

THE PROPOSED NEW LAGOS STATE CIVIL PROCEDURE RULES ON THE INCREASE IN COST OF FILING AND DEFAULT FEES AND THE IMPLICATIONS ON ACCESS TO JUSTICE



INTRODUCTION AND BACKGROUND

In mid-2018, the Chief Judge of Lagos State, Honourable Justice Opeyemi Oke, set up a committee to review the current High Court Civil Procedure Rules (2012). The aim of the review is to make modifications and proposals for a more efficient justice administration system. In particular, the review is intended to devise a means of resolving disputes in a timely manner and also address the long-standing problem of congestion.

From the review of the rules, the committee proposed new rules which are slated to take effect from January 2019. Some proposed inclusions/modifications include: increase in the cost of filing, increase in the default fees for late filing of court processes from N200 per day to N1,000 per day, the power of a judge to strike out a suit where there has been no party activity in six months, limit

on the length of written addresses and replies on points of law, and use of *verifiable means of electronic communications* as a means of serving court processes by substituted means.

While the proposed new rules appear to be conceived out of concerns relating to delays in the adjudication process and these proposals might be the right steps towards judicial efficiency—the proposed provisions on increased cost of filing and default fees are problematic because the cost of action is borne on litigants from all financial status. This article explores the implications of the increase in cost of filing and default fees on indigent litigants' access to justice.



Mischief to be Remedied by Increasing Cost of Filing and Default Fees

As earlier stated, the proposed the new rules appear to target inefficiencies and delays in dispensation of justice in the High Court. The Punch Newspaper remarked that, *“the latest efforts towards stemming delayed justice in Lagos State is the proposed amendments to the Lagos State High Court Civil Procedures Rules 2012. Most of the proposed amendments were targeted at tackling delays in the courts.”*

In particular, the increase in cost of filing is aimed at generating revenue for the Court operations, given the inflation in the Country. Moreover, the default fees appear to be targeted at deterring the excesses of parties who abuse the court process. Another aim of the new rules is to encourage alternative dispute resolution mechanisms as a means of unclogging the congested court dockets.

Although these new rules are a welcome development, the draftsmen need to consider the potential implications of the new rules on access to justice, particularly for the indigent populace.

Definition of Access to Justice

Access to justice is a fluid concept that lends itself to several applications. Justice can either be in the procedural or substantive. Similarly, it can be viewed from a narrow or broad sense. In a narrow sense, “access to justice focuses on access to legal advice, legal services and other methods of dispute resolution.” From a broad perspective, “access to justice has been defined as the right of every individual to require the state to provide a means of dispute resolution that is equally accessible and socially just.” The Open Society Initiative for West Africa (2007) discussed the concept of access to justice

as entailing three features: *knowledge of rights and how to access them, proper environment to be heard and quality services.*

At the root of the broad and narrow interpretations of access to justice is the inherent right of every citizen to be given an opportunity to be heard. However, being “heard” may be hindered by physical, economic, socio-political or cultural challenges. The focus of this report is on the possible economic limitations to access justice which may result from an increased cost of filing and high default fees.

Practical Implication

As mentioned in the introduction, the Lagos State High Court proposes to modify the High Court Rules to include provisions that have financial implications. Present-day Nigeria is marred by widespread poverty. The cost of filing, as uniformly applied to all litigants, is a heavy cost to be borne by some litigants—indigent ones who fall in the majority. This burden does not include the professional fees to be paid to the litigant's counsel, where applicable. Furthermore, increased default fees (an additional cost), is borne by the litigant. Sometimes the cause of the default is a result of actions unrelated to the litigant's conduct. Nevertheless, the litigant is still expected to bear those costs. The practical implication is that litigants are constantly caught in a dilemma, whether to pursue or continue litigation to seek redress for wrongdoings or whether to incur heavy debts as the price of litigation. Perhaps the indirect implication of the increased cost of filing is that more parties will be inclined to settle issues out of court.

Recommendations and Conclusion

Based on the practical implication raised, it appears that an entire section of society might be disenfranchised from seeking redress in court for reasons beyond their control, namely poverty. This is unacceptable to the fundamental principles of justice. The Lagos State High Court should consider other means of achieving its goals of efficiency without imposing financial burdens on litigants.

Some recommendations to consider include promoting improved efficiency of the judges by digitizing the adjudication process and moving away from paper processes that overwhelm the judges. Furthermore, the Court should consider a sliding scale formula for assessing filing fees, where the court takes into consideration the means of the litigant. Additionally, Lagos state should consider setting up small claims courts and empower those courts to handle a variety of matters, not just commercial matters. Small claims courts will significantly reduce the cost of litigation by dispensing with the need for legal representation and promote timely dispensation of justice.

Among the benefits of the proposed new rules is the movement towards utilizing ICT to make the processes more efficient. Incentives should be attached for adopting those ICT measures. For instance, there should be a reduction in the cost of filing for e-filing and e-substituted service of process. This recommendation addresses the need for multiple registrars in the filing process, which increases the cost of filing. The reduction of human interference also removes chances of manipulation of the court processes filed and eliminates means for extortion of litigants under the guise of expediting the process.

While these considerations proffered will address some of the mischief sought to be cured by the new rules, the Court system needs to build sustainable institutions that address the present maladies, while being flexible enough to accommodate future challenges, in order to avoid the need for constant review of the rules.