FINDING AN EQUILIBRIUM BETWEEN TECHNICALITIES /TECHNICAL JUSTICE AND SUBSTANTIAL JUSTICE

Okoro, Jude Tobechukwu*

Abstract

The Courts and tribunals are temples of justice and established to dispense or do justice according to the law. There are situations where extant laws establishing these courts or rules of Court prescribe a particular mode or manner for institution of an action and a departure from it would inevitably lead to a striking out or dismissal premised on lack of procedural compliance or otherwise on technical grounds. Sadly, such situations have arisen where an inadvertent departure from a prescribed mode for instituting an action have led to the termination or death by way of striking out or outright dismissal of many otherwise actions with a good cause of action and a consequential miscarriage of substantial justice. It is most glaring when the cause of action is within the jurisdiction of the court yet suffers a dismissal anchored on technicalities. This to say the least defeats the essence of fairness, equity, good conscience and natural justice and takes the judicial system back to the rigid and inflexible Common Law judicial system or era where letters of the law are slavishly followed and enforced. This work therefore recommended among others amending or expunging strict liability provisions of laws or rules of court which prescribe the mode or manner of instituting an action. This will ensure that suits inadvertently instituted in breach or violation of any prescribed mode or manner of instituting an action can be regularized and determined on the merit in the interest of justice and by extension equity.

Keywords: Court, Equity, Law, Practice and Procedure, Justice.

Introduction

The courts as established by the Constitution of the Federal Republic of Nigeria, 1999[1] are designated to dispense justice according to the law. Courts are referred to as courts of law and justice. Law and justice are two sides of the same coin and cannot be isolated from each other. The law is the wheels on which justice runs. In our legal jurisprudence and by extension practice and procedure, there is what is known and referred to as technical justice on one part and substantial justice on the other part. These are interwoven and intertwined composite parts of justice and therefore not mutually exclusive. The two are best illustrated with Olympic circles.

As stated earlier, the law is the wheel on which justice runs and the corollary is that justice must be done according to the spirit and letters of the law for if justice is not dispensed as prescribed by the law, then it is not justice. It therefore means that where the law has prescribed a way for dispensing justice, it must be followed as prescribed and any departure from same would amount to breach or violation of the law and consequently a miscarriage of justice.[2] It goes without saying that justice is the end product of application of the law. However, justice cannot be a slave to or hostage of the law for the law is the vehicle that drives justice to its destination or otherwise the instrument through which justice is delivered or dispensed. Therefore, in any situation where

* **Okoro, Jude Tobechukwu, LL.B; BL; LL.M and Ph. D (ABD), is a Lecturer in the Department of Public Law, Faculty of Law, Federal University, Oye-Ekiti, Ekiti State; GSM Number: +234 8064758398; E-mail Address: jude.okoro@fuoye.edu.ng**

1 SS 230, 237, 249, 255, 260, 265, 270, 275, and 280.

2 *Larmie v. D.P.M and Services Ltd*. [2006] All FWLR (Pt. 296) 775 at 778 where the Supreme Court defined and described miscarriage of justice as "… the decision or outcome of legal proceedings that is prejudicial or inconsistent with substantial rights of a party. … Miscarriage of justice means a reasonable probability of more favourable outcome for the defendant. A miscarriage of justice therefore means such a departure from the rules which permeate a judicial procedure as to make that which happened not in the proper sense of the word a judicial procedure at all".

justice cannot be dispensed using the law as an instrument, then a situation of absurdity arises and one can arguably assert that the law has failed in its sacred duty to do or dispense justice.

Definition, meaning and nature of justice in law

It is logical to first but in brief espouse what "law" in the context of justice is because the concept of justice according to the law is incomplete without the law. In fact, there cannot be a comprehension of justice without the law for it is the law that prescribes what justice is in any given context. Law is defined as "a body of rules of action or conduct prescribed by controlling authority and have binding legal force. That which must be obeyed and followed by citizens subject to sanctions or legal consequence is a law"[3]. On the other hand, "Justice" is fairness, moral rightness, a scheme or system of law in which every person receives his/her or its due from the system, including all rights, both natural and legal.[4] The Black's Law Dictionary defines justice as protecting rights and punishing wrongs using fairness; the fair and proper and proper administration of law.[5] Justice, in its broadest sense is the concept that individuals are to be treated in a manner that is equitable and fair.[6] This broad definition was captured by Plato[7] when he opined thus: "justice is keeping what is properly one's own and doing one's own job".

From a microscopic view of the above definitions, it is clear that justice is not an absolute legalistic term or something that is stuck in rigidly and slavishly following the dry letters of the law void of equity and fairness. The corollary is that the idea and meaning of justice does not include laws which though legal may be unjust and consequently impose injustice, inequality or a deprivation in its application. A system where the application of laws does not fairly, equitably and accordingly give each one his/her due cannot be described as justice.

The nature of justice is that it is a rule against bias and the right to a fair hearing.[8] By necessary implication, justice in this sense is well beyond the dry letters of the law but extends to natural justice which embodies viz- fairness, equity and good conscience. Natural justice is also known as substantial justice or fundamental justice or universal justice or fair play in action.[9] Lord Esher M. R. in *Vionet v. Barrett* defined natural justice as the natural sense of what is right and wrong.[10] It is a systematic process of rendering justice by the judicial, quasi-judicial and other administrative authorities.[11] The rules of natural justice embodies three cardinal principles viz: rule against bias, rule of fair hearing and rule of reasonableness and the sole purpose of this is to prevent the miscarriage of justice.[12] A judicial or an abjuratory system void of the principles of natural or

3 Henry Black, *Black's Law Dictionary*, (6th edition, Springer, 1991) 1002

4 Geral Hill, *The Peoples Law Dictionary*, available at >https://dictionary.law.com/Default.aspx?selected=1086< accessed 10th August, 2023.

5 Bryan Garner, *Black's Law Dictionary* (9th edition, West, 2009) 942

6 Morris Ginsberg, 'The Concept of Justice' (1963) 144 Journal of the Royal Institute of Philosophy, 99.

7 A Greek philosopher who lived between 428/427 – 348/347 BCE and authored "The Republic" and translated by Desmond Lee, (England: Penguin Books Ltd.), 1974, cited by P C Obioha, *The Nature of Justice*, published in Journal of Social Sciences, 29 (2): Pp183-192, 2011, at page 3

8 *Newswatch Communications Ltd. v. Atta* [2006] All FWLR (Pt. 318) 580 at p. 583 where the Supreme Court on *contents of principles of fair hearing* stated: Fair hearing according to the law envisages that both parties to a case be given opportunity of presenting their respective cases without let or hindrance from the beginning to the end. It also envisages that the court or tribunal hearing the parties case should be fair and impartial without it showing any degree of bias against any of the parties.

9 M. A. Aslam, 'Principles of Natural Justice in the Light of Administrative Law' (2020) available at > https://www.legalserviceindia.com/legal/article-1659-principles-of-natural-justice-in-the-light-of-administrative-law.html< accessed 10th August, 2023.

10 [1885] 55 LJ RB 39

11 Pritam Banik, *Principles of Natural Justice with Case Laws*, available at >https://strictlylegal.in/principles-of-natural-justice-with-case-laws-and-explanation/< accessed 10th August, 2023.

12 *Ibid*

substantial justice will render the administration of justice impossible and unpleasant as we have seen and witnessed in recent cases[13] decided by the Supreme Court of Nigeria. In Cooper v. Wandsworth,[14] it was stated thus:

> Even God did not pass a sentence upon Adam before he was called upon to make his defence. "Adam" says God, "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat".[15]

In view of the above, it can be deduced that administration of justice must be rooted in fairness and by extension determination of the substantive law. The Latin maxim "*fiat justitia ruat caelum*" [16] captures succinctly and aptly the whole essence of justice.

Technicalities/Technical Justice

Legal technicality ordinarily means a strict adherence to the words of a statute to determine the spirit of justice. In Benedict Orji *v.* Ozo Nne Illoputaife[17] the Court of Appeal, defined technicality to mean "immaterial, not affecting the substantial rights, without substance." Justice Niki Tobi (Rtd.) offered an answer to what legal technicalities are in *Yusuf v. Adegoke*[18] when he said thus:

> What is technicality? *In Adedeji v. The State*[19], I said at page 265: "I realize that courts of law seem to be using the word technicality out of tune or out of turn, *vis-a-vis* the larger concept of justice. In most cases, it has become a vogue that once a court is inclined to doing substantial justice by deflecting from the rules, it quickly draws a distinction between justice and technicality so much so that it has become not only a *cliche* but an enigma in our jurisprudence. In most cases when the courts invoke the substantial justice principle, they have at the back of their minds the desire to put to naught technicalities which the adverse party relies upon to drum down an otherwise meritorious case. We seem to be over-stretching the technicality concept. We should try to narrow down the already onerous and amorphous concept in our judicial process. A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be, to work against the merits of the opponent's case. In other words, he holds and relies tenaciously unto the rules of court with little or no regard to the justice of the matter. As far as he is concerned, the rules must be followed to the last sentences, the last words and the last letters without much ado, and with little or no regard to the injustice that will be caused the opponent."[20]

Technical justice or technicalities in the dispensation of justice is akin to a judicial system rooted in Common Law. This makes justice a slave to the dry letters of the law and consequently reduces it to legalism. Idowu[21] stated that the practice of technicalities or technical justice is rooted in the Common Law of England which is one of the cardinal sources of the Nigerian legal jurisprudence. The Common Law is well known for its rigidity and inflexibility and hence after its incorporation

---

13 See *APC v. Machina,* Suit No.: SC/CV/1689/2022; [2023] LPELR- 59953 (SC)

14 *[1863] 143 ER 414*

15 King James version, *Bible*, Genesis 3:11.

16 *Let justice be done though the heaven falls.*

17 [2011] LPELR-9199 (CA) 24, Para A-E.

18 [2007] LPELR – 3534 (SC).

19 [1992] 4 NWLR (Pt. 234) 248.

20 Adeleke v. Oyetola: Technicality and the Judicial Process, reported in the Cable, July 29, 2019 <accessed on 28th August, 2023>

21 O I Idowu, *The Supreme Court of Nigeria and the Stains of Justice by Technicalities: Why APC v. Machina is Wrong*, (2023) 3 (1) Redeemer's University of Nigeria Journal of Jurisprudence and International Law, 5.

into our legal system, the inherent rigid rules and technicalities became part and parcel of our judicial and legal system till present.[22] The effect or consequence of technicalities is that a cause of action though within the jurisdiction of the court could still be defeated for want of form or failure to file the appropriate Writ.[23] In other words, any error in mere form is sufficient to terminate a cause of action without even a hearing and determination of the facts of the case or the substantive suit. The Supreme Court in *Akeredolu v. Abraham*[24] held thus:

> Technicality in the administration of justice shuts out Justice. A man denied justice on any ground, much less a technical ground, grudges the administration of justice, it is therefore better to have a case heard and determined on merit than to leave the Court with a shield of 'victory' obtained on mere technicalities.

The recent case of *APC v. Machina*[25] is a *locus classicus* on this point.

The facts of the case in brief were that pursuant to the Independent National Electoral Commission (INEC) guidelines, the All Progressives Congress on 28th May, 2022, conducted a valid primary election in respect of the Yobe North Senatorial District wherein Bashir Sherrif Machina emerged as the undisputed winner under the statutory supervision of INEC. Ahmed Lawan[26] was absent and did not participate because he voluntarily withdrew his candidature to pursue nomination as a presidential candidate. Subsequently, the APC conducted another primary election on 9th June, 2022 where Lawan emerged as the candidate and in which Machina did not participate. This second primary election was in breach of Section 84 (5) of the Electoral Act as APC never cancelled the primary election that produced Machina. Also, INEC did not monitor/supervise the second primary election that produced Ahmad Lawan and was not put on notice either by the APC. However, the APC strangely forwarded Lawan's name to INEC as its duly elected candidate for the Yobe North senatorial district election. Aggrieved by the wrongful exclusion of his name, Machina approached the Federal High Court (FHC) in Damaturu, challenging the action of the APC and among other things sought an order declaring him as the APC's authentic and valid candidate for the Yobe North Senatorial district. The suit was commenced by Originating Summons[27] in line with the Practice Direction of the Federal High Court which specifically prescribes Originating Summons as the form of commencing pre-election matters. In the supporting affidavit accompanying the Originating Summons, allegations of criminality (fraud and forgery) were raised against the APC. The totality of the arguments canvassed by the parties was: Whether, in consideration of the provision of Section 115 (1) (d)[28] of the Electoral Act, 2022,

---

22 An example of a legal principle which reflects the rigidity of Common Law is the *locus standi* principle which still heavily applies in our judicial system.

23 *APC v. Machina* Suit No. SC/CV/1689/2022, [2023] LPELR- 59953 (SC); In *Pinnel v. Cole* [1602] 5 Co. Rep 117a, Lord Coke recognized that the Plaintiff ought to fail in his action based on the merit of the case, yet succeeded as a result of the technical flaw in the Defendant's pleadings. At the time, Common Law was expressed in Latin as *forma non observata infertur adnullatio actus* meaning, when forms are not observed a nullity of the act is inferred.

24 [2018] LPELR- 44067 (SC)

25 Suit No. SC/CV/1689/2022, [2023] LPELR- 59953 (SC)

26 The immediate past President of the Senate and Senator representing Yobe North Senatorial District in the National Assembly (Senate- the Upper House and otherwise known as the Red Chambers)

27 This is one of the forms of commencement of a suit in a Court of Record or superior court and this form or mode is employed where a litigant or party seeks the interpretation of the law and actions and sets questions for the court to determine. It is used where the facts are not contentious and is supported by an affidavit which sets out the facts.

28 The section provides thus: "A person who signs a nomination paper or result form as a candidate in more than one constituency at the same election, commits an offence and is liable on conviction to a maximum term of imprisonment for two years." This was clearly a question of interpretation for which Originating Summons was the right and proper way to raise and determine the issue.

Senator Lawan could have lawfully participated in the 2022 Presidential and Senatorial Primary Elections of the APC?

The Plaintiff successfully challenged his party, the APC, at the Federal High Court and same was upheld on appeal by the Court of Appeal.[29] The Defendant not satisfied with the decision of the Court Appeal appealed at the Supreme Court. Before the Supreme Court, the question as raised by the APC was whether Machina's case was properly commenced at the trial court considering that allegations of fraud and forgery were raised in the grounds of the Originating Summons and allegations of facts of fraud and forgery were adduced or averred in the affidavit inn support.

In a strange twist, the Supreme Court allowed the appeal solely and on the ground that the action was wrongly instituted by way of an Originating Summons rather than by Writ of Summons since in the wisdom of the apex matter, the case was contentious in nature by virtue of the fact that there were allegations of fraud made by the Plaintiff. Consequently**,** the Supreme Court in a split decision of 3 against 2 dissenting judgments ruled[30] that the Defendant (Lawan) was the All Progressives Congress (APC) senatorial candidate for Yobe North Senatorial District instead of the Plaintiff (Machina). The two dissenting Justices held that the second primary election which produced Lawan was held in breach of the Constitution of the Federal Republic of Nigeria[31] and the Electoral Act, 2022[32] and consequently upheld the findings of the Federal high Court and the Court of Appeal as the APC never cancelled the earlier election held on 28th May, 2022 in respect of which Lawan had voluntarily withdrawn and did not participate in.

It should be noted that in the instant case, Machina followed the laid down procedure in the institution of the action. The Practice Direction of the Federal High Court specifically prescribes Originating Summons as the form of commencing pre-election matters.[33] However, because Machina had included "fraud" in his allegation as earlier stated, the apex court reasoned that he ought to have sought judicial intervention through a Writ of Summons because of the criminal nature of the allegation. While this position resonates with the law, because the Supreme Court has held in a plethora of authorities that the rules of court supersedes a practice direction; and by the rules of court, an allegation of fraud should be brought by way of Writ of Summons. However, it is also trite that the failure of a party to initiate proceedings by the appropriate mode is not fatal to his case. It is a mere procedural irregularity that can be cured by simply converting the suit to the proper mode. It is trite that equity follows the law. Equity won't look at the form but the substance of the matter. Where the Court puts form over substance then it adheres to a barren technicality. The age-long principle of law is that where an action is commenced by the wrong form, the proper thing for a court to do in such circumstances is to order the Plaintiff to bring the matter by the appropriate mode and not to dismiss the matter as the apex court did. This is the position the apex court adopted in *Udo v Registered Trustees of B.C.S.*[34] on *whether commencing action by wrong procedure constitutes jurisdictional issue* held thus:

> Commencing an action by wrong procedure does not constitute a jurisdictional issue since the lapse, except where specifically stated in the rules of court, does not defeat the Claimant's cause of action. If the subject matter of the Plaintiff's action is within the jurisdiction of the court, the cause of action would not be abrogated simply because it has been commenced by the wrong procedure. The lapse in that

[29] The Federal High Court and the Court of Appeal delivered their judgment on 28th September, 2022 and 28th November, 2022, respectively.
[30] The judgment was delivered on 6th February, 2023.
[31] S 285.
[32] S 84 (5).
[33] S 4 (1) Federal High Court Practice Direction.
[34] [2015] EJSC Volume 7 155 at page 158.

> regard is only an irregularity that gives the Defendant the right to insist that the Plaintiff adopts the proper procedure in approaching the court.[35]

In my opinion, and with due respect to the apex court, I do not subscribe to the view that the suit ought to have been instituted by way of Writ of Summons because the matter before the trial court was an issue relating to the interpretation of the Electoral Act and whether APC's action in submitting the name of another candidate (Lawan)- after it had conducted a primary election earlier where Machina emerged as a candidate is valid in the eyes of the law. It was an issue that could be resolved by affidavit evidence. This is supported by the Federal High Court pre-election practice direction, 2022 by virtue of section 4 (1) which states that pre-election matters should be instituted by originating summons. Relying on the fact that rules of court supersede practice direction to dismiss a cause of action is technical and barren justice to say the least.

It is trite that the essence of law is to serve as a vehicle for delivery of justice in our courts of law. Iguh, JSC, in *Famfa Oil Ltd v. A.G. Federation*[36] lucidly stresses this point thus:

> Accordingly, Courts of law should not be unduly tied down by technicalities, particularly where no miscarriage of justice would be occasioned. Justice can only be done in substance and not by impeding it with mere technical procedure irregularities that occasion no miscarriage of justice".[37]

Substantial Justice

According to the Black's Law Dictionary,[38] substantial justice is defined as "justice fairly administered according to the rules of substantive law, regardless of any procedural errors not affecting the litigant's substantive rights; a fair trial on the merits." Substantial justice is justice on objective consideration of the merits or otherwise of a case. The Supreme Court in *Udo v Registered Trustees of B.C.S.*[39] on duty on court to do substantial justice held thus:

> The overriding duty of courts, including this court, however, is to do substantial justice between parties, a principle which entitles the appellate court to find exceptions to their primary duty of determining appeals solely on the basis of the issues raised and determined at the court below…

The spirit of substantial justice is rooted in the Latin maxim *fiat justitia ruat caelum,* which means "let justice be done though the heaven falls." "When the law becomes a science and system, it ceases to be justice."[40] This form of ideology has offended the law enthusiasts, who are of the opinion that the rules are integral parts of the law and any attempt to downplay the rules will make the law lifeless and susceptible to the whims and caprices of any judge.

The astute English legal luminary, Lord Denning, in addressing the endless and ever recurring conflict between justice and technicalities had this to say thus:

> My root belief is that the proper role of the judge is to do justice, if there is any rule of law which impairs the doing of justice, then it is the province of the judge to do

---

35 See, *Okotie-Eboh v Okotie-Eboh* [1986] 1 NWLR (Pt. 16) 264; *Ijebu-Ode Local Government v Adedeji Balogun & Co. Ltd.* [1991] 1 NWLR (Pt. 166) 136.

36 [2003] LCN/ 3068 (SC); Suit No.: SC/305/2002, [2003] 18 NWLR (Pt. 852) 453.

37 See also, *Consortium MC v. N.E.P.A* [1992] 6 NWLR (Pt. 246) 132 at 142; *Bello v. A.G. of Oyo State* [1989] 6 NWLR (Pt. 45) 828; *Okonjo v. Dr Odje* [1985] 10 SC 267*; Falobi v. Falobi* [1976] NMLR, 169.

38 9th edition, p. 943.

39 [2015] EJSC Volume 7, 155 at page 156.

40 Walter Savage, English poet and philosopher.

> all he legitimately can to avoid the rule, even to change it, so as to do justice in the instant case before him.[41]

The Supreme Court in some of its judicial pronouncements had towed a similar path. In Dapianlong *v* Dariye[42] the erstwhile Chief Justice, Walter Onnoghen J.S.C., wittingly stated:

> "The reign of technical justice is over, on the throne now sits substantial justice, long may you reign, substantial justice."

In *Salawu Ajide v Kadiri Kelani*[43], Oputa J.S.C. (Rtd.), on the need for truth to prevail in order to ensure justice is done poignantly cautioned that:

> Justice is much more than a game of hide and seek. It is an attempt to discover the truth, on human imperfections, notwithstanding. Justice will never decree anything in favour of so slippery a customer as the present Defendant/Appellant on this note, our courts have admitted that justice and truth are on the same ticket and that in doing justice the courts and all ministers in her temple, that is lawyers and all other stakeholders, must strive at discovering the truth regardless of legal technicalities.

In *Aigbobahi v Aifuwa*[44], the Supreme Court on *Duty on Supreme Court as apex court to do substantial justice rather than technical justice* held thus:

> The Supreme Court is the court of last resort in some appeals in Nigeria. The attitude of the Supreme Court has changed from doing technical justice to doing substantial justice. This attitude envisages the possibility of hearing everyone on any complaint so as to enthrone and sustain the rule of law

The Court of Appeal in *Aturu v Akinleye*[45] held that cases must be fought not by mere technicalities but by determination of the substantial issues before the court. It is the duty of courts to aim at and do substantial justice.

It is trite that the law does not command the impossible but however and sometimes, we have seen judicial decisions apparently commanding the impossible and then using the hammer of technicalities to strike out or dismiss the merits of a case. In *Labour Party v APC*[46], the Court of Appeal held that a subpoenaed witness must frontload his witness deposition at the time of the filing of a petition.[47]

Okoro JCA., in *BALOGUN V. E. O. C. B (Nig.) Ltd*. said:

> Good law, in my opinion must have a human face; good law should not patronize technicalities that will give rise or room to undeserved victories in litigation. Good

---

41 Joshua Ogwu, 'An Inspection of the Legal Tussle between Technicalities and Substantial Justice: A Need for balance' (2020) available at >https://unilaglawreview.org/2020/05/15/an-inspection-of-the-legal-tussle-between-technicalities-and-substantial-justice-a-need-for-balance/< accessed 28th August, 2023.

42 [2008] 8 NWLR (Part 1036) 332.

43 [1985] 1 NWLR 248 at 269.

44 [2006] All FWLR Pt. 303 202 at page 208.

45 [2006] All FWLR Pt. 337 526 at page 528.

46 Petition No.: CA/PEPC/03/2023 [Unreported].

47 Under the Electoral Act, 2022, a Petitioner has 21 days to file his petition against any election result and usually at the time of filing a petition, the Election Tribunals are yet to be constituted and inaugurated. In addition, a petitioner may not know if there may be need to file an application for a subpoena and have a witness subpoenaed with his witness deposition frontloaded with the petition. The practice is to apply to the court after commencement of trial to apply for a witness to be subpoenaed as the need arises and if necessary and this usually arises only after issues have been joined and the Respondent denying any allegations of facts in the Petitioner's or Plaintiff's claim which can only be rebutted by calling a subpoenaed witness to testify.

> law should discourage technicalities … good law will not encourage a situation where a party in litigation will only return home with pyrrhic victory which in reality is no victory at all.[48] The court is more interested in substance than in mere form. Justice can only be done if the substance of the matter is examined. Reliance on technicalities leads to injustice.[49]

In affirming the above in other words, the Supreme Court in *Boniface Ebere Okezie V. Central Bank of Nigeria* held thus:

> Justice does not reside in the form of the processes of the court. Where there are sufficient provisions in the Rules of the court to sustain an action, the rules of natural justice demand that parties should be heard with a view to resolving their dispute once and for all. It is in the interest of justice that parties are not shut out prematurely from being heard in accordance with the laid down procedures in the court's Rules.[50]

In *Akeredolu v Abraham*[51] the Supreme Court in that case had said that:

> Technicality in the administration of justice shuts out Justice. A man denied justice on any ground, much less a technical ground, grudges the administration of justice, it is therefore better to have a case heard and determined on merit than to leave the Court with a shield of 'victory' obtained on mere technicalities.

The importance of substantial justice and fairness are vital such that where the letters of law [52] will occasion injustice to any other party in a judicial litigation or adjudication, the spirit of the law should be applied notwithstanding the direct, explicit and implicit letter of the law, otherwise, the party who succeeds by invocating the letters of the law will 'leave the Court with a shield of victory obtained on mere technicalities'.[53]

It is pertinent to state that the Constitution of the Federal Republic of Nigeria, 1999 contemplates and envisages that matters brought to the court for adjudication be heard on the merit and not to be struck out or dismissed on grounds of technicalities without being heard. The Constitution proceeds to state the function of the judiciary as to "extend to all matters between persons, or between government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any questions as to the civil rights and obligations of that person."[54]

Technicalities/Technical Justice and Substantial Justice: Striking a balance or finding an equilibrium

The conflict between technicalities or technical justice and substantial justice in our judicial system is a recurring decimal and perhaps a shifting parabola that plagues the dispensation of justice. Sometimes, Attorneys and Judges are often caught up more in procedure than in achieving justice by placing emphasis and reliance on technical justice or technicalities which are largely anchored on strict adherence to the letters of the Rules of court above substantial justice. This negates the spirit of natural justice, fairness and equity particularly when there is a meritorious cause of action.

---

48 [2007] 5 NWLR (Pt. 1028) 584.
49 *Ibid.*
50 [2020] 15 NWLR (Pt. 1747) 181.
51 [2018] LPELR- 44067 (SC).
52 Especially Rules of Courts.
53 Akeredolu v Abraham [2018] LPELR- 44067 (SC).
54 S. 6 (6) (b).

However, the point must be made that where there is a need to approach the Court to enforce a right, duty, responsibility, obligation or redress, guaranteed by the law, it is proper to look at the legal procedures and processes to see whether the provisions of the law that established the Court, the rules, regulations and practice directions of the Court has been followed. This is because it is through the proper initiation of the provisions of adjectival laws that the provisions of substantive laws are enforced. This ensures that the substantive law is interpreted and enforced with predictability, certainty and stability.

Legal justice implies the application of the law as it is. This ordinarily implies that all the laws of the land, including procedural laws and rules of courts must be adhered to by all the litigants seeking justice before the court. However, in approaching the Court, there is probability of making mistakes inadvertently which in turn may lead to defect, failure, or mistake in a legal proceeding or lawsuit. These possible mistakes are normally described as irregularities which are departures from a prescribed rule/regulation prescribed by the adjectival law that should not be punishable either with a striking out or dismissal.[55]

Therefore, a distinction must be made between mere irregularities which are not and should not be fatal to a cause of action and substantial procedural irregularities which are fatal and irredeemable. The provisions of the Rules of Court are intended for the orderly conduct of cases before the Court and are therefore required to be complied with by litigants.[56] There are broadly speaking two types of irregularities in Law: substantial irregularities and non-substantial irregularities. The treatment the Court will accord a given irregularity depends on its nature and effect in law. When a non-substantial irregularity is discovered and proved to exist during a judicial procedure, if curable, the Court will grant leave to the party in error to correct the irregularity subject to the conditions specified by the trial Court so that the cause of action is not nullified.

In other words where non-compliance with the provisions of the rules is not intrinsically fatal to the proceedings the Court has the discretion under the rules to waive such non-compliance as a mere irregularity. Generally, a Court has the inherent powers and discretion to bend forward or backward and direct a departure from the provisions of its rule where the interest of justice so requires[57] to accommodate technical defects in a given proceeding.

Therefore, where a procedural irregularity can be cured without causing any injustice to the adverse party, an amendment will be granted to rectify the anomaly and restore normalcy. Such discretionary power may be granted to correct the name of a party even if doing so will have the effect of substituting a new party, provided the Court is satisfied that the mistake in question, being sought to be corrected, is honest, genuine and not one which will overreach and unduly encumber the adverse party. For example, the Court can also allow a plaintiff to amend his writ even after final judgment in the proceedings has been entered, for the purpose of substituting a party's correct name for the incorrect one.[58] The Court may enlarge the time provided by the rules for the doing of anything to which the rules apply, or may direct a departure from the provisions of the rules in

---

55 Example, See Order 5 Rules (1), (2) and (3) of The High Court of Imo State (Civil Procedure); Order 2, High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2007; Order 5 of High Court of Ondo State (Civil Procedure) Rules, 2012; Rules, 2017, Order 5, Rule 1, the National Industrial Court Rules, 2007 (NIC Rules, 2007).

56 O D Amucheazi and P U Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure*. (Wildlife Publishing House, 2013), p. 124.

57 Order 21, Rule 2, Court of Appeal Rules, 2016; *Ogundalu v Macjob* (2006) 7 NWLR (Pt. 978) 148

58 Hon. Justice Mossud Abdurrahman Oredola, J.C.A. in *Njoku & Ors. v Onwunelega*, [2017] LPELR-43384 (CA), Pp. 41- 42

any other way where departure is required in the interest of justice.[59] It therefore goes without saying that mere irregularity does not go to the root of the cause of action and consequently does not divest the court of its statutory and inherent jurisdiction to hear and determine the cause of action on the merit.

On the other hand, once an irregularity is found to be substantial, the process becomes incompetent because same is ineffectual in conferring jurisdiction on the Court. It is the law that an incompetent process cannot be amended.[60] The Supreme Court in *Dickson Ogunseinde Virya Farms Ltd. v Societe Generale Bank Ltd*[61] reiterates that:

> A litigant cannot be heard to complain about fair hearing when the applications (s) he placed before the Court were incompetent. 'That is the exception to the fair hearing principle as it only applies where the party has the right to be heard and when that right does not exist on account of a process that is incompetent or dead on arrival, then the party has no leg on which to stand to cry out about fair hearing. Substantial irregularity is any irregularity that goes to the root of the proceedings or process. For instance, the failure to commence proceedings with a valid writ of summons goes to the root of the case and any order emanating from such proceedings is liable to be set-aside as incompetent and nullity because, 'it clearly borders on the issue of jurisdiction and the competence of the Court to adjudicate on the matter'. [62]

It is now settled law that Courts should not decide cases or resolve issues on mere legal technicalities.[63] Where a litigant inadvertently approaches a Court for the redress by a wrong procedure, it will amount to mere technicalities or irregularity to base a defence to such action on the fact that the action was instituted by wrong procedure.[64] At most, the adverse can only insist that the proper procedure be adopted but not to canvass for the striking out or dismissal of the suit. A person whose rights have been violated must be free to seek redress for such wrongs in the Courts.[65]

An irregularity is substantial when it touches on the legality of the whole proceedings or process and in such situation the technical failure is not a mere technicality but an irregularity that is transcendent to the realm of validity. A substantial irregularity is the one which causes a proceeding to have a smell of judicial sacrilege and to allow that kind of trial which is hostile to the law to stand is in itself, denial of fair of hearing.[66] A breach of a mandatory constitutional provision is more than a mere technicality, it is fundamental. The breach vitiates the entire proceedings before the Court.[67] So also a litigant must adhere strictly to his pleading, hence a litigant who ignores his pleadings and made a different case at the hearing will not be allowed to claim that such inconsistency is a mere technicality.[68] It is the law that parties must be consistent in presenting their cases to the Court. This means that the pleadings and the oral evidence or witness deposition should tell the same story because this goes to the root of the case and the rule

---

59 Order 2, Rule 31, Rules of Supreme Court of Nigeria; Order 44 Rule 4, Imo State High Court (Civil Procedure) Rules, 2017

60 25 Nigeria Army v Samuel [2013] 14 NWLR (Pt. 1375) 466 at 483.

61 [2018] LPELR- 43710(SC).

62 *Kida v Ogunmola* [2006] All FWLR (Pt. 327) 402 at 412 - 413, [2006] 13 NWLR (Pt.997) 377 at 394.

63 E*golum v Obasanjo* (1999) 7NWLR (Pt. 511) 255, 413.

64 *General Sani Abacha & Ors v Chief Gani Fawahinmi* (2000) 6 NWLR (Pt. 660) 228.

65 S 6 (6) (b) CFRN, 1999.

66 Ojasanmi v FGN: (2018) LPELR-44331(CA).

67 Alhaii Nuhu v Alhaji Ogele (2003) 18 NWLR (Pt. 852) 251.

64 Kode v Yussuf (2001) 4 NWLR (Pt. 703) 392.

of pleadings. It is loud law that parties are bound by their pleadings and cannot give evidence in contradiction to their pleadings. In effect, a party cannot depart from his pleadings and give evidence of facts not duly pleaded therein, such departure is not in the eye of law a mere technicality but a substantial irregularity that goes to the root of the departing party's case since same has the potentiality to overreach and do injustice to the other party.[69]

It is an irredeemable irregularity for judicial officer(s) who did not sit through a trial to deliver judgment in the case. The main function of the trial Court is to see and observe the witnesses. 'He watches their demeanour, candour or partisanship, their integrity, manner etc. He can therefore decide on their credibility and this affects a substantial part of his findings of fact'.[70] The opportunity of a Court or Tribunal to observe the demeanour of a witness is an indispensable aspect of procedural jurisprudence, which is rooted in fair hearing.[71] Consequently, the Supreme Court in *Adeleke v Oyetola*[72] held that the decision of the Electoral Tribunal was a nullity because Justice Obiora who read and pronounced the majority judgment at the Tribunal was evidently absent from the proceedings, at least, one of the days of the trial and the failure of the absent panelist to be present on that day meant that the tribunal lacked the authorities to have given any judgment in the entirety of the matter.

The Supreme Court's majority decision in *Adeleke v. Oyetola* follows the West African Court of Appeal authority in the case of Nana *Tawiah v. Kwesi Ewudzi*,[73] where it was discovered that at least two of the Tribunal members who gave judgment were not present throughout the proceedings, and did not hear all the evidence. Thus, the Court (WACA) came to the conclusion that the absence of the judges "vitiates the whole trial, and in my opinion this Court has no option but to declare the whole proceedings before the Tribunal and the Provincial Commissioner's Court a nullity".[74]

Another instance of substantial irregularity that is incurable is when a process, for example, an election petition is not filed within the time specified[75] or the fees statutorily prescribed are not paid.[76] Generally, other forms of substantial irregularities include where a matter is filed before a Court that lacks jurisdiction to entertain the matter, non-service of relevant processes (including hearing notices) and in all these situations the procedure will amount to a nullity.[77]

The question that should be pertinent in coming to a resolution of this ever recurring conflict is whether an irregularity is fundamental and impacts negatively on the merit of a case? It must be borne in mind that the whole purpose of law and rules of Court is to ensure that the affairs of the Court during the administration of justice are carried out in an orderly fashion with reasonable degree of certainty that prescribed acts have been duly complied with by the parties in the interest of justice.[78] Thus, where the law prescribes a way of carrying out an act, such is the only way to be followed, when a date is specified for the doing of an act, that date becomes sacrosanct. This is because the rules of Courts and practice direction are made to be obeyed and no favour should be

69 *Kode v Yussuf* (Supra).
70 *Okereke v The State* (2016) 1 SCM 99 at p. 113.
71 *Woluchem v Gudi* (2004) 3 WRN, 20.
72 SC/553/2019.
73 3 WACA 52.
74 *Ibid*.
75 Electoral Petitions must be filed within 21 of the announcement of the elections results. See section 285 (5), Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010.
76 Paragraph 3 (4), First Schedule to the Electoral Act, 2010 (as amended).
77 *Okafor v A. G. Anambra* State (1991) 6 6 NWLR (Pt. 200), 659.
78 *F. S. B. Int. Bank Ltd Vs. Imano* (Nig.) Ltd [2000] 11 NWLR (Pt.679) 620 at 634.

shown for not obeying same.[79] However, it has also been judicially noted that strict and unreasonable adherence to technicality in the administration of justice shuts out justice.[80]

Technicalities, substantial justice and fair hearing

The conflict between technicalities and substantial justice centrally borders on procedural correctness and substantive fairness. It is in the interest of justice that parties are not shut out prematurely from being heard in accordance with the laid down procedures in the court's Rules. The whole essence of fair hearing is to ensure that parties are heard on the merit or strength of their case and that same is determined on the merit void of technicalities. This perspective supports the concept of justice been done in the eyes of a layman who leaves the court with the impression and satisfaction that justice has been done. It is a notorious principle of law, and also an essential attribute of the administration of justice that justice must not only be done, but it must manifestly be seen to have been done.[81] What this lucidly means is that it is not merely of some importance, but it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.[82]

In *Obaro v Hassan*[83] on test of fair hearing Per O. Ariwoola, JSC, said:

> In *Alhaji (Chief) Yekini Otapo v Chief B. O. Sunmonu*,[84] on the test of fairness in the trial and appellate courts, this court per Obaseki, JSC, states as follows:… The true test of a fair hearing is the impression of a reasonable person who was present at the trial, whether from his observation justice has been done in the case…

The court furthermore, on the importance of rules of court and failure to obey held thus:

> Rules of court are very vital in the process of justice administration. They are meant to be obeyed. Failure to do so can be counterproductive or negatively costly at times. A party who fails to obey court rules does so at his own peril. He can hardly be heard to complain.[85]

In *Boniface Ebere Okezie v. Central Bank of Nigeria*[86] the Plaintiffs filed an action by way of Originating Summons at the Federal High Court, Lagos, under section 303 of the Companies and Allied Matters Act, seeking leave of court to challenge the actions of the CBN Governor, on behalf of Union Bank of Nigeria, by derivative action. In the Originating Summons, the Plaintiffs did not raise any questions for answer, but set out their claims in declarations, injunctive reliefs and damages. In response to the Originating Summons, the Defendants filed a notice of preliminary objection, challenging the competence of the suit and the jurisdiction of the court to hear and determine the action of the Plaintiffs. The preliminary objection was heard and upheld by the trial court on the ground that the Originating Summons did not contain questions for determination. The appeal to the Court of Appeal was dismissed as lacking in merit, whereupon the Plaintiffs further appealed to the Supreme Court. The Apex Court wasted no time in chastising the trial court and the Court of Appeal, for clinging to technicality to rob the Plaintiffs of justice. The Court held as follows:

---

79 *Williams v Hope Rising Funds Society* [1982], 2 SC 145 quoted with approval in *Jimoh O. Ojugbele v Mr. Musefiu O. Lamiidi* [1999] LPELR-CCN/1/99, Ratio 2.

80 *Akeredolu v Abraham & Ors* [2018] LPELR- 44067 (SC)

81 *Administrator & Executor of the Estate of Abacha v. Eke-Spiff & Ors* [2009] LPELR – 3152 (SC)

82 *R v. Sussex Justices Ex parte Mc Cathy* (1924) 1 K.B. 256 at 259

83 [2015] EJSC Volume 8, 126 at page 137

84 [1987] NWLR (Pt. 58), 587, [1987] LPELR 2822, [1987] 5 SC 228

85 See also, *Afolabi v Adekunle* [1983] 8 SC (Reprint) 75, [1983] 14 NSCC 398 at 405 and *University of Lagos v Aigoro* [1985] 1 NWLR (Pt. 1) 143.

86 [2020] 15 NWLR (Pt.1747) 181.

> There is need to keep the focus on the substantiality of justice and so each of these forms is valid as an originating summons for the determination of any question of right or of construction under an enactment.

Justice does not reside in the form of the processes of the court.

> Where there are sufficient provisions in the Rules of the court to sustain an action, the rules of natural justice demand that parties should be heard with a view to resolving their dispute once and for all. It is in the interest of justice that parties are not shut out prematurely from being heard in accordance with the laid down procedures in the court's Rules.
>
> There was no basis for the conclusion of the two courts below that the originating summons of the appellants was bad and must be struck out for not stating questions for determination. For effect, it was certain that the two courts below went the wrong way in reaching their conclusion and a miscarriage of justice ensued in the erroneous application of the procedural law or rules, hence the necessity for the Supreme Court's intervention and to come against concurrent findings of fact of two courts.

The paramount duty of courts is to do substantial justice and not cling to technicalities that will defeat the ends of justice. It is more in the interest of justice that parties are afforded reasonable opportunity for their rights to be investigated and determined on merit rather than parties shut out prematurely from being heard on the grounds of non-substantial compliance with rules of court. It is immaterial that there are technicalities arising from statutory provisions or technicalities inherent in rules of court. So long as the law or rule has been substantially complied with and the object of the provisions of the statute or rule is not defeated, and failure to comply fully has not occasioned a miscarriage of justice, the proceedings will not be nullified.

It must be borne in mind that as much as law is designed to dispense justice, there are safeguards provided by law to ensure its certainty and purity. When such safeguards are violated, then justice cannot be dispensed. This is different from "mere technicality". This is where the line is drawn and perhaps tenuous. A few examples will help. Courts have their jurisdiction spelt out in the Constitution and the statutes that create them.[87] If a litigant approaches the wrong court and a full trial is conducted where he ventilates all his grievances and he gets "justice", that justice will be short-lived as he is most likely to get a reversal of his euphoric justice on appeal. Another example is where the Defendant or someone affected by the outcome of a case is not served[88] with the originating documents of the suit, any judgment (or "justice" in our context) obtained through such process is likely to suffer a reversal on appeal by the person not served. A suit brought out of the time permitted under the limitation law for a suit to be commenced no matter how well the "justice" (again in our context) is dispensed will ultimately amount to nothing. There are so many examples of issues which may at a first look or appear technical, but which a deeper consideration will clearly show to be so fundamental to justice that they transcend the realm of mere technicalities in that they are not just simple matters of procedure, but matters which actually ensures that justice is dispensed.

The preceding paragraph is particularly true in election petitions which have been described as "*sui generis*", that is, in a special class. There are so many laws guiding the conduct of election matters. A few examples will be necessary. The constitution provides that election petitions are to

---

87 Ss. 232, 239, 251, 257, 262, 267, 272, 277 and 282 of the Constitution of the Federal Republic of Nigeria.

88 Service of court processes is what among other requirements that confers jurisdiction on the court over the parties before it.

be commenced within 21 days, anything outside this stipulation will render any petition invalid. Judgment in an election[89] petition must be delivered in writing within 180 days any judgment which falls short of this constitutional requirement will sound a death knell for the Petition[90]. Therefore, if the Court holds a party to the standard required by these laws on the insistence of his adversary, the agreement of the court with such adversary will not be undue technicality, it will be obedience to the law. In marrying this scenario with the case of *Adeleke v Oyetola*[91], the Supreme Court upheld the decision of the Court of Appeal that the Judge who delivered the lead judgment at the tribunal was not present when some witnesses testified before the tribunal and therefore did not listen, see, or watch the witnesses and assess their demeanour but that in his Judgment he reviewed, assessed and applied the evidence of witnesses who testified in his absence, to give Judgment in the Petition. The Supreme Court held the same position in *Shanu v Afribank (Nig.) Ltd*.[92] and *Nyesom v Peterside*.[93] Indeed, as far back as the days of the West African Court of Appeal, the Court held in the case of *Nana Tawiah v Kwesi Ewudzi*[94] that thus:

> It is clear that at least two of the Tribunal members who gave judgment were not present throughout the proceedings, and did not hear all the evidence. This vitiates the whole trial, and in my opinion this Court has no option but to declare the whole proceedings before the. Tribunal and the Provincial Commissioner's Court a nullity.

The rationale for these decisions is Section 36 of the Constitution of the Federal Republic of Nigeria which makes copious provisions regarding fair hearing. It dictates that the composition of a panel is intrinsic to the fulfilment of the fair hearing requirements of the constitution. The right to fair hearing is a substantive right guaranteed by the constitution, obeisance to the constitutional provision guaranteeing fair hearing cannot by any stretch of ingenuity be a matter of technicality.[95]

The consequence of any decision reached in contravention of the fair hearing provision of the constitution is that the decision is a nullity. In *Dingyadi V INEC*[96], the Supreme Court stated the effect of proceedings held in breach of the right to fair hearing thus:

> The law is trite that the effect of breach of the right of fair hearing in any proceedings of Court as happened in the instant case rendered the proceedings including the judgment of 10th March, 2010 dismissing the appeal, a complete nullity.

Usually, the main argument of those who hold steadfast to technicalities is to rely on form to wave the age old cliché of miscarriage of justice or lack of jurisdiction which many advocates wave like a magic wand. I am of the opinion that where parties are not mistaken as to the nature of any event that occurs at trial, then it would amount to resorting to mere technicality because of form. In other words, form should not and never take precedence over substance more especially where the facts of the case are not either materially affected or affected in any way at all such as to weigh or bear on the outcome or end product.

---

89 S 132 (7) and (8) of the Electoral Act, 2022.
90 S 285 (6) CFRN, 1999, S 132 (8) Electoral Act, 2022
91 Reported in 2019.
92 [2002] LPELR -3036 SC.
93 [2016] 7 NWLR (Pt. 1512) 452 @ 504.
94 3 WACA 52.
95 S 1 (1) of the CFRN, 1999 establishes it as supreme over all persons and authorities and subsection (3) provides that anything inconsistent with it is null and void.
96 [2010] LPELR– 40142 (SC), *Rasaki Salu v. Taiwo Egeibon* [1994] 6 S.C.N.J. 223, [1994] 6 N.W.L.R. (Pt. 348) 23 at 44.

In *EFCC v Kalu*[97], Senator Orji Kalu was charged alongside a former Commissioner of Finance of Abia State, Jones Udeogo and Slok Nigeria Limited for allegedly stealing over Seven Billion Naira from Abia State treasury. The Supreme Court quashed the judgment that convicted and sentenced the former Governor to 12 years imprisonment on the ground that trial Judge, Justice Mohammed Idris was no longer a judge of the Federal High Court as at the time he sat and delivered the judgment that convicted the defendants and as such lacked jurisdiction. According to the learned justices of the Supreme Court, Justice Idris, having been elevated to the Court of Appeal before delivering the judgment, lacked the *vires* to return to sit as High Court Judge. The apex court also held that the Fiat obtained by Justice Idris from the President of the Court of Appeal pursuant to section 396 (7) of the Administration of Criminal Justice Act ("ACJA") was unconstitutional.

The question to be considered at this stage is: how did the return of the Judge to deliver judgment cause miscarriage of justice having been the same Judge that presided over the trial, heard and took evidence of witnesses and witnessed their demeanours? Furthermore, how could a court that sat on a trial till the end before delivery of judgment suddenly lack jurisdiction to deliver judgment after trial? It can hardly be argued by any stretch of imagination or logic that it caused or led to a miscarriage of justice or that Justice Idris lacked jurisdiction to deliver judgment even in view of the Fiat obtained pursuant to the ACJA. It was a murder of justice on the altar of technicality.

Is it all matters that border on jurisdictional issue that must be quashed or nullified, especially where it does not lead to miscarriage of justice? It is trite that where a court lacks jurisdiction, the entire proceeding no matter how well conducted is a nullity. But I believe there should be a qualification to ascertain whether such lack of jurisdiction amounts to a miscarriage of justice, which should be the ultimate consideration. The issue of jurisdiction when raised most times, is merely a ploy to frustrate a good case on a technicality

In my opinion, the coming back of Justice Mohammed Idris from the Court of Appeal to the Federal High Court to deliver judgment in a matter he had been handling before his elevation to the Court of Appeal, had caused no miscarriage of justice. If anything, it has even done justice to all parties, because a judge who began the case, listened to witnesses, admitted evidence, heard counsel's adumbrations, also wrote and read the judgment. This is the position as envisaged by ACJA which the constitution perhaps, never envisaged. I do not think section 396 (7) ACJA is inconsistent with the Constitution. Rather, it is a welcome provision to fill up a lacuna long left uncovered by the constitution. The constitution does not expressly prohibit a judge of the High Court who had been handling a matter before being promoted to the Court of Appeal, from coming back to conclude his part-heard matters.

It was Walter Savage Landor, an UK (English) writer and poet who philosophized many years back that when law becomes a science and a system, it ceases to be justice.[98] In *Salawu Ajide v Kadiri Kelani*[99], Oputa J.S.C, on the need for truth to prevail in order to ensure justice is done poignantly cautioned that:

> Justice is much more than a game of hide and seek. It is an attempt to discover the truth, on human imperfections, notwithstanding. Justice will never decree anything in favour of so slippery a customer as the present defendant/appellant" on this note, our courts have admitted that justice and truth are on the same ticket and that in

[97] FHC/ABJ/CR/J6/07

[98] https://businessday.ng/opinion/article/of-technicality-justice-and-supreme-courts-decisions-1/ accessed on 28th August, 2023

[99] [1985] 1 NWLR 248 at 269

doing justice the courts and all ministers in her temple, that is lawyers and all other stakeholders, must strive at discovering the truth regardless of legal technicalities.

Recommendations

1. Emphasis should be placed to the effect that an action must be initiated by due process. It would be no injustice for a court to refuse entertaining a matter if it defaults in following the required process of the law. This should not be viewed as an anomaly, as the rationale behind this condition is to ensure sanity and check in legal processes. If the court is not stringent on such, gross abuse of process and illegalities will become the order of the day. Thus, if a substantive law spells out due process to be followed, the litigants should not be so negligent as to neglect the rules and argue technicalities with innocent faces in court. This was the position of the Supreme Court in *FBN* v *Maiwada*[100] where Fabiyi J.S.C., stated that no one should talk of technicality when a substantial provision of the law has been rightly invoked. This position reflects due process and rule of law.

2. Secondly, balance can only be achieved when the judiciary ensures that parties before the court get a fair hearing. In *Omoniyi* v *Central Board*[101] the Court of Appeal held that the true test of fair hearing is the impression of a reasonable person who was present at the trial and whether from his observation, justice had been done in the case. The judges in applying the rule of law to the facts of the case should have in mind that the end product of law is justice. Thus, they should be affirmed in all convictions that the trial was a fair one, whether controversial or not. The parameters for a fair judgment should be in line with *section 36 of the Constitution of the Federal Republic of Nigeria, 1999.*

3. Amendment of provisions of court rules or statutes that impose strict liability compliance and by extension, amendment of similar laws which establishes the courts and governs the institution of actions and conduct of proceedings. It is to be noted that judges do not make laws, but instead interpret the laws. The controversies that have paraded the legal scene on the issue of technicalities have always lingered on the interpretation of statute. The lack of precision and clarity in legal frameworks may somewhat move the judges towards applying judicial activism in offensive ways. There should be constant legislative reviews to enable the judges or courts ascertain the minds of the legislature on any matter.

4. There should be an adoption of a practice and procedure in our judicial system wherein all objections bordering on technicalities should be merged together with the hearing of the substantive suit and to incorporate all interlocutory appeals into the main case, such that the determination of the court can be made known on both in a single judgment, rather than pursue common issues of amendment or injunction up to the Supreme Court whilst the main case is guillotined thereby, on the altar of technicality.

Conclusion

Achieving a balance between substantial justice and technicalities is the ultimate safeguard for upholding the sanctity of justice. In the administration of justice every effort must be aimed at resolving or reducing social conflict and promoting social harmony. If justice is to be invoked rightly, then the law should be its solid backbone. Law and justice are inseparable and none can exist without the other. The system of dispensing justice is in two phases- the examination of the law and the application of the law to the facts. The judges depend on law to dispense justice and justice needs good laws to prevail.

[100] *Supra*.
[101] [1988] 4 NWLR PT 89 p. 448.

The judiciary must save itself from extinction and historical irrelevance; it must assert itself as the last hope of the common man, by ensuring that it digs very deep into each case presented before the court in order to give justice to those who deserve it. The incapacity of the court to do justice to the real issues before it goes back to the society itself, as litigants are then forced to embrace self-help, law enforcement agencies become dispute resolution merchants and arbitrariness sets in. We cannot continue to run a court system that delivers empty papers to the people as judgment, the contents of which do not birth any form of justice at all. A system where our learned justices are more interested in rewarding the brilliancy and creativity of lawyers in identifying loopholes and punching it, thereby sacrificing good judgment on the altar of mere technicality must be frowned at.