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Legal Guides**



Practical cross-border insights into litigation and dispute resolution work

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Resolution
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Contributing Editor:
Greg Lascelles
Covington & Burling LLP



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1 Litigation – Preliminaries

1.1 What type of legal system does your jurisdiction have? Are there any rules that govern civil procedure in your jurisdiction?

Nigeria is a common law jurisdiction and its civil procedure rules are contained in the (i) Constitution of the Federal Republic of Nigeria 1999 (as amended) (“**Nigerian Constitution**”), (ii) statutes creating various courts, (iii) civil procedure rules made by heads of the various courts, and (iv) decisions of courts interpreting various rules of civil procedure.

1.2 How is the civil court system in your jurisdiction structured? What are the various levels of appeal and are there any specialist courts?

The Nigerian court system is structured into courts of first instance (trial) courts and appellate courts. Courts are also divided into (i) Federal and State courts, and (ii) superior and inferior courts. A superior court is a court established by the Nigerian Constitution, while an inferior court is a court that may be recognised by the Nigerian Constitution but is not established by same; for instance, Magistrates’ Court, Customary Courts and Sharia Courts.

Appeals flow from courts of first instance (such as the Federal High Court, the National Industrial Court and the High Court of the Federal Capital Territory and other States which are courts of coordinate jurisdiction) to the Sharia or Customary Court of Appeal (for Islamic or customary law disputes, respectively), the Court of Appeal, and finally to the Supreme Court. Please note that the Supreme Court only takes appeals from the Court of Appeal and is the final arbiter in the country.

There are specialised courts in Nigeria, such as the National Industrial Court of Nigeria (“**NICN**”), which has exclusive jurisdiction over labour and employment matters, and the Shariah and Customary Courts, which have exclusive jurisdiction over Islamic law and customary law matters.

1.3 What are the main stages in civil proceedings in your jurisdiction? What is their underlying timeframe (please include a brief description of any expedited trial procedures)?

The main stages in civil proceedings in Nigeria include: (i) commencement of the action in court by filing the originating and supporting processes; (ii) pre-trial or case management conference, during which period interlocutory applications are

usually heard and the matter may be referred to the multidoor courthouse for amicable resolution; (iii) plenary trial; (iv) filing and adoption of final written addresses; and (v) delivery of judgment by the court. A civil proceeding typically takes an average of two to three years from commencement to conclusion.

It is possible to have expedited trial procedures in some States. For instance, in Lagos, there is a Fast Track Procedure through which the whole proceeding is expected to be completed within 90 days. For a case to qualify for this procedure, the claim or counterclaim must be for liquidated monetary relief and not less than NGN 100,000,000.00, or it must involve a mortgage transaction, charge or other securities.

1.4 What is your jurisdiction’s local judiciary’s approach to exclusive jurisdiction clauses?

Nigerian courts are not averse to exclusive jurisdiction clauses due to the propensity to uphold the sanctity of contracts. However, the party seeking to enforce an exclusive jurisdiction clause must show that there is a real connecting factor between the contract, the parties and the selected jurisdiction.

1.5 What are the costs of civil court proceedings in your jurisdiction? Who bears these costs? Are there any rules on costs budgeting?

The costs of civil proceedings in Nigeria include that of filing court processes, engaging counsel and, in certain circumstances, payment of penalties for late filing or truncating court dates. Generally, each party bears the cost of the proceedings, but the court has the discretionary power to award costs against the losing party at the conclusion of the proceedings.

1.6 Are there any particular rules about funding litigation in your jurisdiction? Are contingency fee/conditional fee arrangements permissible?

The Rules of Professional Conduct for Legal Practitioners, 2007 (“**RPC**”) prohibits a legal practitioner from funding and bearing the cost of litigation. However, the RPC provides that a lawyer may agree to advance expenses on a suit, as a matter of convenience and subject to being reimbursed. Furthermore, the RPC permits lawyers to be engaged on a contingency fee arrangement, provided the fee arrangement is reasonable.

1.7 Are there any constraints to assigning a claim or cause of action in your jurisdiction? Is it permissible for a non-party to litigation proceedings to finance those proceedings?

Nigerian law does not recognise the assignment of a claim or cause of action. A party must have sufficient *locus* in the claim before the court can assume jurisdiction over same. Further, being a common law jurisdiction, the English common law principles of champerty and maintenance are applicable and, as such, non-party litigation finance is considered illegal.

1.8 Can a party obtain security for/a guarantee over its legal costs?

Typically, parties bear their respective costs in litigation under Nigerian law. However, security for costs may be granted in limited circumstances. Furthermore, a party seeking such an order is expected to provide an undertaking to cover the counterparty's loss occasioned by the order in the event that the order ought not to have been granted.

Also, under the Admiralty Jurisdiction Act 1991, the court may, where a ship or other property is under arrest in a proceeding, and where an application for a stay or dismissal of the proceedings is being sought on the ground that the claim concerned should be determined by arbitration (whether in Nigeria or elsewhere) or by a court of a foreign country, order that the requesting party should provide satisfactory security for the release of the ship or any other property involved in the proceeding.

Security for costs could also be obtained where either of the party has no assets in the country that could be used to satisfy judgment sums in the event that a liability crystallises.

2 Before Commencing Proceedings

2.1 Is there any particular formality with which you must comply before you initiate proceedings?

Yes. A party initiating a proceeding must ensure that: (i) it has sufficient *locus* to institute the claim; and (ii) the action is instituted in the court with the requisite jurisdiction to hear the particular cause of action, and with the appropriate pre-action steps taken including the service of a pre-action notice, where it is required by statute or complying with the mandatory pre-action protocol procedure for matters commenced in the High Court of Lagos State.

2.2 What limitation periods apply to different classes of claim for the bringing of proceedings before your civil courts? How are they calculated? Are time limits treated as a substantive or procedural law issue?

Limitation of actions vary from State to State, although most State's laws mirror the Limitation Law of Lagos State. Under the Limitation Law of Lagos State, actions in contract and tort have a limitation period of six years. An action for negligence, where damages include personal injuries, has a limitation period of three years, while actions claiming damages for slander have a limitation period of two years. Where an action is to recover a penalty or forfeiture, the limitation period is two years. Where an action is upon an instrument under seal to recover any principal sum secured by a mortgage or charge; arrears of interest in respect of any sum of money secured by a mortgage or charge; arrears of an annuity charged on movable property; or an action

to enforce an arbitration award where the arbitration agreement is under seal, the limitation period of such action is 12 years. Also, an action to enforce a judgment obtained in a Nigerian court cannot be brought after the expiration of 12 years from the date on which the judgment became enforceable. Where the judgment is a foreign judgment, the action to enforce it must be brought within a period of six years.

The computation of the limitation period commences from the date the cause of action accrued, to the date the action is filed in court. The computation is done by checking the statement of claim which will disclose when the cause of action accrued, and when the action was filed in court.

It is also worth adding that where an action is instituted in a court that lacks jurisdiction and is struck out for that reason, the time expended in the wrong court will be discounted for purposes of computation of time under the relevant statute of limitations.

Failure to commence an action within the time limit provided by law may vitiate the proceedings.

3 Commencing Proceedings

3.1 How are civil proceedings commenced (issued and served) in your jurisdiction? What various means of service are there? What is the deemed date of service? How is service effected outside your jurisdiction? Is there a preferred method of service of foreign proceedings in your jurisdiction?

Civil proceedings in Nigeria may be commenced in four ways: (i) writ of summons; (ii) originating summons; (iii) originating motion; and (iv) petition. These processes are referred to as originating processes.

An originating process must be served personally on the defendant by the bailiff of court or any other process server appointed by the court. Where personal service cannot be effected, the claimant may apply to the court for leave to serve in any other manner agreeable by the court. Such service is referred to as substituted service and may be effected by pasting the originating process at the last-known address of the defendant or publishing same in a national daily. Please note that a company may be served through its director, secretary or by dropping same at the registered office address of the company. A company cannot be served by substituted service.

Service of subsequent processes filed in a suit is not required to be served personally on the recipient party and are, by law, expected to be served on the counsel who has entered an appearance for the said counterparty. Several courts are beginning to embrace service of court processes by electronic means. However, such electronic means must be shown to be the usual means of communication by the counterparty or its counsel, and is not typically used for originating processes.

Service of court processes are deemed complete upon deposition and filing of an affidavit of service which contains facts such as, *inter alia*, the date of service, the party served with the processes and the person who effected service of the processes.

Service of court processes outside Nigeria is governed by the various rules of court. Processes are typically served using courier companies. Under the Lagos State civil procedure rules, for example, parties may by agreement determine where and how service is to be done. Further, where there is a convention between Nigeria and the country where service is to be effected, a request in Form 10 attached to the rules may be filed directly through diplomatic channel or through the judicial foreign judicial authority. In the absence of any agreement or convention, a praecipe in Form 8 attached to the rules of the High Court civil procedure rules may be filed.

3.2 Are any pre-action interim remedies available in your jurisdiction? How do you apply for them? What are the main criteria for obtaining these?

Generally, there are no pre-action remedies under Nigerian law. However, the Lagos State judiciary pursuant to the Pre-Action Protocol Rules recently provided for a procedure which allows a party the opportunity to obtain pre-emptive injunctive reliefs before filing a substantive action. A pre-emptive injunctive remedy (usually a freezing or restraining order), is usually granted in the interest of justice or to prevent irreparable damage or a serious mischief. The Federal High Court rules contain a similar provision that allows a plaintiff to obtain a preservative order before the action is filed.

To obtain a pre-emptive remedy, the requesting party is expected to: (i) issue and serve on the prospective defendant a memorandum of claim detailing the dispute between the parties and the reliefs which will be sought (in the case of a prospective claimant), or a response to the memorandum of claim with its accompanying documents (in the case of a prospective respondent); and (ii) apply to the court *vide an ex parte* originating application seeking the relevant relief.

Instructively, to qualify for a grant of a pre-emptive remedy, the requesting party must show, *inter alia*, that: it has a legal right to assert; there are substantial issues of law involved in the impending suit; it will suffer more losses than the counterparty if the application is refused; and the asset or action which is the subject matter of the suit being complained about is still subsisting, etc.

3.3 What are the main elements of the claimant's pleadings?

There are three main elements of the claimant's pleadings, to wit: the (i) introductory averments; (ii) body of the pleadings (which refers to the facts giving rise to the cause of action); and (iii) reliefs sought in the suit.

3.4 Can the pleadings be amended? If so, are there any restrictions?

Yes, a pleading may be amended. However, the number of times a pleading may be amended depends on the extant rules of procedure of the relevant court. Under the rules of the High Court of Lagos State, the pleadings filed in the suit may be amended (no limit is stipulated) at any time before the close of the case management conference and not more than twice during the trial but before judgment.

There are restrictions and circumstances in which amendment of pleadings will not be allowed. They include: (i) when it would present a completely different case or cause injustice to the other party or was brought *mala fide*; (ii) where it would necessitate the hearing of further evidence; (iii) where it is immaterial; (iv) where it will introduce fraud or defence of justification for the first time; (v) where it is to set up a claim that is statute barred or will result in a new cause of action that did not exist on the date of issue of the writ; (vi) where it would not cure the defects in the procedure sought to be cured or where it is inconsistent and useless; or (vii) where it would amount to overreaching of the other party or an abuse of court process.

3.5 Can the pleadings be withdrawn? If so, at what stage and are there any consequences?

Nigerian law does not contemplate the withdrawal of pleadings.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring a counterclaim(s) or defence of set-off?

The main elements of a statement of defence are: (i) introductory averments; (ii) *seriatim* denial of the averments contained in the statement of claim (this contains the defendant's case); and (iii) conclusion. A defendant who has a counterclaim or set-off may include the counterclaim or set-off in its statement of defence after traversing the averments contained in the statement of claim.

4.2 What is the time limit within which the statement of defence has to be served?

The time allowed a defendant to respond to a claim depends on the various rules of court. Under the rules of the High Court of Lagos State, and in an action commenced by a writ of summons, a statement of defence must be filed and served within 42 days of receiving the claimant's originating processes and accompanying documents. Under the Federal High Court rules, the statement of defence must be filed within 30 days of receiving the claimant's originating processes.

4.3 Is there a mechanism in your civil justice system whereby a defendant can pass on or share liability by bringing an action against a third party?

Yes. Where it appears to the judge that any person not a party to the proceedings may bear eventual liability either wholly or in part, the judge may, upon any *ex parte* application stating the grounds for believing that such third party may bear liability, allow the person to be joined as a third party by any defendant.

4.4 What happens if the defendant does not defend the claim?

Where a defendant fails to defend a claim either by not entering appearance in the matter or filing defence processes, and the reliefs sought in the claim do not contain a declarative order, the claimant may apply to the court for judgment in default of the defendant's appearance or pleadings. This judgment is referred to as a default judgment and, in most States of Nigeria, can only be set aside where it is shown that the judgment was obtained by some fraud/misrepresentation, non-service of the originating processes or hearing notices, or that the court adjudicating the claim lacks the jurisdiction to entertain the action. Where, however, the claimant seeks declaratory relief, the judge will typically request the claimant to prove its entitlement to such a relief by setting the matter down for trial.

4.5 Can the defendant dispute the court's jurisdiction?

The defendant can dispute the jurisdiction of the court at any time during the proceedings and even on appeal. Such objection is typically raised by filing a formal application in the form of a notice of preliminary objection or raising the objection in the statement of defence.

5 Joinder & Consolidation

5.1 Is there a mechanism in your civil justice system whereby a third party can be joined into ongoing proceedings in appropriate circumstances? If so, what are those circumstances?

A third party can join or be joined in an ongoing proceeding in appropriate circumstances. The following circumstances have been developed over the years by the court: (i) where the justice of the matter demands that the party be joined before the case can be properly determined; (ii) where the plaintiff's case or the defendant's case in the existing action cannot be effectively and completely determined without the joinder; (iii) the ending of litigation in order not to have two parallel proceedings in which the same issue is raised, leading to different and inconsistent results; (iv) the avoidance of multiplicity of action arising from, in relation to or in respect of the same subject matter; and (v) the making of the person joined bound by the result of litigation; and (vi) ensuring that the principles of natural justice and fair hearing enshrined under section 36(1) of the 1999 Constitution (as amended) are complied with.

5.2 Does your civil justice system allow for the consolidation of two sets of proceedings in appropriate circumstances? If so, what are those circumstances?

Yes, two or more proceedings may be consolidated. The civil procedure rules of most courts typically provide that the court may, upon application, consolidate several actions pending before it where it appears that the issues in the suits are the same and may be properly tried and determined at the same time. The order to consolidate may be made where more than one action is pending between: (i) the same claimant and defendant; (ii) the same claimant and different defendants; (iii) different claimants and the same defendants; or (iv) different claimants and different defendants, provided that where the same claimant brings an action against different defendants, the actions will not be consolidated without the consent of all parties unless the issues to be tried are identical.

5.3 Do you have split trials/bifurcation of proceedings?

Nigerian civil procedure rules do not make provisions for split/bifurcation of proceedings. However, a claimant may institute separate actions against the same defendant or different defendants, provided the cause of action in each of the cases are different.

6 Duties & Powers of the Courts

6.1 Is there any particular case allocation system before the civil courts in your jurisdiction? How are cases allocated?

Cases are allocated to specific judges by the administrative judge of each court in the relevant judicial division of the court. Allocations are often made based on the following considerations, to wit: (i) the subject matter of the suits; (ii) the complexity of the matters *vis-à-vis* the experience of the judges; and (iii) the number of cases already assigned to a particular judge.

6.2 Do the courts in your jurisdiction have any particular case management powers? What interim applications can the parties make? What are the cost consequences?

Most courts in Nigeria have case management powers that are typically exercised during the case management conference or pre-trial conference, depending on the court in which the suit was instituted.

During the case management or pre-trial conferences, judges are empowered to: hear all interlocutory applications; resolve issues relating to the disclosure of facts and documents; encourage and assist parties to achieve a negotiated settlement of the dispute, if possible; grant interim orders to preserve the subject of the litigation; and create a schedule for the trial by settling the issues for determination in the suit and ascertaining the witness(es) in the suit, amongst other things.

The interlocutory applications which are typically entertained during the case management or pre-trial conferences include applications relating to the jurisdiction of the court, service of court processes, interim or interlocutory orders seeking to protect the subject matter of the suit, amendment of pleadings, etc. There are no additional costs consequences in the case management or pre-trial conference.

6.3 In what circumstances (if any) do the civil courts in your jurisdiction allow hearings or trials to be conducted fully or partially remotely by telephone or video conferencing, and what protocols apply? For example, does the court – and/or may parties – record and/or live-stream the hearings and may transcriptions be taken? May participants attend hearings remotely when they are physically located outside of the jurisdiction? Are electronic or hard-copy bundles used for remote hearings?

Court hearings in Nigeria are typically held physically. However, due to the constraints imposed by the COVID-19 pandemic and the consequent increased disposition to the use of technology by the Nigerian judiciary, almost all courts in Nigeria have amended their rules to allow for virtual court hearings. Virtual hearings may be held at the request/discretion of the judge or may be prompted by an application by the party seeking a virtual hearing. The application must provide the court with sufficient reasons to hold the view that an insistence on the physical attendance of counsel or a witness in the suit is impracticable or will occasion significant delays or costs in attending to the matter. This is, however, subject to the availability of resources to conduct the said virtual hearing. Virtual proceedings are usually held on the Zoom meeting platform. Meeting details are shared to counsel/parties/witness(es) scheduled to participate in the proceedings and are typically recorded. The recordings are then used to prepare hard-copy records of proceedings which can be applied for and obtained by parties involved in the proceedings.

6.4 What sanctions are the courts in your jurisdiction empowered to impose on a party that disobeys the court's orders or directions?

Any party who disobeys a court order risks facing committal proceedings for contempt of court; if found guilty, they may be imprisoned.

6.5 Do the courts in your jurisdiction have the power to strike out part of a statement of case or dismiss a case entirely? If so, at what stage and in what circumstances?

In Nigeria, a statement of case is generally referred to as a pleading. Under Nigerian law, any paragraph of a pleading which delves into an evaluation of the evidence sought to be relied upon is liable to be struck out by the court upon an application by the counterparty. The application is typically heard and decided before trial. In addition, the court may strike out a case based on the statement of claim, where it is shown by an application of a counterparty that the court lacks the jurisdiction to adjudicate the case or that the suit discloses no reasonable cause of action against the defendant. On the other hand, a case may be dismissed where the opposing party is able to demonstrate to the court by its application that the claimant is barred from asserting the claim, either because the claim was filed outside the limitation period allowed by law, is an abuse of court process, or that the cause of action presented to the court had been litigated before, and a final decision of a court of competent jurisdiction has been granted on the said cause of action or issue(s) presented in the case.

6.6 Can the civil courts in your jurisdiction enter summary judgment?

Yes, Nigerian courts are empowered to enter summary judgment, provided it is shown that the defendant has no reasonable defence to the claim.

6.7 Do the courts in your jurisdiction have any powers to discontinue or stay the proceedings? If so, in what circumstances?

Yes, courts are empowered to discontinue or stay proceedings. A proceeding may be discontinued where the claimant files a notice of discontinuance to terminate the proceedings, or the defendant is able to show that the claimant has not conducted the case diligently and is unduly wasting the time of the court and the defendant. In addition, non-participation of the claimant in the case management or pre-trial conference may lead to a discontinuance of the proceedings.

On the other hand, a stay of proceedings is often granted by the court where it is shown that the parties had agreed to arbitrate the dispute and the requesting party has not taken any step in the proceedings, or when it is shown that an issue which had been decided by the court has been appealed against and that the appeal will materially affect the court's jurisdiction to proceed with the suit, or that continuing with the proceedings will render the decision of the appellate court ineffectual. A stay of proceedings may also be granted by the court where it is shown that entertaining the claim may unwittingly pit the court against another court of coordinate jurisdiction, and may result in the issuance of conflicting decisions by the courts involved.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in your jurisdiction? Is it possible to obtain disclosure pre-action? Are there any classes of documents that do not require disclosure? Are there any special rules concerning the disclosure of electronic documents or acceptable practices for conducting e-disclosure, such as predictive coding?

Parties are under the obligation to disclose all material facts to

the claim. Where, however, it is shown that a party deliberately concealed a material fact from the court, any order or judgment obtained on the premise of such misrepresentation is liable to be set aside by the court. Furthermore, where a document is shown to be in the custody of a party to an action, and same is shown to have been deliberately withheld by the party, the court is permitted to presume that the evidence so withheld by the party is not favourable to the party withholding same in connection to the fact(s) to which it relates.

Nigerian law does not provide for a process of obtaining disclosures prior to the commencement of an action. However, in the process of prosecuting or defending an action, litigants may take benefit of the mechanisms referred to as discovery and inspection, which allow a party to probe the counterparty for relevant facts and documents that could be material to the suit but are in the custody of said counterparty.

By virtue of the Evidence Act 2011, the statute regulating evidence in Nigeria, any statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, provided that the authenticity of the document is validated by a certificate issued by the person who printed the document. The certificate is to be issued pursuant to the provision of section 84 of the Evidence Act.

7.2 What are the rules on privilege in civil proceedings in your jurisdiction?

Generally, there are two broad types of privileged communication under Nigerian law. These communications are highlighted by the provisions of sections 187–196 of the Evidence Act, and comprise State privilege and private privilege. State privilege is also known as official communications and records of state matters, while private privilege is also known as private communications between private persons. Privilege can be raised at any time during trial and, once raised, the trial judge is duty bound to suspend further proceedings and determine whether it avails the party raising it or not. In doing this, the court has the discretion of entertaining oral or documentary evidence.

7.3 What are the rules in your jurisdiction with respect to disclosure by third parties?

There is no rule on third-party disclosure, to the best of our knowledge.

7.4 What is the court's role in disclosure in civil proceedings in your jurisdiction?

The roles of courts in relation to the disclosure mechanism provided by the relevant rules of court are generally supervisory. For example, issues emanating from the issuance of forms relating to the disclosure, including any objection(s) to the issuance of the relevant forms, are usually heard during the case management and pre-trial conferences. Furthermore, failure to respond to the aforementioned forms is generally treated as contemptuous.

7.5 Are there any restrictions on the use of documents obtained by disclosure in your jurisdiction?

Documents obtained during the discovery and inspection process may be used, subject only to the restrictions that apply to the restriction referred to in question 7.1 above.

8 Evidence

8.1 What are the basic rules of evidence in your jurisdiction?

The basic rules of evidence under Nigerian law are as follows:

- (i) every piece of evidence presented to the court will be admitted where it is shown to be relevant to the fact(s) in issue;
- (ii) the burden of proof for any claim is generally placed on the party whose case will fail where no evidence is adduced on either side. However, where the party with the burden of proof, usually the claimant, places some evidence before the court, the burden to provide counter-evidence shifts to the counterparty;
- (iii) when evidence such as a document or a recording is to be presented to the court, only the original of the document or the recording will be accepted unless the party seeking to tender the evidence is able to show that the conditions for admitting a copy of same exists; and
- (iv) probative value is ascribed to a piece of evidence by the judge upon evaluation of the evidence and the witnesses presenting it.

8.2 What types of evidence are admissible, and which ones are not? What about expert evidence in particular?

Under Nigerian law, evidence presented by a party is generally admissible where it is shown to be relevant to the facts in issue before the court. However, hearsay evidence is generally inadmissible, save for the limited circumstances provided for in the Evidence Act. Furthermore, evidence as to a person's character is generally inadmissible in civil cases, save for where it is made an issue in the proceedings.

In addition to the foregoing, opinions, although generally inadmissible, are rendered admissible in particular circumstances, especially when offered by experts.

8.3 Are there any particular rules regarding the calling of witnesses of fact, and the making of witness statements or depositions?

There are no particular rules relating to the calling of witnesses or making witness statements in Nigeria, save that most rules of courts require that a list of such witnesses be filed ahead of hearing, and that the witness depositions be sworn before the commissioner of oath, filed and accompany the statement of claim.

8.4 Are there any particular rules regarding instructing expert witnesses, preparing expert reports and giving expert evidence in court? Are there any particular rules regarding concurrent expert evidence? Does the expert owe his/her duties to the client or to the court?

Yes, there are rules regarding expert witnesses. Expert witnesses may give evidence in court, but their opinion must be based on proven facts and be restricted to their areas of expertise. The expert owes his/her duty to the court.

9 Judgments & Orders

9.1 What different types of judgments and orders are the civil courts in your jurisdiction empowered to issue and in what circumstances?

Generally, judgments given by a Nigerian court can either be *in personam* or *in rem*. Further, these judgments may be declaratory (in the sense that they merely determine the right of the parties) or executory (in the sense that they order one party to carry out an act).

Furthermore, certain judgments are given without the need of a plenary trial. For example: a default judgment is delivered where the defendant fails to defend a suit; a summary judgment or judgment under the undefended list procedure is delivered when it is apparent that the defendant has no good or no defence at all to the action; and a consent judgment is delivered, which is the court's acceptance of the terms of the negotiated settlement by the parties.

Quite apart from the foregoing, Nigerian courts are empowered to give orders available in most common law jurisdictions, such as injunctive orders, Anton Piller orders and garnishee orders (*nisi* or absolute).

9.2 What powers do your local courts have to make rulings on damages/interests/costs of the litigation?

Nigerian courts are empowered to award damages, interests and costs of litigation. The court's power to award damages and costs of litigation is discretionary, save for circumstances where the damages/costs of litigation have been specifically pleaded and proven. In relation to the decision on interests, pre-judgment interest must be proven to be founded on the contract of parties, custom, or equity, while post-judgment interest is typically prescribed by the rules of the relevant court and awarded to the successful party as a matter of course. (Please also see the cases of *ACB Ltd v. Nwadiogbu* 7 NWLR (Part 356) 330, and *Nigerian Port Authorities v. Aminu Ibrahim & Co. & Anor* (2018) LPELR – 44464(SC).)

9.3 How can a domestic/foreign judgment be recognised and enforced?

Domestic judgments are recognised and enforced pursuant to the provisions of the Sheriffs and Civil Processes Act, 1955 ("SCPA"). Generally, judgments are enforced by way of garnishee proceedings, levying execution on movable and immovable assets of a judgment debtor and the issuance of judgment summons.

A foreign judgment, on the other hand, may be enforced by: (i) an action in common law; or (ii) registering the said judgment under the Foreign Judgment (Reciprocal Enforcement) Act, 2004 or Reciprocal Enforcement of Judgments Ordinance, Chapter 175, Laws of the Federation of Nigeria, 1958. Following the recognition and registration of the foreign judgment under any of these statutes, the judgment may then be enforced under the SCPA, as a foreign judgment automatically becomes a judgment given by a Nigerian court upon registration in Nigeria.

9.4 What are the rules of appeal against a judgment of a civil court of your jurisdiction?

Generally, appeals lie from the High Court of a State, the Federal Capital Territory or from the Federal High Court to the Court of

Appeal. The right to appeal a judgment of court is enshrined in the Nigerian Constitution, and any party who is dissatisfied with a judgment of court has the right to appeal by filing a notice of appeal against a judgment or order and serving same on the counterparty within three months or 14 days, respectively. In other words, shorter timelines apply for filing a notice of appeal against interlocutory decisions. However, depending on the nature of the appeal or issues involved, a litigant may or may not require leave of court to appeal. For example, appeals against final decisions of court, appeals involving questions of law alone, appeals against a decision touching on a fundamental right, appeals against the grant or refusal of an injunctive order, etc., do not require leave of court. However, appeals on decisions from the NICN other than decisions touching on fundamental rights, interlocutory appeals, appeals involving questions relating to mixed law and facts or facts alone, etc., all require leave of court.

10 Settlement

10.1 Are there any formal mechanisms in your jurisdiction by which parties are encouraged to settle claims or which facilitate the settlement process?

Yes. Courts actively encourage settlement of disputes during the case management or pre-trial conferences, and have relevant alternative dispute resolution (“ADR”) mechanisms and procedures enshrined in their respective rules of court. In Lagos State, for instance, cases are actively screened by the court’s registry and referred to the Lagos State Multidoor Courthouse (“LMDC”) for mediation. In addition, the Lagos State judiciary holds an annual Settlement Week wherein judges are encouraged to refer appropriate cases to the LMDC for possible out-of-court settlement.

11 Alternative Dispute Resolution

11.1 What methods of alternative dispute resolution are available and frequently used in your jurisdiction? Arbitration/Mediation/Expert Determination/Tribunals (or other specialist courts)/Ombudsman? (Please provide a brief overview of each available method.)

The ADR mechanisms available in Nigeria include arbitration, mediation, conciliation, expert determination and the ombudsman. However, the more commonly used mechanisms are arbitration and mediation.

Arbitration in Nigeria has in recent times become buoyant, due to awareness of parties and increasing support by the courts in ensuring that parties uphold arbitral agreements. Arbitration arguably provides a quicker route to dispute resolution than the court system, but it is also a lot more expensive.

Although conciliation is recognised in Nigeria and regulated by law, it is rarely explored as an ADR mechanism.

Mediation, on the other hand, is relatively cheaper and usually conducted slightly more informally. However, the LMDC and Lagos Court of Arbitration provide robust institutional framework for mediations in Nigeria.

Expert determination is often represented as dispute adjudication boards and regularly used in Nigeria for construction disputes.

The ombudsman was established in Nigeria as the Public Complaints Commission (“**Commission**”), and is empowered to investigate complaints brought by members of the public against maladministration by public officers, corporate bodies or their officials and other matters ancillary thereto. The Commission is, however, rarely used as a veritable ADR mechanism.

11.2 What are the laws or rules governing the different methods of alternative dispute resolution?

Arbitration and conciliation in Nigeria are regulated by the Arbitration and Conciliation Act, 1988. However, the Lagos State legislature exercised its right to also regulate arbitration, and accordingly enacted the Lagos State Arbitration Law, 2009.

Mediation and expert determination, on the other hand, are regulated by contracts, but may also be administered under various institutional rules incorporated by the parties into their contracts.

The Commission is regulated by the Public Complaints Commission Edict No. 12 of 1995, now the Public Complaints Commission Act, Cap p. 37 Laws of the Federation of Nigeria, 2004.

11.3 Are there any areas of law in your jurisdiction that cannot use Arbitration/Mediation/Expert Determination/Tribunals/Ombudsman as a means of alternative dispute resolution?

Disputes involving criminal law, dissolution of marriages, elections, constitutional law, declaration of title to lands and taxation are exclusively reserved for the courts. While tax disputes are generally not arbitrable, a fine distinction was recently made by the Nigerian Court of Appeal in *Esso v. FIRS* [2017] LPELR-51618(CA) that a claim which is tax related is not necessarily a tax dispute. In sum, a claim will qualify as a tax dispute if it has the potential to: (i) adversely impact on the statutorily discretionary powers of a tax authority to assess the tax liability of a taxpayer; (ii) prevent a taxpayer from paying an accurate tax or a tax assessed by the tax authority or subsequently determined on appeal by a tax tribunal or the Federal High Court; and (iii) make a taxpayer entitled to a tax refund to an extent not authorised by statute, and without the tax authority determining the eligibility of the tax payer to such refund in the first place. These identified tax disputes are clearly not arbitrable. (See also Chinedum Umeche, “Arbitrability of tax disputes in Nigeria”, *Arbitration International*, Volume 33, Issue 3, September 2017, pp 497–502.)

11.4 Can local courts provide any assistance to parties that wish to invoke the available methods of alternative dispute resolution? For example, will a court – pre or post the constitution of an arbitral tribunal – issue interim or provisional measures of protection (i.e. holding orders pending the final outcome) in support of arbitration proceedings, force parties to arbitrate when they have so agreed, or order parties to mediate or seek expert determination? Is there anything that is particular to your jurisdiction in this context?

The Nigerian courts rarely interfere in the ADR process, other than referring matters to such ADR fora pursuant to the relevant applications by parties. (Please see the case of *Mekunye v. Lotus Capital Ltd & Ors.* (2018) LPELR-45546(CA).) Indeed, with respect to arbitration, a court may prevent a claimant from continuing its matter in court in breach of an existing agreement to arbitrate executed by such claimant and on the application of the defendant that has not taken any steps in such proceedings. Also, in deserving circumstances, the court may give orders in aid of arbitration particularly where the substantive matter was before the court before same was referred to arbitration, or where the arbitral tribunal is yet to be constituted. Also, in certain circumstances, mediation agreements are forwarded to the courts to be validated as judgments. Once validated, the

agreement can be enforced as a judgment of the court in the event of a breach of its provisions. The latter is more commonly practised in Lagos State through the LMDC.

11.5 How binding are the available methods of alternative dispute resolution in nature? For example, are there any rights of appeal from arbitration awards and expert determination decisions, are there any sanctions for refusing to mediate, and do settlement agreements reached at mediation need to be sanctioned by the court? Is there anything that is particular to your jurisdiction in this context?

Alternative dispute resolution methods are generally binding. In the case of arbitration, it is a public policy of Nigerian courts to uphold arbitration agreements. Thus, a Nigerian court will

stay proceedings commenced in breach of an arbitration agreement, as illustrated in the case of *Mekwunye v. Lotus Capital Ltd & Ors* (*Supra*). Also, arbitral awards are binding on the parties, although they may be set aside where it is established that: (1) there is misconduct by the arbitrators; (2) the arbitrators exceeded their jurisdiction; or (3) the award was improperly procured or obtained by fraud. A setting-aside application is restricted solely to the limited grounds set out above.

11.6 What are the major alternative dispute resolution institutions in your jurisdiction?

The major ADR institutions in Nigeria include the: Lagos Court of Arbitration; Regional Centre for International Commercial Arbitration – Lagos (RCICAL); and Chartered Institute of Arbitrators UK (Nigeria Branch).



Abimbola Akeredolu is highly ranked and sought after for her knowledge, depth, and excellence in legal service delivery, particularly in relation to commercial litigation and arbitration. She is often commended for her resolute commitment to the best interests of her clients, coupled with their inevitable attendant success.

In 2013, she was appointed as the first female Attorney-General and Commissioner for Justice of Ogun State, Nigeria. Two years later, in 2015, she was conferred with the highest and prestigious rank of Senior Advocate of Nigeria ("**SAN**") (the equivalent of Queen's Counsel), a testament to her remarkable courtroom advocacy skills. Importantly, Abimbola's multilingual skills (English, French, Italian and German) make her a lawyer with a difference.

Banwo & Ighodalo

48, Awolowo Road, South West Ikoyi
Lagos
Nigeria

Tel: +234 80 340 23034

Email: aakeredolu@banwo-ighodalo.com

URL: www.banwo-ighodalo.com



Chinedum Umeche is a Fellow of the Chartered Institute of Arbitrators and a Notary Public for Nigeria, with extensive experience in commercial litigation and arbitration. He advises and represents clients in complex, big-ticket disputes before arbitral tribunals, trials and appellate courts. Chinedum is a persuasive advocate with the ability to simplify and navigate complex legal and business issues. This has endeared him to the courts and tribunals. Notably, in the recent case of *Heritage Energy Operational Services Limited v. Revenue Mobilisation Allocation and Fiscal Commission ("RMAFC") and Economic and Financial Crimes Commission ("EFCC")*, the Federal High Court was persuaded by his arguments that the RMAFC lacks the powers to assess, demand, and collect tax revenues, including Withholding Tax and Value Added Tax, from private individuals and corporate entities, amongst others.

Chinedum's work ethics are remarkable, driven by his unshakable belief that there is always an answer somewhere. This healthy discontent consistently makes him go the extra mile in delivering exceptional quality legal advice and strategy.

Banwo & Ighodalo

48, Awolowo Road, South West Ikoyi
Lagos
Nigeria

Tel: +234 803 872 6138

Email: cumeche@banwo-ighodalo.com

URL: www.banwo-ighodalo.com

Banwo & Ighodalo was established in 1991 and structured as a partnership, with the vision to be the foremost Nigerian legal services and business solution provider, delivering high-quality services to clients with global outlook. Today, the firm has evolved into a full-service law firm with footprints worldwide, undertaking work for public and private companies, governments, Nigerian and foreign investors, financial institutions, foreign law firms and international consultancy firms. The firm's lawyers are often called upon to serve as resource persons at local and international seminars/workshops, and as public and private sector office holders and advisers.

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