



Delta state administration of civil justice law 2022: A spotlight on its high points

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Abstract

In December 2022 the Delta state Governor signed into law the new Delta State Administration of Justice Law. The law ushers in a new dawn in the dispensation of civil justice. The overarching purpose of the law as contained in the preamble is to facilitate the just, efficient, timely and cost-effective resolution of real issues in dispute. The law promotes a culture of encouraging litigants to resolve disputes without going to court, with pre-litigation processes helping either to resolve disputes or narrow down the issues. Furthermore, the law support litigants and lawyers within the court system to achieve early resolution or narrow issues, except where a judicial determination is necessary. Several innovative provisions were infused in the law, to wit: the pre-litigation requirements, online disputes resolution services, electronic filing, electronic service, electronic recording and transcription of court proceedings, case management, summary judgment, applications for ex-parte interim remedies and interlocutory appeals and stay of proceedings. A spotlight revealed that while the innovations have their uses, it is discovered that the implementation of the law is likely to encounter a lot of challenges. The article concluded by making recommendations on how such challenges are to be tackled.

Keywords: administration of civil justice law, cost-effective resolution, Pre-litigation

Introduction

On the 22nd of December, 2022 the Delta State Governor signed into law the Delta State Administration of Justice Law. The principal objectives of the law are: To reform and modernize the laws, practices, procedures and processes relating to the resolution of civil disputes and civil proceedings in the High Court of Delta and to provide for uniformity in the process of administration of civil justice. To simplify the language relating to civil procedure and to provide for the primary objective or purpose in relation to the conduct of civil proceedings to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.

To achieve the above objectives, the law has provided novel innovations that are worthy of consideration. It is for this reason that this article seeks to cast a spotlight on the major innovations in the Administration of Civil Justice Law, 2022, to determine; to what extent the goals of the Law can be achieved. This is particularly more so that, the new Law largely replicate the 2019 Ekiti State Administration of Civil Justice Law. Hence the first part is introductory. The second part does an overview of the new law, and the third part examines some of the major innovations, from the prism of the overriding objectives of the law. The last part offers recommendations.

Research methodology

This study is based on the doctrinal method of research. It involves analyzing the statutory provisions and cases by applying reasoning power ^[1]. It involves analysis of statutory and case law, arranging, ordering, and systematizing legal propositions through legal reasoning or rational deduction. This includes the use of primary and secondary materials. Thus in collecting materials for this study, we relied on statutes, case laws online materials as well as web information gathered from the site of relevant institutions.

Overview of the innovations in the law

The hitherto Rules of Court in Delta State and many other states in Nigeria are plagued with a lot of criticisms, largely bordering on excessive delays in the administration of justice and non-compliance with international best practices and standards. It is expected that the introduction of the new law will achieve a just, speedy and efficient administration of justice, and address the shortcomings in the old Rules. An overview of some of the innovations in the new Law are discussed below.

a. Preamble and overriding objectives ^[2]

The new law adopts the norm; which has now become fashionable in the drafting of laws, of stating in its outset the guiding spirit behind the law. Section 4 of the provides for the overarching purpose overarching obligations of the said law. The objective of the law is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute. section 29 provides as follows:

1. The primary objective or purpose of this Law in relation to civil proceedings is to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute.
2. Without limiting how the primary objective or purpose is achieved, it may be achieved by –
 - a. the determination of the proceeding by the court;
 - b. agreement between the parties;
 - c. any appropriate dispute resolution process –
 1. agreed to by the parties; or-
 2. Ordered by the court.

b. The Pre-litigation Requirements ^[3]

One of the major innovations in the Delta State Administration of Civil Justice Law, 2022 is the pre-litigation requirements. The law requires every person involved in a civil litigation dispute shall comply with pre-litigation requirements before commencing any civil

proceedings in a court. The pre-litigation requirements are enumerated in section 31 of the said law. The said section provides as follows:

1. Each person involved in a civil dispute must take reasonable steps, having regard to the person's situation and the nature of the dispute:
 - a. To resolve the dispute by agreement; or
 - b. To clarify and narrow the issues in dispute if civil proceedings are commenced.
2. For the purposes of this Section, reasonable steps include, but are not limited to –
 - a. The exchange of appropriate pre-litigation correspondence, information and documents critical to the resolution of the dispute;
 - b. The consideration of options for resolving the dispute without the need for civil proceedings in a court, including, but not limited to resolution through genuine and reasonable negotiations or alternative dispute resolution.
3. Each person involved in a civil dispute must not unreasonably refuse to participate in genuine and reasonable negotiations or alternative dispute resolution ^[4].

The pre-litigation requirement is quite laudable as it gives room to parties to resolve the dispute by themselves through an agreement and if for any reason the matter cannot be resolved through such agreement, then the parties are required to narrow and distilled the issues in dispute before trial should be commenced. This has gone a long in promoting the amicable settlement of disputes and maintaining a friendship. The innovation in this section of the law has also helped to save the time of the court with frivolities as unimportant issues can be dealt with at the pre-litigation stage so that the business of the court is to deal with issues that are in controversy. It should however be noted that the pre-litigation requirements do not apply to the following proceedings: ^[4] A civil proceeding which is an appeal; a civil proceeding under Chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended); a civil proceeding to which the Companies and Allied Matters Act 2020 applies; a civil proceeding to which the Matrimonial Causes Act applies; a civil proceeding to which the Child Rights Law applies; a civil proceeding to which the Freedom of Information Law applies; and a civil proceeding which is an application for Judicial Review.

c. Online Disputes Resolution Services ^[5]

Online Dispute Resolution (ODR) can be defined as the deployment of applications and computer networks for resolving disputes with ADR methods ^[6]. At the moment there are four types of ODR systems. At the moment there are four types of ODR systems:

- a. The online settlement, using an expert system to automatically settle financial claims;
- b. Online arbitration, using a website to resolve disputes with the aid of qualified arbitrators;
- c. Online resolution of consumer complaints, using e-mail to handle certain types of consumer complaints;
- d. Online mediation, using a website to resolve disputes with the aid of qualified mediators ^[7].

To take benefit of technological breakthroughs in recent times, the Delta State Administration of Civil Justice Law

provides for online dispute resolution to enable parties who may not be physically available when the matter in dispute is to be resolved. The Delta State Administration of Civil Justice Law provides as follows:

To facilitate an efficient and user-friendly litigation process in the High Court, Magistrates' Court and any Small Claims Courts operated by the State, the Chief Judge may issue Regulations in the form of Court Rules or practice directions to establish and regulate the provision of Online Dispute Resolution services by the applicable courts ^[8].

The law empowers the Chief Judge to make rules or issue a practice direction that will regulate the proceeding of online dispute resolution. One important feature of the law, as regards online dispute resolution services, is that it is not restricted to only the High Court but also to the Magistrate courts as well as other Small Claims Courts.

d. Electronic Filing and System ^[9]

An electronic filing system is a computer-based system that enables the electronic filing of court documents, such as pleadings, motions, and other legal papers, instead of requiring them to be filed in paper form. Electronic filing systems are designed to streamline the court filing process and make it more efficient and cost-effective. Electronic filing systems typically involve a secure online portal or website where lawyers, litigants, and other authorized users can access files and view court documents. Documents are filed electronically, and the system typically provides users with confirmation of their filing and receipt including the date and time of filing.

The Delta State Administration of Civil Justice Law key into this global best practice by empowering the Chief Judge to issue regulations in the form of practice directions to establish and regulate the use of the Electronic Case Filing system ^[10]. The law equally provides that a process shall be filed under the electronic case filing system where: the court has an electronic case filing and the parties have agreed to it or where a law, court rules, practice direction or court order requires parties to file electronically ^[11].

The innovation in this law for parties to file electronically is of great advantage as it will help to reduce the time and costs associated with traditional paper-based court filing and also to improve access to court records and information. Another great advantage is that the electronic filing system facilitates remote access to court records, which can be helpful for lawyers and litigants outside the jurisdiction.

e. Case Management ^[12]

This is a case management device whereby preliminary issues which hitherto stalled trials are dealt with before trial, at a forum which is time-bound and less formal ^[13]. The case management conference is usually presided over by a pre-trial judge in an environment that is less formal but managed in a manner to achieve its goal. Usually, the purpose of case management is to dispose of matters which can be dealt with on an interlocutory application, to promote the amicable settlement of the case or adoption of alternative dispute resolution and to give such direction as to the future course of the action as appears best adapted to secure its just, expeditious and economical disposal of the matter ^[14]

The Delta State Administration of Civil Justice Law copiously provided for case management in section 48 where the case management schedule, the case management meeting and the procedural timetable are drawn. The case management meeting enables parties to a questionnaire for the examination of each party to help the parties to further narrow down the issues.

f. Electronic Recording and Transcription of Court Proceedings ^[15]

Electronic recording and transcription of court proceedings is the process of using technology to create a digital record of what is said during a court trial. This digital record can then be used to create an accurate transcript of the proceedings. Electronic recording and transcription offer several advantages over the traditional method where judges record proceedings in a long hand. It is burned out the delay usually associated with the recording of proceedings in the long hand that the Administration of Civil Justice Law of Delta State deems it necessary to provide for electronic recording and transcription of court proceedings. The law provides as follows:

1. Subject to subsection (3) of this section, all proceedings shall be recorded, transcribed, and provided to the parties in accordance with the provisions set out in the Ninth Schedule to this law.
2. Subject to subsection (3) of this section, it shall no longer be required for judges to record long-hand notes of proceedings, and the verbatim transcripts produced in accordance with the provisions set out in the Ninth Schedule to this law shall be only valid record of the proceedings of a court to which this law applies ^[16].

g. Summary Judgment ^[17]

Summary judgment is a legal procedure used to dispose of a case without trial. It allows the court to deliver judgment when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Once a party can show that there are no disputed facts that would require a trial to be determined. To obtain a summary judgment, the moving party usually file a motion on notice supported by an affidavit as well as a written address.

The Administration of Civil Justice law of Delta State provides for summary judgment in line with best global practice. By the provision of the said law, both the claimant as well as the defendant can apply for summary judgment depending on the circumstances of the case. The law provides that a Claimant in a civil proceeding may apply to the court for summary judgment in the proceeding on the ground that a Defendant's defence or part of that defence has no real prospect of success ^[18]. It further provides that a Defendant in a civil proceeding may apply to the Court for summary judgment in the proceeding on the ground that a Claimant's claim or part of the claim has no real prospect of success ^[19]. The provision of this law empowers the court in appropriate cases where in the case of the defendant, the defendant has no defence to the whole claim or a defence to a part of the claim and if it is the claimant where his claim has no real prospect of success. This innovation will help to stop litigants from congesting the court with frivolous claims and frivolous defences.

h. Alternative Dispute Resolution ^[20]

With the growing popularity and acceptance of alternative dispute resolution mechanisms as best practice in the resolution of disputes, the 2022 Administration of Civil Justice Law incorporates ADR, for parties to resolve their dispute expeditiously, which saves time, and cost and avoids the rigours of litigation. The interpretation section of the law defined Alternative Dispute Resolution as:

Any procedure agreed upon by the parties to a dispute, in which they use the services of the neutral party to assist them in reaching an agreement and avoiding litigation in respect of the whole or part of the dispute. The term includes but is not limited to:

1. Mediation, whether or not referred to a mediator under court rules;
2. Early neutral evaluation;
3. A judicial resolution of conference;
4. A settlement conference;
5. Reference of a question, a civil proceeding, or part of a civil proceeding to a special referee or under an interim Remedies Reference;
6. Expert determination;
7. Conciliation
8. Arbitration ^[22]

They went further to provide in section 61 as follows:

1. The Court:
 - a. Shall, at the Case Management Meeting, consider the propriety of referring the dispute to mediation or another appropriate Alternative Dispute Resolution (ADR) process; and
 - b. May at any stage of the case, if it is appropriate to do so based on the factors stated in subsection (2) of this Section, make an order referring a civil proceeding, or part of a civil proceeding, to ADR.

1. Applications for Ex-parte Interim Remedies ^[23]

As the name implies, it is an order made in the interim before the other party can be put on notice ^[24]. It is made in cases of extreme urgency, to prevent irreparable damage to the *res* until the respondent can be put on notice. One significant feature of interim remedies is that, it is meant to last for a short period. This is because the application is heard at the request of the applicant alone without the input of the party sought to be restrained or compelled to do an act because of the urgency. The application is by way of motion *ex parte* ^[25].

However, it has been observed over the years that applications for ex-parte interim remedies have been subject to abuse. Hon Justice Mohammed Bello, the Chief Justice of Nigeria, as he then was admonished Judges and practitioners at the All-Nigerian Judges Conference held in Abuja in 1985 in the following words:

“The decision of some of our courts on ex-parte injunction seems to put individual interest over the national interest in Nigeria. Public functionaries have been restrained without being given a hearing from performing their constitutional and statutory duties at the instance of exuberant individuals. I had to point out early this year that it was only in Nigeria that a court of law would restrain a university by order of an ex-parte injunction from holding a convocation to award degrees to over a thousand students, who had passed their examinations. A court of law denied the deserving students their degrees because two students who had failed the

examinations had applied to the court for a declaration that they too were entitled to be awarded degrees.... Indeed, there is an urgent need among some of us, the Judges, to appreciate that ex-parte injunction which was devised as a vehicle for the carriage of instant justice in proper cases should not be converted into bulldozer for demolition of substantial justice...”

It is as a result of the abuses of the application for the ex-parte interim remedies that the Administration of Civil Justice Law of Delta seeks to cure by making copious provisions to regulate the grant of such ex-parte orders. The law provides as follows:

Where, in any proceeding, a party applies for or has obtained an ex-parte order by which a party or non-party is required to perform an act or is restrained from performing an act, the primary principles that a court shall apply when considering an application to grant or discharge such ex-parte order are that:

- a. The Court shall only grant the order in deserving cases.
- b. A case is deserving if the party who applies for the order demonstrates prima facie that: -
 1. There is a real probability that the act which the party seeks to restrain or that the omission which the party seeks to prevent will occur by a date no longer than seven days after the date on which the application for the ex-parte order is made;
 2. The party did not know, and could not reasonably have had knowledge of the threat of the act or omission during any period before seven working days before the date on which the party applied for the ex-parte order, or circumstances exist which made it impracticable for the party to apply for the order within the prescribed time despite having such knowledge;
 3. The party will suffer an injury that cannot be cured by an award of pecuniary damages unless the ex-parte order is granted, and
 4. The party has served an inter-partes application for interim relief on the same terms as the other parties or will do so within 24 hours after an ex-parte order is made ^[26].

Going by the provision of the above-cited section of the Administration of Justice Law, *ex-parte* orders are not to be granted just as a matter of course but they must be granted in deserving cases and what qualifies a case to be deserving is expressly stated in the law. This innovation is quite commendable as it will curb the frequent abuse of the said order by legal practitioners.

j. Interlocutory Appeals and Stay of Proceedings ^[27]

Stay of proceedings connotes suspension of proceedings. Therefore, an order of stay of proceedings is made to suspend or put proceedings in abeyance in a lower court pending the determination of an appeal against an interlocutory decision of the lower court made during the proceedings ^[28]. A party in a case, who is dissatisfied with an interlocutory decision of the court and has appealed against the decision, may apply for an order staying proceedings of the lower court pending the outcome of the appeal.

One disadvantage of this application is that it delays and wastes the time of the court even when the interlocutory ruling being appealed against is manifestly unmeritorious,

the court is asked to wait until the appeal is heard and determined one way or the other. Just like interim *ex-parte* orders, applications for stay of stay of proceedings are usually abused. A defendant who has no defence to a suit against him will file a frivolous application for a stay of proceedings just to buy time and suspend the impending judgment against him.

To remedy the abuse of the application for a stay of proceedings and to save the time of the court, the Administration of Civil Justice Law has made a provision to curtail that. The law provides as follows:

1. Except as in sub-section (2) of this section, the proceedings in any matter before the court shall not be stayed to await the outcome of an interlocutory appeal from a decision of that court, and notwithstanding that an interlocutory appeal has been filed, the parties and their Legal Practitioners shall take all steps required, and comply with all directions given by the Judge to ensure that the proceedings are completed in a prompt, cost-effective and efficient manner, and in accordance with the Procedural Timetable.
2. Sub-section (1) above does not apply to the following:
 - a. An application for stay of proceedings under the Arbitration and Conciliation Act, under the Delta State Arbitration Law or the Delta State Mediation Law.
 - b. An application for a stay of proceedings pending an appeal from a court's decision on application referred to in paragraph (a) of this subsection.
 - c. An application to stay or strike out proceedings commenced in Nigeria where the parties have agreed to resolve their dispute in a court or other tribunal of another country.
 - d. An application for stay of proceedings pending an appeal from a Court's decision on an application referred to in paragraph (c) of this subsection ^[29].

From a community reading of the above section, it can be deduced that the court cannot grant any application for a stay of proceedings pending interlocutory appeal except in circumstances enumerated in subsection 2 of the above section. The law, however, provides for some remedies to a party whose application for a stay of proceedings may be refused. It provides as follows:

1. Where a party files an interlocutory appeal against a court's refusal of that party's objection to a civil proceeding, the Court shall not deem that party to have waived the objection where the party takes all steps required and complies with all directions given by the Judge to ensure the completion of the proceeding.
2. Where, in the circumstances described under subsection (1) of this section, the court proceeds to make a final decision requiring that party's payment of money, entitlement to property, or otherwise requiring the performance of an act, or refrain from performing an act:
 - a. The party's continued participation in the civil proceeding during the pending interlocutory appeal shall be deemed to be a special circumstance entitling a such party to apply for a stay of execution or injunction pending appeal against the court's final decision; and
 - b. No execution, whether by writ of attachment, writ of possession, committal proceedings, garnishee proceeding or howsoever otherwise shall issue against such party until the court has heard and determined the application for stay of execution ^[30].

The law has remedied the hardship that may occasion by the refusal to grant a stay of proceedings to a party who after such refusal, continues to participate in the proceeding even when he had lodged an interlocutory appeal against such refusal. The court is enjoined to automatically grant him a stay of execution or injunction pending appeal where a judgement has been delivered. And no execution will be levied against him until the interlocutory appeal is heard and determined.

Highlights of the likely challenges that may be encountered in the implementation of the Law

As laudable as the innovations in the Delta State Administration of Civil Justice Law is, the problem with the Nigerian Legal system is not in the laws but in the implementation of the laws. The Administration of Civil Justice Law is quite commendable but its implementation is likely to counter the following challenges:

- a. **Epileptic power supply:** the Administration of Civil Justice Law provides for electronic filing, electronic service, online dispute resolution and electronic. Recording and transcription of court proceedings. These innovations are appreciated. However, these innovations require a steady power supply which is lacking in Nigeria. Online Dispute resolution or electronic filing can not be achieved with the epileptic source of power. The device for the electronic recording and transcription of the court's proceeds can only work when there is a constant power supply. With the poor electricity supply in Nigeria, it will be difficult to achieve the intendment of this law.
- b. **Lack of IT skills amongst Judges, lawyers and Court workers:** most judges, lawyers and judiciary staff in Nigeria are not IT literate. To file a process electronically, to conduct an online dispute resolution and to record the proceedings of a court electronically will require that the judge, the lawyer and the judiciary staff have basic knowledge of computers. IT is not taught in the law faculties including the law school and it is the product of these law faculties and law schools without the knowledge of It that are managing the courts. This is likely going to be a pitfall to the smooth implementation of this law.
- c. **Poor and inefficient Internet network services:** the internet facilities and the Internet network in Nigeria is very poor. While in some other climes 5G network has been deployed, in most areas in Nigeria, we still struggle with a 2G network which can be very poor. Aside from the poor nature of the network facilities, the cost of the internet facilities is very high considering the poverty rate in this country. Therefore, unless internet facilities are made available and affordable, the realization of the laudable innovations in the law will be a tantalizing mirage.

Conclusion and Recommendation

In conclusion, the work has highlighted the major innovations introduced by the Delta State Administration of Civil Justice Law, in 2022. In particular, the innovations have been reviewed against the backdrop of the overriding objectives of the law i.e., whether the innovations are in

keeping with the objectives. While most of the innovations align with the objectives of effective use of judicial resources, speedy resolution of cases and promotion of alternative dispute resolution, a few recommendations are necessary in furtherance of the objectives. The recommendations are as follows:

1. There should be an improvement in the supply of electricity, this will help to achieve the innovation of online dispute resolution, electronic filing and electronic recording.
2. There should be constant training and retraining of lawyers, judges and the judicial staff on the use of ICT to keep abreast with the global trend. The curriculum in our law faculties and the Nigerian Law School should be reviewed to include ICT as a compulsory course.
3. The Internet services in Nigeria should be improved. The 5G broadband should be installed in Nigeria to enhance efficient and effective internet service delivery.

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