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An Appraisal of Order 6 Rules 2(3) of the Akwa Ibom State High Court (Civil Procedure) Rules 2009 on the Judicial Process.

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Abstract

The High Court Civil Procedure Rules of Akwa Ibom State of Nigeria and other States of the Federation makes provision for the commencement of every legal action through a court process. A Court Process or Processes is defined to include "writ of summons, originating summons, originating process, notices, petitions, pleadings, orders, motions, summonses, warrants and all documents or written communications of which service is required"[1]. Originating Process is also defined by the Rules to mean "any court process by which a suit is initiated". The Rule further provides that all civil proceedings commenced by originating process such as; the writ of summons, shall be accompanied by statement of claim, list of witnesses to be called at the trial, written statements on oath of the witnesses and Copies of every document to be relied on at the trial.[2] Each copy of the originating process before filing shall be signed and stamped by the Legal Practitioner, or by the Plaintiff or Claimant where he sues in person, and shall be certified after verification by the Registrar as being a true copy of the original process filed.[3] It would be noted that, most of the originating processes that had hitherto been filed by legal practitioners gave scant regard to this provision not until the recent Supreme Court judgment on the matter.[4] The resultant effect is that all pending cases that did not comply with the above provision now have been struck out by the court following that judgment as being incurably bad. The ameliorating effect of Order 5 R 1(1), which deals with the effect of non-compliance with any of the provisions in the Rules, is given various interpretations by the court and scholars alike. The totality is that, a litigant who had/has a good case on the merit is helpless especially where time is of the essence. Where lays substantial justice much talked about by the court, or is the judicial process being fair to the litigant? Therefore, the main essence of this paper is to examine these various opinions by Scholars. Some belief that such a failure goes to the issue of jurisdiction which affects the foundation of the case while others simply believe that, it is merely a procedural issue which can be cured by the inbuilt mechanism provided in the Rules.[5] We shall make attempt to reconcile these varied opinions and possibly proffer solutions in this paper. It is recommended that, if justice should form the bulkwalk of our judicial system, strict procedural adherence to the extant rules of court should be whittled down considerably.

Introduction

What normally operates in the mind of a litigant when approaching the court with his/her complaints, is not to be entertained by legal wizardry and circumlocution of Counsel, but the search for pure and undiluted justice devoid of technicality, and once this is defeated, he goes home dejected feeling that justice had not been done in his case. Justice is normally depicted as blindfolded lady holding scales to weigh each side of an argument, and rightly holding the sword to give justice to whosoever deserves it without fear or favour. Since we have this desire for equality and fairness, the basic assurances of justice is usually a prerequisite for a good society. Any society whether the family, the community, a nation or the world benefit from having justice as a prevailing virtue. Therefore, access to justice is an essential ingredient of the rule of law. People need to be able to access the court and legal processes to enforce their right.[6] The Constitution of the Federal Republic of Nigeria[7] vest this onerous task on the court established in the Constitution. The administration of the law by the court is guided by both statutory, case laws and the rules of court as contained in their various procedural rules. The

1 Order 1 Rule 2) High Court Civil Procedure Rules of Akwa Ibom State of Nigeria 2009

2 Order 3 R2 (1) High Court Civil Procedure Rules of Akwa Ibom State of Nigeria 2009

3 Order 6 R 2(3)) High Court Civil Procedure Rules of Akwa Ibom State of Nigeria 2009

4 *Alawiye v Ogunsanya* (2013) ALLFWLR (pt. 668) 800 at 808-809

5 See Order 5R1(1)

6 S. Ilesanmi, M. Adigun, A. Olatunbosun, "Economic Rights and Justice; Of Walls and Bridges, Exclusions And Inclusions" Being the Institutional Paper of Faculty of Law, University of Ibadan, at the 51st Conference of NALT. 1st_6th July 2018 at Nig. Law Sch. Bwari, Abuja.

7 1999 as amended.

Constitution also empowers the Chief Justice of Nigeria to make Rules with respect to the practice and procedure of a High Court for the purpose of enforcing human rights.[1] The various State Laws also set up High Court Rules Committee to make provision for High Court (Civil Procedure) Rules.[2] It is the cardinal principle of the law that these Rules of court are to be complied with or obeyed. The focus of the Rules of Court is on the procedure to be followed or complied with when initiating an action till judgment and even enforcement of that judgment are all contained in the Rules of Court. The problem is whether the failure to comply strictly with the Rules of Court should vitiate an action especially those that were already pending before trial courts, before the Supreme Court Judgment in *Alawiye v Ogunsanya*.[3] Most scholars have situated this to lack of jurisdiction which goes to the root of an action while others regard it as a mere procedural irregularity which can be waived in compliance with Order 5 R 1(1) of the Rules of Court[4]. Unfortunately, the Rules does not state specifically whether non compliance with that provision attracts any sanction thereby creating more confusion.

Whether the Failure of the Claimant to Comply with this Provision Can Rob the Court of its Jurisdiction?

The proponent of this view believes that, for the court to have jurisdiction in a matter, such must be commenced through due process of law and upon the fulfillment of any condition precedent to assumption of jurisdiction, relying on *Musaconi Ltd v Aspinall*,[5] the Supreme Court held thus;

> Jurisdiction is therefore of paramount importance in the process of adjudication. Where there is no jurisdiction in a court to handle or adjudicate on a matter before the court, everything done or every step taken in the proceeding amounts to nothing. In otherwords, jurisdiction is the life wire of any proceedings in court and everything done in the absence of jurisdiction is simply a nullity.

The court further held in *Salisu v Mobolaji* [6] thus;

> The issue of jurisdiction is a threshold one which must not be treated lightly. No matter how well proceedings were conducted by a court, the proceedings would come to naught and remain a nullity if same embarked upon without jurisdiction. The issue of jurisdiction is allowed to be raised orally and even for the first time in the Supreme Court.

By the provisions of the High Court (Civil Procedure) Rules 2009,[7] Writ of Summons as an originating process; its competence is a pre-requisite for a valid and subsisting claim.[8] Accordingly, where the process filed, fails to comply with the requirement of the law regulating its procedure, the court cannot assume jurisdiction thereon. The non-signing of the Writ of Summons by the Claimant or her Counsel as required by the mandatory provisions of Order 6 R2 (3) deprives the court of jurisdiction. It is trite that, an originating process is issued at the beginning of a judicial process. It is what brings the dispute as between the parties into existence. And where the process with which the suit is commenced is defective, *abinitio*, the court is without jurisdiction to entertain

1 Section 46(3) of the 1999 Constitution as amended.
2 Section 76 of the High Court Law Cap. 55 Laws of Akwa Ibom State of Nigeria, 2000
3 (2013) ALLFWLR (pt. 668) 800 at 808-809
4 Supra.
5 (2013) NSCQR vol. 54 (pt.1) p. 368.
6 (2014) ALL FWLR(pt. 728) 939 at 954
7 Order 6 Rule 2(3)
8 The Blacks Law Dictionary (9th ed.) defines a Writ of Summons to be a law by which actions are commenced.

the claim; even an amendment cannot cure the defect. This is because an incompetent process is dead on arrival.[1] This was the position of the Supreme Court in *Min. of Works & Transport, Adamawa State v Yakubu* [2] per Muntaka-Comassie, JSC;

> The validity of an originating process in a proceeding before a court is fundamental and the competence of the proceedings is a condition *sine-quanon* to the legitimacy of any suit. Therefore, the failure to commence proceedings with valid Writ of Summons goes to the root of the case and any order emanating from such proceedings is liable to be set aside as incompetent and a nullity.

The Supreme Court in *Alawiye v Ogunsanya* [3] demonstrated how processes filed in court by a Legal Practitioner should be signed so as to give the Court jurisdiction thus; The processes filed in the court are to be signed as follows;

(a) The signature of Counsel, which may be any contraption;

(b) The name of Counsel clearly written;

(c) Who Counsel represents;

(d) Name and Address of Legal Firm.

Once it cannot be said who signed the process, it is incurably bad, and rules of court that seem to provide a remedy are of no use as a rule cannot override the Legal Practitioners Act.

The court further held in *Braithwaite v Sky Bank Plc* [4] per Mohammed JSC, thus;

> I agree with the Learned Counsel to the Respondent/Objector that, this court has consistently held that the validity of the originating process in a proceeding before the court is fundamental and a necessary requirement for the competence of the suit and the process set out to commence. Failure to commence a suit with a valid writ/or Statement of Claim goes to the root of the action since the conditions precedent to the exercise of the court's jurisdiction would not have been met to dully place the suit before the court.

It is argued that, this wrong initiation of a process is not one of those irregularities that could be repaired, ignored or waived as it is deep rooted in the competence or jurisdiction of the particular court.[5] It is thus the law, that an originating process whether Writ of Summons or Notice of Appeal must be valid to confer jurisdiction on a subject matter in dispute between them.[6] The law is settled that, the issue of jurisdiction is so fundamental that it can be raised at any stage of the proceedings in the court. This was confirmed in *H.R. Ltd. v F. Inv. Ltd;*[7] the Court of Appeal in determining when and how issue of jurisdiction can be raised held thus;

> A party can raise an issue of jurisdiction even on appeal without obtaining leave. However, an issue of jurisdiction cannot be raised in a vacuum; there must be materials in the proceedings to sustain the submission on jurisdiction.

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1 *Abe v Sky Bank Plc.* (2016) ALLFWLR (pt. 819) 1081 at 1100 ratio 1

2 (2013) ALLFWLR (pt. 694) 23 at 35

3 (2013) ALLFWLR (pt. 668) 800 at 808-809

4 (2013) 5 NWLR (pt. 635) 352 at 394

5 *Okadigbo v Emeka* (2012) ALLFWLR (pt.623) 1869 at 1872

6 Osadebay v A.G Bendel State (1991) 1 NWLR (pt. 169) 525, Govt. of Kwara State v Gafar (1997) 7 NWLR(pt. 511) 51 at 63.

7 (2007) 5 NWLR (pt. 1027) 326

Also in *Okafor v Nweke* [1] the motion that was signed as J.H.C Okolo SAN & Co. was struck out by the Supreme Court leaving the Plaintiffs with the opportunity to present a proper application for consideration by the court. Similarly, in *SLB Consortium v NNPC*[2] the Writ of Summons was signed in a law firm's name. The Supreme Court struck out the Writ without considering that the plaintiff could not file a fresh suit at the High Court again because of limitation of time. The Court of Appeal in *Steel Bell Nigeria Ltd. & Or, v Nigerian Deposit Insurance Corporation*[3] in interpreting Order 28 Rule 3 of the High Court of Lagos State (Civil Procedure) Rules 2004 which states that;

> Every special case agreed pursuant to Rule (1) shall be signed by the several parties or their legal practitioners and shall be filed by the claimant or other party having conduct of the proceedings.

The court noted a preliminary point that from the Record of Appeal which contains all processes filed in the trial court as well as the proceedings recorded therein, there was nowhere shown that the parties complied with the provisions of Order 28 Rule 3 of the rules. The court held that, failure to comply with the provisions of Order 28 Rule 3 is not a mere irregularity but a fundamental vice. The court further said, Rules of Court having been made pursuant to a statutory provision derives its strength there from and must be complied with *stricto sensu* that any indulgence that should be granted upon failure to comply with the rules of Court shall be limited to where the non compliance is minimal or where there is a specific provision in the Rules granting the Court the discretion to either enforce it or grant a waiver.

From the foregoing, it seems clear that matters of jurisdiction cannot be described as technicalities of procedure. In *Ali Abdi Sheikh v Edward Nderitu Wainaina*,[4] the learned judge stated; I have no reason to depart from the reasoning that matters of jurisdiction cannot be described as technicalities of procedure. They are matters of substance since without jurisdiction, they cannot be said to be seized of the dispute. Accordingly, lack of jurisdiction cannot be cured either by overriding objective under section 1A and 1B of the Civil Procedure Act or Art 159(2)(d) of the Constitution of Kenya. Also in *Raila Odinga &5 ors v IEBC &3ors*,[5] the issue was filling an affidavit with disregard to the proper time stipulated in the rules and without leave of the court. The filling was struck out by the Supreme Court where it stated that Article 159(2)(d) of the Constitution did not mean that procedural technicalities imposed by the law may be ignored. Also in James *Murithi Ngotho v Judicial Service Commission*;[6] the Applicant sought an order to grant leave to bring an application to institute review proceedings seeking an order of certiorari to remove to the High Court for purposes of quashing letters of dismissal sent to the Applicant. The Applicant argued that the court should treat statutory limitation of 6 months as a procedural technicality which it can disregard in the exercise of its discretion under Art. 159(2)(d) of the Constitution in the spirit of administering justice. The Court stated that the limitation period of six months prescribed under section 9(3) of the Law Reform Act is not a procedural technicality but a statutory limitation of time for the filling of applications. It is therefore a requirement imposed by substantive law and cannot be said to be a procedural technicality which can be ignored under Art. 159(2)(d) of the Constitution. It further stated that the Constitution

1 (2007) 5 SCM 180
2 (2011) 5 SCM 187
3 (2014) LPELR-23343 (CA) , *See Kalu v Odili* (1992) 6 SCNJ 76; (1992) LPELR-1653(SC)
4 (2012) eKLR
5 Sc Petition No. 5 of 2010
6 Miscl. Amendment of (2010)

or the Rules cannot overthrow the provisions of the law as it stands in the statutes, but was only meant to avoid injustices to parties arising from failure to comply with minor procedural lapses or technicalities in course of proceedings.

However, before one can successfully raise the issue of jurisdiction based on judicial decisions which provides that a court's jurisdiction can be challenged or raised at any stage during proceedings is most at times subject to an abuse. The argument is what of a situation in which a case had reached an advanced stage? How can judicial process be effective if we terminate the case at this point? In solving this problem, the court is always very particular as to the timing of objection to be raised when an irregularity is complained of: In *Unegbu v Unegbu* [1] where the court per Mahmud Mohammed JCA(as he then was) held that failure to do exactly what is required by Order V Rule 10(1) of the Matrimonial Causes Rules could be fatal to a petition. The court further noted that, in that case, objection was raised as to the non compliance by the Respondent immediately he was served with the petition. However, in *Sonuga &1Or.v The Minister of the Federal Capital Territory & 1 Or.*[2] The Respondent in this case raised no objection to the processes served on him, participated in the trial and conceded in part to the petition in that he did not object to the dissolution of the marriage. It was after hearing, addresses of Counsel and judgment that the Appellant now sought to have the petition struck out for failure to comply with the rule. The court held that, when an irregular procedure is adopted with the acquiescence of a party to a civil action; such irregular procedure cannot be a ground for appeal. Also, where a wrong procedure has been followed in filling a process and no objection was raised by the party who should have objected, the court is entitled to proceed with the hearing despite the wrong procedure followed. The Court further held that the Appellant having maintained his silence on the wrong procedure in filing the petition after he had been served with the processes and participated in the trial to the end should therefore hold his peace.[3]

The Supreme Court in *Sani v Okeke L.G Traditional Council* [4] held thus;

> The position of the law is that the issues touching on jurisdiction must be taken at the earliest opportunity …. This is because any step taken by the court without jurisdiction amounts to a complete waste of time.

In *Madam Eno UdoEkpo Ekot v Mr. Michael UdoEkpo Ekot& Ors*,[5] the issue of none signing of the Writ of Summons came to the fore after the case had been fought for more than two years. The court took a judicial activist approach in exercising its discretion under Order 3 Rule 7 and Order 5 Rule I (1) of the High Court Civil Procedure Rules, 2009[6], ordered the claimant's Solicitor to regularize the Writ of Summons by signing and stamping the originating process in the open court and refuse striking out the suit in the interest of justice and assume jurisdiction. To all intent and purposes, the Judge might have had recourse to the case of *Sonuga &1Or.v The Minister of the Federal Capital Territory & 1 Or.*[7]

Nevertheless, the opposing view maintains that, failure to comply with Order 6 R 2(3) is a mere issue of technicality which should not affect the substance of the case. With respect to "technicalities of law," the phrase is not a term of art known to law, thus, it neither has an exact meaning nor a legal definition. This notwithstanding,

1 (2004) 11 NWLR (pt. 884) 332
2 (2010) LPELR 19789
3 (2010) LPELR 19789, see also *Josiah A Olabiwonnu v S tella Oluranti O (*2014) LPELR 24065 CA
4 (2008) LRCN 177, Vol. 164 at 120
5 Suit No.HU/631/2013 (Unreported) High Court of Akwa Ibom State of Nigeria
6 Akwa Ibom State High Court (Civil Procedure) Rules 2009.
7 *Supra.*

it has from time to time finds it way into works of law so much so that it has accorded itself much significance.[1] It implies that strict adherence to the letter of the law has prevented the spirit of the law from being enforced. In the realm of procedural law, it can enable or restrict access to court/ or enable or limit the discretion of a court in handing down judgment. In the area of substantive law, it can affect the interpretation that a court puts on the criteria placed before it to assess a party's case with or violation of the law. Legal technicalities are strict rules of procedure, points of law or small set of rules as contrasted with intent or purposes of the substantive law. The technicalities ensure strict adherence to the letter of the law and may prevent the spirit, intent or purpose of substantive law from being enforced. The Nigerian Court of Appeal in the case of *Steel Bell Nigeria Ltd. & Or, v Nigerian Deposit Insurance Corporation*[2] laid down an escape route when it said:

> That any indulgence that should be granted upon failure to comply with the rules of Court shall be limited to where the non compliance is minimal or where there is a specific provision in the Rules granting the Court the discretion to either enforce it or grant a waiver.

We submit most respectfully, that Order 5 R1(1)[3] is a specific provision in the rules of court which specifically states that, the court should not strike out a suit based on non compliance with any of the Rules of Court but should exercise its discretion in the circumstance to avoid injustice. The Kenyan case of *Murithi Ngotho v Judicial Service Commission*;[4] follows this principle by stating that the court's discretion was only meant to avoid injustices to parties arising from failure to comply with minor procedural lapses or technicalities in the course of proceedings. What is minor is not defined in the Rules of Court, but it is apt to state that, anything that is outside the merit of a case may constitute a minor procedural lapse. We implore that our Judges should follow the dictum of some eminent Justices of the Supreme Court of Nigeria, such as the late Justice Chukwudifu A Oputa and the likes of the late Justice Kayode Eso and Justice Andrew Obaseki who formed a "trinity" of judicial activist, which dispensed justice without recourse to technicalities, fear or favour. They manifested their profound intellectual understanding of the law and belief in equity and justice in their balanced judgments which were usually well researched and showed deep philosophical thinking. They believed in justice based on merit of a case. They were loath in dismissing a case on technical grounds. In *Bello v Attorney General of Oyo State*[5], the late Justice Oputa held;

> The spirit of justice does not reside in forms and formalities, or in technicalities, nor is the triumph of administration of justice to be found in successfully picking one's way between pitfalls of technicalities. Law and technicality …may, if strictly followed, only serve to render justice grotesque or even lead to outright injustice. I will here cast my lot with my learned brother, Eso, JSC who postulated that the court is more interested in substance than in mere form. Justice can only be done if the substance of the matter is examined. Reliance on technicalities leads to injustice.[6]

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1 Prof. L. Fagbohun, "Complexity of Facts, technicalities of law: Dilemma of leadership" The Nation, Tue, Jan.17,2017 p.28.
2 (2014) LPELR-23343 (CA) , *See Kalu v Odili* (1992) 6 SCNJ 76; (1992) LPELR-1653(SC)
3 High Court Civil Procedure Rules of Akwa Ibom State of Nigeria 2009
4 Miscl. Amendment of (2010)
5 (1985) 5 NWLR 67
6 A . Onanuga, " Judicial Footprints in the Sands of Time, Oputa's Landmark Verdicts" The Nation, Tuesday, May 27, 2014 p.25

Courts at some instances have embraced substantive justice in preference to strictly and rigidly rules of procedure. In *Githere v Kimungu*;[1] Justice Hancox stated that;

> The relation of rules of practice to the administration of justice is intended to be that of a handmaiden rather than a mistress and that the court should not be too far bound and tied by the rules, which are intended as general rules of procedure, as to be compelled to do that which will cause injustice in a particular case.

It must be noted that the rules should only provide for overriding objectives which includes the just, expeditious, proportionate, efficient and affordable resolution of disputes in a case. This is called the oxygen principle as was applied in *Kamani v Kenya Anti- Corruption Commission;*[2] the technical objection raised by Kamani was that some primary documents including the hand written notes of two trial Judges had been omitted from the record. Kamani therefore argued that the appeal was invalid and should be struck out. Before the amendment, the Court of Appeal had consistently ruled that the omission of primary documents in the appeal record was fatal to an appeal, which would have to be struck out as a result. However, the court considered the new amendments which introduced the oxygen principle. The court went on to consider what was likely to happen if it proceeded to strike out the appeal, and found out that the common experience was that whenever an appeal was struck out, the appellant would invariably seek leave to file a fresh appeal. This would lead to an increase in the cost pertaining to litigation, as well as waste of judicial time and resources. The appeal was dismissed. This attitude of the court in the above case can be likened to the equitable principles that, "equity follows the law" which normally applies where strict adherence to rules would inflict outright injustice, equity favours the court in doing substantial justice.

The weight of judicial authorities has today shifted from reliance on technicalities to doing substantial justice even handedly to the parties in the case.[3] The admonition by the Chief Justice of Nigeria (CJN)[4] while inaugurating the 242 Judges in the over 70 Election Petition Tribunals in the Country urged them to look at cases on their merit and dwell less on technicalities. He said;

> As you start your assignment, I must reiterate that while you are on the tribunals, you will be looked upon as the embodiment of this ideal of justice. To that end, you must be the dispensers of justice, regardless of fear or favour, position or standing. Since you all do not have the luxury of time in the discharge of your duties, I urge you all to be pedantic in your deliberations, but do not allow 'red- herring' technicalities to distract you from the part of justice. You must listen attentively, and enquire appropriately, taking care not to descend into the arena.

Nevertheless, Judges at tribunals seem to be doing otherwise, some of their decisions tend to emphasize more on technicalities. Despite these overwhelming statements, the Supreme Court still seems "too quick' as Lord Denning once said of Lord Goddard in reaching certain decisions based on technicality especially on election matters. This seems to be on its belief that it has a "right to be wrong." This assertion is not healthy and seems to destroy the judicial process.[5]

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1 (1976-1985) EA 101
2 (2010) eKLR
3 See Oloba v Akereja (1999) 2 NSCC 120, Ogburu v Ibori (2006) 17 NWLR (pt.1002) 542, Egolum v Obasanjo (1999) 7 NWLR (pt. 61) 355 at 413.
4 Justice Mahmud Mohammed at the 2011 general elections.
5 Esezoobo, " How Supreme Court's 'Right' Destroyed Judicial Process" The Nation, Aug. 13, 2013 p.31

Now because of this complexities and inconsistencies by our courts in the pursuit of justice and equity for all Nigerians, the Federal Government of Nigeria in order to sanitise the sector to make it fair and non-discriminatory set up a technical Committee to redesign the justice sector framework to review, harmonise and integrate on going reform initiatives in the justice sector and produce a National Justice Sector Policy (NJSP). The Solicitor General and Permanent Secretary, Federal Ministry of Justice said while inaugurating the Committee that:

> The policy would clearly define Nigeria's political philosophy with respect to justice delivery, and provide a common policy direction for the justice sector stakeholders across the Nation. One of the Committee's terms of reference includes; drafting and submitting a National Policy on justice for Nigeria that sets out a common vision of a fair and effective justice system that respects the rights of all without discrimination.[1]

One of the areas the reform was urgently needed was on the current Rules of Procedure in court. Lawyers maintained that, the current Rules of Court dwell too much on technicalities and needs be reviewed. Rather than argue the substance of a case, lawyers spend time on arguments over undue adherence to procedure, wasting precious time. A good case can also be rendered invalid if certain motions were served without a court's leave or certain documents not signed among others.[2] This is an area that needs a clear-cut policy guideline. Prof. Fidelis Oditah (SAN) said; "Nigerian law is excessively and destructively procedural. It reminds us of the 18th and 19th century jurisprudence.[3] There is no way we can make progress with a law that is mostly procedural". Chief Godwin Obla also said; "we need to review our laws of evidence and procedure. We need to cut out a lot of the red-tape in the administration of justice."[4] The implementation of this policy still left much to be desired since the Committee submitted its report in 2015.

Another problem is that often times, our Court Registrars are untrained in the art of examining court processes to ensure that they comply with the rules in event of oversight by Counsels before filing. Their sins should not be visited on the litigant. This was applied in the case of *Olajuwon Olaleye v Afribank Nigeria Plc. & 2 Ors;* [5]the Registrar of the Court failed to call the attention of the court to the Appellant Counsel's letter. The Court then struck out the Appellant's suit from the cause list. In its Ruling for non-appearance of all parties pursuant to Order 19 Rule 1 of the National Industrial Court Rules 2007, the Court held, allowing the lower court's decision refusing to relist the Appellant suit would amount to visiting and blaming the inadequacy or inadvertence of Court's official on the litigant which is contrary to established principle of law that the sin of the Court or it's official or that of his Counsel cannot be visited on the litigant. We submit most respectfully that, as far the court process were placed before the Registrar, who perused it and did not refuse or reject the process, the court should exercise its discretion judiciously and judicially in favour of the claimant.[6] We submit strongly that the Supreme Court should consider reversing itself.

Another problem is the allure and public acclaim associated with lawyers advocacy and rhetorical prowess, some advocates usually deviates from their noble duty to render diligent and conscientious service not only to his client,

1 J. Jibueze, " Wanted: Refined Justice System" The Nation, Tuesday, September 20,2016 p.21
2 Ibid.(note 35)
3 Ibid.
4 Ibid.
5 (2014) LPELR-23742(CA)
6 See University of Lagos v Aigoro (1985) NWLR (pt. 1) 143

but also to the court and the society in general, embark on needless pontification and excessive legalism. In that setting, the temple of justice could be likened to abattoirs; where legal practitioners employ the principal tools of their trade namely; "the whirligig of technicalities" daily butchered substantial issues in their "fencing game in which parties engaged themselves in an exercise of outsmarting each other"[1]

In the end, it is the litigant and the judicial process that suffers.

Conclusion

Generally, the Supreme Court most times appears to approbate and reprobate at the same time. The Supreme Court seems to agree on the need for substantial justice, but on the other hand, always insist on technicalities even when it may breed injustice.[2] *In First Bank of Nig. Plc. & Ors v Alhaji Salmanu Maiwada &Ors.*[3] Notice of Appeal was not signed by a legal practitioner or the appellant; the Court per Fabiyi, JSC said;

> I agree that the age of technical justice is gone. The current vogue is substantial justice. But substantial justice can only be attained not by bending the law but by applying it as it is; not as it ought to be. There is nothing technical in applying the provisions of section 2(1) and 24 of the Legal Practitioners Act as it is drafted by the Legislature. The law should not be bent to suit the whims and caprices of the parties/counsel. One should not talk of technicality when a substantive provision of the law is rightly invoked.

We submit most respectfully that the current dichotomy between the Rules and the Statutes or the Act should be abrogated because it breeds injustice, based on the maxim "when law and equity conflicts, equity must prevail"

The argument that failure to comply with the Rules of Court goes to the root of the case which robs the court of jurisdiction had been streamlined by the decision in the case of *Unegbu v Unegbu* [4]that in solving this problem, the court is always very particular as to the timing of objection to be raised when an irregularity is complained of.

The position of the Supreme Court that technicality of law should have no place in our jurisprudence is a proposition that we all accept and profess, but how well have we succeeded in entrenching same. The court should graduate from mere rhetoric and actually entrench substantial justice in our judicial process. These issues of technicalities have made our courts less a court of justice and more a court of technicalities.[5]

It is our most desired dream that, one day not too far away, we may have a judiciary that aims at promoting real justice. A judiciary which believes that, technicalities are important only for well ordered proceedings, technicalities should only aid "not impede" substantive justice.

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1 Chief F. Agbedo " The New Face of Advocacy in Nigerian Courts" The Nation, Tues. May 27, 2014 p.28

2 E. Ojukwu " Judging the Judges; Issues, Trends and Perspective" A Paper presented as part of Activities to mark the opening of the 2016/2017 Legal Year on Thur.29th Sept. 2016 at Judiciary Headquarters, Uyo.

3 (No.1) (2007) 18 NWLR (pt. 1065) 42

4 (2004) 11 NWLR (pt. 884) 332

5 Ibid. (note 16)