

CIVIL PROCEDURE RULES IN OYO STATE

INTRODUCTION

In this article, an attempt is made to give an overview of the High Court (CIVIL PROCEDURE) Rules 2010 of Oyo State (hereinafter referred to as “the Rules”). The Rule is a piece of subordinate legislation that brings together under one enactment the rules of procedure applicable to the Oyo State High Court. This legislation enacted on 17th February, 2010 to repeal the old High Court of Oyo State (Civil Procedure) Law (No. 10) of 1988 came at the right time when there was obvious and discouraging delay in the dispensation justice in the State. The purpose of the rules as spelt out in Order 1 Rule 2 is to achieve the just, speedy and inexpensive resolution of disputes and also to avoid a multiplicity of actions.

Under the old law, defaults in complying with the rules were categorized into two namely – mere irregularities and fundamental irregularities. Whilst the former was capable of being rectified or waived either by the parties or the court the latter was said to be of such a nature that once it occurred the proceedings resulted in a nullity.

Civil procedure generally is a body of rules that regulate the conduct of civil proceedings. It lays down the manner by which such proceedings (civil) are commenced, the steps that are taken at any particular stage thereof and how such steps are to be taken. It also caters for the modes of enforcing the resultant judgment. As far as the rules are concerned, the court and the parties are bound by the rules. The purview of civil procedure is as wide as civil litigation itself.

The above may be regarded as the core of Civil Procedure but its scope extends further and an attempt would be made to elucidate some areas that are essential.

The sources of Civil Procedure includes: the Rules of Practice of the High Court of Justice in England, the Constitution, the Statute creating the Court, the Rules of Court, the Sheriffs and Civil Process Rules, decisions of Superior Courts on procedural matters, other Statutes and Practice Directions.

Below is an analysis of the various stages through which an action may have to pass before it is finally disposed off, including execution processes. These stages may be broken down as follows (not exclusive): (1) Commencement of Actions; (2) Pleadings (3) Pre-trial Conference (Discovery) (4) Trial (5) Judgments and Orders (6) Execution or Enforcement of Judgments.

COMMENCEMENT OF ACTIONS: The rules regulating the initiation of actions or proceedings are contained in Order 3. In substance, the rule deals with the form that a Writ may take as it enters the court system. As a rule every writ has to be accompanied by a Statement of Claim – See Order 3 Rule 2. In issuing the writ, the plaintiff has to comply with the provisions on venue or convenient forum contained in Order 2. In the event of non-compliance with these provisions, the defendant may raise an objection to the jurisdiction before or at the time that he is required to plead to the action. Where no objection is taken, the case may be proceeded with or the judge may report its pendency to the Chief Judge for his direction as to the venue. Where an objection to the jurisdiction is considered meritorious by the court then the judge shall inform the Chief Judge that in his opinion the action

ought to have been commenced in another region and the Chief Judge may make such orders as he considers appropriate. It is to be observed that the provisions on convenient forum that use the word “jurisdiction” do not refer to the word as it is commonly employed in the literal sense to mean that the court does not have jurisdiction over the defendant in respect of the claim made or relief or remedy sought in the action but should be limited to an irregularity arising only out of commencing an action in the wrong forum.

PLEADINGS: The rules on pleadings are contained in Orders 15, 16 and 17 of the Rules. The provisions are intended to make the parties put forward in an intelligible manner for the consideration of the court, the matter(s) in contention. As said earlier on, the plaintiff is required to serve a Statement of Claim at the same time with the writ on the defendant. Upon service on him the defendant if he is desirous of contesting the action may enter an appearance and file a defence to the action before the expiry of fourteen days after the time allowed under the rules for appearance.

PRE – TRIAL CONFERENCE (DISCOVERY): the Rules introduce an obligation on parties to have a mutual discovery of documents otherwise referred to as Pre-Trial Conference. Order 25 Rule 1(1) in this regard provides: “Within 14 days after the close of pleadings, the claimant shall apply for the issuance of a pre-trial conference notice as in Form 17”. The Rules contained in Order 25 appear to be a departure from the position that prevailed under the old enactment. Writing on the subject of discovery under Order 24 of the Rules of the Supreme Court England, 1964 that has almost the same expression as Order 25 of the Rules, the learned authors in Halsbury’s Laws of England, 4th edition, Volume 13 paragraph 1 at page 2 state as follows: “The function of the discovery of documents is to provide the parties with the relevant documentary material before the trial so as to assist them in appraising the strength or weakness of their respective cases, and thus to provide the basis for the fair disposal of the proceedings before or at the trial. Each party is thereby enabled to use before the trial or to adduce in evidence at the trial relevant documentary material to support or rebut the case made against him, to eliminate surprise at or before the trial relating to documentary evidence and to reduce the costs of litigation.”

TRIAL: After the action has been set down for trial and service of the requisite notices for the notice of the trial has been complied with, the matter comes up before the judge normally for a full scale trial in which the parties tender evidence and are cross-examined. At the conclusion of the case by the party on whom the initial burden of proof rests, his adversary also gives his evidence and may call witnesses in support. After the case for the second party is closed the court is to give a date for addresses and then deliver its judgment not more than six weeks after the delivery of the addresses by the parties.

JUDGMENTS AND ORDERS: The judgment of the court is normally pronounced in open court after the parties have been notified to that effect. There are several orders that may be made by the court depending on the reliefs claimed in the action. In a land cases (which are prevalent in Oyo State), the court may make an order for declaration of title, perpetual injunction, recovery of possession, specific performance, damages. In some land cases, the court may make an order directed at the judgment debtor to execute a conveyance in favor of the judgment creditor. When, however, this is not complied with the court upon being so satisfied as to the default may direct the Registrar of the Court to execute the conveyance in the stead of the disobedient party who under the Rules is liable to

be proceeded against by way of execution for the costs incurred in carrying out the order that he has disobeyed.

EXECUTION AND OR ENFORCEMENT OF JUDGMENTS: The mode of execution depends on the reliefs granted by the Judge in his judgment. In cases of money or debts the usual mode is by writ of *fifa* and garnishee proceedings. In land cases there are various types of writs of execution such as writ of possession and writ of delivery. Where there is an order of perpetual injunction this may be enforced by attachment but it appears that this is a relief available only to the High Court. In certain cases, execution does not issue without leave of the court to be obtained by an application made *ex-parte* to the court. See Order 35.

This write-up examines the ways the rules have been improved for the achievement of a just, efficient and speedy dispensation of justice. It must however be stated that High court rules are not ends in themselves. It, like all other rules guiding human conducts, is drawn on the basis that they will assist towards the attainment of an objective as espoused above. As human nature is not constant, the Rules need to be constantly revised in conformity with changing demands for speedy and efficient dispensation of justice.