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# DISSECTING THE PROVISIONS OF HIGH COURT OF PLATEAU STATE CIVIL PROCEDURE RULES 2020, TOWARDS EXPEDITIOUS DETERMINATION OF CIVIL LITIGATION

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**ABSTRACT**

The High Court of Plateau State (Civil Procedure) Rules, 2020 emerged after 33 years of application of the repealed Plateau State High Court (Civil Procedure) Rules 1987. The evolution of the Rules in 2020 can be regarded as a landmark event given that the repealed Plateau State High Court (Civil Procedure) Rules 1987 had outlived its usefulness. The level of social, economic and technological advancements spanning over three decades that the repealed Rules had been in force and the changes that had occurred from that time till date can best be described as significant and phenomenal. The emergence/evolvement of Information Communication Technology and mobile telephone communications alone in the last 10-20 years had been quite epoch making. These developments meant undoubtedly, that the repealed 1987 Rules should be jettisoned and preserved in the archives for historical reference. Remarkably, the

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transition from the 1987 Rules to the 2020 Rules can best be described as a transition from analogue system to a digital system. In view of these monumental changes, this paper examines the imperativeness for reform and x-rays the innovations introduced in the High Court of Plateau State (Civil Procedure) Rules 2020. The paper beams its searchlight on provisions in the new Rules that are geared towards expeditious disposal of civil suits. The paper notes that the enactment of the new Rules has come with its challenges and makes recommendations on how some of the challenges can be addressed going forward.

**Keywords:** Procedure, Rules, Expeditious, Litigation

## 1. INTRODUCTION

The bulk of cases that occupy the dockets of most High Courts in Nigeria are civil in nature. The primary means for disposal of these cases are rules of court deployed to guide and direct all the stages of civil litigation from pre-commencement, commencement, pre-trial, trial and to post-trial stages. The practice and procedure relating to civil litigation are controlled by the High Court (Civil Procedure) Rules of the various High Courts including Federal and State High Courts. The rules of court are periodically reviewed, modified or altered altogether to bring them in tandem with current realities for the conduct of smooth, efficient, cost-saving and expeditious disposal of civil cases; speed and order are regarded as the main reasons for rules of court.[1] It is a notorious fact that the hearing and determination of civil cases before the various High Courts have been bedevilled by the circle of unnecessary and long delays which is not only an embarrassment to the judiciary but also occasions grievous agony and lamentation for many litigants. This ugly development has left many litigants completely disenchanted and frustrated with the justice delivery system.

Such delays have been attributed to the attitude of lawyers conducting civil cases and their clients as well as the strict adherence to technicalities by the courts which, despite deliberate efforts to break the circle of delays, appeared to have been encouraged and facilitated by the Rules themselves.[2] A landmark development in the attempt to eradicate

[1] P C Okorie, 'Sources of Civil Procedure' in Afolayan A.F. and Okorie P.C. (eds), *Modern Civil Procedure Law* (Lagos; Dee-Sage Nigeria Ltd. 2007) 2

[2] This writer was involved as a Counsel for a party in a chieftaincy dispute in Suit No: PLD/J273/93 *Da John Gyang Bot v. The President, Jos North, Jos South and BarkinLadi: Joint*

undue delays in the civil justice administration system occurred in 1987 with the adoption by most States of the Uniform High Court Civil Procedure Rules based on the model recommended by the Nigerian Law Reform Commission.[3] In fact, apart from Lagos State which later departed from the Uniform Rules, most States toed the line and this was how the now repealed Plateau State High Court (Civil Procedure) Rules 1987 emerged. Rapid reviews, amendments and in some cases outright repeal of the Uniform Rules followed as a consequence of socio-economic realities in a number of States. In realisation of the fact that the Uniform Rules had become outdated, a number of States took steps to introduce new High Rules that will accommodate the level of socio-economic developments commensurate with the desire to get justice.[4] Most of these Rules introduced innovations that will bring about speedy dispensation of justice. In most instances, the old Rules were outrightly repealed and new Rules were introduced. Salient provisions relating to Alternative Dispute Resolution (ADR); provision on fast track of cases, introduction of default fees to checkmate frivolous adjournments; front loading, Case Management Conference to expedite the disposal of cases, defining, settlement and filing of issues, among others, were introduced. The innovations contained in the provisions of the High Court of Plateau State (Civil Procedure) Rules 2020 which is substantially patterned after the High Court of Lagos State (Civil Procedure) Rules 2019 is therefore the primary focus of this article.

## 2. DEFINITION OF TERMS

### 2.1 Rules of Court

Rules of court constitute a primary source or means for conduct of civil litigation. Every court has its own rules of procedure and every person appearing before a particular court is bound by the rules of the court to the

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*Traditional Council* (Unreported) which was filed in 1993 before the High Court in Plateau State but took 21 years to conclude as judgment was delivered on 24th July, 2015.

[3]Okorie (n1)

[4] The changes were rapid in Lagos with the Lagos State High Court (Civil Procedure) Rules, 2004, 2012 and 2019; High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2004 and 2018; National Industrial Court Rules, 2007 and the Practice Direction, 2012 repealed and replaced with NICN (Civil Procedure) Rules, 2017; Federal High Court (Civil Procedure) Rules, 2000, 2009 and 2019; Benue State High (Civil Procedure) Rules, 1988 and 2007.

same extent that the court itself is bound by its own rules.[5] A rule is defined as one set of explicit or understood regulations or principles governing conduct or procedure within a particular area of activity.[6] A rule is a prescribed guide for conduct or action. Specifically, a rule is defined as "a usually written order or direction made by a court regulating court practice or the action of parties; a legal precept or doctrine; a regulation or bye-law governing procedure or controlling conduct."[7]

Rules of court constitute the touchstone for the conduct of cases before the various hierarchies of courts in Nigeria. They can be regarded as the standard by which the conduct of court proceeding is recognised and actualised. Rules of court are meant to be obeyed and must be obeyed. The rules of court are usually made for the various courts by the authorities vested with powers to do so in order to guide the conduct of civil proceedings, and to regulate practice and procedure in those courts.[8] In *Western Steel Works Ltd. v Steel Workers Union*,[9] Oputa JSC quoting Roland Dworkin opined that "A rule is a normative proposition making certain legal results depends upon the establishment of certain factual situations stipulated in the antecedent part of the rule." Rules generally determine the outcome of decisions in which they are applied. The essence of the rules of court was explained by the Supreme Court in *Oyegun v Nzeribe*[10] thus:

> I consider it of paramount importance at this stage to explain the essence of the rules of court in proceedings under our civil procedure. The proceedings of the court are guided by the rules of that court. They are regulations made by courts to assist them in their efforts to determine issues or controversies before them. They provide the support in administration of justice. They regulate matters in court and help parties to present their cases within a procedure made for the purpose of a fair and quick trial. It

[5] M.M. Stanley-Idum and J.A. Agaba *Civil Litigation in Nigeria* (3rd ed, Renaissance Law Publishers Ltd, Lagos, 2020)7

[6] Oxford Language Dictionary <https://www.languages.oup.com> accessed 4th March 2022.

[7] Merriam Webster Dictionary <http://www.merriam.webster.com> accessed 4th March 2022.

[8]Okorie (n1)

[9](1986) 3 NWLR (Pt.30) 617 at 632.

[10](2010) 7 NWLR (Pt. 1194) 577 at 593.

> is the strict compliance with the rules that makes for quicker administration of justice. Any party seeking the discretionary power of court must bring his case within the provisions of the rules on which he purported to make his application.

The rules of court promote the doctrine of fair hearing as they are considered as a tool for doing justice in the determination of cases between parties. The rules of court are of immense assistance to the court and to the parties in the conduct and presentation of cases. Given the different scenarios and factual situations that underpin civil litigation, the rules of court are handy to offer guidance and direction on the order in which proceedings are conducted in civil proceedings.

**2.2 Expeditious Determination of Cases**

The ultimate goal of civil litigation is the just determination of a cause or matter. This implies that cases filed before the courts are decided as quickly as possible. This is what makes the word "expeditious" relevant in this paper. The word is an adjective which means a process 'that works well without wasting time, money, etc,'.[11] This is synonymous with a process that is efficient. Admittedly, the inordinate delays that have characterised civil litigations in Nigeria have been the very antithesis of the attainment of justice. A former Chief Justice of America once remarked: -

> A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay would drain even a just judgment of its value; that people who have long been exploited in the smallest transaction of daily life come to believe that courts cannot vindicate their legal rights from fraud and overreaching; that people come to believe that the law- in the larger sense - cannot fulfil its primary function to

[11] Hornby A.S., (ed.) *Oxford Advanced Learner's Dictionary*, (7th ed, Oxford University Press, London,2005) 521

> protect them and their families in their homes, at their work, and on the public streets.[12]

To avoid the above mischief, expeditious determination of civil actions becomes absolutely necessary. The word "expeditious" simply means "done with speed and efficiency".[13] A simple literal construct of the word "determination" yields the result that it means "the act of coming to a decision or of fixing or settling a purpose." Expeditious determination of causes simply means the act of settling, resolving or deciding disputes with speed and efficiency. A civil justice system that cannot achieve the expeditious determination of civil litigation is a potent danger to itself and the society at large.

**2.3 Civil Litigation**

The *Black's Law Dictionary* defines litigation as "A lawsuit, a legal action, including all proceedings therein. Contest in a court of law for the purpose of enforcing a right or seeking remedy. A judicial contest, a judicial controversy, a suit at law.[14] The definition clearly shows that litigation is really concerned about contests in a court of law for the purpose of enforcing a person's right or remedy. It is a judicial contest involving an arbiter (Judge) who determines the fate of the litigating parties.[15] The forum for the contest is the courtroom. Litigation is a systematic process governed by rules and laws. Litigation is activated when an action is brought by a person (plaintiff or claimant) against another person (defendant) based on legal principles by which the former asserts some rights or legal entitlements from the latter. Litigation is time consuming, adversarial in nature, rigid and technical, state controlled and publicly conducted, resulting in binding decisions, lawyers dominate the win/lose connotations, etc.[16] Litigation often occurs in judicial trials where oral testimonies/documents are presented by parties and their witnesses to

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[12] Adam G. Garson, <https://garson-law.com> accessed on 24th January 2022.

[13] *Oxford Languages Dictionary*, (n6)

[14] Henry Campbell Black, *Black's Law Dictionary*, (6th ed, West Publishing Co, St. Paul Minn, 1990) 934

[15] Brown, H.A. and Marriot A. *ADR: Principles and Practice* (Sweet & Maxwell, London, 2011) 3.

[16] Stanley-Idum and Agaba (n5)

assist the Judge in arriving at a just decision. The process of litigation is usually characterised by prolonged agitations spanning years in court before they are finally concluded.

The kind of litigation, which is the primary focus of this work, refers to civil litigation as opposed to criminal litigation and it relates to "civil proceedings" as opposed to "criminal proceedings". Civil proceedings are commenced by private individuals for the ventilation of private grievance and enforcement of those rights. Civil litigation deals with the resolution or determination of all disputes other than criminal. It involves all the processes and procedures relating to civil actions in court including pre-action notices, originating applications and processes, pleadings, interlocutory applications, trial, judgment, appeals, applications pending appeal, etc[17]

Against the foregoing backdrop, it is pertinent to consider a brief historical antecedent of the Plateau State High Court in order to highlight the imperative for reforms before attention is turned to a consideration of the innovations in the 2020 Rules.

## 3. HISTORICAL ANTECEDENTS OF THE PLATEAU STATE HIGH COURT

Plateau State was part of the Northern Nigeria Region before the creation of Benue-Plateau State in 1967. The Northern Region had one High Court made up of two judicial divisions, namely, the High Court of Justice in Kaduna as its headquarters and the High Court of Justice in Jos, Plateau State. The two courts served the whole of Northern Region. The Plateau State High Court of Justice is therefore the second High Court in the whole of the Northern States[18]. In 1967 when Benue-Plateau State was created, the Benue-Plateau State judiciary was created comprising the two courts, namely, the High Court and the Sharia Court of Appeal. These two courts served Benue-Plateau State until Benue State was created in 1976 and the two States became separate States. Again, this remained so until Nasarawa State was created on 1st October, 1996 out of Plateau State. The Plateau State High Court as it stands today has a vibrant and robust history as far as litigation is concerned, especially in Northern Nigeria. A number of remarkable lawyers and Judges are a part of this enviable history.

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[17]Ibid at 1.

[18]Yakubu Gyang Dakwak, Chief Judge of Plateau State, Speech delivered at the unveiling of the High Court of Plateau State (Civil Procedure) Rules, 2020 on 7th December, 2020.

Ironically, in terms of the evolvement of the High Court Civil Procedure Rules, the Plateau State High Court appeared to have missed it. According to a former Chief Judge of Plateau State: -

> This High Court, … is one of the oldest in the Northern Region and no doubt the oldest in the Middle Belt Region. From the foregoing therefore, the Plateau State High Court ought to be a pacesetter in most, if not all, spheres of development. How come then it is only now we are reviewing and producing our High Court Rules since 1987? This no doubt is disturbing, particularly disturbing and even embarrassing is that all attempts to make new or even review our High Court Rules since 1987 have been abortive as if we have been under a spell or a jinx.[19]

With the High Court of Plateau State (Civil Procedure) Rules, 2020, the jinx, if at all, has been broken. There is hope that this positive development will go a long way to speed up and fast track the administration of justice in Plateau State and to enable the State to take its pride of place in the comity of States in Nigeria with up to date and modern rules, especially given its history as one of the pioneer High Courts in Northern Nigeria.[20]

**4. IMPERATIVES FOR THE CIVIL PROCEDURE, RULES, 2020**

The administration of justice by our courts has not been a very rough ride and experience for many litigants. This is as a result of myriad problems which were succinctly described in the following words-

> The problems besetting procurement of justice through the adjudicatory process in Nigeria are multifarious and multi-dimensional. They range from too many cases in the courts to trial delays and denial of justice, inadequacy of judicial personnel, archaic system of court adjudication,

[19]Dakwak Y.G. Chief Judge of Plateau State at a speech at the occasion of the unveiling of the High Court of Plateau State (Civil Procedure) Rules, 2020 on 7th December, 2020.
[20] Ibid.

> corruption, lack of modern technology and the absence of case management techniques.[21]

The introduction of new rules with a transition from the 1987 Rules to the 2020 Rules can be likened to a transformation from analogue signal or systems to digital signal. The difference between the two is so clear in terms of resolution, time, mobility/speed, and the possibility of human error.[22] In recognition of the fact that the 1987 Rules were grossly irrelevant to a quick and just determination of civil suits, a former Chief Judge of Plateau State introduced the High Court of Plateau Practice Direction No.1 2007 as a stop gap measure to ameliorate the challenge of delay in civil litigation from the stage of filing of processes to the hearing and final determination of cases.[23] This Practice Direction was meant to ensure expeditious dispensation of justice with the procedural steps for achieving speedy trial and disposal of cases outlined. This basically spelt out the requirement that pleadings must be frontloaded with witness statements on oath and it helped greatly to fast-track the hearing of cases.

The whole idea of expeditious determination of cases is to address the mischief caused unwittingly by dint of unbearable delays in the disposal of cases which defeats the ends of justice. According to Lord Denning in *Allen v Sir Alfred Mc Alpine & Sons Ltd*,[24]-

> The delay of justice is a denial of justice. Magna Carta will have none of it. To no one will we delay or deny right of justice. All through the years men have protested at the law's delay and counted it as a grievous wrong, hard to bear. Shakespeare ranks it among the whips and scorns of time. Dickens tells how it exhausts finances, patience, courage, hope. To put right this wrong, we will in the Court do all in our power to enforce expedition; ... This is a stern

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[21] Dele Peters, *"Alternatives to Litigation: The Multi Door Court House Concept*" in Issues in Justice Administration in Nigeria (ed) Fassy Adetokunbo O. Yusuf, VDG International Ltd, 2008 at 435.

[22] Difference Between Analogue and Digital Instruments <https://electricalvoice.com> accessed 23rd March, 2022.

[23] The Practice Direction was issued by Hon Justice Lazarus Dakyen, the then Chief Judge of Plateau State.

[24](1968) 2 Q.B. 229 at 245. See *Usi Karo v. Itsekiri Land Trustees* (1991) 2 NWLR (Pt.172) 150 at 190

> measure. But it is within the inherent jurisdiction of the court.

It is, indeed, in the public interest that there should be an end to litigation.[25] There ought to be an end to litigation and surely too. The concern is, how early? Mann J., was apt when he observed as follows:

> The Plateau State High Court is no doubt a very busy jurisdiction. We were familiar with interminable delays in our courts ranging from the filing of processes to the hearing and final determination of cases, including the execution of judgments under the old rules... The situation was such that after several years of active practice in our courts, many young lawyers were unable to have the benefit of a full trial, their experience being limited to arguing a few motions and countless adjournments.[26]

The turn-around time for the determination of a civil suit according to a survey conducted by the Lagos State Ministry of Justice with a view to understanding the problem of delays in the conclusion of cases between 2002-2005, revealed that it took an average of 5 years to dispose of a civil matter in the Lagos State High Court.[27] This ridiculous state of affairs will be perhaps no less different in Plateau State.

The reasons for delays in the determination of civil suits are multiple as posited earlier in this work. However, the imperative for the 2020 Rules were echoed by Mann J. as follows:

> The role an effective dispensation of justice can play in creating an enabling environment for the development of any country can never be underestimated. This is especially so for our country and Plateau State in

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[25] See the case of *Ojukwu v Nnoruka* (2000) 1 NWLR (Pt.641) 348 at 359; *Abubakar v Bebeji Oil & Allied Products Ltd. & 2 Ors* (2007) 18 NWLR (Pt.1066) 319 at 380

[26] David G, Mann, 'The Need for Procedural Reforms Toward Better Access to Justice and Speedy Trial: The High Court of Plateau State (Civil Procedure) Rules 2020' (Plateau State High Court Judges Retreat, Akwanga, 25th February 2021.

[27] Justice Research Institute, "Delays in Justice Administration: Beyond the Rules and the Law", <www.justiceresearchinstitute.org> accessed 23rd March 2022.

particular, which is in dire need of foreign direct investment to fund its economic development.

With the imperative of the 2020 Rules now fairly outlined, it then becomes pertinent to turn to a consideration of key innovations in the Rules.

**5. INNOVATIONS EMBODIED IN THE 2020 RULES**

The High Court of Plateau State Rules 2020 is a radical departure from the 1987 Rules. In order to capture the essence of the innovations contained in the 2020 Rules, it will suffice to take a cursory look at Order 2 which deals with the overriding objectives as follows:

i. (a) To deal with every civil proceeding in ways that are proportionate, considering the nature and importance of the case, complexity of the issues, the amount of money involved and the financial position of each party.

(b) To allot to every civil proceeding an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

(c) The court shall further the overriding objectives by actively managing cases, and active case management includes:

i. mandating the parties to use an Alternative Dispute Resolution (ADR) mechanism where the court considers it appropriate, and facilitating the use of such procedure.

ii. assisting the parties to settle the whole or part of the case.

iii. Fixing timetables or otherwise controlling the progress of the case.

iv. Giving directions to ensure that the trial of the case proceeds quickly and efficiently.[28]

v.

The second aspect of the overriding objectives deals with the requirement for the claimant complying with the requirements of pre-action protocol through deliberate attempts to achieve amicable settlement of cases using various alternative dispute resolution methods. The court is mandated to impose appropriate monetary sanctions if a party does not

[28] Order 2 R1 (a) – (c)

comply with the Rules or an order of the court.[29] A careful perusal of the entire gamut of the Rules through a community reading of the various Orders will lead to the conclusion that a number of the innovations introduced into the Rules are indeed a product of the overriding need to fast track the hearing of civil cases. It is certain that at the heart of the Rules is the need to tackle head long the challenge of undue delays in the litigation process primarily through Case Management and Alternative Dispute Resolution. The underlying philosophy of the Rules is the need to revolutionize how civil litigation is conducted from a slow pace to a faster regime of determination of civil litigation. This paper shall now consider the various innovations in the next segment.

**i. Commencement of Action**

By dint of Order 5 Rule 2 of the 2020 Rules, it is expected that all proceedings commenced by writ of summons shall be accompanied by certain documents, namely, statement of claim, a list of witnesses to be called at the trial, written statements on oath of the witnesses except witness on *sub poena* and a pre-action protocol form.[30] Where a claimant fails to comply with this provision, his processes will not be accepted for filing by the Registry.[31] This requirement also applies to proceedings commenced by originating summons.[32]

The above procedure is what is commonly referred to as the "front loading system". In introducing the frontloading system, with filing of the documents to be used at the hearing upfront, it is intended to ensure that only serious cases and committed litigants with *prima facie* good cases and witnesses to sustain their claims come to court and fewer "lame duck" claims find their way into the court.[33] The essence of frontloading is that it will quicken the dispensation of justice as Judges of the High Court where such procedure is adopted are no longer adjudicators interested in the trial of disputes in the court room only but have become managerial Judges who must effectually utilize the technique and tool of case management and judicial control to achieve just, efficient and speedy dispensation of

[29] Order 2 R2 (a) – (d)
[30] Or. 5 R2
[31] Or. 5 R3
[32] Or. 5 R5
[33] Stanley Idum and Agaba (n5) 253

justice.[34] The mandatories of frontloading are underscored by the fact that where an originating process is filed by default without compliance with front loading, such action shall be a nullity *ab initio.*[35] On the part of the defendant, there is a corresponding demand on him upon being served with the originating process to file his statement of defence within 30 days. The statement of defence must be accompanied by a list of witnesses, list of documents and the deposition of the witnesses on Oath[36].

The justification for the frontloading system lies in the fact that it is an affront to filing of frivolous and untenable cases since the parties at the point of preparation have the opportunity to evaluate the relative strengths and weaknesses of their case with a view to facilitating early settlement in order to minimise expenses.[37]

**ii. Service of Process**

Service of originating process is usually the primary responsibility of the bailiff, sheriff, special marshal or other officers of the court.[38] However, innovations were introduced which entails the exercise of discretion by the Chief Judge who is empowered to appoint and register any law chambers, courier company or any other person to serve court processes. Such a person is called a "process server.[39] The manner of service by the process server is prescribed by the Rules. It is expected that a number of copies, sufficient for service, including an electronic copy is made available to the Registrar.[40]

Also, a significant innovation was introduced towards deploying the use of technology to fast track the litigation process. This involves service by electronic means. Substituted service of an originating process can now be effected by electronic mail.[41] This is a clear example on how to leverage on

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[34] Ibid

[35] See Or. 7 R1

[36] See Or. 19 R1

[37] Alabi A.A, "The Need for Procedural Reform to Facilitate Access to Justice and Speeding Trial of Cases." Paper delivered at the All- Nigeria Judges Conference Abuja, 5th – 9th December 2005.

[38] Or. 9 R1(1)

[39] Or 9 R1(2)

[40] Or 8 R2 (2) and (4).

[41] Or 9 R5(1).

technology to fast-track the hearing and determination of cases. Where a party is represented by a legal practitioner, it is expected that service of a court process other than an originating process may be made on him or on a person under his control.[42]

It is salient to point out that at the time of filing the suit, a claimant suing in person or through a legal practitioner is expected to state his residential or business address (chamber address for the legal practitioner). There is provision for recording of service by the process server as well as inclusion by the claimant of his phone numbers or email address in the address for service.[43] The Defendant upon being served has a corresponding obligation to supply the required details at the point of entering appearance in the suit in the memorandum of appearance.[44]

**iii. Default Fees and Costs**

This is innovation introduced in the 2020 Rules geared toward making litigants and their Counsel to sit up and to avoid tardiness and undue delay in the conduct of their cases by the imposition of default fees. Any party who defaults in performing an act within the time authorized by the Judge or the Rules shall pay to the court a fee of N500.00 (Five Hundred Naira) only for each day of the default at the time of compliance.[45]

As regards the award of costs, this is always awarded based on the discretion of the Judge in line with the Common Law principle that costs follow the events. However, the court has been further fortified in the award of costs by providing for personal liability of legal practitioners for costs where the Judge considers that any legal practitioner or his agent is responsible for any undue delay, misconduct, or default without reasonable cause.[46] When such costs are ordered, they become payable immediately, and shall be paid within 7 days of the order, otherwise the defaulting party or his legal practitioner may be denied further audience in the proceedings.[47]

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[42] Or 9R1(3).

[43] Or 7R6(1)-(4) and Or 9 R15

[44] Or 11R2 (1)-(3).

[45]Or 48 R4. The sum of N500 penalty provided by the rule has attracted severe resentment from the NBA Jos Branch as it is perceived to be quite high and punitive in nature.

[46] Or 53 R14(1) and 15

[47] Or 53 R10

**iv. Diligent Prosecution**

This is an innovation introduced in the 2020 Rules which places a mandatory obligation on parties to ensure diligent prosecution of their cases.[48] The Judge is at liberty to strike out any matter at any stage of the proceedings either on application or *suo motu* if the suit is not being prosecuted diligently.[49] When it appears to the Judge that there is undue delay in the prosecution of any proceeding, the judge may require the party responsible to explain the delay and make such order expediting the proceedings including orders for the conduct or stay of the proceedings as the circumstances may require. The court is at liberty to strike out a pending case where no proceeding is held or application filed in the case for a period of 12 months.[50] This Order is therefore specifically targeted at curbing tardiness and inexcusable delays in the conduct of a civil suit.

**v. Case Management Conference**

This major innovation in the 2020 Rules is simply described as case management conference. This involves a pre-trial conference presided over by a Judge. At this stage of the proceedings, interlocutory matters are identified and resolved within specific time limits to set the stage for trial, if need be. Within 14 days after the close of pleadings, the claimant is expected to apply for the issuance of a case management conference notice as in Form 17.[51] If the claimant fails to apply for a case management conference notice, the defendant may make the application or apply for an order to dismiss the action.[52] A case management conference is targeted at achieving the following objectives:

a. disposal of matters which must be dealt with on interlocutory application;
b. giving directions as to the future cause of action as appears best adapted to secure its just, expeditious and economical disposal; and
c. promoting amicable settlement of the case or adoption of ADR.[53]

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[48] Or 34 R1
[49] Or 34 R2
[50] Or 34 R 3(2) and (3)
[51] Or 27 R1(1)
[52] Or 27 R1(3)
[53] Or 27 r1(2)(a)-(c)

Case management conference is a very important pre-trial procedure and the notice in Form 17 is usually accompanied by a case management information sheet in Form 18 which discloses the agenda for the case management conference and includes formulation and trial of issues, amendment, further and better particulars, admission of facts, other evidence by consent of the parties, control of and scheduling of discovery, inspection and production of documents, settlement of documents to be admitted as exhibits at the trial, etc. All the parties are expected to file and serve a case management information sheet 7 days before the case management conference.[54] The case management conference has a time-table and it is expected to be completed within 3 months from its commencement. At the end of the process, the Judge shall issue a report which guides the subsequent course of the proceedings[55]. If a party or his legal practitioner fails to attend the case management conference, or obey a scheduling order, or is substantially unprepared to participate in the conference, or in good faith, such an action will attract sanctions.[56] It is obvious from an analysis of Order 27 that the essence of case management conference is to expedite determination and conclusion of a civil suit.

**vi. Alternative Dispute Resolution**

Alternative dispute resolution (ADR) which has become a very attractive mode of dispute resolution was introduced as a very potent innovation in the 2020 Rules. The parties are actively encouraged to resolve their disputes outside litigation, with a number of advantages, chief among which are avoiding undue delay in the litigation process, flexibility of the process, mutual satisfaction of the parties, etc. The importance of ADR, as a recognized dispute resolution mechanism in Nigeria, was highlighted by the Supreme Court in the case of *Metroline (Nig.) Ltd. v Dikko*[57] where Bode Rhodes Vivour JSC held as follows-

> Building up and sustaining a globally respected dispute resolution system are major steps for the growth of our nation into a preferred investment destination. The Nigerian legal system, following international standards,

[54] Order 27 R 2(a)-(n) and Form 18

[55] Order 27 R3 and 4

[56] Order 27 R5

[57] (2021) 2 NWLR (Pt. 1761) 422 at 445

> has legislated on the nature of arbitration awards to be final and binding and only to be interfered with by the courts in exceptional circumstances enunciated in the relevant arbitration statutes. Arbitration is widely acknowledged as an alternative to litigation which enables expeditious dispute resolution.

The Judge is empowered to do a referral of a case after pleadings are deemed closed, to the Plateau State Multi-Door Court House or other appropriate ADR institutions or practitioners.[58] A case may be determined summarily under the ADR procedure when the claimant is ordered to file a statement of case within 14 days period and the defendant is expected to also file his response within 14 days of the service of the statement of claim. Thereafter, judgment is given thereon. Any judgment given may be set aside upon an application made within 7 days of the judgment, or as allowed by the ADR Judge.[59] The Rules makes provision regarding how an application can be entertained in an ADR proceeding as well as enforcement of arbitral award. For instance, an application in any ADR proceeding under the Rules shall be by origination motion and may dealt with a number of issues including an application to revoke an arbitration agreement, to appoint an arbitrator, to stay proceedings, to remove an arbitrator or umpire, to seek injunction against an arbitrator or pending suit or to enforce an award.[60] The Rules makes allowance for the issuance of a status report by the ADR Judge where it is not possible to resolve a cause or matter and the case shall be remitted for assignment to a trial Judge.[61]

**vii. Summary Judgment**

The summary judgement procedure introduced by the 2020 Rules is a complete departure from the "Undefended List" Procedure in the repealed Rules.[62] Under the old Rules, a Plaintiff was expected to file alongside his Writ of Summons for judgment under the undefended list, an ex-parte application which makes a case for the suit to be placed for hearing under

[58] Or 28 R2(1)
[59] Or 28 R 2(2)-(4)
[60] Or 28 R3(1) and (2)
[61] Or 28 R5
[62] Or 23, Plateau State High Court (Civil Procedure) Rules, 1987.

the undefended list and stating the deponent's belief that the Plaintiff has no defence to the action. If the ex-parte application is granted, the suit is placed for hearing in the Undefended List on the return date. The suit is determined based on affidavit evidence. In the event that the Defendant files a notice of intention to defend, and the court finds merit in the application, the case is then transferred to the general cause list for hearing and the parties are then ordered to file their pleadings for a plenary trial of the suit.[63]

Significantly, by Order 13 of the 2020 Rules, where a claimant believes that there is no defence to the action, he may file alongside his originating process, his statement of claim, a list of witnesses, deposition of his witnesses, a list and copies of documents to be relied upon together with an application for summary judgment supported by an affidavit stating the grounds for his belief, and a written address in support of the application.[64] On the other hand, where a defendant is served with the processes and documents filed by the claimant, and desires to defend the suit, the defendant shall within the time prescribed for defence, file his statement of defence, a list of witnesses and deposition of witnesses, a list and copies of all documents to be used in his defence, a counter affidavit and a written brief in reply to the application for summary judgment.[65] Where it appears to the Judge that a defendant has a good defence and ought to be granted leave to defend the claim, the defendant may be granted leave.[66] In this wise, unlike the position in the old Rules, the case will then proceed based on the pleadings filed without the need to order for the filing of pleadings and this will then expedite the hearing of the suit. On the other hand, where it appears to the Judge that the Defendant has no good defence to the action, the Judge may then enter judgment for the claimant.[67]

The summary judgment procedure envisaged by Order 13 is a hybrid between applications and pleadings. While Order 23 in the old Rules is

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[63]Or 23 R1. See the case of *Unity Bank Plc v Olatunji* (2013) 15 NWLR (Pt. 1378) 503

[64]Or 13 R1 2020 Rules. See also the case of *Abia State Transport Corp &Ors v. Quorum Consortium Ltd* (2009)
LPELR-33(SC).

[65] Or 13 R4

[66] Or 13 R5(1)

[67] Or 13 R5(2)

restricted only to recovery of debt or liquidated money demand, Order 13 is broader and the transition from application for judgment to trial where leave to defend is refused is quick and expeditious.

**viii. Written Addresses**

The 2020 Rules has made provision for filing of written addresses under Order 35. This provision was not covered by the 1987 Rules. The filing of written addresses applies to all applications and final written addresses. By the Rules, the contents of a written address are no longer a matter of conjecture which a counsel is at liberty to file as it pleases him. A benchmark has been put in place for standardization. A written address is expected to be printed on white opaque A4 size paper, with type set being not less than single space and also not less than 12 font size, set out in paragraphs and numbered serially.[68] The written address of any party shall not exceed twenty (20) pages and a reply on point of law shall not exceed five (5) pages except with leave of Court.[69] The Rules provides expressly for what the written address shall contain and how it should be concluded and the list of all authorities relied upon in the address is expected to be submitted with the address.

**ix. Special Case**

Special case procedure is an innovation in the 2020 Rules by which the parties during the case management process by consent agree to state the questions of law arising in their case in the form of a special case for the opinion of the Judge.[70] The special case procedure is activated at the preliminary stage of civil litigation. Order 2 R 1 states that if at the case management conference, it appears to the Judge that there is any cause or matter, or a question of law, which could be conveniently decided before evidence is given, or any question or issue of fact is tried, for example, jurisdiction of the court to entertain a suit, the Judge may make an order accordingly and may raise such questions of law or direct the questions to be raised at the trial either by special case or in such other manner as the Judge may deem expedient.[71]

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[68] Or 35 R 2
[69] Or. 35 R3 (3)
[70] Or. 31 R 1 (1)
[71] Or 31 R 2 (1)

Every such special case shall be divided into paragraphs, numbered consecutively and stating concisely such facts and documents as may be necessary to enable the court decide the questions.[72] This procedure takes the form of a written address where argument on issues of law in the case are marshalled and resolved without the necessity of a full trial. During the argument in the special case, the Judge and the parties are at liberty to refer to the contents of such documents as well as inference of facts or law from the facts and documents stated in such special case.[73]

**x. Summary Proceedings for Possession of Landed Property Occupied by Squatters or Without the Owners' Consent**

This unique Order is a special procedure designed to be commenced by originating summons and is applicable to squatters occupying landed property without the consent of the owner.[74] This Order does not apply to a tenant, or a tenant holding over after the expiration of his tenancy, or a licensee of the owner or person entitled to possession or a person who had the consent of the predecessor in title of the person who is entitled to possession.[75] The originating summons is expected to be accompanied by an affidavit stating the claimant's interest in the land, the circumstances in which the land has been occupied without licence or consent and from which his claim to possession arises.[76] The Order makes elaborate provisions regarding service of the originating summons, order for possession, writ of possession, etc.[77]

**xi. Fast Track Procedure**

The fast-track procedure as the name implies, is adopted for accelerated hearing of causes and matters that qualify for fast track. The main objective of fast track procedure is to reduce the time spent on litigation to a period not exceeding nine (9) months from the commencement of the action till

[72] Or 31 R1 (2)
[73] Or. 31 R1 (3)
[74] Or 57 R2 (1)
[75] Or 57 R1
[76] Or 57 R3. See the case of *Persons, Name Unknown v. Sahris Int. Ltd* (2019)13 NWLR (Pt. 1689) 203
[77] Or 57 R4, 5, and 7.

final judgment.[78] To qualify for fast track, the suit must be commenced by writ of summons and it must be for a liquidated money demand of a sum not less than fifty million (₦50,000,000.00) or a claim that involves a mortgage transaction, charge or other securities.[79] A case qualified for fast track is marked QUALIFIED FOR FAST TRACK by the Assistant Chief Registrar and is expected to be served within 14 days of filing.[80] Of interest is the fact that specific timelines are set out for the determination of a case slated for fast track procedure. The preliminary stages outlined include the time for filing of the statement of defence and reply, application for case management conference and the duration for completion of the case management conference. Upon completion of the case management conference and issuance of case management report, the case is remitted to the Chief Judge for assignment to a trial Judge who shall issue a direction for the trial including a trial time table.[81] Due to the urgency suggested, the case management conference shall be held from day to day and the trial is also conducted from day to day and no trial shall be adjourned unless under exceptional circumstances as the Judge may deem fit.[82] The period for trial and addresses and judgment must all be within the maximum period of 90 days. The Judge is expected to deliver judgment within 60 days of completion of trial. This Order is specifically put in place to achieve the overall objectives of the 2020 Rules which is to fast track the conduct of civil litigation.

**xii. Proceedings in Revenue Matters**

Proceedings in revenue matters is another means for expedited hearing of revenue matters which applies to cases and proceedings relating to the revenue of the State Government; in which the State Government or any of its agencies or parastatals is suing or being sued.[83] The Deputy Chief Registrar or any other person in charge of the litigation [84]section shall cause the originating process to be marked as “Qualified for Fast Track.” The Chief

[78] Or 59 R1
[79] Or 59 R2
[80] Or 59 R3 and 4
[81] Or 59 R8
[82] Or 59 R7(1); R 11 and 12
[83] Or 60 R1(1)
[84] Or 60 R2

Judge is expected to designate a number of courts as "Revenue Courts" for the purpose of hearing all cases under this Order. An action commenced under this Order is by petition accompanied by an affidavit verifying the facts deposed to by the petitioner(s) together with the exhibits and written address.[85] This procedure is exploited for tax related matters and the revenue of the State Government. A petition under Order 60 is expected to be heard within 14 days after the expiration of the time limited for filing and service of the reply under the Order. The hearing of a petition as far as practicable is expected to be held from day to day[86]. Of interest is the fact that unique provision was made that "Nothing in this Order shall preclude any person from proceeding under any provision of these rules or any other law as may be appropriate."[87] This allows for some level of flexibility in the way and manner proceedings in revenue matters are conducted.

## 6. CONCLUSION

This paper considered the transition of the Plateau State High Court from the Plateau State High Court (Civil Procedure) Rules, 1987 to High Court of Plateau State (Civil Procedure) Rules, 2020. The challenge of delay in the determination of civil causes and matters was discussed as a cause for serious concern. The vital role played by the rules of court towards ensuring the expeditions disposal of cases was underscored. This explains why the transition from the repealed 1987 Rules to the 2020 Rules is quite remarkable. The innovations in the 2020 Rules primarily aimed at quick and speedy disposal of civil causes and matters were dissected. In the final analysis, the first major step enacting the 2020 Rules, after a period of 33 years within which the 1987 Rules was applicable can be described as a milestone. What is now left is the seamless application of the 2020 Rules to achieve the desired objectives. This goal will be achieved if some of the suggestions and recommendations put forward in this paper are implemented accordingly.

[85] Or 60 R1 and 2
[86] Or 60 R9 and 10
[87] Or 60 R12

**6.1 Recommendations**

1. The Plateau State judiciary, as an institution that oversees the implementation and application of the 2020 Rules, must be strengthened if the objectives the Rules towards expeditious determination of civil causes and matters would be achieved. In this context, there is the need to build the capacity of the Judges by way of training and re-training to enable them properly appreciate the impact and essence of the new Rules after over three decades of the application of the Plateau State High Court (Civil Procedure) Rules, 1987. This also applies to the lawyers who appear before the courts. This approach will hopefully engender a change of mindset from the old to the new Rules which will impact positively on the realization of the objectives of the 2020 Rules. The importance of learning the new Rules cannot be over emphasized for as often quoted, "A little learning is a dangerous thing; drink deep, or taste not the pierian spring. Their shallow draughts intoxicates the drain, and drinking largely sobers us again".[88]

2. Closely associated with above is the need for appointment of more Judges and the building of court rooms in order to enhance access to justice for litigants. This will go a long way to reduce the delay in the determination of cases due to too much workload on the Judges. It ought to be stated that since the 2020 Rules has incorporated the use of technology into its provisions, technology has to be deployed to make this a reality for smooth implementation and application of the Rules. For instance, if it is envisaged that service of court process should be effected by electronic means, the Plateau State Judiciary needs to build its ICT infrastructure to accommodate this. The use of information technology by the State judiciary will go a long way to fast track the hearing and determination of civil causes and matters.

3. The 2020 Rules is not and cannot be a perfect document and, on this score, might not cover some grounds. There might even be some grey areas that need to be clarified. For example, Order 44 of the 1987 Rules,[89] dealing with appeals from the District Court, etc, to the High Court was completely omitted. In fact, the only reference to appeals from District and Area Courts in the 2020 Rules is Order 35 R 6 which makes filing of written addresses

[88] Alexander Pope (1711) quoted by Daniel Reyenieju, "View Point", <vanguardngr.com> accessed 28/4/2021

[89] Plateau State High Court (Civil Procedure) Rules, 1987.

applicable to appeals from the District and Area Courts to the High Court. This is a huge lacuna. In this wise, it is recommended that the Chief Judge can activate the power to issue Practice Directions in furtherance of the Rules to cure such defects and to bridge such gaps.

4. Finally, in view of the visible ADR component of the 2020 Rules, capacity building for the Judges and Lawyers within the jurisdiction and development of the State High Court Multi-Door system is very important and most desirable. There appears to be a "good market" for established ADR institutions to make their presence felt within the jurisdiction of the Plateau State High Court.