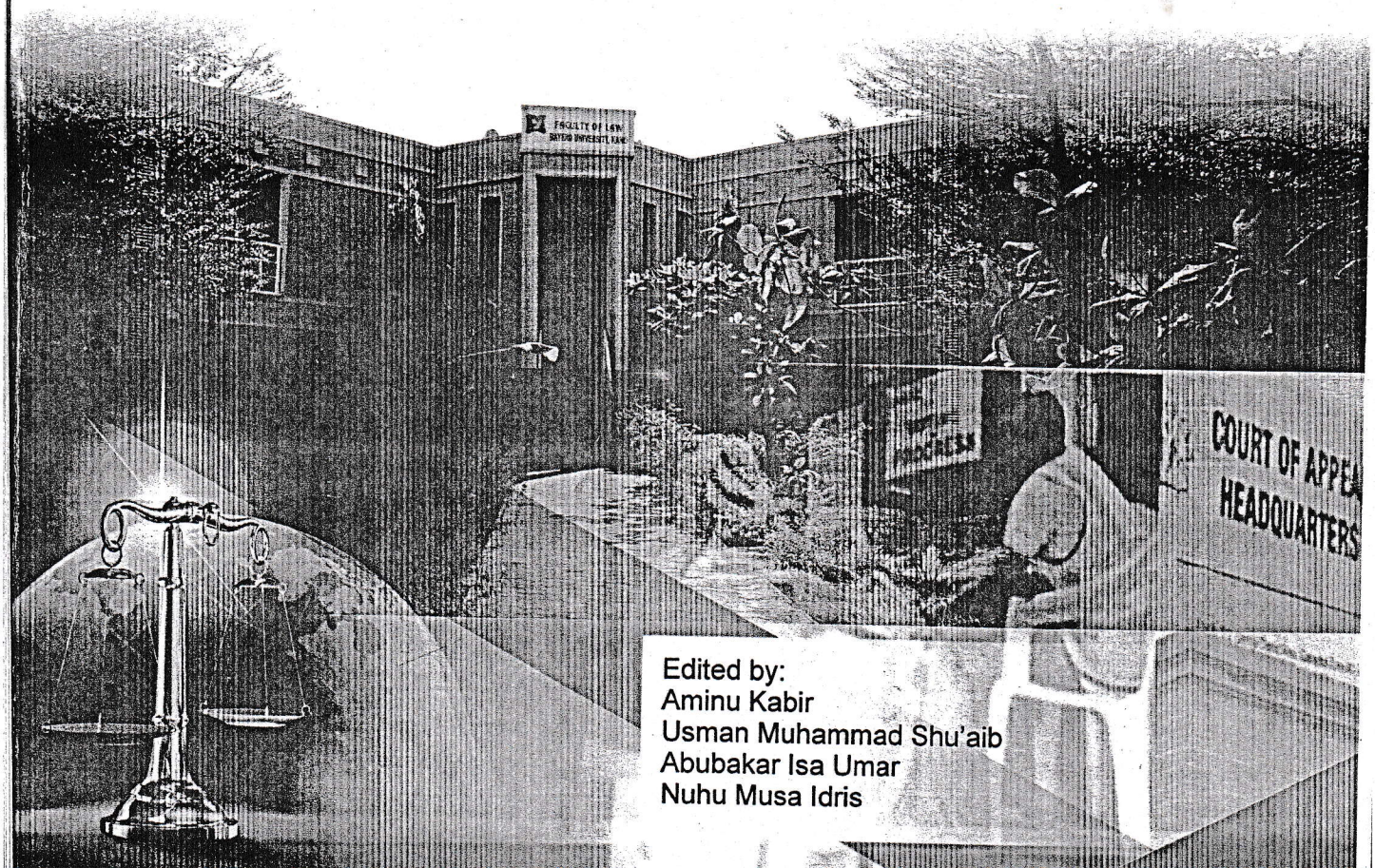
Conference Proceedings

53rd NALT ANNUAL CONFERENCE, 2022

BAYERO UNIVERSITY, KANO

Nigerian Association of Law Teachers
Lex et Lumen pro bono omnia
1962

LAW, DEMOCRACY & ELECTORAL PROCESS



Edited by:
Aminu Kabir
Usman Muhammad Shu'aib
Abubakar Isa Umar
Nuhu Musa Idris

Law, Democracy and Electoral Process

53rd NALT Conference

Edited by

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Nuhu Musa Idris

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53rd Nigerian Association of Law Teachers' Annual Conference 2022

Kwara State University, Malete

Electronic Judicial Process and Procedure in Nigeria: Issues, Prospects and Challenges

Prof. Abiodun Amuda-Kannike, SAN,* Dr. Yahya Duro Uthman Hambali* *
Dr. Hanafi A Hammed,* * * Dr. Abdulwahab M.J. Eleshin* * * * *
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ABSTRACT

The outbreak of coronavirus in 2019 proved to be one of the most transformative events in the modern period. It was a test case for the need to embrace the modern technology in the conduct of government and private affairs. Nigeria recorded her first case of COVID-19 on 27th February, 2020, when an Italian, who returned to Lagos for work tested positive to the virus. The rise in the number of the infected persons led the Nigerian government to implement regulatory measures to contain the spread of the pandemic both at the federal and state levels. As the situation started spiraling out of control, which was evidenced in the discovery of the virus in every part of the country, state governments, taking cue from federal government, replicated the lockdown measures, specifically stay at home, closure of schools, courts, places of worship, markets, offices, business centres, transportation, intra and inter-state travels, imposition of curfew, compulsory use of face shield, nose mark, social distance and many others. As a result of overreaching impacts of COVID-19 and suspension of judicial activities within the country then, it goes without saying that the situation occasioned a great hardship on the judicial system in Nigeria. Thus, the need to ensure that judicial activities in Nigeria continue to thrive has brought to the fore the importance of embracing electronic legal process in fostering smooth and unhindered dispensation of justice and dispute resolution at all times in Nigeria.

Keywords: Electronic legal process, Coronavirus Pandemic, Jurisdiction, Public Hearing, Online Courtroom

INTRODUCTION

Dispute resolution and the administration of justice is an integral part of every society. As a result of the outbreak of the corona virus (COVID-19) pandemic which is transmitted through human physical contact, various countries have taken different measures to curb the spread of the virus

especially within its court and other places used for dispute resolution.[1]

In an attempt to enforce social distancing in the Nigerian Court, the Chief Justice of Nigeria (CJN), Justice Tanko Ibrahim Muhammad, CFR, as the chairman of the National Judicial Council, issued a circular directing the suspension of Court sittings in Nigeria for an initial period of two weeks, from 24th March, 2020. However, a day before the expiration of the two-week period, CJN through a letter dated 6th April, 2020, directed all heads of Courts in Nigeria to suspend court sittings till further notice, with the exception of matters that are urgent, essential or time-bound according to extant laws. CJN reiterated that the suspension of Court sittings was in line with the Presidential Order made pursuant to the COVID-19 Regulation 2020, which directed the lock-down of the Federal Capital Territory (FCT) as well as Lagos and Ogun States in order to prevent the spread of the pandemic.[2]

In Lagos state, a complete shutdown of judicial activities was ordered save the Administrative Magistrates who sat only on Mondays, Wednesdays and Fridays between 10am and 1pm to attend to bail and remand applications. Sustainability and continuity measures have been introduced by different judiciaries in the world[3] which include conducting hearings remotely, using technological frameworks (either audio or video),[4] hearing of civil case through videoconferencing technology[5] and delivery of judgements through virtual means.[6] While it was easy for the judiciaries of many countries to put in place measures to contain the spread of the pandemic and to shift the base for carrying out their activities online due to pre-existing technological and electronic frameworks that can enhance sustainability and continuity of business during pandemic, it appeared that the judiciary in Nigeria was caught unaware because it experienced almost total halt of activities when compared to what was obtainable in other jurisdictions.

Due to the overreaching impact of COVID-19 and the suspension of judicial activities within the country then, it was obvious that the situation occasioned a great hardship in the dispute resolution system in Nigeria. Thus, the need to ensure that judicial activities in Nigeria continue to thrive at all times, fostering continuous dispensation of justice

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[1] F Roberts, 'COVID-19 and Virtual Justice in Nigeria-A Call for the Technological Revolution of the Administration of Justice,' (2020) *Legal Practice Magazine* <https://www.funmirobertsandco.com 2020 /04/ 15/covid-19> accessed 28 Jan. 2022.

[2] V A Oluwajobi and K Omojajowo, '*Covid-19: A Case for Online Courtrooms in Nigeria and the Admissibility of Electronic Evidence in Nigeria's Online Courtrooms,' (2020) Regulatory Framework and Policy on Financial Technology Company in Nigeria, (2020) <ttps://www.researchgate.net/publication/ 343344219_COVID> accessed 28 Jan. 2022.*

[3] COVID-19 Global: Arbitration and Court Impacts updated by Clyde & Co <https://www.clydeco.com/ insight/article/covid-19-impact-on-courts-and-arbitration> accessed 30 Jan. 2022.

[4] United Kingdom.

[5] Dubai, Qatar.

[6] Kenya.

and dispute resolution has become imminent. It was ridiculous for a judiciary that handles cases running into thousands every year not to have in existence, technological framework such as an online courtroom. Absence of this, greatly flawed the judiciary during coronavirus pandemic in Nigeria. It is a necessity for the Nigerian judiciary to upgrade to current trend of doing thing by migrating to electronic legal process or online courtrooms.[7]

Walker[8] describes legal process as any formal notice or writ by a court obtaining jurisdiction over a person or property.[9] It was also said that legal process means iinformation disclosure request made under law, governmental regulation, court order, subpoena, warrant, or other valid legal authority, legal procedure, or similar process. Common forms of process include a summons, subpoena, mandate and warrant.[10] Legal process is all forms of originating processes, interlocutory applications of whatever nature, affidavits, orders[11] and such documents other than the aforesaid which are required to be served under the Rules of Court, notices required to be given to the other party and correspondence between the parties hereto or other document issued or entered by or on behalf of a court or lawful tribunal or lawfully filed with or recorded by a governmental agency that is used as a means of exercising or acquiring jurisdiction over a person or property, to assert or give notice of a legal claim against a person or property or to direct persons to take or refrain from an action.[12]

The importance of e-legal process are akin to the main goals of judiciary, that is, achieving just, efficient and speedy dispensation of justice. It is submitted that Nigerian courts, like courts in other jurisdictions, are in dearth need of practical solution to the major problems (case delay, access and corruption) confronting administration of justice.[13]

It is believed that the primary consideration for e-legal process system is to reduce case delay and cost, promote access to justice, improving effectiveness, efficiency, ensuring transparency and convenience in the administration of justice and to ensure that judiciary flourish even at the face of any pandemic.[14] Thus, the relevance and needs for deployment of the information and communication technologies solutions in solving problems facing Nigerian courts, for example, cannot be over-emphasised. It is argued that with the use of ICT, legal process becomes more efficient for the parties involved, for their attorneys, for the individual judges and for the justice system as a whole.[15]

However, every innovation, legal or otherwise, brings about positive or otherwise effects. Therefore, this paper examines the concept of electronic legal process, issues relating to the operation of electronic legal process, prospects and challenges to the adoption of electronic legal process.

2. Understanding the Concept of Electronic Legal Process

Bureaucratic efficiency in any state creates effectiveness, economic growth and enhanced service delivery to the citizenry. Taking into cognisance the importance of bureaucratic efficiency and public services delivery, governments around the world introduce all

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7 Roberts (n.1).

8 W David, *Oxford Companion to Law*. (Oxford University Press, 1980) 1003.

9 Ibid.

10 Ibid.

11 F C Murphy, *Introduction to Law, Legal Process, and Procedure*.(St. Paul, MN: West Publishing, 1977).

12 G K Frederick, *Legal History: Law and Social Change*. (Englewood Cliffs, NJ: Prentice-Hall, 1963)

13 C C Nweze, 'Challenges of Administration of Justice in the Sustenance of Good Governance in a Transnational Era' in A I. Abikan and A S Ishola (eds), *Nigeria Judiciary: Contemporary Issues in Administration of Justice* (Ilorin, Nigeria Bar Association, Ilorin Branch, 2013)1-34.

14 R Dory, *Technology for Justice How Information Technology Can Support Judicial Reform*, 21.

15 O Rabinovich-Einy, *Beyond Efficiency: The Transformation of Courts through Technology* (2008) 12 (1), Spring 34.

kinds of reforms and initiatives to enhance bureaucratic efficiency and public service delivery, such as electronic governance (e-governance) or electronic filing (e-filing) in their respective courts.[16] E-filing in Nigerian courts is a simple approach that is intended to increase access to public services, improve transparency and accountability, reduce transaction cost and ensure good governance.[17] However, e-process is an endeavour that requires a great amount of effort to implement and for which court leaders (judges, administrators and officials) often underestimate the impact.[18]

E-filing has been defined as electronic filing which consists of transmitting documents by electronic means. For our purpose in this discourse, e-filing refers to the process by which documents are electronically submitted to a court for filing. E-filing is the process of transmitting documents and other court information to the court through an electronic medium, rather than through hard copies or the traditional paper documents.[19] It allows court officials, lawyers and litigants to get a lot of work done with their personal computers and smart phones; either to send and receive documents, pay filing fees, notify other parties, receive court notices and retrieve court information.[20] Historically, electronic media have included fax filing, CD-Rom, data transfer, modem-based online services and more recently e-mail.[21] The evolution of the internet has however redefined e-filing. Thus, internet-based electronic filing and service is rapidly replacing other less capable and less dependable approaches.[22] When properly implemented, e-filing is a highly secure and reliable method for sending, receiving and managing legal documents and case information.[23] An important aspect of the e-filing system is the creation of electronic envelopes in which digital information is inserted and securely transmitted between litigants, lawyers and the courts.[24] Electronic service is cost effective, less laborious and faster than the traditional personal service. The use of e-filing facilitates efficient transfer of information, allows access by all the affected individuals simultaneously from different locations and it is changing the way the courts work and interact with one another, with lawyers, litigants and the public.[25]

The paper argues that, adoption of e-filing became imperative in Nigeria, especially with the intrusion of the COVID-19 pandemic into the country and the enforcement of the attendant precautions such as the lockdown, wearing of face masks, hand sanitation and other measures prescribed by the government for its containment. During the lockdown, court cases were adjourned indefinitely to contain the pandemic. Although, some courts resorted to virtual hearing, certain factors like poor electronic broadband and network glitches made the process less effective.[26]

Further, there was the END-SARS protests during which some courts like the Lagos State High Court, Igbosere, and Delta State High Courts were burnt by hoodlums. This act of arson destroyed structures, case files,

[16] W Abdallah, Electronic Filing System, Bureaucratic Efficiency and Public Service Delivery: Evidence from Bangladesh (International Growth Centre 2017).

[17] Ibid; P Lawrence, *Webster, Automating Court Systems* (National Center for State Courts 1996).

[18] R Lalonde, 'Electronic Filing: Assessing Its Feasibility for Trade Disputes Institute for Court Management,' (2006) *Institute for Court Management*, <https://www.ncsc.org/data/assets/pdf_file/0023/17096/lalonderobertcedpfinal0506.pdf> Accessed 12 Jan 202.

[19] J E. McMillan, D Walker, and L P Webster, A Guidebook for Electronic Court Filing (National Center for State Courts 1998).

[20] Lalonde (n. 18).

[21] Ibid.

[22] Ibid.

[23] T Olson, M Edwards and M A Arthur, *A Guide to Model Rules for Electronic Filing and Service* (LexisNexis File and Serve 2003).

[24] FJean-Jacques, *E-filing for the Courts in Canada: An Idea whose Time has Come* (Lex Electronica 2002).

[25] K M. Finn, *Electronic Filing Trends in 2002: The Paperless Law Practice* (National Center for State Courts 2002; Lalonde (n. 18).

[26] Y A Ojo, 'Why Electronic Filing is not Working in Nigeria Courts' (*The Guardian*, agos 8 December 2020) <https://guardian.ng/features/why-electronic-filing-is-not-working-in-nigeria-courts> accessed 14 Jan. 2022.

exhibits and court properties like the archives. The implication of this was that, the court is faced with a situation, whereby some lost documents would never be recovered.[27] These developments have reopened the debate on the need for the judiciary to fully embrace and implement electronic process. The argument is that, the automation of the judicial process would ensure that important documents are saved electronically and the courts would not face with the challenge of inability of retrieving files when any mishap such as fire or flood affect the court premises.[28] Moreover, the need for the adoption of e-filing in Nigerian courts, considering its successful adoption in some other jurisdictions and especially, its successful adoption in the Nigerian banking sector for instance need not be over-emphasised.

Relly and Babharwa[29] observe that Information and Technology like e-filing help in impacting a high level of transparency into the running of both public and private administration. Similarly, Madueke *et al,*[30] further submit that ICT driven initiatives like e-filing can reduce corruption by promoting good governance, strengthening reform oriented initiatives, enhancing relationships between the government, employees and the general public. While this paper acknowledges that e-filing and other technology driven initiatives may positively impact on the transparency and reduce corruption in the system, this is yet to manifest in the Nigerian court system. This may be due to faulty programming of the entire project *ab initio*, inappropriate execution of the e-filing process and inadequate infrastructure and other issues.

Lalonde[31] identifies the following as the accruing benefits from the e-filing process: reduction in paper utilised in the courts because most of the paperwork would now be done online; there is increased information accessibility because the general public, litigants, lawyers, judges and court officials are accessible to information online based on their respective clearance status; the cost of operations, such as the filing fees are reduced because the cost of transaction is reduced as well; the efficiency of the court operation is highly enhanced, in addition to the interoperability of systems and the full text search capacity inherent in the automated system. Lawyers and litigants complained that the automation of the court processes has not significantly imparted positively on the operation of the court; and there is better security for data and 24/7 access to automated process since machines do not have a closing time.[32]

There is a general concern that creating an electronic document repository will shift the delicate balance between the principle that courts must be seen to be open and accessible and the privacy concerns of participants.[33] Creating an integrated searchable database on the web opens the doors of the courts wide to members of the public who will be able to access information than has traditionally been the case.[34] While all documents (except those specifically concealed) filed are in the public domain, it is generally recognised that certain protections of privacy, inherent in the burden of searching through hard copy filings, do not exist in the electronic world.[35]

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[27] Ibid.

[28] Ibid.

[29] J E Relly and M Sabharwal, 'Perceptions of Transparency of Government Policy Making: A Cross -National Study' (2009) 26 *Government Information Quarterly* 26.

[30] O Madueke, C E Nwosu,and D Uduma 'Challenges and Prospects of Implementation E-Administration in Nigeria: An Explanatory Discourse,' (2017) 5 (2) *International Journal of Social Science and Humanities Research* 426.

[31] Lalonde (n. 18).

[32] Ibid.

[33] J C. Middlemiss, *The Courts in a Digital World: Building a Canadian Electronic Filing Marketplace' Feasibility Report: Electronic Filing Service Provider Model* (Lex Electronica 2002) 16.

[34] Ibid 157.

[35] W Murray and G Pinder, *Discussion Paper: E-filing Service Provider Model* (Lex Electronica 2002) 14.

Although, the federal courts and some state courts in Nigeria have adopted the e-filing system. For instance, the extant rules of the Federal High Court and the National Industrial Court provide for e-filing of court processes. Similarly, the Court of Appeal Rules and the Supreme Court Rules respectively provides for filing of e-copies of briefs of arguments. The Lagos State Judiciary under the administration of the former Chief Judge, Justice Ayotunde Philips, introduced e-filing in the judicial sector. Similarly, her successors, including the incumbent, all subscribed to this project.[36] However, the implementation of the e-filling method is bedeviled with many problems. These problems include epileptic power supply, inadequate and lack of IT skills among court workers including judges, lawyers, and courts officials. Similarly, there are also the challenges posed by viruses and hackers, who could invade the court's online sites, thereby destroying vital information stored on the site.[37] Other problems encountered in the use and implementation of e filing in the court are poor and inefficient internet network services; and inadequate legal and regulatory framework. The e-filing methods depend on a good internet network to function effectively and where the service providers cannot guarantee the same, then, that becomes a major setback. Many legal practitioners complained that despite the fact that the e-filing system was introduced in the Lagos State judiciary about two decades ago, the salutary reception gave way to apprehension when it was discovered that it caused the undue delay while filing new suits, particularly urgent ones.[38]

There were also complain that it took days, even weeks to obtain permanent suit numbers, thereby making the system frustrating. Further, there is no mechanism to ascertain that every process filed actually passed the test of e-filing in the Lagos courthouse. After the necessary ritual of payment at the Registry, you are expected to take the documents to the e-filing room, where it would be scanned.[39] Similarly, there was complains about the frequent breakdown of servers, making it impossible to utilize it for filing processes thus recourse is made to the Registry of the court for filing cases. The paper suggests that the courts' e-project in Nigeria should be awarded to competent corporations with a view to creating a product especially situated to the Nigerian environment, which will be capable of inter-connectivity with the other Nigerian court systems, even if such courts are not yet ready for automation due to financial constraints.

3. ISSUES-Jurisdiction, Public Hearing and Online Courtroom

i. Jurisdiction

Jurisdiction is an integral part of conflict resolution process. It has been defined as the power of a court to decide a matter in controversy and presupposes the existence of a duly constituted court with control over the subject matter and the parties.[40] It is also the legal right by which judges exercise their authority.[41] In the case of *AG Anambra v AG Federation*,[42] the Supreme Court per Ogundare (JSC) defines the term jurisdiction as the authority a court has to decide matter before it or take cognisance of matters presented in a formal way for its decision. It serves as the basis on which a dispute resolution is premised. Whenever a decision of any court is questioned, based on jurisdiction and it is discovered that the court has no jurisdiction, the decision of such court becomes null and void. The issue of jurisdiction is so momentous that it can be raised at stage of a legal proceeding.[43] In the

[36] Ibid

[37] Madueke, et al, (n. 30) 427.

[38] Ojo (n. 26).

[39] Ibid.

[40] C B Henry, *Black law Dictionary*, (6th edn, St Paul, Minn, West Group) 853.

[41] Ibid.

[42] (1993) 7 SCNJ, 249.

[43] A O Vitor and O Kolawole, 'COVID-19: A Cases for Online Courtroom in Nigeria and the Admissibility of Electronic Evidence in Nigeria's Online

case of *Obeta* v *Okpe*,[44] the court held that jurisdiction is the vires of a court to come into a matter before it. Therefore, where a court has no jurisdiction over a matter, it cannot exercise any judicial power thereon.

The premium placed on the issue of jurisdiction is so great and because of this, it must be examined while contemplating e-courtroom. In the popular case of *Madukolu* v *Nkemdilim*,[45] the Supreme Court of Nigeria enumerated the components of jurisdiction to include when:

i. the court is properly constituted in respect of number and qualification of its members;

ii. the subject matter of the action is within the jurisdiction of the court;

iii. the action initiated through the due process of law; and

iv. any condition precedent to the exercise of the jurisdiction of the court has been fulfilled.

The combined effect of the aforesaid signified that a court must consider all the above before assuming jurisdiction on any matter. However, the salient question that may be asked is whether an online courtroom has jurisdiction. This question is likely to be answered in affirmative. It will not be out of place to say that the courtroom goes beyond just being at a place. A court is meant to render services of granting access to justice at any time from any place. Therefore, in any civilised and modern society, access to justice is inviolable. Therefore, in an attempt for a court to render justice in a society, it should not be restricted to a physical courtroom, particularly when pandemic can dictate otherwise.

It is trite law that judicial system in Nigeria since the inception has been rendering services of granting access to justice by holding proceedings in physical courts because the Constitution which established the various court in Nigeria, the various procedural law and rules governing procedures before the court in Nigeria do not make provisions for online courtrooms. While the provisions for an online courtroom do not exist, there is also no provision in existence that expressly restrain an online courtroom. Therefore, because the essence of the court is to avail justice to the Nigerian citizens, doing that through an online courtroom should be valid once the requirements of jurisdiction are met.

ii. Public Hearing and Online Courtroom

The Constitution of the Federal Republic of Nigeria, 1999 (as amended) makes provision for public hearing. It provides that the proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.[46] It further provides that whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal.[47] The operative word in these provisions being 'shall' shows that the prerequisite of public hearing and determination of cases whether civil or criminal is mandatory and not discretionary. It equally indicates that public hearing is a core part of the Nigerian court system for the purpose of administering justice.

The blindness nature of hearing in public has been expressed in many judicial decisions and this was inveterate by the Supreme Court in the case of *Edibo* v *State*,[48] where the court held by per Ogbuagu, JSC as follows:

> In my respectful but firm view therefore, the right provided in section

Courtrooms,' (2020) <https://www.researchgate.net/publication134334429-COVID-19-A-CASE-FOR-ONLINE-COURTROOM-IN-NGERIA....> Accessed 25 Feb. 2022.

[44] (1996) 9 NWLR (PT 473) 411.

[45] (1962) 1 All NLR (Pt 4) 557.

[46] Constitution of the Federal Republic of Nigeria 1999 (as amended) s.36 (3) and (4).

[47] Ibid, s. 36 (4).

[48] (2007) 13 NWLR (Pt.1051) 306.

> 3 (3) of the 1979 Constitution or 36 (3) of the 1999 Constitution, on the decided authorities, is a public right for every citizen of this country. The court must be opened to anyone who may present himself or herself for admission or is obliged to be so presented. There are some exceptions in the proviso of the said two sections as to the right of the public to free access to court proceedings. But being a public right a party to any matter in the court, cannot waive the right.

More so, in the case of *Oviasu* v *Oviasu*,[49] where the hearing of a matrimonial case took place in the Judge's Chambers and neither the counsel nor the parties requested for the hearing of the divorce proceedings in camera, the Supreme Court held as follows:

> A judge's chamber is not a court hall to which the public will normally have any right of access. The petition and answer did not contain such matters, which by law, ought to be heard 'in camera' in a court room. But surely, the law is no respecter of persons. Divorce proceedings, no doubt, presents a veritable ground for scandal peddlers. There are, however, legal processes by which such situations are controlled and the persons concerned protected. It is of the essence of justice that it should not only be done but that it should be seen to be actually done. Any act of secrecy, however desirable it might seem, detract from the aura of impartiality, independence, publicity and unqualified respect which enshrouds justice given without fair or favour. Its acceptance by the public at large, and the confidence it demands depends on this aura being strictly adhered to. These attributes have been considered so fundamental that they are enshrined in our Constitution.

[49] (1973) 11 S.C. 187.

It is obvious from the decisions of apex court that public hearing is considered by right of access. It is important to note that these decisions on public hearing are in context of physical courtroom because physical courtroom was what hold sway at the time when these judgments were delivered.

On the other hand, an **online courtroom** provides online justice. It gives room for determination of cases by human judges but not in physical courtrooms. In this process, evidence and arguments are submitted through online platforms and judges also deliver their decisions. Online courts allow for the use of technology to deliver judicial decisions. These extended courts provide tools to help users to understand relevant law and available options to formulate arguments and assemble evidence. Technology and coronavirus pandemic are giving a new face to dispute resolution across the globe. Online courts is not an alternative to the public court system but as part of it.

In judicial process, video conferences facilities provides courts with the capacities to receive evidence and submissions from the witnesses or persons involved in court proceedings. In circumstances here, it would be expensive, inconvenient or otherwise not desirable for person to attend a court in person.[50]

In State of *Maharahtr v Dr Praful B. Desai*,[51] video conferencing is an advancement of technology which permits seeing, hearing and talking with someone who is not physically present. The legal requirement for presence does not necessarily means physical presence. Video conferencing is real time ideally interactive, face-to-face communication that permits physical separated person to meet virtually as if they are in the same physical space. Such virtual meeting can be achieved using a range of video conferencing

[50] P C Aneke, 'The Legality of Virtual Court Hearing in Nigeria: Way Forward,' (2021) 2 MUNFOLLI/J, 57.

[51] 2 AIR 2003 SC 2053.

technology.[52] It provides an alternative to conventional practice of presenting in-person or as a witness in a trial.

The first virtual court session in Nigeria tagged ID/9006C/2019, was held at Ikeja High Court in Lagos where one Olalekan Hameed was sentenced to death by hanging for the murder of a 76- year old Mrs. Jolasum Okunsanya. Justice Mojisola Dada of Ikeja High Court blazed the trial. The issue that has thrown up debate is whether the virtual hearing does not qualify as public hearing under section 36 (1), (3) (4) of the constitution. The attempt to clear this issue at the Supreme Court in *Lagos State v Ekiti State Government*[53] further created a panorama for other arguments as the decision of the Supreme Court was an advisory opinion.

Proceedings in an online courtroom can be conducted in three ways which are:

i. Audio Hearing- The use of audio conferencing technologies to facilitate court proceedings;
ii. Video/Virtual Hearing- The use of videoconferencing technologies such as Zoom, Skype, Teams, Webex to conduct proceedings; and
iii. Paper Hearing- Submission and exchange of written arguments online and the judge decides premised on the written argument.

With the advent of online courtrooms, it is still within the realm of debate whether an online courtroom (virtual hearing) fulfils the requirement of public hearing. Some are insisting that the word 'public' in the Constitution shall continue to mean physical courtroom and their argument is that online courtrooms do not possess the feature of being accessible to all which is the common feature of public hearing, as anyone who intends to participate in an online courtroom proceeding would need to put in place the appropriate technology gadget, have an access to internet and must be registered with a virtual communication service provider.[54]

The arguments are somewhat valid. But that a court is accessible to the public does not divest anybody who is to participate in a court proceedings of certain responsibilities like having to make preparations to ensure that he or she gets to the court room. Apart from the legally justified exceptions where access to court is restricted in special cases, some courts can only accommodate limited number of persons, in most cases, the judge, court officials, parties and their counsel as a result of small size thereby restricting the public access. In such instance, will the proceedings of the court be invalidated?

Making available to the public the web link to a virtual communication technology which enhances a virtual proceeding connotes that, the public is granted an unrestricted access to the proceedings of the online courtroom. The responsibility of anyone who wants to participate is to put in place every necessary measures that will enable him or her to engage the weblink, just as the responsibility of anyone who wants to participate in the proceedings of a physical courtroom is to ensure that he goes to that particular court. Therefore, where an appreciable number of the public engages the web link, it will not be out of place to deem such proceedings as one done in the public and accessible by the public.[55]

4. Prospects of Electronic Legal Process in Nigeria

Prospects of electronic legal process are enormous with the skill to read and file from any place. It is just like possessing court room in the comfort of your room or office. With

[52] W Boyd, 'What is it good for? Using Interactive Video in Legal Education and Law Practice' (1999) 3 *the Journal of Information and Technology* (JILT).

[53] SC/CV/260/2020 (unreported).

[54] Victor and Kolawole (n.47).

[55] Ibid.

online legal process, you can be in another place working, or in another state for your holiday and embark on online legal process. Some of the prospects of online legal process are examined below:

It gives opportunity to counsel for both litigants to file case documents from their offices or homes right up to the filing deadline, without worry about postage, assistance of bailiff services or traffic bottleneck.

All Parties involved in a case, the presiding judge, court staff and the public can all review the case file instantaneously. Legal practitioners filing over the Internet inevitably create docket entries and docket sheets are updated immediately when documents are filed. It gives room for automatic verification in the form of a 'Notice of Electronic Filing' which can be sent by e-mail to the filer and case parties immediately after filing.[56]

E-legal process also promotes transparency which is a fundamental element of justice. Among the well-established principles is that, justice must not only be done, but be seen to be done. Therefore, the need to resuscitate public trust and confidence in the Nigerian judiciary system further supports relevance of adoption of e-legal process. E-legal process can also achieve the objectives of accountability and transparency by giving the public access to the court's judgments, procedures, and case information.[57]

Other importance of consideration and adoption of e-legal process is that, it has the potential of eradicating corruption in the judiciary.[58] Components of e-justice, such as automated case management system, electronic filing and online payment of fees completely prevent situation that may necessitate or prompt corrupt practices by the judiciary staff. With these features, the lawyers make payment and receive notification of schedule of court business in his office without contact with court officials. Thus, it is submitted that adoption of e-legal process is capable of eliminating or at least reducing issues of corruption in the Nigerian justice system.

Adoption of e-legal process in the administration of justice in Nigeria will bring greater convenience and flexibility in conducting court businesses. For instance, with the e-filing system in place, a lawyer can file processes from the comfort of his office or home with a single click; 24 hours a day, 7 days a week. The ability to offer clients the possibility of remote access 24 hours a day from anywhere in the world to communicate with their lawyers, order and receive the necessary services, pay by using various forms of electronic payments, the creation of Internet legal services. There are also 24/7 legal services appearing in the market that expand by the rules of network marketing.[59] Beyond the benefits or relevance of the electronic governance in court, the present realities of information age makes shifting to electronic platform in service delivery in both private and public institutions inevitable. Thus, the Nigerian judicial system must respond to, and keep up with the technological advancement.

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[56] Advantages of Electronic Filing, <https:// www.azd.uscourts.gov/efiling/advantages> accessed 28 Jan. 2022.

[57] J L Dubgyur, 'Judicial Reforms and Access to Justice Through The use Of Information and Communication Technology' ICT, in Bhutan, *It Management and Judicial Reforms in Bhutan* <www.judiciary.gov.bt/ html/education/.../IT%20Paper-Lungten.pdf>accessed on 14, Jan. 2022. J E. Mcmillan, 'The Potential of Computerized Court Case Management to Battle Corruption,' (Information Science Reference an imprint of IGI Global, 2009) 57.

[58] J E. Mcmillan, 'The Potential of Computerized Court Case Management to Battle Corruption,' (Information Science Reference an imprint of IGI Global, 2009) 57.

[59] G. E. Ageeva and Y S Syrov, 'GCPMED 2020 Global Challenges and Prospects of the Modern Economic Development Innovations in Legal Proceedings: Problems and Development Prospects,' (2020) <www. europeanproceedings.com e-ISSN: 2357-1330>, accessed 14, January 2022.

5. Challenges Facing Electronic Legal Process in Nigeria

The idea or modern reasoning informing the adoption of electronic legal processes in our courts is the need to smoothly and effectively file legal processes and slate the date before the appropriate court or for compliance purposes whatever the processes may be for without any delay. However, as necessary as the adoption sound, the implementation is not without hitches as the idea is tainted with many challenges forestalling the adequate practice and use of the modern technology in the Nigerian courts.

Lack of Basic IT Skill – It would not be out of place to reckon that majority of the staff that dominate the Nigerian courts are not literate in the use of computer not to mention their ability to use internet in filing, serving and registering court processes.[60] This lack of knowledge in information and communication technology has greatly hindered the smooth implementation and effectiveness of electronic filing of legal processes in courts. The most hit with the introduction of electronic legal process are the staff of the registry of the lower courts who are ordinarily not armed with the use of computers in their daily office routine. The staff is helpless as they lack the knowledge, or better put, as they are not computer literate. This is more obvious with the lack of provision on the part of the government to organise trainings and workshop in relation to the use of computer and technology for legal/judicial purposes such as e-signature,[61] slating dates, publishing judgment, enforcement and execution of judgments entries. Also, being computer literate is not part of strict requirement at the point of employment.[62]

Inadequate Legal Regime: The lack of adequate rules and practice direction on the use of ICT in the Court for the ease of filing also poses as challenge. The absence of a legal foundation on the introduction, mode of adoption, implementation and procedure to enable each and every actors of the judicial system to know what is required of them hinders the effectiveness of the adoption of the modern form of initiating legal process electronically. Provision of the Evidence Act 2011 on electronic evidence cannot be relied upon as a foundation for electronic process in the Courts. How do lawyers tender documents that have been filed electronically in court? How do parties bring in or adopt statement already in the courts system? There are more posers which can only be solved by the provision of laws and rules on electronic legal process. More so, it is known that the essence of lawyers is usually felt, not to use the word 'dependent,' on technicalities. Therefore, absence of legal regime may hinder lawyers' prowess in exhibiting the necessary technicalities that is likely to ensue on the matter of e-filing and fast- tracking. [63]

Inadequate Power Supply in the Court: Although, this problem is not peculiar to the judicial system. Erratic or lack of power supply hinders the implementation of electronic legal processes. The use of modern ICT is only achievable when there is constant supply of power, as a minute power outage can occasion serious delay and handicap the work of the court both at registry and in the court room while the court is sitting. The

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[60] A Asuquo, 'Examining the Obligation to preserve Electronic Evidence under the Nigerian Law' (2019) <https://dx.doi.org/10.2139/ssrn.3309035> accessed 27 Jan 2022;

[61] W H Abanikanda, 'Nigeria: E=commerce in Nigeria – Legal framework, Challenges and Prospect' Daily Trust (Abuja, 11 May 2021) <https://allafrica.com/stories/ 202105110212.html> accessed 27 Jan 2022, Brickmans Law, 'Electronic and Digital Evidence Admissibility of E-signatures in Nigeria: Limits, Burdens and Opportunity' (2021) <https://www.mondaq.com/ nigeria/ trials-appeals-compensation/ 1138936/electronic-and-digital-evidence-admissibility-of-e-signatures-in-nigeria-limits-burdens-and-opportunity>accessed 25 Jan 2022

[62] O B Uruchi, Information Technology and the Challenges Facing the Legal Profession in Nigeria (2015) 3 (2) *International Journal of Business & Law Research*, 110-123

[63] Ojo (n. 26).

implication or effect of lack of power supply OR power outage in the court where electronic legal process is fully adopted can be liken with the effect such will have in any hospital where there is power outage during surgery. It will definitely shut down proceedings absolutely and embarrassingly, thereby frustrating the justice system.

Internet Network Issues- The implication of a bad internet network is as serious as that of power outage. This is because the core of the efficient use of modern ICT rest solely on the provision of strong and reliable internet network. Unstable internet network frustrate the work of the registry and stunt the smooth running of the court. As there are many internet network providers in Nigeria, scouting for the supply of internet network by the providers is expected. The choice of the cheapest provider may not necessarily be good choice as it may not be the best in terms of the areas (location) where the network would be use or that the network is known to be generally poor. Poor network and electronic broadband render the work of the court unachievable.

Lack of Facilities and Infrastructure: Majority of the court rooms and environment are not in conducive state to accommodate the adoption of ICT. Lack of proper electricity wiring burns sockets and damage computers, collapse of court rooms which needs renovations and left unattended too, limited numbers of computers are available to the court staff and majority of this computers are in bad state, inadequate supply of backup system in the event that a system crashes and all information is lost, lack of provision for regular services and maintenance of ICT facilities, lack of provision of up to date anti-virus.[64]

Internet Hackers: Inherent in the narratives of issues relating to modern ICT is the issues of internet invaders otherwise known as hackers. Many of the court staff, identified earlier has been deprived of ICT knowledge do not understand the threat that comes with use of ICT. It is always difficult for them to be able to identify a possible threat until the hackers invade the court system and corrupt information in the system. Hackers take over, manipulate and corrupt information of the computer via internet. Rulings and judgment of the court may be re-written and re-processed. Dates may also be manipulated to suit the purpose of the invasion. This may not even be noticed by the staff of the court.[65]

There is also the challenge of educating users on the benefits of using electronic formats in order to reduce paper usage. Certain participants such as judges, court officials and lawyers are set in their old ways, thus no easily amenable to adapting to the utilisation of digital devices. Communication however plays a major role when any new idea or way of doing things is introduced. Thus, participants to electronic filing systems need to be convinced of its benefits and educated on its functionalities.[66]

CONCLUSION AND RECOMMENDATIONS

Law is a mechanism of social engineering which must develop with the society. Technology advancement and outbreak of coronavirus (COVID-19) has made the law evolve virtual hearings. Judiciary must therefore embrace the development. The introduction of virtual court hearing in Nigerian legal system is a welcome development. The law is dynamic and as such needs to grow to meet with the challenges posed by the pandemic outbreak and global trend. Although, The Constitution does not

[64] D M Abubakar, 'Use of Information Technology in Court room: Merits and Challenges' (2020) <https://nji.gov.ng/wp=content/uploads/2020/11/Use-of-Information-Technology-in-courtroom-Merits-and Challenges.Pdf>accessed 27 Jan 2022

[65] Ojo (n. 26).

[66] W Murray and G Pinder, 'Discussion Paper: E-filing Service Provider Model,' (Lex Electronica 2002) 14.

specifically provide for virtual court hearing but in as much as the same court empowers the heads of court to make practice direction, virtual court hearings cannot be said to be inconsistent with the provisions of the Constitution. The National Assembly is therefore enjoin to amend the Constitution to specifically make provision for legal electronic process.

This paper also recommends for amendment of the Constitution to make it mandatory for the courts to ensure that the facilities needed by the parties, their counsel and general public to accommodate electronic legal process are provided.

Electronic case management system should be introduced for court. Case management involves managing the day-to-day activities of the court such as case registering, case tracking, case planning, document management, scheduling of hearings and so on. An electronic case management system will ensure proper monitoring and tracking of case and it will enhance proper evaluation and monitoring of judges.

The relevant laws and rules of courts in Nigeria are not fashioned in a way to provide for electronic systems. So, those rules need to be amended to accommodate virtual operations. Most of the extant laws and rules of the courts were made several years back and they do not envisage e-process. However, section 84 of the Evidence Act, 2011 recognises computer generated documents. Unfortunately, under the same Evidence Act, 2011, the requirement for the admissibility of computer generated documents is cumbersome, which serve as a setback on the issue of e-evidence. In addition, the Court of Appeal (Fast Track) Practice Directions 2014, provides for e-filing. For instance, Paragraph 14 of the Court of Appeal (Fast Track) Practice Directions 2014, provides for electronic service and signatures, thus:

(1) A requirement that a document should be signed is satisfied if the signature is printed by computer or other mechanical means.
(2) A document served by electronic means is deemed to have been signed by the person who owns or subscribes to the electronic source account if its signature appears on the document or its cover message as the sender.
(3) Examples of electronic source accounts are email addresses and fax numbers.

While the provision in the new Practice Directions is commendable, a lot more has to be done in terms of adoption and adaptations by the justice sector in the use of the electronic system. Until laws are made in this regard, the applicability of the electronic method will remain a mirage.[67] The adequate provision of enabling laws and practice direction is germane because lawyers are adventurous, on the lookout for loop holes in the extant laws and thrive on technicalities,[68] thus in issues involving e-filing and fast-tracking, technicalities will definitely be employed.

Also, poor or inadequate funding of the judiciary adds to the drawback.[69] The paucity

[67] Y O. Alli, 'The Nigerian Evidence Act and Electronically –Generated Evidence: A Need to Fast Track the System,' in A Onigbinde and S Ajayi (eds), *Contemporary Issues in the Nigerian Legal Landscape. A Compendium in Honour of Prince Lateef Fagbemi, SAN* (Crown Goldmine Communication, 2010) 66-99; A S Asonibare and H T Akaje, 'E- Path to Effective Justice Delivery: The Nigerian Courts in Perspective,'<http://eprints.covenantuniversity.edu.ng/5276/1/Amended%20copy%20of%20reviewed%20paper%20titled%20E-%20Path%20to%20Effective%20Justice%20Delivery-%20The%20Nigerian%20Courts%20in%20Perspective.pdf> accessed 15 January 2022.

[68] See *Okafor v Nweke and ors.* (2007) 10 NWLR (pt. 1043) 521; *SLB Consortium v NNPC* (2011) 9 NWLR (pt. 1262) 317.

[69] P O Musa and R O Adeolu, ' An Assessment of the Judiciary on Administration of Justice and Governance in Nigeria (2020) 18 *Journal of Public Administration, Finance and Law* 78-88; I T Gambo, 'Financial Independence of the Judiciaries: A Mirage or a Reality,' being a Paper Presented at the National Workshop for Chief Registrars, Deputy Chief Registrars, Directors and Secretaries of Judicial Service Commissions/Committee. Holden at National

of fund for the judiciary was apparent to the extent that the Attorney General of the Federation and the Minister of Justice attested to it in a session he had with the senate.[70] The courtrooms of most state judiciaries are decrepit with the air conditioners not functioning.[71] The issue of introduction *and* operation of full automation of the court processes is better imagined in such an impecunious environment.

In conclusion, the Judiciary should be mandated to have up to date website that will contain all information about the judges in the jurisdiction. This website will be regularly updated with cases and lawyers should be able to get information about the cases such as the next adjourned date and so on.

Judicial Institute on the 4th of September,2019,https://nji.gov.ng/wpcontent/uploads/2020/11/Financial-Independence-of-the-Judiciaries.pdf accessed 15 January 2022; Innocent Adaba, 'Judiciary and Challenge of Funding' *Vanguard* (Lagos, 20 December 2018) https://www.vanguardngr.com/2018/12/ judiciary-and-challenge-of-funding/ accessed 15 January 2022; Wale Odunsi, 'Nigeria's judiciary suffering inadequate funding – Malami tells Senate' *Daily Post* (Lagos 8 November 2021) https://dailypost.ng/2021/11/08/nigerias-judiciary-suffering-inadequate-funding-malami-tells-senate/ accessed 15 January 2022; K Odeku and O Animashaun, 'Poverty, Human Rights and Access to Justice: Reflections from Nigeria' (2012) 6 (23) *African Journal of Business Management* 6754-6764.

[70] W Odunsi, 'Nigeria's Judiciary Suffering Inadequate Funding – Malami tells Senate' *Daily Post.*

[71] Ibid.