

**REFLECTIONS ON THE NEW HIGH COURT OF FEDERAL CAPITAL TERRITORY,
ABUJA (CIVIL PROCEDURE RULES) 2018**

BY

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1. INTRODUCTION.

The new High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 was signed on the 30th day of October, 2017 by Hon. Justice Ishaq Usman Bello (Chief Judge of the High Court of the Federal Capital Territory, Abuja) and the Rules came into force on the 15th day of February, 2018.

The 2018 Rules contain some laudable improvements upon the 2004 Rules. The new rules will enlarge the frontiers of civil practice and procedure in the High Court of the Federal Capital Territory, Abuja as a result of these key improvements.

2. PURPOSE OF THE RULES.

The main purpose of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018 is aptly captured as follows:

Application of these Rules shall be directed towards the achievement of a just, efficient and expeditious dispensation of justice. Parties and Counsel shall assist the Court to further the overriding objectives of these rules²

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² See Order.1. R. 2 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018. **Note** that this Rule shall hereinafter be referred to as **2018 Abuja Rules** in this paper.

3. SOME HIGHLIGHTS OF THE 2018 ABUJA RULES

Application of the Rules

The Rules shall apply to all proceedings including all part-heard causes and matters in respect of steps to be further taken in such cases, causes and matters.³ This is clearly absent from the 2004 Abuja Rules.

Terminologies

Under the 2018 Abuja Rules, plaintiffs are now known as claimants. Next friends and committee suing or being sued on behalf of persons under legal disability are now replaced by guardians. Minors, lunatics etc. are now generally referred to as persons under disability.⁴

Costs

Under the 2018 Abuja Rules, a party who fails to file any court process apart from Memorandum of Appearance within the stipulated time shall pay the sum of N200 (Two Hundred Naira) for each day of default⁵. When costs are ordered, they become payable forthwith and must be paid within 7 days otherwise, the defaulting party shall be liable to penalty of N100 (One Hundred Naira) payable to the court for everyday of default⁶.

In addition to the above penalty for default, a defaulting party or his counsel may be denied further audience in the proceedings

NBA Seal by counsel on court process

One key provision of the 2018 Abuja Rules is to the effect that all processes filed by counsel at the Registry, shall bear the seal of the counsel filing the suit as provided by the Nigerian Bar Association, showing that the counsel is fully enrolled as a legal practitioner and qualified to practice in Nigeria.⁷

³ See Order 1. R. 1 of the 2018 Abuja Rules.

⁴ See Order 1. R. 5 of the 2018 Abuja Rules

⁵ See Order 56. R. 1 of the 2018 Abuja Rules

⁶ Order 56. R. 9(2) of the 2018 Abuja Rules

⁷ Order 2. R. 9 of the 2018 Abuja Rules

This further re-echo the purport of Rule 10⁸ and other judicial authorities on the subject matter⁹

Electronic Service of Court process/other documents

This is innovating especially against the background that nothing of this nature was contemplated by the 2004 Abuja Rules. With this innovation it shows that the rules appreciate the advancement of science and technology in our today Nigeria.

By the rules, Substituted service may be ordered where it appears to the court (either after or without an attempt at service) that for any reason prompt service cannot be conveniently effected, the court may order that service be effected by E-mail or any other scientific device now known or later developed¹⁰. However, this service effected electronically must be contemplated by parties in a written agreement or subsequently agreed by counsel in the course of proceedings. Suits and interlocutory applications may be filed and served by Counsel vide electronic means and this shall be in accordance with practice directions issued by the Chief Judge¹¹

Similarly the new rules also provided for service of hearing notices via email and/or SMS except as otherwise directed by the judge¹²

Time a defendant may enter appearance in an action commenced by writ of summons.

The defendant shall within the period prescribed for appearance in the writ enter an appearance¹³. A cursory look at Civil Form 1 which is the form for writ, it shows that a defendant now have 14 days within which to enter appearance. This is a clear departure from the 8 days period that was obtainable under the 2004 Abuja Rules.

Time to Amend Pleadings

Under the 2004 Rules, originating processes and pleadings could be amended at any stage of the proceedings before judgement¹⁴. However, according to the 2018 Abuja Rules “a party may

⁸ Rules of Professional Conduct for Legal Practitioners 2007

⁹ See All Progressive Congress(APC) V. General Bello Sarkin Yaki (APPEAL NO: SC/722/15)

¹⁰ Order 7.R.11(2)(e) of the 2018 Abuja Rules

¹¹ Order 3. R.5 of the 2018 Abuja Rules

¹² Order 7.R.11(17) of the 2018 Abuja Rules

¹³ Order 9.R.1 of the 2018 Abuja Rules

¹⁴Order 24 of the 2004 Abuja Rules

amend his originating process and pleadings at any time before the pre-trial conference and not more than twice during the trial but before close of his case.”¹⁵

Where an originating process or pleading is to be amended, a list of any additional witnesses to be called together with their written statement on oath and copies of any document to be relied upon on such amendment shall be filed with the application¹⁶. This is clearly absent from the 2004 Abuja Rules.

If a party who has obtained an order to amend does not amend within the time limited by the order or, if no time is limited by the court, within 7 days from the date of the order, such party shall pay an additional fee of N100.00 (One Hundred Naira) for each day of the default. This is a departure from the old rules which provided that where a party fails to amend within 7 days of the granting of order for amendment, such order shall become void unless the time is extended further by the court.

Pre- Trial Conference

One key innovation of the 2018 Abuja Rules is the provision for pre-trial conference. According to Order 27 R.10 (1)&(3), the claimant is required to apply for the issuance of a pre-trial conference notice within 7 days of the close of pleadings. If he fails to do so, the defendant may make the application or apply to dismiss the action.

The purposes of the conference are set out in Order 27 Rule 10(2) as follows:

- a) disposal of matters which must or can be dealt with on interlocutory applications;
- b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal;
- c) promoting amicable settlement of the case or adoption of alternative dispute resolution.
- d) fix trial dates

The pre-trial conference must be concluded within 30 days of its commencement unless extended by the Chief Judge¹⁷. After the pre-trial conference or series of pre-trial conferences, the court shall issue a Report which will guide the subsequent course of the proceedings unless modified by the trial judge¹⁸. If the claimant or his legal practitioner fails to attend or obey a scheduling order or pre-trial order or is substantially unprepared to participate in good faith, the court shall dismiss his claim if it is the claimant that defaulted and in the case of a defendant defaulting, the court shall enter final judgment against him. But any judgment so entered may be set aside on application within 7 days¹⁹.

The essence of the pre-trial conference is to reduce trial time as much as possible as only those issues that cannot be resolved at the pre-trial conference will go to trial.

¹⁵ Order 25 R.1 of the 2018 Abuja Rules

¹⁶ Order 25 R.3 of the 2018 Abuja Rules

¹⁷ Order 27. R.14 of the 2018 Abuja Rules

¹⁸ Order 27. R. 15 of the 2018 Abuja Rules

¹⁹ Order 27. R. 16 of the 2018 Abuja Rules

Summary judgment procedure

According to Order 11 Rule 1 of the 2018 Abuja Rules:

“where a claimant believes that there is no defence to his claim, he shall file with his originating process the statement of claim, the exhibits, the deposition of his witnesses and an application for summary judgment which application shall be supported by an affidavit stating the grounds for his belief and a written brief in respect in support of the application”

It therefore shows that summary judgment procedure under Order 11 of the 2018 Abuja Rules applies to any claim as this is aptly captured by the opening paragraph of the order as follows:

“where a claimant believes that there is no defence to his claim.”²⁰

Note that the 2018 Rules did not replace the Undefended List procedure with summary judgment. The new rules retained the Undefended List procedure which was obtainable under Order 21 of the 2004 Abuja Rules in exact words both in heading and content²¹. The implication of having this two procedure which serve the same purpose (i.e expeditious recovery of claim) is that a party is at liberty to pick and choose which fit his purpose. But whether Summary Judgment can be used for the recovery of liquidated money demand or debt in Abuja, only time will tell especially against the background that the provision for Summary Judgment says ‘every claim’.

A claimant who believes that the defendant does not have a defence to his claim and intends to apply for summary judgment must file the following documents along with his originating process—

1. Statement of claim
2. Depositions of his witnesses
3. Exhibits referred to in the depositions
4. Application for summary judgment supported by an affidavit
5. A written brief in support of the application

A defendant who intends to defend summary judgment under the 2018 Abuja Rules must comply with Order 11 r.4 which provides that:

“Where a party served with the processes and documents referred to in Rule 1 of this order intends to defend the suit he shall, not later than the time prescribed for defence file:

1. his statement of defence,
2. depositions of his witnesses,
3. exhibits to be used in his defence;
4. counter Affidavit; and
5. a written brief in reply to the application for summary judgment.”

²⁰ Order 11. R. 1 of the 2018 Abuja Rules

²¹ See Order 35 of the 2018 Abuja Rules

The above documents must be filed by the defendant within Twenty-one (21) days after service on him of the claimant's originating processes and the application for summary judgment, being the time limited by the rules for filling of defence ²².

Time duration to adumbrate on written address

Under the 2018 Abuja Rules oral argument of not more than twenty minutes (20 mins) may be allowed for each party to emphasize and clarify the written address already filed²³. This is quite distinct from the time duration obtainable under Order 36 .R. 5 of the 2004 Abuja Rules which was thirty minutes (30 mins) for a party to adopt, emphasize and clarify his written address.

Fast Track of Cases

One key innovation of the 2018 Abuja Rules is the provision for fast track procedure in civil cases. By Order 37. R. 4 of the 2018 Abuja Rules-

“Where any of the parties specifically requests to proceed by way of fast track, the fast track court shall have jurisdiction to hear and determine that case and any other case requiring exceptional urgency including but not limited to the following:

- a. Banker/customer disputes
- b. Commerce and Industry
- c. Landlord and Tenant
- d. F.C.T or Area Council Revenue
- e. where any of the parties specifically requests to proceed by way of fast track.
- f. provided that the monetary claim in paragraphs (a) and (b) above is not less than N50,000,000(Fifty Million Naira); and
- g. any other case which the Chief Judge may approve.

The fast track procedure under the 2018 Abuja Rules is wide in scope as it involves ‘any other case which the chief judge may approve’. Where a matter is placed on the fast track, a filing fee of N100, 000 (One Hundred Thousand Naira) shall be paid by the applicant²⁴. The period from commencement to conclusion of trial in fast track procedure shall be within 30 days, the filing and adoption of final addresses is within 14 days, judgment shall be delivered within 7 days and the issuance of certified true copy of judgment shall be within 4 days²⁵.

Power to order Non Suit

A non- suit is made possible pursuant to statutory provision²⁶. There is no such provision under the 2004 Abuja Rules, but by the 2018 Abuja Rules, the power to order a non-suit is now provided for. It is also a requirement of the rules that counsel be given an opportunity to be heard as to the propriety or otherwise of making an order of non-suit²⁷.

²² Order 15. R. 2 of the 2018 Abuja Rules

²³ Order 33 . R. 4 of the 2018 Abuja Rules

²⁴ Order 37 .R. 6(3) of the 2018 Abuja Rules

²⁵ Order 37 . R. 12 of the 2018 Abuja Rules

²⁶ See *Omogbe v. Lawani* (1980) 3-4 SC 108

²⁷ See Order 38. R. 1 of the 2018 Abuja Rules

Actions against Persons Unknown

The 2018 Abuja Rules makes provisions for the institution of action against persons unknown. A claimant in a land matter who is unable to identify the person against who he claims, may subject to the rules describe such a person as a “person unknown”²⁸

Alternative Dispute Resolution

One radical improvement made by the 2018 Abuja Rules is the substantial provision for ADR. Under Order 17 of the 2004 Abuja Rules there was only little provision for ADR and it was discretionary and subject to the consent of the parties. But under the 2018 Abuja Rules the scope of ADR is wider. The court or judge is now duty bound to encourage settlement of matters via ADR. Where a matter is suitable for ADR, the Judge shall by enrolment order refer the case to the Abuja Multi Door Court House (AMDC) for resolution within 21 days except otherwise ordered by the court²⁹. Where a party refuses to submit to ADR and loses the case in court, he shall pay a penalty as may be determined by the court.

The court or judge shall, on the application of parties enroll the terms of settlement both in heading and content reached at the AMDC as consent judgment, such terms shall thereupon have the same force and effect as judgment of the court³⁰

It should be noted that under the 2018 rules, an application to enforce an award on an arbitration agreement or order may be made ex-parte, but the court hearing the application may order it to be made on notice.

Application for change of Legal practitioner or withdrawal

The 2018 Abuja Rules now make elaborate provision for change of Counsel unlike what was obtainable under Order 10 Rule 40(2) of the 2004 Abuja Rules. By Order 55 Rule 2 of the 2018 Abuja Rules, an application for change of legal practitioner or withdrawal may be made by the claimant, defendant or the counsel as the case may be, not less than 3 clear days before the date fixed for hearing.

It therefore shows that an application to change counsel must be made within 3 days before date fixed for hearing, this is not contained in the 2004 Abuja Rules. Apart from change of counsel by client, the rules also accommodate withdrawal from employment by a legal practitioner. A legal practitioner who has withdrawn appearance may still re-appear for the same party with leave of court. This is also absent from the 2004 Rules.

²⁸ Order 13. R. 9 of the 2018 Abuja Rules

²⁹ Order 19. R. 2(1) of the 2018 Abuja Rules

³⁰ Order 19. R. 7(1) of the 2018 Abuja Rules

4. Conclusion

In order to create a viable Judicial System, there should be periodic reforms of the rules of court through the setting up and establishment of a standing committee for Law Reforms or Law Review as this will ensure the smooth running of the Judicial System in consonance with current realities. Though there cannot be a law without some lacunas, the efforts of the FCT judiciary is commendable in the promulgation of the 2018 High Court Rules