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FRONTLOADING UNDER THE HIGH COURT OF LAGOS STATE (CIVIL PROCEDURE) RULES 2004: EFFECTS ON ADMISSIBILITY OF DOCUMENTARY EVIDENCE

By

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Introduction

The question of admissibility, or otherwise is the main pivot on which the entire law of evidence gravitates. Admissibility has been described as a quality or state of being allowed to be entered into evidence in a hearing, trial, or other proceedings.[1] Whether a piece of evidence is admissible or not is dependent upon whether the fact to be established by the evidence is relevant to the fact in issue. A court may have to consider admissibility in deciding whether or not an opponent's rebuttal evidence is relevant and whether or not counsel can argue that the evidence proves a particular point. During court proceedings, the party contending that the evidence is admissible does so by raising an objection to it, and which objection must be raised promptly as soon as the evidence is about to be given, or when it is to be tendered in the case of documents.[2] It is also a time-honoured adjectival rule that when such objection is taken, the question of admissibility should be decided by the court before the evidence is admitted or rejected.[3]

While the issue of admissibility generally is cardinal in any litigation and adjudicatory process, that of admissibility, or otherwise, of documentary evidence enjoys a prime position. This is because very few cases run the gamut of commencement of trial and determination of the cause on its merit without the introduction of documentary evidence. In fact, it has been seen as inconceivable that any serious matter could be presented and concluded in any High Court without an allusion to documents in civil proceedings on the pleadings.[4] This paper juxtaposes the effect of the law on admissibility on and with procedural requirement of frontloading under the Lagos High Court Rules.

Meaning of Frontloading under the Lagos Rules

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 requirement of the rules. Thus, rather than defines, '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 cards 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 fulfill the objective of speedy administration of justice".[5] Writing a memorandum on commencement of action under the

[1] B.A.Garner (ed.), *Black's Law Dictionary*, 7th Ed., West Group, Minnesota, 1999, p.48.
[2] *Kutti & Alli v Tagbobo* (1967) NMLR 419; *Chief Bruno Etim & Ors v Chief Okon Udo Ekpe & Anor* (1983) 3 SC 12.
[3] *R. v Bana Kuzzi* (1935) 5 WACA 154.
[4] Z.C. Anyoga, "The Inadmissible Original: Comments on Lawson v. Afani Continental Nig. Ltd" , *UNIZIK Law Journal*, Vol. 4 No. 1, 2004, p.278.
[5] Iguh, J.C., *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.

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.*[4]

Early attempt at providing for what looks like frontloading was first 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, it was with the High Court of Lagos State (Civil Procedure) Rule 2004 that the term 'frontloading' entered into the practice lexicon of legal practitioners and gained popularity. Hence, the Lagos Rules[5] provides that "all civil proceedings commenced by the 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[6] 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". What particularly distinguishes the Lagos Rules from the Federal High Court Rule 2000 is the introduction in the former of the requirement of the list of witness and witnessed 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.[7]

The Lagos 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"[8]. 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 frontloading rule.

Effect of Non-Compliance with Frontloading System

Order 3 Rule 2 (3) of the 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 makes frontloading mandatory. But this is not without equivocation considering other provisions of the Rules. Under Order 5 Rule 1 (1), it would appear that the effects of non-compliance would be nullification of the proceedings:

[4] C. Ogunbanjo, *An Overview of the High Court of Lagos State Civil Procedure Rules 2004*, Marina, Lagos.
[5] Order 3 Rule 2(1).
[6] Order 17 Rule 1.
[7] 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. Retrieved from http://www.mondaq.com/article.asp?Articleid=68066. Accessed on 25/01/12.
[8] See Order 3 Rule 2 (2).

> *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 the Rules, it is also stated:

> *Where at any stage in the course of or in connection with any proceedings there has by reason 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 provisions 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:

> *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 he waived by any act of the defendant. Also it is not very clear which omissions or failures will fall into the category's of failure that will nullity 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.*[9]

Indeed, what is clear is that the provisions on the effects of non-compliance with the under Lagos 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*[10] 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[11] applies, every writ of summons

[9] E. Ojukwu & C.N. Ojukwu, *Introduction to Civil Procedure*, 3rd Ed., Helen-Roberts, Abuja, 2009, pp. 158-159.
[10] *Supra*.
[11] Order 23 of Kwara Rules is on the issue of undefended list.

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.

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. 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.[12] The court further stated that "shall" when used in an enactment is capable of bearing many meanings. It 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.[13] 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.[14] 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 thus held:

> *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 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.*[15]

The court equally utilized the opportunity to define the purpose of 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.*[16]

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.*[17]

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

[12] *Olaniyan v. Oyewole*, Supra, p. 137, para B. See also *Obajimmi v. A.G. Western State* (1967) 1 All NLR 31; See further *Udene v. Ugwu* [1997] 1 NWLR (pt 691) 57 at 63.
[13] *Olaniyan v Oyewole, Supra*, p 137, paras. D-E; See also *Anadi 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; *Oguniyi v. A.G. Rivers State* (1997) 6 NWLR (pt. 508) 209.
[14] *Olaniyan v. Oyewole, Supra*, pp. 137-138; see also *Ifezue v. Mbadugha* (1984) 1 SCNLR 427; state v. Mori (1988) 1 SCNLR 94.
[15] *Olaniyan v. Oyewole, supra*, p. 140, para E.
[16] *Ibid.*, p. 139, paras B-C.
[17] *Ibid.*
[18] *Ibid.*

compliance by the parties and the court"[19]. 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.*[20]

Thus, "rules of courts are meant to serve the interest of justice but not to defeat it"[21]. In fact, it is urged that in applying rules of procedure, the trial court must look at the circumstances of each case.[22]

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 at 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 on the registrar or the secretary to compel him to accept the originating process? It appears it is only when a writ or petition had 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*,[23] and in which case the appeal would be against a judicial act.

Frontloading and Admissibility of Documentary Evidence

It may now be apt to consider the effect of frontloading on the admissibility of documentary evidence. We shall also attempt a discussion on the effect of frontloading on pleadings, status of pleaded documents that are not frontloaded, status of frontloaded documents that are not pleaded.

The Lagos Rules prescribe the exchange of written pleadings by the contestants to a *lis*.[24] The Rules specify the contents of the pleading. Every pleading shall contain a statement of the material facts on which the party pleading relies but not the evidence by which they are to be proved.[25] Pursuant to Order 3 Rule 2 (1) of the Rules, pleadings are now filed along with writ of summon, statement of claim, written depositions, list of witnesses and documents. Failure to so frontload renders the proceedings a nullity. The object of pleading is to fix the issue for trial accurately and to apprise the other side of the case which it would meet in court.

Generally, under our civil litigation procedure, where a party intends to rely on a document, the rule is that the party must plead that particular document for it to be admissible. Where however either by inadvertence or omission a party failed to plead a necessary and vital document, same will be rejected if tendered for admission as an exhibit. In *Ita v. Ekpenyong*,[26] which is a case between the parties involving

[19] *Ibid.*, p. 138.
[20] *Ibid.*, p. 140. See also *F.S.B. International Bank Ltd v. Imano Nig. Ltd* [2000] 11 NWLR (pt 679) 620.
[21] *Olaniyan, Supra*, p. 141; See also *U.T.C (Nig) Ltd v. Pamotei* [1989] 2 NWLR (pt 103) 244.
[22] *Olaniyan, supra*, p. 139.
[23] *Supra*.
[24] Or. 15 Rule 1 (2) Rules.
[25] Or. 15 Rule 2 Rules.
[26] [2001] 1 NWLR (pt 695) 587.

dispute over a piece of land, at the trial court, the defendant failed to plead the purchase agreement upon which his case is built. As the document was tendered for admission, it was rejected and so marked. Counsel then sought to amend his pleadings in order to plead the rejected document. The application to amend his pleadings was rejected and his appeal up to the Supreme Court was dismissed. At the Court of Appeal, Opene JCA had this to say:

> *I must observe that before a Counsel tenders a document to be admitted in evidence that he must acquaint himself with the relevant law of evidence and ascertain that the document is a legally admissible document and also how it is tendered in evidence. It is not a matter of a game of chance where a counsel will seek to tender a document and it is rejected because it was not pleaded and therefore marked rejected, and the counsel will again apply to amend his pleadings at the end of the trial so that he could plead the rejected document so that it could be re-tendered in evidence. No doubt this makes nonsense out of the whole process and it is in fact an abuse of Judicial process which is using the Judicial process for what it is not meant for.*[29]

So it becomes necessary for a party in a judicial proceeding to plead a particular document which he intends to rely on in proof of his case.

However, a document need not be pleaded if the fact contained in the document is pleaded. In *Odunsi v. Bamgbala*,[30] it was held that the legal position is that documents in support of facts pleaded need not be pleaded and they can be tendered in support of facts pleaded. Documentary evidence need not be pleaded specifically to be admissible in evidence so long as facts and not the evidence by which such a document is covered are expressly pleaded.[31] Consequently, where the contents of a document are material, it shall be sufficient in any pleading to aver the effect thereof as briefly as possible without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material, such as in cases in libel.[32]

In view of the frontloading concept, such document though not pleaded must be frontloaded. So the law as can be deduced above is that when a document is pleaded, it forms part of the pleading, it's existence being pleaded as a fact. The document will then at the appropriate time in the proceedings be tendered as the evidence in proof of those facts. As has been pointed out by Uwaifo JSC in *Brawal Shipping (Nig) Ltd v. F. I Onwadike Company Ltd & Ors.*[33]

> *It is not part of our procedure as it is / in England to attach documents pleaded to the statement of claim so as to make them possible to be read at once along with the pleading as was certainly the case in Day v. Williams Hill.*

This statement was made before frontloading was introduced. Having discussed the law as it relates to the admissibility of documents, we shall now proceed to examine this rules against the backdrop of the frontloading concept which as we have already seen requires that documents to be relied on at the trial must be frontloaded along with the originating processes.[34] Failure to so frontload will have the effect of leaving the admission of such documents at the bounty of the trial judge. For purposes of

[29] *Ibid*, pp. 621-622.
[30] (1995) 1 NWLR (pt 374) 641 @ 667, also *Monier Construction Co. V Azubuike* (1990)3 NWLR (pt 136) 74.
[31] *Alhaji Babatunde Thanni and V Sabalemotu Saibu & Orr* (1977) 2 SC 89; *U.A. C. Ltd v. Saka Owoade* 13 WACA 207.
[32] *Oba E.A Ipinlaye II v Chief Isaliss Olukotun* (1996) NWLR (pt 453) 143 @ 166 Per IGUH JSC.
[33] (2001) 2 SCNQR 1379 @ 1379. At the time of this decision the frontloading concept has not been introduced. The statement cannot now be correct.
[34] Or. 3. R. 2 (1).

clarity and lucidity, here is the unequivocal statement as laid down by the Rules:

> *Unless, at or before trial, a Judge for special reasons otherwise orders or directs, no document, plan, photograph or model shall be receivable in evidence at the trial of an action unless it has been filed along with the pleadings of the parties under these rules.*[35]

Flowing from this, it means that even when a document is relevant and was pleaded in accordance with the rules of admissibility, that alone will not automatically make the document to be admissible as the Rules require same to be frontloaded. The Rules give the Judge unfettered power to reject the document as the words used are "shall be receivable… unless". The word "shall" when used in a statute implies a mandatory obligation on the part of any persons so directed. It does not leave the doing of an act at the option of the actor; it is mandatory or imperative. In *Oloyo v. Alegbe*,[36] Nnamani JSC agreeing with the majority view as read by Eso JSC stated that "it is settled that if a statute declares that a thing "shall" be done the natural and proper meaning to be given to it is peremptory not directory. In *Ifezue v. Mbadugha*,[37] it was held that the words "shall deliver in writing not later than 3 months" is mandatory and imperative and not directory or permissive so that any Judgment delivered outside the three months limit is a nullity and of no legal effect. In this case, the court was construing Section 258 (1) of 1979 Constitution of Federal Republic of Nigeria now Section 294 (1) of the 1999 Constitution.

So the question that naturally comes to mind is, what rule now governs admissibility? Is it the rule of evidence or the High Court Rules. Does the mere pleading of a document and frontloading of it *ipso facto* mandatorily make it admissible? On the first part, civil litigation practice as a field of legal practice is largely governed and regulated by rules of civil procedures. The rules encapsulate a body of orders (rules and sub-rules) under which civil proceedings are conducted and administered. Civil procedure rules lay down the method of initiating proceedings and also stipulate the various steps and actions that are taken at every stage of any such proceedings. The modes of obtaining and receiving of evidence are all laid down in the rules.[38] The Rules are meant to be observed by all.[39] However, what the rules can do with respect to the reception of evidence is limited to procedural steps a party will take in order to have his evidence admitted. The Rules cannot purport to delve into the substantive issues of evidence. The Evidence Act has laid down how and when a piece of evidence is admissible or not and the rules which merely lays down the procedure for bringing such evidence before the court. Therefore, it is safer to conclude that as far as evidence is concerned, the rules of courts are limited to the issues of procedures. Anything short of this will be unconstitutional.[40] This is because, the constitution which creates the States High Court delegated the powers of making procedural rules of these High Courts to the Chief Judge of each state subject however to the law of the State's House of Assembly.[41] Therefore, the powers of the Chief Judge or the House of Assembly to make rules of court are subject to

[35] Or. 32 R. 4.
[36] (1983) 2 SCNLR 35 at 72. Also the dictum of Lord Campbell in *Liverpool Borough Bank v Turner* (1860) 6 De GF & J 502 @ 507-8, *Stroud's Judicial Dictionary* 4th ed. Vol. 5 2514.
[37] (1984) 1 SCNLR 427, *Kpema v The State* (1986) NWLR 396.
[38] Apart from the rules of a particular court, the rules governing conduct of civil litigation are also derivable from other laws and most importantly the Constitution of the Federal Republic of Nigeria, 1999. Judicial powers of the Court are more importantly enacted by the Constitution under S. 6; so the courts are expected to act in accordance with Law establishing it.
[39] As far as the conduct of civil proceedings are concerned, the litigants, their legal practitioner, as well as the court itself are all bound by the rules. In the conduct of civil proceedings recourse must also be had to other relevant laws particularly the Constitution, the Evidence Act, the enabling statutes creating the particular court, the Sheriff and Civil Process Act, Judgment Enforcement Rules and other Specific Rules like the Matrimonial Causes Rules, Companies Winding Up Rules, other statutes, judicial authorities and practice directions. There are other sources of civil procedure law some of which have overlapping or supplemental roles on the rules of court.
[40] The Constitution has an overriding power over all rules of court. Consequently, the rules of court must be construed and administered in a manner to ensure compliance and consistency with constitutional provisions, *Nuba v. Ogele* (2004) FWLR (pt 193) 262 pp @ 379-380, *Ojubwa v. Obasanjo* (2004) FWLR (pt 222) / 666.
[41] See for instance sections 254, 259, and 274 of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*.

dispute over a piece of land, at the trial court, the defendant failed to plead the purchase agreement upon which his case is built. As the document was tendered for admission, it was rejected and so marked. Counsel then sought to amend his pleadings in order to plead the rejected document. The application to amend his pleadings was rejected and his appeal up to the Supreme Court was dismissed. At the Court of Appeal, Opene JCA had this to say:

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In view of the frontloading concept, such document though not pleaded must be frontloaded. So the law as can be deduced above is that when a document is pleaded, it forms part of the pleading, it's existence being pleaded as a fact. The document will then at the appropriate time in the proceedings be tendered as the evidence in proof of those facts. As has been pointed out by Uwaifo JSC in *Brawal Shipping (Nig) Ltd v. F. I Onwadike Company Ltd & Ors.*[13]

> *It is not part of our procedure as it is / in England to attach documents pleaded to the statement of claim so as to make them possible to be read at once along with the pleading as was certainly the case in Day v. Williams Hill.*

This statement was made before frontloading was introduced. Having discussed the law as it relates to the admissibility of documents, we shall now proceed to examine this rules against the backdrop of the frontloading concept which as we have already seen requires that documents to be relied on at the trial must be frontloaded along with the originating processes.[14] Failure to so frontload will have the effect of leaving the admission of such documents at the bounty of the trial judge. For purposes of

[9] *Ibid*, pp. 621-622.
[10] (1995) 1 NWLR (pt 374) 641 @ 667, also *Monier Construction Co. V Azubuike* (1990)3 NWLR (pt 136) 74.
[11] *Alhaji Babatunde Thanni and V Sabalemotu Saibu & Ors* (1977) 2 SC 89; *U A C. Ltd v. Saka Owoade* 13 WACA 207.
[12] *Oba E A Ipinlaye II v. Chief Justius Olukotun* (1996) NWLR (pt 453) 143 @ 166 Per IGUH JSC.
[13] (2001) 2 SCNQR 1379 @ 1379. At the time of this decision the frontloading concept has not been introduced. The statement cannot now be correct.
[14] Or. 3. R. 2 (1).

clarity and lucidity, here is the unequivocal statement as laid down by the Rules:

> *Unless, at or before trial, a Judge for special reasons otherwise orders or directs, no document, plan, photograph or model shall be receivable in evidence at the trial of an action unless it has been filed along with the pleadings of the parties under these rules.*[15]

Flowing from this, it means that even when a document is relevant and was pleaded in accordance with the rules of admissibility, that alone will not automatically make the document to be admissible as the Rules require same to be frontloaded. The Rules give the Judge unfettered power to reject the document as the words used are "shall be receivable… unless". The word "shall" when used in a statute implies a mandatory obligation on the part of any persons so directed. It does not leave the doing of an act at the option of the actor; it is mandatory or imperative. In *Oloyo v. Alegbe*,[16] Nnamani JSC agreeing with the majority view as read by Eso JSC stated that "it is settled that if a statute declares that a thing "shall" be done the natural and proper meaning to be given to it is peremptory not directory. In *Ifezue v. Mbadugha*,[17] it was held that the words "shall deliver in writing not later than 3 months" is mandatory and imperative and not directory or permissive so that any Judgment delivered outside the three months limit is a nullity and of no legal effect. In this case, the court was construing Section 258 (1) of 1979 Constitution of Federal Republic of Nigeria now Section 294 (1) of the 1999 Constitution.

So the question that naturally comes to mind is, what rule now governs admissibility? Is it the rule of evidence or the High Court Rules. Does the mere pleading of a document and frontloading of it *ipso facto* mandatorily make it admissible? On the first part, civil litigation practice as a field of legal practice is largely governed and regulated by rules of civil procedures. The rules encapsulate a body of orders (rules and sub-rules) under which civil proceedings are conducted and administered. Civil procedure rules lay down the method of initiating proceedings and also stipulate the various steps and actions that are taken at every stage of any such proceedings. The modes of obtaining and receiving of evidence are all laid down in the rules.[18] The Rules are meant to be observed by all.[19] However, what the rules can do with respect to the reception of evidence is limited to procedural steps a party will take in order to have his evidence admitted. The Rules cannot purport to delve into the substantive issues of evidence. The Evidence Act has laid down how and when a piece of evidence is admissible or not and the rules which merely lays down the procedure for bringing such evidence before the court. Therefore, it is safer to conclude that as far as evidence is concerned, the rules of courts are limited to the issues of procedures. Anything short of this will be unconstitutional.[20] This is because, the constitution which creates the States High Court delegated the powers of making procedural rules of these High Courts to the Chief Judge of each state subject however to the law of the State's House of Assembly.[21] Therefore, the powers of the Chief Judge or the House of Assembly to make rules of court are subject to

[15] Or. 32 R. 4.
[16] (1983) 2 SCNLR 35 at 72. Also the dictum of Lord Campbell in *Liverpool Borough Bank v. Turner* (1860) 6 De GF & J 502 @ 507-8, *Stroud's Judicial Dictionary* 4th ed. Vol. 5 2514.
[17] (1984) 1 SCNLR 427; *Kpema v The State* (1986) NWLR 396.
[18] Apart from the rules of a particular court, the rules governing conduct of civil litigation are also derivable from other laws and most importantly the Constitution of the Federal Republic of Nigeria, 1999. Judicial powers of the Court are more importantly enacted by the Constitution under S. 6; so the courts are expected to act in accordance with Law establishing it.
[19] As far as the conduct of civil proceedings are concerned, the litigants, their legal practitioner, as well as the court itself are all bound by the rules. In the conduct of civil proceedings recourse must also be had to other relevant laws particularly the Constitution, the Evidence Act, the enabling statutes creating the particular court, the Sheriff and Civil Process Act, Judgment Enforcement Rules and other Specific Rules like the Matrimonial Causes Rules, Companies Winding Up Rules, other statutes, judicial authorities and practice directions. There are other sources of civil procedure law some of which have overlapping or supplemental roles on the rules of court.
[20] The Constitution has an overriding power over all rules of court. Consequently, the rules of court must be construed and administered in a manner to ensure compliance and consistency with constitutional provisions, *Nuhu v. Ogele* (2004) FWLR (pt 193) 262 pp @ 379-380, *Ojukwu v. Obasanjo* (2004) FWLR (pt 222)/666.
[21] See for instance sections 254, 259, and 274 of the *Constitution of the Federal Republic of Nigeria 1999 (as amended)*.

the Constitution. In the same vein, the Constitution provides for evidence in the Exclusive Legislative list,[47] an area exclusively preserved for the Federal Government wherein the States cannot purport to delve into. Pursuant to that power, the National Assembly enacted the Evidence Act.[49]

The Evidence Act therefore is superior to any law made by a state House of Assembly or Rules of Court made by the Chief Judge. Since it is the Evidence Act that governs the rules of admissibility, we shall next consider whether the High Courts Rules has in anyway infringed on this area of the law, that is, delved into the substantive rules of evidence instead of limiting itself to procedure. The question is whether the rules of court on the requirement of admissibility of evidence procedural or substantive in nature? If substantive, then it would be inconsistent with the Constitution and the Evidence Act. Or. 3 R. 2 merely lays down the mode of commencing an action. It does not provide that the frontloading of documents entails its automatic admission. Neither does it make written depositions sacrosanct as being receivable. They are still subject to the provisions of the Evidence Act. Order 32 of the Rules which deals with evidence generally has introduced a number of significant changes in the mode and manner of tendering and admitting evidence in civil proceedings. With respect to the mode of proof of evidence, Rule 1 provides that any fact required to be proved at the trial of any action shall be proved by written deposition and oral examination of witness in open court. The implication of this provision is that proof of evidence at trial is no longer to be by oral examination alone but must be in conjunction with the written deposition of a witness. As a matter of fact, it appears that the major form of proof is now written depositions as "the oral examination of a witness during his evidence-in-chief shall be limited to confirming his written deposition and tendering in evidence all disputed documents or other exhibits referred to in the deposition."[50]

Order 32, Rule 1 (2) provides that all documents not disputed by the parties shall be tendered from the bar or by the party where he is not represented by a legal practitioner. Although this practice has been growing in court lately, it appears that this is the first time the practice is backed up by the rules of court. Most importantly, it is provided that "no document, plan, photograph or model shall be receivable in evidence at the trial of an action unless it has been filed along with the pleadings of the parties under these rules". The Judge may however give a contrary order at or before trial but such contrary order must be for a special reason.

From the above provisions, the Rule does not intend and does not usurp the provisions of the Evidence Act as regards the admissibility of documents. It merely lays down the procedure of tendering documents. It does not in anyway determine or state how evidence becomes admissible. The Rule even demonstrates its willingness to respect the provisions of the Evidence Act and its superiority to the Rules when in Order 33 Rules 10, the provision relating to affidavits, it says that "the provisions of Sections 79 90 of the Evidence Act which set out provisions governing affidavits shall be applicable under these Rules. Based on the above findings, we are of the view that the frontloading concept has not affected or altered any known rules of admissibility.

The next question is whether the frontloading of document *ipso facto* makes them mandatorily admissible in evidence? This takes us to the philosophy or objective behind the frontloading concept. As pointed out, the concept was incorporated into the High Court of Lagos State (Civil Procedure) Rules

[47] Second schedule, part 1, item No. 23 of the Exclusive Legislative list of the Constitution of Federal Republic of Nigeria, 1999. Under the principle of vertical separation of powers, the Federal Government through the National Assembly has the exclusive right to legislate on all matters as contained in the exclusive legislative list. The state House of Assembly cannot venture into any matter on the exclusive list. The next Cadre, the concurrent legislative list, wherein both the National Assembly and the state's House of Assembly can legislative but with a Caveat under section 4 (5) Of the Constitution (Supra) that where a Law made by the State House of Assembly is inconsistency with a Law validly made by the National Assembly, that Law to the extent of its inconsistency shall be void. The next, though not provided or listed by the constitution is called the residual list which is a list of whatever that is left after the exclusive and concurrent list have been exhausted. The Residual list is the exclusive preserve of the state.
[49] CAPT E14 LFN 2004, formerly Evidence ordinance, which was passed in 1943, Ordinance No. 27 of 1943 but came into effect in June, 1945, Notice No. 618 in Gazette No. 33 of 1945.
[50] Or 32 R. 1 (3).

2004 as part of the overall framework for bridging the time it takes to commence actions and the time within which the actions are disposed off.[51] Literally, it involves bringing to court, at the time of filling 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 filling 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 filling 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 Or. I. R. 1 (2), 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 case,
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 front-loading 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 the new system is "Don't come into the court system until you are ready for a trial."*[52]

The above 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. Having seen the philosophy of the frontloading concept and what the Rule intend to achieve by asking parties to forward their entire case in advance including documentary evidence, it is safe to conclude that the Rules have not altered the rules of admissibility of evidence as far as frontloading is concerned. The fact that copies of documentary evidence are frontloaded or filed along with the originating processes does not ordinarily constitute automatic admission of the documents submitted. 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 significance of such documents does not necessarily go beyond the aforesaid policy or purpose. Even where such documentary evidence may influence the court at the pre-trial conference, it will be open for both parties to state their positions in respect of such document before the Judge prepares his pre-trial report. The Rules have not opened the floodgate for the admission of inadmissible evidence or secondary evidence without requiring the party

[51] Just like the concept of active case management incorporated unto the pre-trial conference procedure under Or. 25 of the 2004 Rules.
[52] F. Adekoya, SAN, *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.

tendering such document to lay a proper foundation. With respect to the admissibility or otherwise of hearsay evidence as well as any statement or fact not pleaded or frontloaded in the statement of a witness made on oath, the intendment of the Rules is achievable is so far as they are consistent with the provisions of the Evidence Act. Such statement on oath of a witness if hearsay will be expunged at the appropriate time since there is a savings provision encapsulating the desire of the Rules to comply with the provisions of the Evidence Act.[47] The intendment of the Rules is to extinguish the provisions of the old Rules which have been abused to constitute the foundation for perpetual delays in court proceedings.

Therefore, frontloading of documents does not dispense with the requirement of admissibility. Sakah, writing on the Indian Evidence Act, admitted this fact when he stated that:[48]

> *Mere making of a document as an exhibit does not dispense with its proof. In other words, the document upon which reliance is placed by the party must be brought on record legally. There is no provision in the Evidence Act which permits to admit the document if cursorily referred to by the other side while cross examining the witness or his opponent.*

The cardinal objective of the Rule is to drastically reduce the extensive time spent during the hearing of cases which sometime could span to years. This objective of the new Rule should be applauded. It is not likely that the Judge would administer the Rules in any manner that could render it inconsistent or confrontational with the traditional principle of law relating to pleadings generally or the rule of evidence regarding admissibility of secondary evidence or evidence that could be classified as hearsay.

At this juncture, it is pertinent to point out that pleading and frontloading work hand in hand. A document that is not pleaded cannot be acted upon even if it is frontloaded. Pleading being a rule of admissibility precedes frontloading. So in addition to frontloading a document which is a requirement of the rules, it is necessary if not compulsory to plead same as failure to do so would mean that evidence will not be given in proof of the document. Merely frontloading a document does not automatically make it admissible. In *Ugo v. Obiekwe & anor,*[49] Nnaemeka Agu JSC held that:

> *It is now perfectly settled that evidence called on any fact that needs to be pleaded but is not, goes to no issue at all at the hearing and ought to be disregarded.*

Therefore, frontloading does not dispense with the requirement of pleading.

Conclusions and Recommendations

The objectives of achieving a just, efficient and speedy dispensation of justice and resolving preliminary issues and narrowing down contentious or disputed issues for trial which frontloading was set out to achieve has been considerably blocked by the rule that objection to documents should be taken in *limine*. When written depositions and documentary evidence are filed along with writ of summons, the Rules expect that when hearing commences, it shall be disposed of as quickly as practicable. The evidence-in-chief of the plaintiff witnesses which usually takes a lot of time to conclude, sometimes years, having been reduced to a written form and the witness adopting same in court as his statement, the aim was to conclude trials speedily and expeditiously. With all this innovations most if not all the factors that cause delay in the trial process has drastically been removed.

However, it is strongly suggested there should be included a provision on the statement on oath of witnesses requiring subpoena, and which statements need not be filed at the commencement of the suit.[50]

[47] For example, Order 33 Rule 10, Lagos Rules.
[48] Sakah on Evidence: 15th Edition (1999) vol. I. S. 1-100, p. 1055. In support of his submission, Sakah cited cases amongst which is *Saint Tarajice v. Yelamarti. A* (1971) 3 C 1856.
[49] [1989] NWLR (pt. 99) 566; *Ogboda v. Adulugba* [1971] All NLR 681; *Nce B. Chigbu v. Toni Max Nig. Ltd. & anors* [1999] 3 NWLR (pt 593) 115.
[50] See the Proviso to Order 3 Rule 3(1) (e) of the Federal High Court (Civil Procedure) Rules 2009.

It seems the wisdom of the provision would be 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 proceeding 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.[51] Really, it is what makes subpoenaed witness unwilling that at the same time dissuades him from making statements on oath or furnishing the required document 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 Court of Appeal determination on frontloading issue as formulated in *Olaniyan v. Oyewole.*[52] It is an issue that arose from the interpretation of Order 2 Rule 2 of 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 document can only be secured through subpoena. In addition to determining this issue in the negative, Ogunwumiju, J.C.A 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.*[53]

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.[54] The Chief Judge of Lagos State may do well to consider the inclusion of similar provision into the Lagos Rules.

More still, it is our candid opinion that this objective of frontloading will not be realized unless objections to the admissibility of documentary evidence which is taken in *limine* is seriously reviewed. The rule as it stands today places a very serious barricade to expeditious disposal of case. It is itself another agent of delay which unless something is done, will continue to block the objectives of frontloading. These objections to admissibility of documents sometimes takes days, weeks and even months for Counsel to finish their argument and for the Judge to prepare his ruling. While this argument rages on, the substantive suit is stayed until after the objection is disposed off. Even after the court's ruling on the objections, which can either be to uphold the objection or refuse it, that may not be the end of the matter as the aggrieved party can decided to go on appeal. While the interlocutory ruling is on appeal, the substantive suit suffers. Most times the aggrieved party will apply for stay of proceedings[55] at the trial court pending the determination of his appeal against the interlocutory ruling. If the stay is

[51] See B.A. Garner (ed.), *Black's Law Dictionary*, 7th Ed., West Group, Minnesota, 1999, p.1440.
[52] [2008] 5 NWLR (pt. 1079) 114-146 C.A.
[53] *Ibid.*, 139-140.
[54] See the First Proviso to Order 3 Rule 3 (1)(e).
[55] A stay of proceedings is meant to suspend a proceeding before a court pending the determination of an interlocutory appeal. This arises where there is an appeal on a point or issue that came up in the course of proceedings. Here, no rights are suspended because none has accrued. It is available to any party to the proceeding whether plaintiff or defendant. The Supreme Court had emphasized that where the ruling appealed against will not dispose of the case it will be wrong to order a stay of proceeding since the applicant can wait until final judgment and make the rule or order a ground appeal if it becomes necessary. *Gomwork v. Okwuoga* (1996) 3 NWLR (pt 339) 181, *Societes General Bank Nigeria Ltd v. Integrated Foam Industry Ltd* (2001) 1 NWLR (pt 640) 319. The Supreme Court had laid down the conditions for the grant of stay of proceedings, one of which is that the trial court will consider whether the interlocutory order will finally disposes of the case or not. See again *Liyange v. SAN* (1998) 14 NWLR (pt 582). In *Amadi v. NNPC* (2000) 10 NWLR (pt 674) p. 76 a 13-year period of delay was occasioned as a result of appeal against an interlocutory ruling.

granted, the appeal may travel up to the Supreme Court, as this goes on, years fly by. At the end of the exercise the Supreme Court will either dismiss the appeal and affirm the ruling of the trial court or it will allow the appeal and set aside the trial court's ruling. Either way, the parties will return to the High Court and continue from where they stopped. Sometimes, the trial court judge may have retired, been transferred or even died and the matter will again start *de novo*. And there is no guarantee that another objections to admissibility of document will not arise. So a counsel who wishes to frustrate the proceedings of the court will always hide under this practice and will be legally protected. The introduction of the case management concept notwithstanding, such a mischievous legal practitioner would still have his way as the Judge cannot validly stop him from appealing against an interlocutory ruling, as appeal is a constitutional right.[39] It may be apropos to make the following responses.

It is true that by way of frontloading, it is possible that parties may well in response to the full disclosure requirements at case commencement and the tight deadlines which accompany them, "overload" their case, throwing in issues and documents that are irrelevant to the issues in hand on the basis that they can always be pruned down later on. It is also true that parties may as well throw in all manner of documents if they are to be admitted provisionally on the basis that at the address stage, it will be expunged or in most cases, they will get away with it. This is because, both the Judge and the opposing Counsel are human beings with all the inherent weaknesses that are associated with human nature, as a result, there is possibility that they may forget to address Court on the admissibility of the documents provisionally admitted. Yet, one may want to say that by allowing parties to tender documents provisionally, people will begin to drop patently frivolous and usually useless documents knowing that the opposite party will argue on it later, that a lot of time will be wasted in the course of addressing the court later on.

It may also be argued that it would be neater and better if such objections are taken up immediately the documents are sought to be admitted. Another argument that will confront this initiative is that though the Judges are professionally trained, the danger of being biased or prejudiced is still there. It ought to be noted that the reason behind the introduction of this rule under the English Jury system, is mainly to prevent the jury from coming into contact with inadmissible documents so that they will not influence one way or the other the decisions of the Jury. In Nigeria, we do not have the Jury system and it is the same Judge who decides both questions of law and of fact. So that it now makes no difference when the objection to admissibility is taken, whether at address stage or when it is been tendered. Either way, he can still be prejudiced if he wants. In *Prince Ladejobi & ors v. Otunba Oguntanyo & ors*,[40] it took almost eleven months for the court to conclude the evidence-in-chief of one witness, mainly because of objections against admissibility, which were taken up one after another in the course of trial. It would have made a lot of difference had those objections been reserved until the address stage when parties will then address the court on its propriety or otherwise.

Another possible powerful argument against this proposed initiative is the fact that in most cases, the case of a party will be built entirely on a particular document and that once that document is taken off, the case will collapse naturally. It is further argued that by admitting the document provisionally until the address stage, the opposite party will incur a lot of expenses by coming to court to answer to a case that is bound to die; that it will reduce a lot of expenses on the parties if the document is rejected early enough, and that it will even encourage the parties to explore alternative means of settlement instead of insisting on litigation. Despite the foregoing agitations, there is no guarantee that the aggrieved party after the

[39] Under section 241 (1) (a) of the Constitution of Nigeria, 1999, an appeal shall lie from the decisions of the Federal High Court or a High Court of a State to the Court of Appeal as of right in final decisions in any civil or criminal proceeding before the Federal High Court or a State High Court sitting at first instance. A ruling on the admissibility of document is a final decision which is only amenable to an appeal. The High Court cannot even set it aside because after giving his decisions, it becomes *functus officio* in respect of that issue expect where the ruling falls within those cases where the order was a nullity. In *Obimonure v.Erimusha* (1966) 11 ALL NWLR 250, it was held that the inherent jurisdiction of a court to set aside its judgment or order is limited to judgments or orders which are nullities. Also in *Nwosu v. Udeaja* (1990)1 NWLR (pt 125) 188. Nnaemeka-Agu JSC at p. 219 doubted the propriety of the procedure whereby a judge admits some documents as exhibits and later turns round to reject them as inadmissible. His Lordship stated that the procedure has not the support of decided cases, unless, of course the original decision to admit them was null and void. See also *Ogbu v. Urum* (1981) 4 S. C. I.

[40] An unreported Suit No. ACI/70/95 of which judgment was delivered on 25th day of July 2008.

ruling rejecting the document will not appeal against the said ruling, and a lot of time may be wasted in the course of this process. In *Ita v. Ekpenyong*[41] a document was admitted provisionally by consent of parties and an appeal against such procedure was dismissed as lacking in merit.

Finally, the most likely potent and deadly argument against our recommendation will be anchored on the plethora of judicial precedents that insist that unless a party object to the admission of a document timeously, that the party is forever foreclosed from complaining against such admission unless the document is one which by law is inadmissible.[42] That such document will constitute legal evidence upon which the court can base its decision.[43] And herein lies our problem. This is because decisions of court, especially the apex court and the Court of Appeal are part of our law which the lower courts are bound to follow and apply.[44] So how can we be advocating for a procedure that will be inconsistent with already established judicial precedents. Hence, such reform will not have judicial and statutory support or sympathy. However, we will disagree with the antagonist of this reform. First, the origin of this practice in our adjectival law cannot be traced to any legislative or statutory enactment. It was introduced as part of the Received English Laws into our Jurisprudence. And we have by the introduction of the new Rules jettisoned most of the archaic products we copied from England which are now out of place. There can be no gainsaying that objections to admissibility in *limine* is still part of the relics of colonial legacy on our judicial/legal system that needs to be thrown away. The best way of achieving this is by incorporating into the High Court Rules of various States that objections to admissibility should be reserved until the address stage. This is to help solve the problem that will arise by the already established judicial precedents on the topic. By so enacting or incorporating such a rule into the High Court Rules, the existing judicial precedents on the matter which are against such a procedure will become impliedly abandoned.

As the court observed in *Ita v. Ekpenyoung*:

> *...though such a procedure is not highly commendable in all cases, it should not be condemned outright. It can be used depending on the circumstance of each particular case especially where there is need for urgency and expeditious hearing and determination of a case. The important thing is that the trial court should eventually take argument from counsel for the parties on the admissibility of the document provisionally admitted in evidence and decide on it one way or the other before writing his judgement and making use of it the Judge, if he decides that the document is admissible...*

The objective of introducing this initiative is to encourage speedy disposal of cases which is the reason behind the Lagos High Court Rules, especially the frontloading system and case management concept encapsulated in the pre-trial conference provisions. A further innovation in the area of admitting documents provisionally will advance the actualization of the objectives of the new Rules, especially toward the achievement of just, speedy and expeditious dispensation of justice.

[41] *Supra.*

[42] *Owonyi v. Omotosho (1961)* All NLR 304 at 308 or FSC (1962) W.N.L.R.1; *Minister of Lands, Western Nigeria v. Dr Nnamdi Azikiwe & Ors (Unreported) Supreme Court SC 169/68 (1969).* etc.

[43] *Akunne v. Ekwuno & Ors (1952) 14 WACA 59.*

[44] This doctrine of judicial precedent or *stare decisis* provides that lower courts are bound by the decision of a superior court. They are bound to follow it irrespective of whether the decision is good or bad. *Afro Continental Nigeria Ltd v. Ayantoyi* (1991) 3 NWLR (pt 178) 211.