**PRACTICE AND PROCEDURE IN THE COURT OF APPEAL: AN OVERVIEW**

**BY**

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**INTRODUCTION**

The Court of Appeal is the penultimate court in Nigeria; established in the year 1976 to address the growing need for speedy and effective dispensation of justice. Prior to the establishment of the Court of Appeal, there were only two levels of courts of record within the Nigerian judicial system- the High Courts of each region and the Federal Supreme Court.

The increasing number of appeals to the Federal Supreme Court from the regional High Courts made it imperative for an intermediate appeal court to be established. This was because, the Federal Supreme Court at the time, did not have the capacity to ensure speedy and effective dispensation of justice in respect of all the appeals filed from the High Courts of the regions.

The first court of appeal to be established was the Western Nigeria Court of Appeal, established in the year 1967. The court was given recognition under the Constitution (Miscellaneous) (No. 2) Decree of 1967. Following this, there were discussions for the establishment of a national Court of Appeal, which culminated in the establishment of the Court of Appeal by the Court of Appeal Decree in 1976.

Since its establishment in 1976, the Court of Appeal has contributed immensely to the effectiveness of the administration of justice system in Nigeria. The Court has also experienced several innovative developments overtime leading up to the establishment of 20 divisions of the Court across the Six Geopolitical Zones of Nigeria. These divisions of the Court entertain appeals, whether criminal or civil, from the Federal High Court, State High Courts, High Court of the Federal Capital Territory, and the National Industrial Court.

The Court is also vested with the power to entertain appeals from: Sharia Court of Appeal, Customary Court of Appeal, Code of Conduct Tribunal, Court Marshal, Election Petition Tribunal, Investment and Securities Tribunals and the Legal Practitioners Disciplinary Committee.

A notable innovation of the Court of Appeal is the establishment of the Court of Appeal Alternative Dispute Resolution Centre (CAADRC) by the Abuja Division/Head Quarters in 2021. The CAADRC is the first of its kind in West Africa and it is tailored to promote mediation and other alternative dispute resolution mechanisms towards enhancing the administration of justice and speedy resolution of disputes.

The Court of Appeal has both original and appellate jurisdictions which are extensively provided for under sections 244 to 247 of the 1999 Constitution of the Federal Republic of Nigeria (as amended). However, the practice and procedure in the Court of Appeal is regulated by the rules made by the president of the Court of Appeal pursuant to Section 248 of the Constitution.

This paper therefore focuses on the practice and procedure of the Court of Appeal based on the Rules AND Practice Directions made by the president of the Court of Appeal.

**PRACTICE AND PROCEDURE**

Over the years, several rules of practice and procedure have been made by the various presidents of the Court of Appeal. However, for the purpose of this discourse, our focus shall be on the more recent Rules made by the current President of the Court of Appeal which include: Court of Appeal Rules 2021, Court of Appeal (Alternative Dispute Resolution) Rules 2021, Court of Appeal (Fast Track) Practice Directions 2021, Court of Appeal Practice Directions on Costs 2021, Court of Appeal (Exemption of default Fees for Filing of Court processes) Practice Direction (No. 1) 2021 amongst others. These set of rules and practice directions regulate the practice and procedure of the Court of Appeal in adjudicating over disputes on the basis of its original or appellate jurisdiction.

* **Civil Appeal**

The practice and procedure of the Court of Appeal in respect of civil appeals is extensively provided for under Part II of the Court of Appeal Rules 2021.

**Order 7** provides generally for the notice and grounds of civil appeals. Notable provisions under Order 7 are that all appeals come to the Court by way of notice- notice of appeal, filed physically or electronically. The notice of appeal must clearly set out the grounds upon which the appeal is filed and the particulars that sets out the basis for such grounds of appeal. By the provision of Order 7(3), vague grounds of appeal which do not set out in specific terms the basis for the appeal would be struck out by the Court. As such, it is important to be concise and precise when drafting a ground of appeal.

Whilst the Court is not limited to the grounds of appeal for the determination of the appeal, no argument can be made in respect of a ground of appeal that is not contained in the notice of appeal except by the leave of the Court. The Court has the power to strike out a notice of appeal for being incompetent and may allow the notice of appeal where the incompetence is not a fundamental defect subject to rectification by the appellant. Georgewill J.C.A had this to say in 2022 ***"this Court has the plenitude of power to strike out a Notice of Appeal as well as the appeal itself if it turns out that the Notice of Appeal is not competent. This is so because, once there is no valid Notice of Appeal there is really no basis in law to proceed to consider and resolve an incompetent appeal on the merit, since no matter how well reasoned or sound such a judgment on the merit would be, it having been reached in the absence of competence and lack of jurisdiction, is nothing but a nullity. See Macfoy V. UAC Ltd. (1962) AC 152 @ p. 160, …You cannot put something on nothing and expect it to stay there. It will collapse."*** Per GEORGEWILL ,J.C.A in Tukur v. Magaji & Ors (2022) LPELR-58847(CA) (Pp. 24-25 paras. E)

However, a notice of appeal may be amended by or with the leave of the Court at anytime.

**Order 8** provides for the compilation and transmission of records. It is the duty of the registrar of the trial court to compile and transmit records within 60 days after the filing of the notice of appeal. Where the registrar fails to compile and transmit records within the 60 days, it becomes the duty of the appellant to compile and transmit records within 30 days. By the provision of Order 8(4) the appellant is expected to provide 10 copies of the compiled records and two encrypted compacts discs of the compiled records to the registry of the Court of Appeal. Upon compilation, the appellant is required to effect service of the notice of appeal within 30 days.

in Cross Country Ltd v. A. G. Moeller Ltd (2014) LPELR-24091(CA) (Pp. 46 paras. D), the Court of Appeal per Abubakar J.C.A stated the law clearly as follows:

***"An Appellant who has a valid Notice of Appeal like the applicant in this application must compile and transmit record of Appeal, compilation and transmission of record to the Court of appeal or the Supreme Court is the next stage, it is only when records are compiled and transmitted that an appeal will be deemed entered in the Appellate Court. See LEADERS & COMPANY vs KUSAMOTU (2008) All FWLR (Pt 405) page 1800."***

The respondent is at liberty to apply for a departure from the rules to allow for the accelerated hearing of the appeal. If the respondent is dissatisfied with the record compiled, the respondent is at liberty to compile additional records within 15 days of the service of the records of appeal.

After the compilation and transmission of records, the appellant is expected to make a deposit of not less than **₦50, 000.00 (Fifty Thousand Naira)** with the deputy chief registrar as cost for the prosecution of the appeal. An order as to deposit on cost may also be awarded against the respondent upon the application of the appellant.

Where the registrar or appellant fail to transmit records after 90 days of the filing of the notice of appeal, the respondent may apply to the court to strike out the appeal. The Court may relist an appeal so struck out if satisfied that the appellant had justifiable reasons for the failure to transmit records within the time stipulated by the rules.

**Order 9** provides for the filing of respondent’s notice of contention. A respondent’s notice is filed when the respondent desires that the Court varies the decision of the trial court in the event that the appeal is allowed in part or in full. A respondent’s notice is also filed to request that the Court to affirm the decision of the trial court on grounds other than that contained in the notice of appeal. A respondent’s notice of contention is to be filed and served within 15 days after the service of the notice of appeal in the case of an interlocutory appeal, and within 30 days, in the case of other appeals.

 MUKHTAR J.C.A clarified the essence of Respondent’s Notice in Alade & Ors v. Ogundele & Anor (2013) LPELR-21382(CA) (Pp. 17-18 paras. F) as follows:

***"The purpose of a Respondent's Notice is essentially to show and convince the appellate court to affirm the decision appealed against on grounds other than those relied upon by the trial court. It is only the ground in the Respondents' Notice that may support an issue for determination. The Respondents' Notice raises only issue (5) above which was well taken based on the ground of the Respondents' Notice and although the trial court did not base its decision on it, the court of appeal may still rely upon such grounds in affirming the decision of the trial court. A Respondent cannot use a Respondent's Notice to make out a new case at the appellate level. See Stephen Onyerehido v. M. O. Babalola & Anor (2008) LPELR- 8488 per Pemu, JCA at page 19 paras A-8. The fourth issue for determination formulated by the Respondents which is extraneous to the Notice of Appeal and the Respondents' Notice alike is tantamount to a non starter and hereby discountenanced”***

**Order 10** provides for the filing of notice of preliminary objection. A respondent is required to give the appellant notice of his preliminary objection within 3 clear days before the hearing of the appeal. However, arguments in support of the preliminary objection are to be contained in the respondent’s brief of argument.

Where the appellant seeks to withdraw the appeal, he can file a notice in respect of same pursuant to Order 10. Upon an order of withdrawal, the court may make orders as to costs as it deems appropriate in the circumstances of the withdrawal.

* **Criminal Appeals**

The practice and procedure of the Court of Appeal in respect of criminal appeals is extensively provided for under Part III of the Court of Appeal Rules 2021.

**Order 17** makes extensive provisions for the practice and procedure of the Court of Appeal in respect of criminal appeals. It is important to note that all that apply to civil appeals apply to criminal appeals save in the following:

1. Appeals may be brought before the Court by ways other than the filing of a notice of appeal. An appeal may also be filed by filing at the trial court a notice of application for leave to appeal or a notice of an application for extension of time within which such notice shall be given. The forms of these notices are set forth under the Second Schedule to the Rules.

Banjoko J.C.A put it very succintly in FRN v. Atuche & Ors. (2022) LPELR-58733(CA) (Pp. 37-41 paras. D) when she said ***“The argument of the learned Silk representing the 3rd Respondent that the Appellant did not comply with the unambiguous rules of this Court is misconceived. Order 7 Rule 2 being relied on by the 3rd Respondent, is inapplicable to this instant case, as this appeal is a Criminal Appeal and the Procedure for filing a Criminal Appeal is different from that of a Civil Appeal. The overriding guide in Criminal Appeals is that by the Rules, under Order 17 Rule 5, a proviso is stated that the Court may in the interest of justice and for good and sufficient cause shown, entertain an appeal, if satisfied that the intending Appellant has exhibited a clear intention to appeal to the Court against the decision of the lower Court."***

1. Where an appellant fails to file a notice of appeal or any of the other notices, the court may entertain the appeal if satisfied that the intending appellant has exhibited a clear intention to appeal to the Court against the decision of the trial/lower court.
2. Where leave to appeal is granted, it is no longer necessary for the appellant to file a notice of appeal. The notice of application for leave to appeal shall be deemed to be a notice of appeal.

Only the registrar of the trial/lower court has the power to transmit the record of appeal in respect of criminal appeals. This is to be done within 60 days of filing of the notice of appeal. There is no provision for the appellant to compile and transmit records in the failure of the registrar to do same.

In Abiodun & Ors v. FRN (2013) LPELR-21465(CA) (Pp. 8 paras. B), the Court of Appeal was called upon to determine the validity of a transmitted record of proceedings in a criminal appeal where the respondent complained that they were not summoned by the Registrar before compilation of records. IKYEGH J.C.A had this to say:

***"The quarrel of the respondent who placed reliance on Order 8 Rule 2 of the Rules of the Court is that it was not invited by the Court below to participate in the compilation of the record of appeal. Order 8 Rule 2 of the Rules of the Court is grouped under part 2 of the said Rules dealing with Civil Appeals which starts with Order 6 thereof, so it is inapplicable to the present application which arose from a criminal trial which is categorised under part III of the Rules of the Court, starting with Order 17 thereof. And, Order 17 Rules 7 and 9(1) thereof read together clearly shows that the preparation of the record of appeal in a criminal case is the sole responsibility of the registrar of the Court below who does not require to summon any of the parties for the preparation of the record of appeal”***

1. An appellant may be granted bail pending appeal, however such an appellant must be present at all times for the hearing of the appeal. Where the appellant fails to appear, the Court may decline to consider the appeal and proceed summarily to dismiss the appeal, and may also issue a warrant for the apprehension of the appellant.
2. Where an appellant is still in custody, the Court can *suo moto* grant bail to the appellant if it deems it appropriate in the circumstances.
3. A certificate of conviction cannot be issued against an appellant who has filed an appeal against the judgment of the trial/lower court.
4. Unlike in the case of civil appeals where a notice of withdrawal is filed, in the case of criminal appeals, it is a notice of abandonment of appeal that is filed. The service of the notice of abandonment on the registrar suffices for the appeal to be deemed as duly dismissed. However, an appellant may withdraw the notice of abandonment which shall only be allowed by the court in special cases.
5. On the application of the appellant or respondent, the Court may direct at any time that a necessary witness who gave evidence before the trial court be examined by the Court or an Examiner appointed by the Court.
6. Notices of the outcome of an appeal is to be made to the appellant, the lower court, and in the case of conviction and death penalty, to the permanent secretary of the appropriate ministries for advice to the President or Governor on the exercise of prerogative power of mercy.
* **Appeal from Court Martial and Other Tribunal**

The practice and procedure of the Court of Appeal in respect of appeals from courts marshal and other tribunals is extensively provided for under Part IV of the Court of Appeal Rules 2021.

**Order 18** makes extensive provision for the procedure of the Court of Appeal in respect of appeals from courts marshal and other tribunals. The procedures are very similar to that of criminal appeals except in the following:

1. The Court may *suo moto* amend the notice or grounds of appeal.
2. In the case of the determination of an appeal, the outcome is sent to the Courts Martial and to the Permanent Secretary of the Ministry of Defence or other department of the government for the information of the authority responsible for advising the President on the exercise of the prerogative of mercy, the respondent, the prison, or military authorities.
3. Order 18(14) provides for the savings of all proceedings instituted before the coming into effect of the Rules. It further provides that reference would be made to the Court of Appeal Act or other practice direction on anything that the Rules do not make provisions for in respect of the appeals from courts marshal.
* **Briefs of Argument**

The practice and procedure of the Court of Appeal in respect of briefs of argument is extensively provided for under Order 19 of the Court of Appeal Rules 2021.

Upon the receipt of the record of appeal, the appellant is expected to file the appellant’s brief of argument within 45 days. The brief of argument must contain amongst other things, succinct legal arguments in support of the appellant’s grounds of appeal, and a summary of the arguments. The respondent is expected to file the respondent’s brief of argument within 30 days of the receipt of the appellant’s brief of argument. Upon receipt of the respondent’s brief, the appellant shall file a reply brief within 14 days if necessary.

All briefs shall be legible, well-bound, prepared in 210mm by 297mm paper size (A4) and typed in clear typographical character. The font style shall be in Arial, Times New Roman, or Tahoma of 14 font size with at least 1.5 line spacing spaces in-between. All brief of arguments shall not exceed 35 pages except as otherwise directed by the court. However, a reply brief shall not exceed 15 pages except the Court directs otherwise.

Parties with identical interest shall file joint brief of argument, and separate briefs where their interests are separate. In the case of a cross appeal, the cross appellant may include the argument in support of the cross appeal in the respondent’s brief of argument without the leave of court.

Where the appellant fails to file the appellant’s brief of argument within the stipulated time or the time as extended by the court, the respondent may apply to the Court to dismiss the appeal. In the event that the respondent fails to file a respondent’s brief of argument, the respondent shall not be allowed to make oral arguments on the date the appeal is heard.

* **Election Petition**

The Court of Appeal has original jurisdiction over election petitions on questions as to whether, any person has been validly elected to the office of the president or vice-president, the term of office of the president or vice-president has ceased, or whether the office of the president or vice president has become vacant.

The practice and procedure of the Court in respect of election petitions is provided for under the First Schedule to the Electoral Act 2022, and the practice direction made by the president of the Court of Appeal pursuant to Section 140(2) of the Electoral Act 2022. In line with this provision, the president of the Court of Appeal usually makes a practice direction regulating the procedure for handling election petitions after every election.

The most recent practice direction made by the president of the Court of Appeal is the Election Judicial Proceedings Practice Directions 2023, which came into effect on the 22nd of May, 2023. This practice direction made holistic provisions for filing briefs of arguments, time of filing, the form and content of briefs of arguments, etc. as it relates to election petition. It is important for legal practitioners to get familiar with all practice directions in respect of election petitions so as to avoid pitfalls which may destroy the Client’s chances. This is given the peculiar nature of election petitions and the timeliness in the dispensation of same. Two decisions of the Court of Appeal will help for a better understanding.

In Mahmud & Anor v. Mustapha & Ors (Pp. 23-25 paras. F), the Court of Appeal, per IDRIS J.C.A held as follows:

***"The Appellants' Brief of Argument did not comply with the specifications in paragraphs 11 and 14(b) and (c) of the Election Judicial Practice Direction 2023 ?for a Brief of Argument in election matters.***

***Paragraphs 11 and 14(b) and (c) of the Election Judicial Proceedings Practice Direction 2023 provides as follows:***

***11 - (a) The Brief of Argument, which may be settled by learned Counsel, shall contain what are, in the Appellant's view, the issues arising in the appeal.***

***(b) The Brief of Argument shall be concluded with a numbered summary of the reasons upon which the argument is founded.***

***(c) The reasons should also be supported by particulars of the titles, dates, and pages of cases reported in Law Reports or elsewhere, including summary of the decision in such case which the parties propose to rely upon. If necessary, reference should also be made to relevant Statutory Instruments, Law books and other legal journals.***

***(d) The parties shall assume that Briefs of Argument would be read and considered in conjunction with the documents admitted in evidence as exhibits during the proceedings in the Tribunal or lower Court and wherever necessary, reference should also be made to all relevant documents or exhibits on which they propose to rely upon in their argument.***

***Paragraph 14 (b) and (c) provides as follows:***

***"(b) Every Brief must be prepared in 210 mm by 297 mm paper size (A4), typed in clear typographic character and paginated. The font type shall be either in Arial, Times New Roman, or Tahoma of 14 font size with a least 1.5-line spacing between.***

***(c) Any Brief of Argument which does not comply with these provisions shall be invalid.***

***Looking at the Appellants' Brief of Argument side by side with the provisions cited above, it is clear that the said Brief complied with paragraphs 11(a) and (b), but did not comply with (c) and (d). It is also clear that the Brief with regards to paragraph 14(b) and (c), did not comply with (b) and by the provisions of (c), any Brief of Argument which does not comply with these provisions shall be invalid. An invalid brief cannot support any appeal. In the circumstances of this appeal, the Appellants' brief which is invalid, cannot support the present appeal."***

In Olatunde & Anor v. INEC & Ors (2023) LPELR-61409(CA) (Pp. 2-5 paras. E) the Court of Appeal per IKYEGH J.C.A stated as follows:

***"Paragraph 5 (c) and (d) of the Election Judicial Proceedings Practice Directions, stipulates that -***

***(c) Every process to be filed in a Tribunal or Court must be prepared in 210mm by 297mm paper size (A4) and typed in clear typographic character. The font type shall be in Arial, Times New Roman, or Tahoma of 14 font size with at least 1.5-line spacing between.***

***?(d) Every process which does not comply with these provisions shall be invalid.***

***The phrase 'Every process' in the opening part of paragraph (c) and (d) (supra) is generic and would cover list of additional authorities which has no pagination limit. It is also pertinent that Paragraph 5 (c) and (d) of the Practice Directions contemplates the filing of other processes like list of additional authorities in addition to the filing of briefs, not to elongate the brief but to have the process standing on its own, as aid for quick reference to ease the tedium of rummaging through the maze of a brief which appears to be the case with some of the briefs filed in an appeal.***

***The case of Ezeani v. Onyereri (supra) cited by the 3rd respondent is in point. Where the Supreme Court held per the lead judgment prepared by Ogunwumiju, J.S.C., as follows -***

***"The Court of Appeal Rules (or the Practice Directions) does not mandate the inclusion of the list of authorities in the body of the brief. I agree with the Court below that the brief was not irregular or invalid. "***

***The Supreme Court's decision in the case of Ezeani v. Onyereri (supra) is pointer to the position that the pages of listed authorities should not be computed or considered as part of body of the brief and/or in addition to the pages of a brief.***

***The filing of briefs is captured in Paragraphs 11 and 12 of the Election Judicial Proceedings Practice Directions, 2023 (Practice Directions). Paragraph 12 (a) thereof is on the filing of the respondents' brief. There is Paragraph 14 (a) of the Practice Directions to the effect that a brief of argument shall not exceed 25 pages. Normally or usually briefs are expected to be filed and exchanged before appeal is fixed for hearing.***

***Paragraph 15 of the Practice Directions stipulates that-***

***"As early as possible and before the date set down for hearing of the appeal, the party who has filed a Brief of Argument or the Legal Practitioner representing him, shall forward to the Registrar, the list of law reports, textbooks and other authorities which learned Counsel intend to cite at the hearing of the appeal."***

***?The list of authorities mentioned in Paragraph 15 of the Practice Directions (supra) is not in any way a continuation of the brief. It is not subsumed in the brief. It is a separate process, and not an extension of or appendage to the brief. It comes after briefs have been filed, and not with the briefs. Timeline for both is also different. Likewise, the preliminary objection to the length of the 3rd respondent's brief."***

**THE BENEFIT OF A THOROUGH UNDERSTANDING OF THE PRACTICE AND PROCEDURE OF THE COURT OF APPEAL**

**A good lawyer knows the court.**

As a legal practitioner who is desirous of having a successful appellate court practice, it is imperative to have a thorough understanding of the practice and procedure of the court in respect of all kinds of appeals. As a court of record, the Court of Appeal’s practice and procedure in respect of all appeals is highly regulated by the rules and practice directions; the court will not deviate from the provision of the rules except it is established that there is a strong justification for doing same. As such, any legal practitioner that must appear successfully before the Court must have a thorough understanding of the rules of practice and procedure. Some of the benefits of a thorough understanding of the practice and procedure of the Court of Appeal are:

1. It helps the legal practitioner eliminate mistakes and cut down on unnecessary costs.
2. It helps the legal practitioner form a good impression in the mind of the justices, which would endear them to listen to the appeal with keen interest and favourable consideration.
3. Clients would be satisfied with the legal practitioner’s show of excellence and efficiency.
4. The legal practitioner will win the favour of justices who would be helpful to give their recommendations when the legal practitioner is applying for the conferment of the rank of a senior advocate of Nigeria.

**CONCLUSION**

A successful appellate court practice is a rewarding experience for legal practitioners. To achieve this, it is imperative that in addition to the in-depth knowledge of the law, the thorough understanding of practice and procedure is required. This is because, it is the practice and procedure that aids the presentation of the legal practitioner’s case in a manner that would persuade the justices to allow or dismiss the appeal. As such, a legal practitioner is required to also spend time in reading through the rules of the court and various practice directions to be equipped in the appellate court room practice.

It is my belief that this overview on the practice and procedure of the Court of Appeal serves to whet your appetite for more understanding and experience of the practice and procedure of the Court of Appeal.

Thank you.