

ANALYSIS OF THE LEGAL REGIME OF VIRTUAL PROCEEDINGS IN NIGERIAN COURTS: CHALLENGES AND PROSPECTS

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Abstract

The emergence of virtual proceedings in Nigeria's jurisprudence is one of the positive aftermaths of COVID 19 pandemic. It has promoted access to justice and timely dispensation of justice. However, despite its novelty in Nigeria's jurisprudence, it is still bedeviled by some challenges in its applications. Aside from that, the legal regimes regulating the deployment of virtual proceedings are weak. It is against this background that this article drew its inspiration. This article has found that the legal regimes regulating virtual proceedings are mostly limited to the Superior Courts of Records, thereby neglecting the lower courts. In the course of this paper, the writers deployed the use of doctrinal research where reference is made to case laws and statutes as well as articles in Journals plus periodicals. It is the finding of this work that there is a need for a legislation regulating virtual proceedings in Nigeria. Government should ensure sound technical facilities to ensure promote virtual court session.

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1.0 Introduction

This article examines the challenges Nigeria is still facing in the areas of conducting virtual proceedings. It also proposes certain measures that need to be adopted to enable Nigeria consolidate on the new innovations ushered in by the advent of virtual proceedings. Therefore, this paper is structured into four parts. The first part deals with the basic concepts associated with virtual proceeding such definitions, types, evolution and relevance of virtual proceedings. In part two, the paper examines the policy and legal framework regulating virtual proceedings. In part three, the paper discusses the challenges facing the deployment of virtual proceedings in Nigeria. Part four suggest better ways on how to overcome the challenges facing the use of virtual proceedings in Nigeria.

2.0 Meaning of Virtual Court Proceedings

The phrase virtual proceeding is combination of two words ‘virtual’ and ‘proceedings.’ The word virtual, as an adjective, is defined as “*of or pertaining to a device or service that appears to the user as something that is actually not or that does not physically exist*”.¹ By this definition, the word virtual means something that appears to be in real existence but in truth it is not. It refers to an impression created by the user of device or service that what is happening is something that is not a reality. It also refers to a situation experiencing something in a soft form which does not physically exist. It is the situation of mental experience of an object where the items or subjects interacted with cannot be physically reached or touched. It is an abstract experience of something or situation that cannot be tangibly felt. It is from this perspective that the word virtual is further defined as “not physically existing as such but made by software to appear

1.Rigdon John C., “Dictionary of computer and internet Terms “ (Eastern Digital Resources , 2016) p.1369

to do so.”² By this rendition, the word ‘virtual’ is further interconnected with the word ‘online.’³

The word online is defined to mean ‘connected to the internet, or of the internet’.⁴ The similarity between the words ‘virtual’ and ‘online’, further inspired these writers to adopt the judicial definition of the word ‘online’ by the Court of Appeal in the case of *Daily Times Nigeria Ltd V Arum*⁵ where it was stated that “*online means connected to, served by, or available through a system and especially a computer or telecommunications system such as internet.*” This view established the judicial definition of the word online.

On the other hand, the word “proceeding” is defined as; ... *the form and manner of conducting juridical business before a court or judicial officer; regular and orderly progress in form of law; including possible steps in an action from its commencement to the execution of judgement.*⁶ The above definitions view proceeding as a systematic manner through which cases are adjudicated and enforced by court of law. Here, the proceedings are ascribed to judicial activities that deal with adjudication before a court or a judicial officer who may be presiding on any dispute settlement mechanisms. It is from this perspective that judicial proceeding is defined as “...*any proceeding had or taken in or before any court, tribunal, commission of inquiry, or person, in which evidence may or may not be taken on oath*”.⁷

2. Virtual/English meaning-Cambridge [Dictionary@dictionary.cambridge.org](https://dictionary.cambridge.org)<accessed on August 2, 2024>

3. Word Hippo, “[What is another word for virtual?](https://www.wordhippo.com)”@www.wordhippo.com<accessed on August 2, 2024>

4. Dictionary of Computer P.858

5. (2023) NWLR (PT.1914) 559 [CA@P.575](#), paras.C-D)

6. Garner Bryant A.,” Blacks’s Law Dictionary”, 8th Edn. (Thomson West, 2004) p.1368

7. s 113 of the Criminal Code Act, Cap C 28, LFN, 2004

Therefore, based on the above appraisal of the words ‘virtual’ and ‘proceedings’, these words, virtual proceedings could be defined to mean the deployment of computers and other internet facilities for the purpose of conducting judicial proceedings. Thus, virtual proceeding is the use of technology to facilitate the process of conducting legal proceedings via technological means, such as Zoom, Skype, and Microsoft Teams, without the need for participants to attend the Court in person. It is dealing with the use of virtual facilities to conduct judicial as well as quasi-judicial proceedings. It is the use of virtual court for judicial adjudication. It is the online court setting where parties, judges, witnesses and their counsel are virtually connected for the purpose of ventilating their grievances.

3.0 Types of Virtual Court Proceedings

Virtual proceedings are carried out in different manners. There are different types of virtual proceedings. The virtual proceedings are deployed through the use of different platforms like Zoom, Skype, Teams Microsoft, Go-to-meeting. However, the most common types of Virtual Proceedings are video-conferencing virtual proceedings, speech to-text-transcriptions, live litigation, teleconferencing, and webinar. These classifications are further examined at the subsequent part of this work.

a. Video-Conferencing Proceedings

This type of virtual proceedings gives parties the room to hear and see each other during the proceedings. Here virtual proceeding is achieved with the aid of a video camera on a computer video and microphone or the built-in camera of a mobile device. Video-Conferencing Proceedings is usually is provided by different commercial digital platforms like Zoom, Go- to-meeting, and Skype Teams.⁸

8.ICJ,“Video-Conferencing,Courts and COVID 19 ICJ, Video Conferencing Courts and COVID -19 Recommendations Based on International Standards @<https://www.unodc.org/res/ji/import/guide/icj-videoconferencing><accessed on September 15 ,2024>

b. Speech-to-text Transcription

This tool is deployed in both online and in-person court proceedings. It is the use of a soft-ware that translates testimonies and proceedings of the court. People can have access to it after 24 hours when its transcript has been reviewed by an expert.⁹

c. Live litigation

This is a kind of software that is designed to reflect the proceedings of court to be like it is inside the Zoom conference or other kinds of virtual digitalisation. It has features such videoconferencing, including screen sharing features and breakout rooms. It is known to have private chats that are not discoverable.¹⁰

d. Teleconference

This is one of the oldest virtual meetings that allow people to connect through phone lines. This can be through landlines or cellular devices, and allows more people to connect simultaneously from multiple locations. It used to be only in audio version, but these days technology has allow it to be done through the internet.¹¹

e. Webinar

It is the use of the web to deliver information or conduct proceedings. It could be used by the Multi-door House courts to promote settlements. This is usually deployed via the Alternative Disputes mechanisms such as Negotiation, Mediation, Arbitration and Conciliation. Webinars are also used for virtual meetings.¹² Unlike video conferencing, web conferences are often led by a single person or group. Larger audience usually attends webinars. In webinar, the hosts can speak directly to the audience by

9.ABA, "RemoteCourt Transcription Enables Virtual Court Appearances",@<https://www.americanbar.org/groups/journals/articles><accessed on Septemeber 15, 2024>

10.Ibid

11. BCFSa, "Virtual Proceedings Proceeedures"2022@<https://www.bcfsa.ca.PDF><accessed on September 15, 2024>

12.Ibid

activating their camera, or they can share a presentation to support their meeting's topic.¹³

4.0 The Origin of Virtual Proceedings in Nigeria

The COVID-19 pandemic brought in a lot digital revolution worldwide. Nigeria as a nation is equally a beneficiary of such revolutions. Thus, it in the areas of virtual proceedings it is not out of place to say that COVID 19 is a blessing in disguise. Prior to the Emergence of COVID 19 pandemic in Nigeria, there are no instances of deployment of virtual proceedings in Nigeria. The first virtual court in Nigeria was set up in Borno State in early April of 2020.¹⁴ Consequently, Justice Fadawa Umaru, delivered a judgement in the case of *State V Ali Mohammed*¹⁵ where the accused was discharged and acquitted having not being found guilty of culpable homicide.¹⁶ After that, the Lagos State High Court adopted the virtual proceedings on May 4 2020. This happened when the Lagos State High Court sentenced Olalekan Hammeed for the murder of a 76-year old woman, Mrs Jolasun Okunsanya.¹⁷ After that, the Chief Judge of Lagos State issued the first recognized of Practice Direction, known as 'Lagos State Judiciary's Remote Hearing of Cases (COVID 19 Pandemic Period).¹⁸ Ever since, other courts and regulatory bodies started adopting virtual proceedings as part of their proceedings.

14.Ibid

15.Olambitan Bolanle, "Borno Set Up virtual court room –first in Nigeria", TheCable, April 28,2020 @the<https://www.Thecable.ng><accessed on September 14, 2024>

16.(Suit BOHC/MG/CR/115/19.

17.Ibid

18. Sule I.,Olorunyomi F.,Ajah J. and Adama S., (2024) " Virtual Court Proceedings in Nigeria: Some Legal Matters Arising" European Journal of Law and Political Science , 3(3) [1@https://doi.org/10.24018/ejpolitics.2024.3.3.91](https://doi.org/10.24018/ejpolitics.2024.3.3.91)<accessed on September , 2024>

19.Umah O., " the First Virtual Court Hearing was in Borno State And Not in Lagos", June 1 , 2020 , SabiLaw@www.Sabilaw.org<accessed on Septemeber 14, 2024>

However, in discussing the evolution of virtual proceedings in Nigeria will be incomplete without referring to the debates that ensued among Nigerian scholars on the constitutionality of virtual proceedings. After the conducts of virtual proceedings in Borno and Lagos States, lawyers were divided on whether a virtual proceeding is constitutional or not. Thus, there were two camps; proponents and opponents of virtual proceedings. To the proponents of virtual proceeding, the proceeding is constitutional because its ultimate aim is the administration of justice. They maintained that the provisions of section 36 of the 1999 Constitution which provides that the proceedings of the court shall be conducted in a manner that it will ensure access to the public. This is because by using Zoom and other related virtual mediums, the trial is now open to cyberspace. Interested persons can log into the virtual space and access the proceedings of the court; this satisfied the requirement of trial publicity contemplated by section 36 of the 1999 Constitution. Prominent among the proponent of this view include Ayodele Akintunde,¹⁹ and Timi Olagunju.²⁰

However, the opponent of virtual proceedings, among whom was Chief Mike Ozekhome,²¹ maintained that it is against the Nigerian Constitution. They observed that for virtual proceedings to be effective and legal the provisions of section 36 (4) of the 1999 Constitution which provides for hearing in public must be amended. Thus, doing so may amount to breach of section 36 of the 1999 constitution which mandated publicity of trial.²² Adegboyega Awomolo,²³ also allied with this position to the effect that

20. Ayo Akintunde SAN, “Senior Lawyer Backs Clamour for audio-visual hearing in courts” @<https://ayoakintunde.com><accessed on September 14, 2024>

21. Akhiero P., “Virtual Court Hearings :Towards A Purposive Effective Interpretation of Statutes”@<https://edojudiciary.gov.ng>. [PDF]@<accessed on September 14, 2024>

22. Senior Advocate of Nigeria

23. Nnaike U., “Ozekhome Seeks Constitutional Amendment to Validate Courts’ Virtual Sitting’, This Day, May, 2020@<https://www.thisdaylive.com/index.php><accessed on September 15, 2024>

24. Senior Advocate of Nigeria

constitutional amendment is necessary for the effective use of virtual proceedings in Nigeria.²⁴ They further maintained that while virtual proceeding could be practical possible in certain stages of litigation like arraignment, adoption of written and judgements. It will be difficult in ensuring fairness of trial in cases involving leading of evidence-in-chief, cross-examination and physical inspection of documents via virtual proceedings due to hitches in network or other unforeseen circumstances.²⁵ The opportunity to embrace virtual proceedings came in 2020 when Ekiti State sued the Federal government and seek the interpretation of section 36 (3) and (4) the Constitution as to whether Virtual proceedings in unconstitutional. The Apex court, even though, strike the matter for being hypothetical, finally held that the virtual proceedings is constitutional.²⁶ This judgement of Supreme Court could be said to be the first legal approval of virtual proceedings. Thus, the National Judicial Council had announced separate plans for Nigerian courts to resort to virtual proceedings during and after the covid-19 pandemic.²⁷ After, the various courts and Practice Directions started adopting virtual proceedings in the Rules of their respective Courts.

After the above verdict, the Chief Justice of Nigeria who is the Chairman of the National Judicial Council, set up a 10-man committee headed by Justice Olabode Rhodes-Vivour (Rtd) saddled with the mandate of coming up with practical measures for courts to function during the lockdown. After much deliberations, the Committee made recommendations in line with the federal government's guidelines for taming the spread of COVID-19, recommended the use of technology by way of virtual sitting in court

24 Akhiehiero P., *Loc.Cit*

26.Godfree M., " A Critique of the Legality of Virtual Proceedings Under Nigeria Law", May 4, 2020, [TheNigerianLawyer@https:// thenigerianlawyer.com](https://thenigerianlawyer.com) <accessed on Septemeber 14, 2024>

27.Ibid

28.Harold B., "The Legality of Virtual Court Proceedings in Nigeria", [TheNigerianLawyer@https://thenigerianlawyer.com](https://thenigerianlawyer.com)<accessed on September 15, 2024>

proceedings. These recommendations of the Committee were later approved by the Chief Justice of Nigeria and the National Judicial Council.²⁸

Lagos State government became the first to sign the “Lagos State Judiciary Remote Hearing of Cases Practice Direction” (hereinafter referred to as the “Practice Direction”), which came into effect on May 4, 2020. The Practice Direction is to ensure the hearing and determination of urgent and time-bound cases through digital platforms like Zoom, Skype, or any other video and audio-conferencing platform approved by the Court. Lagos State judiciary had its²⁹ first virtual sitting in line with the Practice Direction. The Borno State judiciary has also already recorded its first virtual sitting wherein a Judge delivered a judgment in a criminal matter.³⁰

Another State judiciary- Ekiti State decided to adopt virtual hearings of cases. This ushered in a new dimension and novel experience for court proceedings that became virtual throughout the country including e-fillings in the court system when the National Judicial Council also introduced the Virtual court direction policy to apply to all heads of court in the country. It is therefore, a question of when, and not if, virtual court proceedings, because the Covid-19 pandemic then interrupted traditional methods of doing things, leading to ensuring that the justice system does not come to a standstill due to the lockdown, and was welcomed by most some senior Lawyers.³¹ Today, virtual proceeding is an integral parts of Nigeria’s jurisprudence. It is reflected in the provisions of most Superior Courts of Records in Nigeria. It is one of the positive impacts of COVID 19 on Nigerian jurisprudence.

5.0 Relevance of Virtual Court Proceedings to Nigerian Jurisprudence

29.Ibid

30.Ibid

30 Olambitan Bolanle, Loc.Cit

32.Harold B. Op.Cit.

The introduction of virtual court proceeding is by no means relevant to Nigerian jurisprudence as it adds value to the system. Some of the relevance of virtual proceedings are outlines as follows:

- a. It enhances robust data protection measures, and probes secure platforms for use as a means of vigilance against cyber threats which have become a trend in cyberspace.
- b. It promotes digital literacy among lawyers and Judges. This in turn require training and constant re-training for them including court staff on the best way to utilize virtual platforms to be effective and ensure fair and efficient proceedings is crucial.³²
- c. Virtual proceedings will ensure clear guidelines and regulations Establishing procedural rules and ethical guidelines for virtual court proceedings thereby safeguarding participants' rights as well as maintaining integrity in the justice system.
- d. It recognizes the setbacks in technology within the system and offers participants methods to surmount these limitations and will provide solutions for those who lack the facilities and access to virtual platforms.³³
- e. It helps in addressing the issue of those living dispersedly facing mobility challenges it reduces the need for costly journeys and long adjournments while these participants can make use of the virtual proceedings which will reduce the high cost of movement
- f. Efficiency will increase as caseloads will reduce faster and resolutions will be quick while administrative burdens reduce to a minimum. It will also save costs for both the government and the parties and physical court room expenses will reduce. Parties, witness, lawyers and Judges will leverage on the technology to remotely participate electronically through various platforms or the one approved by the court. Without physical presence.
- g. It helps in access to justice. People that were detained without trial were able to secure their bail once virtual proceedings became the new normal.

33. ["Virtual Meetings In 2023: Everything You Need To Know"](https://www.webex.com/virtual-meetings) <[https://www.webex.com/virtual meetings](https://www.webex.com/virtual-meetings)> accessed on June 15, 2024

34. Ibid

Equally, parties whose judgements/ rulings have been in procrastinations have been delivered on time.³⁴

- h. It is helpful to address emergency situations. In situations where physical seating is not possible due to some unpleasant reasons. The use of virtual court is a better option to promote access to justice. This will be helpful in addressing access to justice.

6.0 Policy and Legal Framework Regulating Virtual Proceedings in Nigeria

The legal frameworks that will be examined in this paper include the, Arbitration and Mediation Act, 2023, National Judicial COVID 19 Policy Guidelines, the Rules of Courts, Practice Directions of Courts, and Judicial pronouncements. These are some of the legal approaches that give legitimacy and legality to the deployment of virtual proceeding in Nigeria. These laws are further examined in the subsequent paragraphs.

(a) The National Judicial Council COVID-19 Policy Guidelines

The main regulation governing or regulating virtual proceedings in Nigeria is the National Judicial Council Circular of 2020. This ushered in a practice direction to all heads of court within the federation as a result of the COVID-19 pandemic the power creating this policy derived its authority from the provision of section ...of the National Judicial Act, 2006. It is line with the power stipulated under this law that the Chief Justice of Nigeria (CJN), Justice Tanko Ibrahim Muhammad, gave a directive in a Circular No. NJC/CIR/HOC/11631 in March 2020 to stop proceedings during the lockdown for two weeks. Then later court proceedings were stop indefinitely in urgent matters.³⁵

Again, in his proactive attempt to ensure courts continue to function even during the lockdown, Justice Tanko Muhammed, CJN, set up a ten 10- man

³⁵.Ibid

³⁶ Harold B. Loc. Cit

committee headed by Justice Justice Olabode Rhodes-Vivour Vivo to come up with strategic measures for the smooth running of courts in line with COVID 19 Guidelines issued by the health protocols approved by the Nigeria Centre Disease Control (NCDC).³⁶ Consequently, the committee adopted the NJC Circular No. NJC/CIR/HOC/II/656 dated April 6, 2020, recommended that all heads of courts and judicial bodies continue to include the use of appropriate technology on virtual or remote hearings. The guidelines are called the National Judicial Council Guidelines for Court Sitzings and Related Matters in the Covid-19 Period.³⁷

As stated in the guidelines it applies to all courts “These guidelines shall apply to all courts in the Federation, notably, the Federal and States Judiciaries. Heads of Court shall have primary responsibility for ensuring the compliance of the judicial officers over whom they superintend with the provisions of this guidelines it being the intention of Council that justice administration shall continue despite the challenges and glitches occasioned by the COVID-19 pandemic”.³⁸

(b) Decision of the Supreme Court

Nigerian Courts have been instrumental in legalizing virtual proceedings in Nigeria. The judicial activism exhibited by the Supreme Court in the case of *A.G Ekiti state V A.G Lagos state*³⁹ has laid a legal basis for the justification of virtual proceedings. This decision is the *prima impressionis* a case of first instance.⁴⁰ It helps in addressing novel areas of law and expanding the frontiers of knowledge.

37.Sule I.,Olorunyomi F.,Ajah J. and Adama s.,Loc.Cit.

38.Ibid

39.NationalJudicial Council Guidelines For Court Sitzings and Related Matters in the COVID -19 Periods”@<https://www.njc.gov.ng><accessed on September 15, 2024>

40..SC/CV/260/2020

41.Ibid.

(c) The Rules of Court

As mentioned earlier virtual court proceedings in Nigeria gained popularity during COVID -19 lockdown and became effective in 2020. The lockdown forced the government as well as the state judiciaries to come up with practice Direction to deal with urgent cases. Some states within the country also followed suit with practice Direction for the justice system to continue.

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The first to come up with a policy was the Lagos state judiciary following the Lockdown directive the Chief Judge of Lagos State signed the “Lagos State Judiciary Remote Hearing of Cases (COVID-19 Pandemic Period) Practice Direction” (hereinafter referred to as the “Practice Direction”), which came into effect on May 4, 2020. The Practice Direction came into effect to ensure the hearing and determination of urgent and time-bound cases through digital platforms like Zoom, Skype or any other video and audio-conferencing platform that is approved by the Court.

The Supreme Court of Nigeria provides for Virtual Proceedings. Under Order 18 of the Supreme Court Rules, 2024, the court where it deems it is appropriate to do so. But the parties have to apply to the court for the permission to conduct virtual proceedings. The virtual proceedings can be conducted via audiovisual platform and the link will be made available to the public. The measure taken by the apex court to adopt virtual proceedings is a welcome development. It shows progressive stride in digital revolution in our jurisprudence.

The Court of Appeal also made provisions for virtual proceedings. Order 21 of the Court of Appeal Rules, 2021 permit the Court of Appeal to conduct virtual proceedings where it thinks it is appropriate. Before doing so, the Court’s registrar is obliged to notify the parties and their counsel as

42.Emudainohwo E, [“Appraising The Constitutionality Of Virtual Hearings in the National Industrial Court of Nigeria”](https://www.researchgate.net/publications/361111111)[@https://www.researchgate.net/publications/361111111](https://www.researchgate.net/publications/361111111) accessed on June 5, 2024>

well as the Justices of the Court of Appeal.⁴² The use of virtual proceedings does not dispense with the needs for lawyers and Justices to observe their respective professional ethics. Thus, lawyers are to comport themselves in a manner prescribed the ethics of their profession. Also, lawyers and Justices are to be fully robed.⁴³

The Federal High Court also made Provisions for virtual proceedings in its 2020 practice direction regulating COVID 19. It allows for the use of Skype, Zoom or any other audio-visual platform.⁴⁴ This court made provisions for the laws on the circumstances under which virtual proceedings shall be conducted. It has ushered in the era of virtual proceedings in Nigeria.

The National Industrial Court also made its own provision regulating virtual proceeding. It was made pursuant to the effects of COVID 19 pandemic. Under paragraph 7 of National Industrial Court of Nigeria Practice Directions and Guidelines for Court Sitting, 2020, virtual proceeding is recognized. It is also specifying the nature of proceedings that shall be conducted via virtual proceedings. Thus, matters relating to evidence are not permitted to be taken via virtual proceedings. It is also the types of virtual courts are not close ended. They include video conferencing or any other method required by the court. Notice of the date slated for hearing shall be both physically communicated on the Cause List of the court as well as the website of the court.

43.TONBOFO Law Practice, “Court of Appeal Rules, 2021”, @<https://tonofa.com>[PDF]@<https://tonbofa.com><accessed on September 14, 2024>

44.Ibid.

45.Kashimu G., “Summary and Analysis of Practice Direction Issued By the Federal High Court and the High Court of Lagos on COVID 19”, Femi Ayetobi &CO, June 2020@<https://femiayetobi.com><accessed on September 15, 2024>

Again, under paragraph 8 (9) of the National Industrial Court of Nigeria Practice Directions and Guidelines for Court Sitting, 2020, the condition precedent for conducting virtual proceedings, are spelt out. The court is enjoined to ensure the availability of the following facilities:

- (a) Fast speed, pervasive and reliable Internet Connectivity.
- (b) End-user hard ware/devices i.e desktops, laptops, tablets, smartphones-any one of these or a combination thereof.
- (c) Collaborative platform e.g MS365 (which incorporate Microsoft Teams), Zoom, Google Meetings, etc.
- (d) Electricity power for, among others, the end-user device and ancillary equipment for the duration of courts sitting.

The above shows how the Nigerian courts have now embraced virtual proceedings. Most of the Courts now have provisions for virtual proceedings. However, it is unfortunate that in practice, the Nigerian judiciary has only accorded greater concerns to the upper bench i.e courts of Superior Records contemplated under section 6 (5) of the 1999 Constitution. Most of the lower courts such as the Magistrates, District courts, Areas courts and Customary courts are neglected as far as the judicial reforms towards virtual proceedings is concerned. This could be understood from the dearth of social amenities to compliment the deployment of virtual proceedings. Nevertheless, Nigerian government is obliged to ensure that such development is extended to the grassroots for the purpose of promoting access to justice.

(d) The Arbitration and Mediation Act, 2023

The Arbitration and Mediation Act 2023 (hereinafter referred to as the Act) provides for virtual proceedings in cases involving emergency reliefs' proceedings. Thus, section 18 (3) of the Act provides that:

Any meeting with the emergency arbitrator may be conducted through a meeting in person at a location which the emergency arbitrator considers

appropriate or by video conference, telephone or similar means of communication.

From the above provision, it appears the use of virtual proceedings is not the first option; rather, it is permissible only in instances of emergency situations. Thus, where there is no need for it the arbitrator can resort to physical seating.⁴⁵ The approach by the Arbitration and Mediation Act, 2023 to use virtual proceedings only in case of emergency situations agrees with the philosophical reason behind the introduction of virtual proceedings, which is flexibility in emergency situations.⁴⁶

Furthermore, virtual proceedings may be implied to regulate emergency proceedings in a situation where there are no adequate provisions to regulate conducts of proceeding under the Act. Thus, where there are no adequate provisions under the Act to regulate virtual proceedings, the arbitrator can resort to the current provisions of the Rules of High Court, Court of Appeal and the Supreme Court.⁴⁷

7.0 The Challenges of Virtual Proceedings in Nigeria

The major challenges confronting effective deployment of virtual proceedings in Nigeria include poor infrastructural support, poor funding of the judiciary, lack of independence of judiciary, weak legal framework, inadequate human capacity building, and conflict of interest.

Poor infrastructural support is another bane for effective use of virtual proceedings. The inadequate and power supply affects effective deployment of virtual proceeding. This includes lack of network stability

46. For This reason the First Schedule, in section 18 (2) of the Act, does not contemplate virtual proceedings as one of the venue for meeting an hearing.

47. Wojciech P., "A Right to a Public Hearing in Times of Emergency –Online or Physical?", International Journal for Court Administration, 2023, Vol.14 ,Iss.2 @ <https://iacajournal.org><accessed on September 15, 2024>

48. See Order 17 of the Arbitration Proceedings Rules 2020, under the Third Schedule to the Act.

and poor frequency of communication networks due to poor network services. Hostile geographical terrain further contributes to the challenges of poor infrastructural stability in the use of virtual proceedings in Nigeria.⁴⁸

Nigerian judiciary is the only arm of government that is under-funded. Use of virtual proceedings requires financial commitment for installation of gadgets, virtual equipment, network installations and data. It is on record that funds given for judiciary were very low to facilitate the deployment of virtual proceedings in Nigeria. This development is no doubt an albatross to the effective deployment of virtual proceedings in Nigeria.

Closely linked to the above is the fact that lack of independence of judiciary could be another reason for poor deployment of virtual proceedings in Nigeria. In Nigeria, judiciary depends on the executive and the legislature for the release of its statutory funds under the Consolidated Revenue Funds.⁴⁹ Thus, judiciary cannot have automatic authority to use the monies statutorily meant for them, unless it is approved by the executives. Consequently, this affects the facilitation of modern courts' system, including the deployment of virtual proceedings.

Presently, there are inadequate laws regulating virtual proceedings in Nigeria. Most of the laws are premised from the National Judicial Policies and Directives, Court Rules and Practices Directions. In the hierarchy of our laws, these laws are weak in nature. The National Judicial Policies regulates the administrative and the judicial activities of judges. It is not a law enacted by the National Assembly. In case of conflict, the National Judicial Policy will bow. Court Rules are good sources of law, but where they conflict with laws enacted by the National Assembly, the Act of National Assembly shall prevail. Thus, laws regulating virtual proceedings

49. Godfree M., *Loc Cit.*

50. Sections 80 and 81 of the 1999 Constitution of The Federal Republic of Nigeria (2010 Amended)

from these sources have flaws that will not stand the test of legal scrutiny at the long-run.

Further, judges and lawyers are not good at the use of virtual proceedings in Nigeria. Many of them are not digitally literate. Issues of e-filing stipulated by some court rules are yet to be complied with. Even though many judges and lawyers are undergoing digital training in their conferences, the resultant effect is yet to be felt in the practice of law in Nigeria.

Further, most of the laws on virtual proceedings are apply to Superior courts. Most the laws and rules of courts regulating virtual proceedings appears to be more provided for in the Supreme Court Rules, Court of Appeal Rules, Federal High Court Rules, Rules of Procedures of High Courts of States, and Tax Appeal Tribunals. Most states, except Lagos and Port Harcourt, have no laws or rules of Court regulating virtual proceedings in Nigeria.⁵⁰ This neglect of the judiciary at the grassroots level has affected access to justice.

Lastly, deployment of virtual proceedings has the tendency of bring conflict of interest. The conflict of interest could arise between the court and the stakeholders in telecommunication Networks. For instance, if a case arises between Mr A with B owner of Zoom (who is a service Provider to the Court), it is impossible to avoid conflict of interest in two fronts. Firstly, would the court be adjudged to be impartial in its trial of the case when it Virtual Lord, Zoom is involved? Would Zoom controlling the Virtual proceedings not tampered with the virtual record/transcript of the proceedings? Questions like this tend to raise issue of conflict of interest in Nigeria.

51. In an online consultations (via Whatsapp chats and phone calls) with colleagues and registrars of lower courts in some states in Nigeria, it is glaring that most states don't have laws regulating virtual proceedings in lower courts.

8.0 Findings

In the course of research leading to this paper, these authors have established the followings:

- (a) Existence of weak laws regulating virtual proceedings in Nigeria.
- (b) Weak social amenities are affecting the realization of effective use of virtual proceedings.
- (c) Lower courts lack legal regulation and policy framework on virtual proceedings.

9.0 Recommendations

In the light of the above challenges and the findings of this work, this paper recommends the need for adequate funding of judiciary, capacity building of stakeholders, need for third party service providers to handle virtual proceedings, and strong laws to regulate virtual proceedings.

Adequate funding will go a long way to solve the problems of lack of updated facilities. It will also address the issues of dilapidated facilities and introduction of modern digital gadgets. This will help to facilitate sound virtual proceedings in Nigerian courts. As such activities like virtual hearing and fillings will be hitch free.

Capacity building of stakeholders in the field of virtual proceedings shall be encouraged. Thus, the need for constant training and retraining of stakeholders on the use of technology in courts' proceeding should be encouraged. Thus, judges, lawyers and judicial staffs need constant training and retraining. This will make them to be in tandem with the growing pace of virtual technology in judicial proceedings in Nigeria. It will also put the stakeholders at par with their contemporaries on the other parts of the globe. Third party service or Network Providers should be engaged where one of the service providers to the court is a subject of litigation before the court. Thus, where for instance Zoom is a party to a suit before a court that its provide services to, another service provider should be engaged. This will avoid the tendency of role conflicts among the courts in Nigeria.

The lower bench should be able to have laws regulating virtual proceedings in Nigeria. This will promote equity in development of the judiciary as well as ensuring access to justice. When lower courts are facilitated with equipment and laws to regulate virtual proceedings, access to justice will be enriched.

Lastly, there should be specific laws regulating virtual proceedings in Nigeria. The specific laws should be enacted by the National Assembly. These laws could either be a specific law to singularly deal with virtual proceedings in Nigeria. This is because specific legislation enjoys primacy over other sources of law in cases of conflicts.⁵¹ On the alternative, the various laws and Acts establishing courts at the State and the Federal Levels should be amended to specifically include virtual proceedings. Doing so will give the virtual proceedings, a special legislative status and power, than the administrative directive of the Chief Judges, Presidents of the Courts and the Chief Justice of Nigeria.

10.0 Conclusion

This work focuses on the legal framework regulating virtual proceedings in Nigeria. The paper is able to point out that even though there laws regulating virtual proceedings, these laws are weak. Equally, the work established that there is the need for modern up-to-date facilities in Nigerian Court. Doing so will ensure effective administration of justice. In light of these developments, this paper draws the attention of policy makers to proffer solutions in order to bolster justifiable use of virtual proceedings. In this regard, policy makers are enjoined to consider some of the proposals made in this paper.

46. Benjamin V Kalio (2018) 15 NWLR (PT.1641) 38