

ESTABLISHING SPECIALISED COURTS:
A PANACEA TO THE PROBLEMS OF
DELAYED JUSTICE ADMINISTRATION IN
LAGOS STATE?

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1. Introduction

The recent creation of specialized divisions in the High Court of Lagos State can be regarded as an important step in the process of modernization and streamlining of the judicial system in order to promote greater efficiency in the delivery of justice.

Nevertheless, the title of this paper can be regarded as misleading to the extent that the creation of specialized divisions of the High Court of Lagos State cannot all by itself constitute a solution to the problems of delay in the delivery of justice. Specialization has been introduced into the High Courts in England for a long time, but this has not solved the problem of congestion and delay in the judicial process. The Queen's Bench Division of the High Court of England and Wales contains (i) a Commercial Court, with specialist Judges to deal with banking, insurance companies and other commercial matters, (ii) an Admiralty Court, hearing matters concerning claims for damages for collisions at sea, carriage of goods, salvage rights when a ship has sunk or is stranded and (iii) the Technology and

Construction Court which presides over cases involving technically complex issues such as building and engineering disputes or litigation over computers.

The Chancery Division is also divided into two, one, a Special Companies Court dealing mainly with winding up of Companies and the main section dealing with mortgages, trust property, copyright, patents and other intellectual property matters. In addition to all this, there is also the Family Division of the High Court, which deals with divorce, nullity matters, separation, cases relating to children and non-contentions probate matters. In spite of all this, a series of Law Reform Committees for the reform of civil proceedings were set up in the eighties and nineties, by the British Government in a bid to improve the speed of justice delivery and the efficiency of the judicial system. These were the Civil Justice Review Committee, 1988, the Heilbron Committee, 1993 and the Woolf Committee, 1996.

The Woolf Report, which was the very last one, was entitled Access to Justice. In the view of the Committee, a civil justice system should have the following qualities and characteristics¹

- Be just in the results it delivers
- Be fair in the way it treats litigants
- Offer appropriate procedures at a reasonable cost
- Deal with cases at a reasonable speed
- Be understandable to those who use it
- Provide as much certainty as the nature of particular cases allows

1. See generally on reform of English Civil Court Procedures Jacqueline Martin, English Legal System, 2nd Ed. Chapter 6.

The Report found that virtually none of these points was being achieved in the civil courts, and criticized the system for being unequal, expensive, slow, uncertain and complicated. The report contained 303 recommendations. The most important ones proposed were

- Extending small claims up to 3,000 Pounds
- A new fast track for straightforward cases up to 10,000 Pounds
- A new multi-track for cases over 10,000 Pounds, with capping of costs
- Encouraging the use of alternative dispute resolution
- Giving judges more responsibility for managing cases
- More use of information technology
- Simplifying documents and procedures and having a single set of rules governing proceedings in both the High Court and the County Court
- Shorter timetables for cases to reach court and for lengths of trials.

This Report was accepted with minor amendments and the new English Civil Procedure Rules came into effect on 26 April 1999. One thread that runs throughout the new rules is their simplicity. They are tailored towards the layman who is in fact encouraged to file and conduct his own case, if he lacks the funds to engage Lawyers. The vocabulary of the new Rules reflects this. Instead of 'Plaintiff', the term for someone bringing an action is now 'Claimant' and 'Pleadings' 'Writ of Summons' etc are now called 'Claim forms'. Rule 1.1 of the new Rules declares that its overriding objective is to enable the courts deal with cases, justly² and to:

² See Jacqueline Martins Op. Cit. p. 92

- Ensure that the parties in any case are on an equal footing
- Save expense
- Deal with cases in a way which is proportionate to:
 - the amount involved (that is avoid the costs of the case being more than the amount claimed)
 - the importance of the case (for example, is there a major point of law involved?)
 - the complexity of the issues in the case
- Ensure that the case is dealt with quickly and fairly
- Allocate an appropriate share of the court's resources (so smaller claims do not take up more time than they justify).

The new Rules give Judges more control over proceedings in Court, and they are now empowered to set time tables and ensure that the parties do not abuse the judicial process by dragging out a case endlessly as is the case in this country.

- Thus the Judge is empowered to
- Identify the issues at an early stage
- Encourage parties to use alternative dispute resolution where appropriate
- Deal with any procedural steps without the need for the parties to attend court

- Give directions to ensure that the trial of a case proceeds quickly and efficiently.

All the above is backed up with the most recent information technology package and electronic facilities.

It is clear that it is this comprehensive or wholistic approach that can eradicate court congestion and delays and it is gratifying to note from the address of the Lagos State Attorney-General to the N.B.A. Conference at Calabar in August 2001, that the approach of Lagos State towards solving the nightmare of delays and congestion in the High Court of Lagos, is equally comprehensive and painstaking.

In a sense therefore, what the Government of Lagos is currently doing, i.e., setting up specialized sections of the High Court, whilst carrying out a thorough review of the Civil Procedure Rules and introducing automatic recording; and other electronic facilities and computerization, is very much in line with what is going on in the U.K. For the problem of delay in the judicial system has many sources and therefore needs a multifaceted solution.

2. Establishment of Specialized Courts in Lagos State

As part of its programme of improving efficiency, speed and quality in the justice delivery system, the Lagos State Government, through the Ministry of Justice, announced the establishment of Specialized Courts in April 2001 and these Courts

have started operating with effect from September 2001. The new divisions are as follows:

1. Commercial
2. Criminal
3. Land
4. Family and
5. General

No policy document has been made available to the public and these divisions have only just started operating; but it is not difficult to state what the objective of the Government in introducing this innovation into the Lagos State judicial system, is.

In the view of the present Writer, specialization will enhance speed and quality of judgment in the justice delivery system because, (i) the Judges in each division will be dealing with areas and aspects of law with which they have greater familiarity, and in which they have greater facility and knowledge; (ii) Judges will now be focused on a limited and defined area of law, in which they have established their mastery and authority. They can therefore go straight to the substance of the issues involved in a case without having to study the laws applicable, and working themselves up to a state of credible knowledge, after a wobbly or shaky beginning. In the process, the speed and quality of justice delivery will definitely be enhanced.

From the management perspective, cases will now be allocated knowledgeably, to the appropriate Division, thus eliminating the former system of “blind” allocation to anyone, without a rational basis.

The increased confidence which Judges are bound to have in themselves, will mean that they will be in firmer control of their courts and will provide appropriate guidance and direction during proceedings. This will reduce the opportunity for the abuse of the judicial process by lawyers and hasten the conclusion of proceedings.

Moreover, it will not be too much to expect stakeholders in a particular area of human activity to assist in providing facilities to the Divisions that deal with their matters. For example, Chambers of Commerce could provide computers and other electronic equipment to the Commercial Division of the High Court.

Thus, although it is too early to judge the performance of the new specialized courts, one can confidently hope that enhanced speed, efficiency and quality in the justice delivery system, will be the outcome of this bold innovation in the Nigeria judicial system.

3. Other Causes of Delay

As I have already noted at the beginning of this paper, whilst the creation of specialized courts will facilitate the speed of justice and the quality of judgments, it cannot by itself alone solve the problem of delay in the judicial system. In a paper delivered at the 2001, Annual Conference of the Nigerian Bar Association, at

Calabar, on 31st August 2001, by the Hon. Attorney-General of Lagos State, Professor Yemi Osinbajo, and entitled “Delay in Civil Proceedings: Need for New High Court Rules”, the Writer identified the major causes of delay in the judicial process as

1. a grossly defective civil procedure system
2. abuse of the system by lawyers
3. Judges failure to take a firm control of proceedings
4. manual recording of proceedings, and non –use of written address by lawyers.

The bulk of the paper dealt with the details of the radical reforms in the Civil Procedure System of Lagos State, seen as the worst culprit in the virtually collapsed judicial system.

The former Chief Judge of Lagos State, Hon. Justice C.O. Ilori who set the process of reform of the civil procedure rules in motion, stated as follows in his address to the Court Procedural Reforms workshop in 1997.

“Our Court procedures are tedious, archaic, slow and in all respects unacceptable to a civilized community within the scientific and technical environment of modern age. The delays that result from our court procedures have reached an indecent stage which cannot be allowed to continue.

It is in the interest of us all either as individuals or corporate bodies that the cause of the delay be investigated and practical solutions be evolved.

The Nigerian Court Procedures Project being carried out by your Institute [Nigeria Institute of Advanced Legal Studies] has come at a psychological time as we prepare for the 21st century. The Lagos State Judiciary is a front house of legal activities in Nigeria. Majority of the litigations at first instance between individuals and corporate bodies are litigated in courts situate in Lagos. Consequently most of the appeals to the higher courts originate from courts situated in the Lagos State.”

The work of the former Chief Judge was continued by his successors and the State Ministry of Justice, after his retirement and in his address to the Nigerian Bar Association in August 2001, the present Attorney-General of Lagos State was able to state that:

“The foregoing has been an attempt to establish the need for a new set of High Court Civil Procedure Rules. As the detailed results of empirical studies show, users of the court system are seriously dissatisfied and one of the causes for complaint are the court rules. We have also examined those aspects of the rules that have occasioned much of the problems. As noted then, some of the rules are inherently bad, while others are susceptible to perennial abuse. Finally, we have followed the problem identification with a quick review of some of the most important suggestions that are under consideration.

Before I resume my seat, I wish to state that we, in Lagos State, recognize that other critical factors are required to make the court system succeed. We are working on all of these issues, even while the rules are

being reviewed. Courtrooms are being refurbished and equipped with modern technology, including digital audio recorders, transcribers and computers. Also, 26 new Judges were recently appointed in the state. Before that appointment Nigerian Bar Association in Lagos State was given the opportunity of reviewing and commenting on the carefully selected applicants. We hope that this group, which had the approval of the Bar, will live up to our highest expectations.

Besides, the High Court itself has been divided into divisions to enhance specialization and coordination. Salaries and conditions of service of judicial personnel have been substantially reviewed upwards and conscious efforts are being made to fight corruption in the judiciary. It is this, along with our efforts on the rules, that give us confidence that the Lagos judiciary will definitely become a model for its kind within and outside Nigeria.”

Many Writers, including the present one, have commented extensively on all the various causes of delay. In an earlier paper³, I made the following recommendations.

“In concluding this part of my paper, I offer the following very strong recommendations to curb irresponsible applications for adjournments by Counsels, who brazenly and routinely abuse the judicial process by these application.

³ “An Appraisal of the Effectiveness and Efficiency of the Nigerian Judicial System”, June 2000

1. No party should be granted more than one adjournment in any case, unless the reason for the application is regarded by the Court as extremely compelling.
2. The Constitution and Rules of Court should be amended to cut down drastically the right to interlocutory appeals. That is one of the greatest sources of delayed justice. In his paper entitled “A New Approach to Justice Delivery in the Twenty-First Century” the great Jurist, Dr. Akinola Aguda addressed the issue of interlocutory appeals extensively, citing and quoting the judgment of Anigololu JSC in Bakare Vs. African Continental Bank,⁴ which I now also quote:

“It is to be hoped that parties would not contribute to the delay in the hearing of cases in our Courts by unnecessary application for adjournment of cases for them to test on appeal, trivial issues which could easily wait for the conclusion of trial and taken up with the main appeal to the Supreme Court. Not to heed this is to add to the congestion of cases in our courts and to bring about the “chaotic state of affairs” mentioned by Edmund Davis, L.J., in Seldon Vs. Davidson. The High Court and the Court of Appeal should lean against granting adjournments, or granting leave for interlocutory appeals, in such trivial matter.

The time, energy and expense involved in such appeals cannot be justified merely by the lawyer’s academic satisfaction that a legal

⁴ [1986] 3 NWLR (Pt. 26) 47 at 59.

principle, no matter how trivial, has been established or that a trifling legal issue has been resolved.

Lawyers may enjoy the splitting of hairs on obtuse legal points but that extravagant exercise has the result of weighing heavily on the pockets of litigants and unnecessarily exhausting the energies of the Appeal Courts.”

Aguda observes quite correctly, the Courts have ignored the Supreme Court in this regard, and adds “.....in most cases, once a Counsel files an appeal against an interlocutory order, he at once applies for a stay of proceedings, and many High Court Judges believe that they have no alternative but to grant the stay”.

The answer to this problem is for the Courts to refuse to grant a stay of proceedings or stay of execution of interlocutory orders, except in cases where the issue involved in the appeal is such that a refusal might irreversibly determine the outcome of the substantive case. As much as possible, interlocutory appeals should be taken together with substantive appeal.

3. Finally, once any Counsel appears for any Chambers, the case must go on. The Courts should refuse to entertain the argument that a Counsel is not sufficiently briefed and that his Senior has asked him to obtain an adjournment. A Counsel who is a Barrister of the Supreme Court of Nigeria cannot be heard to say that he is too junior to take a case being handled by his or her chambers.

4. **Conclusion**

The creation of Specialized Divisions of the High Court of Lagos State constitutes an important step forwards, towards the modernization of the judicial system and the promotion of efficiency and quality in the justice delivery system of the State. It is therefore to be greatly welcomed.

However since the establishment of Specialized Divisions cannot fully eliminate the problems of congestion and delays in the judicial process, it must be carried out in tandem with numerous other measures, some of which are (i) reform of the Civil Procedure Rules, (ii) automatic/electronic recording of judicial proceedings and computerization of the whole process, (iii) tighter control of court proceedings by Judges, (iv) use of written addresses, (v) elimination of abuses of the judicial process, (vi) drastic reduction of adjournments and interlocutory appeals, etc.

With the introduction of such reforms and their firm implementation by judicial and other relevant authorities, the “collapsed” judicial system of Lagos can be resuscitated and we can all begin to take ourselves seriously, whenever we put on our collars and bibs in the morning and head for the courts with our ‘sack’ containing a wig and gown. The judicial system in Lagos State will no longer be a sick joke and a travesty of justice and the rule of law.