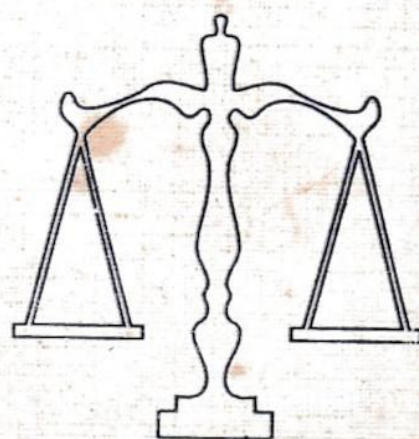


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THE ROLE OF COURT REGISTRARS IN THE ADMINISTRATION OF JUSTICE IN NIGERIA*

PREAMBLE: The duties assigned to Registrars in the High Court (Civil Procedure) Rules¹ are numerous. The Magistrate's Court Rules² and the Customary Court Rules³ also ascribe certain specified duties to Registrars of the respective Courts involved. This paper sets out to examine at least some of these duties, particularly as relates to the commencement of civil suits; an appraisal of the level of discharge of these duties will also be undertaken, and suggestions for improvement will be proffered. There is no doubt that the roles of Registrars are to complement those of the Court towards the over-all objective of attaining justice according to law. Judicial approaches will therefore be discussed alongside the role of Registrars.

INTRODUCTION:

Literarily speaking, a Registrar is somebody in charge of a register, e.g., in a university, or somebody who records births, deaths and marriages.⁴ In the context of Court Registrars however, a Registrar is an official responsible for the administrative functions of compiling and keeping court records, and arranging for the issue of summonses; he also undertakes some judicial functions like hearing and determining certain interlocutory applications.⁵ Under the High Court (Civil Procedure) Rules, the Chief Registrar, acting as Probate Registrar, hears and determines non-contentious probate applications.⁶ Court Registrars, therefore, generally speaking, have and do play both administrative and judicial roles in the administration of justice.

The High Court (Civil Procedure) Rules⁷ recognise this bipartite role of a Registrar, i.e., the administrative and judicial functions. Thus, apart from the traditional administrative duties vested on the Registrar particularly in the commencement of civil suits, the Registrar is also saddled with some judicial functions e.g.

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to hear and determine certain simple inter-locutory motions.⁸ However, for a Registrar to be competent to hear and determine such motions, the Registrar must be a qualified legal practitioner within the meaning of the Legal Practitioners Act.

The Provision that allows Registrar to entertain certain non-contentious interlocutory applications is meant to expedite the hearing and determination of such interlocutory motions instead of waiting for the Judge who may already have been overburdened with a pending long list of contentious cases awaiting determination. For instance, at the expiration of the time limited for filing and exchange of pleadings,⁹ the plaintiff is required by the rules of court to apply to the Registrar to set down the suit in the Cause List.¹⁰ This logically leads us to a discussion of the role of Court Registrars in the commencement of civil suit.

DUTIES OF REGISTRARS IN THE COMMENCEMENT OF SUIT UNDER THE GENERAL CAUSE LIST

Ordinarily and unless otherwise specifically provided for, all civil suits are commenced by writ.¹¹ The Writ is issued by the Registrar, or other officer of court empowered to issue summonses, on application.¹² The "issue" of the writ takes place upon its being signed by the Registrar or other officer of the Court duly authorised to sign writ.¹³ This holds true even in the District or Customary courts where the illiterate litigant may just walk up to the Registrar and orally tell him his grievance and the Registrar reduces into writing and same is filed by way of Writ of Summons.¹⁴

The defendant, on receipt of the summons is required by the rules of Court¹⁵ to enter an appearance by filing a Memorandum of Appearance at the Registry of the Court, within the time limited on the Writ. Upon being so filed, the Registrar is enjoined to enter the appearance in the cause Book and stamp the copies of the Memorandum of Appearance with the official stamp, showing the date on which he received those documents, and deliver one sealed copy thereof to the plaintiff or, as the case may be, his legal practitioner.¹⁶

It is of great importance that the Registrar should show the

date on which the defendant filed the Memorandum of Appearance because it is this date that determines the next step to be taken by the plaintiff: the plaintiff is required by the rules of court to file his Statement of Claim within 30 days (or 60 days, in land cases) after the defendant has entered appearance. This is why it is necessary for the Registrar to show the date the Memorandum of Appearance was filed by the defendant and to serve a copy thereof on the plaintiff so that the plaintiff may know of it. If the Registrar fails to do this, the case may be unduly delayed (as the plaintiff would not know when to take the next step) and this would not meet the end of justice.

Equally, it is no justice for the Registrar to set down a case for mention, let alone for hearing, on a date prior to the close of pleadings.¹⁷ In other words, the time limited by the rules for the filing and exchange of pleading must elapse before the Registrar can properly set down the case for hearing (or for mention). This is a striking departure from what obtained in the old High Court Rules¹⁸ whereby once the case was filed, the Registrar listed it for mention in Court, whereat pleadings were ordered. Under the new (current) Civil Procedure Rules, the "ordering" of pleadings is regulated by the rules of Court and the whole procedure has to be done and completed and the timing is computed administratively before the Registrar lists the case in Court. It would be sheer waste of the parties, the lawyers and the Court's time, and in fact sheer injustice to all parties concerned, if the Registrar lists the case to come up in court before the case is actually ripe for such fixture. In fact it is the strong view of this writer that even in cases where an undefended action is transferred to the general cause list following the filing of Notice of Intention to Defend and an affidavit disclosing a defence on the merit, the proper thing is not to order pleadings but to allow that to be regulated by the rules governing the filing of pleadings.

DUTIES OF REGISTRAR IN COMMENCEMENT OF SUITS UNDER THE UNDEFENDED LIST

As a short-hand definition, one may say that the undefended list procedure is a legitimate short-cut to judgment. It is normally adopted in cases where the claim is for a liquidated money

demand, the proof of which is mainly documentary and it appears that the defendant may not have any defence thereto. Thus, by this procedure, a defendant who has no real defence to the action is not allowed to dribble and frustrate the plaintiff and cheat the plaintiff out of the judgment which he (the plaintiff) is legitimately entitled to by delay tactics aimed not at offering any real defence to the action but at gaining time within which he may continue to postpone meeting his obligation and indebtedness.¹⁹ Against this, however, is the opposing policy that a plaintiff should not be permitted to shut out real (not a sham) defence to an action by his clinging to the assertion that once the defendant has failed to show cause against such (plaintiff's application) as required by rule of court, he is out of court and must have a judgment signed against him no matter how genuine a defence he has disclosed by means other than by affidavit.²⁰

As can be seen therefore, the main objective and singular advantage of this procedure is the avoidance of undue delay in the administration of justice that would otherwise be occasioned if the suit were put on the general cause list.

It is strongly submitted that the application for leave of court to bring the suit under **Undefended List**, like all applications to the Court, must be by motion supported by affidavit to which all relevant documents are exhibited.²¹ It is after the Court (i.e. the Judge, not the Registrar) has perused the facts in the affidavit and is satisfied that there is no defence thereto, that he would then order that the suit be placed under the **Undefended List**.

There has been some controversy as to whether the suit should be filed along with the Motion paper which asks for the suit to be entered under the **Undefended List**, or whether the suit (Writ) should merely be exhibited to the motion paper. A perusal of the rules of Court will suggest that the Writ of Summons should be filed, not just exhibited; the application or prayer on the motion paper is merely for the suit to be "entered" under the **Undefended List**. This presupposes the existence of a suit which can be so entered. This view is supported by the Supreme Court case of **U.T.C. (Nig) Limited V Pamotei & 4 Ors**²² where Nnaemeka-Agu J.S.C. inter alia, said

"Under **Undefended List**, an application is made to

the Court for issue of a Writ of Summons in respect of a claim to recover a debt or liquidated demand. The application is supported by an affidavit which is filed along with the Writ, and which sets out the grounds of the claim and states that in the deponent's belief, the defendant has no defence to the action. Once the Court is satisfied that there is no defence thereto, it shall enter the suit for hearing under Undefended List and it will be marked accordingly.²³

After the court has ordered that the suit be entered under the Undefended List, the plaintiff delivers to the Registrar as many copies of the affidavit as there are defendants. The Registrar, upon receipt of the Writ of Summons and affidavit shall attach one affidavit to each writ and shall mark on the Writ of Summons "Undefended List".

ROLE OF REGISTRARS IN THE COMMENCEMENT OF APPEALS

Where an appellant has lodged his appeal by filing notices and grounds of appeal, paid appeal fee and perfected all other stipulated conditions of appeal, delay by the Registrar in compiling record of appeal and transmitting same to the appellate Court amounts to a delay (and denial) of justice. In the case of appeal from the Magistrate's Courts to High Court, for instance, the Registrar is expected to finish compiling the records within 3 months from when the appellant fulfilled his conditions of appeal. This, however, is often obeyed more in the breach than in the observance.

And, talking about conditions of appeal, it is common to find that after the appellant has been directed to deposit a sizeable amount of money for preparation/compilation and transmission of the record, as decided by the Registrar and approved by the Magistrate or Judge as the case may be, he is further asked to supply stationery, e.g. packets of stencils, several reams of duplicating papers, tubes of duplicating ink; a roll or twin, etc. It is submitted that this is most unfair to the appellant as such

onerous and burdensome conditions may prevent the appellant from prosecuting his appeal. It may be noted that the constitution of Nigeria guarantees the right of appeal whether with leave or as of right.²⁴ The Registrar should not impose conditions that tend to prevent a prospective appellant from seeking justice in the appellate court. It may further be noted that the deposit decided upon by Registrar should sufficiently cover such fees for preparation/compilation and transmission of the record.²⁵

Another point worth mention in this regard is that the Registrar is obliged as a matter of duty to exercise utmost care in the compilation of records of appeal and ensure that such record is complete as otherwise the appellant may suffer injustice; his appeal may be struck out on the ground of incomplete record.

CONCLUSION

It cannot be gain said that the duties of the Registrar, both administrative and judicial, are indispensable in the Courts' search for justice according to law. There is also no gainsaying that generally speaking, Registrars have striven hard to discharge these duties. However, since there is no virtue in stagnation, it is humbly suggested that Registrars still need to do better. They can do this taking seriously the points that have been raised above, and by familiarising themselves with the relevant court rules in so far as they relate to their (Registrars') roles.

In fact it is this need for familiarity with the relevant rules of court that has informed the English practice whereby Registrars of County Courts²⁶ are appointed by the Lord Chancellor from solicitors of at least 7 years standing. Being solicitors, such Registrars are effectively equipped to properly discharge their judicial functions.

NOTES

1. 1989 of Akwa Ibom State. The Rules are, generally speaking, uniform throughout the country. Lagos State however still applies its own Lagos State High Court Rules - which has different provisions, e.g. its Order 10 procedure in lieu of the Undefended action procedure.
2. Cap. 71 Vol. IV Laws of Cross River State, which also applies in Akwa Ibom State.
3. Cap. 34 Vol. 2 Laws of Cross River State, which also applies in Akwa Ibom State.
4. See: The New Lexicon Webster's Dictionary, Deluxe Encyclopedic Edition (1991)
5. See: Curzon L.B.: A Dictionary of Law, Macdonald & Evans, 1979, P. 288.
6. Order 50 rule 6(1) High Court (Civil Procedure) Rules of Akwa Ibom State. Same provision is made in the High Court (Civil Procedure) Rules of Cross River, Imo, Abia, Anambra, Enugu, Rivers State and in fact in other states' High Court Laws.
7. op. cit.
8. See Order 37 Rule 1; Order 49 rule 1(1) and rule 72. Any person aggrieved by a decision or requirement of the Registrar may appeal by summons to a Judge. See also Order 49 rule 73(1).
9. Order 25 rule 35.
10. Order 37.
11. Order 1 rule 2(1)
12. Order 5 rule 1.
13. Order 5 rule 15.
14. Order 3 of Customary Court Rules, op.cit.
15. Order 13 rule 1(2) of the High Court (Civil Procedure) Rules, op. cit.
16. Order 13 rule 1(3) (emphasis mine).
17. Order 25 rule 35. For the procedure to be followed for a case

to be set down for hearing, see Order 37 rules 1, 2, 3 of the High Court Rules, *op. cit.*

18. Cap. 51, Vol. III Laws of Cross River State; other states had their equivalents.
19. See *NAL Merchant Bank Limited V. Macauley* (1986) 5 N.W.L.R. (Pt. 40) 216 held 1.
20. *Ibid*, held No. 1; see also *Nishizawa Limited V. S. N. Jethwani* (1984) 12 SC 234. If the defendant fails to file an affidavit disclosing a defence on the merit but instead files a Statement of Defence, the Court will still consider the statement of defence; it will not ignore it. See *Pamotel op. cit.*, held Nos. 4, 5, 11; *Jethwani op. cit.*; or where he has not filed his notice of intention to defend within time, he can apply to the Court for extension of time to file the notice - *Messrs Jammal Engineering Co. Ltd. V. Nisir (Nig.) Limited* (1972) 1 SC 79 at 80, 84; or where he merely files a notice not supported by an affidavit, the Court may give him an adjournment to enable him file the affidavit. See: *Pamotel, op. cit.*, held 25; *John Jolt Limited V. Fajemirokum* (1961) All NLR 492.
21. See, e.g., Order 8 rule (1) which, though it concerns interlocutory applications, requires that all applications wherever referred to in the Rules, should be by Motion.
22. (1989) 2 NWLR (Pt. 103) 244.
23. *Ibid* at p. 299 para A - B (emphasis mine).
24. See Sections 220(1) and 221(1) of the 1979 Constitution of the Federal Republic of Nigeria, as amended by Decrees.
25. Order 44 rule 3 of High Court (Civil Procedure) Rules, *op. cit.*
26. These are the main civil Courts, established by County Courts Act 1846.