

A PRACTICAL APPLICATION OF TECHNOLOGY TO MORDERN LAW PRACTICE IN NIGERIA VIS-À-VIS THE NIGERIAN LEGAL SYSTEM: A LEGALTECH ANALYSIS

(Making a Case for the Abolishment of Fresh Hearing in *Trial De Novo* by the Application of Audio-visual Coverage of Testimonies)¹

Abstract

The COVID-19 pandemic brought along with it a wave of transition in all of the world's institutions and economies. These changes have hitherto been called for, albeit with very less attention paid to it because of the lack of a quick realization of the essence on the part of concerned stakeholders. However, the surge of the pandemic brought with it an imperativeness for the world to reconsider its conservatism on these overt yearnings. One of such is the increased use of technology in legal systems, which for some countries of the world, had become a norm to a recognizable extent. For Nigeria, given the ostensible insistence on analogue systems, players and stakeholders had to fully reconsider the situation. And so, because the pandemic tended implicitly to put the world to a stop, and the legal system had to find a way to go on lest there be anarchy, the system had to apply the use of technology in a more drastic way. Till date, albeit reluctantly, the Nigerian Legal System (NLS) having learnt a thing or two, have consistently driven itself towards ensuring a continuous growth alongside the dynamism (in terms of technology) of the society it tends to govern, like the allowance of virtual hearings. This work tends to bring to fore a practice of justice delivery in the NLS that yields one of the greatest injustice and inhumanity on litigants; the practice of fresh hearing in trial de novo. The writer is able to demonstrate the unjust hardship occasioned on litigants on the strength of this practice, and the writer posits that such hardships could be avoided by the application of audio-visual technology. This work employs the analytical and doctrinal methods of research, and alludes to primary and secondary sources of law, in its submissions.

Keywords: Trial de novo, LegalTech, Jury, Audio-visual, Practical Application of Technology.

Introduction

Law has consistently proven to be a veritable tool in the direction of affairs of a society it governs. From onset, society was governed by customs, traditions and myths, which relied hugely on affirmative belief and social sanction to achieve enforceability. Sequel to that, the secular state came to be, and took eminence in all the institutions of the society that emerged alongside. As a reaction, the importance of individual was asserted by thinkers and philosophers. There were revolutions and political changes. The necessity of balancing the welfare of the society and the individual was realized.²

Society and human life always go together. Every human being expects that his or her desire be fulfilled, for which their arise conflict of desires or claims which come under the term 'interest'. It is impossible to fulfill all the desires of a human being. So to fulfill the desires of maximum human beings for the welfare of the society, the concept of Social Engineering was coined by Roscoe Pound. Social engineering is based on the theory that laws are created to shape the society and

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² V. D. Mahajan, 'Jurisprudence and Legal Theory', 5th ed reprint 2006, Eastern book company, Luknow.pg 605, para 1

regulate the people's behavior. It is an attempt to control the human conduct through the help of Law.³

The secular state in its bid to socially engineer the continuously emerging areas of human endeavors had to employ law to regulate every aspect of human endeavor. In the NLS, professions, religions, vocations, politics, trade, and etc., are all thriving against the bedrock of existing regulations, all of which has their place in the *corpus juris* of the Laws of the Federation of Nigeria. *A for tiori*, the Constitution give powers to the National and States Legislature to make laws to regulate fields of human endeavor.⁴

There is therefore a need for the Laws of any society to strive to meet up with the dynamism of the society. Put better, there is a grave necessity for laws to as a matter of fact, go before the society. The Laws should be proactive, rather than reactive, hence Oguntade, JSC, citing the *dictum* of Lord Denning, MR, stated thus in **AMECHI v INEC**⁵ with approval;

"If we never do anything which has not been done before, we shall never get anywhere. The law will stand still whilst the rest of the world goes on and that will be bad for both."⁶

It is thus of a grave necessity that while the society finds a way to advance on day to day basis, the laws must also be as busy, in evolving alongside. Most beneficially to the polity, the law should in fact speculate and envisage future situations of likely issues, disputes, human endeavor, patterns and styles of every aspect of the society, and place frameworks and regulations for these societal advancements to simply meet. The recent uprising on the use of Cryptocurrency in Nigeria, and the reaction of the Central Bank of Nigeria to it, exemplifies the lukewarm reactive attitude of our law making bodies towards societal regulation.

There is no gainsaying that technology have come to stay, and that it has permeated all spheres of human endeavor. The effect of the COVID-19 pandemic on the universe is a lesson for the NLS, and so far, the NLS continues to strive to meet up with the demands of a 21st century technology driven society.

The Nigerian Legal System and the Practice of Fresh Hearing in *Trial de novo*

One of the salient characteristics of the NLS is that a judge is both an arbiter of fact; jury on questions of fact, and an arbiter of law; judge on questions of law. Thus, as a function of legal psychology, and in *tandem* with legal realism, a judge is required to experience witnesses first hand. *A for tiori*, the *viva voce* testimonies of the witnesses alone do not determine the findings of fact *simpliciter*. A judge watches the demeanor of the witness while these testimonies are taken, and same contributes to the believability or otherwise of that witness. This jurisprudence forms the most potent argument in favor of fresh hearing in trial *de novo*.

Trial *de novo* is interpreted to mean "fresh trial" or "new trial". It occurs where certain pre-conditions necessitate that the hearing in a matter be re-litigated.⁷ In circumstances warranting

³ S. Kumar, 'What is Social Engineering', iPleaders Intelligent Legal Solutions, <https://blog.ipleaders.in/all-about-social-engineering/> accessed at 4:34 pm, 11/20/21.

⁴ 2nd schedule, Constitution of the Federal Republic of Nigeria, 1999 (as amended).

⁵ Rt. Hon. Rotimi Chibuike Amaechi v INEC & 2 ors, S.C. 252/2007 (unreported).

⁶ *Packer v. Packer* 1954 P. 15 at 22, per Denning, M. R.

⁷ O. Olalere, H. Benson and I. Oyemade, 'Effects Of An Order Of Trial De Novo On Orders Made At Interlocutory Stage By The Previous Trial Judge', <https://www.mondaq.com/nigeria/civil-law/1106424/effects-of-an-order-of-trial-de-novo-on-orders-made-at-interlocutory-stage-by-the-previous-trial-judge> accessed at 10:31 am, 11/22/2021.

the application of trial *de novo*, the previous trial is nullified, and a new trial ensues. Trials begin with hearing and end at judgment, and therefore, a fresh hearing commences a trial *de novo*. In **ALHAJI ISIYAKU YAKUBU ENT. LTD V. TARFA & ANOR**⁸, the court, per Sankey, JCA, held the valid opinion that the consequences of a retrial order or a *de novo* trial, is an order that the whole case should be tried anew, as if no trial whatsoever had been held in the first instance. Circumstances that could necessitate a trial *de novo* would include where a judge is deceased, elevated, retired, transferred, or removed from his judicial office, and the head of such Court reassigns the case file to a new judge. Such new judge must begin the trial *de novo*⁹. Another situation is where an appellate court orders a retrial¹⁰. In all, it is the desire of justice to ensure that the judge who listened and watched the witnesses give evidence, and recorded their testimonies and demeanor, be the one who writes the judgment.

An empirical consideration of the foregoing trumps the argument, in that in the NLS, trial judges get to experience a handful of witnesses on an average, in any juridical day. It is also true that trials in Nigeria could span between months to years, before judgment is rendered. With the frequency of recording many witnesses over a considerably extended time before writing judgment, it is unreasonable to argue that judges would as a matter of fact remember the specifics of these witnesses that testified before them, during judgment writing. In any case, if a fresh judge is availed the audio-visual records of the said witnesses, then the prime argument in favor of fresh hearing is nailed, as a fresh judge could simply write a fresh judgment from the records.

Constitutionally, fair hearing must be within a reasonable time¹¹. Reasonable time must mean the period of time which, in the search of justice, does not wear out the parties and their witnesses, and which is required to ensure that justice is not only done, but appears to a reasonable man to be done.¹² The unintended consequence of fresh hearing in trial *de novo* is that it ultimately denies justice, or brings about pyrrhic victories to litigants. Many cases suffer fresh hearing multiple times. Cases are protracted, and litigants are worn out. Witnesses also become smarter with each new opportunity to have another bite at the cherry. In some other cases, witnesses die, or relocate to remote places, making their reproduction in court impracticable. The whole essence of the system, being justice, is nipped in the bud.

The Proposal; a Case for the Use of Visual-audio Facilities for Recording Hearings in Court

The writer proposes the employment of visual-audio facilities during hearing in courts. The issue of audio-visual coverage, and the tension between courts recognizing the social benefits of such coverage while expressing concern of allowing it, have been discussed around the globe in various contexts and circumstances. It continues to be revisited by judiciaries, policy makers, and the media in many societies. For example, in 2013, England allowed cameras into its court of appeals. In the same year, the U.S. federal court system completed a five-year-long experiment allowing cameras in federal courts, while the state courts continued evaluating their own existing regimes. New Zealand published new guidelines for its audio-visual coverage policy.¹³ These jurisdictions have for various reasons allowed audio-visual recording in their courtrooms. So why not Nigeria?

⁸(2014) LPELR-24223(CA) (pp. 26-27, paras. G-A).

⁹ Etinyin E. H. Coco-Bassey & Anor v. Mr. Patrick Offiong Bassey, CA/C/271/2014 (unreported).

¹⁰ Enang v. Umoh & Ors., (2012) LPELR-8386(CA)

¹¹ Section 36, Constitution of the Federal Republic of Nigeria, 1999 (as amended).

¹² Ariori v Elemo, 1983 LLER/80/81SC, Per Obaseki, JSC.

¹³ Itay Ravid, 'Audio-Visual Coverage of Court Proceedings in a World of Shifting Technology', Cardozo AELJ, Vol. 35:41, 2017.

A proper budgeting, policy consideration, and regulation would readily have the courts across Nigeria fitted with audio-visual cameras, and data storage facilities as well, for the specific business of hearing of witness testimonies. Court staffs are either to be trained on the operation and storage, or newer staffs employed specifically for this purpose. The courts are to ensure minimal interference with facilities, and storage could most preferably be achieved with cloud options, and/or hardware.

Again, the battle of challenging the record of a trial court is also done away with, as a reproduction of the recording to an appellate court settles all disputes with ease. It is the firm view of the writer that if audio-visual facilities are set up to record hearings, and the recorded hearings stored in a safe medium capable of reproduction of these recordings, then judges would be availed the opportunity of assessing witnesses in trials *de novo* without having to call them back.

CONCLUSION

It has been established in the course of this work that law has a duty owed to itself (carried out by the institutions of the society) to ensure it is well fortified at any point in time to meet the needs of the society. Thus, as the society improves and changes occur, the law is expected to follow suit, or preferably, go before the society. It has also been established that technological advancements in the 21st century are widespread, extra-territorial and persistent. The NLS in the light of the foregoing facts, must allow technology to infiltrate her system the more, and must apply it wisely to aid her cause, while maintaining her tenets. The application of audio-visual coverage of testimonies during hearing of witness testimonies is one that would serve the utmost interest of the populace, whom the laws must always strive to ensure their greater happiness. Tales of injustice occasioned as a result of delay in judicial processes would become history, and public confidence in the Judiciary as the common man's last hope would be reinforced.