TECHNOLOGY AND LAW PRACTICE IN NIGERIA

John Inyang Okoro,
Justice Supreme court of Nigeria

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INTRODUCTION

Let me express my profound gratitude to the promoters of the Nigerian Law Publications Limited, publishers of the Nigerian Weekly Law Reports (NWLR) for inviting me to participate in this webinar on an issue which the legal community in Nigeria and their counterparts all over the world are trying to make it a new normal. May I also pay my respect to the late Chief Gani Fawehinmi, SAN for his pioneering efforts which birthed the NWLR some thirty five (35) years now. May his soul continue to rest in peace. I congratulate the organisers of this webinar for adding a digital version of the NWLR to their numerous publications. The legal community cannot thank you enough.

The theme for this discourse on “Technology and Law practice in Nigeria” is not new. It has been with us for sometime now. As far back asJuly 2012, the National Judicial Council unveiled a Judicial Information Technology Policy which is in the process of being activated and made to work as the new normal. Over the years the Supreme Court of Nigeria, some divisions of the Court of Appeal, Federal High Court , the High Court of the FCT and some state high courts, prominent being the Lagos state High Court have made frantic efforts to implement

the policy. Had we made the policy a priority, we would not have been caught napping at the advent of the COVID-19 pandemic that took the world by storm and still raging. Indeed the Nigerian legal community was

largely unprepared whilst other jurisdictions e.g United States and The United Kingdom including some African countries like Kenya, Ghana which had invested heavily and integrated Information Communication Technology into their justice delivery systems, readily switched to using technology in conducting court businesses.

I must however commend some Nigerian courts, notably the High courts of Lagos state, the FCT, Ogun state, Borno state and the National Industrial court which issued practice directions that allow for the conduct of limited court businesses via online platforms such as Zoom, Microsoft teams, Skype etc notwithstanding reservations of its constitutionality by some stakeholders. So we are not totally left behind. In fact I have taken part in the virtual hearing of some motions in the Supreme court during this lockdown. This is a commendable first step.

During the COVID-19 pandemic, exactly on the 7th of May, 2020, the NJC in furtherance of its policy formulation mandate issued what it termed "Guidelines for Court Sitting and Related Matters in the COVID-19 Period". This is meant to guide heads of court in "*adopting or formulating Rules, Directives and Guidelines as appropriate to the legal and Material circumstances of their courts with a view to achieving the goal of safety, delivering justice in these unprecedented times*". The guidelines recommended inter alia, virtual or remote court sittings with a

view to avoiding as much as possible sittings in the physical courtrooms save for time bound extremely urgent and essential matters that may not be heard virtually or remotely.

Earlier in 2016, the Nigerian Judiciary adopted a National Judicial Policy which provides for the use of ICT in clause 2.4.10 as follows:

> (a)The judiciary in Nigeria both at the Federal and state levels shall encourage the use of Information and Communication Technology and in particular all courts shall as far as practicable , predicate and integrate their information technology system on the Judicial Information Technology Policy of the Federal Republic of Nigeria when adopted.
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> (b) Judicial bodies and institutions shall be equipped with information technology systems.
>
> (c) All judicial officers shall undertake mandatory training on the use and application of information technology systems including electronic and digital recording and transcription of court proceedings and processes.

Based on the above policy, and even before the advent of COVID-19, some form of ICT was being deployed in Nigerian courts. For instance, the Evidence Act 2011 provides for the admissibility of computer

generated evidence. Some courts of record in this country have made rules of procedure containing provisions enabling electronic filing (e-filing), electronic service of court processes and even a limited form of virtual hearing.

I remember that in February 2018, the Supreme Court of Nigeria, in order to give vent to the said technology policy, launched an electronic mailing system and gave an ultimatum of July 18, 2018 as the last date for filing physical court processes at the Supreme Court. This was to enable litigants and opposing parties to file and serve their processes online without necessarily visiting the supreme court. The project aims at easing communication system between the bar and the bench, reduce paperwork and incidental costs and ultimately speed up the court process and thereby improve the administration of justice. I however regret to say that most lawyers as I speak have not taken advantage of this provision. You still find them travelling miles to Abuja to file processes at the registry of the supreme court. What could be the problem?

It has been suggested that the legal profession being a conservative industry where decisions are made by referencing past cases and legislation, some of which are centuries old, many lawyers and judges have expressed reservations about moving from the traditional text based approach to using technology to support their work. That notwithstanding,

there must be a paradigm shift because today, ICT is now used in all large corporate entities and even small firms around the world. It is a generally accepted view that ICT has the capacity to improve efficiency, increase accessibility and has the more general effect of promoting confidence in the justice system. We have no reason to lag behind. I counsel both the Bar and the Bench to embrace this faster means of delivering justice to our people.

In a developing country such as ours, the implementation of technology in the legal sphere and particularly in remote or virtual hearing comes with a lot of challenges which may include:

(i) poor infrastructure,

(ii) network disruption and connectivity issues,

(iii) hacking and cyber security concerns,

(iv) indigent litigants who are unable to engage the services of a lawyer,

(v) illiterate parties who are unable to participate in video conferencing on their own,

(vi) witnesses who cannot afford a computer or other devices with which to connect to a virtual hearing or who do not adequately know how to use such devices and a lot more issues which appear to make embracing technology a preserve of the rich and powerful only.

One may argue that even if notice of cause list, access codes, links or meeting IDs for a remote hearing are given to parties or their counsel, and published in the court's website to enable interested members of the public observe court proceedings without any discrimination, the above challenges could render the whole exercise a mirage.

As has been suggested elsewhere, we should not emphasise much on those challenges. Rather our discussion should focus on how to surmount those identified challenges. Remote or virtual court proceedings are not intended to replace or supplant in-person hearing in a physical courtroom, it is merely complementary. It is not all matters that are suitable for virtual hearing. It is thus part of the case management function of the court to decide whether or not any particular matter should be heard virtually. Nothing good comes easy. The teething problems should not deter us. As advanced countries manage these challenges, we should follow suit.

I need to emphasise that these challenges are not peculiar to Nigeria. In Capic v Ford company of Australia (2020) FCA 486, the Federal court of Australia, Per Perram, J, acknowledged that the use of technology in law practice and particularly in remote or virtual hearing could be plagued by such constraints as technological limitation, physical separation of legal teams, challenges in cross examining expert and lay

witnesses virtually, document management, trial length and expense as well as future issues. Notwithstanding, he insisted that:

"*I think we must try to make this (virtual) trial work. If it becomes unworkable then it can be adjourned but we must at least try*".

We are aware that the number of persons infected by COVID-19 is increasing by the day. It is uncertain when the virus will come to an end. As observed elsewhere, postponing the administration of justice and restriction of court sittings to urgent matters only, may not be in the interest of justice. Both the Bar and the Bench must collaborate and think out of the box and probably make sacrifices in making the use of technology in our justice administration and delivery a reality. We can use and manage the existing platforms to administer justice. Counsel does not need to travel from Lagos to Abuja only to adopt briefs already filed and exchanged. It is a waste of resources for counsel to fly from Sokoto to the Supreme Court in Abuja only "to move in terms of the motion papers".

There is no reason why Judges or Justices must sit in court to read judgements which can conveniently be published in the website of the court and copies sent to parties and their counsel via e-mail . Parties who have filed and exchanged written addresses in support and/or in

opposition to any motion need not appear in a physical siting of the court to adopt the written addresses.

In spite of all perceived and real challenges, let us join our hands to put Nigeria on the World map of countries leveraging on Technology to drive their legal system.

I thank you for your attention.