an injunction pending appeal, a stay of execution, or a stay of proceedings may now be contingent upon the appeal being formally entered at the Supreme Court registry.

¹ In *Bello v. C.O.P.* [2018] 2 NWLR (Pt. 1603) 267 the Supreme Court stated that both the Court of Appeal Act and the Court of Appeal Rules (as amended) have very scantily interpreted an appeal to "include an application for leave to appeal" and "the filing of notice of appeal", respectively. See also *Kalu v. Odili & Ors* (1992) LPELR-1653(SC).

In essence, the mere filing of a notice of appeal or an application for leave to appeal may no longer suffice to establish a valid appeal for the purposes of these applications.

Service of Notice of Appeal

One of the more controversial decisions of the Supreme Court in recent times, is the case of **Odey v. Alaga**,² which borders on the question of service of notice of appeal. While the 1985 Rules provided for the service of originating processes, including notices of appeal, on parties, the Supreme Court had in practice allowed for notices of appeal to be validly served only on the respondent(s) from the court below.

For instance, in **Saleh v. Abah**,³ the Supreme Court encountered a situation where the notices of appeal were not personally served on the respondents but were instead placed “in the care of” their counsel. The respondents challenged the competence of the appeal based on this service method. The Supreme Court affirmed the established principle under the 1985 Rules when it held that service on a “*legally and formally acknowledged representative*” of a respondent is good, competent and effective service. However, when faced with the same objection, in the case of **Odey v. Alaga**,⁴ a case in which the respondents had been served through their counsel; they had filed their respondents’ brief; and the Supreme Court had previously granted the appellant leave to serve the notice of appeal by substituted means, yet the Supreme Court in a narrow majority decision of 4:3 (with Muhammad, Ogunwumiju, and Agim, JJSC dissenting), upheld a preliminary objection on service on counsel and struck out the notice of appeal.

Fortunately, the introduction of the 2024 Rules has effectively resolved this controversy. Order 3 Rule 2 explicitly states that a notice of appeal shall be served on the respondent(s) either personally, on their legal practitioner who represented them at the Court of Appeal, or through electronic mail or other electronic means.

To clarify, the Rules further assert that while personal service of a Writ of Summons in the Court’s original jurisdiction or a notice of appeal is generally required, once these updated provisions have been complied with—whether by serving the respondent’s legal practitioner or using electronic methods—no objection shall lie on the ground only that the Notice of Appeal was not served personally. This enhancement aims to streamline the appellate process and mitigate procedural challenges arising from service disputes, thereby fostering a more efficient judicial system.

Obligations on legal practitioners

Notably, Order 3 Rule 3 introduces a crucial obligation for legal practitioners who receive a notice of appeal or any other process on behalf of a client that they no longer represent. Under this provision, such practitioners must notify the Registrar of the Supreme Court within seven days of service that they are no longer authorised to accept service on behalf of that party.

Importantly, the Rules stipulate that failure to inform the Registrar may result in the practitioner being ordered to pay any costs incurred due to this omission. Furthermore, such negligence could be deemed an act of professional misconduct. This provision aims to ensure accountability within the legal process, thereby safeguarding the integrity of the appellate system and protecting the rights of all parties involved.

² *Odey v. Alaga* (2021) 13 NWLR (Pt. 1792) 1.

³ *Saleh v. Abah* (2017) 12 NWLR (Pt. 1578) 100 at 126 – 127 [H]-[D].

⁴ *Odey v. Alaga* (2021) 13 NWLR (Pt. 1792) 1.

Applications to the Court

Order 2 of the 1985 Rules outlined the administration and general procedures of the Supreme Court, with Rule 28 specifying the procedure for applications to the Court. Essentially, the said Order 2 Rule 2028 merely provided that every application be made by notice of motion, supported by an affidavit, and clearly state the rule under which it was brought, along with the grounds for the relief sought.

The 2024 Rules now contain a standalone provision for applications under Order 4. Order 4 Rule 1 stipulates that all applications to the Court shall be made by motion on notice, specifying the relevant rule and grounds for the relief sought. Such application shall be supported by an affidavit, and for the first time, the Supreme Court now requires the filing of a written address, which shall not be exceed 10 (ten) pages, to accompany each application.

Timeframe to respond to applications

In contrast to the silence on response timelines in the 1985 Rules, Order 4 Rules 2-4 of the 2024 Rules provide explicit timeframes. Respondents now have 14 (fourteen) days from the date of service of applications to file their responsive processes, while applicants are allowed 7 (seven) days to file a reply (if any). The written address in opposition to an application shall not exceed 7 (seven) pages, and any reply address shall not exceed 5 (five) pages.

Requirements for extension of time applications

For applications seeking an extension of time to appeal or to seek leave to appeal, the 2024 Rules retain the substantial requirement for the grant of such applications, i.e. demonstrating good and substantial reason(s) for the delay. However, the 2024 Rules also expand the formal prerequisites for such applications. In addition to including a copy of the judgment under appeal and relevant proceedings to substantiate the complaints, applicants must now attach:

- A certified true copy of the trial court's decision.
- A copy of the Court of Appeal's order refusing leave (if applicable).
- A written address in support of the application.

Automatic Extension of time and No Application for Extension of Time

Order 4 Rule 15 delineates a three-tiered approach to extending filing periods. In the first instance, after the time specified for taking any steps under the Rules elapses, the timeframe for submitting any process is automatically extended for the same duration. Subsequently, following the first automatic extension, the Supreme Court may grant a further extension upon payment of a penalty for any period of default, which period shall not exceed the prescribed time. Importantly, no further applications for extension shall be entertained after this period, except in an appeal against a death sentence.

Notice of non-contest

One of the noteworthy innovations in the 2024 Rules is found in Order 4 Rule 12, which mandates that a respondent file a notice of non-contestation for any application they do not intend to contest. This notice must be filed within 14 (fourteen) days of service of the application on the respondent. Where such a notice is filed, the Supreme Court is empowered to consider and determine the application in chambers, without the need for the parties or their legal representatives to be present.

This provision echoes a beneficial practice first introduced in the 2011 Court of Appeal Rules, which significantly contributed to the decongestion of appeals in the Court of Appeal and the reduction of unnecessary costs for litigants and their counsel. While this provision was regrettably omitted from the 2021 Court of Appeal Rules, its reintroduction in the 2024 Rules is a welcome development. It eliminates the need for parties and their legal representatives to travel long distances to Abuja for the hearing of non-contentious applications, thereby promoting efficiency in the judicial process.

Preliminary Objection

Order 4 Rule 13 of the 2024 Rules codifies what has become an established practice by stipulating that a respondent intending to raise a preliminary objection must file a notice of that objection and include it in their Respondent's brief of argument.⁵ This formalisation serves to clarify the procedural requirements surrounding preliminary objections and ensures that all parties are adequately informed and prepared for the issues to be addressed in the appeal.

Application of Leave without Oral Hearing

Lastly on applications, Order 4 Rule 16 introduces a significant advancement by allowing the Supreme Court to grant applications for leave to appeal without requiring an oral hearing of the application where the Court, after a consideration of the record of proceedings, is of the opinion that leave to appeal is necessary and the interests of justice do not require an oral hearing of the application.

While the above provision aligns with the progressive objectives of the 2024 Rules, it purports to be based on Section 233(4) of the 1999 Constitution, a non-existent provision.⁶ This raises concerns about the legal foundation for such a procedural change.

Overall, however, these provisions in the 2024 Rules not only streamline the application process but also enhance the efficiency of proceedings within the Supreme Court, reflecting a progressive approach to legal practice in Nigeria.

Record of Appeal

The contents of records of appeal have now been extended by Order 6 Rule 2 of the 2024 Rules to include electronic copies of the relevant documents and processes. This is consistent with the provisions of Order 2 Rules 6 & 7 which mandates 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

⁵ In *Wassah v. Kara* (2015) 4 NWLR (Pt. 1449) 374 (SC) p.391 [G]-[H] the Supreme Court stated thus: *It is also accepted practice for the respondent to argue his preliminary objection in his brief in which case the appellant would have to respond in a reply brief. In this appeal the respondents argued their preliminary objection in their brief. The procedure adopted by the respondents obviates the need to file a separate notice of preliminary objection. The appellants responded by filing an amended reply brief. The preliminary objection and the appellants' response are thus properly before this court.*

⁶ See the judgment of Rhodes-Vivour, JSC in *Shittu v. PAN Ltd* [2018] 15 NWLR (Pt 1642) 195 at 209-210, [H]-[B].

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.

By Order 6 Rule 4, the time for the Registrar of the Court to compile and transmit the record of appeal has been reduced from **6 (six) months** under the 1985 Rules to **3 (three) months** under the 2024 Rules. However, by Order 6 Rule 7, where at the expiration of **30 (thirty) days** after the filing of the notice of appeal, the Registrar has failed to compile and transmit the record of appeal, it is mandatory for the appellant to compile the record of appeal, encrypt and transmit the record of appeal to the Registry of the Supreme Court. This provision could be interpreted to mean that time starts to run for an appellant to compile the record of appeal, 30 days after notice of appeal has been filed.

Entry of Appeal

Order 7 of the 2024 Rules introduces a new provision. Order 7 Rule 1 provides that an appeal is entered in the Supreme Court when the record of appeal has been received in the Registry of the Supreme Court within the time prescribed by the Rules or within such other extended time as ordered by the Court. Order 7 Rule 2(1) of the 2024 Rules now mirror the provisions of Order 4 Rule 11 of the Court of Appeal Rules and provide that after an appeal has been entered, the Supreme Court shall be seised of the whole of the proceedings and every application therein shall be made to the Supreme Court.

No stay of proceedings for interlocutory appeals

Instructively, Order 7 Rule 2(2) provides that the proceedings in any matter before the Court of Appeal shall not be stayed in any form to await the outcome of an interlocutory appeal to the Supreme Court. This contrasts with the provisions of Order 4 Rule 11(2) of the Court of Appeal Rules which permits the Court of Appeal to grant a stay of proceedings in the High Court in respect of proceedings that are affected by appeals against interlocutory decisions such as decisions on jurisdiction that have the effect of nullifying the entire proceedings. It remains to be seen how the courts will apply the blanket provision of Order 7 Rule 2(2) especially in cases where the interlocutory appeal has the potential to resolve the entire proceedings.

Costs

One of the criticisms historically levelled at the various courts in Nigeria is their reluctance to award costs at full indemnity basis even in obviously frivolous cases. It is perhaps to address this that Order 12 of the 2024 Rules have stipulated the amount of costs to be awarded by the Supreme Court in different instances. Notably, the costs awarded to a successful party in a civil appeal is a minimum of ₦2,000,000 (Two Million Naira); the costs awarded against a party for delaying the hearing of a civil appeal on the day the appeal has been fixed for hearing is a minimum of ₦1,000,000 (One Million Naira); the costs for any application in a civil appeal heard in open court is fixed at a minimum of ₦500,000 (Five Hundred Thousand Naira); and the costs where the Supreme Court finds that there has been an abuse of its process is fixed at a minimum of ₦2,000,000 (Two Million Naira). Further, by Order 12 Rule 5, costs may be imposed personally on any counsel representing any government or governmental department in Nigeria. Where costs are ordered to be paid personally by counsel, the same shall 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, with the Chief Registrar serving a Notice of such default on all superior courts of record in Nigeria.

This Order represents significant progress.

Briefs of Argument

The 2024 Rules have significantly reduced the timeframe for the filing of an appellant's brief of argument from 10 (ten) weeks from the date of receipt of the record of appeal under Order 6 Rule 5(1)(a) of the 1985 Rules to 45 (forty-five) days from the date of receipt of the record of appeal under Order 16 Rule 2 of the 2024 Rules. Similarly, the time for filing a respondent's brief of argument has been revised downwards from 8 (eight) weeks from the date of service of the appellant's brief under Order 6 Rule 5(2) of the 1985 Rules to 30 (thirty) days from the date of service of the appellant's brief under Order 16 Rule 4 of the 2024 Rules. Furthermore, the appellant has 14 (fourteen) days to file a reply brief (if any).

The 2024 Rules mirror the provisions of the Court of Appeal Rules 2021 by providing that briefs shall be legible, well-bound, prepared in paper size (A4) and that the font shall be in Arial, Times New Roman or Tahoma of 14 font size with at least 1.5 spacing between. Significantly, Order 16 Rule 3(7)(c) further provides that every brief which does not comply with the above page limit and size requirements shall not be accepted by the Registry for filing, and where accepted, it shall not be deemed as properly filed.

Another fundamental provision of the 2024 Rules in relation to filing of briefs is contained in Order 16 Rule 7(1). Under Order 6 Rule 6(1) of the 1985 Rules, parties whose interest in an appeal are passive were not required to file a separate brief if they were satisfied that their position was explained in one of the briefs filed. In other words, it was left to the discretion of such parties to decide whether to file a separate brief. In a significant departure from the 1985 Rules, Order 16 Rule 7(1) of the 2024 Rules provides that all parties whose interests are identical or joint, shall file joint briefs and separate briefs may be filed only by those parties whose interests are separate or are in conflict.⁷

Lastly, a significant change regarding the filing of briefs of argument under the 2024 Rules is articulated in Order 16 Rule 9. In contrast to the 1985 Rules, which provided that where an appellant failed to file and serve his appellant's brief within the designated timeframe, the respondent may apply to the Supreme Court to strike out the appeal for want of diligent prosecution; under the 2024 Rules, if an appellant fails to file the appellant's brief within the prescribed period, the Supreme Court may dismiss the appeal in chambers, either upon receiving a certificate from the Registrar or upon the respondent's application. This shift emphasises the Court's ability to manage cases more efficiently and highlights the importance of adhering to procedural timelines, thereby reinforcing the principle of diligent prosecution in appellate matters.

It is important to note that the timelines above do not apply to criminal appeals relating to Kidnapping, Corruption, Money Laundering and Human Trafficking which have been designated as fast-track appeals pursuant to Order 14(a) of the 2024 Rules. The timelines for fast-track appeals are significantly shorter, which is applauded, as where effectively implemented, would lead to speedy dispensation of justice.

⁷ See the judgment of the Court of Appeal in *Bi-Courtney Highway Services v. AG, Federation & Ors* (2018) LPELR-50157(CA) where the Court of Appeal gave effect to a similar provision in the Court of Appeal Rules. It remains to be seen if the Supreme Court will accord a similar treatment to separate briefs filed by respondents whose interests are identical or joint under the 2024 Rules.

Electronic Filing and Virtual Hearing

Understandably, the 2024 Rules have made significant strides in modernising court processes by introducing detailed provisions for electronic filing and virtual proceedings. Orders 17 and 18 outline the procedures for filing court processes through the NCMS E-filing portal and for conducting virtual hearings, respectively. Notably, Order 17 Rule 4(2) and Order 18 Rule 8 grant to the Chief Justice of Nigeria the authority to periodically issue Practice Directions to specify the manner and form of electronic filing and to regulate virtual hearings.

Conclusion

After nearly four decades of regulating the practice and procedure of the Supreme Court of Nigeria, the 1985 Rules required urgent reform. With a total of 22 Orders and 216 Rules, the Supreme Court Rules, 2024 represent a substantial upgrade in both content and form. This new framework not only addresses the procedural inefficiencies of its predecessor but also aligns the Supreme Court with contemporary practices in legal administration.

We hope that the 2024 Rules will act as a driving force for comprehensive reform in Nigeria's appellate legal framework, enhancing the efficiency, accessibility, and effectiveness of the judicial process.