TRIAL *DE NOVO* AND ITS IMPACT ON THE CONSTITUTIONAL SAFEGUARD OF TRIAL WITHIN A REASONABLE IN NIGERIA*

Abstract

Generally, inordinate and/or unreasonable delay in the administration of justice defeats the ends of justice, and in fact, most times, it occasions miscarriage of justice or denial of justice. Justice delayed is justice denied. Little wonder the Constitution of the Federal Republic of Nigeria 1999 (as amended) in its section 36(1) & (4) sets up, among others, a constitutional safeguard against undue and or unreasonable delay in civil proceedings and criminal proceedings respectively. Also, the injustice of undue and or unreasonable delay in election matters is curbed and cured under Section 285(6), (7) & (8) of the same Constitution. Thus, the extant Constitution of Nigeria makes it clear that trial within reasonable time is part and parcel of the constitutionally guaranteed fundamental right to fair hearing in Nigeria. Trial de novo is the trial/hearing of a case commenced afresh as if no trial had ever taken place previously in that case. This work interrogates the wide application of the principle of trial de novo and the impact thereof in civil proceedings in Nigeria vis-à-vis the constitutional element of trial within reasonable time. The researcher observed that de novo trials somewhat contribute to inordinate and/or unreasonable delays in judicial proceedings especially civil proceedings and that such delays in the administration of justice might create occasion for loss of confidence in the administration of justice system and resort to self-help. This work recommends that reasonable timeframe be stipulated by the Constitution for the determination of the civil rights and obligations of litigants in Nigeria by courts and tribunals and that sufficient number of judicial officers be appointed to attend to [civil] cases with maximum dispatch.

Keywords: *De Novo*, Impact, Safeguard, Fair Trial, Reasonable, Time, Constitutional.

1. Introduction

In the general parlance of administration of justice, "justice delayed is justice denied' and 'justice rushed is justice crushed' are two frequently used maxims. Justice is not only meant to be done but should be seen to be manifestly and undoubtedly done in every case.[1]In an adjudicatory system, whether inquisitorial or accusatorial/adversarial, the expected life span of a case is an inherent element of fair hearing in the justice system. It becomes worrisome when the actual time taken for the determination and/or disposal of a particular case is far more than its expected reasonable life span and that is when it may be correct to say that there is delay in the dispensation/administration of justice. Respect and/or observance of the fundamental right to fair hearing as enshrined in *Section 36 (1) & (4) of the Constitution of the Federal Republic of Nigeria 1999*may be a mirage unless and until trials of cases by courts and tribunals are conducted and the cases determined within a reasonable time. Reasonable time, in this context, would mean a moderately and practically possible time within which a court a court or tribunal could complete a trial and pronounce its decision[2].

Indeed, it can be submitted and/or contended that criminal cases/proceedings in Nigeria command already some measure of priority and now receive due and prominent attention by the Nigerian courts so as to curtail inordinate delays in the trial and determination of criminal cases. Likewise, election petitions in Nigeria now receive the best constitutional attention to ensure that election petitions are determined within reasonable time so as to forestall the grave injustice of delay. However, we have observed, and verily believe that it ought now to have become common knowledge, that, generally, civil cases/proceedings in Nigeria remain pending for years.

***By Uwadineke C. KALU**, **PhD,** Professor of Law in the Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. His email address is uwadinekekalu@yahoo.com while his telephone number is +2348037727063, and

*** Odinakachukwu E. OKEKE, LLM, BL, PhD Candidate**, Lecturer and a PhD Candidate in the Faculty of Law, Nnamdi Azikiwe University, Awka, Anambra State, Nigeria. His email address is oe.okeke@unizik.edu.ng while his telephone number is +2348066740136

[1] EM Akpambang, 'Fair Hearing: Sine Qua Non Under Nigerian Criminal Justice Jurisprudence', *Journal of Law, Policy and Globalization* (2016) 52, 34.

[2]Effiom v. State (SC 166/1993), judgment delivered on January 13, 1995

In the light of the foregoing, it is our observation and position that, in the ordinary course of the dispensation/administration of justice in Nigeria, justice may not be rightly said to be 'rushed' in Nigeria, however, with a few exceptions, justice is usually delayed and oftentimes appears to the common man to be so denied and/or miscarried. The reasons for delay in cases/proceedings include the congestion of cases in different courts of the country from time to time, inadequate number of judicial officers, and *de novo* trials. This work focuses, and beams some measure of [re]search light, on *de novo* trials in Nigeria vis-à-vis the constitutional element of fair trial within reasonable time in civil proceedings wherein the civil rights and obligations of a person in Nigeria are determined by the courts and tribunals.[3]

2. Interrogating the Concept of Trials *De Novo* in the Nigerian Jurisprudence

In Nigeria, it is now a well settled legal consequence that, generally, upon the retirement, resignation, elevation, demise (death) and even the transfer of a judicial officer from one judicial division to another, cases pending before the judicial officer in question would have to commence *de novo*. Without prejudice and in addition to the aforementioned instances/circumstances, another instance and/or circumstance whereby a trial commences *de novo* in Nigeria is where fresh trial (trial/hearing *de novo*) is ordered by an appellate court in appropriate/deserving situations[4].In other words, instances/circumstances whereby a trial may start afresh in Nigeria are as follows:

1. The retirement of a trial Judge,
2. The resignation of a trial Judge,
3. The elevation of a trial Judge,
4. The removal or sanctioning of a Judge by the NJC[5] under its disciplinary jurisdiction,
5. The demise (death) of a trial Judge,
6. The transfer of a trial Judge from one judicial division to another,
7. The transfer of a pending case from the one Judge / Court to another, and
8. Upon the order of an appellate Court in appropriate/deserving situations particularly where an appellate Court declares a proceeding a nullity[6].

Now, for proper grasp of the crux of this work, we would inquire hereunder into the meaning/definition, nature, and imports/implications/effects of trial de novo in the Nigerian Jurisprudence. Trial is the judicial examination and determination of issues between the parties; a judicial examination in accordance with the law of the land, or of a cause, either civil or criminal of the issues between the parties, whether of law or fact, before a court that has proper jurisdiction.[7]The maxim/phrase *'de novo'* is a Latin adjectival phrase, which to English language translates 'anew'[8]; 'afresh'; 'again'; 'from the beginning'.[9]Accordingly, a case or matter to be heard/tried *de novo* means that the judicial examination and determination thereof shall be re-started afresh,[10] or shall start all over again.[11] A trial *de novo* has been defined as: 'A new trial on the entire case, that is, on both questions of fact and issues of law – conducted as if there had been no trial in the first instance.'[12]

On the nature of a hearing/trial *de novo*, the Court of Appeal per Georgewill, JCA, Yola Judicial Division, on the 30th day of May 2014, stated, *inter alia*, that:

[3]*Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999* provides for the constitutional element of trial within reasonable time in civil proceedings.

[4] For instance, where an appellate Court declares a proceeding a nullity, the proper order to make is to order a hearing/trial de novo. See *P. C. Philip Vuyor v.The State* (2013) LPELR-20757(CA) page 13, paragraph A.

[5] National Judicial Council

[6]*P. C. Philip Vuyor v.The State* (supra).

[7]*Sunday Kajubo v.The State* (1988) LPELR-1646(SC) p. 10, paras. C – D.

[8]BA Garner, *Black's Law Dictionary* (9thedn, Minnesota: West, 2009) p. 500

[9]*Governor of Borno State &Anor. v. Ali (MNI) &Ors.*(2014) LPELR-23544(CA) p. 8, para. A; Abayomi *Babatunde v. Pan Atlantic Shipping and Transport Agencies Ltd. & 2 Ors.*(2007) LPELR-698(SC) p. 31, para. A,(2007) 13 NWLR (Pt. 1050) 113 at 146 – 147;See also *Definitions of de novo*, <https://www.dictionary.com/browse/de-novo> accessed on January 25, 2020.

[10]*Lt. Cdr F.J. Ebohon (Rtd.) v. Attorney General, Edo State & 2Ors. (2016) LPELR-41269(CA) p. 16, para. B.*

[11]Per Rhodes-Vivour, JSC in *Obiuweubi v. Central Bank of Nigeria* (2011) 7 NWLR (Pt. 1247) 465, (2011) LPELR-2185(SC) p. 29, para.G; *Cletus Okwuchukwu Iche v.The State* (2013) LPELR-22035(CA) p. 48, para. D.

[12]BA Garner, *Black's Law Dictionary* (9thedn, Minnesota: West, 2009) p. 1644

> In law, a de novo hearing or trial simply put is tantamount to wiping out of the slate and making it clean for a new beginning in the hearing of the case. It cannot and will never in law be tantamount to a continuation of the hearing already done before the previous Judge before its transfer to the present Judge. It is indeed a new dawn and behold all things have become new in terms of both orders and proceedings already done in the previous court, which proceedings no longer defines what is relevant in the proceedings before the present court, except in those excepted circumstances in which the law allows the use of previous proceedings in a present proceedings, including inter alia for the purposes of cross examination of witnesses who had earlier testified.[13]

Concisely, two legal imports/implications of trials *de novo* are most prominent and relevant in relation to this research and the said two legal imports/implications of trials *de novo* are highlighted hereunder as follows:

Effect of Trial *De Novo* on Previous Proceedings and Record thereof: As stated in *Alhaji Isiyaku Yakubu Ent. Ltd. v. Mr.Aliyu B. Tarfa & Anor.* (supra) by the Court of Appeal, Yola Judicial Division per Georgewill, JCA, a trial de novo cannot be a continuation of the previous trial/hearing proceedings conducted before the previous Judge before the case was transferred to the new/present Judge or Court. Accordingly, the record of proceedings of the previous proceedings will be wiped out *de jure* and the record slate made clean for new beginning in the trial/hearing of the case. In other words, when a case is begun *de novo* by another Court or Judge, the previous proceedings and record thereof are deemed by the extant position of the law to have fizzled out, been got rid of, discarded and/or become of no moment as the current trial/hearing of the case supersedes the previous trial/haring[14]. This effect is well captured in the judgment of the Court of Appeal in *Bakule v. Tanerewa (Nig.) Ltd*.[15] wherein the Court stated *inter alia* as follows: 'The effect of starting the case afresh before Adamu, J., is to sweep clean all previous proceedings in the case before Abdullahi, J.,'[16]

Effect of Trial De Novo on Previous Evidence Adduced in the Case: For the avoidance of doubt, when a case is to be heard de novo, the case must be proved anew or re-proved. The previous evidence adduced before the previous Judge or Court are regarded as discarded; the situation is just as if no trial/hearing of the case had taken place.[17]In other words, the current Court or trial Judge, therefore, is entitled to and, indeed, must look at the pleadings before it or him to ascertain the issues joined by the parties. In fact, the new Judge may have to hold a fresh pre-trial conference and make his own scheduling arrangement and/or orders.

3. Fair Hearing within Reasonable Time in Civil Proceedings

The principle of fair hearing in the determination of civil rights and obligations as enshrined under the extant Constitution of Nigeria[18] is for all the parties in a given civil case.[19]*Section 36(1)* of *the Constitution of the Federal Republic of Nigeria 1999 (as amended)* provides that:

> <u>In the determination of his civil rights and obligations</u>, including any question or determination by or against any government or authority, <u>a person shall be entitled to a fair hearing within a reasonable time</u> by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.[20] (underlining and emphasis are the researchers).

Civil proceedings are the proceedings including the procedures and steps taken and undertaken in the determination of a person's civil rights and obligations. The provisions of the extant Constitution make it clear that trial of civil cases must be conducted and the cases determined within reasonable time. The terms 'fair hearing' and 'within reasonable time' are not defined anywhere in the Constitution of the Federal Republic of Nigeria 1999 in the same manner they were not defined in the extinct 1979 Constitution of Nigeria but they have received judicial interpretation.[21]Fair hearing therefore must mean a trial conducted according to all the legal rules formulated to

[13]*Alhaj iIsiyaku Yakubu Ent. Ltd. v. Mr.Aliyu B. Tarfa & Anor.*(2014) LPELR-24223(CA) p. 38, paras. C – F.
[14]*Uchechi Orisa v. The State* (2015) LPELR-24636(CA) p. 23, paragraph C.
[15] (1995) 2 NWLR (Pt. 380) 728 at 738, paragraph G.
[16]per Mohammed, JCA.
[17]*Dr. OladeleAjayi v.The State* (2015) LPELR-25851(CA) p. 5, paras. C – F.
[18]*The Constitution of the Federal Republic of Nigeria 1999 (as amended).*
[19]*Darlington Eze v. Federal Republic of Nigeria* (2017) LPELR-42097(SC) p. 17, para. B.
[20] This was quoted by the Supreme Court per Bage, JSC., in *Darlington Eze v. Federal Republic of Nigeria* (supra).
[21]*Chief OsigweEgbo& 13 Ors.v. Chief Titus Agbara& 4Ors.* (1997) LPELR-1036(SC) Pp. 25 – 26, paragraphs A – E.

ensure that justice is done to the parties in a case.[22] We perceived and verily believe that trial/hearing within a reasonable time is such a constitutional element and rule formulated to ensure that justice is not only done to the parties in a case but seen to be so done.Reasonable time is therefore an inevitable and/or indispensable constitutional element/constituent of fair hearing, which the Supreme Court per Obaseki, JSC. has held, must mean the period of time which, in the search of justice does not wear out the parties and their witnesses and which is required to ensure that justice is not only done but appears to reasonable persons to be done.[23]The phrase 'within a reasonable time' implies that the time for the determination of the civil matter should not be too short or too long,[24] depending on the nature and facts of the case.[25]The true test of fair hearing, and of course necessarily of fair hearing within reasonable time, is the impression of a reasonable person who was present at the trial , whether from his observation, justice has been done in the case.[26]Who then is a 'reasonable man' or 'reasonable person' for the purpose of assessing what time is a reasonable time in a trial? In response to this important question, the Court of Appeal, Port Harcourt Judicial Division, per Rhodes-Vivour, JCA (as he then was), on Thursday, the 12th day of July 2007 stated *inter alia* that: 'A reasonable man is a fair-minded man, rational in thought and orientation. He is a man endowed with reason. It includes the ordinary person seen on our streets, whose means of transport is the popular Okada or mammy wagon. It also includes the affluent, highly literate or otherwise.'[27]In the premises of the foregoing, it is clear that no reasonable person will approve the wide application of the principle of trial *de novo* especially where it is merely by reason of the transfer of a trial Judge of a Court from one judicial division of the same Court to another.

4. Fair Trial within Reasonable Time in Criminal Proceedings and Election Matters

It is not a simple matter to find a citizen of Nigeria guilty of a criminal offence without first ensuring that he is given a fair trial before a Court of law.[28] The right to a fair hearing is at the very root of a just and fair administration of criminal justice. The absence of it always amounts to grave injustice especially in a matter wherein the liberty of a person is very much in issue. It is for this reason that the extant Constitution of the Federal Republic of Nigeria has given due place of importance to the right to fair hearing in the administration of criminal justice.[29]*Section 36(4)* of *the Constitution of the Federal Republic of Nigeria 1999 (as amended)* provides that: 'Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal. (underlining and emphasis are the researchers')'.

Above civil matters, criminal matters now command priority that is more prominent and receive speedy attention in the Nigerian Courts. For example, the Administration of Criminal Justice Act (ACJA) was signed into law in the year 2015 in a bid to revolutionize the administration of criminal justice in Nigeria, and the purpose of the Act as set out in *Section 1(1) of the Administration of Criminal Justice Act 2015* is:

> …to ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim. (underlining and emphasis are the researchers')

As could be gleaned from the above provisions, the spirit of speedy dispensation of justice in criminal cases (trial of criminal matters within a reasonable time) stands out very firmly in the extant Constitution of Nigeria and in the statutory purpose of the Administration of Criminal Justice Act. The Administration of Criminal Justice Laws of the

[22]*Ariori&Ors.v. MaraimoElemo&Ors*. (1983) 1 SC 13 at 24.
[23]*Ariori&Ors.v. MaraimoElemo&Ors*. (supra). See also the of *Idakwo v. Ejiga* (2005) 48 WRN page 35 at 36
[24]*AlhajiSaniAbubakarDanladi v. Barr.NasiruAuduDangiri&Ors.*(2014) LPELR-24020(SC) Pp. 43 – 44, paragraphs E – A.
[25]*AlhajiSaniAbubakarDanladi v. Barr.NasiruAuduDangiri&Ors.*(supra). See also the case of *Wema Bank Plc v. Arson Trading and Engineering Company Limited &Anor.* (2015) LPELR-40030(CA) p. 46, paras. C – F where the Court held that reasonable time in its nebulous content cannot be determined in vacuo but in relation to the facts of each case because what constitutes a reasonable time in one case may not so constitute in another case.
[26]*Chukwuma v. Federal Republic of Nigeria* (2011) LPELR-863(SC) p. 49, paragraphs A – B. See also *Unongo v. Aku* (1983) 2 SCNLR p. 332.
[27]*Oliserv Limited v. L. A. Ibeanu& Company Nigeria Limited &Anor.*(2007) LPELR-5149(CA) Pp. 18 – 19, paragraphs F – A.
[28]*Rt. Hon. RotimiChibuikeAmaechi v. Independent National Electoral Commission & 2Ors.*(2008) LPELR-446(SC) pp. 53 – 54 para. G.
[29]*Sunday Okoduwa&Ors. v. The State* (1988) LPELR-2457(SC) p. 18, paras. E – G.

federating States of Nigeria and the Practice Directions applicable to the various Courts in the federating States should therefore be led by the selfsame spirit of speedy dispensation of justice. Fair enough, it is already our observation that criminal cases/proceedings in Nigeria now command some measure of priority and receive due and prominent attention by the Nigerian courts in the bid to curtail inordinate delays in the trial and determination of criminal cases, unlike civil cases/proceedings. This observation is vital as we make a case for speedy dispensation of justice especially vis-à-vis civil cases/proceedings.

Coming to election matters, let us first note that an election matter is any election petition under the Electoral Act including petition, which challenges the validity of election of persons into the office of the President and Vice President of the Federal Republic of Nigeria.[30] Election and election related matters are sui generis; they are very much unlike ordinary civil or criminal proceedings.[31] In *Orubu v. National Electoral Commission*[32], the Supreme Court per Uwais, JSC (as he then was) opined, *inter alia,* that:

> …an election petition is not the same as ordinary civil proceedings. It is a special proceedings because of the peculiar nature of elections, which by reason of their importance to the well-being of democratic society are regarded with aura that places them over and above the normal day to day transactions between individuals which give rise to ordinary or general claims in Court.

In consonance with the foregoing, it has become trite and settled law that in an election or election related matter, time is of the essence; the same applies to pre-election matters.[33] For speedy dispensation of justice in election matters, the Constitution has made provisions for the timeline/timeframe within which an election must be filed and determined which timeline/timeframe is as firm as the rock of Gibraltar – in other words, the time cannot be enlarged/extended for any reason.[34] Accordingly, an election petition shall be filed within 21 days after the date of the declaration of result of the elections,[35] an election tribunal shall deliver its judgment in writing within 180 days from the date of the filing of the petition,[36] and the Court in all appeals from election tribunal may adopt the practice of first giving its decision and reserving the reasons therefore to a later date.[37]In *Ugba&Ors. v. Suswan&Ors.*[38]the Supreme Court restated *inter alia* that:

> Furthermore, where the limitation of time is imposed in a statute, decree or edict, unless the said statute, decree, or edict makes provision for extension of time, expansion or elongation, the Courts cannot extend the time. In ANPP v. Goni's case this Court held at pg. 191 paragraphs F – G that '180 days provided by Section 285(6) of the Constitution is not limited to trials but also to de novo trials that may be ordered by an Appeal Court. For the avoidance of any lingering doubt, once an election petition is not concluded within 180 days from the date the petition was filed by the Petitioner as provided by Section 285(6) of the Constitution, an Election Tribunal no longer has jurisdiction to hear the petition and this applies to re-hearings…

Obviously, from the above, we see clearly that election petitions in Nigeria now receive the best constitutional attention to ensure that election matters are determined within reasonable time so as to forestall the grave injustice of delay. Meanwhile, we had earlier on in this work observed, and signified our firm belief that it ought now to have become common knowledge, that, generally, civil cases/proceedings in Nigeria remain pending for years.

5. A Case for the Prescription of Time[frame] for Trial of Civil Matters

Recall that trial has been defined in *Sunday Kajubo v. The State* (supra)[39] encompasses both the judicial examination and the determination of issues between the parties; a judicial examination in accordance with the law of the land, or

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[30]*Chief Emmanuel OsitaOkereke v. AlhajiUmaru Musa Yar'Adua& 6Ors.*(2008) LPELR-2446(SC) p.19, para. A.
[31]*Peoples Democratic Party & 2Ors. v. Barr. SopuluchukwuEzeonwuka&Anor.*(2017) LPELR-42563(SC) p. 68, paras. F – G.
[32](1988) 5 NWLR (Pt. 94) 323 at 347.
[33]*Alhaji Jibrin Bala Hassan v. Dr. Mu'azu Babangida Aliyu & 2Ors.* (2010) LPELR-1357(SC) p. 41, paras. D – E.
[34]*Ugba & Ors. v. Suswan & Ors*. (2012) LPELR-9726(SC) pp. 58 – 59, paras. D – C.
[35]*Section285(6) of the Constitution of the Federal Republic of Nigeria 1999*. See also *Oke & Anor. v. Mimiko & Ors.*(2013) LPELR-20645(SC) p. 40, para. D.
[36]*Section285(7) of the Constitution of the Federal Republic of Nigeria 1999*
[37]*Section285(7) of the Constitution of the Federal Republic of Nigeria 1999.*
[38](2012) LPELR-9726(SC) pp. 50 – 53, paras. F – C
[39]Per Wali, J.S.C.

of a cause, either civil or criminal of the issues between the parties, whether of law or fact, before a court that has proper jurisdiction. It is observed that virtually all the Civil Procedure Rules of the various trial Courts in Nigeria provide for time[frame] within which certain procedural steps may be taken such as time for filing[40] and service[41] of processes, time for entry of appearance,[42] time for filing and exchanging pleadings, time for conduct of pre-trial / case management conference and scheduling,[43] time for discovery and inspection,[44] time for filing final addresses,[45]*et cetera*. Where any party fails to do any act or to take a required procedural step within the time/period stipulated therefor, he/she will be required to bring an application for enlargement/extension of time with substantial reasons why it is not done within the prescribed/stipulated time/period.[46] There is also usually a penalty for failure to do an act or take a step within the time[frame] / period prescribed therefor.[47]Equally, without prejudice to Section 294(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), timeframe of not later ninety days is stipulated by the extant Constitution of Nigeria within which every Court established under the Constitution shall deliver its decision in writing after the conclusion of evidence and final addresses.[48]

However, no time [frame] is constitutionally fixed for trial of civil cases (taking of evidence and conclusion of evidence) as it is fixed for election petitions. We say so because the provisions in the various Rules of trial Courts relating to proceedings at trial seem to be there for fancy[49]. Should those provisions be implemented, then civil proceedings would certainly be determined within reasonable time and will not always stand prone to the overwhelming pain of being heard *de novo*. This is unlike in election petitions, where for example, the entire proceedings including the procedural steps, taking and conclusion of evidence, delivery of the tribunal's decision, and even determination of appeals arising therefrom are all timed and accordingly special attention is given to the proceedings from the beginning to the end[50].

On the importance of taking and conclusion of evidence timeously (that is, within reasonable time), the Supreme Court per Iguh, JSC., has held *inter alia* that:

> It cannot be over emphasized that the taking of evidence in a suit must, as far as possible, be continuous and not punctuated by very long periods of adjournments and /or long intervals between the reception of the evidence of witnesses in the proceedings. This will ensure that the case receives fair hearing and is concluded with the minimum delay and certainty within a reasonable time. It will also ensure that the case is determined at a time when the impressions made on the trial Judge by the witnesses are still fresh and present in his mind and have not become dimmed or vague by the passage of time.[51]

It is our considered view that the above pronouncement of the Supreme Court per Iguh, JSC, is very apt and instructive and should give a hint to the National Assembly on the need to alter/amend the Constitution to make provisions for a specific [maximum] time for the determination of civil matters. May we prescribe a maximum of two (2) years for the trial (hearing and determination) of civil matters.

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[40] See for example, *Order 15 Rule 1 (2) &(3), and Order 18 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2012*

[41] For example, see *Order 39 Rule 1 (3) & (5) of the High Court of Lagos State (Civil Procedure) Rules 2012*

[42] For example, see *Order 9 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2012*

[43] See for example, *Order 25 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2012*; also *Order 26 Rule 1 of the High Court of Anambra State (Civil Procedure) Rules 2019.*

[44] See for example, *Order 26 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2012.*

[45] For example *Order 36 Rules 2, 3, and 4 of the High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules 2004* provides for the manner and time[frame] for filing of final written addresses.

[46]*Midland Galvanizing Product Limited v. Ogun State Internal Revenue Service* (2014) LPELR-22935(CA) p. 18, paragraph A.

[47] For example, see *Order 9 Rule 5 and Order 44 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules 2012.*

[48]*Section 294(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

[49] See for example, *Order 30 of the High Court of Lagos State (Civil Procedure) Rules 2012.*

[50]*Section 285 (5) to (8) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).*

[51]*Chief OsigweEgbo& 13 Ors.v. Chief Titus Agbara& 4Ors.* (1997) LPELR-1036(SC) p. 27, paragraphs B – D.

6. Trials *De Novo*, Record of Proceedings and Evaluation of Evidence

Generally, it is settled principle of law that the Court is bound by its record, which is the true reflection of what transpired in the Court,[52] and that 'Record of Proceedings is the only indication of what took place in Court; it is always the final reference of events, step by step, that took place in Court.'[53] Again, in the case of *Daggash v. Bulama*[54], the Court of Appeal per Ogbuagu, JCA (as he then was) held that 'a court is entitled to look at its case file and make use of its contents'[55]It is equally settled law that it is the primary function of the trial Court which had the advantage of seeing the witnesses and observing their demeanours as well as hearing them to evaluate their evidence and to make findings of facts therefrom.[56]Therefore, the better position of the law is that both the evidence adduced by witnesses and the demeanours of the witnesses observed by the trial Court are reflected, and should necessarily be reflected, in the record of proceedings, which record of proceedings should be a true reflection of what transpired in Court and the final reference of events, step by step, that took place in Court. A trial Court, for instance, the Federal High Court of Nigeria, includes[57] all the Judges of the Federal High Court and is not by any law limited to any particular Judge of that Court. The Federal High Court is therefore one Court and does not translate into many Courts by reason of having many Judges of that one Court. In support of this view is the fact that *Section 249(1) of the Constitution of the Federal Republic of Nigeria 1999* established only one Federal High Court as it provides that 'There shall be <u>a Federal High Court.</u>'[58] The proper constitution of the Federal High Court,[59] and the fact that the Federal High Court shall consist of the Chief Judge thereof and such number of Judges of the Federal High Court as may be prescribed by an Act of the National Assembly,[60] are different questions altogether which do not affect the constitutional position that there is only one Federal High Court. The above constitutional position on the Federal High Court equally applies to the High Court of each of the thirty-six (36) federating States in Nigeria. Accordingly, there is only one High Court for every State regardless of the prescribed number of the Judges thereof.[61]

The implication of the foregoing is that generally, cases should not be suffered to be tried/heard *de novo* merely because a Judge of a certain trial Court had cause to take over the recording of the proceedings of a particular case from another Judge of the same trial Court. The record of proceedings of a particular trial Court should remain the true reflection of what transpired in that trial Court and always remain the final reference of events, step by step, that took place in that trial Court. This should be the position regardless of the fact that there was [inevitable] cause for the proceedings to be presided over and recorded, even at different times, by more Judges than one of the same trial Court, perhaps due to elevation, resignation, demise, removal, retirement, transfer of cases from one Judge of the same trial Court to another, transfer of Judges from one judicial division of the same trial Court to another. After all, if any party has any valid ground to challenge the record of proceedings or any content thereof, there is a procedure for such a challenge, but in the absence of such challenge, why should a case start de novo when the record is there for continuation by another Judge of the same Court? Particularly, on the transfer of Judges of a trial Court from one judicial division of the same trial Court to another, the position of the law is as captured in Chief *Osigwe Egbo & 13 Ors. v. Chief Titus Agbara&4Ors.*[62] wherein the Supreme Court per Iguh, JSC, stated *inter alia* that: 'A Judge of a State High Court having jurisdiction to sit in one of the Judicial Divisions of that State does not lose the jurisdiction to sit and adjudicate on a matter by the mere fact of his transfer to another Judicial Division of the same State'.[63]

In the light of the foregoing, what then is/are the justifiable reason(s) why the constitutional element of fair hearing/trial within reasonable time in civil cases, as guaranteed under *Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999*, should continue to stand in jeopardy on the strangulating altar of trials *de novo*

[52]*Mohammed v. Nigerian Army* (2016) LPELR-41594(CA) pages 9 – 10, paragraphs F – A.
[53]*Fawehinmi Construction Co. Ltd. v. OAU* (1998) LPELR-1256(SC) page 10 paragraph B**.**
[54](2004) 14 NWLR (Pt 892) 144 at 233 paragraphs F – H.
[55] See also *WestAfrican Provincial Ins. Co Ltd. v. Nigerian Tobacco Co. Ltd* (1987) NWLR (Pt 56) 299 at 306; *Nwankwo v. Nwankwo* (1993) 5 NWLR (pt. 203) 281 at 287; *Agbasi v. Ebikarefe* (1997) 4 SCNJ 147 at 160.
[56]*TijaniSofolahan& 5Ors.v. Chief J. S. Folakan – OlumoIjeun& 5Ors.* (1999) LPELR-13106(CA) Pp. 20 – 21, paragraphs F – A.
[57] See *Section 258(1) of the Evidence Act, 2011.*
[58] Underlining is ours.
[59]*Section 253 of the Constitution of the Federal Republic of Nigeria 1999.*
[60]*Section 249(2) of the Constitution of the Federal Republic of Nigeria 1999*
[61]*Sections 270 and 273 of the Constitution of the Federal Republic of Nigeria 1999.*
[62] (1997) LPELR-1036(SC) p. 24, paragraphs B – G.
[63]*M. S. Aliyu v. M. N. Ibrahim & Ors* (1992) 7 NWLR (Pt. 253) 361 at 370

save where an appellate Court so orders for retrial or trial *de novo* in appropriate cases? For instance, the researcher is aware of a case filed in 1972 still pending before the High Court of Anambra State,[64] which has suffered greatly on the altar of trial *de novo*; in fact, the last time the hearing of the case was at the verge of conclusion in the year 2018, the learned trial Judge retired and the matter had to bow again at the altar of trial *de novo*. The authors would also want to observe and opine that Nigeria is blessed with much more than enough resources to have more number of Judges and Justices employed/appointed by the Federation and the Federating States as the case may be so that the serving Judges and Justices would not continue to labour under a heavy load of cases congested in their Courts. This would contribute immensely to the deliverance of the constitutional element of fair hearing/trial within reasonable time from strangulation. Who will believe that Nigeria does not have enough money to appoint and pay enough Judges and Justices when we hear about huge sums of money looted and recovered, spent by politicians in their election campaigns and allied matters?

7. Conclusion and Recommendations

In conclusion, it is now obvious that the Nigerian jurisprudence and legal system has a very wide room for the application of the doctrine of trial *de novo*. Circumstances under which the trial of cases commence *de novo* in Nigeria include retirement, elevation, demise, removal, resignation, transfer of a trial Judge/presiding judicial officer, transfer of cases upon application of any of the parties to a suit perhaps on allegation of likelihood of bias.The authors observed that trials *de novo*, save where an appellate orders for it in appropriate/deserving cases, somewhat contribute to inordinate and/or unreasonable delays in civil proceedings contrary to the constitutional element of fair hearing/trial within reasonable time in civil cases as guaranteed under Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999.Such delays in the administration of justice especially in civil proceedings might create occasion for loss of confidence in the administration of justice system and resort to self-help. Sometimes, a ‘star witness’ [a very vital witness] in a case dies or becomes senile or incapable of testifying perhaps by reason of ill-health, while the case is yet suffering on the altar of trial *de novo*.

In the light of the above, the following recommendations are made: The National Assembly should further alter/amend the Constitution of the Federal Republic of Nigeria 1999 and/or enact an Act providing therein for a specified [maximum] time[frame] within which the trial of every civil causes/matters must be concluded and the case determined. We make bold to recommend a maximum period of two (2) years. More number of Judges and Justices should be prescribed and appointed for the trial Courts and appellate Courts established under the Constitution of the Federal Republic of Nigeria 1999.The law should be made in such a way that the onus shall be on a party to a case who desires that the case be heard *de novo* to show justifiable reasons why a Judge of a particular trial Court should not start/continue the recording of proceedings from where his learned brother stopped. Once trial has commenced in a civil suit and the presiding Judge is transferred from one Judicial Division to another of the same Court, the Judge before whom trial has commenced should continue to hear the matter in his new station[65] (judicial division) except where a party could show justifiable reason(s) why the hearing/trial should not continue and be concluded before that Judge. For each Judge presiding over a case in a particular trial Court, provisions may be made for an ‘auxiliary Judge’ who will equally sit alongside the presiding Judge, such that in any event, at any point the presiding Judge is unable to conclude the trial and determine the case, the ‘auxiliary Judge’ will take over from that point and hear the case to the conclusion, evaluate the evidence, and decide the case. Special Courts may be created by the National Assembly to hear only civil matters, which Court should consist of sufficient number of judges.

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[64] A/26/1972 between *Mr. ObioraMbah& 5 Ors.v. Basil Efobi& 4 Ors.*

[65] For example, in Abia State, the recent Practice Direction of 27th January, 2020 allows Judges on transfer to move automatically with and conclude all pending cases before them, which have entered defence stage. A Judge must hear and determine the case once the Claimant has closed his case or through with the presentation of his witnesses and the witnesses fully cross-examined. It is our recommendation that this position should be extended to all cases wherein hearing has commenced at all and not restricted to cases at defence stage.