



## LEGAL ANALYSIS OF THE ESSENTIAL INNOVATIONS IN THE RIVERS STATE HIGH COURT (CIVIL PROCEDURE) RULES, 2023

By

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### 1.0 Introduction

Rivers State is one of the thirty-six States making up the entity called, Nigeria in West Africa region. Rivers State was created on the 27<sup>th</sup> day of May 1967 pursuant Decree No. 14 promulgated by General Yakubu Gowon.<sup>1</sup> The 1999 Constitution of the Federal Republic of Nigeria also list Rivers State as one of the States of the federation.<sup>2</sup> The same Constitution of the Federal Republic of Nigeria vests adjudicatory powers in the judicial arm of government<sup>3</sup> and by Chapter VII thereof created the judicature.<sup>4</sup>

Nigerian Constitution divide the judicature into federal and state courts. Part II of Chapter VII of the Constitution specifically established a High court for each of the States of the federation, including the Federal Capital Territory. The High Court of a state in Nigeria is under the leadership of the Honourable Chief Judge of the particular state.<sup>5</sup> One of the powers exercisable by the Chief Judge of a State in Nigeria is the power to “make rules for regulating the practice and procedure of the High Court of the State”.<sup>6</sup> The power of the Honourable Chief Judge of a State to make rules and regulations is pursuant to section 274 of the 1999 Constitution and the respective laws by the States Houses of Assembly relating to the establishment of High Courts.

The Rivers State Judiciary since its creation has made several rules of practice and procedure for the courts under it, including the Customary Court of Appeal, Magistrate Court, and Customary Court of the State.<sup>7</sup> The last High Court (Civil Procedure) Rules of Rivers State was enacted in the year 2010 during the tenure of the then Chief Judge, Hon. Justice Iche Ndu. Hon. Justice Simeon Amadi, Honourable Chief Judge of Rivers State initiated the process for the amendment of the erstwhile 2010 Rules for which they deserve special commendation. The focus of this paper is to look out for the novel provisions in the new Rules. This is necessary because Rules of court, though a subsidiary legislation is binding and enforceable.<sup>8</sup>

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<sup>1</sup> Creation and Transitional Provision Act No. 14 of 1967.

<sup>2</sup> Part 1, 1<sup>st</sup> Schedule to the CFRN.

<sup>3</sup> CFRN, s. 6.

<sup>4</sup> Chapter VII, CFRN consist of sections 233 to 304.

<sup>5</sup> CFRN, s. 270.

<sup>6</sup> CFRN, s. 274.

<sup>7</sup> The courts have both civil and criminal jurisdictions.

<sup>8</sup> S.18 of the Interpretation Act. See also, *Access Bank Plc vs. Ogboja* (2022) 1 NWLR (Pt. 1812) 547, SC; *Suleman vs. Osideinde* (1994) 2 NWLR (Pt. 327) 477.



The 2023 Rules takes effect from the 3<sup>rd</sup> day of April 2023 and applies to all pending and future proceedings in the High Court of Rivers State, Nigeria. The new Rules consist of 64 Orders as against the 2010 Rules with 54 Orders. Four new Orders were introduced in the new Rules to *wit*, Orders 4, 5, 27 and 45. Order 55 of the old Rules is unbundled and now gives birth to Orders 59-63 of the new Rules. Similarly, whereas the old Rules had 40 Forms, the new Rules now has 41 Forms with the introduction of Form 41 dealing with Proceedings in Tax. It would appear that more than half of the old 2010 Rules were either amended, improved upon, renamed or rearranged in the new Rules.

Before examining the respective Orders with a view to determining what is new, it is apposite to state that some of the innovations introduced in the new Rules were influenced by the preamble to the Rules. The preamble provides the background to the new Rules. Additionally, the new Rules was influenced by advancement in technology and the need to keep the administration of justice uninterruptedly afloat. This arguably appears to be the only positive impact of covid-19 pandemic for the legal profession. Another point of note is that the new Rules incorporate most of the provisions of the several Practice Directions in the Rivers State Judiciary made between the years 2010 to 2022.

It would appear more appropriate and beneficial for legal practitioners to first identify those novel provisions in the new Rules. What exactly is new in the new Rules? Has anything changed from what it used to be in the old 2010 Rules? The answer to the latter poser is in the affirmative. These two posers would guide the course of this paper henceforth. In other words, this paper will attempt to specifically identify only the new provisions in the Rules without going into so much analysis.

Before examining the new provisions, it is pivotal to note that some of the Orders and Rules under the old Rules were simply renumbered or rearranged without any innovation. Twenty-two (22) out of the Fifty-four old Orders retained their contents. Some of those old provisions, which retained its former contents, subject to the renumbering of the Orders, include Order 8 (issuance of originating process); Order 12 (default of appearance); Order 14 on application for account; and Order 15 on parties generally. Others are Order 16 on joinder of causes; Order 17 on pleading generally; Order 18 on statement of claim; Order 19 dealing with defence and counter-claim; Order 22 dealing with default of pleadings; and Order 23 dealing with payment into and out of court. Further provisions under this category are Order 30 (issues, inquiries, accounts); Order 31 (references to referees); Order 36 (affidavit); Order 37 (non-suit); Order 39 (drawing up orders); Order 41 (interlocutory orders, etc); Order 46 (habeas corpus, attachment for contempt); Order 47 (interpleader); Order 50 (arrest of absconding defendant); Order 51 (proceedings in forma pauperis); Order 54 (proceedings in chambers) and Order 56 dealing with summons to proceed.

## 2.0 X-Ray of the 2023 Rules

### 2.1 Order 1

Order 1 of the Rules provide the scope of application of the new Rules to include all part heard causes and matters and every further steps to be taken in respect of pending matters. The same Order 1 make provisions for enhanced case management mechanisms, strengthening of ADRs and factors influencing case management to include the nature of the case, complexity of the issues at stake, amount of money involved in a case, and financial position of parties, all of these are geared towards the “achievement of



a just, efficient and speedy dispensation of justice".<sup>9</sup> Another improvement in the new Rules could be found in the relatively expansive Interpretation Section under O. 1 Rule 2. RIVCOMIS, RSMDC, Remote/virtual hearing and ADR among others are some of the new terms defined in the new Rules.

It would appear that the new Orders 4 and 5 influenced the provision of Order 1 Rule 4 dealing with some factors that should guide the court, as emphasis seems to be placed on monetary claim. This impression would have been different if the Rules had simply referred to the status of the parties as against the financial status of the parties and the nature of the claim as against the amount of money involved in the claim. It seems to create albeit the unintended impression that claims involving higher monetary value are expected to be prioritized. This is however understandable because Rivers State Judiciary also has the Small Claims Court that deals with smaller monetary claims using a summary procedure.

## 2.2 Order 2 – Place of Instituting and Trial of Suits

There is nothing new in Order 2 of the new Rules. It is the same with the old Order 2 of the 2010 Rules. The issue of venues for litigation and territorial jurisdiction is maintained. In *Usman vs. State*,<sup>10</sup> the Supreme Court reiterated that the territorial jurisdiction of the high court of a state is limited to the territorial boundaries of the state. The implication is that courts of each state of the Federation of Nigeria has locus to hear and determine suits that occur within the territorial area of each state.<sup>11</sup> It follows that the high court of a state has no extraterritorial jurisdiction.<sup>12</sup>

## 2.3 Order 3 – Form and Commencement of Action

Order 3 of the 2023 Rules has 18 Rules as against 15 under the old Rules. Although the title of O.3 of the old and new Rules is the same, there are certain innovations in the new Rules. These include:

O.3 R. 2, which clearly provides that all proceedings in the High Court of Rivers State shall be commenced by e-filing the relevant processes at the RIVCOMIS platform or any other platform as the CJ may direct in writing. This provision officially ends the era of manual filings practised under the old Rules. The Evidence Act 2011 expanded the scope of electronic documents. It also invariably provided the basis for electronically generated evidence and e-filing of processes.<sup>13</sup> In *George VS. F.R.N*,<sup>14</sup> the Court of Appeal reiterated the revolutionary impact of computers and electronic appliances on the court system. The Supreme Court in *A.P.C VS. Nduul*<sup>15</sup> and *ENL Consortium Ltd. VS. S. S. (Nig.) Ltd*<sup>16</sup>, held respectively that service of processes and hearing notice could be made electronically pursuant to the provision of the Court of Appeal Rules.

Another innovation is O.3 R.3(c), which now require counsel to depose to Affidavit of Non Multiplicity of Suits. This requirement is intended to curb abuse of court via the duplication of actions.<sup>17</sup>

<sup>9</sup> Rivers State Civil Procedures Rules, 2023, O.1, Rule 1, sub. 3-6.

<sup>10</sup> *Usman Vs. State* (2014) 12 NWLR (PT. 1421) 207

<sup>11</sup> *Kraus Thompson Org. Ltd Vs. UNICAL* (2004) 9 NWLR (PT. 879) 631 SC

<sup>12</sup> *Veepree Ind. Ltd. Vs. O.F (Nig.) Ltd.* (2023) 9 NWLR (PT.1889) 279 SC.

<sup>13</sup> *Dickson Vs. Sylva* (2017) 8 NWLR (1567) 167

<sup>14</sup> (2010) 5 NWLR (Pt. 1187) 254.

<sup>15</sup> (2018) 2 NWLR (PT. 1602) 1

<sup>16</sup> (2018) 11 NWLR (PT. 1630) 315.

<sup>17</sup> *N.I.W.A vs. S. T. B. PLC* (2008) 2 NWLR (PT. 1072) 483.



Similarly, 0.3 R. 5 ( E) is new to the extent that it requires the frontloading of electronic evidence. 0.3 R. 5 prohibits the use of initials in affidavit or deposing to an affidavit by proxy. It is submitted however, that O.3 R5 could be interpreted to means that the prohibition on the use of initials on affidavit applies only to situation where someone different from the deponent himself presents the affidavit. This possible ambiguity would have been averted if the word “or” were inserted before “presented” after “initials”.

Further innovations under O 3 could be found in Rules 8,9, and 10 requiring parties in dispute relating to land in any manner to file LIS PENDENS CERTIFICATE during and after adjudication. Although, LIS PENDENS is not defined in the new Rules, it simply refer to a Certificate (document) alerting the public that litigation is pending over the land. In other words, that there is dispute in court over the ownership of the land. The term is derived from the latin maxim “ut pendent nihil innovetur” which is to the effect that during litigation over property nothing should be changed or no new right introduced to the subject matter. This common law and equitable doctrine is traceable to Lord Justice Turner in the Indian case of *Bellamy vs. Sabine*<sup>18</sup>. Section 52 of the Indian Transfer of Property Act, 1882 and other judgments of the Indian courts such as *Anyyaswami vs. Jayaram Mudaliar AIR*<sup>19</sup> and *Harder Singh vs. Gurmail Singh*<sup>20</sup> all strengthened the doctrine of lis pendis in India.

In Nigeria, the requirement of filing of lis pendis certificate as provided under the new Rules enjoy recent judicial blessings in *Ohaegbu & 2Ors vs. The Registered Trustees of the Capuchin Friars Minor Nigeria*.<sup>21</sup> Similarly, the Supreme Court of Nigeria in *Oyewo vs. Shekons & 2Ors*<sup>22</sup> recently held “a person who acquires a property pendente lite has bought litigation for himself, and should be prepared to sink or swim with the litigation”.

It is important when the doctrine of LIS PENDENS will apply to vitiate any right created during the pendency of action over the property. The Nigeria’s Supreme Court in *N. I. D. B Ltd. vs. Kan Biscuits Co. Ltd.*<sup>23</sup> listed four conditions for the applicability of *lis pendis* in such circumstance to *wit*; i. That at the time of the sale of the property, the suit regarding the dispute about the said property was already pending. ii. The action or *lis* was in respect of real property as it never applies to personal property; iii. That the object of the action was to recover or assert title to a specific real property and iv. That the other party had been served with the originating process in the pending action.

O.3 Rules 16-18 are further innovations aimed at strengthening the administration of justice in Rivers State. Specifically, O.3 R 17 provide an alternative to E-filing on the RIVCOMIS platform established in O.3 R 2(1) above, subject only to the written approval of the Chief Judge. There are three situations when the e-filing platforms may be dispensed with in the COMMENCEMENT of the action to *wit*; i.

<sup>18</sup> (1857) 1 D & J 566

<sup>19</sup> (1973) SC 569

<sup>20</sup> Appeal No. 6222 of 2000

<sup>21</sup> (2022) 10 NWLR (Pt. 1839) 485-508.

<sup>22</sup> (2023) 5 NWLR (Pt. 1876) 157

<sup>23</sup> (2023) 2 NWLR (Pt. 1869) 561.



Technical glitches on the e-platform ii. When the platform is undergoing maintenance and, iii. cases requiring extreme urgency. In other words, even when the three conditions are met, especially when the platform is apparently down, the CJ must approve recourse to manual filing.

A probable challenge to the application of O.3 R. 17 is that obtaining the Chief Judge's approval in writing may in certain circumstances be difficult, even for no fault of the Chief Judge. Consequently, this paper argues that the above situations appears limited in scope. Adding an omnibus clause such as "when the Chief Judge considers that it will be in the overall interest of the parties and justice for the case to be filed manually". Alternatively, circumstances amounting to "extreme urgency" as used in the Rules should be defined.

O.3 R 18 require that "all the life processes" in a transfer matter must be refiled on the RIVCOMIS platform. The intention here is to enable the availability of e-copies of the processes. The challenge with the provision is that it might be expensive for the parties to refile even as there is no apparent consequences for violating the provision. a

#### **2.4 Order 4 - Fast Track Procedure**

This is a new ORDER. It is a special provision aimed at accelerating the hearing and determination of a suit. By Rules 4, 5, 6 and 9, it would appear that proceedings under this ORDER must be concluded within a period of 10 months.

The Order apply to the following classes of actions: i. Liquidated money sum of at least N500,000.000.00 or its equivalent as per the legal tender involved; ii. actions or causes involving a deceased whose remains is yet to be interred as a result of the pending suit; iii. administration of estate involving minors as beneficiaries; iv. matters/causes that has been pending for 10years, in which hearing is yet to commence, and v. any other cause or action as the Chief Judge may designate. In any of these, the actions must be commenced by writs of summons.

This paper note that by the provision of Order 4 Rule 8, the Fask Track Procedure does not apply automatically even when the above conditions are met. To be eligible, the parties would need to apply to the 'Officer in charge of litigation' who has the right to refuse the application. Where it is approved, the originating process shall be marked FAST TRACK PROCEDURE. It must be served with 14days and the defendant must file defence within 21days.

Generally, Order 4 is optional to the parties. It appears there is no power vested in the court or registry to *suo motu* designate a matter as Fast Track. Again, the opposing party has no opportunity to object to the application for Fast Tracking. This is logically apt because at the time, it is assumed that the opposing party is unaware of the institution of the action. The albatross in practice is that whereas the claimant may draft his pleading to qualify for Fast Tracking, the actual determination of the suit may show otherwise. For example, falsely claiming that the subject matter of the suit is liquidated money relief. The position of this paper is that Order 4 will be effective and efficient where both parties consents to it.

Fast Track Procedure may appear similar to Summary Proceedings and Undefended List Procedure under Order 13 of the new Rules and Order 11 of the old Rules. However, they are not the same.



Proceedings in Order 13 (8) are decided based on affidavit evidence but oral evidence are mandatorily required under Order 4. Secondly, Order 13 deals with a situation where the claimant believe that the defendant has no defence to the claim. Such belief is not required for the applicability of Order 4. Thirdly, Order 4 can apply to all type of actions, but such is inapplicable to undefended list which claim must be for money demand. Fourthly, the claimant under Order 13 do not require the approval of the Officer in charge of the Registry or Assistant Chief Registrar to file his action, however such approval is mandatory under Order 4. Fifthly, whereas matters under Order 13 may be transferred to the general cause list, there is nothing in Order 4 to suggest such transfer.

The paper found that might be no serious consequences where the court is unable to conclude the Fast Track Proceedings within a year. Similarly, a Judge before whom a matter is brought under the Fast Track Procedure may rely on section 294 of the Constitution of the Federal Republic of Nigeria, 1999 on timing for delivery of judgment to obviate the 60days timelines in Order 4. Furthermore, the Order is silent on the right of parties adopting the Procedure to file interlocutory appeal arising from a matter filed under the Order.

## **2.5 Order 5 – Proceedings in Revenue Matters**

This is a new Order. Rule 1(1) thereof clearly define the scope of its application to *wit*, revenue of the State government, including Local Government Areas of Rivers State and their Ministries, Departments and Agencies (MDAs). *Prima facie*, it appears that only the government and its MDAs can activate the said Order 5. However, by Order 5(4), others could sue or activate same, particularly in dispute relating to government levy; demand for account or to production of books relating to disputed revenue.

## **2.6 Order 6 – Indorsement of Claim and of Address**

The only thing new in this Order is the specific requirements in Order 6 R. 6 (1-2) for the provision of phone numbers and email addresses on the originating processes. The old Order 4 simply required the provision of physical address. This new Order is necessary to accommodate the introduction of technology in the administration of justice.

## **2.7 Order 7 – Effects of Non -Compliance**

There is nothing new in the contents. This provision used to be Order 5 and it is to the effect that proceedings would not be vitiated by certain level of irregularities. Overall the years this provision has provided a safe haven for indolent and slothful practitioners. Certain level of limitation would have been appropriate to discourage careless litigants.

## **2.8 Order 9 – Service of Process**

Order 9 Rule 1(4) is new. It expanded the mode of service of non-originating processes to include service *via* RIVCOMIS and other social media platforms such as whatsapp, facebook, email, RIVCOMIS and other means as the Chief Judge may direct.

The proof of service, that is, Endorsement and Returns in such case is the printout. However, this mode of service does not apply to service of originating processes. Similarly, service may be effected on Sundays and public holiday. However, such service would be deemed to have been served on the next



working day.<sup>24</sup> Under the old Rules, service was by the traditional method of using court bailiff, chambers to chambers or counsel to counsel.

The stage for the expansion of the mode of service to include social media was long overdue since the decision in *Trade Bank Plc vs. Chami*<sup>25</sup>. Contrary to the decision in *Continental Sales Ltd. vs. R. Shipping Inc*,<sup>26</sup> the consent of the party to be served electronically is not required for electronic service of court processes to be valid under the 2023 Rules. It would appear from the Supreme Court of Nigeria's decision in *ENL Consortium Ltd. vs. Shambilat Shelter (Nig) Ltd*<sup>27</sup> that the mode of service has been further expanded to include phone calls and text message.

It is submitted however that the innovation in this Order should not take hook, line and sinker because of the technicality that could arise therefrom. There is no denying the fact that message could be sent via social media and yet not received by the intended recipient due to several factors ranging from network failure, bandwidth, power or even location of the recipient. It will thus be safe for parties effecting service via whatsapp or facebook to additionally place a call or send a short message service to the recipient. Additionally, social media service could be accompanied by the traditional mode of service. It is safe to avoid the trouble of proving service of process via social media than the traditional means of service.<sup>28</sup> This is more so as the jurisdiction of the court will generally depend on it except in ex parte applications.

## 2.9 Order 10 – Service Outside Jurisdiction

There is nothing new except renumbering. The implication is that processes could still be served outside jurisdiction under the new Rules. Service outside jurisdiction could simply mean service outside Rivers State or outside Nigeria.

The concept of 'outside jurisdiction' has elicited more reactions and appeals, especially in the Federal courts, where they are considered to be one notwithstanding their location within Nigeria.<sup>29</sup> A process for service outside jurisdiction is expected to be expressly marked as such by the Registry before the service. The decision in *MV Arabella vs. Nigeria Agricultural Insurance Corporation*<sup>30</sup> seems not to have completely settled the matter, particularly as the learned Justices of the apex court did not expressly make a pronouncement of its decisions in *Akeredolu vs. Abraham and Ors*;<sup>31</sup> *Kida vs. Ogunmola*;<sup>32</sup> and *Odua Investment Co. Ltd. vs. Talabi*<sup>33</sup> on the same issue. The decisions in the latter cases were in conflict with the former decision in *Akeredolu vs. Abraham*.

In *PDP vs. Engr. John Uche & 2 Ors*,<sup>34</sup> the Supreme Court allowed the appeal on the ground that section 97 of the Sheriff and Civil Process Act do not apply to the Federal High Court, except where the process

<sup>24</sup> O. 9(15), 2023 Rules.

<sup>25</sup> (2003) 13 NWLR (Pt. 836) 158 at 216-217.

<sup>26</sup> (2012) All FWLR (Pt. 630) 1393.

<sup>27</sup> (2018) LPELR -43902 p.15

<sup>28</sup> See *Okeke vs. Uwaechina* (2022) 10 NWLR (Pt. 1837) 173 SC

<sup>29</sup> *Biem vs. S. D. P & Ors* (2019) 12NWLR (Pt. 1687) 377

<sup>30</sup> (2008) 11 NWLR (1097) 182

<sup>31</sup> (2018) LPELR 44067- SC

<sup>32</sup> (2006) 13 NWLR (Pt. 997) 377

<sup>33</sup> (1997) 10 NWLR (Pt. 523) -1

<sup>34</sup> (2023) 9 NWLR (Pt. 1890) 523



is to be serve outside Nigeria.<sup>35</sup> However, in *Izeze vs. INEC*,<sup>36</sup> the Supreme Court allowed the appeal nullifying the issuance of the originating summons at the Federal High Court Warri for service at Abuja. It held that the provisions of the Sheriff and Civil Processes Act, being a substantive law was mandatory and, override the provisions of the Federal High Court Civil Procedures Rules. In the face of these conflicting decisions, legal practitioners opt to have the writ marked accordingly at the registry to avoid A Technical Defeat On Ground Of Lack Of Proper Endorsement.

### **2.10 Order 11 – Appearance**

There is nothing new except that parties/counsel entering appearance should indicate their phone number and email in addition to their residential or chambers address. This is in line with the modern means of communication and identification.

Appearance could be conditional, in which the Defendant is indicating willingness to raise issue. Appearance could be unconditional meaning the Defendant submits to the jurisdiction. In any of these instances, the Defendant still has the right to challenge jurisdiction. Appearance of a counsel could however be challenged by a party. This is more common in representation for fractured political parties.<sup>37</sup>

The implication is that the Rules in Rivers State still allow for default judgment. The Rule also allow for the setting aside of default judgment subject however to good explanation.<sup>38</sup> A matter struck out for default of appearance on the part of the claimant might be relisted and relitigated.<sup>39</sup>

### **2.11 Order 13 – Summary Judgment**

The only thing new here is for the claimant filing an action under the Undefended List Procedure to serve the originating process along with a hearing notice stating the court and the date of hearing.<sup>40</sup> There was no such requirement under the old Rules except that a subsequent Practice Direction of 2018 had such provision. In *Fidelity Bank Plc Vs. The M. T. 'Tabora'*<sup>41</sup>, the Supreme Court reiterated the need for proper service before considering an application for default judgment as non-service goes to the jurisdiction of the court.

### **2.12 Order 20 - Reply**

The only thing new is Order 20 R 2(1)(2) requiring the claimant to file defence to counter-claim if any within 21 days. Also, Defendant/Counter-Claimant to file Reply to the defence to the counter-claim within 7days. Under the old Rules, these were not explicit.

<sup>35</sup> See also *Zakirai Vs. Muhammad & 3ors* (2017) 17 NWLR (PT. 1594) 181, SC

<sup>36</sup> (2018) 11 NWLR (PT.1629) 110

<sup>37</sup> *Ore vs. Akanbi* (2021) 14 NWLR (Pt. 1795) 1

<sup>38</sup> *Cont. Pharm. Ltd. vs. Scanpharm A-S* (1994) 2 NWLR (Pt. 326) 332

<sup>39</sup> *Micro-Loan Nig. Ltd vs. Gadzama* (2014) 3 NWLR (Pt. 1394) 213

<sup>40</sup> O. 13(8) 3.

<sup>41</sup> (2018) 12 NWLR (Pt. 1632) 138, SC.



## 2.13 Order 21 – Admissions

The only thing new is O.21(5) which is to the effect that the cost payable by a party who issued notice to produce irrelevant document is a minimum of N30,000.00. The penalty under the old Rules was a minimum of N5,000.00.

## 2.14 Order 24 – Proceedings in Lieu Of Demurrer

There is a new Order 24 R2(3) to the effect that proceedings in lieu of demurrer recognized the right of parties to have recourse to arbitration. In other words, filing pleading and challenging the claim is still mandatory. The objector must first raise arbitration (where applicable) in the pleading.

## 2.15 Order 25 – Withdrawal or Discontinuance

Under the old Rules, it was simply titled, DISCONTINUANCE. The present Rules titled it withdrawal or discontinuance.

Order 25 R 3 is new and fundamental to the effect that the discontinuance or withdrawal of suit after commencement (not conclusion) of trial is dismissal, and not a striking out.<sup>42</sup> Put differently, an action that is withdrawn or discontinued after commencement of trial cannot be relisted by the same court. This is because an order of dismissal puts an end to a claim while an order for striking out keeps the claim alive.<sup>43</sup> It appears on the authority of *AMCON Vs. Suru Worldwide Ventures (Nig) Ltd*<sup>44</sup> that the Judge contrary to the decision in *UBN PLC vs. LUOBAI (Nig) Ltd*<sup>45</sup> has no discretion the moment hearing has commenced.

It remains trite law that withdrawal or discontinuance after close of pleading must be with the leave of the court.<sup>46</sup> Similarly, it would appear on the authorities of *Keystone Bank Ltd Vs. Dazz Motors Ltd*,<sup>47</sup> and *Ansa vs. Cross Lines Ltd*<sup>48</sup> that mere filing the Notice to discontinue the suit suffice to terminate the case. The Supreme Court in *Mabamija Vs. Otto*<sup>49</sup> held that in certain circumstances, a notice of discontinuance when granted constitute a bar to re-litigating the matters.

Nonetheless, the case of *Adama vs. Maigari*<sup>50</sup> is instructive to the effect that a suit struck out upon application for discontinuance may be relisted and all the extant Orders therein restored. However, an order of dismissal or striking out will be reached by a court after a judicious assessment of the facts of each case.<sup>51</sup> It would also appear that the appellate court may in deserving circumstances go beyond the words used the court to determine whether a case of striking out or dismissal has been properly made.<sup>52</sup>

<sup>42</sup> *Ekudano vs. Keregbie* (2008), LLJR –SC, the HC, CA and SC concurrently upheld the order of the trial court dismissing the suit, which was withdrawn after the commencement of hearing. In *Mautech Vs. Adamawa State Board of Internal Revenue* (2019) LPELR 47773, the CA overruled the trial court and dismissed the appeal stressing that the trial ought to have dismissed the case since the application for withdrawal was brought after hearing had commenced.

<sup>43</sup> *Kaura Vs. U.B.A Plc* (2005) 8 NWLR (PT. 926) 24, CA

<sup>44</sup> (2022) 2 NWLR (1813) 163 CA.

<sup>45</sup> (2008) 2 NWLR (Pt. 1071) 257.

<sup>46</sup> *Onwuka Vs. Ononuju* (2009) 11 NWLR (PT. 1151) 174, SC; *Egbukohia Vs. Onyegbule* (2015) 8 NWLR (Pt. 1461) 37, CA

<sup>47</sup> (2021) 3 NWLR (PT. 1762) 141 CA

<sup>48</sup> (2005) 14 NWLR (PT. 946) 645, CA.

<sup>49</sup> (2016) 13 NWLR (PT. 1539) 171.

<sup>50</sup> (2019) 3 NWLR (PT. 1658) 26 SC

<sup>51</sup> *Y.S.G Motors Ltd Vs. Okonkwo* ((2010) 15 NWLR (PT. 1217) 524

<sup>52</sup> *UBN PLC Vs. Petro Union Oil And Gas Co. Ltd* (2022) 7 NWLR (PT. 1829) 199.



This paper hold the strong view that a party that had voluntarily discontinued a suit should not be allowed to relist the same suit with same suit number. The question that readily comes to mind is why would the party not be foreclose from relisting the same suit? While this paper agrees with the provision that discontinuance should not be a bar to subsequent, it however argues that discontinuance should be a bar to relistment. Similarly, it would appear that the discretion given to the Judge to grant leave to discontinue after close of pleadings is now too limited, since the likely outcome must be a dismissal after commencement of hearing. In the era of frontloading of documents and witnesses depositions, the gap between close of pleadings and commencement of hearing is insignificant. One wonders why the consequences of discontinuance at any of these stages should be different.

## **2.16 Order 26 --- Amendment**

Few innovations are provided in Order 26 R 2(B) wherein a proviso is made allowing for oral application for the amendment of typographical error or minor non-contentious errors. Order 26 Rule 4 imposed additional default fee of N1000 daily or higher for failure to effect amendment within days after the grant of the application.

The general rule is that the court can grant an amendment at any stage of the proceedings. An amendment that would change the character of the case before the court or overreach the other party ought not to be granted. Several reasons may account for amendment. The court in refusing an application for amendment will need to be careful not to violate an applicant's right to fair hearing.<sup>53</sup> O. 26 R 10 restrict the number of amendment to maximum of two after Pre Trial Conference. All amended processes must be filed and updated on the RIVCOMIS platform with evidence of payment of the additional default fees filed and attached.

The essence of this latter innovation is to ensure that all processes exist in electronic form. It is further submitted that the provision limiting amendment of processes to a maximum period is to meet the objective of the new Rules, which include ensuring just dispensation and expeditious determination of matters. Additionally, it is assumed that all issues of amendment and other gray areas would have been concluded at the pre-trial conference.

## **2.17 Order 27 Alternative Dispute Resolution (ADR)**

Order 27 of the Rules is completely new. It has to do with Alternative Dispute Resolution mechanisms. It provides in effect that an action may be referred to arbitration at two stages to wit, at the stage of assignment by the Chief Judge or any time before defence by the trial Judge. Additionally, a party may at any stage apply for referral to ADR.

There are so many benefits of submitting a matter to ADR. It provides a win-win situation. Time is maximized. Acrimony is likely to be reduced. ADR is less expensive and devoid of the usual technicality of the courtroom process.

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<sup>53</sup> *Akaninwo vs.Nsirim* (2008) 9 NWLR (Pt.1093) 439 SC



A matter tried at the Rivers State Multi Door Court House (RSMDC) shall be regulated by the RSMDC Law 2019. Matters in ADR court are instituted via originating motion. Matters not resolved at the ADR will be remitted to the Chief Judge for assignment to the regular court.

Similarly, there is a mandatory requirement for parties to respect arbitral clauses in agreements and to cooperate in arbitration proceedings as failure to do so attract minimum penalty of N50,000.00 – O.27 R 5(3). Arbitral awards are enforceable in regular court with leave just like any other court judgment. Application to set aside arbitral award are to be filed within 3months of the publication of the awards.

It appears that the only punishment for refusal to obey a Referral Order by the Chief Judge or the Judge is an imposition of a minimum of N50, 000-penalty payable into the account of the court, after which the matter will automatically.

### **2.18 Order 28 -- Pre-Trial Conference (PTC) and Scheduling**

O. 28 R 1(2) d is new to the effect that the court at PTC can consider any previous decision or agreement between the parties.

Former Order 25(3) is now Order 28(9)(a) to the effect that the PTC Judge consider the possibility of settling all or some of the issues in the action. Rule 9(g) introduced the prospect of resolving issues relating to the testimonies of expert witness while Rule 9(m) deals with implementing any Order or resolution of the RSMDC. PTC must not exceed three sittings of not more than 90days – O 28(10)1. All preliminary objections must be raised before the conclusion of PTC or afterward to be determined with the main suit – O. 28 (15).

### **2.19 Order 29 – Discovery and Inspection**

Rules 1-15 is the same with the old Rules. However, Rules 16-24 of Order 29 is new. These Rules basically deals with the request for inspection or copy of items in the custody of opponents. The opposing party has a right to object to the request.

### **2.20 Order 31 – Special Case**

This Order has been expanded to include introduction of “DOCUMENT ONLY PROCEDURE”, a special procedure liken to summary procedure, where the Judge may order. The procedure is available only before the commencement of defence and is determined by i. admitting all the documents; ii. relying on the witness depositions and iii. the pleadings. There is no cross- examination. It follows that actions under this Order will commence using normal procedure but apparently changed midway at PTC on the application of both parties or the directive of the Judge.

### **2.21 Order 32 - Cause List**

There is no different saved that the Cause List or PTC List should be published on RIVCOMIS. The cause list is like the agenda of the court for the day. Thus, the court is under a duty to obey its agenda.<sup>54</sup>

### **2.22 Order 33 – Trial Proceedings**

This Order contain so many innovations, some of which are radical. It used to be former Order 30.

<sup>54</sup> *Pam vs. Mohammed (2008) 16 NWLR (Pt. 1112) 1 SC*



Under the current rule, a matter may be relisted for a maximum of three times.<sup>55</sup> No matter shall be relisted after it has been struck out thrice. Relisting a suit for the third time attracts a minimum of N100,000.00 penalty payable to the court. Furthermore, the court can proceed to deliver judgment without or with only one-party final address, where parties failed to utilize their time.<sup>56</sup>

Similarly, a matter shall be struck out where no activity has taken place therein within a period of one year. Office copy of exhibits could be released to parties upon application for the purpose of using same for Appeal. Stalling of cross-examination after two adjournments is automatic foreclosure. Cross-examination shall not last beyond 90 minutes or maximum of three adjournments. However, it is necessary to note that cross-examinations is the most veritable means of ascertaining the truth in a matter, especially in the current dispensation of frontloading where the witness deposition is a mostly a replica of the pleading.<sup>57</sup>

Other innovations include Rule 24 that provide for remote or virtual hearing by video. It further provide that except as otherwise directed, both parties must join the remote hearing fulling roped. The remote proceedings may be recorded and subsequently transcribed and that a party challenging the correctness or otherwise of the transcription shall pay the sum of N20,000.00 for authentication.

## 2.23 Order 34 – Filing of Written Address

This used to be former Order 31. The new Rules now requires that final written addresses must not exceed 40pages of 12font size.

Oral argument of 10 minutes as against the previous 20mins under the old Rules may be allowed. Written addresses must conclude with the prayers and relief sought. Penalty for late filing of written address is N30,000.00 in addition to cost in favour of the other party. It is however trite to note that written address of counsel no matter how brilliantly cannot be a substitute to the evidence of the witnesses<sup>58</sup> even though it is an important part of the matter with the object of clarifying the position of the law on the evidence before the court.<sup>59</sup>

All these are new and are apparently targeted at discouraging delay in concluding the matter. Order 5 and the miscellaneous provisions in Order 49 of the new Rules continue to be available to litigants to enjoy certain indulgences from the court.

## 2.24 Order 35 - Evidence Generally

There is a new proviso to Rule 1 incorporating remote hearing. Similarly, there is a new Rule 2(3) to the effect that Statement on Oath should state if the document to be tendered is original or not and where applicable proper foundation should be made in the pleading. In such situations, the party is expected to relate the document to the specific area of his case and not to dump them on the court. In other words, it should be clear the part of the case that the document is supporting or disproving.<sup>60</sup>

<sup>55</sup> *Tejuoso vs. Farombi* (2022) 9 NWLR (Pt. 1835) 205 SC.

<sup>56</sup> *Gidiya vs. Sanusi* (2023) 5 NWLR (Pt. 1876) 71 SC

<sup>57</sup> *African Songs Ltd. vs. Adegeye* (2019) 2 NWLR (Pt. 1656) 335 CA

<sup>58</sup> *Onwuta vs. State of Lagos* (2022) 18 NWLR (PT. 1863) 7701 SC

<sup>59</sup> *Amough vs. Zaki* (1998) 3 NWLR (Pt. 542) 283 CA

<sup>60</sup> *PDP vs. INEC & 2Ors* (2020) 16 NWLR (Pt. 1751) 416 SC.



## 2.25 Order 38 --- Judgment, Entry of Judgment

There is a new Rule 3 making it possible for the Chief Judge or any other Judge so assigned to sign an Order, Ruling or Judgment delivered by another Judge, where the latter is elevated, retired, deceased or unavailable for good cause. For instance, where a judge is on medical vacation abroad or rather engaged in other official assignment within and outside Nigeria. This provision though highly welcomed is not without reservation, especially where there is an error on the face of the judgment. It is not clear if the duty of the judge signing is limited to appending his signature to the document and nothing more, or he can correct an apparent error, example in name or title of the parties, among others. It is submitted that technology should be further deploy in the Rivers State judiciary to elevate its practice to what is obtainable at the National Industrial Court of Nigeria, where judgment delivered are usually uploaded online within 24hours of delivering. Another option is for judgment to be delivered from the computer to enable the insertion of appearances on the judgment day and same printed out to the lawyers immediately after delivery. The latter suggestion would require that the judgment would have been fully ready and proofread to be error free.

Similarly, Rules 9-10 is new requiring Judgment Creditor in Garnishing Proceedings to obtain a Certificate of Verification from the court to be served on the Judgment Debtor's banks to enable confirmation that the Judgment Debtor has sufficient fund. The challenge with this provision is the high chances of the judgment debtor moving the fund from the account after judgment. Considering the usual bottleneck in processing Judgment Orders from the court, associated with manual recording *vis a vis* availability of record book, delay in serving the Certificate of Verification may be to the advantage of the judgment debtor.

Nonetheless, the new Rules made issuance and service of Certificate of Verification mandatory. The potential benefits is that it would help streamline number of banks sued on daily basis in garnishing proceedings. More so, there is penalty for false information provided by the banks on the account. This is apt because it is not the duty of the garnishing to wage a proxy war against the judgment creditor.<sup>61</sup> Similarly, Judgment Debtor can liquidate their debt in instalment with the leave of the court.

The challenge here is that liquidation of judgment debt by judgment debtor is akin to a stay of execution. It could be abused and open new vista to further litigation. Consequently, the court has held that an applicant in an application for payment of judgment debt by instalment must show honesty and full disclosure of all his income, assets, interest and properties as well as obligations and liabilities.<sup>62</sup> Notwithstanding it would appear to be desirable and beneficial to both parties to accommodate payment by instalment.

## 2.26 Order 40 --- Transfer and Consolidation

This used to be formerly Order 37. Rule 4 of the 2023 Rules is new to the effect that any claim for money to the tune of N10,000,000.00 and below may be transferred to a Magistrate Court by the Judge *suo motu* or upon application of parties. It is submitted that to ensure orderliness the transfer will be made to the office of the Chief Registrar of the High Court for assignment to a Magistrate.

<sup>61</sup> *Oboh vs. N. F. L. Ltd.* (2022) 5 NWLR (1823) 283 SC.

<sup>62</sup> *Livestock Feeds Plc vs. Igbino Farms Ltd. & 20rs* (2002) 5 NWLR (Pt. 759) 118



It appears the 2023 Rules did not specify the rank of the Magistracy to which such transfer could be made. Furthermore, the provisions of the extant Magistrate Court Law of Rivers State would need to be amended to increase the monetary jurisdiction to N10,000,000.00.

### **2.27 Order 42 --- Motions and Other Applications**

Rule 1 sub rule 2 is new to the effect that every motion is deemed served upon filing. This is a radical provision but not without risk. Similarly, sub rule 5 of RULE 1 is new as failure to serve reply to the counter-affidavit may be construed as abandoning the motion. This is not without reservation, as the Applicant may have no need to reply to the counter-affidavit. Filing of reply is not compulsory. It is only desirable especially where the counter-affidavit raised serious issues requiring clarification. The consequences therefore should not be a deemed abandonment of the motion. Except otherwise, the court should determine the motion. The take home is that Order 42 Rule 1(5) requires that the applicant be vigilant.

Rule 3 (4) of the Order is also new to the extent that it expressly imposes on the parties duties to respect status quo the moment a motion is filed and served. The moment a motion on notice is served, both parties must maintain status quo pending the determination of the motion. This approach though highly notable could be abuse by mischievous applicant.

This reservation could be cured if the Rule can impose a timeframe on the court for the determination of the motion. Similarly, the new Order 42 provide that motions for setting aside arbitral awards must be filed within 90 days from the date of the publication of the award. It used to be mere 6weeks under the old Rules.

### **2.28 Order 43 - Judicial Review and Appeals**

Order 43 (formerly Order 40) has a new proviso to its Rule 18 empowering the Appellant or his Counsel to compile record of appeal and serve same where the Registrar of the court failed and or refused to call for the compilation of records. The timeframe is 15days.

The challenge with counsel compiling the record is when there is a dispute as to the completeness or otherwise of the record. Traditionally, it is the duty of the court registry to ensure that the records so compiled is correct and complete.<sup>63</sup> Presently, both parties have the right to challenge incorrect or incomplete records of appeal.<sup>64</sup>

The deposit for making copies for the purposes of appeal is N70,000.00 –Rule 18(3).

Similarly, O. 43(38) 2 now provides that failure to make deposit for security for appeal will amount to a deemed striking out of the appeal, and no longer a dismissal as it was under the old Rules. This is commendable as such failure is remediable.

<sup>63</sup> *Okochi vs. Animkwoi* (2003) 18 NWLR (PT. 851) 1, SC

<sup>64</sup> *Access Bank Plc vs. Onwuliri* (2021) 6 NWLR (Pt. 1773) 391 SC



## **2.29 Order 44 --- Jurisdiction of Chief Registrar**

Rule 44 is new to the extent that list of matters to be heard by the Chief Registrar shall also be published on the RIVCOMIS and any other platform as the Chief Judge may direct. Outside that, there is nothing else.

## **2.30 Order 45 – Committal for Contempt of Court**

This Order is completely new. It applies to breach of undertaking to the court or disobedient to the court proceedings before the court. Actions are commenced by filing motion on notice and serving same. Court can *suo motu* commit for contempt.

There are basically five circumstances when contempt proceedings could be held in private viz, cases involving infants/children; persons suffering from mental disorder; secret process discovering; national security and interest of justice. It is to be noted that the order of committal may be suspended after it has been issued.

Similarly, the extortion of money from litigant or counsel by staff of the judiciary or anyone is contempt of court and punishable upon conviction to a minimum of one month imprisonment. It would appear that the Rules of court though a subsidiary legislation has by virtue of this provision created a substantive criminal offence. Nonetheless, extortion is a criminal offence under the criminal code applicable in the southern part of Nigeria.<sup>65</sup>

## **2.31 Order 48 --- Computation of Time**

Rule 5 is new to the extent that time shall not run when the Registry is under lock and key and the business of the court is stalled. This provision has no doubt addressed the challenge faced by lawyers and litigants after the post 2014 to 2015 leadership crisis in the Rivers State judiciary, when state courts in Rivers State were closed.

## **2.32 Order 49 --- Miscellaneous Provisions**

This Order has been greatly modified and enhanced.

The annual vacation of the Rivers State High court is now for 42 working days commencing from a day in August and no longer just six weeks as it was under the old Rules. Similarly, Christmas vacation now terminates on the 7<sup>th</sup> working day of January, and no longer 2<sup>nd</sup> working day of January.

Furthermore, the new Rules addressed at least in principle the hydra headed issue of the high cost of executing judgments. Under the new Rules,<sup>66</sup> the maximum cost is now N50,000.00. This is a huge relief for legal practitioners and parties, subject to effective implementation mechanism. In practice, parties levying execution will still need to mobilize security agencies and get other vehicular logistics to successfully levy execution.

Another notable innovation in the new Rules is Order 49(17) which is to the effect that payments by litigants or counsel to court officials for opening or movement of files from one office or division to

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<sup>65</sup> Cf, CFRN s. 36(12).

<sup>66</sup> Order 49(18).



another is now outlawed. Similarly, oral applications to correct errors in processes are now permissible under Order 49(15) subject however to the consent of the opposing counsel obtained in open court.

Furthermore, “Payment of assessed fees for filing of ALL PROCESSES shall be made in Port Harcourt” until such a time when the Judiciary is able to provide Point of Sale machines to the courts outside Port Harcourt.<sup>67</sup> It is necessary to note that ‘Port Harcourt’ is not defined in the new Rules. A definition to include the Headquarters is recommended. In any case, the Rules appears to be a mere safeguard in view of the fact that all filings are now done online.

### **2.33 Order 52 – Conduct of Legal Practitioners**

The Order is no longer titled Change of Legal Practitioner, although the contents are nearly the same. The following Rules are new. Counsel should not depose to affidavit on behalf of a party in contentious matters. However, the Rules did not state what amount to ‘contentious matters’. It is submitted that what is contentious should include any averment in an affidavit that will likely affects the counsel’s ability to functions professionally without a conflict of interest.

Counsel holding watching brief must be seize of the facts of the case before appearing in court. Improperly dressed counsel may be denied audience in court, and in extreme case, be asked to vacate the Bar.

### **2.34 Order 53 -- Costs**

There is nothing new. However, it is necessary to be reminded that O. 53 RULE 13 deals with the personal liability of legal practitioner for costs for failure to attend in person<sup>68</sup> or by a proper representation or failure to deliver any document for the use of the court.<sup>69</sup>

Notwithstanding it is necessary to note that counsel are counsel of law, not fact. Whether a counsel would be held personally liable for failure to deliver a document will depend on the fact before the court.

### **2.35. Order 55 -- Foreclosure and Redemption**

The only addition is O. 55 RULE 4 to the effect that any response by the Respondent to the Order of execution of judgment by the court shall be served in the same way as other applications.

### **2.36 Order 57 -- Summary Proceedings for Possession Of Landed Property Occurred by Squatters or Without Owners Consent**

Present Order 57 used to be Order 53 under the old Rules. There are two basic innovations in the new Rules under this Order. Rule 2 now requires that the originating summons be published in any newspaper circulating within Rivers State where the person in occupation is unknown. Under the old Rules, no acknowledgment of service was required. It is still trite that the Order will not apply if the persons occupying the land are known.

<sup>67</sup> Rule 16 of Order 49.

<sup>68</sup> OKOSA: Award of costs in judicial proceedings: When a Legal Practitioner may be personally liable for payment of costs, International journal of Law and clinical legal education (IJOLACLE) 3 (2022), pp. 75-82.

<sup>69</sup> THE NATION NewspaperCourt awards N20M cost against lawyer behind suit to stall Tinubu’s inauguration, 7<sup>th</sup> June 2023.



Secondly, there is a new RULE 6(2) to the effect that the Judge may visit the locus before making order for possession. This apply where there is no defence or as the circumstances may so require.

### **2.37 Order 58 -- Stay of Execution or Proceedings Pending Appeal**

Rule 2 sub rules 3-5 is new to the effect that the record of appeal must be compiled within 90days from the date of the filing of the Notice of Appeal otherwise the notice or the Order of stay already made may be struck out or discharged and shall not be relisted, refiled or revived.

It is necessary to note that Order 43 Rule 18 discussed above permits counsel or appellant to prepare the record of appeal after 15days of default by the court registrar. In effect, there is a punishment for failure to compile records within 90 days after filing of Notice of Appeal. The penalty relate to the fate of the processes before the lower court. It follows that the appellant's right to appeal at the appellate court is still sacrosanct.

### **2.38 Orders 59 - 63 Probate and Administration**

As noted earlier in this paper, Orders 59 to 63 were jointly known as Order 55 under the old Rules. The new Rules unbundled it distinctively into grant of probate or letters of administration with will; granting of letters of administration without will; proceedings in probate and administration actions and legitimacy order.

### **2.39 Order 64 – Fees and Allowances**

There is no different in the contents except the Order contained what appears to be a fundamental error, wherein the highest paying fees is increased to One Million Naira. The new Order also streamlined fees chargeable by court bailiffs for service of court process.

The challenge with the later innovation is in the implementation, especially with the current economic instability in Nigeria and high cost of transportation in the country.

## **3.0 Conclusion**

The Rivers State High Court (Civil Procedure) Rules 2023 is less than six month old at the time of this paper. However, it is clear from its tenor that the judiciary is determined to enhance the machinery of justice delivery by leveraging on the advancement in technologies. Furthermore, there is a clear intention to reduce procedural bottlenecks in the dispensation of justice. The Rules prioritize early determination of matters, hence the several timelines and penalty, which this paper believe, is intended to discourage delay. Nonetheless, the noble objectives seems to have undermines certain natural factors that could inhibit the active participation of parties, for example ill-health and bereavement among others. The paper thus recommends that there should be massive deployment of technologies in the judiciary as well as the retraining of staff in line with the overriding objectives of the Rules.