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Client Alert

FCT High Court Issues New Civil Procedure Rules: Key Updates

Introduction

On 7 November 2024, the Chief Judge of the High Court of the Federal Capital Territory, Honourable Justice Husseini Baba Yusuf, issued the High Court of the Federal Capital Territory (Civil Procedure) Rules, 2025 (the **“New Rules”**) in exercise of his constitutional responsibilities¹. The New Rules will replace the current civil procedure rules which were issued back in 2018 (the **“2018 Rules”**) and will apply to the High Courts of the Federal Capital Territory, Abuja.

The New Rules are expected to come into force on 3 March 2025. In this alert we examine some of the key provisions of the New Rules which will be of interest to litigants, judges and lawyers practicing within the Federal Capital Territory. The innovations will be broadly discussed under the following headings: (a) Commencement of actions (b) Pleadings (c) Trial (d) Costs, and (e) Alternative dispute resolution provisions.

A. Commencement of actions

Electronic filings

The New Rules have made significant advancements in modernizing justice administration by introducing detailed provisions for electronic filings. Part I of Order 3 Rule 5 of the Rules gives litigants

¹ Section 274 of the 1999 Constitution (as amended) empowers the Chief Judge of the State to make rules for regulating the practice and procedure of the High Court of the State.

an option of filing suits either electronically or manually.² The filing method adopted by the Claimant in commencing an action is the same method that the Defendant is required to adopt in filing a response to the action.³ Also, a Claimant who files a matter electronically may continue in the same manner until determination of the matter. The New Rules also recognize electronic signatures as usable for court processes.⁴ Therefore, where a document is required to be signed or made under oath, a party to an action can sign electronically and it will be deemed to have been properly signed. Furthermore, where an e-filed process or document could not be filed on time because of a technical glitch on the filing system of the court, the process or document so filed may be deemed as properly filed as the court may direct.⁵

Pre-action counselling certificate to accompany originating papers

Order 2 Rule 8 of the New Rules provides that a certificate of pre-action counselling signed by counsel and the litigant should be filed along with all originating processes.⁶ This provision, which was not contained in the 2018 Rules, is perhaps aimed at settling the confusion as to whether pre-action counselling certificates are required for commencing all actions especially matters that are commenced via undefended list, Originating Motions or Petitions under the 2018 Rules. For instance, in the case of *Babajide v First Bank Nigeria Ltd*⁷, the issue arose as to whether the requirement for the filing of a certificate of pre-action counselling with originating processes was applicable to undefended list actions. The court held that it was not applicable because a certificate of pre-action counselling is not specifically mentioned as one of the required documents for commencing undefended list actions under order 35 of the 2018 Rules.

Lifespan of writs

Unlike the 2018 Rules which grants a 6-month lifespan to originating processes⁸, the New Rules have extended the lifespan of originating processes to 12 months⁹. Also, under the 2018 Rules, an application for renewal of an originating process is required to be made before the expiration of 6 months from issuance,¹⁰ Now, the New Rules state that applications for renewal of originating processes can be made even after expiration¹¹ provided that the application is made within 14 days of the expiration.¹²

Pre-Trial Conference

The New Rules do not make provision for pre-trial conferences but grants the Chief Judge the discretion to issue a practice direction on pre-trial conference management.¹³ Furthermore, a judge is at liberty to manage his cases and give directions on pre-trial issues as he deems fit¹⁴.

² Order 3 Part I, Rule 5 of the 2025 Rules.

³ *Ibid*, Rule 6.

⁴ *Ibid*, Rule 9.

⁵ Order 3 Part I, Rule 11.

⁶ The 2025 Rules defines originating process to mean any court process by which a suit is initiated. See Order 1 of the 2025 Rules.

⁷ Suit No. CV/3415/2020 delivered on 23 February 2022 available at <https://www.fcthighcourt.gov.ng/?file=FOFORUNSHO-MICHAEL-BABAJIDE-VS-FIRST-BANK-OF-NIGERIA-LTD-JURISDICTION.pdf>.

⁸ Order 6 Rule 6(1) of the 2018 Rules.

⁹ Order 8 Rule 6(1) of the 2025 Rules.

¹⁰ Order 6 Rule 6(2) of the 2018 Rules.

¹¹ Order 8 Rule 6(2) of the 2025 Rules.

¹² *Ibid*.

¹³ Order 5 Rule 1 of the 2025 Rules.

¹⁴ *Ibid*, Rule 2

He is however encouraged to adopt contemporary case management practices in conducting proceedings.¹⁵

Electronic service of hearing notice

The 2018 Rules provide that the court may serve hearing notices via email and/or SMS except where the judge directs otherwise.¹⁶ However, under the New Rules, the scope of electronic service has been expanded to include WhatsApp, Telegram, and/or other electronic means.¹⁷ This provision is commendable because it aligns with realities of modern society. In *Compact Manifold & Energy Services Ltd V. Pazan Services (Nig.) Ltd.*,¹⁸ the Court of Appeal had noted that the essence of a hearing notice is to bring to the notice of the party that his matter will come up on the date named in the notice of hearing. In our view expanding the scope of permitted modes of electronic service will be a positive development which aligns with today's digital world.

Time for entering appearance

The provisions of the 2018 Rules did not clearly provide a timeline for filing of a memorandum of appearance. The New Rules have now cleared this ambiguity by Order 11 Rule 1 by clearly stipulating 21 days as the time limited for entering appearance. The New Rules state that "*Subject to the provisions of the sheriff and Civil Process Act, a defendant served with an originating process shall, within twenty-one (21) days, file in the registry as many copies of the completed and signed memorandum of appearance for service on the other party.*"¹⁹

B. Pleadings

Striking out of pleading at pre-trial conference

The 2018 Rules provided that a court may, at a pre-trial conference in any proceedings, order endorsements or pleadings which may be unnecessary, scandalous, or tend to delay the fair trial of the action, to be struck out or amended, if it deems fit²⁰. This provision has been expunged from the New Rules. This removal may possibly be because of the removal of provisions on pre-trial conference from the New Rules.

Time for Filing Reply to statement of Defence

The time for filing of replies to statements of defence has been extended from 7 days in the 2018 Rules to 14 days under the New Rules.²¹

Judgment in default of pleadings

While the 2018 Rules provide that default judgments can only be set aside on grounds of fraud, non-service or lack of jurisdiction,²² the New Rules have removed these specified grounds, leaving it at the discretion of the court. In other words, applications to set aside default

¹⁵ Ibid, Rule 3.

¹⁶ Order 7 Rule 17 of the 2018 Rules.

¹⁷ Order 9 Rule 17 of the 2025 Rules.

¹⁸ (2017) LPELR-41913 (CA).

¹⁹ This is as opposed to Order 9 Rule 1 (1) of the 2018 Rules which says "(1) A defendant served with an originating process shall, within the period prescribed for appearance, file in the registry as many copies of the completed and signed memorandum of appearance as in Form 12 with such modifications or variations as circumstances may require for the use of the court and for service on the other parties."

²⁰ Order 15 Rule 16 of the 2018 Rules.

²¹ Order 18 Rule 1 of the 2025 Rules

²² Order 21 Rule 12 of the 2018 Rules.

judgments will no longer be limited to grounds of fraud, non-service or lack of jurisdiction, but will now accommodate other factors/grounds that the court may deem sufficient.²³ While this provision is welcome, it could give rise to uncertainty as there are no clear indications of what criteria the courts will adopt.

C. Trial/hearing of actions

Virtual Proceedings

The New Rules have made provisions for virtual hearings. Virtual hearings can be ordered at the instance of a party to an action or at the direction of the court.²⁴ It also empowers the Chief Judge to issue Practice Directions for the conduct of virtual proceedings.²⁵ This provision appears to give effect to the decision of the Supreme Court in the cases of *Attorney General of Lagos State v Attorney General of the Federation & the National Assembly*²⁶ and *Attorney General of Ekiti State v Attorney General of the Federation & 2 others* where the Supreme Court upheld the validity of virtual court hearings in Nigeria.²⁷

Date for hearing

Under the 2018 Rules, parties to an action may apply to the registrar to set down the case for trial where a trial date has not been fixed by the trial judge. Further, the registrar is entitled to issue hearing notices to all the parties in the suit upon such application.²⁸ The New Rules have now changed the above position as it now empowers only the trial judge to set down cases for trial. The Registrar issues hearing notices to the parties thereafter.²⁹

Time for filing final written address and format

Under the New Rules, the number of days for filing the Claimant's final written address, where the Defendant does not call evidence, has been reduced from 21 days to 15 days.³⁰ With respect to format, the 2018 Rules provided that a written address shall be printed on white A4 size paper, set out in paragraphs, and numbered serially³¹, the New Rules have stipulated additional requirements to the use of white A4 size paper. A written address is now required to also have Times New Roman font style, 14 font size, and 1.5 line spacing³². The number of pages has also been limited to 30 pages and where there is a counter claim, 35 pages. On the other hand, a Reply is not expected to exceed 10 pages. It should be noted that where an address exceeds the prescribed number of pages, the court is empowered to discountenance the address.³³

²³ Order 20 Rule 12 of the 2025 Rules.

²⁴ Order 3, part II Rule 1.

²⁵ *Ibid*, Rule 2.

²⁶ Unreported suit no SC/CV/260/2020, ruling delivered by Hon. Justice Rhodes-vivour JSC on July 14, 2020.

²⁷ Unreported suit no. SC/CV/261/2020, ruling delivered by Hon. Justice Rhodes-vivour JSC on the same July 14, 2020.

²⁸ Order 32 Rule 1 of the 2018 Rules.

²⁹ Order 38 Rule 1 of the 2025 Rules.

³⁰ Order 38 rule 14 of the 2025 Rules.

³¹ Order 33 Rule 2 of the 2018 Rules.

³² Order 39 Rule 2 (i) of the 2025 Rules.

³³ *Ibid*, Rule 2 (ii-iii).

Undefended list

Another innovation of the New Rules is that it now allows judges in chambers to direct that matters brought under the Undefended list procedure be transferred to the general cause list for trial, if the judges are satisfied that the claims are not fit to be tried as undefended suits.³⁴ Furthermore, the requirement for filing of notice of intention to defend alongside affidavit of defence on the merit within 5 days under the 2018 Rules³⁵ has now been extended to 21 days.³⁶

Stay of Execution of Judgments from Lower courts

Unlike the 2018 Rules which provides that applications for stay of execution pending appeal can be made ex parte³⁷, the New Rules states that such applications can only be made on notice³⁸. Also, under the 2018 Rules, where an application is made for stay of execution, the court may order that the Appellant's property be sold and the net proceed be deposited with the court pending determination of the appeal.³⁹ However, this condition has been removed by the 2025 Rules. Meaning, court will no longer order the sale of the Appellant's property as condition for stay execution of judgement.

Interlocutory applications -

(i) Reply on point of law

One of the innovations of the New Rules regarding interlocutory applications is that it has reduced the number of days for filing of Reply on points of law and Reply affidavits to Motions from 7 days to 5 days.⁴⁰

(ii) Deeming of non-contentious motions as moved

The New Rules now also empowers courts to deal with non-contentious applications in chambers without the appearance of counsel and to deem the written addresses in support of such applications as having been adopted.⁴¹

D. Costs and fees

Default fees

The provision for default fees under the New Rules has been reviewed upward to ₦500 (Five Hundred Naira) per day⁴² where a party defaults in performing any act that is required under the Rules. In fast-track cases, the default fee is ₦2,000 (Two Thousand Naira) per day.⁴³ Furthermore, every application for enlargement of time under the New Rules shall be

³⁴ Order 34 Rule 1(2) of the 2025 Rules.

³⁵ Order 35 Rule 3(1) of the 2018 Rules.

³⁶ This is opposite of the Order 35 Rule 3(1) which provides that "Where a party served with the writ delivers to registrar, before 5 days to the day fixed for hearing, a notice in writing that he intends to defend the suit, together with an affidavit disclosing a defence on the merit, the court may give him leave to defend upon such terms as the court may think just."

³⁷ Order 50 Rule 24 (4) of the 2018 Rules.

³⁸ Order 46 Rule 23 (4) of the 2025 Rules.

³⁹ Order 50 Rule 24 (4) (e) of the 2018 Rules.

⁴⁰ Order 30 Rule 1 (4) of the 2025 Rules.

⁴¹ Order 30 Rule 4 of the 2025 Rules.

⁴² Order 50 Rule 5(2) of the 2025 Rules.

⁴³ Order 41 Rule 6.

accompanied by proof of compliance with Order 50 Rule 5 (1) of the Rules regarding payment of default fees.⁴⁴

Cost for withdrawing suit

Under the 2018 Rules, a Claimant has a discretion to, at any time before receipt of the defence or after receipt of the defence but before taking any other step in the action, discontinue his claim against all or any of the Defendants in the suit. The Claimant will be required to pay costs to the defendant(s) where he discontinues or withdraws the suit.⁴⁵ While the New Rules retains this provision concerning withdrawal of actions, it has expunged the requirement for payment of costs by the Claimant.⁴⁶ This means that withdrawal of actions before filing of defence will no longer attract costs when the New Rules come into force. It appears the intent is to encourage litigants to withdraw their cases without fear of sanction thereby decongesting the courts with frivolous cases.

Effect of Withdrawal

The New Rules further provides that “Where a suit is withdrawn or discontinued after the party withdrawing has called evidence, the suit shall be liable to be dismissed.”⁴⁷ The implication of this novel provision is that issues need not be joined, or responsive process(es) be filed by the defence, for withdrawal of a suit to attract dismissal as emphasized in many judicial pronouncements.⁴⁸ Thus, the mere fact that a Claimant has called evidence in the matter will suffice to have the matter dismissed, once application for withdrawal is made.

Fast-track matters

Under the New Rules, fast-track proceedings are limited to only Banker/Customer transactions and Commercial Transactions.⁴⁹ This is different from the position under the 2018 Rules where fast-track proceedings also apply to Landlord and tenant disputes, cases relating to Federal Capital Territory or Area Council Revenue, and cases requested by parties to be proceeded by way of Fast track⁵⁰. Additionally, the substantive monetary claim in actions under fast-track in the New Rules has been increased from ₦50,000,000 (Fifty Million Naira)⁵¹ to ₦100,000,000 (One Hundred Million Naira)⁵², and causes under fast track now attract a non-refundable Fast Track fee of ₦500,000 (Five Hundred Thousand Naira).⁵³

E. Alternative Dispute Resolution provisions

Under the 2018 Rules, when a matter comes before the court for the first time, the judge shall where appropriate, grant the parties, time, not more than 30 days within which to explore possibilities of settlement. The New Rules goes further to make robust provisions for alternative dispute resolution

⁴⁴ Order 50 Rule 5(2) of the 2025 Rules.

⁴⁵ Order 24 Rule 1(1) of the 2018 Rules.

⁴⁶ Order 23 Rule 1 of the 2025 Rules.

⁴⁷ Order 23 Rule 3 of the 2025 Rules.

⁴⁸ See for instance the case of *Eronini vs Iheuko* (1989) 2 NWLR (Part 101) 46 where the Supreme Court held that “once issues have been joined to be tried and the stage set, the plaintiff is no longer *Dominis litis* and cannot be allowed to escape through the back door to enter again through another action. The proper order is that of dismissal.”

⁴⁹ Order 41 Rule 2 of the 2025 Rules.

⁵⁰ See Order 37 Rule 4 of the 2018 Rules.

⁵¹ Previously provided by the 2018 Rules.

⁵² Order 41 Rule 3 of the 2025 Rules.

⁵³ *Ibid*, Rule 7.

of cases in court. Specifically, the Rules provide that “*In the course of proceedings, the judge may grant the parties time within which they may explore possibilities for settlement of dispute.*”⁵⁴ Where parties consent to explore a settlement of their dispute, the court or judge shall by an enrolled order refer the case to the Abuja Multidoor Courthouse for resolution.⁵⁵ The New Rules also states that the Chief Judge has the discretion to appoint and designate judges as ADR judges, who shall have jurisdiction to handle sessions and other ADR related matters. These provisions relating to Out of Court settlement and ADR will help a great deal in decongesting the courts and will foster the speedy dispensation of cases.

Conclusion

The introduction of the New Rules is indeed a welcome development. Not only does it fill in the gaps in the 2018 Rules, but it has also introduced progressive changes to meet the technological demands of modern society especially with respect to e-filings and virtual court hearings which will certainly promote efficiency of the judicial process. It is, therefore, imperative for litigants, judges and practitioners in Nigeria's dispute resolution landscape to familiarize themselves with the provisions of the New Rules to avoid preventable drawbacks when litigating cases before the FCT High Court.

⁵⁴ Order 28 Rule 1 of the 2025 Rules.

⁵⁵ Order 28 Rule 3 of the 2025 Rules.