

## **AN APPRAISAL OF REMOTE COURT PROCEEDINGS AND JUSTICE DELIVERY SYSTEM IN NIGERIA**

**Chibuzo Mercy Onwuzuruoha\***

### **Abstract**

*COVID-19 Pandemic affected every aspect of human existence in the world including the justice delivery system. The containment measures in place at the time in form of lockdown, affected the efficient and prompt administration of justice and dispute resolution. Filing of court processes and service of same was virtually impossible. The Nigerian Judiciary like her counterparts in other jurisdictions issued regulations which allowed for remote court proceedings in various courts. This paper examined the constitutionality of remote court hearing. It discussed the legality of Remote Court proceedings. It advocates for the consolidation of remote court proceedings in justice delivery system in Nigeria for efficiency in dispute management through amendment of the Constitution or judicial interpretation. This paper finds that remote court proceedings must however conform to the rules and principles of law that apply to physical court hearings. This paper noted that there are surmountable challenges no doubt, but for effective justice delivery system to take root in Nigeria, remote court proceedings must be embraced especially in non-contentious matters and applications. This paper employs a doctrinal methodology. This Paper recommends effective case management system by the Bench, wide public sensitization on remote court proceedings, statutory reforms, transparency of the system etc.*

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\* PhD, Lecturer, Faculty of Law, Renaissance University Ugbawka, Enugu. Email: [chibuzomercy14@gmail.com](mailto:chibuzomercy14@gmail.com)

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## **1.0 Introduction**

When it became clear that the COVID-19 virus has spread all over the world, including Nigeria, the Chief Justice of Nigeria, Hon. Justice Tanko Mohammed in line with the containment drive of Presidential Task Force on COVID-19 issued a Practice Direction No. NJC/CIR/HOC/11/631 to safeguard the health of lawyers, litigants and judges. He directed all heads of courts in the Federal and State Judiciary to suspend court's activities for an initial period of two weeks except for urgent or time bound matters. Eventually, the courts were shut down indefinitely. This limited access to justice in a significant manner.

This situation created a need for Nigerian Justice delivery system to consider the option of remote court proceedings for resolution of disputes. Remote court proceeding was recommended by the then Chief justice of Nigeria by way of circular NJC/CIR/HOC/11/656 in April 2020 to cushion the effect of suspension of Courts activities owing to the outbreak of the pandemic. The heads of Courts in consequence, issued practice directions for remote court sittings pursuant to powers granted by the Constitution.<sup>1</sup>

The legality and constitutionality of remote court proceedings in the justice delivery system of Nigeria has been questioned in different fora. This paper therefor examines the debates on the constitutionality or otherwise of the Nigerian courts' adoption of remote court proceedings in its justice delivery system.

This paper is segmented. This first segment discussed conceptual and legal framework on remote court proceedings in the justice delivery system in Nigeria. The second segment examined the legality of remote court proceedings in Nigeria. The third segment discussed the procedure of taking evidence through remote court proceedings. The fourth segment focused on the effect of remote court proceedings in Justice

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<sup>1</sup> s 274 of the 1999 Constitution.

Administration in Nigeria. The challenges of adopting the remote court proceedings was discussed. This paper finally concludes with recommendations and advocates for an amendment of the constitution or in the alternative a clear judicial decision that can give teeth to remote court proceedings.

## **2.0 Conceptual framework**

At the onset of the covid-19 pandemic, to safeguard the judges, litigants and the lawyer, the Chief Justice of the Federation issued the National Judicial Council Guidelines for Court Sittings and Related Matters in the COVID - 19 period in May 2020.<sup>2</sup> He directed all heads of courts in the Federal and State judiciaries to suspend court's activities for an initial period of two weeks except for urgent or time bound matters. The heads of court in turn issued a practice direction that enabled remote court proceedings. This forms the basis and the conception of remote court proceedings.

## **2.1 Remote Court Proceedings**

E- trials or remote court proceedings can be defined as court proceedings whereby the court officials, the judge, the parties, and their counsel interact and conduct the courts business virtually in a virtual proceeding, the audience or the general public is expected to have access to and observe the courts proceedings without any hindrance to avoid encroaching upon the guaranteed rights under the constitution. The entire trial, including applications, examination of witnesses, tendering of documents, presentation of addresses and even judgements is to be done remotely without any physical contact between the counsel, the court officials, the parties and the audience. This is very practicable by deploying IC, internet, associated technologies and software.<sup>3</sup>

## **2.3 Justice Delivery System.**

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<sup>2</sup> <<https://njc.gov.ng>> guidelines for Court Sittings and related matters in the covid-19Period. Assessed on 6 September 2024

<sup>3</sup> <<https://ej-politics.org>'> Virtual Court proceedings in Nigeria; Some Legal Matters Arising 'assessed on 6 September 2024.

Justice delivery refers to the system that ensures that disputes between litigants are resolved in a fair, dispassionate and timely manner. Put differently, where parties to an action head to court, their dispute should be resolved in the shortest possible time and in a manner that convinces them that justice has been done, even if one of them ultimately loses. It covers not just the final decision reached by the court but the processes leading up to it. Consequently, justice delivery can be said to be effective when disputes in court are resolved timeously and fairly whereas there is obstruction of justice when the adjudication process is either fraught with delays, bias or anything that indicates that 'justice was not done or seen to be done.'<sup>4</sup>

### **3.0 Legal Framework for Remote Court Proceedings**

The impact of COVID-19 in every aspect of human existence is not missed even by the judiciary as noted above. At some point, the whole world including Nigeria was in total lockdown. There was little or no access to justice. Litigants were denied access to justice. This situation led the judiciary to respond to the challenge by being creative and innovative. A new order of remote court proceedings was birthed. The legality or otherwise of remote court proceedings has been at the front burner among legal luminaries.

The Chief Judge of the Federal Capital Territory High Court on Monday the 11<sup>th</sup> day of May 2020 issued some practice direction which gave the FCT High Court the power to adopt remote court proceedings in dealing with causes and matters before the court. According to clause 9 of the directive, matters that can be determined by affidavit evidence may be heard and disposed of through remote court proceedings on platforms like Zoom, Microsoft Teams, Skype etc. non-contentious cases like matters initiated by originating summons or originating motions, application for enforcement of fundamental right, interlocutory applications and adoption of final written addresses and delivery judgements/ rulings. There were other guidelines issued by NJC<sup>5</sup>

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<sup>4</sup> <https://www.ajol.info> 'Appraising The Concept of Justice And Advancing The Course of Justice Delivery in Nigeria' accessed on 6 September 2024

<sup>5</sup> Ref No; NJC/CIR/HOC/11/660,2020

prohibiting physical sitting in court room to maintain social distancing devised to contain the pandemic except for extremely urgent and essential matters.

The argument surrounding the constitutionality of remote court proceedings is hinged on section 36 (3) and (4) of the 1999 Constitution of the Federal Republic of Nigeria (As amended). It provides as follows:  
3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal shall be held in public  
4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn be entitled to a fair hearing in public within a reasonable time by a court or tribunal.

It has been argued that that the requirement for ‘Public’ hearing and determination of cases in Nigeria is a mandatory provision as the operative word in section (36) (3) (4) of the constitution is ‘Shall.’<sup>6</sup> The section therefore does not envisage remote court proceedings via any platform like Zoom or Skype<sup>7</sup>.

Similarly, section 266 of the Administration of Criminal Justice Act 2015 requires the presence of an accused person at his/her trial in a courtroom that is open to the public. This provision stands contrary to what obtains in remote courts proceedings where one can be given links if he/she is invited to participate. This in sum is usually arguments put forward to dissuade the conduct of proceedings through remote hearing. In *Edibo v The State*,<sup>8</sup> the issue before the Supreme Court was “whether the court below was right when it held that taking the plea of the Appellant in Chamber by the learned judge is not unconstitutional. The Supreme Court set aside the conviction of the defendant by the lower

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<sup>6</sup> *Nwankwo v Yar Adua* (2010) 12 NWLR (PT 1209) 513 SC. The Supreme Court stated that the word ‘Shall’ when used in a statutory provision imports that a thing must be done. It is not permissive, it is mandatory.

<sup>7</sup> See *Obi v Mbakwe* (1984) NSCC (Vol. 15) 127. See also *Marwa v Ntako* (2012) 6 NWLR (pt.1298) 199.

<sup>8</sup> (2007) 13 NWLR (PT 1051) PG 306

Courts in the case simply because a judge's Chambers is not a public place which permits unrestrained ingress and egress for the general public. The Supreme Court by this judgement is reaffirming section 36(3) and (4) which suggest and uphold the mandatory requirement of public hearing in a physical space.

Also, in *Oviasu v Oviasu*,<sup>9</sup> the judge conducted hearing of a petition for dissolution of marriage in his Chambers. The Supreme Court set aside the decision of the trial court and held that the hearing occasioned a fundamental irregularity as same was not conducted in public. The Court defined 'Public' to mean 'Open to everyone without discrimination' it argued that virtual hearing therefore does not meet the constitutional requirement of sitting in public.

This position of the Supreme Court among other factors hindered both the Bar and the Bench including litigants from embracing remote court proceedings. As judgements delivered through the process does not command general acceptance.

However, there has been some arguments in favour of remote court proceeding. It suggests that the provisions of section 36(3)(4) of the 1999 Constitution are not in any way restrictive. They are wide enough to accommodate remote court proceedings which are open and accessible not only to the Nigerian public but the entire world and may even be seen to be more public than physical courtroom. This necessitated the argument that the constitution should be interpreted broadly rather than narrowly as the word 'public' has moved away from buildings to internet.

#### **4.0 The Legality of Remote Court Proceedings**

The issue surrounding the legality of remote court proceedings centres on the definition of the word 'Public' as provided in section 36 of the Constitution of Nigeria. In the case of *Edibo v State*<sup>10</sup> the term 'public' was defined by the Supreme Court of Nigeria as 'the use of everyone

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<sup>9</sup> (1973) 11 SC 315

<sup>10</sup> (2007) LPELR-1012 (SC) 20

without discrimination'. Literally speaking, the word 'public place' as used in the constitution can be conveniently given its ordinary meaning. The term 'public place' in ordinary parlance implies any enclosed places that is open to be used by, or accessible to the general public. It goes without saying that a major consideration in deciding whether a place is a public place or not is whether that place can be accessible to the general public. In the case of *Oyeyipo v Oyinloye*<sup>11</sup> the Court considered the question of what constitutes a public place under section 36(3) of the constitution as a question of fact. The court held in that case that a judge may sit in Chambers without excluding members of the public. However, in *Abashi v COP*<sup>12</sup> and in other cases examined above, the court held that it is unconstitutional for a judge to sit in the chambers. In the case of *Ovunwo & Anor v Woko & Ors*,<sup>13</sup> the Court held that the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law includes among others that all concerned shall be informed of and have access to such place of public hearing. The court of Appeal in the case of *Kosebinu & Ors v Alimi*,<sup>14</sup> the issue was whether or not the court was right to set aside a judgement of the trial court delivered in the Judge's chamber in violation of section 36(3) of the constitution. The Court held that for a place to qualify under section 36(3) of the Constitution as a 'public' it must be outrightly accessible, and not so accessible on the basis of the 'permission' or 'consent' of the judge.

It therefore logical to conclude that in the light of the above decided case laws, once the requirement of accessibility by the public is satisfied, such hearing can be said to be a hearing in the public as contemplated by the Constitution. What should be considered at all times, should be whether the trial was assessable to the public. The constitution did not qualify any means of that accessibility. It could therefore be through virtual means. It appeared that in the face of

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<sup>11</sup> (1987) LPELR-2883 SC 38-39

<sup>12</sup> (2004) LPELR – 5597 CA

<sup>13</sup> (2011) LPELR-2841 (SC0 33

<sup>14</sup> (2005) LPELR-11442 (CA)

unforeseen circumstance like the advent of COVID -19, the Supreme Court shifted its position to accommodate the new reality.

In the case of *AG Lagos State v AG Federation*.<sup>15</sup> and *AG Ekiti v AG Federation*.<sup>16</sup> the plaintiffs requested that the Supreme Court determine whether having regard to the constitutional requirement that court proceedings , save for some exceptions must be held in public and whether court hearings by use of technology, by remote hearings of any kind (whether by zoom , Microsoft Teams, WhatsApp, Skype or any other audio-visual or video conference platform) by the Lagos State High Court (or any other courts in Nigeria) in aid of hearing and determination of cases, is constitutional. In the second case, the plaintiff challenged the constitutionality of the directive of the Minister of Justice and the Attorney General of the Federation to the heads of courts at federal and State levels to adopt virtual court sittings. The plaintiffs subsequently withdrew both cases when they realized from the reaction of the Supreme Court that the cases were considered to be speculative and pre-emptive. However, while striking out the first case, the Supreme Court stated that “as of today, virtual sitting is not unconstitutional.”<sup>17</sup>

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## 5.0 Remote Court Proceedings and taking of Evidence

Perhaps among the chief concern of the judiciary in embracing Remote Court Proceedings is the procedure in tendering documents. There is need to articulate how parties to a matter would present their evidence in Court when the hearing is remote. The law permits parties to a legal proceeding to present both oral and documentary Evidence<sup>18</sup> with rules and procedures on presentation of the documentary evidence before a traditional Court. The documentary evidence could be in primary form or in the secondary form.<sup>19</sup> The law is that the contents of documents

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<sup>15</sup> (2020) 12 NWLR (PT1738) 345.

<sup>16</sup> (2020) 12 NWLR (PT1738) 320

<sup>17</sup> F Omohomhion, “Supreme Court dismisses Suit against Virtual Hearing” Business Day Weekender, 14<sup>th</sup> July 2020

<sup>18</sup> Sections 83, 86, 125, and 126 of Evidence Act 2011.

<sup>19</sup> s 85 of Evidence Act. 2011

may be proved by either the primary or secondary evidence. The primary evidence is the original copy and the secondary evidence a 'copy' which can be tendered in the absence of the original document after proper foundation is laid.<sup>20</sup> These forms of evidence could be in respect of Private or Public Documents.<sup>21</sup> The only secondary evidence of a public document admissible is the Certified true copy and non-other. The question that has agitated the minds of the court over time is the position of a certified true copy accessed virtually or remotely. Does it become a photocopy? In the past, there was a divergence of judicial opinion as to whether a photocopy of a certified true copy of a public document is admissible. It was settled in the Supreme Court case of *Magaji v Nigerian Army*.<sup>22</sup> It was decided that a photocopy of a certified true copy is admissible. Thus, photocopies of Public documents need no further certification as there is no degree of secondary evidence. Virtual transmission of a certified True Copy therefore will be proper. There however, are other challenges as regards the taking of evidence where remote court proceeding is adopted like where the dispute borders on the authenticity of a document or questions as to the validity of a purported original document, remote court proceeding may not clarify such controversies. The mentality of hard evidence or seeing is believing still dominates court proceedings. Physical or traditional consideration of documents could be adopted to circumvent this challenge especially in contentious matters until the issues around tendering of evidence through a remote court proceeding is clarified.

#### **6.0 Remote Court Hearing and Justice Administration.**

Justice administration in Nigeria refers to the system and processes through which justice is delivered, maintained and enforced in the Country. It encompasses various institutions and procedures that govern the legal system to ensure fairness, equity and the rule of law.

The administration of Justice in Nigeria is primarily based on the adversarial system. Criminal and civil cases are adjudicated through the system, where parties present their arguments and evidence before an

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<sup>20</sup> s 89 and 90 of Evidence Act 2011.

<sup>21</sup> s 102 and 102 of Evidence Act 2011

<sup>22</sup> (2008) 8 NWLR (PT 1089) 338

impartial judge. It includes pre-trial, trial and post-trial stages. Remote court proceedings can be adopted in any of these stages to enhance justice delivery in Nigeria. There is no doubt that there has been feeble formal attempts to incorporate Remote court proceedings into both federal and local laws as far as practicable but acceptability and implementation has been met with a lot of hesitation and scepticism.

The Administration of Criminal Justice Act (ACJA) 2015 introduced the use of ICT in the administration of criminal justice in Nigeria to wit: the voluntary recording of arrest and confessional statement in writing or electronically recorded on a retrieval video compact disc or such other audio visual means; the establishment of Police Central Criminal Registry, Electronic record of proceedings, examination of witness through video link<sup>23</sup> These novel provisions of the ACJA has variously been utilized by the court in accordance with section 232(3) of the ACJA.<sup>24</sup> This provides for instances where certain criminal trials may not be conducted in open courts. In any of the instances covered under the said provisions, the court may take any or all of the following measures (a) receive written deposition of expert's evidence by video link; (b) permit the witness to be screened or masked; (c) receive written deposition of Expert's evidence; and any other measures that the court considers appropriate in the circumstances. This section has set in motion the use of video conferencing in taking evidence in Nigeria.

Secondly, the National Industrial Court of Nigeria Rules 2017 is another legislation. The National Industrial Court is a specialized Court created out of the need to decongest the burden of the regular Court and to ensure efficiency in the dispensation of justice solely for the handling of labour disputes with a unique procedure for ensuring that such disputes are expeditiously dealt with and the interests of the workers are safeguarded within the working place.<sup>25</sup> The Constitution of the Federal Republic of Nigeria (Third Alteration) Act 2010 recognizes the NICN

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<sup>23</sup> s 232(3) of ACJA 2015

<sup>24</sup> The Administration of Criminal Justice Act 2015

<sup>25</sup> O.D. Amucheazi, *the National Industrial Court of Nigeria: Law, Practice & Procedure (Top Desig 2013)* 42

as a specialized Court of superior record. The court has exclusive jurisdiction over labour matters<sup>26</sup>

In our view, the NICN is one of the best ICT compliant courts in Nigeria. The National Industrial Court Rules made some tremendous improvement, as some of the provisions in the National Industrial Court (civil procedure) Rules 2017 laid down some provisions that enabled the use of ICT in our justice administration. Most remarkable of the innovations of the Rules is the establishment of Communication and service centre for Electronic Filing (E-Filing) under Order 66 of the Rules, electronic service of processes, and electronic service of hearing notice. Under Order 7 Rule 1(1) and Order 7 Rule 1 (2) of the Rules respectively. Furthermore, Order 7 Rule (1) )4) provides for modes of service of court processes other than originating processes through any of the following devices: fax machine, where available, electronic message or Short Message Service (SMS) via the e-mail address and telephone number(s) provided by the party or/and the party's counsel respectively, and any other electronic communication and messaging platform<sup>27</sup>

Also, the 1999 Constitution of the Federal Republic of Nigeria,<sup>28</sup> empowers the heads of courts to make Practice Direction subject to the provisions of any law made by the House of Assembly of a State, the Chief Judge of a State may make rules for regulating the practice and procedure of the High Court of the State. From the above constitutional provision, it is obvious that the Chief Judge of a State has the powers to make regulations regarding practice and procedure of courts in Nigeria. During the Pandemic as we have seen, the judiciary nationwide made laws introducing virtual or remote court proceedings in Nigeria.

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<sup>26</sup> S 254c of the 1999 CFRN

<sup>27</sup> Note that the Rule has a proviso that the use of Short Message services shall be limited to communicating dates of hearing or any change in respect thereof and not to be extended to service of other court processes, proof of which must be filed in the Court's record.

<sup>28</sup> *Ibid.*, s 294 CFRN

The High Court Rules of Enugu State (Civil procedure) Rules 2020 unveiled on the 30<sup>th</sup> of November to 4<sup>th</sup> of December, 2020 embraced electronic system of filing and conducting of cases to enable the court and litigants conduct cases without hitches. Some of the provisions of the Rules for the admissibility and recognition of visual, virtual evidence and hearing are the provisions that stated that proof of service can also be by electronic means<sup>29</sup> this recognises electronic means as a good way to prove service of a court process. The Rules listed the matters that can be taken through remote court proceedings.<sup>30</sup> They are new cases where there is urgency, Pending cases involving urgent or important and time bound interlocutory applications, Motions, Appeals, Bail Applications, adoption of addresses, Proceedings for the recovery of premises, arrears of rent and /or Mesne Profits, Fundamental Rights Enforcement Proceedings, Proceedings in matters commenced by writ of summons, matters commenced by prerogative writs, Matters on summary judgement, matters commenced by Originating Summons; rulings and Judgements, any other matter as the Chief Judge may approve during emergency situations.

The Rules also provides that parties and counsel shall ensure that every document filed electronically or in court has the email address and mobile telephone number of the counsel or contact person where parties are not represented by counsel.<sup>31</sup> This Rule provides for electronic filing and that such a process should bear e-mail address or telephone number of counsel or contact person where not represented by counsel.

The Rules equally provides that the Chief Registrar of Enugu State shall designate appropriate officials who shall assess the fees payable by parties and communicate same by email, WhatsApp or text message or may publish same on the Enugu State Judiciary website'.<sup>32</sup> This provision recognises remote preliminary procedure to hearing. Service of Court processes may also be effected by email, Whassap, or as

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<sup>29</sup> Order 7 Rule 19(3) of the High Court Civil Procedure Rule of Enugu State 2020

<sup>30</sup> Oder 58 (1) ibid

<sup>31</sup> Order 58(5) Op Cit

<sup>32</sup> Order 58(7) of High Court Civil Procedure Rules Enugu State 2020.

otherwise directed by the Court and *where an electronic mode of service is employed, time shall prima facie begin to run from the date the process was sent*<sup>33</sup>

### **7.0 Challenges facing Remote Court Proceedings in Nigeria**

There are challenges facing remote court proceedings in Nigeria. They are: need for the cyber security, modalities for information storage and retrieval system, technological know-how, susceptibility to cyber-attacks, analogue mind-set etc. These challenges are surmountable. The many benefits gained from virtual hearing in administration of justice far outweighs the challenges inherent. It is important to note that a shift in paradigm and work culture could aid in the transformation process that Remote Court proceedings promises.

## **8.0 Recommendations**

### **8.1 Effective Case Management procedure by the Bench**

The Bench has to be firm in providing leadership and control over the procedure to be adopted in his court having regard to the facts and circumstances of each case for enhanced justice delivery. A date could be set aside for remote court proceedings wherein non-contentious matters and Applications will be heard. This method will gradually entrench virtual hearing into the mainstream of events in the court which will ultimately expedite justice without sacrificing justice on the altar of speed.

### **8.2 Wide Public Sensitization of Remote Court Proceedings**

This clearly ensures that everyone involved in the remote court proceedings understands and is understood. A person can more readily accept an adverse decision of a Court where it has been arrived at through a process which has been transparently just and have provided a sense of engagement and participation by all the parties involved. Such acceptance avoids unnecessary Appeals and contributes to public confidence in the judiciary. Conversely, a hearing that is perceived as unfair can inflame mistrust and continuous legal battle. To confer

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<sup>33</sup> Order 58(10) and Order 58(13) *ibid*.

legitimacy to the process therefore, awareness of all the parties will be ensured. Carrying all the parties along will ultimately lead to effective justice delivery system

### **8.3 Statutory Reforms to accommodate the full adoption of Remote Court Proceedings.**

There may be need to amend some provisions of Evidence Act 2011 as regards tendering of Documentary Evidence or Exhibits virtually so that it could be in line with the rules of Evidence Act. The 1999 Constitution of the Federal Republic of Nigeria should also be amended to integrate remote court proceedings with the traditional Court sitting procedure and where this cannot be achieved timeously, a clear judicial interpretation on the issue will suffice as Regulations are not laws.

### **8.4 Partnership between the Judiciary and Telecommunication sector.**

The judiciary should work with Telecommunication Company to develop a process that will guarantee the following:

- i. Protection of password to ward off every form of intrusion especially in cases where the public is precluded from being part of the proceedings<sup>34</sup> or where witnesses who will give evidence in a case should be out of court and out of hearing.
- ii. Prevention of any means of sharing information or documents by participants to outsiders through video, chats, screen shots etc., where they are not permitted
- iii. Providing a platform for recording of information, storage and retrieval of such information in such a way that every file is separate with proper regulation.
- iv. Prevention and control of unauthorized intrusions or background activities during hearing.

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<sup>34</sup> s 36(4)(i) of the 1999 Constitution of the Federal Republic of Nigeria. It makes an exception to section 36 (1). It provides that a court or tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of 18 years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interest of justice.

- v. Ensuring the privacy and security of all information stored.  
Etc.

### **9.0 Conclusion**

Full integration of Remote Court proceedings in the mainstream of justice Administration in the country has the capacity to improve efficiency, increase accessibility and promote confidence in the justice delivery system. This is because speedy dispensation of justice is also part of Justice Delivery. The Perception of the Public as to the transparency of a hearing through remote court proceedings has the capacity to confer legitimacy on the system and procedure. The Judge therefore has the onerous task of ensuring fairness at all stages of the hearing to ensure that everyone is carried along.