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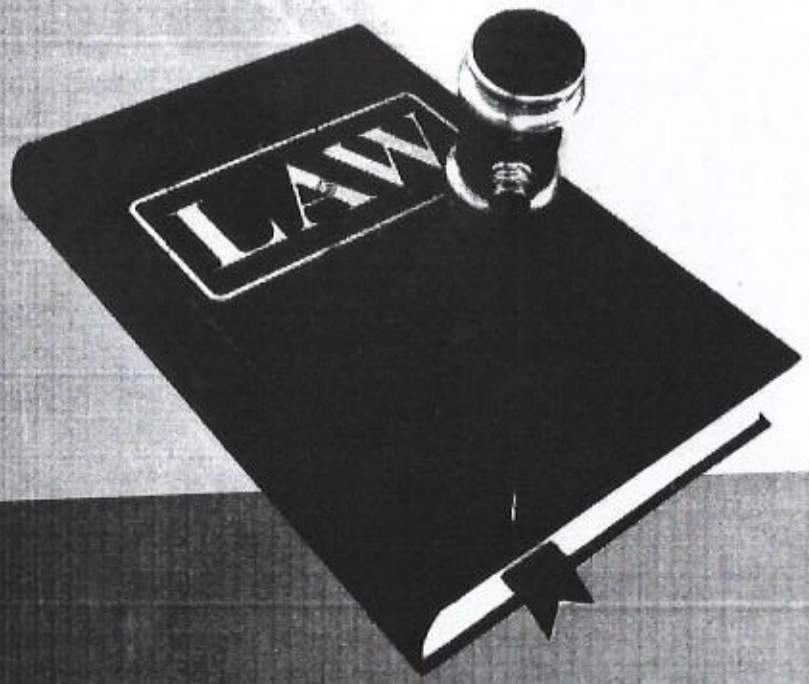
... Celebrating Bishop Hilary Okeke



JOURNAL OF CURRENT ISSUES IN NIGERIAN LAW

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JOURNAL of Current Issues IN NIGERIAN LAW

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FROM THE EDITOR-IN-CHIEF

Legal history in Nigeria is at its galloping stage at the moment. Several issues hitherto considered to be of exotic concern have become matters arising for urgent legislative actions. The legal aspects of information technology, cyberspace and cybernetics have become issues for Criminal Law and Jurisprudence. Energy law, Oil and Gas Law, Space Law, Marine and Insurance Laws are other virgin land for rigorous and renewed considerations. What is more, new grounds broken in Human Rights and Humanitarian Laws are quickly redefining the old boundary of Nigeria Legal System. In short, the landscape is highly dynamic and holds much for prospective and upcoming legal scholars. I, therefore, introduce the maiden edition of the "Current Issues in Nigeria Law Journal" to the Nigerian legal community and invite all to subscribe to it.

This very first edition is dedicated to Most Rev Hilary Paul Odili Okeke, the pioneer bishop of the Catholic Diocese of Nnewi, as he completes a decade of service in the lord's vineyard. Bishop Okeke doubles as a jurist of the canon law tradition and a dedicated prince of the Church committed to justice, fair play, and due process. He has served as judge in the Onitsha Archdiocesan Tribunal.

It is my hope that this first edition of J.C.I.N.L will meet your standards and add value to your legal concerns. Articles contained in this edition are very sensitive and scholarly types capable of evoking interests in legal research within our province.

While touching upon new developments in law and practice, effort is made to achieve a wide distribution of interest in various areas of law. We sincerely salute the brilliant scholars who made entries into this journal and solicit for your continued support with a view to sustaining our journal in research. All are reassured of sincere and dispassionate review of papers to be received.

Rev. Fr. Maurice Okechukwu Izunwa, PhD
Editor-in-Chief

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II

Frontloading in Civil Litigation Process in Nigeria Today Examining the Jurisprudence thereof

Ikenga K.E. Oraegbunam &*
*R. Okey Onunkwo***

Introduction

Recently, the Nigerian civil judicature seemed to have woken up from dogmatic judicial slumber. Cognizant of the socio-political and economic implications of delay in the dispensation of justice, many heads of courts in Nigeria have exercised their delegated powers under the law[1] to make rules that govern civil litigation and justice dispensation, and which jurisprudence is geared towards just, speedy and efficient disposal of cases before the relevant courts. From the Federal High Court and the States High Courts, including the High Court of the Federal Capital Territory Abuja, to Election Petition Tribunals, the respective new Rules, *mutatis mutandis*, provide for procedures that, if properly adhered to, would lead to quick disposal of the mountains of case files that litter the court registries. Such procedures include, though not limited to, pre-trial conference, scheduling, drawing of time table, written addresses, and frontloading.

*PhD., MA., LLM., LLB. (Hons), BL, Lecturer, Dept. of International Law & Jurisprudence, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria.
**LLM., LLB., (Hons) (Nig), BL, Lecturer, Dept. of Public & Private Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria.

[1] See for instance sections 254, 259, and 274 of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*.

The thrust of this essay is to critically examine the propriety, or otherwise, of the philosophy behind just one of these innovations, namely, frontloading system, in the commencement and defence of civil suits in Nigeria. Thus, the essay seeks to discuss the following issues and more: Is frontloading actually paying off in accordance with the philosophy behind its innovation? In other words, has the system led to quicker administration of civil justice in the relevant jurisdictions and causes? What was the situation before the adoption of the frontloading regime? What actually is frontloading and what is novel about it? Has the frontloading system together with related procedures any effect on the constitutional right to fair hearing? Does frontloading touch the all-important issue of adducement and admissibility of evidence? What is the effect of non-compliance with the frontloading requirement? To what extent is one obliged to frontload documents in sustenance and defence of civil suits? Are there any challenges? Responses to these and incidental questions would constitute the concern of this essay. The main aim of the essay therefore is to proffer ways that would enhance a faster, speedier and quicker dispensation of justice without sacrificing the basic tenets of natural justice.

Brief Historical Background: The English Antecedents

Before delving into the critical analysis of the relevant provisions and the implications of the adjectival regime in relation to frontloading, it is *apropos* to first allude to the English antecedents, which certainly provided the impetus for the Nigerian procedural revolution. There is no gainsaying that the recently adopted frontloading practice in Nigeria was influenced by the report[2] of the committee set up to review the English Civil Procedure Rules, and which committee was headed by Lord Woolf M. R. The report that came later to be called the Woolf's Report, contains principles that are germane to civil justice reform in England. The principles are well articulated thus:

> The civil justice system must be just in results delivered, fair and seen to be so. It must ensure an equal opportunity for litigants to state their cases and answer their opponents. The procedure and cost should be proportionate to the nature of the issues involved. It must have the

[2] See F.O. Akinrele, *Nigeria: Commencement of Civil Actions, Frontloading, Etc.* Paper delivered at the conference on the Revision of the Civil Procedure Rules of Lagos State, 19th-21st February, 2002, available at, http://www.mondaq.com/article.asp?Articleid=68066, retrieved on 25/01/12.

attributes of speed, be understandable to those who use it, effective, organized and adequately resourced.[3]

The Woolf Reforms sequel to the report culminated not only in the Rules of the Supreme Court of England 1998 but also, in conjunction with the relevant contents of Practice Notes, were recently implemented in Australia, especially, in the District Court of New South Wales on the subject of case management of civil actions.[4] Surely, the report represented a comprehensive re-appraisal and incorporation of many past endeavours which either remained unimplemented or at best partially implemented. Successive attempts at reform which focused on mere procedural changes could not overcome the attendant problems. Dire need was for a fundamental shift in the responsibility for management of civil litigation from litigants and their counsel to the courts. In fact, there was a strong urge for a judicial case management of civil actions. The jurisprudential implication is that litigants, once they commence proceedings, no longer have sole and unfettered control over the way in which they prosecute the cases. In the said Australian experiment, it was proposed that careful attention be given to Practice Note No. 33 on case management of civil actions which took effect from 1st January 2002 and is applicable to construction list, commercial list, defamation, and family relationship actions. These four types of actions referred together to as "specialist list actions" are directly managed by the judge from the time of commencement or from the time of entry into the list under the existing rules.

The objective of the Practice Note is that 90 percent of civil actions would be completed within 12 months of commencement and 100 percent within 2 years.[5] Disposal of actions within the court's time-frame requires that the action be expeditiously prepared by the parties. According to this idea, plaintiff's solicitors must accept that there is no rest period after commencement of an action, and in general, preparations for trial must be well underway before commencement. What this means is that actions must not be commenced until they are ready to meet the requirements of the timetable as to preparation and hearing. This is however subject to the inherent powers of

[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*

the courts to, on the application of a party vary the requirement if compliance is not possible due to the statute of limitations or other special consideration.

In the light of the above judicial management philosophy, legal practitioners are urged to advise their clients in writing, at the time of commencing an action or filing a defence, of the court's insistence on actions being ready when the system so requires. They will also let clients know that the court will not hesitate in dismissing actions or striking out a defence where parties do not meet time standards, timetables or comply with court orders. Again, applications for adjournments are made by Notice of Motion with an Affidavit in support and must be brought before the date of hearing and heard before a list judge. In cases which cannot proceed on the date fixed for hearing, the defaulting party will be asked to show cause why his claim or defence should not be dismissed or struck out. Cost orders, payable within a nominated time can be made against a party or alternatively against a legal practitioner who may be called upon to show cause why he should not personally pay the costs. Hence, it has to be noted that since the fundamental reformation of the structure and functions of English courts under the Judicature Acts of 1873 – 75, not less than 60 reports on civil procedure and re-organization of civil courts have been procured in England.[6] No wonder, the *Civil Justice Review Report* of 1988 and the Report of the Joint Independent Working Committee set up by the General Council of the Bar and Law Society of England in 1992 have sought to implement reports to the Rules of English Courts. The latter stated to the effect that:

> The philosophy of litigation should primarily be to encourage early settlement of disputes. Litigants and their lawyers need to have imposed on them, an obligation to prosecute and defend their proceedings with efficiency and dispatch. Procedures should be simple and easily comprehensible to both layman and lawyer alike.[7]

This yearning for a change petered out in a practice direction[8] issued on 24th January 1995 by the Lord Chief Justice of England, setting out new requirements in the preparation and control of cases. Remarkably, the Lord Chief Justice said, "we have over the years been too ready to allow those who

[6] *Ibid.*
[7] *Ibid.*
[8] *Ibid.*

are litigating to dictate the pace at which cases proceed."[9] The provisions of this Practice Direction were no doubt embodied in the Rules of the Supreme Court of England 1998.

Under the English Rules, part 7 deals with commencement of proceedings and Part 16 provides for the contents of the documents required for commencement. In part 7, the user-friendly term "claim form" has replaced the terms "writ" and "summons". Hence, one who wishes to make a claim no longer issues a High Court writ or county court summons, but instead issues a claim form. The fundamental shift in Part 16 is that a "statement of claim" now restyled as "statement of case" must be verified by a "statement of truth". The statements of case should enable the court and the parties to identify and define the real issues in dispute. In particular, they should enable the court to allocate the case to the appropriate track for the purpose of giving the required case management directions. On the other hand, the defence must provide a comprehensive response to the particulars of claim, as a simple denial would not suffice.

Although, for instance, the Lagos Rules is far ahead of the English Rules, as argued by Justice J.O.K. Olubunmi of the Lagos High Court, who as a member of the Lagos Reform Committee that visited England on a fact finding mission, observed that English Rules do not require written depositions at the time of filing or commencing an action, yet what has assumed the description of frontloading and its implications in Nigeria drew inspiration from the above English reform approach.

Some Problems in Pre-Frontloading Era in Nigerian Civil Jurisprudence

In order to appreciate the nature of frontloading as required by law, it is *apropos* to delineate briefly what obtained before the adoption of the present practice. This is particularly *ad rem* as the functions of the courts and the bases for reform of rules can only be understood when put in some historical context. This would help to situate the philosophical underpinnings of the machinery of justice. Surely, prior to the coming into force of the new procedural regime, the old relevant court Rules[10] in spite of several

[9] *Ibid.*

[10] See, for instance, High Court Rules of Anambra State 1988, High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 1989.

amendments thereto harboured provisions that unfortunately encouraged delay. For instance, in the old Rules of various States High Courts, fairly uniform as it were, writ of summons was filed only with statements of claim and the defendants filed merely the statement of defence.[11] The parties in the suit and their witnesses testified orally in court in their evidence-in-chief.[12] Counsel delivered oral arguments in moving motions and gave oral final addresses.[13] Again, before the coming into force of the Practice Direction for use in determination of election petitions following the 2007 elections, petitioners and respondents were not required to frontload anything other than the petitions and the replies. It was only in the course of trial that documents claimed were tendered, some of which might not be authentic, admissible or even relevant. With the oral examination-in-chief, lawyers and witnesses often lacked focus in the examination and testification process. All these and related issues led to unnecessary delay and sheer waste of precious judicial time. At the end, even if justice was arrived at, it was quite delayed and often approximated to justice denial, with the consequence that the masses started increasingly to lose confidence in the courts.

The above procedural problems were the consequence of the dearth of clear judicial responsibility for managing individual cases. Due to lack of the required effective judicial control, the adversarial processes encouraged a trial culture that degenerated into an environment in which the process was too often seen as a battle field where no rules apply. Under this regime, addressing questions of delay, expense, compromise and fairness was of low priority. While expense became disproportionate and unpredictable, delay was frequently unreasonable. Ultimately, litigation was reduced purely to adversarial tactics and where their worst excesses were not controlled, substantive and meritorious issues and claims were wholly jettisoned or even sacrificed. Accordingly, the powers of the courts fell behind the more sophisticated and aggressive tactics of some litigators. Interlocutory hearings and proceedings increasingly represented strategic skirmishes aimed at delaying rather than enhancing the progress of the case.

[11] See, for example, Order 9 Rule 1 (2) and (5) of the High Court Rules of Anambra State 1988. But in land matters, it is the High Court that orders pleadings. See Order 9 Rule 3.

[12] *Ibid.* Order 24 Rule 17.

[13] *Ibid.* See generally Order 16 and Order 25 Rule 1.

More still, it became crystal-clear that the "cards on the table" or "full and candid disclosure" principle was not fully met by mere filing of pleadings. Furthermore, the discovery process was often left unpursued due to an indolent plaintiff or recalcitrant defendant, and if pursued, the procedure remained unmonitored and unenforced so that the situation created further delay and cost. At the end, settlement was discouraged. Where settlement was reached, experience in Nigeria, as in many commonwealth jurisdictions, showed that it occurred at too late a stage in the proceedings to be meaningful, and which more often than not, arose out of frustration. Thus, the benefits, to the parties and the courts, of fair settlements were lost, due to the failure to avoid over listing of suits that should have been settled out of court.

It goes without saying that processes of determination of many civil cases including election petitions lasted for donkey years with the overwhelming toll such delay took on the individual and national developments. The ugly scenario expectedly gave rise to an urgent need for reforms. In what immediately follows, we shall examine the nature of frontloading in some court rules in Nigeria, aimed, as it were, at combating the anomaly.

Frontloading Requirements in Some Civil Adjectival Rules in Nigeria

The term 'frontloading' is not defined in any court rule or statute in Nigeria. The term is however adopted by legal practitioners in an attempt to explain certain requirements of the rules. Thus, rather than define, 'frontloading' as a grammatical construct or contrivance used by lawyers, describes the requirement in civil litigation whereby both the plaintiff and the defendant or petitioner and respondent are compulsorily expected to completely reveal their entire case before trial by filing not just the originating or the defence processes and the pleadings but also the documents to be relied on together with the witnesses' statements on oath. 'Frontloading,' as a term of literary rather than legal art therefore, is a terminology reactive to the old practice of "inloading" or "onloading" of the probative and evidential requirements in the course of trial. 'Frontloading,' thus represents the expectation of the new procedural methodology that requires parties to spread all loads on the table at the pre-trial stage so as to avoid all forms of springing of surprises, among other advantages. According to Iguh J, frontloading could be described as "a principle of our modern civil procedure system so that a defendant would have full knowledge and adequate notice of the cause of the plaintiff and the

plaintiff, would have full knowledge and adequate notice of the defence of the defendant, so as to avoid delay in trials and fulfil the objective of speedy administration of justice"[14]. Writing a memorandum on commencement of action under the High Court of Lagos State Civil Procedure Rules, 2004, Ogunbanjo notes:

> The frontloading system is designed to ensure full research and knowledge of the facts of a case and law relating thereto together with full preparation of evidence prior to the filing of a suit. In suits commenced by originating summons and interlocutory applications, a full preparation of the legal submissions on the points of the subject matter of the applications must be prepared prior to filing the summons or notice of motion and filed along with same.[15]

Early attempt at providing for what looks like frontloading was officially, made in Nigeria by the Federal High Court (Civil Procedure) Rules 2000. In its Order 6 Rule 8, it is provided that before a writ is issued, it shall be accompanied (a) by a statement of claim (b) copies of documents mentioned in the statement of claim to be used in evidence (c) where the claim made by the plaintiff is for a debt or a liquidated demand only, also by a statement of the amount claimed in respect of the debt or demand, and for costs. In 2004, however, there was almost a total overhauling of the High Court (Civil Procedure) Rules in Lagos State and the Federal Capital Territory Abuja with the need for just, efficient, and speedier dispensation of justice as their mission statements. Soon after, many other states followed in imitation and copied almost, *ipsissima verba,* the Lagos or Abuja Rules.

Thus, although in Nigeria, the early beginnings of the frontloading regime are traceable to the provisions of the Federal High Court (Civil Procedure) Rules 2000, it was in consequence of the High Court (Civil Procedure) Rules 2004 of Lagos State first, and the High Court (Civil Procedure) Rules 2004 of the Federal Capital Territory (FCT) Abuja later, that the term 'frontloading' entered into the practice lexicon of legal practitioners and gained popularity.

[14] J.C. Iguh, *The Frontloading System in the New High Court Rules*. Paper delivered at the Seminar Organized by the Law Students Association (LAWSA) of Nnamdi Azikiwe University, Awka, at the University Auditorium on 24th May, 2010. p. 4.

[15] C. Ogunbanjo, *An Overview of the High Court of Lagos State Civil Procedure Rules 2004*, Marina, Lagos.

Hence, the Lagos Rules[16] provides that "all civil proceedings commenced by a writ of summons shall be accompanied by (a) statement of claim (b) list of witnesses to be called at the trial (c) written statements on oath of the witnesses and (d) copies of every document to be relied on at the trial." Similarly, the Lagos Rules[17] provides that "the statement of defence shall be a statement in summary form and shall be supported by copies of documentary evidence, list of witnesses and their written statements on oath". The High Court (Civil Procedure) Rules 2006 of Anambra State seems to be a verbatim recopy of the Lagos Rules as similar provisions are made therein with Order-Rule correspondence.[18] What particularly distinguishes the Lagos and Anambra Rules on the one hand from the Federal High Court Rules 2000 on the other hand is the introduction in the former of the requirement of the list of witnesses and witnesses' statements on oath. It is also on the basis of these later demands that Justice Olubunmi of Lagos High Court argues that the Lagos Rules is far more ahead of the English Rules that does not require the written statements on oath of witnesses at the point of filing.[19]

Just after Lagos Rules had come into force, the Chief Judge of the High Court of Federal Capital Territory (FCT) made similar rules to regulate civil proceedings in the jurisdiction. With regard to frontloading, the difference between Abuja and the Lagos Rules is that the former does not demand the filing of the list of witnesses to be called at the trial. It instead requires at the time of filing the suit that a certificate of pre-action counselling accompanies the writ of summons together with witnesses' statement on oath and the copies of documents mentioned in the statement of claim to be used in evidence.[20] Probably, the Abuja Rules sees the Lagos Rules combined demand for both the list of witnesses and their statements on oath as mere surplusage since the witness statements on oath incorporate respectively the names of the witnesses to be called at the trial. Again, in line with the preference for a more peaceful extra-curial settlement of cases in relation to civil disputes and the need to reduce the number of case files in courts, the Abuja Rules also demands at

[16] Order 3 Rule 2(1).
[17] Order 17 Rule 1.
[18] See for instance Order 3 Rule 2 (1) and Order 17 Rule 1 of both Rules.
[19] See F.O. Akinrele, *op.cit.*
[20] See Order 4 Rule 15 of the *High Court of the Federal Capital Territory Abuja (Civil Procedure) Rules 2004.*

commencement, the filing of the certificate of pre-action counseling showing that previous attempts at pre-litigation settlement have been made and failed. This is akin to the requirement of the *Matrimonial Causes Act* and Matrimonial Causes Rules of the certification of the failed extra-judicial reconciliatory efforts at settling the relevant causes.[21]

More still, ever since the Lagos and Abuja Rules, many, if not all, States High Courts in Nigeria have adopted similar Rules that provide for frontloading and related issues to govern civil litigation in their respective jurisdictions. Also, in line with the new practice, the Chief Judge of the Federal High Court has recently made the Federal High Court (Civil Procedure) Rules 2009, which incorporates fully the frontloading regime. The Rules[22] provides that all civil proceedings commenced by writ of summons shall be accompanied by:

(a) Statement of claim;
(b) Copies of every document to be relied on at the trial;
Provided that dispute survey plans need not be filed at the commencement of the suit, but shall be filed within such time as may be ordered by the court upon any application made under sub-rule 3 of this rule.
(c) List of non-documentary exhibits;
(d) List of witnesses to be called at the trial; and
(e) Written statements on oath of witnesses;
Provided that:
(i) The statements on oath of witnesses requiring subpoena from the court need not be filed at the commencement of the suit;
(ii) The witnesses who require subpoena or summons shall at the instance of the party calling them be served with the Civil Form 1(A) before filing of the statements of such witnesses.

On the other hand, the Rules also provides on the part of the defence, that "the statement of defence shall be a statement in summary form and shall be

[21] See Form 3 and Form 3A pursuant to Order II of the *Matrimonial Causes Rules 1983* (First Schedule to the Rules). See also section 11of the *Matrimonial Causes Act*, Cap M7, Laws of the Federation of Nigeria, 2004.
[22] Order 3Rule 3 (1).

supported by copies of documentary evidence, list of witnesses and the written statements on oath[23].

It is noteworthy that the Federal High Court (Civil Procedure) Rules 2009 as would be expected, coming very much later in time as it were, is more comprehensive and takes care of the implications of some court decisions emerging from frontloading issues. Like at least the Lagos and Anambra Rules, the Federal High Court Rules in relation to land matters exempts the survey plan from the frontloading stipulation and permits the court to order or direct the filing at the earliest evidential convenience. It thus provides that "a plaintiff may file a motion on notice along with the originating process, for leave to enter the land in dispute for the purpose of making dispute survey plan for the suit"[24]. This presupposes the fact of the possibility that in spite of being a document to be relied on during trial, the survey plan may not be filed along with the originating processes as required by the frontloading rules. However, what is probably a unique provision of the Federal High Court Rules 2009 relates to the statement on oath of witnesses, who are required to be subpoenaed and which statements need not be filed at the commencement of the suit.[25] It seems the wisdom of the Rules is based on the fact that requiring otherwise would counter the very nature of subpoena where the summoned witness is not often a willing one. He is often under compulsion *vide* a court order to attend the proceedings for either the purpose of giving oral testimony (*subpoena ad testificandum*) or for the purpose of tendering a document (*subpoena duces tecum*) necessary for the determination of the relevant suit[26] or for both purposes (*subpoena duces tecum et ad testificandum*). Really, it is what makes a subpoenaed witness unwilling that at the same time dissuades him from making statements on oath or furnishing the required documents well in time before the commencement of the suit for frontloading reasons. The Federal High Court (Civil Procedure) Rules 2009 understands this possibility.

Nevertheless, it appears that the relevant provisions of the Federal High Court (Civil Procedure) Rules 2009 drew inspiration from the Court of Appeal's

[23] Order 13 Rule 35 (1).
[24] See the Proviso to Order 3 Rule 3 (1) (b).
[25] See the Proviso to Order 3 Rule 3(1) (e).
[26] See B.A. Garner (ed.), *Black's Law Dictionary*, 7th ed., (Minnesota: West Group, 1999), p. 1440.

determination on frontloading issue as is evident in *Olaniyan v. Oyewole*[27]. It is an issue that arose from the interpretation of Order 2 Rule 2 of the High Court of Kwara State (Civil Procedure) Rules 2005 requiring frontloading. The issue gravitates on whether or not the provision contemplates frontloading in situation where the claimant can attach documents he is not in possession of and which documents can only be secured through subpoena. In addition to determining this issue in the negative, Ogunwumiju, JCA, reasoned thus, in relation to *subpoena ad testificandum*:

> By virtue of Order 39 Rule 12 of the High Court of Kwara State (Civil Procedure) Rules, 2005, a party who desires to call additional witnesses during the course of the trial may do so with the leave of court where the deposition of such witnesses did not accompany his pleadings. In the instant case, the failure of the appellants to attach the statements of the witnesses to be subpoenaed could not overreach the respondents.[28]

From the above statement, it is crystal-clear that to still demand the frontloading of all documents without exception would circumvent and abridge the relevant party's right to call witnesses even via subpoena in the course of trial. It is therefore to obviate the attendant procedural difficulties that the Federal High Court (Civil Procedure) Rules 2009 provides for the exception[29].

However that may be, the exemption, from frontloading, of the written statements on oath of a witness to be subpoenaed does not permit the claimant or the defendant not to include the name of the witness in the list of the witnesses to be called at the trial in accordance with the provision of Order 3 Rule 3 (1) (d). This is evident from the first recital in the Preamble of Form 1 (A) which is a form for civil summons to witnesses requiring subpoena: "whereas the plaintiff/defendant has listed your name as a prospective witness in this case and has indicated that a subpoena will be needed to get you to testify at the trial...." More still, form 1(A) shows that the requirement of having the witness' statement/testimony written and on oath is not dispensed with even in the case of subpoena. It is thus stated in the form:

[27] [2008] 5 NWLR (pt. 1079) 114-146 CA.
[28] *Ibid.*, pp. 139-140.
[29] See the First Proviso to Order 3 Rule 3 (1)(e).

> Whereas the rules of practice and procedure of this court requires every witness to reduce his intended testimony in writing under oath for same to be filed in the Registry of the court by the party calling the witness, for service on the opposite party; Now, therefore, you are commanded...to deliver to the above named plaintiff(s)/defendant(s) or his/her legal practitioner...your written statement (i.e. your intended testimony) on oath, concerning the case.

The compulsory nature of this demand from the subpoenaed witness is demonstrated in the Form by the possibility of issuance of bench warrant for arrest and/or committal of the witness to prison should he fail to comply, as this failure would no doubt tantamount to contempt of court. In addition to this, the witness will still be required to attend court when duly notified for a formal adoption, like any other witness, of the written statement on oath, and to tender exhibits if need be, and be cross-examined.

In the light of the above observations, it is quite clear that the relevant provisions of the Federal High Court (Civil Procedure) Rules 2009 are a milestone and constitute a tremendous improvement on, if not a paradigm shift from, those of the Federal High Court (Civil Procedure) Rules 2000. While the latter required only a frontloading of the copies of documents to be relied on at the trial to accompany, the originating processes and the pleadings, the former requires in addition the list of witnesses, and their written statements on oath, save and except, in the case of a witness who is to be subpoenaed.

Yet, another issue that requires to be tackled immediately is whether it is only in civil proceedings commenced by a writ of summons that frontloading is required. In our considered view, the rule on frontloading is not restricted to proceedings commenced by a writ of summons. This is because, insofar as the term "frontloading" is not defined in any statute including the rules of courts not to talk of such a definition restricting the requirement to matters initiated with the writ of summons, it is our candid view that at least semblance of frontloading as an adjectival rule can be precipitated from certain other provisions. We are convinced that any prior procedural demand for documents, exhibits, affidavits, written addresses, list of witnesses and their testimonies, and other such evidential materials, is more or less a demand for frontloading even if in the loose sense. Instances of this demand abound in

many a civil procedure rule and other laws in Nigeria today. The High Court (Civil Procedure) Rules 2006 of Anambra State[30] states that "originating summons shall be accompanied by (a) an affidavit setting out the facts relied on; (b) all exhibits to be relied upon; and (c) a written address in support of the application. In the same manner, the Fundamental Right (Enforcement Procedure) Rules 2009[31] demands that the application and the relevant documents be filed before hand. Although enforcement of fundamental right is a matter *sui generis*, not regulated by the ordinary rules of court as in respect of other causes of action, yet the application more often by originating motion must be filed along with a written address, the affidavit in support, and the statement containing the name and description of the applicant, the grounds for the application, and the reliefs sought plus the verifying affidavit.

Hence, even as ordinary witnesses do not testify *viva voce* and have their written depositions admitted as exhibits, yet the fact that all the documents relied on and referred to in the affidavit in support are already exhibited and marked as such, holds the practice out as a specie of frontloading, even if not in *stricto sensu*. This frontloading flavour in relation to fundamental right action is further reinforced by the allowance by the Rules to commence enforcement by any originating process accepted by the court,[32] which acceptance shall, subject to the provisions of the Rules lie without leave of court[33]. This allowance for commencement by any originating process inaugurates at least an academic problem, namely, whether fundamental right enforcement action can be begun with a writ of summons, and if yes, whether the writ of summons can be accompanied by the strict frontloading requirements that must include in addition, list of witnesses and their written testimonies on oath. Again, will the written statements on oath replace the affidavit or counter-affidavit, as the case may be? What will be the nature of the statement of claim or otherwise the statement of defence or pleadings generally, which by the rules, must accompany the writ of summons during filing?

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[30] Order 3 Rule 8(2).
[31] See Order II of the Rules made pursuant to section 46 (3) of the *Constitution of the Federal Republic of Nigeria 1999* by the then Chief Justice of Nigeria, Idris Legbo Kutigi,CJN.
[32] See Order II Rule 2.
[33] *Ibid.*

The rectification of the above controversy is left both for the Chief Justice of Nigeria who has the constitutional duty to make fundamental right enforcement procedure rules,[34] and the relevant High Courts in which resides jurisdiction to entertain fundamental right actions[35] and each of which courts becomes the guardian of its own records and master of its own practice *(cursus curiae est lex curiae)*.

While the actions commenced by originating summons and originating motions as above demand frontloading even if only in the loose sense, certain actions initiated by a petition in Nigeria have made a strict requirement for frontloading in all its ramifications. The Rules of Procedure for Election Petitions (RPEP) housed in the First Schedule to the Electoral Act 2010 (as amended), provides that election petition shall be accompanied by:

(a) a list of witnesses that the petitioner intends to call in proof of the petition;
(b) written statements on oath of the witnesses; and copies or list of every document to be relied on at the hearing of the petition.[36]

It seems that the requirement in sub-paragraph (c) of either "copies" or "list" of documents to be relied on at the hearing of the petition is based on the fact of the possibility that actual copies of the documents may not be secured at the time of filing the petition taking into account the limitation period for the presentation of an election petition and the unfortunate difficulty in obtaining the required documents especially from the Independent National Electoral Commission (INEC). Thus, in the event of not having the documents, mere list of the documents will suffice for filing, subject, of course, to and pending the future tendering of the documents. However that may be, the entire provision is no less for frontloading properly and strictly so-called. Similarly, paragraph 2 of the Election Tribunal and Court Practice Directions 2011 states that the above requirement of the First Schedule to the Electoral Act 2010 (as amended) "shall apply *mutatis mutandis* to a petitioner's reply...." Again, frontloading is also demanded of the respondent who pursuant to paragraph 12

[34] Section 46(3) of the *Constitution of the Federal Republic of Nigeria 1999*.
[35] *Ibid.*, section 46(1).
[36] See paragraph 5 (1) (a)-(c) of the *Rules of Procedure for Election Petition* (First Schedule to the *Electoral Act, 2010 (as amended)*.

(3) of the RPEP must file his reply along with the "copies of documentary evidence, list of witnesses and the written statements on oath"[37].

The domino effect of the above procedural legal framework is that in Nigeria today, there is a rapid movement towards a wholesale adoption of frontloading system in the commencement and defence of civil suits. It would appear it is only a matter of time before the practice may diffuse into all other civil causes before different relevant levels of courts, and possibly into criminal litigation generally. This would hardly be a surprise as the philosophy behind the practice seems a panacea to the much detested delay in the administration of legal justice in Nigeria. It may however be apt to examine the relevant court rules and judicial decisions thereon with a view to delineating the effects of non-compliance with the frontloading system.

Frontloading System and Effects of Non-Compliance

The effect of non-compliance with adjectival rules generally is often a matter determined by each court in its interpretation, rightly or wrongly, of its own rules of practice and procedure. There is hardly a monolith or unanimity in actual practice. Sometimes, there is a *caesura* between the literal provisions of the Rules and the practical implementation thereof. At other times, a set of Rules may harbour contradictions sequel to inelegance in drafting. At yet other times, what is observed may be as a result of an individual judge's understanding of the Rules. This uncertainty may not however be applicable in the case of frontloading. This is because, more often than not, frontloading requirement is a condition precedent to acceptance by the registry for filing. For instance, Order 3 Rule 2 (3) of the High Court (Civil Procedure) Rules, 2006 of Anambra State which is a verbatim recopy of the relevant provisions of Lagos Rules provides that "where a plaintiff fails to comply with Rule 2 (1) above, his originating process shall not be accepted for filing by the Registry". This is also the effect of non-compliance with the similar provision of the Federal High Court (Civil Procedure) Rules 2009[38]. Again, paragraph 4(5)(ii) of the Rules of Procedure for Election Petitions, that is, First Schedule to the Electoral Act 2010 (as amended) states that "a petition which fails to comply with sub-paragraph (1) of this paragraph (which provides for frontloading)

[37] *Ibid.*, para. 12(3).
[38] See Order 3 Rule 3 (2).

shall not be accepted for filing by the secretary". The Court of Appeal, referring to frontloading of documents, interpreted a similar provision in paragraph 1 of the Practice Direction 2007 in *Independent Electoral Commission & Ors v. James Iniama & 3 Ors*[39] thus:

> The meaning of the word "shall" in paragraph 1 (1) (c) of the Practice Direction is clearly provided for in the expression "to be relied on at the hearing of the petition". The negative consequence of the disobedience of the petitioner to the expression of command "shall" in paragraph 1 (1) (c) is that he would not be able to rely on any such documents not so listed at the hearing. Sub-paragraph 2 of paragraph 1 of the Practice Direction gave the secretary to the tribunal a statutory and ministerial duty not to accept a petition which fails to comply with sub-paragraph (1) of paragraph 1 of the Practice Direction. Whereas in the instant case, the secretary accepted a "defective petition", that is, one which did not list every document to be relied on at the hearing, the consequence is still as contemplated by the wordings of paragraph 1 (1)(c) itself, that is, that the petitioner would be taken not to have intended to rely on such a document not so listed[40].

In fact, in *Emmanuel Osita Okeke v. Yar-Adua & 34 Ors*[41], the suit of the petitioner was struck out for non-compliance with the frontloading requirement, which failure rendered the suit incompetent.

In the light of the provisions of the above court rules and especially the Court of Appeal construction of same, it seems trite and settled that frontloading is of a compulsory nature. Yet, a careful perusal of individual Rules in their entirety may not fail to demonstrate a contrary or an ambivalent view even if on mere academic leverage. Order 5 Rule 1 of Abuja Rules provides that "non-compliance with rules of court, whether at the stage of commencing the action or any other stage shall be treated as an irregularity and shall not nullify the proceedings or any step taken therein". This is without prejudice to the proviso of Rule 1 (2) of Order 5 which permits the court to "set aside any proceedings either in whole or part or any step taken in them or order any amendment or make any other order it may think fit". Besides, sub-rule 3

[39] [2008] 8NWLR (Pt. 1088) 182 at 200, para D-F.
[40] Per Owoade, JCA.
[41] [2008] 6 NWLR (pt 1082) 37.

expressly states that "a court shall not set aside any proceedings or writ or other originating process by which an action was commenced on the ground that the rules required that the proceedings be commenced by an originating process other than the one employed"[42].

While relevant provisions of Abuja Rules are fairly straightforward, yet it is not clear whether the expression "...at any stage of commencing the action..." also connotes the stage at which frontloading is required, for the failure of which to amount to mere irregularity that would not nullify the proceedings. Or shall it be construed that the provision requiring frontloading is a special one that would derogate from the above general provision (*specialia generalibus derogat*), or again that the general provision that comes later repeals the former (special) provision *(leges posteriores contrarias abrogant)*. Be that as it may, the Anambra and Lagos Rules are much more confusing on the subject-matter. Under Order 5 Rule 1 (1) of both Rules, it would appear that the effects of non-compliance would be nullification of the proceedings: "where in the beginning or purporting to begin any proceeding there has by reason of anything done or left undone, been a failure to comply with the requirements of these rules, the failure shall nullify the proceedings." Surprisingly, however, in order 5 Rule 1 (2) of both sets of Rules, it is also stated:

> Where at any stage in the course of or in connection with any proceedings there has, by reason of anything done or left undone, been a failure to comply with the requirements as to time, place, manner or form, the failure shall be treated as an irregularity and may not nullify such step taken in the proceeding. The judge may give any direction as he thinks fit to regularize such steps.

These rules are not unequivocal as it is not certain whether the requirement of frontloading is that of form in which case it is covered in the expression "... with respect to time, place, manner or form..." in sub-rule 2, for the failure of which to amount to a mere irregularity. The ambiguous and problematic nature of the provisions is further underscored by Ojukwu and Ojukwu. Commenting on Order 5 Rule 1 of Lagos Rules, the learned authors observe:

[42] *Anatogu v. Anatogu* [1997] 9 NWLR (pt 519) 49.

> The problem with the provisions is with the use of the word 'nullify'. It is not clear whether it means that once there is such failure as described in 0.5 r.1(1), it cannot be waived by any act of the defendant. Also it is not very clear which omissions or failures will fall into the category's (sic) of failure that will nullify the proceedings. Perhaps the intention is that failure to provide the supporting documents required in commencing proceedings under 0.3 will have the effect of nullifying the proceedings and cannot be waived by a defendant's conduct or even express waiver.[43]

Indeed, what is clear is that the provisions on the effects of non-compliance with the Rules, especially under Lagos and Anambra Rules, do not speak with one voice. Yet these provisions have been copied *verbatim ad literatim* by most States with the attendant difficulties they pose in the administration of civil justice. Recently, the Court of Appeal had had an occasion to interpret similar provisions of the High Court of Kwara State (Civil Procedure) Rules 2005. This is in the case of *Olaniyan v. Oyewole*[44], in which the court considered an issue, inter alia, of whether the trial court was right to have struck out the suit on the basis that it was incompetent because of non-compliance with Order 2 Rule 2 of the High Court of Kwara State (Civil Procedure) Rules 2005. In its determination, the Court of Appeal considered the purport of Order 4 Rule 1 and Order 2 Rule 2 of the Kwara Rules. Order 4 Rule 1 provides thus:

> Where in beginning or purporting to begin any proceedings there has been a failure to comply with the requirements of the rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings or any document, judgment or order therein.

On the other hand, by virtue of Order 2 Rule 2 "subject to the provisions of the Rules or any applicable law requiring any proceedings to be begun otherwise than by a writ, a writ of summons shall be the form of commencing all proceedings; and except where order 23 applies, every writ of summons shall be accompanied by (a) statement of claim; (b) list of witnesses to be called at the trial; (c) written statement on oath of the witnesses; and (d) copies of every document to be relied on at the trial."

[43] E. Ojukwu & C. N. Ojukwu, *Introduction to Civil Procedure*, 3rd Ed., (Abuja: Helen-Roberts, 2009), pp. 158-159.
[44] *Supra.*

In construing the implications of the provisions when placed side by side with each other, the Court of Appeal agreed with the respondent's counsel that generally, where a law or rule of practice prescribes a method of commencement of a particular type of proceeding, where such proceeding is wrongly commenced, it would be set aside.[45] The Court of Appeal went further to consider the implication in Order 2 Rule 2, of the word "shall" in the expression "...every writ of summons *shall* be accompanied by...." The court noted first that "shall" may be interpreted as mandatory, obligatory or merely directory, depending on its contextual usage.[46] The court further stated that 'shall' when used in an enactment is capable of bearing many meanings. 'Shall' may be implying futurity or implying a mandate or direction or giving permission. If it is used in a mandatory sense, then the action to be taken must obey or fulfill the mandate exactly, but if it is used in a directory sense, then the action to be taken is to obey or fulfill the directive substantially.[47] After intense consideration, the Court of Appeal held that the word "shall" in Order 2 Rule 2 of the High Court of Kwara State (Civil Procedure) Rules 2005 is used in a directory sense and the claimant is only obliged to fulfill the directive substantially and not necessarily exactly.[48]

More strongly, the court established a connection between strict or draconic demand for frontloading and the denial of the constitutional right to fair hearing on the part of the party who for justifiable reason failed to observe fully the rule on frontloading. It is held thus:

> The constitutional right of fair hearing must not be sacrificed on the altar of strict adherence to the rules of court. Thus, Order 2 Rule 2 of High Court of Kwara State (Civil Procedure) Rules 2005 should not be

[45] *Olaniyan v. Oyewole*, supra, p. 137, para B. See also *Obajinmi v. A.G. Western State* (1967) 1 All NLR 31; See further *Udene v. Ugwu* [1997] 3 NWLR (pt 491) 57 at 63.
[46] *Olaniyan v.Oyewole, supra*, p.137, paras. D-E; See also *Amadi v. NNPC* [2000] 10 NWLR (pt 674) 76; *Edewor v. Uwegba* [1987] 1 NWLR (pt. 50) 313; *Ude v. Nwara* [1993] 2 NWLR (pt. 278) 638; *Ogualaji v. A.G. Rivers State* [1997] 6 NWLR (pt. 508) 209.
[47] *Olaniyan v. Oyewole, supra*, pp.137-138; see also, *Ifezue v. Mbadugha* (1984) 1 SCNLR 427; *State v. Mori* (1983) 1 SCNLR 94.
[48] *Olaniyan v. Oyewole, supra*, p. 140, para E.

> interpreted to mean that the names and statements of all the witnesses must be loaded upfront and that there is no room for adjustment during the course of trial.[49]

The court equally utilized the opportunity to define the purpose of the frontloading system: "In introducing the frontloading system, that is, the upfront filing of all documents to be used at the trial, the intention of the maker of the rules of court is to ensure that only serious and committed litigants with prima facie good cases and witnesses to back up their claims would find their way into the court"[50]. Nevertheless, this definition is not without the court's caveat:

> However, there must be a happy medium between balancing the public interest to reduce unnecessary and frivolous claims as against the constitutional right of a party to have his legal counsel conduct his case as he thinks fit.[51]

Furthermore, the court did not mince words in holding that "Rules of courts being merely adjectival law should not be elevated to the status of substantive legislation for which there must be strict compliance by the parties and the court"[52]. More so, on the purpose of rules of court, the Court of Appeal stated:

> The rules of practice and procedure are aimed at prescribing the procedure for determination and enforcement of rights and obligations which aid legal principles. Their compliance should not be aimed at defeating the ends of justice and foreclosing fair trial of disputes. Thus, the court should not be enslaved to the rules or interpret them to cause injustice by shutting out the claimant from prosecuting and the defendant from defending the suit.[53]

[49] *Ibid.*, p. 139, paras B-C.
[50] *Ibid.*
[51] *Ibid.*
[52] *Ibid.*, p. 138.
[53] *Ibid.*, p.140. See also, *F.S.B. International Bank Ltd v. Imano Nig. Ltd* [2000] 11 NWLR (pt 679) 620.

Thus, "rules of courts are meant to serve the interest of justice but not to defeat it"[54]. In fact, it is urged that in applying rules of procedure, the trial court must look at the circumstances of each case.[55]

Following the above determinations of the Court of Appeal, frontloading system is hardly to be seen as sacrosanct. At least, the net effect is that in certain circumstances, the rule on frontloading can be derogated from. Until the Court of Appeal reverses itself or is overruled by the Supreme Court on the issue, these holdings remain the law by virtue of the principle of *stare decisis quietur non movere* (binding precedents). Yet the resilience and persistence of the problem cannot be glossed over. Will a claimant sue or appeal against the administrative action of the registrar of a High Court or secretary of a tribunal who refuses *ab initio* to accept the writ of summons or petition that is unaccompanied by the relevant documents *vide* frontloading in which case the action had not been filed or commenced? Which court will have jurisdiction? Or will he seek for an order of Mandamus against or on the registrar or the secretary to compel them to accept the originating process? It appears it is only when a writ or petition has been accepted and filed 'wrongly' as a result of failure to fully observe the frontloading requirements, and the matter later struck out for the same reason, that one can appeal against the striking out order of the trial court or tribunal as happened in *Olaniyan v. Oyewole*,[56] and in which case the appeal would be against a judicial act.

Frontloading and Case Management Philosophy: Prospects and Challenges

A critical consideration of frontloading cannot be meaningful without turning our minds to the benefits and the challenges attendant thereto. There is no doubt that the philosophy behind the frontloading procedure is to quicken the dispensation of justice. In accordance with this philosophy, the judges of the high court or members of the tribunal where such procedure is adopted are not merely adjudicators and/or umpires that are interested in the trial of disputes in the court room only but have also taken on managerial roles at which they must effectively utilize the technique and tool of case management and

[54] *Olaniyan, supra*, p.141; See also, *U.T.C (Nig) Ltd v. Pamotei* [1989] 2 NWLR (pt 103) 244.
[55] *Olaniyan, supra*, p. 139.
[56] *Supra.*

judicial control to achieve and facilitate just, efficient and speedy dispensation of justice.

The frontloading of documents is certainly prepadeutic, inter alia, to yet another procedure, namely, pre-trial conference and scheduling at which the judicial officer will exercise a managerial duty unto same objective. The respective Order 25 of Lagos and Anambra Rules provide for the purpose of pre-trial conference. Rule 1 (2) thereof delineates the objectives as contained in Form 17 that contains the hearing notice for pre-trial conference: (a) disposal of matters which must or can be dealt with on interlocutory application; (b) giving such directions as to the future course of the action as appear best adapted to secure its just, expeditious and economical disposal; (c) promoting amicable settlement of the case or adoption of alternative dispute resolution.

Formulation and settlement of issues; amendments and furnishing of further and better particulars; admissions of facts and other evidence by consent of the parties; control and scheduling of discovering, inspection and production of documents; narrowing the field of dispute between expert witnesses; hearing and determination of objections on points of law; and so on, make up the agenda of pre-trial conference.[57] At the beginning of pre-trial conference which must be completed within three months[58], the judge shall enter a scheduling order for joining of other parties; amending pleadings or any other processes; filing motions; further pre-trial conferences; and any other matters appropriate in the circumstances of the case[59]. In *Ikeyi v. Crown Realities Plc*[60], the Court of Appeal was faced with an opportunity to expound the purpose of a pre-trial conference as provided by Order 25 of the High Court of Lagos State (Civil Procedure) Rules 2004 in the following terms:

> Pre-trial conference is an extra-ordinary procedure before trial where parties are encouraged to resolve dispute or settle the case. Order 25 is designed to save precious .dicial time, expense involved in a full blown trial, and avoid unnecessary litigation when there are no longer any live issues after a successful pre-trial conference. Successful pre-trial conference reduces drastically a judge's docket, thereby hopefully ensuring speedy conclusion of a contested case.[61]

[57] Order 25 Rule 3; See also Form 18.
[58] Order 25 Rule 4.
[59] Order 25 Rule 2.
[60] [2010] 6NWLR, (pt. 1189) 114.

According to the Rules, the judge shall at the end of the conference or series of conferences issue a report which shall guide the subsequent course of proceedings at the trial. Where there are no issues left for trial, the trial court will be perfectly correct to strike out the suit. It is clear that for a successful pre-trial conference, which is a veritable forum for judicial management of civil actions, frontloading of documents is quite congenial. Thus, with the pleadings, list of witnesses, and their statements on oath, and the copies of documents to be relied on at the trial plus the originating process, the vision of the Rules is set.

Hence, the advantages of the frontloading system in conjunction with related procedures cannot be overstated. With the system, the relevant courts and tribunals quickly and expeditiously dispose of civil suits before them much more than happened under the old procedural regime. Judges now write more judgments and rulings. Testimonies of witnesses during examination-in-chief are no more taken orally but are now in the form of written statements on oath. This procedure no doubt saves precious judicial time formerly wasted through the question-and-answer examination methodology and possible raising of objections which would surely take some time for determination by the judge. Frontloading as antidote to delay in justice dispensation is further propped by the fact that final addresses of counsel in a suit and arguments of counsel in respect of applications (motions) are no longer taken orally. Writing in connection with the merits of frontloading in civil litigation and adjudication in the High Court of Anambra State, Iguh, J. notes:

> It (frontloading) has given litigation a new face. The precious time of the court is no more wasted. They are now fully utilized. We have achieved a lot since the new Rules came into force. The cases in our courts have dramatically reduced. New suits are being instituted in line with the provisions of the new Rules and they are disposed of within a very short period. A civil litigation instituted in a particular year could

[61] *Supra* at 127.See also Order 25 of the Anambra Rules.

> be disposed of within that year. There has been just and speedy disposal of actions.[62]

Literally, frontloading involves bringing to court, at the time of filing an originating process or defence, all that a party requires in order to prove his claim or defence as the case may be. With frontloading, the filing of frivolous applications by counsel, sometimes to cause delay or frustrate the court or the opposing party has been done away with it. Now, an action cannot be competently commenced by mere filing of originating processes. Mandatorily, requiring a party to file all the processes and documentary or other evidence necessary for him to prove his case means that there is no more room for filing of frivolous and vexatious suits. By having the entire case of the parties before hand, as a result of frontloading, the trial Judge and the parties are afforded an early opportunity to assess the relative strength and weakness of the case and thus may opt for settlement at the earliest possible time before too much expenses are incurred. By virtue of Order 1 Rule 1 (2) of the Anambra Rules, the application of the Rules shall be directed towards the achievement of a just, efficient and speedy dispensation of Justice. Part of the intendment and objectives of front-loading requirements are: 1. to discourage the filing of weak or frivolous suits; 2. to identify and focus attention on the main issues from the onset and thus avoid the tendency to dissipate energy on irrelevancies; 3. to minimize the incidence of amendment of pleadings and frivolous application for adjournments.

The effect of frontloading on the entire civil judicial process is indeed very profound. On the part of legal practitioners, it means that it is no longer reasonably possible to file an action or defend same until full and adequate briefing has been secured from the client. According to a Learned Opinion:

> Unlike "holding charges" in criminal matters (which exist although legally they do not exist), under this new dispensation "holding pleadings" sometime filed until we receive the full instructions from the client has effectively been done away with... The philosophy of

[62] J.C. Iguh, *op.cit.*, p.6.

> the new system is "Don't come into the court system until you are ready for a trial."[63]

The above statement best summarizes the situation with respect to legal practitioners. On the part of the court, the frontloading concept will, to a great extent, infuse a considerable sense of predictability into its various proceedings as well as shorten the length of time it hitherto took to commence actions and conclude same. The policy of the Rules in this respect is to cause all cards to be laid on the table to prevent any form of surprises. More importantly, the court has the opportunity of an early preview of the case coming before it and the documentary evidence related thereto.

The new adjectival regulation of which frontloading is a part has certainly shifted a whole load of practice work from the court to the chambers as if like a Copernican revolution[64]. While the old regime made judges to write a lot in taking notes of proceedings, albeit, in long hand, the new Rules now have re-assigned that onerous task of writing to the advocates. Statements on oath of witnesses, addresses, and arguments are now written by counsel and filed in court for eventual use as raw materials for judicial determination by judges. The result is that less time should now be taken in civil litigation process where frontloading and allied procedures are adopted.

However that may be, practice and experience show that there are still certain factors that combine to constitute an *obex* on the way to full utilization of frontloading system in fighting delay in the relevant civil justice dispensation. First and foremost, in spite of the frontloading system, there still remains the problem of admissibility. The fact that copies of documentary evidence are frontloaded does not ordinarily constitute automatic admission of the documents filed. The Rules have not opened the floodgate for the admission of inadmissible evidence, or secondary evidence without the relevant laying of proper foundation.[65] Hence, issues of admissibility of documents can still

[63] F. Adekoya, *The Legal Practitioner And the 2004 Rules: New Approach as to Practice and Procedure*. Paper presented at the Ministry of Justice Workshop for Lawyers on the 2004 Civil Procedure Rules of Lagos held on 8th October, 2003.

[64] Nicholas Copernicus discovered that the earth and other planets revolve round the sun and not the other way round as held by Ptolemy.

[65] See *sections* 89 & 90 of the *Evidence Act 2011*.

occasion series of objections which according to the present procedure must be taken *in limine*. Although matters of admissibility of documents are a part of the agenda of pre-trial conference, yet some of them are carried over to the trial. Raising and determination of these objections sometimes take days, weeks or even months. The arguments of counsel and eventual ruling by the judge may take so much time that our civil procedure still harbours very serious barricade to expeditious disposal of cases in spite of the frontloading system. This is all the more possible since while the argument rages on, the substantive suit is stayed until the objection is disposed of even probably by the Supreme Court sitting on appeal. Thus, the delay which is targeted by the frontloading system, inter alia, yet rears its ugly head.

Secondly, with profound respect, general laziness and lack of knowledge and dynamics of law on the part of some judges, can still be a clog in the wheel of whatever gains that can proceed from the adoption of the frontloading system. For instance, delay in the delivery of rulings on interlocutory applications still eclipses the benefits targeted by the philosophy of the just, efficient and speedier dispensation of civil justice as encapsulated in the Rules. More, it is still safe to hold, with respect, that an adjudicator that is lacking in the knowledge of law and its dynamics would create more problem than solve any. In the process, the justice of the matter brought before him would be murdered and the supplicant would become poorer and more disgusted for it.

Similarly, poor case management by some judges is yet another obstacle to the full realization of the dividends of the frontloading system. It has to be noted that one reason for frontloading, apart from placing all cards on the table to avoid springing of surprises on the other party, is to enable the judge to manage the civil litigation process for effective and quicker administration of legal justice. Yet some judges, with profound respect, falter in this regard. This is either due to recklessness or ignorance of the purport and procedures of, for instance, pre-trial conference, scheduling and conduct of proceedings generally. Sometimes, some judges confuse the managerial judge concept with the need not to descend into the arena of conflict.

Quite another monster that is adverse to the dispensation of civil justice is corruption. This ranges from the attitudes of the judge and the lawyer to those of the registrar and the litigant. Hence, if the judge does not demand bribes in

order to pervert justice, the lawyer would forge documents on behalf of the client or edit the written statements on oath of witnesses to suit needs other than that of justice and truth. If the registrar does not demand for *tips* in order to perform his official duty or not to perform same depending on the beneficiary, the litigant or client will submit himself to be tutored by the legal practitioner to tell lies on oath.

Therefore, there is an urgent need to address the above and related anomalies if ever the dispensation of civil justice in Nigeria will stand to realize the objectives of the frontloading system.

Conclusion and Suggestions

The frontloading system of filing relevant documents in commencement and defence of civil actions has come to stay. The practice is well-intentioned, aiming, as it were, at the achievement of a just, efficient and speedy dispensation of justice. The adoption is gradually paying off as is evident in the quicker conduct and determination of civil suits experienced at present. In fact, suggestions have come from some quarters for the assimilation of the frontloading system into criminal procedure. Yet, obstacles are still on the way to adequate utilization of the benefits of the frontloading technique. Certain measures need to be put in place or strengthened. There is the need to make room for provisional admission of documents frontloaded and the objections thereto reserved for final addresses. The judge can, therefore, thereafter give his rulings along with the final judgement. This procedure would go a long way to obviate the never-ending objections and arguments that hold the trial process under siege. Hence, while the rights to raise objections and that to appeal which are a part of the constitutional right to fair hearing are still preserved, the attitude of raising frivolous and vexatious objections aimed at delaying or frustrating expeditious disposal of cases is thus put on check.

Again, there is a great need for more careful selection and appointment of judges. The judicial office is a sacred one and must remain so. For one to be qualified for appointment, one must be fit and proper both in character and in learning. A judicial officer must have the orientation and the *gravitas* to function as such and must be learned in fact. He must know the law and must be prepared at all times to exude it. These qualities characterize the high office of a judge and must never be compromised for any reason whatever. In

addition to these, is the need for the training institutes and disciplinary bodies to stand tall to their responsibilities. The National Judicial Institute should organize more effective and frequent workshops for both newly appointed judges and older ones to address issues of not only practice and procedure but also of ethics. This will enable judges to be abreast with or reminded of not only the principles of professional ethics but also the relevant practice and procedure such as the manner of conducting pre-trial conference and other managerial and judicial duties. In the same manner, the National Judicial Council should be more responsive in the treatment of genuine complaints of incompetence and or inefficiency on the part of judicial officers and bringing such erring judicial officers to book.

Moreover, the legal practitioners should properly understand and put into effect the philosophy of the frontloading system. All forms of forgery of documents and other sharp practices must be eschewed. Achievement of truth and justice is, no doubt, the ultimate duty of a lawyer. Cases should not be won at all costs. There is necessity for better enforcement of the Rules of Professional Conduct for Legal Practitioners. In the same vein, the Legal Practitioners Disciplinary Committee must be made to function better in order to assist in stemming the tide of corruption that sweeps across legal practice in Nigeria today.