

REQUIREMENT OF ENDORSING ORIGINATING PROCESSES WITH ORDER TO MAINTAIN STATUS QUO UNDER THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY, ABUJA (CIVIL PROCEDURE) RULES 2018: AN APPRAISAL*

Abstract

The new High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2018 in line with its overriding objectives of effective and expeditious trial contains some ground breaking and innovative provisions. In illustration, the new Abuja rules provide for the case management mechanism of Pre-trial Conferences as well as the simple Summary Judgment Procedure under its Order 11; all of which it adopted from the High Court of Lagos rules, 2012. The new Abuja rules also provides for the mandatory fixing of lawyers' seal to originating processes. One of the new provisions, which this work critically analysed was its Order 4 Rule 9; which requires the Registrar to endorse all originating processes with the order that parties maintain status quo until the court otherwise orders. Prior to this, interlocutory injunctions were the only means of getting an order to maintain status quo. The analysis found that the provision seeks to make trials faster by removing the need for the time wasting interlocutory applications, but in doing so raises some fundamental questions. For instance, does the rule imply the abrogation of interlocutory applications before the High Court? Does the provision bind agents and privies of the parties to the suit? Is it an order of court, the breach of which can be addressed by contempt proceedings? Who indemnifies a party if losses are incurred by the party who eventually succeeds? What safeguards are there to prevent abuse by the filing of frivolous suits simply to restrain the other party? It was recommended that the provision be strengthened to achieve its goal.

Keywords: Endorsement, Originating Processes, Order 4 Rule 9, High Court of the Federal Capital Territory (Civil Procedure) Rules 2018, Appraisal

1. Introduction

New rules were issued for the High Court of the Federal Capital Territory, Abuja which took effect from the month of January of 2018. In order to meet up with the national and global trend of increased access to courts, better case management and effective and less cumbersome court procedure, the new rules came up with several innovative provisions. In addition to the adoption of the Pre-trial Conferences,¹ the Summary Judgment Procedure² and giving more teeth to the obligation of affixing lawyers' seal³ to originating processes, the new rules introduced a requirement of an endorsement on all originating processes; to the effect that parties must maintain *status quo* during the pendency of a suit. *Order 4 Rule 9*⁴ provides as follows: 'Every originating process shall contain an endorsement by the registrar that parties maintain *status quo* [] until otherwise ordered by the Court'. Plausible as this rule may seem, it raises fundamental questions regarding its application and effect. This is especially so when viewed against the erstwhile procedure of applying for interim and/or interlocutory injunctions, where there is need in an action to maintain *status quo* so as to protect the *res* or prevent it from being dissipated thus defeating the claim. The necessity for injunctions is more so in actions respecting ownership or trespass to property or indeed other claims for declaration or enforcement of rights. The issues raised by the rule which agitate the mind of the writers are legion. In illustration some of the issues are: does the rule imply the abrogation of interlocutory applications before the High Court? Is the provision wide enough to stop every conceivable act? What is the effect of the failure to make the endorsement? Does the provision bind agents and privies of the parties to the suit? What

***Dauda Umaru DEWAN, LLM (Jos), BL,** Lecturer, Nigerian Law School, Kano. dewandauda@nigerianlawschool.edu.ng

***Salmanu Mohammed RILWANU, LLM (ABU), BL,** Lecturer, Nigerian Law School, Kano Campus. rilmwanu71@gmail.com

¹ A Conference before the trial to deal with interlocutory matters, alternative dispute resolution options or determine the future course of the case. See *Order 27 High Court of the Federal Capital Territory (Civil Procedure) Rules 2018 (HCCPRs)*. Referred to as Case Management Conference in other jurisdictions such as Lagos from where the procedure was adopted by other jurisdictions.

² In addition to the Undefended List Procedure in *Order 37 HCCPRs FCT 2018*, Summary Judgement Procedure under its *Order 11 HCCPRs FCT 2018* which is less cumbersome and applies to claims beyond liquidated money demands, recoverable under the undefended list is one of such innovations.

³ *Order 2 Rule 9 HCCPRs FCT 2018*, See Rule 10 of the *Rules of Professional Conduct (RPC) 2007*.

⁴ *HCCPRs FCT 2018*

is the effect of the provision, in terms of its force and consequence of failure to comply? Is it an order of court, the breach of which can be addressed by contempt proceedings? Who indemnifies a party, if losses are incurred by the party who eventually succeeds? Does the order terminate at the conclusion of the case? What are the benefits of the provision? What safeguards are there to prevent abuse by filing frivolous suits simply to restrain the other party? The answers to these questions will be the task of this paper in its four parts. While the first part is introductory, the next two parts deal with discussions on relevant concepts and the objectives of the rules, and in particular, the provision of *Order 4 Rule 9*. Analysis of the issues thrown up and comments on the effect of the provision of *Order 4 Rule 9* of the rules will form the concluding part of the work.

2. Overriding Objectives of the High Court of the FCT (Civil Procedure) Rules 2018

Order 1 Rule 2 of the rules sets out the objective of the rules. It states that the ‘...rules shall be directed towards the achievement of a just, efficient and expeditious dispensation of justice.’ Simply put, the rule targets a more efficient and speedy dispensation of justice. In order to achieve this, in view of importance of lawyers in administration of justice,⁵ the rules further enjoins counsel and the parties to assist the court to further the overriding objectives of the rules.⁶ The rules are meant to improve on the rules⁷ which it replaced by making innovative provisions to deal with the great evils of our judicial system, which are slow trial - where trials go on for years unending - and the procedures and processes that are not as efficient. The efficiency and speed of a judicial system has economic and political as well as developmental implications for a nation. *Order 4 Rule 9* is one of the innovations in the 2018 FCT rules, geared towards making trials more efficient by preventing the dissipation or alteration of the subject of a suit pending trial. It is intended also to speed up trials by obviating the need for applications for injunctions before trial, which in most cases is time consuming, especially where interim and interlocutory orders are sought first rather than face the trial.

3. Features of *Order 4 Rule 9* High Court of the Federal Capital Territory (Civil Procedure) Rules 2018.

The rule underscores the overarching objectives of the rules. This appears to be the trend throughout the country⁸ in view of the complaints on how inefficient the judicial system has become in delivering speedy and efficient decisions. The essence is to ensure efficiency of the judicial system so that the subject matter of a suit is protected until a decision is made by the court on how to deal with it. Secondly, it is meant to guard against the delay of trials which applications for interlocutory injunctions may occasion. The endorsement is required by the rules to be made on all origination processes, i.e. Writs of Summons, Originating Summons and Motions and Petitions.⁹ It should be noted that the rule requires the registrar to make the endorsement on all originating processes that parties should maintain *status quo* pending until otherwise ordered by the court. It will appear that the provision is mandatory. The use of the peremptory ‘shall’ indicates that it is a command to the Registrar to ensure that all originating processes carry the endorsement. There is nothing in the rule to suggest that it is not a mandatory provision to warrant a permissive interpretation as held by the court in *Okpala v DG, National Museum and Monuments*.¹⁰ Parties have no discretion in electing whether there is need or not to maintain *status quo*. The effect of the endorsement, that parties maintain *status quo* can however be varied. This is because the rule provides that the *status quo* be maintained ‘... until otherwise ordered by the court.’ It means that the effect of the order may be vacated or modified. It is submitted that the vacation or modification by a court can be actuated or procured by parties on application or on the Court’s own motion. The discretion of the court of court will be determined by compelling facts placed before it.

Is the Endorsement an Order of Court? The question is pertinent in determining that nature of the provision. Does the provision stand at par with an order of injunction as to lead to that same consequence in the event of breach? It is contended that it cannot be equated with an order of court for two reasons. Firstly, the endorsement is required to be made by the Registrar and not the Judge. It is therefore not the outcome of

⁵ See Rule 30 RPC. A lawyer is an Officer of Court and as a Minister in the Temple of Justice, they must not do anything to obstruct or delay the course of justice or abuse the process of court.

⁶ *Order 1 Rule 2 HCCPRs FCT 2018*.

⁷ *High Court of the Federal Capital Territory (Civil Procedure) Rules 2004*

⁸ The new High Court rules of Lagos, Kano and Jigawa contain similar overriding objectives. See for instance *Order 2 HCCPRs Lagos 2019*.

⁹ See *Order 1 Rule 5 HCCPRs FCT 2018* defines ‘Originating Process’ as ‘Court Process’ by which a suit is initiated. Court process is also defined as including the four modes of commencing an action highlighted above.

¹⁰ (1996) 4 NWLR (pt. 444) 587

a judicial function or the exercise of judicial powers by a Court. *Order 45*¹¹ which provides for the businesses which may be transacted by a Registrar as a Judge, does not include the task of endorsement of originating processes under *Order 4 Rule 9*.¹² The businesses to be transacted by the registrar pertain to applications for taxation and delivery of bills etc., taking account as ordered by the court, taxation of bills of cost and applications leading to the grant of probate or letters of administration of estates in non-contentious or common probate business. Secondly, unlike a positive order of courts, failure to comply with *Order 4 Rule 9*, which is in the main a court summons, simply leads to the proceeding going on in one's absence and cannot lead to sanctions as would positive injunctive orders, where at least one party may have been heard on an affidavit of urgency setting out facts upon which the court should exercise its jurisdiction. The point being made is that even though the endorsement is a command, it may not be equated with a positive order of court pursuant to an injunctive order after consideration of application to make same.

What Stage of a Dispute is the Status Quo? The provision under consideration requires that an endorsement be made, requiring all parties to an originating process to maintain *Status Quo* until otherwise ordered by a Court. The question that this necessarily begs is; what stage, state or point is the *status quo* that parties are expected to maintain in each case? In answering this question, the Supreme Court in the case of *The Military Governor of Lagos State & Ors v Ojukwu & Anor.*,¹³ held that *status quo* is the status that existed before the controversy or dispute or suit or the action commenced. In the case, the respondent before the Supreme Court who had been in peaceable possession of the subject matter of the suit for more than ten months, sued the appellants following letters they sent to him requiring him to move out of the premises or be ejected. The Court held that the *status quo* was the peaceable status of the property which preceded the letters or the action he brought against the appellants and, not the status that arose as a result of the trial judge's ruling granting an order of possession to the appellant against which ruling there was a pending appeal.¹⁴ The trial judge's ruling, the court held was made in *medio litis* i.e. in the middle of the dispute and cannot be the *status quo ante litem*.¹⁵ What this translates to, is that, *status quo* is the 'peaceable state' before steps were taken that resulted in the dispute. Nwadiolo¹⁶ posits that the 'peaceable state' refers to the; '... actual, peaceable, uncontested *status quo* [] preceding the pending controversy, as distinguished from the status quo effected by a wrong doer before the institution of the suit.' It means that *status quo* is the state, in terms of where an application is made for an injunction, where the parties were before the respondent embarked on the activity that is sought to be restrained. It is often said that where a peaceable state precedes litigation then that state is the *status quo*. Where however the state has been unlawfully disturbed or interfered with, which resulted in the law suit, then, the status quo is not the state preceding the suit but the peaceful state preceding the unlawful interference. In a nut shell, *status quo*, a Latin phrase in a narrow legal sense means the 'peaceful state' before a suit is instituted. In the context of the provision of *Order 4 rules 9*¹⁷ the *status quo* required to be maintained by parties is either the peaceful state preceding the suit or if there was a preceding interference or disturbance then the peaceful state before the unlawful interference. This will usually be a question of fact which will be determined from the facts i.e. the pleadings before the court.

4. Order 4 Rule 9 and Related Principles Compared

A comparison of the provision of the rules under consideration with related principles is germane in an analysis of this nature. The provision will be compared with interlocutory injunctions and the doctrine of *lis Pendens*.

Or. 4 r. 9 Order vs. Interlocutory Injunctions: It has been stated that the provision of *Order 4 Rule 9* seem to have the same effect for which interlocutory injunctions are used, i.e. to maintain *status quo* in an action pending the determination of a suit. This work pertains to the implication of the innovative provision of *Order 4*, hence a discussion on the nature of interlocutory injunctions which in many ways is similar but with some differences is apposite. Interlocutory injunctions are restraining orders meant to preserve the subject

¹¹ HCCPRs FCT 2018.

¹² *Order 45 Rule 2(a)-(d)* HCCPRs FCT 2018.

¹³ (1986) 2 SC 277 at 317, Cited in Fidelis Nwadiolo, *Civil Procedure in Nigeria*. (2000, University of Lagos, Press) 581

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ Ibid at 582.

¹⁷ HCCPRs FCT 2018

matter of dispute by maintaining *status quo* pending the determination of a suit. This means that at the termination or conclusion of a suit, they cease to have effect. This is in contrast to perpetual injunctions which are substantive orders, obtained pursuant to prayers in a substantive suit; usually captured in the originating process. Interlocutory applications on the other hand are procured by means of interlocutory applications, whether Motion Ex parte¹⁸ or on notice.¹⁹ Interlocutory injunctions are important to prevent substantial alteration or dissipation of the subject matter of a suit. For this reason, a condition for the grant of an injunctive order is that it must be premised on a claim where the applicant is claiming a legal right. So the application is usually made by the claimant. The defendant can however apply for an injunction where they are also making claims to the subject matter, usually expressed in a counter claim.²⁰ In terms of the similarities, as is the case with the provision of *Order 4 Rule 9*, interlocutory injunctions can be made only where a suit exists before the court. The court underscored this point in *Adebomi v Haro DC*,²¹ where it held that a court cannot make an order of injunction in respect of a matter before another court. Also the provision of *Order 4 Rule 9* entails an endorsement on the originating process which presupposes the existence of a suit. The point has also been made that both interlocutory injunctions and *Order 4 Rule 9*, have the goal of preserving the *res* so as to prevent its irreparable alteration or dissipation.

On differences, from the nature of the application, interlocutory injunctions are usually obtained through formal applications; by a motion ex parte or on notice, supported by affidavit evidence. No formal application is required in the case of *Order 4 Rule 9*. On the basis of making the order of interlocutory injunctions, as an equitable relief, the court has discretion to grant or refuse the order. The court's discretion is usually premised on the facts in the affidavit evidence presented before it. In contrast, *Order 4 rule 9* takes effect upon filing of the suit regardless of the facts. It must be noted though that the discretion must be exercised judiciously by evaluation of the facts relative to the conditions for the grant of an injunction. Also, on the conditions for the grant of an injunctive order pursuant to an application for interlocutory injunction, the principles are as enunciated in *Obeya Memorial Hospital v Attorney General of the Federation*²² by the Supreme Court as the existence of a legal right by the applicant in the subject matter; the existence of substantial issues to be tried, balance of convenience is in favour of the applicant, that irreparable damage will be caused to the applicant if the order is not made, a consideration of the conduct of the parties and an undertaking as to damages. *Order 4 Rule 9* on the other hand, does not take into account these conditions before the endorsement is made or the order takes effect. The conditions stipulated by judicial rule making are to safeguard against the abuse of the order. This it is submitted leaves the *Order 4 r. 9* Order open to abuse. For instance where a party intends to stop another from working on a property, they will simply file an action, which may indeed be frivolous, but will carry the endorsement requiring parties to maintain *status quo*. And with Nigeria's slow adjudicatory process,²³ by the time the issues are resolved, maximum and irreversible damage will have been occasioned.

Order 4 r. 9 vs. the Doctrine of Lis Pendens: A discussion on the doctrine of *lis pendens* further clarifies the context of the provision of *Order 4 Rule 9*. This is because they are in some ways related but the limitations of the doctrine provide the context for the application of *Order 4 Rule 9*. What then is the doctrine of *lis pendens*? *Lis pendens* is an abridgement of the Latin maxim fully expressed as '*lis pendent lite nihil innovetur*' which translates to; nothing should change while a suit is pending. It constitutes a notice that a property is a subject matter of a court action and any interest acquired or transferred is subject to the decision of the court arising from the outcome of the suit. The effect is to restrict or prevent sale of any interest in land during the pendency of a suit.²⁴ The Court of Appeal in *Akiboye v Adeko*²⁵ held that the doctrine evolved to prevent one party from fraudulently over reaching the decision of a court granting title to another on the basis

¹⁸ Interim injunctions which last until a named date or when parties can be heard on notice.

¹⁹ Interlocutory Injunctions pending the determination of a suit.

²⁰ *Nigerian Cement Co. v NRC (1992) 1 NWLR 747*

²¹ (1965) NMLR 242

²² (1987) 3 NWLR 325

²³ See *Ariori v Elemo* (1983) 1 SC 13, where an action took 23 years before getting to the Supreme Court.

²⁴ *Ezomo v N.N.B. Plc.* (2007) ALL FWLR, Pt. 368 at 1032, cited in Y. Y. Dadem, *Property Law Practice in Nigeria* (2015, 3rd Edition, Jos University Press Ltd) pg. 223

²⁵ (2011) 6 NWLR (pt. 1244) 415 cited in Olorunmaiye Joshua, 'The Doctrine of *Lis Pendens* in Nigerian Property Law,' *Opinion Nigeria* <www.opinionnigeria.com/the-doctrine-of-lis-pendens-in-nigerian-property-law-by-olorunmaiye-joshua/> Accessed 9/3/2019 at 5.31pm

of the argument that title has been transferred before the decision of the court. The doctrine principally applies to cases where title to property is in issue, and serves to prevent sales during the pendency of the suit. But where sale occurs, the title is not void, but must abide by the decision of the court. The court in the case of *EFP Co. Ltd v. NDIC*²⁶ set out the conditions that must exist before the application of the doctrine. It must be noted that all the conditions must coexist in order to invoke the doctrine. The conditions are; The existence of a pending suit on a property; The property subject of the suit is an immoveable real or landed property, not personal property; The dispute is in respect of the title or ownership of the property; The concerned party was aware or ought to be aware of the suit.

The doctrine of *lis pendens* is similar to the provisions of *Order 4 Rule 9*²⁷ in that it pertains to the protection of property subject of a suit from being conveyed during the pendency of a suit, so as prevent the eventual decision of a court from being overreached. Another similarity between the two is that they take effect at the commencement of a suit without any positive order of the court as in the case of interlocutory injunctions. It can be said that in both cases, it takes effect by operation of law. The doctrine of *lis pendens* is however not as wide as the provision of *Order 4 Rule 9* and in many other ways there are marked differences between the doctrine and the rule. They are;

1. While the doctrine is applicable only to real or immoveable property,²⁸ the rule applies to all actions.²⁹
2. The provision of *Order 4 Rule 9* requires an endorsement to be made on the originating process to make it effective, however, in case of the doctrine; no such requirement exists. Once an action has been filed and served it becomes effective.
3. In case of the provision of the new rule, a court can order otherwise i.e. the order to maintain *status quo* can be vacated or modified, but no such possibility is contemplated by the doctrine of *lis pendens*.
4. While the breach of the *lis pendens* rule can be remedied in a separate suit after judgment, failure to comply with the new rule can be addressed by the court during the pendency of the trial.
5. While the new rule is applicable to the Federal Capital Territory, Abuja only,³⁰ the doctrine of *lis pendens* applies throughout Nigeria.
6. While the doctrine of *lis pendens* is a principle derived from judicial law making, the new rule is a product of the rules of court, which is akin to codification of the doctrine by giving it more teeth.

These differences perhaps explain why the new rules came about. The new rule is wider in application and a codification of the doctrine of *lis pendens*. The point being made here is that the new rule is similar to the principle of *lis pendens*, but wider in some respects. The rule is an extension of the doctrine to other causes of action, beyond real property. It also represents a crystallization of the common principle into a law.

5. Order 4 Rule 9: Matters Arising

The foregoing discussion has shown the nature and differences of the provision and sundry procedures as interlocutory injunctions and also principles as the doctrine of *lis pendens*. In spite of the advantages of the new rule, which coincides with the overarching goals and objectives of the 2018 rules of speedy, cheap and effective trial, some obvious issues need to be attended in order to achieve the goals of the rules. The issues are as discussed here under;

Fair Hearing

The application of the rule raises the question of whether the principle of fair hearing has any expression under the order. As safeguards for fair trial in our adversarial judicial system, the constitution provides for guarantee of fair hearing.³¹ The principle requires that in the determination of the civil rights and obligations of any person fair, hearing should at all times be accorded to them.³² Opportunity to be heard should always

²⁶ (2007) 9 NWLR (Pt. 1039) 216; see also *Bua v Dauda* (2003) 13 NWLR (pt. 838) 657 at 686

²⁷ *HCCPRs FCT 2018*

²⁸ *Bua v Dauda* (Supra)

²⁹ *Order 4 Rule 9 HCCPRs FCT 2018* begins by providing that ‘... [e]very originating process shall contain an endorsement...’ This highlights the pervasive nature of the provision, showing that it is applicable to all actions commenced by all originating processes in the High Court of the FCT.

³⁰ Except also in jurisdictions that may have incorporated the provision in their rules.

³¹ S. 36 (1) CFRN 1999

³² *Federal College of Education v Anyanwu* (1997) 4 NWLR (pt. 501) 536

be afforded parties, failing which the decision is liable to be set aside as offending a constitutional provision.³³ In respect of *Order 4 Rule 9*, the endorsement is required to be made on ‘...every originating process...’ without hearing the parties. Even the exception to the rule, where interim orders may be granted without hearing the other party, the fact of urgency must be disclosed.³⁴ The Court in *Leedo Presidential Motel Ltd. v Bank of the North*³⁵ held that an interim order arising from an application *ex parte* can be entertained on two grounds only. First, where the interest of the other party will not be adversely affected and secondly where time is of the essence. To this extent, in our view, *Order 4 Rule 9* which requires endorsement to maintain *status quo* without hearing parties and no condition of urgency impinges on the sacrosanct and time honored constitutional principle of fair hearing.

Is the Provision Wide Enough To Bind Agents and Privies of Parties?

An order to maintain *status quo* in the case of injunctions ‘should be such as the substance of the matter is that the defendant is to be restrained in whatever method he may use in committing the prohibited act.’³⁶ In law, reliefs sought by a party must be specifically and clearly set out. This is because a court cannot grant a relief that is not specifically requested, except in case of a consequential relief.³⁷ It is submitted that an order of injunction to bind privies and agents cannot be granted by a court as a consequential order. Consequential orders are granted to give effect to a substantive decision and must be based on facts. Where an affidavit discloses nothing on the possibility of privies interfering with res on behalf of the respondent, a consequential relief cannot be awarded, especially at an interlocutory stage where the issues in the suit have yet to be determined. It is against the foregoing background that traditionally the prayer for an order of interlocutory injunction is couched in a manner as to bind privies, agents and persons working through them. The Court held that it was wrong to couch a prayer as ‘restraining the defendant and his privies, agents ...’ because that will be a direct order against the agents who are not parties and could not be bound in *Marengo v Daily Sketch Ltd.*³⁸ It should rather be couched as ‘...restraining the defendants by themselves, their privies...’³⁹ Even though, it has been held that injunctions bind agents who are aware of the order, whether mentioned or not,⁴⁰ it is neater to specifically include in the prayer an order to bind agents acting through the respondent. In the same breath, *Order 4 Rule 9* is open to the interpretation that it may not sufficiently cover or bind privies acting on behalf respondents. This is a limitation for the new provision in our view which can be improved upon.

Has the New Provision taken away the Need for Interlocutory Injunctions?

It will appear that the provision has taken away the need for formal applications for injunctions. Since injunctions are meant to ensure *status quo* is maintained and, it is the same goal *Order 4 Rule 9* is meant to achieve, interlocutory applications for injunctions will simply be as superfluous as it is unnecessary. In spite of the obvious advantage of saving time and cost by obviating the need for applications, the new provision is open to abuse. Since no application is needed for the provision to take effect, a frivolous suit could be filed with the goal only of stopping the steps taken by another party which in the long run may not be justified. And commensurate damages may not be immediately obtainable, except in a fresh suit for malicious prosecution.

Who Indemnifies Where Maintaining Status Quo Results in Damage to a Party?

Another issue raised by the provision is, where it turns out that damage has been caused to a party because of the restrictions imposed by the endorsement,⁴¹ who bears the burden of the damage? In case of formal applications for injunctions, one of the requirements for the grant is an undertaking as to damages especially in respect of *ex parte* applications for interim injunctions.⁴² In effect, where injury occurs and it turns out that the order ought not to have been granted, especially where the respondent succeeds, the applicant is liable to

³³ S. 1(2) provides that the Constitution is supreme and binding on all authorities.

³⁴ See *7 Up Bottling Co Ltd. v Abiola* (1989) 4 NWLR 229; *Kotoye v CBN* (1989) 1 NWLR (pt. 98) 419

³⁵ (1998) 7 SCNJ 328 at 353

³⁶ *Francis Nwobi Otogbolu v Onwemena Okeluwa* (1981) 6-7 SC 99, cited in Fidelis Nwadialo, ‘Civil Procedure in Nigeria’ 595

³⁷ *Ekpenyong & Ors. v. Nyong & Ors.* (1975) 2 SC 71

³⁸ (1948) 1 All ER 406

³⁹ *Francis Nwobi Otogbolu v Onwemena Okeluwa* (Supra)

⁴⁰ *Marengo v Daily Sketch Ltd* (Supra)

⁴¹ Endorsement to maintain *status quo* in the suit, pursuant to *Order 4 Rule 9 HCCPRs FCT 2018*.

⁴² *Kotoye v CBN* (1989) 1 NSCC 238

indemnify the respondent who has been deprived of his right to use of their property by the endorsement. With the advent of the rule, it is doubtful who bears the burden of indemnity especially where the beneficiary of the order, as it were, may not have applied for an injunction in the first place and so cannot be justifiably asked to bear the cost. This needs to be looked into with a view to making provisions to take into account this challenge.

Is the Breach of the Rule Contemptuous?

The *High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2018* prescribes the procedure for dealing with disobedience of Court Orders.⁴³ The rule prescribes first the service of a notice of consequences of disobedience *endorsed on the order*⁴⁴ in case of disobedience to an Order in the nature of injunctions. Since the endorsement pursuant to *Order 4 Rule 9* is not in the nature of a formal order of court to which this notice can be endorsed, it is therefore doubtful whether this procedure of dealing with formal contempt is applicable to a breach of the endorsement to maintain *status quo* under consideration. The rule is not clear as to the procedure for enforcement of the rule. The point has also been made that the rule is not tantamount to a positive order of a court, disobedience to which can be dealt with as provided by the rule. The argument may be made that a breach of the provision is contemptuous (*ex facie curia*) to the extent that it affects the administration of justice, however, whether a criminal charge can result from the breach is doubtful. The rule should provide for how to deal with or the effect of flouting the provision.

6. Conclusion

This work has highlighted the features of the novel provision of *Order 4 Rule 9* of the High Court of the Federal Capital Territory, (Civil Procedure) Rules 2018, which require an endorsement on all originating processes that parties should maintain *status quo* until otherwise ordered by the court. The rationale for the rule was highlighted especially against the backdrop of related principles as interlocutory injunctions and the doctrine of *lis pendens*. Even though the goal of the rule is to make trials more efficient and faster by extending and codifying the principles around injunctions and the doctrine of *lis pendens*, it has been shown that the rule has done only so much and there is room for improvement. The gaps that exist were highlighted to include; questions of fair hearing; whether the provision bind privies; whether applications for interlocutory injunctions can still be filed; who indemnifies a party where damage results from the restriction and how to enforce a breach of the rule. It is recommended that the rule be amended to provide specifically for ways of dealing with the concerns raised since the goal of rules is to make trials easier and not to complicate them.

⁴³ *Order 47 Rule 10(2) (c) & Rule 11*

⁴⁴ Italicised for emphasis.