Electronic Filing and Service of Court Processes under the National Industrial Court Rules, 2017 and Court of Appeal (Practice Directions), 2014: A Catalyst for Trial within a Reasonable Time in Nigeria

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Abstract

The conventional method of justice delivery in Nigeria is marred with avoidable delays and lack of transparency. The need to improve the effectiveness and efficiency of the judicial system has necessitated the use of modern Information and Communication Technology (ICT). Spurred by the desire to examine the extent to which the use of ICT, especially in the area of electronic filing and service of court processes has enhanced speedy dispensation of justice, this article adopted the doctrinal method of research in which reliance was placed primarily on the National Industrial Court Rules, 2017 and Court of Appeal (Practice Directions), 2014 as well as judicial authorities. Reliance was also placed on secondary sources of information such as opinions of eminent scholars expressed in books and journals. It was found that albeit the use of electronic filing and service of court processes is a veritable catalyst for speedy trial, its effective utilisation is hamstrung by epileptic power supply, lack of Information Technology (IT) skills, inadequate funding of the judiciary, inadequate relevant legal and regulatory framework, et cetera. It is advocated that Government should ensure the provision of stable electricity supply as well as introduction of a mandatory programme for the acquisition of IT skills by lawyers, judges, court officials like clerks and registrars. It is further advocated that the judiciary should be adequately funded, amendment of various court rules to accommodate electronic method in conducting activities in court, among others.

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Introduction

It is pedestrian to opine that there is delay in the administration of justice in Nigeria. It is in an attempt to address this quagmire that the use of the internet or technology in enhancing effective and timely administration of justice becomes justified. The availability of web services, the possibility of consulting online legislation and case law, the use of electronic filing and the exchange of legal documents are only some examples that are spurring the judicial administration around the world.[3] ICT is a veritable tool that can assist any judiciary to carry out its functions maximally by enhancing efficiency, increasing accessibility, and delivering quick dispensation of justice in a transparent and accountable manner.[4] The automation of court systems and the use of the internet unlock the courts to the public, increasing access to its services.[5]

It is against this background that this article explores the electronic filing and service of court processes under the National Industrial Court Rules and the Court of Appeal (Practice Directions) to ascertain the extent to which these have enhanced speedy delivery of justice. In doing this, the article is divided into seven (7) parts. Part one introduces the topic; part two discerns conceptual clarifications; part three examines electronic filing and service of court processes; part four chronicles the advantages of the e-system; part five highlights the problems associated with the effective utilisation of the electronic system; part six proffers suggestions aimed at reform while part seven draws the conclusion.

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3 Halima Doma, 'Enhancing Justice Administration in Nigeria through Information and Communications Technology' [2016] (32) (2) *The John Marshall Journal of Information and Technology and Privacy Law,* 89-104. Retrieved from http://repository.jmls.edu/jitpl.pdf. Accessed on 21-1-2018.

4 Ibid.

5 Ibid.

Conceptual Clarifications

Trial

The word 'trial' is defined as 'a legal process in which someone who stands accused of a crime or misdemeanour is judged in a court of law'.[6] The Black's Law Dictionary[7] captures it as 'a formal judicial examination of evidence and determination of legal claims in an adversary proceeding'. The first definition above limits its scope to criminal trials by adopting the words '… who stands accused of a crime or misdemeanour…' The second definition is wide enough to cover both civil and criminal trials and this research adopts same for the purpose of this work.

It is pertinent to note that the second definition is in tandem with the judicial formulation in Nigeria. It was held in *University of Illorin v Oyalana*[8] that a trial is the conclusion by a competent tribunal of questions in issue in legal proceedings, whether civil or criminal. The word 'trial' embraces all the facts before the court including the judgment.

It is gratifying to note that the body conducting the trial must be one established by law-courts and tribunals. It was held[9] that where an alleged misconduct of a student involved a crime against the state, it is not any longer a matter for internal discipline but one for a court or tribunal seised of judicial power. Curiously, an investigation or inquiry in proceedings by an institution or organization on the conduct of its members is not contemplated at all when considering the meaning of trial.

The word 'trial' also means the examination of evidence by a court of competent jurisdiction so as to determine the legal claims of parties to a case. It connotes the gamut of processes involved in a case from the commencement to the point when judgment is finally given. Judgment is the final stage of a trial. Simply put, 'a trial is

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6 Ibid, 103.

7 Bryan, A. Garner, *Black's Law Dictionary* (10th edn, Thomson Reuters, 2014), 1735.

8 (2001) FWLR (Pt. 83) P. 2193 at 2198.

9 *Garba v University of Maiduguri* (1986) NSCC 245

demonstration and testing before a court of the cases of the contending parties. The demonstration is by assertion of evidence and the testing is by cross-examination and argument'.[10] Certain vital issues emerge from the foregoing definition of 'trial' which enhance an understanding of the term itself. These include: assertion of evidence, testing of evidence, before a court, trial to be in public.

By assertion of evidence it is meant that the trial is a place where each of the contending parties whether the prosecution or defendant (in criminal matters) or plaintiff or defendant (in civil matters) makes assertions, that is, tries to place before the court the respective angle of his story or case. The parties do this by giving evidence either oral or documentary. They tell the court how they got into contact, what gave rise to the case and the role each party played. This giving or placing of evidence is called evidence-in-chief because it is the main evidence of the party giving it. The testing of evidence is done by cross-examination which simply means the asking of questions by the opposing party to test the veracity of the evidence placed before the court. Evidence could also be tested by argument where the party argues that logically or legally the evidence against him is unacceptable.

It is distillable from the definition that the trial must be before a court, which should try to resolve all the issues of facts, law or mixed law and fact on the evidence before it. It was held in *Ikenyi v Ofene*[11] that it is the duty of the court to decide between the parties on the basis of what has been tested, demonstrated, canvassed and argued before it. In performing this role, the courts are not investigators and it is not for them to ask questions except to clear ambiguity.

The trial must also be in public as required by the Constitution[12]. A trial is regarded as fair only when it is done in

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10 *Durinya v Commissioner of Police (COP)* (1962) NNLR 73.

11 (1985) 2 NWLR (Pt 5) 126

12 Constitution of the Federal Republic of Nigeria, 1999 (as amended), s 36 (3) and (4).

public. A trial is said to be in public when members of the public have access to the tribunal though not a necessity that they be present and that it is only in exceptional situations that trials cannot be held in public. The issues raised and discussed above are part and parcel of the concept of trial and, taken together, present a logical, concrete and holistic meaning or view of trial.

Trial within a Reasonable Time

The pertinent question that may be asked is what is the meaning of the phraseology 'reasonable time' as used in the Constitution?[13] To ensure that fair hearing is accorded to every person whose civil rights and obligations are a matter for determination in any proceedings, the trial itself must be conducted within a reasonable time. Generally, no hard and fast rule can be laid down as to what reasonable time is in any given case. This depends upon the circumstances of each case such as the nature and complexity of the case, the time taken by the parties to introduce evidence, adjournments demanded by legal practitioners and the availability of competent courts, the congested nature of the calendar of the courts, *et cetera*.

This principle has been subjected to judicial interpretation. In *Yerima v Borno Native Authority*,[14] the court held that the trial of the defendant was not conducted within a reasonable time when the prosecution knew all the witnesses and the case against or to be brought against the defendant in a murder charge but kept the defendant in detention for a whole year before arraignment. The same decision was given in *Ariori v Elemo*[15] where an action was filed in October, 1960 but came up for trial in March, 1972 and the trial went up to October, 1975 when judgment was finally given or delivered. The trial judge took three (3) years, seven (7) months in writing judgment. The court held further that the expression

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13 Ibid, s 36 (1).
14 (1968) 1 All NLR 410, SC.
15 (1983) SCNJ 24.

'reasonable time' used in the Constitution[16] must be taken to mean the period of time which in the sight of justice does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to a reasonable person to have been done. In *Deduwa v Okorodudu*,[17] the Supreme Court ordered a retrial in 1976 and as at 2005 the case was still pending at the trial court.

The most crucial point to note is that what is to be considered as a reasonable time in any proceedings depends upon the circumstances and peculiarities of each case. The Supreme Court had cause or occasion to aptly capture the position when it held thus:

> There is a general saying that justice delayed is justice denied and s 33 (1) of the 1979 Constitution gives every person the right to have his civil rights and obligations determined by a court after a fair hearing and within a reasonable time… If, therefore, a party indulges in asking for incessant and unreasonable adjournments, a trial court should not allow him use the due process of law to defeat the ends of justice. That court, which is the trial court, ought to weigh the reasons given for the application for adjournment and the surrounding circumstances.[18]

It is to be noted that section 33 (1) of the 1979 Constitution cited in the *dictum* above is consonant with section 36 (1) of the extant Constitution.[19] The *dictum* is symptomatic of the fact that the requirement of trial within a reasonable time is necessarily subject to the facts and circumstances of each case in question. This explains

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16 Constitution of the Federal Republic of Nigeria, 1963, s 22(2), *impari materia* with n10, s 36(1).

17 (1976) 9 and 10 SC 331.

18 *Salu v Egeigbon* (1994) 6 SCNJ (Pt. 2) 223 at 246

19 n10.

why the court[20] held that the delivery of judgment fourteen (14) months after final addresses under section 258 (1) and (4) of the Constitution[21] did not violate the right of the appellant, since given the facts and circumstances of the case, there was no miscarriage of justice. The court went further to give the litmus test for determining whether delay amounts to miscarriage of justice thus: 'It must be shown that the facts were not properly remembered, summarised or perceived by the learned trial judge in that judgment'.

The Supreme Court had cause to define this phrase in *Okeke v The State*[22] when it held thus:

> The word 'reasonable' in its ordinary meaning means moderate, tolerable or not excessive. What is reasonable in relation to the question whether an accused has a fair trial within a reasonable time depends on the circumstances of each particular case, including the place or country where the trial took place, the resources and infrastructures available to the appropriate organs in the country. It is, therefore, misleading to use the standard or situation of things in one or a particular country to determine the question whether trials of criminal cases in another country involve an unreasonable delay. A demand for a speedy trial which has no regard to the conditions and circumstances in this country will be unrealistic and be worse than unreasonable delay in trial itself.[23]

The court further adumbrated four factors to be considered when determining whether the trial of a defendant was held within a

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20 *Walter v Skyll Nig. Ltd* (2000) FWLR (Pt. 13) 2244 at 2254-2255.
21 Constitution of the Federal Republic of Nigerial, 1979, now n9, s 294(1) and (4).
22 (2003) 15 NWLR (Pt. 842) 25.
23 Ibid, 84-85.

reasonable time: the length of delay, the reasons given by the prosecution for the delay, the responsibility of the defendant for asserting his rights and the prejudice to which the defendant may be exposed.[24]

The courts have held that in observing the constitutional provision on speedy trial or trial within a reasonable time, care should be taken to avoid undue haste and undue delay, noting that either constitutes an infraction of the Constitution. The apex court incisively intoned when it held that:

> What is reasonable time within the purview of the subsection is a matter to be determined on the circumstances of every case. I may venture to generalise, however, that undue delay and undue haste cannot by any standard be said to be reasonable and consequently either constitutes an infraction of the provisions of section 33(1) of the Constitution.[25]

The Court of Appeal was of the opinion that the phrase 'reasonable time' does not mean as long as a party to a case wishes but that 'reasonable time here means time that allows a party reasonable opportunity to present his case. Reasonable opportunity exists when a party has advance notice of what he is required to do in the proceedings within a particular time'.[26] This underscores the importance of expeditious trial. In the same spirit, it has been held

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24 Ibid, 85.

25 *Unongo v Aku* (1983) 2 SCNLR 332 at 352. The s 33(1) of the Constitution of the Federal Republic of Nigeria, 1979 referred to in this case is *impari materia* with n10, s 36(1). A similar decision was reached by the Supreme Court in *Danladi v Dangiri* (2015) 2 NWLR (Pt. 1442) 124, (2015) All FWLR (Pt. 768) 815; *Ogli Oko Memorial Farms Ltd v NACB Ltd* (2008) All FWLR (Pt. 419) 400; *Abubakar v Yar'Adua* (2008) 1 SC (Pt. II) 77 at 108 and 109; *Uzodima v Izunaso (No. 2)* (2011) 17 NWLR (Pt. 1275) 30 and the Court of Appeal in *Tolani v Kwara State Judicial Service Commission* (2009) All FWLR (481) 880.

26 *Sylvester v Ohiakwu* (2014) 5 NWLR (1401) 467 at 509 CA; *Salu v Egeibon* (1994) 6 SCNJ (Pt. 2) 223 at 246.

that the fact that a lawyer holds the brief of another should not be used as a cloak to prevent speedy trial of cases.[27]

For the trial to be conducted within a reasonable time, implying that there is neither undue haste nor undue delay, there must be balancing of acts. This entails that a judge must balance the requirement of fair hearing with the requirement for hearing to be within a reasonable time.[28]

Taking the discussion to the corridors of the American legal system, it is abundantly clear that the position there is not any different from Nigeria's. Thus, the Supreme Court of America in *Barker v Wingo*[29] identified four factors (akin to those identified in *Okeke's* case above) in ascertaining whether a trial was held within a reasonable time. For better appreciation of the position of the law, the facts of the case are reproduced: the defendant's trial delayed for over five (5) years after his arrest while the government sought numerous continuances (adjournments). When Willie Barker was eventually brought to trial, he was convicted and given a life sentence. The defendant did not ask for a speedy trial and did not assert that his right to a speedy trial had been violated until three (3) years after his arrest. Based on an evaluation of these factors in relation to his case, the court held that Barker had not been deprived of his due process right to a speedy trial.

This case is vital because it rejects the method of measuring a speedy trial by the fixed time rule or the demand waiver rule. The fixed time rule demands that a defendant be offered a trial within a specific period of time while demand waiver rule restricts consideration of the issue to those cases in which the defendant has demanded a speedy trial.[30] It is to be noted that the United States Supreme Court instead took the approach that the speedy trial right

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27 *Mfa v Inongha* (2014) All FWLR (Pt. 727) 628 at 645 SC.

28 Sebastine Tar Hon, *S.T. Hon's Constitutional and Migration Law in Nigeria* (Pearl Publishers Ltd, 2016), 412 - 416.

29 (1972) 407 US 514.

30 J.S. Joseph, *Introduction to Criminal Justice*. (4th edn, West Publishing Co., 1897), 356-357.

can be determined by a test balancing the actions of the government and the defendant on a case-by-case basis.

From the foregoing, it is poignant that the concept or right of speedy trial is relative and necessarily depends upon the circumstances of each case. It requires the courts to balance the conflictual interests of the parties on the one hand, and the society on the other. It is the effectual balancing of these interests that is termed justice which is necessarily consonant with fair hearing. No doubt, it is asserted that 'law serves the interest of the individual with the good of the society in view'[31] and that 'justice delayed is justice denied; on the other hand, a hasty trial without the due process of law is also justice denied'.[32]

Electronic Filing and Service of Processes under the National Industrial Court Rules, 2017 and Court of Appeal (Practice Directions), 2014

National Industrial Court Rules, 2017

Electronic filing and service of court processes is amply provided for under the National Industrial Court Rules[33] with a view to expediting trial. The NIC Rules further establishes an electronic filing centre for electronic filing and payment of filing fees for processes and documents.[34] An officer of the court designated as an Electronic Filing Manager (hereinafter referred to as EFM) is in charge of electronic filing in the court. A party or party's Counsel desiring to e-file[35] a process shall first register as an e-filer with the EFM in order to e-file with the court.[36] Counsel's electronic signature constitutes his signature on the document in compliance with the

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31 J.N. Samba, *Fundamental Concepts of Jurisprudence*. (Bookmakers Publishing Co., 2003), 80.

32 E. Malemi, *The Nigerian Constitutional Law* (Princeton Publishing Co., 2006), 228.

33 2017, O. 6A R. 1. (hereinafter called NIC Rules).

34 Ibid, O. 6A R. 2.

35 E-file means 'electronically file'. The 'e' when used refers to 'electronic'.

36 NIC Rules (n31) O. 6A R. 4.

signature requirement in the Rules.[37] Where a process or document has been sent and acknowledged by the EFM, the e-filing is deemed good and proper and to have been delivered to the registrar[38] and any technical failure or system outage that impedes a party from complying with e-filing procedures or an order, ruling or relevant rules of the court cannot be a basis for disposing of any case.[39]

It is submitted that this provision on e-filing of processes is quite salutary. This is true in that it has the propensity to engender timely filing of processes as a party or a party's Counsel who resides far away from the location of the court can easily and timely file processes so as to enable the court timeously dispose of the matter. The cost of travelling, accommodation, feeding, risk of accidents, *et cetera* are obviated.

Electronic service of processes is also provided for. This is to ensure that the e-filed process is timeously served so as to avoid delay usually associated with the service of court processes. To this end, it is provided that any process may be served by sending a copy of the document or process to the person concerned or to the person's Counsel through the e-mail address or addresses or any electronic mailing device provided by the parties concerned.[40] In the same vein, a hearing notice or notice of adjournment date may be served by telephone call to the number provided by the parties or their Counsel or any other means permitted by the Rules of the court or as may be directed by the court.[41]Once a process is served via electronic means, its electronically downloaded and printed copy as a proof of service may be allowed to be tendered by a party who either transmitted the process or document or by the party or Counsel that received same.[42]

Equally salutary is the fact that an electronically transmitted process or document may be tendered as the original of the same

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37 Ibid, O. 6A R. 8.
38 Ibid, O. 6A R. 12.
39 Ibid, O. 6A R. 14 (3).
40 Ibid, O. 7 R. 1 (e), O. 7 R. 4.
41 Ibid, O. 7 R. 2.
42 Ibid, O. 7 R. 5.

process or document and the content therein may be received in evidence in proving the facts therein contained.[43] To obviate situations where objections may be raised respecting electronic service of processes, leading to delay, it is provided that proof of service of any court process other than an originating process served via electronic means shall be deemed good and proper service[44] and where a hearing notice has been sent and delivered by electronic means to the contact addresses or information provided by a party or Counsel, it shall be deemed sufficient, good and proper service on the party or Counsel that provided the e-mail address(es) or electronic mailing device.[45] It is submitted that these provisions are commendable since they are capable of ensuring timely disposal of cases. The problem, however, is that most High Court Rules in the country are yet to incorporate the innovations introduced in the NIC Rules, leading to delay in the filing and service of processes emanating from such High Courts.

Court of Appeal Practice Directions, 2014

The Court of Appeal (Fast Track) Practice Directions[46] provides for Fast Track Procedure through the use of technology in appellate matters. A fast track appeal means a debt appeal, appeals pertaining to or connected with corruption, human trafficking, kidnapping, money laundering, rape, terrorism as well as appeals by or against such national human rights. It also includes intelligence, law enforcement, prosecutorial or security agencies such as the Economic and Financial Crimes Commission, Independent Corrupt Practices Commission, National Human Rights Commission and the State Security Service.[47]

The court must generally administer, apply, construe and interpret the practice directions purposively and holistically to secure

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43 Ibid, O. 7 R. 6.
44 Ibid, O. 7 R. 7.
45 Ibid, O. 7 R. 8.
46 2014, para 3 (g).
47 Ibid, para 1.

the efficient and speedy determination of every fast track appeal.[48] It is submitted that the use of the word 'must' is salutary as it connotes peremptoriness on the part of the Registrar to give priority listing to all fast track appeals. The fundamental objective of the practice directions is to enable the court deal with fast track appeals quickly and efficiently and as such the court must give effect to the fundamental objective of a fast track appeal by actively managing cases.[49]

The Practice Directions[50] particularly provides for electronic service and signatures. It provides that a requirement that a document should be signed is satisfied if the signature is printed by computer or other mechanical means[51] and that a document served by electronic means is deemed to have been signed by the person who owns or subscribes to the electronic source account if its signature appears on the document or its cover message as the sender.[52] Examples of electronic accounts are listed to include e-mail addresses and fax numbers.[53] It is submitted that while the provision in the practice direction is commendable, a lot more has to be done in terms of adoption and adaptation by the justice sector in the use of the electronic system.

Advantages of e-System

It is gratifying to note that the use of electronic system is pivotal in the attainment of efficient, effective and speedy administration of justice. This is rationalised against the backdrop of the legion of advantages associated with its use by the judiciary, to wit: enthronement of transparency by making decided cases available and accessible to the public; enhancing security of court documents since risks of loss of documents as well as cases of missing files and

48 Ibid, para 2 (a).
49 Ibid, para 3 (d).
50 Ibid , para 14.
51 Ibid, para 14 (1).
52 Ibid, para 14 (2).
53 Ibid, para 14 (3).

archives destruction are significantly reduced or eliminated; easier and faster access to information; cost savings in terms of reduction in money spent; time and energy used as well as space savings by eliminating expensive and expansive storage spaces.[54] Another advantage of the electronic system is its potential to engender quick dispensation of justice. This is true in that administrative bureaucracy is eliminated where processes are filed and served online; loss of documents (through fire incidence and other unforeseen circumstances) in the court files which entails the court having to improvise another file, stalling proceedings, will be done away with.[55]

Problems

The constraints to the effective utilisation of the electronic system include epileptic power supply, lack of ICT skills by lawyers, judges, court support staff, network dysfunction and inadequate legal and regulatory framework in that the relevant laws and rules of court in Nigeria are not fashioned in a way to provide for electronic system. Most of the extant laws were made several years back and they do not envisage ICT innovations. Most of the various rules of court which are meant to regulate proceedings in court are not better either.[56] However, quite recently, the Evidence Act has now recognised computer generated documents.[57] It is gratifying to note that the above hitches or problems are not insurmountable and if adequately so tackled; the use of electronic system will be a potent tool for engendering trial within a reasonable time in Nigeria.

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54 Adelowo Stephen Asonibare and Halimat Tope Akaje, 'E-Path to Effective Justice Delivery: Nigerian Courts in Perspective.' 1-15. Retrieved from www.eprints.covenantuniversity.edu.ng.pdf. Accessed on 20-1-2018, 7.

55 Ibid, 8.

56 Ibid, 11.

57 2011, s 84.

Recommendations

The following recommendations are hereby made:

1. Government should muster the political will to provide stable electricity supply. Virtually all the sectors, without exempting the judiciary, need electricity to perform effectively;
2. Acquisition of IT skills by lawyers, judges, litigants, court official like clerks and registrars and other stakeholders must be made mandatory. In doing this, it is invaluable to incorporate acquisition of ICT into various programmes organized both by the Nigerian Bar and the Bench. This is achievable, for instance, through the inclusion of same as one of the courses to be taken during the mandatory continuing legal education;
3. The judiciary should be well funded like other arms of government. The issue of agitation for autonomy of the judiciary should be well considered. Such independence will guarantee better funding with the concomitant effect of quality justice delivery, in that it will, among other benefits, facilitate the smooth adoption and implementation of electronic method;
4. The users of the electronic method should be provided with accreditation number having registered online and obtained Personal Identification Number (PIN) which should be renewable upon payment of annual practicing fee as provided by the Nigerian Bar Association and or relevant regulatory bodies. This will help prevent abuse of the electronic method;
5. The various laws and court rules should be amended to accommodate electronic method;
6. Network dysfunction should be seriously looked into by making the service providers more effective. The regulatory body, in particular the Nigerian Communications Commission is required to monitor the activities of the service providers by putting up a robust mechanism to keep them on their toes. It is also not impossible for the government to make provision of

internet service a basic amenity, for this will make electronic methods easier and attractive to the citizenry.

Conclusion

This article has demonstrated that the use of ICT especially in the area of electronic filing and service of court processes is a desideratum in that it is a catalyst for trial within a reasonable time. As lofty as this appears, it is regrettable to reckon that the optimum utilisation of electronic filing and service of court processes is plagued by epileptic power supply, network dysfunction, lack of IT skills, absence of relevant legal framework and other defects as earlier stated.