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**Highlight of Some Innovations of the
Court of Appeal Rules, 2021**

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1. Introduction

The Court of Appeal Rules 2021 (the “**New Rules**”) replaces the Court of Appeal Rules, 2016 (the ‘**Old Rules**’) and introduces many laudable innovations. The introductions by the New Rules may solve some of the existing problems (such as the epidemic delay in judicial processes) in the procedures of the Court of Appeal (the “**Court**”). This piece briefly discusses some notable changes and provides a comprehensive list of the new changes made by the New Rules which are either nonexistent or distinct from what was operative in the Old Rules.

2. Brief Discussion of Notable Innovations

Recognition of Electronic filing and service

The New Rules introduces electronic filing and service of electronic copies of processes filed in the Court including but not limited to the Notice of Appeal, Applications (Notices of Motions), Records of Appeal, Briefs of Argument, etc. See Orders 2 Rule 1; 2 Rule 3; 3 Rule 9; 8 Rule 5 and 19 Rule 3 (6) (c) of the New Rules. The introduction of the electronic filing and service are to augment the traditional physical filing and service and not overtake it. The New Rules also recognize electronic service of Court processes. By the New Rules, a Respondent shall file ten (10) hard copies and an electronic copy of the Respondent’s Notice of Address within fourteen days. See Orders 2 Rule 4 and 7 Rule 2 of the New Rules.

Applications to the Court

By the New Rules, every application to the Court shall be accompanied by a written address, a respondent shall respond to any notice of motion within five (5) days and an applicant shall file reply within three (3) days. Every written address shall not exceed three pages and a reply on point of law shall not be more than three pages. See Order 6 Rules 1 and 2 of the New Rules. The problem with this innovation is that the New Rules does not specify when the time within which to file a reply to a notice of motion or a reply on point of law will begin to count. Will the time start counting on the date a notice of motion or reply to a notice of motion is filed or on the date they are served on the opposing party? The New Rules does not answer this question. This does not mean, however, that parties will not be able to file their replies. The position as contained in many of the Rules of other Courts such as the High Courts of States and the Federal High Court is that the time to file a reply will start running on the date the party is served with the process of the opposing party.

Compilation and Transmission of Records

The New Rules provide for electronic transmission of records of appeal and reduces the number of copies to be transmitted to ten (10). Further, when a record of appeal is regularized, it will be deemed to have been transmitted within the 90 days allowed by the New Rules and not on the day that the application for regularization was granted. See Order 8 Rule 4. By the New Rules, where an appeal is filed, a Respondent may apply for a departure from the New Rules to compile and transmit the record of appeal for

accelerated hearing and determination. See Order 8 Rule 6 of the New Rules. Where an appeal is struck out for failure to transmit records of appeal, an application to relist such appeal must be made within seven (7) days showing good cause for the relisting of the appeal. See Order 8 Rule 18 (4) of the New Rules.

3 Other innovations

- 3.1. By the New Rules, one (or more) Senior Advocate(s) of Nigeria shall not appear with more than 5 counsel, and any other Counsel with not more than 2 counsel. See Order 3 Rule 11 of the New Rules.
- 3.2. The publication of a weekly cause list on the Notice board and official website of the Court on Fridays. This cause list will show the cases coming up the following week. Further, notification of court sittings shall be made through physical and/or mail addresses of parties. See Order 3 Rule 12 of the New Rules.
- 3.3. The introduction of conditions for the exercise of the Court's power to give injunctions or make any other necessary orders for the protection of person or property pending the determination of an appeal, even when no application for such injunction or order was made in the court below to make injunction. See Order 4 Rule 6 (1) (a), (b) and (c) of the New Rules.
- 3.4. The New Rules provide that the lower court is not required to stay proceedings or adjourn *sine die* in relation to matters or proceedings that are not impacted by or related to the appeal entered in the Court- See Order 4 Rule 11 (2) of the New Rules.
- 3.5. The New Rules provide that every application shall be treated as argued, where any of the parties do not appear in the Court on the day of hearing of the application or a party has failed to file his processes after the expiration of the due time. See Order 6 Rule 8 (2) of the New Rules. Further, costs shall be awarded against any Counsel who files an incompetent application. Order 6 Rule 11 of the New Rules.
- 3.6. The Court shall not strike out a Notice of Appeal where the incompetence affecting the Notice of Appeal is not of fundamental defect. See Order 7 Rule 6 of the New Rules.
- 3.7. The deposit of an amount not less than ₦50,000 (Fifty Thousand Naira) by the Appellant with the Deputy Chief Registrar of the Judicial Division of the Court for the diligent prosecution and payment of any cost against the Appellant, except for an Indigent Person¹ or where deposit is payable by the government or any governmental department. See Order 8 Rule 11.

¹ The New Rules define an Indigent Person as any person whose annual income is less than an annual wage of persons in Grade Level 01 in the Civil Service of the Federation

- 3.8. Every requirement for twenty (20) physical copies for filing of processes has been replaced with ten (10) physical copies and an electronic copy. See for example Order 9 Rule 5 10 Rule 1 of the New Rules.
- 3.9. The New Rules also provide that a preliminary objection will be part of a Respondent's Brief or Argument. See Order 10 Rule 1 of the New Rules.
- 3.10. An appeal can be withdrawn with the consent of parties by filing the relevant document(s) signifying the consent and such appeal shall be deemed withdrawn once they are filed. See Order 11 Rule 2 of the New Rules.
- 3.11. Any person who intends to carry on an appeal as an Indigent Person, must satisfy the Court that he is indigent. See Order 13 Rule 2.
- 3.12. The New Rules replaces the Court of Appeal Mediation Program under the Old Rules with the Court of Appeal Alternative Dispute Resolution Program ("CAADRP"). The operations of CAADRP shall be governed by the CAADRP Rules. The time for filing Briefs of Argument will not begin to run until any alternative dispute resolution proceedings under the CAADRP is finalized. See Order 16 of the New Rules.
- 3.13. Amendments to a Notice of Appeal in criminal appeals can only be made upon an application made to the Court by one of the parties before the Court as against the provisions of the Old Rules which gives the Court the power to amend a Notice of Appeal on its own motion. See Order 17 Rule 3(3) of the New Rules.
- 3.14. The line spacing for Briefs of Argument which used to be at least a single line spacing is now 1.5 line spacing. See Order 19 Rule 3(6)(b) of the New Rules.
- 3.15. A Respondent may include arguments under a cross-appeal or a Respondent's Notice in the Respondent's Brief of Argument. The Cross-Respondent must file a Cross-Respondent's Brief of Argument within thirty (30) days from the service of the Cross Appellant's Brief of Argument while the Cross-Appellant must file a Reply (if necessary) within fourteen (14) days from the service of the Cross-Respondent's Brief of Argument on the Cross-Appellant. See Order 19 Rule 7 of the New Rules.
- 3.16. The Court can, without the Appellant making any application, hear an appeal on the Appellant's Brief of Argument alone where it is satisfied that a Respondent has failed to file the Respondent's Brief of Argument after being duly served with the Appellant's Brief of Argument. See Order 19 Rule 10 (3) of the New Rules.
- 3.17. Stay of computation of time in case of disruption of normal business of Court. This appears to cover unusual situations like the Covid-19 outbreak. Order 19 Rule 12.

- 3.18. The establishment of a 24-hour electronic filing unit of the Registry of the Court. This electronic filing unit is required to create an electronic file for every appeal filed at the Court's Registry. Order 20.
- 3.19. The establishment of a procedure for virtual hearing where the Court deems it fit to hold proceedings virtually. Order 21 of the New Rules.
- 2.1.1 The establishment of case scheduling and management system (CSMS). The aim of the CSMS to ensure the effective and efficient management of case-load and case scheduling. The President of the Court is required to issue practice directions to regulate the Court's CSMS. Order 22 of the New Rules.
- 2.1.2 The Court shall be on annual vacation for a period not less than ten (10) weeks between July and September of each year and shall not sit during Easter, Sallah or Christmas periods except where the President directs otherwise. The timeline for the filing of Briefs of Argument shall not run during the period of annual vacation. See Order 24 of the New Rules.

3. **Conclusions**

We consider most of these innovations laudable and necessary for the smooth administration of justice in the penultimate court of Nigeria. However, the information technology infrastructure of the Court must be aggressively updated in order to cater for the technological innovations of the New Rules. The introduction of timelines within which to respond to interlocutory applications is laudable because it fast tracks the process of the Court. In all, the Court is commended for the forward-thinking provisions of the New Rules and it is hoped that its provisions will be implemented in a manner that will guarantee the achievement of the core-objectives of the New Rules.

Authors



Kanzullahi Hibatullahi

ASSOCIATE

kanzullahi.hibatullahi@gelias.com



Ibrahim Haroon

ASSOCIATE

ibrahim.haroon@gelias.com

LOCATIONS

LAGOS OFFICE

6 Broad Street
Lagos, Nigeria

T: +234 (1) 460 7890

E: gelias@gelias.com

ABUJA OFFICE

2nd Floor, Abia House
Plot 979, First Avenue
Central Business District
F.C.T, Abuja.

T: +234 (1) 888 8881

www.gelias.com | www.africanlegalnetwork.com/nigeria

