

SOME PROVISIONS OF THE FEDERAL HIGH COURT CIVIL PROCEDURE RULES AND THE PROMOTION OF INTERNATIONAL TRADE IN NIGERIA

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INTRODUCTION

This paper was provoked by the need to call attention to some of the provisions of the Federal High Court Rules¹ that could be used to promote international trade in the sphere of litigation. This need is all the more compelling having regard to the all embracing jurisdiction of the Federal High Court as expanded by Decree 107 of 1993.

It should be remembered that before the promulgation of Decree 107 in 1993, the Federal High Court was a court of very limited jurisdiction². This paper is all the more necessary at this time in order to call the attention of the members of the profession to the provisions of the Rules that could be invoked in the appropriate proceeding to the advantage of litigants where causes of action have to do with International Trade.

Also, the paper will attempt to call attention of the law maker to the need for some amendments to the Rules of the Federal High Court with a view to enhancing its effectiveness in the promotion of International Trade in Nigeria.

In this era, when the world has become "global village," each country especially developing ones like Nigeria, must do

everything to reform its Laws to encourage the inflow of foreign capital investments.

SHORT HISTORY OF THE FEDERAL HIGH COURT

The Federal High Court came into the Nigeria Legal System in 1973 with the promulgation of **Federal Revenue Court Decree**³. It is this same court that was renamed the Federal High Court by the 1979 Constitution of Nigeria.⁴

Upon the commencement of the 1979 Constitution of Nigeria on 1st October, 1979 the establishment of the Court was invested with constitutional flavour⁵.

The constitution provides for the establishment of the court appointment of the members of the court, jurisdiction, powers, constitution and practice and procedure of the court⁶.

At conception, as the original name suggests, the Court was to be a specialized court that deals with the revenue of the Federation. But due to amendments of the enabling Law which culminated in Decree No 107 of 1993, the court now has jurisdiction to deal with virtually all the items on the exclusive legislative list of the 1979 Constitution.⁸

INTERNATIONAL TRADE

In the context of this paper international trade will be used as the form of trading of business transaction undertaken between a Nigeria human or corporate with others outside the shores of Nigeria. In other words, we shall X-ray business transactions that involve any form of trade with other persons outside Nigeria. However, we are not concerned in this paper with the nitty-gritty or the technicalities of international trade such as CIF or F.O.B. contracts; rather we shall deal with international Trade as a simple economic term.

SOME PROVISIONS OF THE FEDERAL HIGH COURT RULES IN AID OF INTERNATIONAL TRADE

Order III Rules 1-9 make provisions for a method of summary judgment procedure by the name of 'undefended list.' This is a procedure open to a plaintiff who wants to claim a debt of liquidated money demand from a defendant. He only needs to file a writ with supporting affidavit. In the affidavit, he should depose to facts verifying his claim and that in his belief there is no defence on merit to the action. If the defendant fails or neglect to deliver the requisite processes indicating his intention to defend the action or if the defence he files amounts to no defence in the opinion of the judge the, the trial judge would be entitled to give judgement in favour of the plaintiff.⁹

It is our view that if the above provisions of the undefended list are seriously harnessed

for the purposes of litigation involving a dispute arising from international trade in Nigeria it will aid quick resolution of such dispute.

Order V Rule 1 makes provisions for the assignment of an address within jurisdiction for a plaintiff who is not ordinary resident in Nigeria. This provision could be very salutary for a defendant that is sued by a foreign company in Nigeria since such plaintiff will be obliged to supply an address within jurisdiction and this will save the defendant the trouble of having to serve process outside the country, with attendant cost and strain on time.

Order X Rule 2 makes provision for special bailiff for effecting service of court processes. This provision is very important for the services of court processes outside Nigeria especially for the realization of the benefit of Rule 9 of Order X which makes provision for service of courts processes on a ship within Nigeria's territorial water Rule 5 of Order X makes beneficial Provisions for substituted services of court processes. Those who are familiar with the difficulties of effecting personal service of court processes, will appreciate the indispensability of the provisions especially on matters bordering on international trade which will in most probability involve a company or person resident outside Nigeria¹⁰.

Order XI make copious provisions for the method of effecting service of foreign court

processes issued from tribunals and courts outside Nigeria. Even from the heading of the order¹¹. It is clear that it was directed in aid of the promotion of international trade.

In order XIV Rules 11-16 thereof, comprehensive provisions are made for the obtaining of evidence by Nigerian Courts from a witness or witnesses resident in Nigeria on behalf of a foreign Tribunal for a better appreciation of these provisions it would be beneficial to *quote in extenso* the provision of Rule 11 which provides as follows:

“where under the Foreign Tribunals Evidence Act 1856, or the Extradition Act, any commercial matter, or Criminal matter, is pending before a Court or tribunal of a foreign country, and it is made to appear to the Court by commission rogatoire, or letter of request, or other evidence as hereinafter provided that such court or tribunal is desirous of obtaining the testimony in relation to of any witness within the jurisdiction, the court may on the ex-

parte application of any person shown to be duly authorized to make the application on behalf of such foreign court or tribunal, and on production of the commission rogatoire, or letter of request, or of a certificate signed in the manner, and certifying to the effect mentioned in section 2 of the foreign Tribunals effect mentioned in section 22 of the foreign Tribunals evidence Act, 1856, or such other evidence as the court may require, make such order as may be necessary to give effect to the intention of the enactment above mentioned to in conformity with section 1 of the said Foreign Tribunal Evidence Act, 1856.”

It is apparent from the above provision that under the rule of reciprocity international trade will get a boost if and when a Nigeria

litigant also needs to obtain evidence of a witness resident outside Nigeria.

In order XVI Rule 1-7 make copious provisions enabling the Federal High Court to make an order arresting an absconding defendant in cases where such a defendant after becoming aware of the case against him or not intends to leave the jurisdiction of the court or to dispose or remove his property either in whole or in part pending the determination of the matter. The court can also order that he should give security for his appearance at the court.

It will be seen from the Rules that if properly mastered it will aid the disposal of any dispute involving international trade without the attendant risk of the victor or judgment creditor to having a pyrrhic victory.

Another important provision is order XIX wherein provisions are made for the interim attachment property of a defendant that wants to dispose of same during the pendency of the matter before the court for a full appreciation of the provision, Rule 1 provides *inter alia*.

“1 (a) *Where the defendant in any amount or value of five hundred Naira or upwards with intent to obstruct or delay of any decree that may be passed against the execution him, is about to dispose of his property, or any part thereof, or to remove any such property from Nigeria: or*

(b) *Where in any suit founded on contract or for detinue or trover in which the cause of action arose in Nigeria.*

i. *The defendant is absent from Nigeria, or there is probable cause to believe that he is concealing himself to evade service: and*

ii. *The defendant is beneficially entitled to any property in Nigeria in the custody, or under the control of any other person in Nigeria, or such person is indebted to the defendant.*

Then in either such case, the plaintiff may apply to the court either at the time of the institution of the suit or at anytime thereafter until judgment to call upon the defendant to furnish sufficient security to fulfil any decree that may be made against him in the suit, and on his failing to give such security, to direct that any movable or immovable belonging to the defendant shall be attached until the further order of the court.”

The above provision is a veritable tool that can be employed to telling effect in the prosecution of a litigation that deals with any element of international trade. In a true life

situation, a Nigerian may want to take undue advantage of a foreigner with whom he dispose of his property either real or personal, the foreigner could legitimately invoke the powers of the court under the Rules to frustrate such an action. The Rule can also operate in the converse.

One important provision of the Federal High Court Rules that has a direct bearing on international trade is order XXI which for its importance is quoted hereunder;

When the extreme urgency or other peculiar circumstances of the case appear to the court so to require, it shall be lawful for the Court on the application of any plaintiff, by warrant under seal of the detention by the sheriff of any ship about to leave the jurisdiction (other than a ship enjoying immunity from civil process). And such clearance shall be stopped from the ship arrested and detained accordingly:

Provided always that no such warrant shall be issued at the instance of any plaintiff unless the application shall be supported by an affidavit of the facts.

It is observable from this provision that in order to protect the sanctity of litigation in an international trade matter, the Federal High

Court has been empowered to order the detention of a ship with a view to making its final order wholesome.

In this paper, we shall not belabour the whole gamut of shipping law by suffice it to state that, in the exercise of the power of detention of a ship, the court will be guided by the principle that are similar to the one that guides the court in the grant or refusal of interim and/or interlocutory injunction.¹²

Order XXX deals with settlement of issues which is a beneficial procedure that can be used by parties to a cause before the court on non-contentious matters or even in contentious ones to agree on the appropriate questions that call for determination in the case. Once this is done, the procedure of giving of evidence is dispensed with partially or totally and the parties through their counsel would address the court on the issue that are so settled. This procedure shortens the time of litigations appreciably¹³.

Order XLII provides for reference of questions of facts, or account to be referred by court to a referee for investigation. The importance of this in the adjudication process will better be appreciated by a recall of the provision of Rule 1 of the other which appear in the following terms.

“In any cause or matter in which all parties interested who are under to disability consent thereto, and also without such consent in any cause or matter

requiring any prolonged examination of documents or account or any scientific or local examination, which cannot in the opinion of the court, having regard to the business before it, conveniently be made by the court in the usual manner, the court may at any time on such terms as it may think proper, order any question or issue of fact, or any question or account arising therein, to be investigated before a referee to be agreed upon between the parties, or failing such agreement, appointed by the court.”

There is no gain saying that the above provision could be found very handy in the terrain of international trade involving C.I.F and F.O.B contracts and complex international accounting system. Most of this complexity could develop in any litigation involving international trade, thus the usefulness of the provision in such cases.

In most international trade contracts which could become subject of litigation at any time, the insertion of arbitration clauses is very important and almost a **sine qua non**.

This is why the copious provisions made in Order XLVI of the Federal High Court Rules are a welcome adjunct to the provisional of the **Arbitration and Reconciliation Act** ¹⁴.

The above highlighted provisions of the Federal High Court Rules even without an attempt at exhaustiveness could be gainfully employed in favour of litigants that found themselves in matters involving international trade.

The above position is all the more compelling in view of the enlarged jurisdiction of the Federal High Court by the provisions of Decree 107 of 1993¹⁵.

SUGGESTED REFORMS

it is our view that, even though the provisions highlighted supra could aid the promotion of international Trade, there are rooms for reform and improvements which area suggested below for a better effectiveness of the Rules:-

1. It is suggested that, since the Federal High Court now deals almost exclusively with all matters in the exclusive legislative list, there should be a provision in the Rule that would empower that court to give its judgment in any currency not necessarily in Naira.
2. The concept of justice personality should be relaxed so as to accommodate foreign companies that want to sue or be sued in their names ¹⁷. This, we submit, will assist parties in litigation in International Trade before the Federal High Court.

3. It is also advocated that the concept of locus staid be severely watered-down, especially in cases involving shipping Law. This will assist all the parties involved in charter party contract to get justice with little or no difficulties. The Court of Appeal made this point eloquently in the recent case of Fareast Mercantile Co. Ltd v Boothia Maritime Inc¹⁸.
4. There is a need for the amendment of the provision of order XV Rule of the Federal High Court Rules which deals with security for costs. At least these amendments could be in line with the recent Supreme Court decision in the case of Oduba v Houtmangrachi¹⁹.

In this case, the Supreme Court frowned at the way and manner the court have been interpreting Order XV Rule 6 supra

In our view, all that tried is a better rewarding of provisions of the Rules so as to remove ambiguities.

CONCLUSION

In this paper, we have tried to call attention to some of provisions of the Federal High Court Rules that could exploited by litigants before that court in the promotion international trade. It is also our hope that the operators of the Rules, that is judges of the Federal High Court, would employ when necessary alienor

and progressive interpretative stance in operation of the Rules.

We have also tried to suggest some necessary reforms to Rules for a better promotion international Trade. We need belabour the point that “no man is an Island” and therefore should be willing to borrow a leaf from the reformations of other Rules from other common Law jurisdictions.

It is our hope that the century which is at the door step will not meet our Court Rules in the anachronistic garb which the currently wear.

ENDNOTES

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1. See Cap 134 Laws of Federal of Nigeria 1990
2. Brank Motors v. Wema Bank Limited (1983) 1 SCNLR 296, where the provisions of S. 7(1) of the Federal High Court Act was interpreted by the Supreme Court.
3. Federal Revenue Court Decree No. 13 of 13th April, 1973.
4. Section 6 (5) © of the CFRN 1979
5. section 228 (1) of the 1979 CFRN
6. section 228-233 of the 1979 CFRN
7. Decree 60 of 1991, and Decree 166 of 1992.
8. Second schedule (Part 1) of the 1979 Constitution as amended.

9. For detailed discussion of the Undefended list procedure under the rule of courts in Nigeria see: Y.O. Ali, "The Undefended List Provision in the Uniform Procedure High Court Civil Procedure Rules" The Gravitas Review of Business and Property Law, Vol, 2 No 12, November – December, 1989.
10. *Odutola v Kayode* (1994) 2 NWLR (Pt. 324) 1 at 15. where the Supreme Court stated that where personal services of Court Processes is required, a party cannot without the order of the court carry out substituted service except by order of court.
11. The wording reads, "Service in Nigeria for foreign Tribunals"
12. See: *Onawadike & Co. Ltd v. Brawal Shipping* (1996) 1 NWLR (Pt. 422) 65
Falomo v. Banigbe (1998) 7 NWLR (pt. 559) 679.
13. See the case of: *Maximum Insurance Co. Ltd v Owoniyi* (1994) 3 NWLR (pt. 331) 178 at 194, where the court fully espoused the intricacies and subtleties of procedure of settlement in a case.
14. See: *Kano v. Franz Construction Co. Ltd* (1990) 4 NWLR (Pt. 142)
15. The Decree among others amended section 2230 of the 1979 Constitution which conferred jurisdiction on the Federal High Court.
16. See: (1) *Broadline Enterprises Ltd. V. Monetary Maritime Corporation* (1995) NWLR (Pt. 417) 1.
(2) *Prospect Textile Mill Ltd. v. I.C.I. Plc England* (1996) 7 NWLR (pt. 459) 192.
(3) *Salzgitter Stahl Gmbh v. Arid industry Ltd.* (1996) 7 NWLR (pt. 459) 192.
17. See: *Carlen Nig. v. UNIJOS* (1994)1 NWLR (pt.323) 631.
18. (1998) 5 NWLR (pt. 551) 620 at 629-630 (1997) 6 NWLR (pt.508) 185 at 200-201.