



BOOK REVIEW BY: DR. ENEFIOK ESSIEN

TITLE: CIVIL LAW AND PROCEDURE IN NIGERIA: A NEW APPROACH

AUTHOR: A. EKONG BASSEY (SAN)

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This is a compact and handy book of 21 preliminary pages, 196 pages of text, 71 pages of three appendices and 5 pages index. It is general knowledge that having a right is one thing and the steps to enforce the right or prevent an infraction of it is another. One is substantive law while the other is adjective or procedural law. It is with the latter that the book is concerned: the formal steps to be taken, the judicial process for enforcing rights and duties recognized by substantive law and for justly administering redress for infraction of them.

The author logically begins from the beginning. Upon being consulted to institute a suit, the first questions are: is there a cause of action? Which court will have jurisdiction over the matter: is it the Federal or State High Court? Does the party have capacity to sue, and if yes, does he have locus standi? All these are covered in Chapter 1.

Chapter 2 discusses the four principal modes of commencing civil suit: by Writ. Originating Summons, Originating Motion and by Petition. Where the suit is improperly commenced it may be struck out, and this can be as demoralizing (to a plaintiff) as losing a battle even before it is started. Both old and recent authorities are cited to elaborate the issues. Also in this chapter, the author discusses the ever burning issue of service of originating process, particularly where a Writ of summons is to be served out of jurisdiction in which it is issued. As rightly noted by the author, this has been a stumbling block for many lawyers who fail to obtain the requisite leave of court and to specially endorse the writ.

In Chapter 3 the author discusses pleadings. Pleadings are exhaustive written narration of the facts which the parties rely on to prove or disprove the claim, as the case may be. The author has clearly and comprehensively stated and discussed the rules, the object and functions of pleadings, be it in actions for defamation, slander, probate matters, tort or contract.

During the pendency of the case in court, it is normal that some applications will be made by either party, which do not go to the merit of the main case. It may, for instance, be an application to amend, or to extend time within which to take a particular action, or for injunction, or for joinder, or for appointment of a receiver. The rules and principles governing all such interlocutory applications are well analysed in chapter 4.

Chapter 5 discusses trial procedures. Of course fair hearing and natural justice generally are an intrinsic part of the hearing or trial process. Evidence also comes into play as one has to be constantly mindful of who bears the onus of proof, and what standard that onus should be. All these are effectively dealt with in this chapter.

The author's treatment of "judgement" in chapter 6 is not only masterly but commendable. Quite often this subject is by-passed or glossed over by authors as if there really is nothing to write about. Of the types of judgement enumerated by the author the most scant attention is given to Judgement ^{on} pleadings. This is not altogether surprising considering that in practice, one hardly meets a case where the judge enters judgement on the pleadings, notwithstanding that rules of court and judicial decisions support this. It would help to decongest the cause list if there is less judicial reluctance to give judgement on the pleadings in deserving cases. In this chapter, the author also discusses the art of writing judgements. Relevant cases are called in aid. This aspect of the book will indeed afford a continuing legal education for judges and magistrates, a subject which has been long reluctantly addressed in this country.

While the only interest of litigants is the judgement, the only interest of a victorious plaintiff is how to enforce the judgement. This is the subject of chapter 7 where the various modes of enforcing a judgement are discussed. Every judgement of a court has an immediacy: it must be complied with without delay, unless there is a stay of execution. The critical questions of where to file an appeal, which court to file the motion for stay, and the grounds on which the stay would be granted or refused, are all very exhaustively explained.

Overall, the coverage of the book is thorough, up-to-date, with detailed discussion of the rules of court and points in controversy. The type face is large enough to be easily readable. The pagination is consistently at the top right alternatively, except at the beginning of each chapter where it is put at the bottom right or left corner, as necessary. The print is good. This is without doubt an invaluable practice book. There is a detailed indexing for quick, easy referencing. The fulsome coverage given to indexing is commendable because most lawyer's and students' work is done in an atmosphere of stress, generated by a combination of load of work and poor time management. The index is often the starting point for preparation.

What may bring a bit of a confusion is the title of the book; it gives the reader the impression that it is about civil law as practised in continental Europe and the procedure thereof. "Civil Procedure in Nigeria" would probably have met less objection. It is also not immediately obvious what constitutes the "New Approach", except perhaps that recent cases are cited and the book is expectedly up-to-date. As Benjamin Cardozo once said, "every age is new to those who are living in it". This, however, does not at all detract from the quality of book as invaluable both for the Bench and the Bar as well as for law students, academics and researchers. It is one book that is worthy of serious consideration as the recommended text for students reading for the Bar. It is hoped that a

sensible price will be put to it, so as not to put the book out of the reach of most of those for whom it is intended.

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