



## AN APPRAISAL OF THE PRACTICE DIRECTION FOR REMOTE HEARING OF CASES IN THE LAGOS STATE JUDICIARY

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Faced with COVID-19 pandemic and its attendant devastating effects on economic, religious and social activities across the world, businesses, institutions and governments have been left with no choice than to temporarily shut down.

On the 23<sup>rd</sup> of March, 2020, the Chief Justice of Nigeria issued a circular to all Heads of Courts directing the suspension of all court sittings for an initial period of two weeks with effect from the 24<sup>th</sup> March, 2020. The directive on the lockdown of courts in the country was extended indefinitely on the 6<sup>th</sup> of April, 2020. This has brought the court system and its administration in the country to a standstill, causing enormous damage to the justice delivery system in the country.

The foregoing has necessitated the use of alternative measures in order to maintain the existence of a functional judicial system and the administration of justice in the country. Thus, online platforms such as *Skype*, *Zoom*, *WhatsApp*, etc are being embraced as alternative means for court proceedings instead of the hitherto physical appearances in courts due to the upsurge in the pandemic.

At the forefront of this novel idea is the Lagos State Judiciary which recently announced its readiness to issue a **Practice Direction for the Remote Hearing of Cases** in Lagos (Practice Direction). When this Practice Direction comes into effect, it will help in the promotion and speedy delivery of justice in Lagos State as some selected cases would be remotely heard using suitable electronic platforms.

The *Practice Direction for remote hearing of cases in the Lagos State Judiciary* is made pursuant to the provisions of Section 6(6) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 87 of the High Court Law of Lagos State 2015, Order 49 Rules 1, 2 and 3 of the High Court of Lagos State (Civil Procedure) Rules 2019, Lagos State Magistrates' Court (Civil Procedure) Rules 2009, Administration of Criminal Justice

Law of Lagos State 2015 and any other enabling legislation.

## **Objectives of the Practice Direction**

The objectives of the Practice Direction for Remote Hearing of Cases are stated in paragraphs 4 as follows:

- a. timely and efficient disposal of cases;
- b. use of suitable technology;
- c. just determination of the proceedings; and
- d. efficient use of available judicial and administrative resources.

## **Nature/Category of cases to which the Practice Direction applies**

It should be noted that the new Practice Direction does not guarantee the hearing of all cases pending before courts in Lagos. The essence of the Practice Direction is to allow for the hearing of few cases where there are issues that require urgent determination by the Court or cases involving time bound applications or as otherwise approved by the Chief Judge.

Thus, paragraph 1 of the Practice Direction is perspicuous where it states as follows: "*This Practice Direction applies to: new cases where there is urgency; pending cases involving urgent or important and time bound interlocutory applications such as bail applications, adoption of addresses, rulings and judgments or any other matter as the Chief Judge may approve*".

It therefore means that cases that are for full hearing or trial are not covered by this Practice Direction except as may be directed by the Chief Judge. What this entails is that, with an application supported by cogent, compellable and verifiable reasons, the Chief Judge may approve the hearing of a particular matter not specifically covered by the Practice Direction.

## **Electronic filing of processes**

According to the Practice Direction, Parties and counsel shall ensure every document filed electronically or in Court has the email address and mobile telephone number of the Counsel or contact person where parties are not represented by Counsel. This is provided by paragraph 6 of the Practice Direction. It further provides in paragraph 7 that the Court



will receive documents electronically. All documents to be filed must be scanned or converted to an appropriate PDF format and forwarded to the Registry via designated **email** address or **WhatsApp**. Where documents are filed by Counsel, each process shall be signed and sealed by such Counsel.

There is however a *proviso* to paragraph 7 of the practice direction to the effect that "*where it is impracticable to file processes electronically same maybe filed at the Registry of the Court*".

It is our considered view that strict compliance with the online filing of processes should be ensured in order to avoid any possible abuse of the above *proviso* except in deserving circumstances. This is because any lapse as a result of the *proviso* would defeat the main purpose of the whole Practice Direction which is to maintain social distancing in Court premises.

Issues relating to assessment of processes, online payment and verification of payments have been well captured in paragraphs 8, 9 and 10 of the Practice Direction. Again, there is a *proviso* to paragraph 9 which allows for payments at the registry where *e-payment* is impracticable. This should also not be allowed to defeat the essence of the Practice Direction as there is likelihood of many people trooping to the registry on account of e-payment failure.

### **Service of processes electronically**

Service of processes during COVID-19 period is covered by paragraphs 11, 12 and 13 of the Practice Direction. The Practice Direction recognizes *email* and *WhatsApp* as proper modes of effecting service. It should be noted that the spirit of paragraph 11 is to allow a Court the prerogative to otherwise direct service of process via other electronic means. This clearly indicates that service of court processes during this period is not only limited to *email* and *WhatsApp*. The Practice Direction further states in paragraph 13 that where service is carried out through the

aforementioned means, time shall prima facie begin to run from the date the process was sent.

### **Preparations for Remote Hearings**

Paragraphs 14 and 15 of the Practice Direction provides for the procedure for initiating remote hearing. Parties and Counsel shall liaise with the Registry for the purpose of scheduling hearings. To this end, Parties or their Counsel may indicate voluntary participation in the Remote Hearing through the official email of the Court. This is a radical departure from the conventional practice where lawyers or parties troop to the registry to get dates for their maters.

Pursuant to paragraph 16 of the Practice Direction, Remote Hearings shall be by **Zoom**, **Skype** for business or any other video communication method approved by the Chief Judge. It should be noted that by paragraph 17 of the Practice Direction, the Court can direct an adjournment of a case if a remote hearing is not possible. This may not be unconnected with the fact that adequate signals may not be available at all times for a seamless transaction of remote Court proceedings.

To further forestall the possibility of unhindered access to the registry, paragraph 18 of the Practice Direction provides that "*Notice of a Remote Hearing shall be stated on the Cause List and the Judiciary website*". This would obviate the need to visit the registry of the Court for whatsoever reason relating to such cases.

### **Conduct of Remote Hearings**

In the course of hearing, the Court shall give directions to Parties on the use of video and audio during proceedings. Of utmost importance to note is that Remote Hearing is to be treated as a formal Court sitting, hence, Counsel shall dress appropriately and Parties shall be properly dressed for Court proceedings. This is covered by paragraphs 19 and 20 of the Practice Direction. That is, Counsel shall be fully robed and parties must appear decent and composed throughout the period of the proceedings.

The proceedings of the Remote Hearing shall be recorded by the Court as provided by paragraph 21. However, according to paragraph 22, recording of the proceedings by Counsel/Parties shall only be with the leave of Court. Certified True Copy of the proceedings



shall be made available upon request pursuant to paragraph 23 of the Practice Direction.

### **Adoption of Written Addresses**

Paragraph 24 of the Practice Direction provides that "*Adoption of Written Addresses shall be in compliance with the provisions of the Rules of Court*". This means Counsel may or may not be allowed by the Court to make oral adumbration on their written submissions during the Remote Hearing.

### **Notice of delivery of Judgment and/or Ruling**

According to paragraph 25 of the Practice Direction, "*the Court shall, through the Registry notify Counsel and/or Parties by email or WhatsApp of the date reserved for the delivery of Judgment and/or Ruling*". This would also help in reducing the spread of the virus as unnecessary movement by Court officials to serve such notices is no longer obtainable during this period.

### **Conclusion**

The noble idea initiated by the Lagos State Judiciary is highly commendable and if properly utilized, Remote Hearing would be a perfect alternative to the traditional conduct of proceedings in Court. With this, there seems to be some rays of light in the tunnel negating the hitherto general belief that all hopes for justice delivery system in the country would be crumbled for a considerable period of time.

This is good news to litigants, legal practitioners and Court officials as well as judicial officers who have been thrown into a state of uncertainties and conjectures since the lockdown order on all courts was issued by the CJN a month ago. It is suggested that all federal and state judiciaries in the Federation key into this great idea and make the ultimate

use of modern technologies which seems to be the best alternative during this period of COVID-19 pandemic and beyond.

It is our further opinion that the long - awaited era for modern technologies in the judicial system has finally arrived. Efforts should therefore be made to sustain the use of these online platforms for hearing of deserving cases after the pandemic. This would place the Nigerian judiciary at par with other developed economies whose judicial systems have since adopted this modern trend to ensure timely, speedy and effective justice delivery.

*Kindly forward your comments to  
info@kmo.legal*

**-Stay Home-  
-Stay Safe-  
-Take Responsibility-**

**KMO LEGAL CARES**



Kevin Martin Ogwemoh Legal "KMO Legal" is a commercial law firm operating primarily in Lagos, Nigeria, the commercial hub of West Africa, with branches in Abuja and the United States of America.

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