

THINGS TO NOTE ABOUT VIRTUAL COURT SITTINGS IN NIGERIA.

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The world is facing yet another global pandemic in almost a 100 years - The Corona virus (Covid- 19) and with social distancing being the only available panacea, public gatherings have been banned indefinitely.

Governments all around the world have placed mandatory bans on social gatherings to enable them curb the spread of the virus. In the case of Nigeria, these bans have come with adverse implications one of which is the closure of the judiciary. However, we have seen some countries all over the world leverage on the availability of information communication technology to facilitate virtual court hearings.

With Nigeria having 191,766 legal cases yet to be concluded by the judiciary as at the beginning of the 2018/2019 legal year as reported by the Punch newspaper, a total closure of the courts will lead to a pile up of cases which will in turn create an excessive backlog that may cripple the efficacious administration of justice through the judiciary, and it is to this end that several provisions on remote court hearings have been created.

The National Judicial Council (NJC) in the wake of COVID-19 pandemic and the inability of courts to hold courtroom proceedings had taken steps to ensure continued administration of justice through virtual proceedings in accordance with global best practices, with some State Chief Judges coming out to openly adopt and implement the NJC guidelines. The guideline with REF NO. NJC/CIR/HOC/II/660 and headed RE: NATIONAL JUDICIAL COUNCIL COVID-19 POLICY REPORT: GUIDELINES FOR COURT SITTINGS AND RELATED MATTERS IN THE COVID-19 PERIOD - in paragraph E stated thus;

“E. VIRTUAL OR REMOTE COURT SITTINGS

1. Physical sittings by courts in courtrooms should be avoided as much as possible during this COVID-19 period. Such physical court sittings must be limited only to time bound, extremely urgent and essential matters that may not be heard by the court remotely or virtually. Heads of Courts have the responsibility for determining the matters that fall within these set boundaries and shall publish the list thereof for the information of judicial officers, litigants, Counsel and members of the public. Such list may be reviewed by the Head of Court from time to time as necessary and required.

2. Virtual court sittings (alternately referred to as “remote court sittings” or “online court sittings”) should be encouraged and promoted by the courts and Counsel; the courts should insist on such remote hearings for matters that do not require taking any evidence. All judgments, ruling and directions may be delivered and handed down by the courts in and through remote court sittings.

3. Save for extremely urgent and time bound matters, contentious matters that require the calling of evidence in a physical courtroom setting should not be called up by the courts at this time.

4. As the courts and Counsel become proficient in virtual court sitting arrangements, the courts may, on a trial-run basis gradually experiment with taking witnesses and evidence virtually. This is important given the fact that no one can estimate with any degree of certainty how long the COVID-19 pall will hang over humanity or when exactly a therapeutic cure or vaccine may be found for the disease.

5. The following guidelines shall apply for the determination of the location for the virtual court sitting:

- a) Subject to the further guidelines hereunder, the judicial officer(s) and the court officials and security personnel shall, as a default arrangement, sit and be in the regular courtrooms for remote court sittings. Except with the leave of court, only the judicial officer(s) and the court officials and security personnel shall be the ones in the courtroom for any virtual court sitting.*
- b) Save with the consent of the court or the prior written agreement of the parties, it is not permissible for any of the parties to a matter that is being heard virtually to be in the courtroom with the judicial officer(s) during the virtual court sitting while the other party or parties to the same matter join the proceedings remotely.*
- c) Subject to the prior approval of each Head of Court, judicial officers may conduct virtual court sittings from their respective chambers. The further provisions of Item 5(a)*



*above shall apply *imparimateria* to all such virtual court sittings that are hosted in chambers.*

- d) For the purposes of delivering judgments or rulings, the judicial officer(s) may liaise with the court officials and conduct the virtual court sitting from whichever location the judicial officer may be, provided that the facilities specified in Item E.6 below are available in such locations. This provision addresses in particular judicial officers who may need to deliver time-bound judgments and/or rulings but are marooned in locations away from their usual stations consequent upon the present national lockdown and travel restrictions pursuant to COVID-19.*
- e) Further to sub-paragraph (d) above, where virtual hearing is not possible, a judicial officer that is marooned outside his station, may upon obtaining the fiat of his Head of Court, deliver the judgment or ruling of his court that is time bound or urgent in the courtroom of any of the Divisions of his Court closest to his location. The provisions of this Guideline in regard to physical sittings of the courts shall apply in all respects to such sitting of the court for the delivery of the judgment or ruling.*

6. In order to host online court sittings, the courts shall ensure the availability of the following facilities in the locations or respective locations where the judicial officers and the court officials may be located:

- a) Fast-speed, pervasive and reliable Internet connectivity;*
- b) End-user Hardware/Devices (i.e. desktops, laptops, tablets, smart phones – any one of these or a combination thereof);*
- c) Collaborative Platform (e.g. MS365 [which incorporates Microsoft Teams], Zoom, Google Meetings, etc.). These require payments of subscription fees to the software manufacturers and subsequent installation of the software in the end-user hardware devices. Some of the software have provision for multiple or group user subscriptions. These may be cost-efficient for standalone judiciaries – Federal or State (e.g. the Supreme Court, each Division of the Court of Appeal, Divisions of the National Industrial Court or the Federal High Court, etc.); and*
- d) Electricity power for, amongst others, the end-user device and ancillary equipment for the duration of the court sitting.*

7. Litigants and their Counsel shall be responsible for ensuring that they have the facilities stipulated in Item E.6 above that would enable them to join and participate in the remote court sittings from their respective locations.

*8. The provisions of Item D in regard to the service of hearing notices by the court on parties shall apply *imparimateria* to virtual court sittings and the contents of such hearing*



notices shall be the same as if the hearing notices were for physical court sittings provided that the following additional details and information shall be contained and prominently stated in the said hearing notices:

- a. The hearing notices must expressly state and inform the parties that the court sittings, or hearings shall be conducted virtually, and that, save as stipulated in Item E.5(b), Counsel and their clients are not expected in the courtroom.*
- b. The time for the remote hearing and the details that would enable the parties and their Counsel to join and participate in the court sitting or hearing should be prominently set out in the hearing notice.*
- c. The details of the channel or social media platform through which there would be live streaming of the virtual court proceedings for public viewing in the terms of Item E.11 hereof shall be specified in the hearing notice.*

9. Further to the preceding provisions in Item E.8, each shall publish for the attention of the general public on a weekly basis the matters that would be heard remotely by the court for that week. The publication shall be effected in the usual manner that the court publishes information about its weekly sittings including publishing on the court's notice boards. The publication shall include the information and details set out in Items E.8(a) to E.8(c).

10. The court shall be in charge and in control of the virtual court sitting proceedings – not any different from the control and management that judicial officers exercise in a physical court hearing or setting– and the following additional guidelines shall apply to any such proceedings:

- a) The courts may enlist the assistance of a technically proficient and trained court personnel to assist in handling and managing the end-user device/hardware (see Item E.6(b) above) and the technical issues related to the conduct of the virtual court sitting.*
- b) The court shall have discretion in the allotment of time to Counsel for making submissions or adopting addresses, subject, in all respects to the provisions of the Court Rules and not any different from what obtains during the regular physical courtroom sittings.*
- c) The collaborative platforms (MS365, Zoom, Google Meetings, etc.) are equipped with electronic recording functionalities for recording virtual court proceedings. The Courts shall make use of those functionalities for the recording of the proceedings in addition to any other recording methods that the court may wish to deploy.*



- d) *The court shall, based on any party's application, provide to the parties certified true copies of the record of any virtual court sitting or proceedings. The parties shall be bound by such courts' records.*
 - e) *Without prejudice to the preceding provisions, Counsel may apply to the court and the court may permit the recording of any virtual court sitting or proceedings by such Counsel for his personal use and records, using the electronic recording functionality in the Counsel's end-user device. Where the court permits any Counsel in any proceedings to carry out such electronic recording of its virtual sitting, all the other Counsel in the proceedings shall be deemed to have been also given the same authorization by the court and the court's records shall at all times record the application of Counsel for such independent recording and the consequential grant of the application by the court.*
 - f) *Counsel shall ensure that their respective remote locations from where they participate in the virtual court sitting are devoid of distractions and interferences to the proceedings. Counsel shall be responsible to the courts for ensuring that their clients comply with this provision in the event that the clients join and participate in the proceedings from different locations.*
 - g) *Except with the leave of the court and a party's Counsel, the fact that a party may join a virtual court sitting from a different location and using a different end-user device does not confer on the party the right to be heard where he or she has a Counsel and the Counsel is present for the court sitting.*
 - h) *Except with the leave of court or as may be directed by the Court, Counsel shall be properly robed for any and all virtual court sittings and shall at all-times address the Court on his or her feet.*
11. *n regard to virtual court sittings by appellate courts, the following additional guidelines shall apply:*
- a. *Each of the Justices in the panel may participate in any virtual court sitting from Their Lordships' respective chambers particularly where it is not possible for the Justices to maintain the required 2-meter or 6-feet social and physical distances in the courtroom between themselves and also between Their Lordships and the court registrars.*
 - b. *In the event of travel restrictions which result in several Justices of the appellate courts being marooned in various locations away from their stations(as in the present circumstance), the appellate courts may explore the possibility of constituting panels for the dispersed Justices to sit virtually from their respective locations provided that:*



- i. The Justices have technically proficient personnel who can assist the Justices in coordinating and managing the collaborative platform and the technical requirements of the Justices and the remote court sittings; and*
 - ii. The Justices have in their respective locations*
 - c. The facilities specified in Item E.6 hereof and are able to participate in the remote court sitting;*
 - d. Requisite court official(s) or support personnel that would assist the Justices for the remote sitting; and*
 - e. The files, Records of Appeal, and other processes for an effective and comfortable participation in the virtual hearing.*
- 12. In order to satisfy the requirements for public hearing of matters:*
- a) Heads of courts shall ensure that there is live streaming of all virtual court proceedings through a publicized Uniform Resource Locator (“url” or “web address”) or the court’s or any other social media channel so that members of the public can observe the proceedings.*
 - b) The details the virtual court sittings shall be published in the usual manner that the court generally publishes its regular sittings provided that such publications shall specify the nature of the sitting – i.e. remote proceedings instead of the regular physical courtroom sitting– and shall indicate the web address or social media channel where there would be live streaming of the proceedings.*
- 13. The Heads of Courts may publish such additional guidelines and/or Practice Directions for the conduct of online court sittings as the circumstances and exigencies of each judiciary may dictate.”*

It is important to note that these guidelines do not act as a replacement or substitute for the respective rules of courts, they merely complement the rules and make specific provisions that would guide justice administration for as long as COVID-19 pandemic subsists and possibly beyond.

It is also worthy to note, that the guidelines do not supersede the constitution of the federal republic of Nigeria, and as at such the implementation of these guidelines may create a lacuna that can be exploited by litigants if not properly backed by the grundnorm. The Nigerian senate in a bid to bridge that gap have passed for first reading a constitution-alteration bill seeking for the legitimization of virtual court proceedings.

The Bill entitled: **“1999 Constitution of the Federal Republic of Nigeria (Alteration) Bill, 2020 (SB. 418)”**, is sponsored by Michael Opeyemi Bamidele, and is aimed at



ensuring the much-needed corresponding amendment of relevant provisions of the Constitution of the Federal Republic of Nigeria (1999, as amended) in giving legal backing to virtual court proceedings.

The provisions of the Bill as contained in the draft copy include Section 36 sub-section (3) which states thus:

“This section is hereby amended by the addition of the following: “Provided that nothing in this subsection shall invalidate proceedings of a court or the proceedings of a tribunal relating to matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) where same is held by remote hearing or any virtual means now in existence or yet to be developed.”

“Section 36 subsection (4) is hereby amended by addition of sub-paragraph (c) as follows: (c) nothing in the foregoing paragraphs shall invalidate proceedings of a court or the proceedings of a tribunal relating to matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) where same is held by remote hearing or any virtual means now in existence or yet to be developed.”

“Section 36 subsection (12) is hereby amended by addition of the following subsection (13): In this section, “remote hearing” means proceedings or hearing of court conducted via zoom, skype, WhatsApp video or any other social media platform or technological innovation.”

Whilst we await the second reading and further determination of the bill, the Lagos state Judiciary has held the first ever virtual court session in Nigeria, tagged ID/9006C/2019 held on Monday the 4th Of May 2020 at the Ikeja High Court in Lagos, where one Mr. Olalekan Hameed was sentenced to death, for the murder of his employer 76-year-old, Mrs. Jolasun Okunsanya on December 1st, 2018. The proceedings were validated by Lagos state Chief Judge, Justice Kazeem Alogba, in line with the remote model of justice, which Lagos state adopted on May 4th, 2020.

Without further ado, it is clear that a litany of issues may arise from the implementation of the virtual court system in Nigeria. There is no doubt that this is a great stride towards progress as we cannot suffer justice to be stagnated by the pandemic. More so, the Nigerian judiciary may simply be incapable of withstanding a complete indefinite closure due to the impact that may arise upon its reopening from the massive inflow of litigants and cases which would have accumulated over the period of its closure. Pending the constitutional legitimization of this process, it is in our collective best interest that we both as lawyers and litigants undergo proper trainings to be able to handle this new reality and accordingly seek to exploit this new form of justice dispensation to its fullest benefits as we await return of normalcy if there shall be any.



We would also recommend that in view of this new process becoming a permanent feature of the Nigerian judiciary system in the post Covid 19 era, that the Council for Legal Education update its curriculum to reflect these novel provisions and thus serve as an educative reference point for a new breed of law students to be able to learn about the role of information communication technology in the administration of Justice. Perhaps these new strides will serve as a glimpse of the future for what a modernized judiciary will look like.

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