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**L E G A L
NEWSLETTER**

**CONTROVERSIES SURROUNDING THE CONSTITUTIONALITY
OF THE VIRTUAL COURT PROCEEDINGS HAVE FINALLY
BEEN SETTLED BY THE SUPREME COURT**



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State having exercised such power to regulate the practice and procedure of the High Court of Lagos State through the issuance of Practice Directions for Virtual Hearings dated May 14 and 15, 2020, the National Assembly can usurp the powers of the Chief Judge of Lagos State under Section 274 of the Constitution by commencing the process for the amendment of Section 36(3) and (4) of the Constitution to include virtual or remote hearings?

INTRODUCTION

The untold controversies about the constitutionality or otherwise that greeted the introduction of the virtual court proceedings by some states' judiciaries in Nigeria seem to have come to an end following the recent pronouncement of the Apex Court on the matter. Recall that few weeks ago, the Lagos State government and some other states released guidelines or Practice Directions for remote conduct of court proceedings using modern technologies such as zoom, WhatsApp, Microsoft Teams, Skype, etc to keep alive, the administration of justice during the lingering COVID-19 pandemic.

The foregoing, generated serious controversies from the general public with most senior lawyers rendering their revered voices on whether the conduct of virtual court proceedings is constitutional or otherwise.

The controversy also prompted the National Assembly to introduce a Bill for an Act to amend the Constitution of the Federal Republic of Nigeria to accommodate or rather legalise the conduct of virtual court proceedings in Nigeria. This did not go down well with Lagos and Ekiti States where implementation of the Practice Directions for remote hearing had already commenced.

Lagos State in particular was apprehensive that if the National Assembly is allowed to proceed with the passage of the bill and the constitution is consequently amended, it will mean that all virtual court proceedings conducted and decisions taken thereof by those courts would be voided. In light of that, the two States approached the Supreme Court for a decisive determination on the issue of constitutionality or otherwise of the virtual court proceedings already ongoing in those states and in fact, any other state in Nigeria.



THE SUIT BY THE LAGOS STATE GOVERNMENT

The Lagos State suit with number: **SC/CV/260/2020** had urged the apex court to determine whether having regard to Section 36(1), (3) and (4) of the 1999 Constitution (as amended), use of technology by remote hearings of any kind, whether, by Zoom, Microsoft Teams, WhatsApp, Skype or any other audiovisual or video-conference platform by the Lagos State High Court or any other Courts in Nigeria in aid of hearing and determination of cases are constitutional.

The plaintiff also wanted the Supreme Court to determine "whether in view of the powers conferred on the Chief Judge of a State under Section 274 of the Constitution, and in particular, the Chief Judge of Lagos

The Plaintiff sought two major reliefs to *wit*: **"a declaration that it is not within the legislative competence of the 2nd defendant or any other body, person or authority whatsoever to make laws or otherwise amend the Constitution for the regulation of the practice and procedure of the courts of Lagos State having regard to Section 274 of the Constitution"** and **"a declaration that the Bill presented before the 2nd defendant seeking to specifically include remote hearing in the constitution constitutes a usurpation of judicial function."**



The major issue in contention in the suit as could be seen in the 45 paragraph affidavit in support of the Originating Summons was the anticipated outcome and effect of the presented bill currently pending before the National Assembly seeking to amend the 1999 Constitution to accommodate remote hearings. The Plaintiff was apprehensive that if the bill is finally passed, it would mean that all the proceedings together with the decisions of courts conducted by virtual hearing prior to the passage of the bill would be invalidated.

THE SUIT BY EKITI STATE GOVERNMENT

The Ekiti State Suit with number **SC/CV/261/2020** urged the Supreme Court to determine whether the directive issued by the Attorney-General of the Federation to the Heads of Courts at Federal and State levels, as it relates to the conduct of virtual proceedings in court, is not a violation of the federalism provisions of the 1999 Constitution. The Plaintiff also called upon the apex court to determine if the directive issued in line with the National Judicial Council is not a violation of the constitutional provisions on fair hearing as it relates to the conduct of criminal trials in public. He then urged the court to set aside or strike down directives to the extent that they purport to be binding on the Ekiti State High Court for being inconsistent with the 1999 Constitution of the Federal Republic of Nigeria.

The Ekiti State government also asked the apex court to determine whether the Attorney-General of the Federation's guidelines are not a derogation from the



My argument is supported by the fact that the Supreme Court pronouncement was not directly based on any case challenging the outcome of any particular matter conducted by remote hearing. The matter would have been permanently laid to rest if the Supreme Court had held that the pending bill when passed will not have any effect on cases already heard and decided by virtual proceedings.

legislative, executive and judicial law-making, law execution and adjudicatory rules making powers exclusively vested in states of the federation in respect of states courts, by virtue of Sections 1(3), 4(6), 5(2), 6(2), 272 and 272 and 274 of the Constitution. The plaintiff further asked the Supreme Court to decide whether Lagos and Ogun states, having adopted virtual court hearings pursuant to the lockdown, the three arms of Government in Ekiti State are bound to conduct their legislative, executive and judicial functions pertaining to adjudication in state courts in compliance with the directive upon which the National Judicial Council formulated the provisions of Articles E (1) to E(13) of its Guidelines (issued on May 7, 2020).

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THE SUPREME COURT'S VERDICT

At the resumed hearing on Tuesday, the 14th day of July, 2020, the Supreme Court's seven-member panel led by the Honourable Justice Rhodes-Vivour, struck out both suits for being speculative in nature. The two plaintiffs earlier withdrew the suits having been hinted by the apex Court that the suits are speculative. Fundamentally, the Supreme Court made a decisive pronouncement on the main issue before it when His Lordship, Honourable Justice Rhodes Vivour held that "As of today, virtual sitting is not unconstitutional".



It is the writer's humble opinion that since the predominant issue before the apex court was the determination of the constitutionality or otherwise of the virtual court proceedings adopted by some states in the wake of the ravaging COVID-19 pandemic, the Supreme Court's affirmative pronouncement in that regard has finally settled all controversies on the issue.

However, the Supreme Court's decision to strike out the suits on the ground that they are speculative may rather open a floodgate to litigations and appeals when the Bill to amend the Constitution to include virtual hearing is finally passed by the National Assembly. This is because the two suits were not determined on their merit and the purport of amending the Constitution to

include virtual hearing would be that all prior proceedings of similar nature were conducted without any legal basis.



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