ICLG

The International Comparative Legal Guide to:

Litigation & Dispute Resolution 2013

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A practical cross-border insight into litigation & dispute resolution work

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Chapter 25

Nigeria

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I. LITIGATION

1 Preliminaries

1.1 What type of legal system has Nigeria got? Are there any rules that govern civil procedure in Nigeria?

Nigeria operates the adversarial legal system based on the common law tradition.

Civil Procedure Rules (CPR) of the courts of various states, as well as Civil Procedure Rules of the federal and appellate courts in Nigeria, govern civil procedure in the respective states and courts.

The Nigerian legal profession is fused. Thus a legal practitioner is entitled to practice both as a barrister and as a solicitor.

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

Civil proceedings can be conducted in the magistrates/area courts. Claims involving substantially higher sums are conducted in the State High Court, while the Federal High Court hears cases specifically assigned to the court under and by virtue of Section 251 of the Nigerian 1999 constitution (as amended).

Appeals lie with the High Court, Court of Appeal and Supreme Court in the last instance.

The National Industrial Court (NIC), which adjudicates over labour disputes, is the only specialist court in Nigeria.

Specialist tribunals however, exist, e.g. the Investment and Securities Tribunal, the Tax Appeal Tribunal, the Election Petition Tribunal and the Census Tribunal.

1.3 What are the main stages in civil proceedings in Nigeria? What is their underlying timeframe?

Using Lagos State (the commercial hub of Nigeria) as a reference, the main stages of civil proceedings are generally as follows:

1. Filling and service of originating court processes (approximately 7 days).
2. Filing and service by the defendant of the Statement of Defence (counter-claim where applicable) (42 days after service of the originating court process).
3. Filing and service by the claimant of a Reply to Statement of Defence and Defence to Counter-claim, where applicable (14 days from service of Statement of Defence and in the case of Defence to Counter-claim, 42 days of service of counter-claim.
4. Case Management Conference and Scheduling (3 months).
5. Trial/taking of evidence (approximately 6 months).
6. Final address (to be filed by a defendant who calls evidence within 21 days after the close of trial). The plaintiff has 21 days from the date of service of the defendant's final address to file a final address, while the defendant has 7 days from the date of service of the plaintiff's address to file a reply.
7. Delivering judgment (90 days after adoption of final addresses).
8. Appealing the judgment (where applicable) (no later than 3 months after delivery of the judgment).

Nos. 1 and 5 above are approximate time periods within which the relevant stages may be concluded, while the CPR and relevant statutes provide the stipulated timeframes for others. Please note that court has the inherent power to extend the time within which to do any of the above acts.

1.4 What is Nigeria's local judiciary's approach to exclusive jurisdiction clauses?

Nigerian courts will generally uphold the exclusive jurisdiction clauses contained in agreements between parties subject to any possible overriding Nigerian legislation on a subject matter. These will also be upheld provided they are not contrary to public policy and do not seek to rob the court of the exercise of judicial powers vested in the court under and by virtue of section 6 of the Nigerian Constitution 1999 (as amended).

1.5 What are the costs of civil court proceedings in Nigeria? Who bears these costs?

Costs of civil proceedings in Nigeria are broadly classified into two: filling fees cost; and professional fees cost. Filling fees are calculated by court officials and are assessed on the basis of the nature and value of the claim. Professional fees are as agreed by the litigant and his legal practitioner and are normally based on the complexity of the case.

In both instances, litigants bear the cost.

1.6 Are there any particular rules about funding litigation in Nigeria? Are contingency fee/conditional fee arrangements permissible? What are the rules pertaining to security for costs?

There is no rule regulating third-party funding of litigation in Nigeria.

Contingency fee arrangements are permissible in Nigeria by virtue of Rule 50 (1) of the Rules of Professional Conduct 2007, which provides that a lawyer may enter into a contract with his client for a contingent fee in respect of a civil matter undertaken or soon to be undertaken for a client, whether contentious or non-contentious.

In any cause or matter in which security for costs is required, the security shall be of such amount and be given at such times and in such a manner and form as the judge shall direct.

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

To succeed on a claim, a claimant must establish a cause of action against the defendant(s). Nigerian courts have drawn a distinction between a cause of action and a right to enforce a course of action. In *Egbe v. Adefarasin* (1987) NWLR (Pt. 47) 1, the Supreme Court of Nigeria per Oputa JSC noted that a cause of action is "*the factual situation which gives a person (the) right to judicial relief... to be distinguished from a right of action... (which) is the right to enforce a cause of action*". It may be extrapolated from the foregoing that although a cause of action cannot be assigned, the right to enforce a cause of action may be assigned or undertaken by a third party on behalf of the litigant. In particular, by virtue of paragraph 3 (e) of Fundamental Right (Enforcement Procedure) Rules 2009, anyone acting on behalf of another person may institute an action for the enforcement of a fundamental right of the person for whom he acts.

As noted in question 1.6, there are no rules regulating third-party funding in Nigeria. However, it is not impossible to see instances where a litigation is funded by a third party albeit on a private bases.

2 Before Commencing Proceedings

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

Apart from pre-action notice requirements imposed by statutes in some cases, there are generally no particular formalities to be complied with before initiating proceedings.

Under the CPR of the Federal Capital Territory (Abuja), a Pre-action Counselling Certificate (evidencing the fact that the claimant has been counselled on the propriety or otherwise of instituting the action) is to accompany the originating process.

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?

Under Nigerian law, limitation is a matter of procedural law and provides a complete defence to a claim. The defendant is expected to plead this fact in his Statement of Defence and may subsequently file an application requesting the court to dismiss the suit for being statute-barred.

The various limitation periods are specified by statute, notably the Limitation Laws of the respective states comprising Nigeria.

The limitation period for contract and torts claims is 6 years and time starts to run from the date when the cause of action accrued. However, where the tort claim is in respect of a claim for damages for negligence, nuisance or breach of duty, the action should be brought within 3 years from the accrual of the cause of action. The limitation period for an action to recover land is 12 years.

The Public Officers Protection Act, Cap. P41, Laws of the Federation of Nigeria, 2004 prescribes a 3-month limitation period for instituting an action against a public officer, in respect of neglect/default in the performance of a public duty.

3 Commencing Proceedings

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

In Nigeria, civil proceedings may be commenced by the issuance of either of these originating processes, i.e. Writ of Summons, Originating Summons, Originating Motions or Petition.

The originating process sets out:

- the names and addresses of the parties and the capacity in which they are sued or being sued;
- claim(s); and
- relief(s) or remedy sought.

These must be served personally or by substituted means (with leave of court).

The date of service is (in the case of personal service) the date of acknowledgment of service by the defendant; in the case of service by substituted means, the date on which the substituted service was effected.

The preferred method of service of foreign proceedings in Nigeria is by way of personal service by a process server unless the judge otherwise directs.

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

Under the various CPR, a claimant can apply for pre-action interim remedies if:

- any further delay would entail irreparable damage or serious mischief;
- the matter is urgent; or
- it is otherwise desirable to grant the interim remedy in the interest of justice.

Applications for such orders are often made without notice to the other party.

The applicant must show by affidavit evidence that a real urgency exists and is not a self-induced urgency. Real urgency has been explained to mean urgency between the happening of the event which is sought to be restrained by injunction and the date the application could be heard if taken after due notice to the other side. See *ODUTOLA v. LAWAL* (2002) 1 NWLR (PT. 749) 433.

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

The claimant's main pleading is referred to as the Statement of Claim, the contents of which are as follows:

1. the name of the parties and the business they carry out;
2. the capacity in which the parties are suing and are being sued;
3. the facts and circumstances giving rise to the dispute. This must be clearly articulated to show a justifiable right claimed by the claimant and the corresponding liability and a

violation of such right by the Defendant. See *GUDI v. KITTA* (1999) 12 NWLR (Pt. 629) 21;

4. particulars must also be supplied where applicable, for example, where the party relies on negligence, illegality, misrepresentation, fraud or undue influence; and
5. the prayers or the reliefs sought.

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

Generally pleadings can be amended, provided no injustice is inflicted upon the other party.

Under the Lagos CPR, pleadings can be amended at any time before the close of the Case Management Conference and not more than twice during the trial, but before judgment. Amendments will not be allowed where:

1. it will introduce a new cause of action;
2. it will necessitate the hearing of further evidence;
3. it would not cure the defects in the procedure sought to be cured;
4. it would amount to over-reaching the other party or an abuse of court process;
5. it is immaterial;
6. it will introduce fraud or defence of justification for the first time; or
7. it is to set up a claim that is statute-barred or will result in a new cause of action which did not exist on the date of issue of the writ.

4 Defending a Claim

4.1 What are the main elements of a statement of defence? Can the defendant bring counterclaims/claim or defence of set-off?

The Statement of Defence must state/contain:

- the allegations contained in the Statement of Claim which are admitted. Such admitted facts need not be proven and will be taken as having been established at the trial. See *EGBUNIKE v. ACB* (1995) 2 SCNJ 58;
- the allegations contained in the Statement of Claim which are denied. Denial must be specific and not evasive. Generally, any averment on the Statement of Claim not specifically denied is deemed to be admitted; and
- the defendant's version of the facts giving rise to the dispute.

The defendant may also include, in the Statement of Defence, an objection in point of law.

A defendant may bring a counter-claim against the claimant and other persons regardless of if they are claimants in the original action or not. A counter-claim is by its nature a cross-action by the defendant against the claimant and must be brought about by an action where the defendant can sue as claimant. A counter-claim must be made in respect of a cause of action accruing to the defendant at the time of issue of the writ.

Where a counter-claim is filed, the defendant(s) to the counter-claim would be required to file a Defence to counter-claim.

A Statement of Defence may also contain a set-off. A set-off is applicable only to a monetary claim by the claimant in respect of a monetary claim by the defendant against the claimant. Once successful, a set-off mitigates the defendant's liability to the amount of the set-off.

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

Under the CPR of Lagos State, the Statement of Defence is required to be filed within 42 days of service of the Statement of Claim and subsequently served on the claimant/defendant to the counter-claim (where different from claimant) immediately after filing. A default fee of N200.00 per day is payable upon failure to file the Statement of Defence within the time limit specified by the Lagos CPR.

Under the CPR operative in the Federal High Court, the Statement of Defence is required to be filed within 30 days of service of the Statement of Claim and served immediately. A default fee of N200.00 per day is payable upon failure to file the Statement of Defence within the time limit specified by the Federal High Court CPR.

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

Generally, a defendant in a pending action may apply for a person who is not already a party to the action to become a third party to that action. The defendant can claim the following against that person:

- that he is entitled to contribution or indemnity;
- that he is entitled to any relief or remedy relating to, or connected with the original subject matter of the action, and substantially the same as some relief or remedy claimed by the claimant; or
- that any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the claimant and the defendant, and should properly be determined, not only as between the claimant and the defendant, but also as between the claimant, the defendant and the third party, or between any one of them.

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

Generally, where a defendant does not defend the claim, the court will enter default judgment in favour of the claimant. However, in some cases, for example, where the claimant's claim is for declaration of title to land or damages for libel, the claimant will be required to give evidence in support of its case and the court will subsequently enter judgment in favour of the claimant. A judgment handed down in these instances is a judgment on merit and can only be set aside on appeal.

4.5 Can the defendant dispute the court's jurisdiction?

A defendant has the responsibility to protest the absence of jurisdiction by a court to entertain a dispute. See *ELUGBE v. OMOKHAFE* (2004) 18 NWLR (PT. 905) 319. Jurisdiction being a threshold issue can be raised at any time by the parties and even by the court *suo motu*. See *OLOBA v. AKEREJA* (1988) 3 NWLR (PT. 84) 508.

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 may be joined in on-going proceedings as a claimant in an action where any right to relief (in respect, of, or arising out of, the same transaction or series of transaction) is alleged to exist, whether jointly, severally or in the alternative where, if such persons brought separate actions, any common question of law or fact would arise. Similarly, a third party may be joined in on-going proceedings as a defendant in an action where the right to any relief is alleged to exist, whether jointly, severally or in the alternative.

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?

Consolidation may be allowed where it appears to the judge that the issues and the parties in the respective cases are the same and can therefore be properly tried and determined at the same time.

An order for consolidation of a suit is an exercise of the court's discretionary power, which must be exercised judiciously and judicially, based on sufficient materials.

5.3 Do you have split trials/bifurcation of proceedings?

A judge has general powers/discretion to order split trials/bifurcation of proceedings if it appears that the suit filed by a claimant cannot be conveniently tried or disposed of in the same proceedings. In particular, under the new CPR of Lagos State, a judge is empowered to give orders or directions for separate trial of a Claim, Counter-Claim, Set-Off, Cross-Claim or Third Party Claim, or of any particular issue in the case.

6 Duties & Powers of the Courts

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

Generally, cases are assigned to different judges by the Chief Judge of the respective states in Nigeria. In addition, in Lagos State, a track allocation system is adopted, according to which a civil claim may be assigned under the fast-track system. Cases that qualify to be assigned under the fast-track system are cases involving claims:

- where the total sum of claims/counter-claims is N100,000,000 (one hundred million Naira or more);
- one or more of the parties is a non-resident investor in the Nigerian economy; and
- the claim involves a mortgage transaction.

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

Under the Case Management Conference and Scheduling procedure, applicable in Lagos, courts are vested with case management powers. Case management actions undertaken by the courts in Lagos include:

- formulation and settlement of issues;
- amendment of pleadings;
- control of scheduling of discovery, inspection and production of documents;
- settlement of documents to be admitted as exhibits at the trial;
- the admission of facts, and other evidence by consent of the parties;
- control and scheduling of discovery, inspection and production of documents;
- hearing and determination of interlocutory applications including objections on point of law;
- promoting amicable settlement of the case or adoption of alternative dispute resolution mechanisms;
- narrowing the field of disputes between experts witnesses; and
- making referrals to the Lagos Multi-Door Courthouse or other relevant ADR bodies.

Several interim applications are available to the parties, including:

- application for interim and interlocutory injunctions;
- application for amendment of pleadings; and
- preliminary objection applications.

Costs are normally awarded after the determination of any application by the court.

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

Court orders are meant to be obeyed, unless and until they are discharged or set aside on appeal. This extends even to cases where the person affected by the order believes it to be irregular or even void. See *MOBIL OIL (NIG.) LTD. v. ASAN* (1995) 8 NWLR (PT. 417) 129.

The Nigerian courts have power to punish a party that disobeys its orders or directions for contempt of court and that power is exercised by an order of committal to prison.

6.4 Do the courts in Nigeria have the power to strike out part of a statement of case? If so, in what circumstances?

Generally, courts in Nigeria have the power to strike out part or all of the statement of a case on the application of either party where:

- the statement discloses no reasonable cause of action;
- the statement constitutes an abuse of court process; and
- there has been a failure to comply with the rules of court, practice direction or court order. For example, the statement was filed outside the prescribed time allowed by the rules.

In addition, a judge may order to be struck out or amended any matter in any endorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the action.

6.5 Can the civil courts in Nigeria enter summary judgment?

Yes. Summary judgment generally applies to cases which are virtually uncontested or to cases where there is reasonable belief that a claimant or defendant is entitled to judgment. All the CPR of the respective states contain trenchant provisions for summary judgment. A summary judgment, unlike a default judgment, cannot generally be set aside by the court that granted it. It may only be set aside on appeal.

6.6 Do the courts in Nigeria have any powers to discontinue or stay the proceedings? If so, in what circumstances?

All the CPR of the respective states contain provisions relating to the discontinuance of an action. Thus, a claimant may discontinue:

- The whole or only part of the claim, against all or any of the defendants by filing and serving a *Notice of Discontinuance*.

A Notice of Discontinuance once duly and validly filled cannot be recalled as the suit ceases to exist the moment it is effectively discontinued, subject to the payment of costs. *ANSA v. CROSS LINES LTD.* (2005) 14 NWLR (PT. 946) 645.

Permission from the courts to discontinue is required where the defendant has filed a statement of defence or where trial has commenced.

A stay of proceedings may be ordered by the court, on the application by either party, or at the court's instance. Typically, a stay of proceedings may be ordered:

- pending an appeal arising from the suit in which a stay has been ordered;
- pending reference to arbitration; or
- pending the determination of a related suit.

7 Disclosure

7.1 What are the basic rules of disclosure in civil proceedings in Nigeria? Are there any classes of documents that do not require disclosure?

Disclosure is used to assist a party in litigious proceedings to cause his opponent to disclose to him before trial, material documents in the opponent's possession for him to inspect, as well as obtaining admissions from his opponent by asking questions in the form of what are known as *interrogatories*.

The CPR of the respective states that have adopted the *frontloading* system contain trenchant provision for parties to a litigious proceeding to give advance notice to each other of any material documentation they intend to tender and rely upon at the trial of the case. Furthermore, any party may request in writing any other party to a cause or matter to make discovery on oath of the documents that are, or have been, in his/her possession, custody, power or control, relating to any matter in question in the case.

Documents that are not material to the case at hand do not require disclosure.

7.2 What are the rules on privilege in civil proceedings in Nigeria?

The two principal categories of privilege in civil proceedings are:

- Legal advice privilege covering professional communication between clients and legal practitioners. See section 192 of the Evidence Act, 2011. Under this section, a legal practitioner is excluded from disclosing any communication made to him/her, or to state the contents of any documents obtained in the course and for the purpose of his employment unless with his client's express consent. Also, no person shall be compelled to disclose any confidential communication which has taken place between him and a legal practitioner consulted by him, unless he offers himself as a witness, in which case, he may be compelled to disclose any such communication as may appear to the court necessary to be known in order to explain any evidence which he has given, but no other.
- "*Without prejudice*" privilege covering communication made either orally or in writing by parties with the intention of settling a dispute. See section 196 of the Evidence Act, 2011. Thus, a statement in any document marked "*without prejudice*" made in the course of negotiation for settlement of a dispute out of court shall not be given in evidence in any civil proceedings in proof of the matter stated in it.

It is worth mentioning that communications made during marriage are also privileged.

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

Generally, a court may, at the instance of either party to a litigious proceeding, order (by the issuance of a subpoena) for disclosure against a third party where the document of which disclosure is sought is in the custody or control of the third party and is likely to support the applicant's case or adversely affect the case of one of the other parties to the proceedings.

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

The court's role in the disclosure process is restricted to making disclosure orders.

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

It would appear that there are no restrictions on the use of documents obtained by disclosure under the various CPR. However, the general rule is that documents used in a set of proceedings may only be used in these proceedings and no other.

8 Evidence

8.1 What are the basic rules of evidence in Nigeria?

Evidence must be led in support of the pleadings of the respective parties, otherwise, such pleadings will be deemed abandoned. Conversely, evidence led on facts not pleaded will be discounted by the court.

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

Types of admissible evidence include: (i) documentary evidence; (ii) oral evidence (witnesses are examined and cross-examined *viva voce* in the presence of the parties and in open court); and (iii) expert/opinion evidence.

Hearsay evidence is generally inadmissible. There are however exceptions to this rule, for example, evidence of a witness in former proceedings, evidence of traditional or communal history in land matters, dying declarations admissions, affidavit evidence, etc.

In relation to expert evidence, the general rule is that a witness cannot give his opinion as to the existence of non-existence of fact-in-issue or relevant fact. See section 67 of the Evidence Act, 2011. Exceptions to this general rule are provided for in sections 68 – 76 of the Evidence Act 2011 and include expert evidence. Thus expert evidence is admissible.

Where expert opinion is to be given, the person giving it must be called as a witness and must state his qualifications and satisfy the

court that he is an expert on the subject on which he gives his opinion and he must state clearly the reasons for arriving at his opinion. See *Shell Dev. Co. Ltd v. Otoko* (1990) 6 N.W.L.R (Pt. 159) 693.

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

The order in which a witness may be called is at the discretion of the party calling the witness. Once a witness is called, he would be examined by the party calling him/her (evidence-in-chief). This is followed by the cross-examination of the witness by the opposing party and then a re-examination (where applicable) by the party calling the witness.

Most states have provisions in their CPR requiring a witness to give evidence-in-chief by way of witness statements or depositions. A witness statement on oath does not become evidence upon which a court can act until it is adopted in open court by the maker/deponent. The requirement of adoption of the witness statement is not discretionary but mandatory. See *INEC v. AC* (2009) 2 NWLR (Pt. 1126) 524.

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

There are no particular rules regarding the instruction of expert witnesses; nonetheless, it is expected that any instructions should be limited to preparing the witness as to his conduct in court. Almost always, a court will treat expert evidence with respect and candour. However, the court may reject the evidence of an expert where same contains material contradictions. See *Amu v. Amu* (2000) 7 NWLR (Pt. 663) 164.

The expert owes his duty to the court. It is not the expert's duty to prove the truth of the matter, but the science of a fact in dispute within the field of his expertise. In *Idudhe v. Eseh* (1996) 5 N.W.L.R (Pt. 451) 750 at 758 it was stated as follows:

"*The duty of the expert is to furnish the Judge or Jury, (the court), with the necessary scientific criteria for testing the accuracy of his conclusion so as to enable the jury to form their own independent judgment by the application of the criteria to the facts proved in evidence before them*" – Per Akintan J.C.A in *Idudhe v. Eseh* (1996) 5 N.W.L.R (Pt. 451) 750 at 758.

8.5 What is the court's role in the parties' provision of evidence in civil proceedings in Nigeria?

The Court may, on the application of either party, issue a subpoena for the attendance in court of a witness to either give oral evidence or tender documents.

9 Judgments & Orders

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

The court has the power to make final, interlocutory, default and summary judgments. Also, the court may make consent judgment (where the parties to the dispute settle the dispute without adjudication by court and request the court to enter judgment in terms of the settlement as agreed by the parties).

The courts also have power to give a judgment on admission where any of the parties admits an issue of fact and the other party makes an application that judgment be entered by the court based on the said admission.

The orders which Nigerian courts are empowered to make include:

- Injunction orders (prohibitory or mandatory): prohibitory where its purpose is to restrain the happening of an event; and mandatory where its purpose is to compel the doing of a thing.
- Interim, interlocutory and perpetual orders of injunction.
- Consent orders, which are given where parties have mutually agreed on the order and request the court to so enter.

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

Generally, the courts have the power to order the payment of damages whenever same have been proved by the party alleging damages.

The court may also award the payment of interest on the judgment sum at a rate not less than 10% *p.a.* (see Order 35 (4) CPR Lagos).

The courts may also award costs. In fixing the amount of costs, the principle to be observed is that the successful party is entitled to be indemnified for the expenses to which he has been necessarily put into by the institution of the proceedings, as well as compensated for the time and effort expended in coming to court.

9.3 How can a domestic/foreign judgment be enforced?

The different modes of executing a domestic judgment are provided for in the Sheriffs and Civil Process Act ("*the Act*") Cap. S6 Laws of the Federation of Nigeria 2004, as well as in the Judgement (Enforcement) Rules made pursuant to the Act.

A judgment for the payment of money may be enforced through the followings modes:

- Issuing a Writ of Fieri Facias (Writ of Fifa).
- A charging order.
- Issuing a Writ of Sequestration.
- An order of committal on a judgment debtor summons.
- Writ of possession.
- Commencing garnishee proceedings.

There are two statutes regulating the enforcement of foreign judgments in Nigeria to wit:

- Reciprocal Enforcement of Foreign Judgments Ordinance, Cap. 175, Laws of the Federation of Nigeria and Lagos, 1958.
- Foreign Judgments (Reciprocal Enforcement) Act, Cap. F35, Laws of the Federation of Nigeria, 2004.

The judgments to which these Acts relate are judgments from countries which have reciprocal arrangements for the recognition of judgments with Nigeria and these judgments become enforceable upon registration of the judgment.

For a foreign judgment to be enforceable in Nigeria under the Act, the judgment must have been pronounced by a superior court of the country of the original court. The judgment must be a money judgment for a certain sum and also must be final and conclusive, as between the parties.

Foreign judgments from countries that do not enjoy reciprocity with Nigeria may be enforced in Nigeria by instituting a fresh action.

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

An appeal is an invitation to a higher court to find out whether on proper consideration of the facts placed before it, and the applicable law, the lower court arrived at a correct decision. The Right of Appeal is a constitutionally guaranteed right. See *N.I.W.A. v. S.P.C.N. LTD.* (2008) 13 NWLR (PT 1103) 48.

Appeals to the High Court are made from decisions of the magistrate and area courts. A Notice of Appeal is required to be filed within 30 days of the judgment.

Appeals to the Court of Appeal from decisions of the High Court *are as of right*, with respect to final decisions of the High Court, and require the permission of either court in respect of an interlocutory decision of the High Court. However, an interlocutory decision involving issues of law only does not require permission.

A Notice of Appeal is required to be filed within 14 days for interlocutory decisions and 90 days for final judgments.

Appeals to the Supreme Court from the decision of the Court of Appeal *are as of right*, with respect to decisions of the Court of Appeal involving questions of law alone, and with the permission of either court with respect to decisions involving questions of mixed law and fact.

II. ALTERNATIVE DISPUTE RESOLUTION

1 Preliminaries

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

The methods of alternative dispute resolution available and frequently used in Nigeria are:

- Arbitration.
- Mediation.
- Conciliation.
- Early Neutral Evaluation.

Arbitration is the reference of disputes or differences between not less than two parties for determination, after hearing both sides in a judicial manner, by a person or persons other than a court of competent jurisdiction. The basis of the exercise of jurisdiction by an arbitral panel is the agreement by the disputing parties to submit themselves to the arbitral body for a determination of the issues in controversy between the parties.

Mediation is a voluntary and informal process in which a neutral third party (mediator) helps the disputing parties to reach a mutually acceptable agreement. Mediation provides good opportunity for the disputing parties to explore interest together. The mediator does not render a decision, but guides the parties in reaching an agreement which, when put in writing, constitutes a binding contract.

Conciliation is a process where the disputing parties request that a neutral third party (a conciliator) assist in resolving their differences.

Early Neutral Evaluation is a preliminary assessment of facts, evidence or legal merits of a case by a neutral third party, with a view to providing an unbiased evaluation of the positions of the disputing parties, as well as to guide them on the likely outcome of the case.

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

The Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria, 2004, which is based on the UNCITRAL Model Law on International Commercial Arbitration is that primary legislation governing arbitration and conciliation in Nigeria.

Various states have enacted laws governing Mediation and other Alternative Dispute Resolution (ADR) processes. In Lagos State, for instance, the Lagos Multi-Door Court House Law of 2007 established a legal framework for the operation of mediation, as well as other ADR processes.

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

Generally, commercial disputes are subject of arbitration. Disputes bordering on criminal law, as well as family law matters are considered to be non-arbitrable.

Similar considerations apply to mediation, except that mediation may be used to resolve family disputes.

1.4 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, will the court force parties to arbitrate when they have so agreed, or will the court order parties to mediate or seek expert determination? Is there anything that is particular to Nigeria in this context?

Nigerian courts lean towards granting preservative orders, including a stay of proceedings in favour of arbitration or other dispute resolution mechanisms, unless it finds that the agreement to arbitrate is null, void, inoperative or incapable of being performed. In the case of *Onward Enterprises Limited v. MV 'Matrix & 2 Ors.* (2010) 2 NWLR (PT. 1179) 530, the Court of Appeal reiterated the sacrosanct duty of Nigerian courts to enforce arbitration agreement entered into by parties. Mshelia JCA, delivering the lead judgment in the case, stated as follows:

> "*Once an arbitration clause is retained in a contract which is valid and the dispute is within the contemplation of the clause, the court should give regard to the contract by enforcing the arbitration clause. It is therefore the general policy of the court to hold parties to the bargain into which they had entered unless there is a strong, compelling and justifiable reason to hold otherwise or interfere.*"

In Nigeria, the general rule is that the arbitral proceedings should be conducted without reference to national courts. However several exceptions exits, justifying reference to a national court during arbitral proceedings. For instance, a witness who is required to give evidence in arbitral proceedings may be summoned to appear before the arbitral tribunal by way of issuance by a court of a writ of subpoena *ad testificandum* or *duces tecum*. Also, it may be necessary to apply to court to make an order for the preservation of property which is subject of the dispute or to take some other interim measure of protection of the subject matter of the arbitration. The initiation of arbitration proceedings does not preclude parties from seeking interim measures or protective orders from national courts.

Furthermore, Nigerian courts typically encourage parties to mediate their disputes.

1.5 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 Nigeria in this context?

The decision of an arbitrator or an arbitral tribunal is legally binding upon the parties to the arbitration. An arbitral award, unlike a court judgment, cannot be appealed against. However, a party who complains against the award may, within 3 months of the award, apply to a court of competent jurisdiction (usually the High Court) to set aside the award, if certain grounds exist. (See section 29 of the ACA.) Such grounds are:

- that the award contains decisions on matters which are beyond the scope of the submission to arbitration;
- that the arbitration or award has been improperly procured; and
- that the arbitrator has misconducted himself.

See *AYE-FENUS ENT. LTD. v. SAIPEN NIG LTD.* (2009) 2 NWLR (PT. 1126) 483.

Also with respect to International Commercial Arbitration, an aggrieved party may request the court to refuse enforcement of the award where the party against whom it is invoked furnishes the court with proof that a party to the arbitration agreement was under some incapacity or on the grounds that:

- the arbitration agreement is not valid under the law which the parties have indicated should be applied, or failing such indication, that the arbitration agreement is not valid under the law of the country where the award was made;
- the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration;
- the award contains decisions on matters which are beyond the scope of submission to arbitration;
- the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the agreement of the parties; and
- the composition of the arbitral tribunal, or the arbitral procedure, was not in accordance with the law of the country where the arbitration took place, or the award has not yet become binding on the parties or has been set aside or suspended by a court in which, or under the law of which, the award was made.

Also, the court may refuse recognition of an award if the court finds that the subject-matter of the dispute is not capable of settlement by arbitration or that the recognition or enforcement of the award is against public policy in Nigeria.

There are generally no sanctions for refusing to mediate in Nigeria.

Settlement reached at mediation, when duly signed by the parties, is enforceable as a contract between the parties.

Where a case has been instituted in court, and the parties reach an amicable settlement of the matter by mediation or by agreement, they will be required to file terms of settlement which are adopted/sanctioned by the court as a consent judgment.

2 Alternative Dispute Resolution Institutions

2.1 What are the major alternative dispute resolution institutions in Nigeria?

The major arbitration institutions in Nigeria are: the Regional Centre for International Commercial Arbitration; the Chartered Institute of Arbitration (UK) Nigerian branch; the Chartered Institute of Arbitration (Nigeria); and the Lagos Court of Arbitration.

Other more specialised, industry-related arbitration institutions are:

- The Maritime Arbitration Association.
- The Association of Construction Arbitrators.

2.2 Do any of the mentioned alternative dispute resolution mechanisms provide binding and enforceable solutions?

Please refer to question 1.5 above.

3 Trends & Developments

3.1 Are there any trends in the use of the different alternative dispute resolution methods?

The practice of arbitration has, over the last 5 years, gained prominence in Nigerian legal circles, not just because of the current realities of global expedience, but also because of the traditional benefits of arbitration, namely speed, availability and flexibility. The government's effort (both at the federal and state levels) to attract foreign investors is partly responsible for the shift to arbitration. Indeed, a stable arbitration framework provides succour to potential international investors who are not comfortable submitting their disputes to the local courts for resolution, either to avoid opportunities for overt or covert state interference or because they perceive the judicial process as being slow. Decisions from Nigerian courts signpost a positive resolve by the courts to encourage parties to submit to arbitration where they have agreed so to do.

In relation to mediation, there is a noticeable preference for courts to actively encourage parties to adopt mediation as a means of settlement of their dispute. In Lagos State, for instance, a "Settlement Week" is usually organised every year, during which judges recommend and refer cases for mediation.

3.2 Please provide, in no more than 300 words, a summary of any current issues or proceedings affecting the use of those alternative dispute resolution methods in Nigeria?

In December 2012, the new Lagos State (Civil Procedure) Rules came into force. The new rules contain several innovative provisions and include a provision relating to the use/adoption of alternative dispute resolution mechanism by the courts. Specifically, Order 3, Rule 11 of the new Rules provide as follows:

> "*All Originating Processes shall upon acceptance for filing by the Registry be screened for suitability for ADR and referred to the Lagos Multi Door Court House or other appropriate ADR institutions or Practitioners in accordance with the Practice Directions that shall from time to time be issued by the Chief Judge of Lagos State.*"

The gist of Order 3, Rule 11 of the new Rules is that suitably qualified matters will be compulsorily referred to ADR institutions

or Practitioners. In our opinion, the major problem with this provision is the mandatory nature of the referral of *suitably qualified* suits to ADR Institutions or Practitioners. Without prejudice to the merits of this provision, we are of the view that the referral of *suitably qualified* suits to ADR Institutions or Practitioners on a mandatory basis appears to impede on constitutionally guaranteed right of access to court. The right of access to court is recognised by sections 6 (6)(b) and 36(1) of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended). See *ADEDIRAN v. INTERLAND TRANSPORT LTD* (1991) 9 NWLR (PT 214) 155.

It is further contended that the referral of suitably qualified suits to ADR Institutions or Practitioners on a mandatory basis pursuant to the provisions of Order 3, Rule 11 of the new Rules imposes conditions inconsistent with the free and unrestrained exercise of the right of access to court and *a fortiori*; the said provision is unconstitutional. The unconstitutionality of Order 3, Rule 11 of the new Rules is further demonstrated by the fact that the essence of the right of access to court guaranteed by sections 6 (6) (b) and 36 (1) of Constitution of the Federal Republic of Nigeria, 1999 (as amended) is that the state is constitutionally prohibited from taking the arbitrary decision (through the instrumentality of the rules of court) of diminishing parties' right to have their disputes determined by a court of law. Furthermore, the right of every citizen to have access to court incorporates the right to a public hearing and the right to an appeal. On the contrary, arbitration, for instance, as an alternative to the judicial process, denies a person these rights since there is no public hearing in such cases. In any event, the right to appeal from an arbitration award is limited to statutorily recognised points of law only.

The foregoing, notwithstanding, the application of this provision will help decongest the docket of courts in Lagos and encourage parties to consider alternative dispute resolution mechanisms.

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Chinedum is a member of the Board of Reporters of the Institute for Transnational Arbitration, and the Young International Arbitration Group of the London Court of International Arbitration. He is also an Associate of the Chartered Institute of Arbitration (UK). He is the author of several publications in reputable local and international law journals.

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