

## The Innovations of the 2017 National Industrial Court Rules.

On January 5, 2017, the National Industrial Court (NIC) Rules 2017 came into being repealing the 2007 Rules of the National Industrial Court. With 67 Orders as against 31 Orders of the 2007 Rules, the new Rules made revolutionary changes to the practice and procedure of the NIC.

This work seeks to outline the innovations, purport and importance of the new Rules on proceedings, access and dispensation of justice at the Nation's exclusive court for the determination of labour related disputes.

### 1. Purport of the Rules

**Order 1, Rules 4 & 5** sets out the purport of the Rules which can be summarised as follows;

- a. Ensuring better case track management system for civil matters.
- b. Easy and speedy determination of civil matters particularly by reducing time spent in interlocutory applications, reducing the need for interlocutory applications and discouraging frivolous adjournments.
- c. Prudent management of the Court's resources.
- d. Facilitating the use of Alternative Dispute Resolution methods in labour related disputes.

### 2. Application

The Rules also applies to part heard matters filed prior to the inception of this Rules. **Order 1, Rule 8.**

### 3. Application of the Evidence Act

The NIC is allowed to depart from the Rules of Evidence where it considers it necessary by virtue of **Sec. 12(2) (b) of the National Industrial Court Act, 2006. Order 1, Rule 9 Sub 2**

### 4. Institution of Action in other Judicial Division

The Rules allows a Claimant to file his action in any judicial division other than that closest to where the Defendant or Respondent resides or carries on business where economic, security, environmental or other exigencies warrant. **Order 2, Rule 1 sub 1.**

The implication of this is that a person who lost his employment at a Lagos based company and has relocated to his village in Ibusa in Delta State due to financial issues or ill health and has grievances against his former employer can file his action at the Asaba Division of the National Industrial Court.

The hearing of the suit in this instance will be at a judicial division to be determined by the President of the Court. **Order 2, Rule 1 sub 2.** The President of the Court is also empowered to direct the hearing of a case in a Judicial Division other than where it was filed. This can also be on the application of party or suo moto. **Order 2, Rule 4 & 6.**

The filing of a suit in a wrong judicial division is not fatal to the suit. It can be heard in that judicial division except the President of the Court directs otherwise. **Order 2, Rule 5.**

#### 5. **State Registries**

The Rule establishes Registries in every state even where there is no resident judge. These Registries are empowered to perform all the functions of the registries of the regular courts. **Order 2, Rule 2.**

All state registries may also have Judges Chambers where on the direction of the President of the Court, interlocutory applications other than ex parte motion can be heard. **Order 2, Rule 3.**

#### 6. **ADR Centre**

The Rule sets up an ADR Centre which only entertains matters involving individual claims. Matters instituted by originating summons do not qualify for referral to ADR. Also, all matters bordering on collective disputes arising from the Trade Dispute Act and matters challenging the appointment of a person to an office, union or association or as public trustee do not qualify for referral to ADR. **Order 2, Rule 17.**

#### 7. **Commencement of Action**

The Rules specifically lists out the means of commencement of actions to wit; Complaint, Originating Summons, Originating Motions, Applications for Judicial Review, Notice of Appeal or Petition, Referral from the Minister of Labour and Productivity and any other means prescribed by the Rules, the Act or any other law.

The Rules also explains when these various means of commencement of actions will be applicable.

Under the Rules, a Complaint is synonymous with a writ of summons as obtainable in our regular Courts. Particularly with regards to Complaints, the form is now radically different. The Complaint and the statement of fact are now one document with one Court heading which is divided into 2 parts;

Part 1- The title of the matter, suit number, address for service, and notice to the other party.

Part2- This section now contains what ordinarily should be the statement of facts which is synonymous with the statement of claim. It should detail the address and description of parties, clear and concise statement of facts, clear and concise statement of legal issues and reliefs sought.

Under this head, all dates, sums and numbers should be expressed in figures.

The Complaint should be accompanied with a schedule listing the documents and the number of documents and exhibits that are material and relevant to be used in the proceedings.

Upon receipt of the Schedule, the Defendant shall within fourteen days file an acknowledgement indicating the documents which their admissibility shall not be contested and otherwise. Documents which admissibility shall not be contested shall be deemed admitted and their admissibility shall not be contested at trial except the Court directs otherwise.

Where the admissibility of a document is contested at trial, the Court may upon the objection being raised, take arguments and rule immediately or determine the admissibility or otherwise at Judgment. **Order 3, Rule 9, 10 and 11.**

The Rules also makes provision for facts that should be specifically pleaded when a Claimant is seeking monetary reliefs or challenging termination. **Order 3, Rule 12 and 13.**

Failure to comply with the requirement of the form of Complaint and filing of pre-action notice is a ground for striking out the suit.

#### **8. Departure from the Rules**

Parties are allowed to apply to the Court to depart from the rules based on the exigency of the matter.

The Rules specifically provides that the Court should not allow technicalities to defeat the course of justice. **Order 5, Rule 6, Sub. 3.**

#### **9. E-Filing of Court Process**

This appears to be the major innovation of the Rules. The Rules allows for Electronic filling of court process. One is required to first register as an E-filer with the Electronic Filling Manager (EFM) of the Court and obtain an Authentication Registration Number (ARN) which will be used in all filing with the Court.

All processes required to be E-filled must be typed and saved in a PDF Format. Exhibits and appendages are to be saved directly where they are in soft copy or scanned where they are printed or in hard copy and saved into

a named computer file with the ARN of the E-filer and the suit number and other relevant details of the suit.

Counsel's electronic signature suffices in compliance with the requirement of the Rules as regards signature.

Where a process or document has been sent and acknowledged by the EFM, the E-filing is deemed good and proper and to have been delivered to the Registrar.

An E-filed process is deemed to be timely filed once it is filed before midnight on the date the document is expected to be filed in compliance with the relevant provision of the Rules. The document is then automatically stamped received.

Where there is a technical or system error that delays the E-filing of a process, such shall not be held against the E-filer.

Upon E-filing, the process is transmitted by the EFM to the President of the Court or Administrative /presiding Judge as the case may be.

**Order 6A, Rule 1-17.**

**10. Service of Court Process.**

**Order 7, Rule 1.**

The Rules relaxes the strict requirement of personal service for court processes. It basically expands the regular modes of service. The Rules allows for service via email addresses.

The Rules allows the pasting of processes or affixing of processes on the address of a party without seeking the leave of court.

Where a process is meant for any agency, institution, ministry or parastatal of the Federal or State government or Federal Capital Territory, the Rules allows the service of such process on the Attorney General, Permanent Secretary or Director of any other agency, institution, ministry or parastatal of the Federal or State government or Federal Capital Territory.

Hearing notice or adjourned dates of a matter can be served by telephone calls.

The Rule also allows for the appointment of an External Process Server.

**11. Entitlement of Deceased Employee who died Testate or Intestate**

The Rules makes provision for the filing of a suit to claim benefits of a deceased employee whether testate or intestate.

The filling fee for claims for benefits of a deceased employee is valued at 25% of the actual filling fee. **Order 10, Rule 1.**

Where the deceased died testate, the Claimant is required to attach a copy of the will and the probate grant to the claim. **Order 10, Rule 2.**

Where a deceased died intestate and names a next-of-kin, the Claimant is required to attach a certified true Copy of the deceased employee's bio-data form where the Claimant was named next-of-kin and a letter of administration or an order from the customary or sharia court as the case maybe. **Order 11, Rule 1.**

The Rules makes other provisions for Claimants who are unable to meet the foregoing requirement.

## 12. **Pre-Trial Conference**

After close of pleadings, the Parties on their own volition or on the order of the Court may hold a Pre-Trial Conference. **Order 12, Rule 2.**

The Pre-Trial Conference under this Rule is conducted by parties without the Court and a report sent to the Court within 7days after conclusion of same. **Order 12, Rule 4.**

## 13. **Sexual Assault and Workplace Discrimination**

The Rule sets out the facts that should be specifically pleaded by a Claimant who alleges sexual assault or workplace discrimination.

In the case of sexual assault, the Claimant is required to state whether the sexual assault is;

- a. The Physical conduct of a sexual nature
- b. A verbal form of sexual harassment
- c. Non-verbal form of sexual harassment
- d. Quid pro quo harassment

### **Order 14, Rule 1**

In the case of workplace discrimination, the Claimant is required to state whether the alleged workplace discrimination is on the following ground;

- a. Ancestry
- b. Religion
- c. Gender
- d. Marital status
- e. Family situation
- f. Genetic heritage

- g. Ethnic origin
- h. Political or ideological conviction
- i. Union affiliation
- j. Tribe
- k. Handicap or disability
- l. Health
- m. Pregnancy or any other ground.

The Claimant is also required to include the activity (including the mode, manner, correspondences and communication) that constitutes the alleged work place discrimination.

**Order 14, Rule 1, sub 2.**

**14. International Protocol, Convention and Treaty**

Where an action involves a breach of non-compliance with an international protocol, convention or treaty, the Claimant is required prove the existence and ratification of such protocol. Where its involves breach of international best practices, the Claimant is required to prove the existence of such in same way as customs are required to be proved in the Evidence Act.

**Order 14A, Rule 1, sub 1.**

**15. Defence**

Under the Rules, a party upon being served with a Complaint and schedule of documents or any recording by an electronic device, a Defendant is required to file alongside his statement of defence a schedule dictating the documents or recording which the Defendant shall be objecting to and the ones the Defendant shall not be objecting to.

The Defendant is also required to file alongside a written address in support of the objection and serve same on the Claimant who shall file a response.

The Court may either take all arguments pertaining to objections before proceeding to trial or take all such arguments alongside final address at the close of the trial.

**Order 15, Rule 3 and 4.**

**16. Priority of Motions**

The Rule makes specific provisions on priority of hearing of multiple motions before the Court. The Rule aligns with the principle that a motion which seeks to regularise or save a suit should be heard before a motion which seeks to terminate a suit. **Order 18, Rule 2, sub 1**

The Rule also makes provision for priority of hearing preliminary objections from various defendants and consolidation of preliminary objections. **Order 18, Rule 3 and 4**

**17. Urgent Relief**

A Claimant is allowed to apply for urgent relief under the Rules. A Claimant applying for urgent relieve is still required to comply with relevant Rules for filing originating processes. **Order 21**

**18. General Procedural Matters**

Like in most rules of Court, the Rules allow the Court to rely on any rules or procedure that will do substantial justice where there is no provision for such circumstance in the Rules. The application to rely on any other Rule can be made by a party. However, where the decision to rely on any other rule is made by the Court, parties must be allowed to address the Court on the suitability or otherwise of the rules. **Order 22, Rule 1 and 2.**

**19. Reference to the Alternative Dispute Resolution Centre**

The President or the Judge of the Court is empowered to refer a matter to the ADR centre for conciliation or mediation. The Centre has 21 days and a maximum extension of 10days within which to conclude a conciliation or mediation.

Where a conciliation or mediation is successful, parties are made to adopt the terms of settlement as a judgment of Court. **Order 24, Rule 1, 2, 3 and 4.**

**20. Fast Track Case.**

The Rule provides that matters which borders on any of the following qualifies to be placed on fast tract;

- a. Strike or industrial action or lock outs;
- b. Any other form of industrial action that threatens the peace, stability and economy of the country of any part thereof
- c. declaration of trade dispute by essential service providers
- d. a trade dispute directly referred to the court by the Minister of Labour and Productivity.
- e. relating to the entitlement of a deceased employee.
- f. any other matter which the President of the court may suo moto or on the application of any party direct to be placed on fast –track.

In this circumstance, the originating process shall be marked “**Qualified for Fast Track**”. **Order 25, Rule 1 & 2.**

After filling of processes which qualify for fast track, the Court guides parties and give directions for a suitable case management time table. In this circumstance, trial will be required to proceed on a day to day. The Rule specifically provides that postponement of trial will only be a last resort.

Upon close of trial, parties only have 7days to file their final address. The Court is enjoined under the rules to deliver the judgment as quickly as practicable. **Order 25, Rule 17.**

**21. Amendment**

The Rules makes specific provisions for amendment unlike the former rules. The procedure and grounds for amendment are in tandem with the general principles of law governing amendment of court process.

**22. Expert Witness**

Any party who desires to call an expert witness must deliver notice to that effect alongside with a summary of evidence at least 14days before the hearing. **Order 28, Rule 6.**

**23. Settlement of Issue**

The Rules provides for settlement of issues before trial or at any stage of the proceedings based on the issue set out by parties or any of the parties. **Order 37.**

**24. Proceedings at Trial**

Where a written address has been filed and the party who filed same is absent in court, the Court is allowed to deem the written address as adopted and adumbrated upon. **Order 38, Rule 3, sub 3.**

The Rules directs that trial shall be on a day to day sequence and that adjournments during trial shall not be more than two times on account of a party except on strong and compelling grounds. **Order 38, Rule 7.**

A party seeking for adjournment during trial is required to notify the Court and the other party at least three days before trial stating cogent reasons. **Order 38, Rule 7, sub 3.**

Where a matter is adjourned at the instance of a Counsel, it shall be that Counsel's responsibility to find out the next adjourned date. **Order 38, Rule 8.**

The Rules empowers the Court to foreclose a party who has exhausted the two opportunities for adjournments. **Order 38, Rule 9.**

The Rule prohibits adjournment on the ground that a Counsel who took a date for a matter is absent or is present and is not ready to go on. **Order 38, Rule 10.**

The Rule defines the concept of holding brief to mean holding brief for all intents and purpose. **Order 38, Rule 11.**

The Rule prohibits adjournments made by a Junior Counsel on the ground that the Principal Counsel intends to personally handle the matter except the junior Counsel gives strong and compelling reasons. **Order 38, Rule 12.**

**25. Evidence and Proof Generally**

All agreed document or documents deemed admitted can be tendered from the bar. **Order 40, Rule 1, sub 1.**

The Rules gives the Court wide powers to guide evidence generally. The Rule also limits cross-examination to forty minutes only. **Order 40, Rule 19, sub 2.**

The Rules also empowers the Court to ask witnesses questions for clarification or order a witness to produce a document. The Rule forbids any objection or cross –examination on this account. **Order 44.**

**26. Final Written Addresses**

Final written address shall not be more than 35pages and shall be concluded with a numbered summary of the points and prayer of the party. **Order 45, Rule 2, sub 2 and Rule 3.**

A motion for extension of time to file written address is required to be made at least 7 working days before the expiration of the 21days required by the rules to file written addresses. **Order 45, Rule 10.**

**27. Judgment and Order**

The Rules directs that copies of Judgments delivered be given to parties within 7days of delivery and that the Registrar prepares the enrolled Order of Court within five working days of delivery of Judgment. **Order 47, Rule 2 and 4.**

The Rule clearly prohibits the filing of motion to arrest Judgements/Ruling or that seek to prevent delivery of Judgment/Ruling except such motions are filed with 14 days before the delivery of the Judgment and 7days before the delivery of a Ruling. **Order 47, Rule 14, 15 and 16.**

**28. Computation of Time**

Penalty for default of filling within time now attracts ~~₦~~100 for the first 14days of default, ~~₦~~200 for further 14days of default and ~~₦~~500 per day for every other day of default.

The Rules also makes new provisions for Admission, Payment in and Out of Court, Re assignment of cases, Enforcement of Judgment, Appeals, Garnishee Proceedings, Proceedings in Forma Pauperis (proceedings for indigent

persons), Interpleader Proceedings, Appointment of Public Trustee for trade unions, transfer and consolidation of suit etc.

### **Conclusion**

The Rules is a well-articulated effort at enhancing speedy dispensation of justice at the NIC. Its provisions carefully seek speed without sacrificing justice. A strict application of the Rules will surely change the justice delivery system at the NIC. The Rules is also a worthy precedent for emulation by other courts.

### **Query**

The Rules burdens the office of the President of the NIC with so many applications that require its authorization/order/directions. This might slow the pace of the justice delivery system which the Rules seek to speedup.

### **NB.**

The work is not exhaustive on the innovation of the Rules but extensively covers the innovations that are necessary and basic for practice and procedure at the NIC.

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