

EMERGING ERRORS ASSUMING LIVES OF THEIR OWN IN THE NIGERIA LEGAL SYSTEM

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Abstract

It has been said that errors would necessarily arise in every human endeavour and correcting them is evidence of a living society. Where errors persist and are not corrected, they soon assume life of their own and may create a new foundation or paradigm based on which people can be assessed and commended or condemned. In the legal profession in Nigeria, some errors have become rampant and seem to be accepted as the norm. These errors are not merely semantic. Some go to the root of legal proceedings and adjudication resulting in the wrong things being done and yet accepted as normal because of the status of those doing them or their widespread occurrence. In this article the author identified some of the errors and proffered corrections in order to preserve the spirit of excellence for which the legal profession is respected and always expected to lead the way, especially in a country like Nigeria where education is yet evolving. The errors include the use of the phrase 'as amended' in the citing of the Constitution and other statutes; the phrase 'inherent jurisdiction' instead of 'inherent power'; the description of the political phase of Nigeria as 'Fourth Republic' when there was no 'Third Republic' and 'Issues for Determination' when reference is to issues for trial and the wrong practice of pre-trial conferences by courts.

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1.0 INTRODUCTION

This writer has an uncle who is a philosopher in indigenous African thought. Playing on the Ikwerre word for tradition or custom – *omenueli* (what is normally done in the community but literally what is done on the earth), he said that when what is done in the sky or heaven (*omenuolu*) drops to the earth it soon becomes *omenueli*. He was emphasising the process whereby unusual or exceptional conduct, which may be intentional, perfunctory or a mistake, however occurring, soon becomes accepted conduct, a norm or tradition. In a profession where precedent is almost worshipped as a doctrine it becomes very important to be careful not to allow the wrong things to be introduced or allowed to persist in order to avoid laying new foundations or erecting the wrong edifices upon foundations rightly or wrongly laid with good or bad materials. An African proverb urges that the elders should not all die lest children would begin to eat vulture as fowl or female goats be allowed to be delivered of their foals while tethered.

The legal profession in Nigeria is being gradually but steadily drowned in errors of language and procedure which are getting so pervasive that those who do the right things are being ‘corrected’. Some persons, especially Judges, have been making efforts to correct these errors but it seems they are fighting losing battles. The Honorable Justice Joseph Mgbo Kobani, before he retired from the High Court of Rivers State was known as the Teaching Judge. He rarely allowed some slips go uncorrected. At his valedictory court session, it emerged that he was not only doing that among lawyers but also extended the ministry to the ‘Inner Chambers of learned men and women’ where lawyers do not sit or appear. This writer had the privilege to compile and edit some of his papers into a book. In the

book, *In Search of a Saner Society*,¹ the Learned Judge addressed some of the emerging pathological tendencies of language in the legal profession in Nigeria which are now being seen at the highest levels. He described them as ‘some matters that are no less important but which have fallen on the blind spot of almost all who ought to know. As a result, the wrong things are gaining currency from the calibre of those doing them’. His Lordship dwelt on some of the pervasive and persistent grammatical inventions which should not be ‘once named among’ lawyers. One would not dare to deal with those, not just because he had covered the field on those words and phrases but because I cannot match the author’s reach. Thus, I simply refer to the book.²

It is, however, intended here to address some of the errors being noticed with increasing frequency in this article. As a Law Teacher, one fears that the younger generation of lawyers would join the profession and, relying on the status of users and frequency of use by a widening circle, want to build tabernacles on the errors and possibly mock those who stick to the old paths. In classrooms today as one corrects students some of them look askance and befuddled wondering how their teacher could be describing as wrong what other lecturers or even Judges in reported cases have been doing with relish. It is hoped that there can be redemption through this little effort and it can come about if each reader cross-checks, confirms what is asserted here and determines to do the right thing irrespective of what others do. The harvest is getting past and the summer is almost ended and we are still entangled in some errors that diminish us in the comity of nations but

¹ (2020) Life, Law and Grace Bookhouse, Port Harcourt.

² Ibid, Chapter Twenty-five ‘Language, Ethics and the Lawyer: The Travails of the legal Profession in Nigeria in the 21st Century’, 192. In Part One of the Chapter, he identified 35 ‘Words and Phrases Frequently Misused or Mispronounced in Court’.

which we either do not seem to know are errors or want to make it '*Nigeriana*'. We shall address a few of them in this article.

2.0 INHERENT JURISDICTION

Jurisdiction is not inherent and thus there is nothing known as inherent jurisdiction in law. Jurisdiction is vested by statute and can also be taken away by statute. However, in most applications in courts at all levels, lawyers for good effect never fail to claim that apart from the rules or statutory provisions, which they are required to state³ they are bringing their applications pursuant to the 'inherent jurisdiction' of the Honourable Court. And it seems that the courts enjoy the flattery and thus, notwithstanding them jealously in guarding of their jurisdiction and the aphorism that the courts can expound but not expand their jurisdictions, the Courts, including the Supreme Court, allow this error in the halls of justice.

In *Adigun v Attorney General of Oyo State* (No.2),⁴ in resisting the invitation to do what is not within its jurisdiction by appeal to 'inherent jurisdiction' by the great Rotimi Williams, SAN, the Supreme Court of Nigeria made it clear that section 6(6)(a) which provides that the judicial powers, vested in the Courts established under the Constitution, shall extend notwithstanding anything to the contrary in the Constitution to all inherent powers and sanctions of a court of law, does not empower the court to review its own judgment as it has no jurisdiction to do so. Chief Rotimi Williams, S.A.N. who had represented the appellants in *Adigun v Attorney-General of Oyo State* (No. 1),⁵ relying on section 6(6)(a) of the 1979 Constitution⁶ applied to the Court invoking the 'undoubted inherent jurisdiction' of

³ Order 42 High Court of Rivers State (Civil Procedure) Rules, 2023; Order 6 Rule 1(a) Court of Appeal Rules, 2021.

⁴ (1987) All NLR 328.

⁵ (1987) All NLR 111.

⁶ Which was in the same terms and tenor as section 6(6)(a) of the 1999 Constitution.

the Supreme Court ‘to correct errors drawn to its attention’ and in effect asking for an order for a reversal of the decision earlier given by the Supreme Court. That application by the foremost trial lawyer in the country at the time showed the magnitude of the problem. Thankfully, he was confronting an equally formidable panel made up of Obaseki, Eso, Nnamani, Coker, Karibi-Whyte, Kawu and Oputa, JJSC. The Court held that there is no inherent jurisdiction in the Supreme Court to do what he prayed for, notwithstanding Chief Williams citing and making available to the Court an article entitled ‘The Inherent Jurisdiction of the Court’.⁷

Majority of the Justices gave extensive consideration to the matter even though there was no clear statement by any of them that there is nothing like ‘inherent jurisdiction’ and no effort to clear the mistaken interchange of the use of the inherent jurisdiction and inherent power. The thesis of this part of the article is that while there is ‘inherent power’, which the Constitution recognises, there is nothing like ‘inherent jurisdiction’ which the lawyers on the Bar, Bench, in the classrooms, books and journals often bandy about.

Jurisdiction of a court is a matter that is at once overbeaten but yet one of the most persistent and recurrent questions that courts face. In discussing it one only deals with the aspect of the subject that is relevant. In this article the concern is with the question whether there is any such thing as ‘inherent jurisdiction’, especially in a regime of separation of powers and express written laws. In *Amakaeze v Nze Pet Co. Nigeria Ltd*,⁸ the Supreme Court made it clear that a court is said to have jurisdiction in respect of a case when it has the authority to take cognisance of and decide the case and the jurisdiction can only be

⁷ By I.H. Jacob, Senior Master of the Supreme Court of England published in 23 Current Legal Problems (1970)

⁸ [2021] All FWLR (Pt. 1076) 180, 204

invoked in the manner the law provides it must. In the words of Garba, J.S.C. in *Amana v Igala Area Traditional Council*,⁹

In simple terms, the jurisdiction of a court of law to entertain a case or matter brought before it, is the legal power and judicial authority vested in it by statute, including the Constitution under which it is created or established, or by which it was specifically conferred to adjudicate; by way of judicial proceedings and resolve disputes on the legal rights and/or obligations of parties. Jurisdiction is therefore specifically and expressly conferred on and/or vested in a court of law by the relevant statute or the Constitution and it is never presumed nor otherwise conferred or acquired over a case or matter.’ The statute establishing a court or conferring jurisdiction on a court circumscribes its jurisdiction. If the statute does not provide for jurisdiction over a subject matter the court does not have it.¹⁰

It cannot inhere in it. What a court has and which the Constitution of the Federal Republic of Nigeria recognises as inherent in it is not jurisdiction (authority) but power (what it can do where it has authority). In the *Adigun* case, Oputa, J.S.C. characteristically took the issue to its bones:

... it becomes an issue of vital importance to probe the meaning and nature of the inherent powers of court of law. Simply put, the inherent power of any court is that power which is itself essential to the very existence of the Court as an institution and to its ability to function as such institution – namely as an institution charged with the dispensation of justice... An inherent power has to be inherent in the sense that it forms an essential and intrinsic element in the whole

⁹ [2022] All FWLR (Pt.1153) 170, 198-199

¹⁰ *All Progressive Congress v Edo State Independent Electoral Commission* [2021] All FWLR (Pt. 1114) 97 SC

process of adjudication. It is innate in a court, and it is not subject of specific grant by the Constitution or by legislation. That is why inherent powers of the courts cannot be taken away or abridged by legislation for he who gave, only he can take away...As soon as any Court is established, all its inherent powers adhere and attach to it. Inherent powers of the Court are therefore those powers that are reasonably necessary for the administration of justice in the court.¹¹ His Lordship described 'inherent jurisdiction as 'the rather nebulous umbrage'.¹²

It is submitted and it is hoped that it is high time every court, in the interest of the law and the legal profession in Nigeria, should take that umbrage away in the same manner a person under heavy downpour would put off a tattered umbrella.

3.0 CITATION OF AMENDED STATUTE

According to Joseph Kobani, retired Judge of the High Court of Rivers State, '(Citation of statutes) is another area where the wrong things are gaining currency from the calibre of people doing them. Let me declare right away that statutes are not cited anyhow... There must be very few people both at the Bar and Bench today who care about this.'¹³ In a Supreme Court Practice direction dated 1st July 2026 issued by the Chief Justice of the Nigeria it was prefaced: 'In the exercise of the powers conferred on me by section 236 of the Constitution of the Federal Republic of Nigeria, 1999 (*as amended*);....'¹⁴ By this the Chief Justice, the highest personage in the legal profession in Nigeria, gave a most recent and perhaps highest stamp of usage and approval to the phrase *as amended* in the citing of the Constitution.

¹¹ (1987) All NLR 328, 371

¹² Ibid, 372.

¹³ (n1) 52.

¹⁴ Italics mine

In doing that His Lordship put me in a quagmire in my struggle to let my students know that a statute or even the Constitution does not change its nomenclature for citation even after it has been amended. How would they listen to and believe me when the ‘Rome’ of the Legal Profession has spoken? When the Romans ruled the world, it used to be said *Roma locuta causa finista est* (Rome has spoken, the matter is finished or concluded). Who is an ordinary lecturer to tell them to follow any other pattern of citation than how the CJN, the head of the custodian and interpreter of the Constitution, Interpretation Act and every other statute – the Supreme Court, the one who is to lay the pattern to be followed and who in the particular document was giving a Practice Direction¹⁵ to the entire legal profession in Nigeria pursuant to the powers conferred on her, has stated it? The CJN is the highest authority but not the only person in making this error. At the Call to the Bar Ceremony on September 25, 2025 where I was present, the Chairman of the Body of Benchers, the immediate past Chief Justice of Nigeria, the Honorable Justice Olukayode Ariwoola in addressing newly called lawyers, including my son, whom I had often corrected him and his friends, in referring to the Constitution did not fail to add *as amended*. So, who am I to say otherwise? But an error does not cease to be so because of the status of the erring person.

At the 2018 National Association of Law Teachers Conference at Awka, Anambra State, I stepped out in a session to correct the emerging culture of adding *as amended* in the citation of the Constitution. The Chairman of the session, Professor O. Olowu of the American University, Yola agreed with me and there was no contrary opinion. But it has persisted. An error remains an error even if teachers make or teach it. Before it becomes a settled axiom and those who do

¹⁵ Supreme Court (Mandatory Upload of Electronic Copies of Processes, Record of Appeal, and other Matters) Practice Direction, 2026.

the right thing by not adding the *as amended* phrase become the ignorant and anachronistic group in Nigeria, it has, however, become necessary to correct this error based on the following:

- i. Every statute, including the Constitution provides for how it should be cited. The Constitution of the Federal Republic of Nigeria provides that ‘This Constitution may be cited as the Constitution of the Federal Republic of Nigeria 1999’.¹⁶ The Constitution contemplates that it can be amended or, to use its peculiar phrase, ‘altered’ and provides within it a provision setting out how it can be altered.¹⁷ It did not provide that any amendment would amend its name. And it is not done.
- ii. The Constitution is an organic document which has the power to regenerate itself. Even though Nigeria seems to have evolved the habit of making and rejecting constitutions at will or on impulse,¹⁸ a constitution is a living document which is made to regenerate itself by means of amendment by the legislature as prescribed and interpretation by the courts. Amendment is like treating a sick person. No matter how extensive a treatment procedure is it does not change the name of the person. Thus, no one describes a ‘Chukwuma Chinwo’ as ‘*Chukwuma Chinwo as treated*’ if he had a time with his doctors whether for mere examination, medication or surgery.
- iii. The Interpretation Act – Section 4 of the Interpretation Act¹⁹ provides:

¹⁶ Section 319.

¹⁷ Section 9.

¹⁸ This writer had addressed the issue in 2007 in an article ‘Constitution Making, Constitutional Governance and Constitutional Behaviour in Nigeria’ in *Ebonyi State University Law Journal*, 2(1) 85.

¹⁹ Cap I 23, Laws of the Federation of Nigeria, 2004.

(1) A reference in an enactment to another enactment shall,²⁰ if the other enactment has been amended, be construed *as a reference to the other enactment as amended*.²¹

It seems that the italicised part of the provision is the source of the abiding confusion. But what the provision means is simply that any reference to the other enactment shall be construed as to the enactment in its new form. Thus, a reference to the Constitution of the Federal Republic of Nigeria, 1999 after the First Alteration shall be construed as reference to the Constitution *including* the alterations made.²² It does not change the name of the Constitution especially when a section referred was not even amended.

(3) Unfortunately, this malaise has become so prevalent, almost to an epidemic proportion, that, to avoid being taken as not knowing the law, lawyers and students now off-handedly cite every statute in Nigeria with the addition of ‘as amended’. According to Kobani,

Another illiterate incongruity arising from the ‘as amended’ conundrum is that even enactments that are not an amendment are now called ‘as amended’ such as the Evidence Act 2011 which is a brand-new legislation.²³ We now see booklets on the bookstands and with hawkers in the traffic called *Evidence Act 2011 as Amended*. And

²⁰ If not in an enactment it means any reference to an enactment.

²¹ Italics mine.

²² A Professor of Constitutional Law with the Rivers State University, Linus Nwauzi in 2019 undertook the reproduction of the Constitution of the Federal Republic 1999 and incorporated the alterations in the 1st, 2nd, 3rd and 4th Alteration Acts. That is what a Law Revision Commission ought to do on a regular basis so that anytime any person has a copy of the Constitution he has the complete body of Constitution pending when a full revision can be done changing the section, subsection and paragraph numbering.

²³ The jurist wrote before the 2023 amendment of the Evidence Act; yet is wrong to refer to the Evidence Act with the suffix ‘as amended’.

even lawyers shamelessly take their cue from that and call the Evidence Act 2011 ‘as amended’ in their written submissions. It is as illiterate as that.²⁴

(4) Precedents of Practice – Nigeria is not the only or first nation operating statutory legal regimes, including Constitution, which are amended from time to time. Take one example: The United States Constitution was signed on 17th September, 1787 with Seven Articles. From December 15, 1791, when the 1st ten amendments were ratified to introduce the Bill of Rights, until 1992 there had been 27 amendments some with several sections. Yet, what is known and mentioned in the courts and to the whole world is the ‘Constitution of the United States of America’. No one hears of ‘*Constitution of the United States of America as amended*’. Rather reference may be made to the ‘First’ or ‘Fourteenth’ or any other Amendment as it should be made to 1st or 5th Alteration of the 1999 Constitution of the Federal Republic of Nigeria, whenever it is necessary.

One submits that if we are not introducing our own peculiarity and pathology in the citation of statute there should be a stop to this ‘conundrum’ which is making Nigeria a laughing stock. Law teachers should lead in saving Nigeria from this shame. Students, who would be the lawyers and judges of tomorrow, would make citations as they learn from their teachers. It is a dereliction of duty for a lecturer to want to conform to, teach or perpetuate errors because the general public of the legal profession, including high personages, are committing the errors.

²⁴ (n1) 52.

3. FOURTH REPUBLIC

Another error that has almost come to stay is the description of the present constitutional governance dispensation in Nigeria as the 'Fourth Republic'.

In the article earlier referred to,²⁵ it was written:

Nigeria's fascination with numbering republics is one of the intriguing things in studying constitutionalism in Nigeria. The Honorable Justice Niki Tobi, then of the Court of Appeal, in 1992 spent much time lampooning it at what turned out to be the most farcical conference of the Nigerian Bar Association in Port Harcourt. The 'Third Republic' never became a reality, as there cannot be a republic in the true sense in a federation without an elected president. Nevertheless, another civilian dispensation emerged (and) wordsmiths described it as the 'Fourth Republic'.

Both factually and in law, it is submitted that the current constitutional dispensation founded on the 1999 Constitution and not the aborted one in 1993 which was to be founded on the 1989 Constitution that never saw the light of the day, is the Third Republic of Nigeria. A republic is one in which the government, especially the President, who is the embodiment of the will of the majority of the entire electorate in a presidential system, is actually or presumably the product of the exercise of the people's franchise to choose their leaders at all levels. While there were elected Local Government Area Councils, State Governments and National Assembly, pursuant to military-promulgated Constitution (Basic Transitional Provisions) Decrees,²⁶ the military Government of President Ibrahim Babangida annulled the June 12, 1993 election which would have produced an elected

²⁵ (n19) 86.

²⁶ Decrees are not a feature of a republic in which sovereignty is in the people.

President and scuttled the operation of the 1989 Constitution. Thus, the expected Republic was never allowed to be birthed or to arrive.

Factually, like this writer put to his postgraduate students recently, no family counts as among its children an aborted or miscarried child. The number he would have had is given to the next child. What would have been Third Republic was in 1993 aborted by the military which ten years earlier overthrew the Second Republic. Legally, when Abacha took over from the Interim Government of Chief Shonekan he only shoved aside a contraption which the High Court had declared as strange to Nigerian constitutional jurisprudence. It had no constitutional basis and was not elected by the people and strangely was appointed to preside over elected institutions. It was not even a diarchy as the military President had abdicated by 'stepping aside'. It was after all the transitional shenanigans of the military that the 1999 Constitution, the making of which some still debate its validity, was promulgated and an elected President swore to uphold it. The constitutional democratic dispensation led by President Olusegun Obasanjo from May 29, 1999 to date is the Third and *not* Fourth Republic of Nigeria based on the Constitution of the Federal Republic of Nigeria, 1999. We need not persist in the error.

5.0 ISSUES FOR DETERMINATION INSTEAD OF ISSUES FOR TRIAL

The frontloading regime in civil trials in Nigeria also seems to have brought along with it some peculiarities of language and errors which are assuming their own lives. This writer had the privilege to be a discussant at the colloquium on what became The High Court (Civil Procedure) Rules, 2023 of Rivers State in October, 2022. In the paper he presented it was emphasised that many lawyers and judges seem not to appreciate the difference between formulation or settlement of facts (or facts-in-issue) for trial and issues for determination. What has

been happening in most pre-trial proceedings and being described as Identification of Issues of Determination, even after the colloquium, is wrong.

At the pre-trial stage in a case commenced by writ what is expected to be identified are facts-in-issue for trial on which evidence would be elicited and subjected to cross-examination.²⁷ The muddling up of the terms and proceedings has resulted in participants in the judicial process not benefitting from the intended advantage of the reforms on civil trial including speed and efficiency. For instance, it appears to be a waste of scarce judicial time to give evidence in-chief or by way of cross-examination or re-examination of existence of a contract when what is in issue is whether it or any obligation in it had been performed and to what extent. Facts in issue for trial are the only facts on which a party needs to adduce evidence. A lawyer should be able to ask leading questions of a witness in a trial where the facts are not in dispute or not in issue if the Judge is not satisfied with just lifting those facts as admitted or not contested into his record for the purpose of evaluating evidence.

This is a matter that goes beyond the discretion or idiosyncrasy of the court or lawyers. It is a matter of law. Section 1 of the Evidence Act provides:

Evidence may be given of facts in issue and relevant facts. Evidence may be given in any suit or proceeding of the existence or non-existence of every fact in issue and of such other facts as are hereafter declared to be relevant, and of no others.

²⁷ Section I of the Evidence Act.

A fact is said to be in issue when it is not admitted, judicially noticed, presumed and un rebutted. Litigants are in court to establish the truth not to erect stumbling blocks and wishing that the other party would fall. The Supreme Court has long settled it that litigation is not a game of hide and seek or of fencing, where a party seeks the other's fall, but to establish why a claim should be or not be upheld.²⁸

Unfortunately, the 2023 High Court Rules of Rivers State omitted the Rules on Settlement and Trial of Issues (which should actually be Trial of Facts in Issue) which was in the 1987 Rules. It would be necessary to reproduce the rule here:

5.1 Settlement and Trial of Issues

- i. At any time before or at the hearing, the Court may, if it thinks fit, on the application of any party, or on its own motion, proceed to ascertain and determine what are the material questions in controversy between the parties, and may reduce those questions into writing and settle them in the form of issues which issues when settled may state questions of law on admitted facts, or questions of disputed facts, or questions partly of the one kind partly of the other.
- ii. The court may, if it thinks fit, direct the parties to prepare the issues and the issues shall be settled by the Court.
- iii. The issues may be settled without any previous notice at any stage of the proceedings, at which all the parties are actually present, or at the trial.
- iv. If otherwise, notice shall be given to the parties to attend the settlement of issues
- v. At any time before the decision of the case, if it appears to the court necessary for the purpose of determining the real

²⁸ *Ajide v Kelani* (1985) 2 NSCC 1298, 1316 per Oputa, JSC

questions or controversy between the parties, the Court may amend the issues or frame additional issues on such terms as to it seems fit.

5.2 Trial of Questions and Issues

6.-(1) The Court may order any question or an issue arising in a cause or matter, whether of fact or of law, or partly of fact and partly of law, and whether raised by the pleadings or otherwise, to be tried before, at or after the trial of the cause or matter, and may give directions as to the manner in which the question or issue shall be stated.

(2) An order under this rule may be made on application by a party or by the Court or Judge in chambers on its or his own motion.

(3) Application by any party for such order shall be by motion on notice stating the question or issue to be tried.²⁹

This is what is meant by ‘trial or settlement of issues. The sorting of ‘questions of law on admitted facts, or questions of disputed facts, or questions partly of the one kind partly of the other’ during pre-trial proceedings is what is known as determination of facts for trial not determination of issues. It is suggested that if the objective of the Rules for speedy trial would be realised this Order should be reinstated, properly articulated and made mandatory.

Issues for Determination, on the other hand, are the legal questions for the Court to answer at the conclusion of the trial based on its findings of facts. Those ones are identified in the final address not pre-trial proceeding. It is not what is expected at the pre-trial stage. Thus, issues of fact for trial ought to be longer than what we have today. The Rules of Court should be more explicit in these matters and they should be provided in mandatory forms. It is submitted that the use of

²⁹ Order 35 High Court (Civil Procedure) Rules, 1987.

the term '*Issues for Determination*' in Pretrial is misleading and should be replaced with '*Facts in Issue for Trial*' in line with the Evidence Act and the obvious intention of the makers of the Rules.

5.3 Defence in Undefended List Proceedings

In the same vein, on Undefended List, it must be clearly stated that what should make the court move a matter from that List to the General Cause List is not mere story or explanation but defence. That a debtor could not pay his debt because he was sick or that robbers broke into his shop is not a defence but an explanation. But that the creditor did not advance the loan as agreed in the loan agreement or that there occurred a *force majeure* or act of God that frustrated performance may be a defence. So, the Court should be sure that what is produced is not an explanation but a defence. If it is an explanation judgment should be given without delay. Explanations are for mitigation not defence.

6.0 PRE-TRIAL IN OPEN COURT

Pre-trial proceedings is another area where error of practice is assuming a life of its own. Today judges in open court ask and write down answers to the questions:

- i. Have pleadings closed?
- ii. How many witnesses do you have?
- iii. How many documents do you have?
- iv. How many days do you need to prove your case and how many days do you need for cross-examination?
- v. Are you objecting to any documents?

The Court then give dates for trial. That is taken as 'pre-trial'! It is not. That is perhaps scheduling, which is a part of pre-trial, but not all of pre-trial. The Judges claim that they have their own procedures and would not be guided otherwise. In some courts pre-trial is viewed as a

distraction not an important facility to speed up trial. This a serious error which has adverse effects on the speed of trial, life and health of the personnel involved in trial and the image of the judiciary. That perhaps is the reason many senior lawyers send their juniors for pre-trial and wait for the main trial in open court.

It seems that proper use is not being made of pre-trial in civil trial proceedings in Nigeria. Pre-trial should be the time the two pleadings are placed side by side. The admitted, judicially noticed and presumed and un rebutted facts should be identified and put on one side. They do not need evidence, at least not on cross examination. The facts in issue, because they are not admitted, not judicially noticed or noticeable by the court or are rebutted by new evidence, are placed on the other side. It is this second category of facts that is for trial because they need evidence-in-chief, cross-examination and possibly re-examination for proof. For the latter category, where discovery had been requested or refused and interrogatory answered or not answered there would be no need for evidence for what is discovered or presumed against the one withholding evidence. That, it is humbly submitted, is the very reason for pleading: to say what ails the claimant against the defendant and for the defendant to say why he should not be liable. It is submitted that if it is followed some matters that last years may end at pre-trial or in less than five sittings. Proper understanding and determination to put them to use is what would make our trial proceedings aid speedy and effective dispensation of justice. It is suggested that this is one of the responsibilities of the Judicial Institutes: to organise practical sessions or workshops on this matter for prospective, new and old judges. Rules are important but observance of the rules is more needful.

Besides it is submitted that the use of the Pre-Trial Conference rooms of Judges should be mandatory. Pre-trial should be a chamber

proceeding where parties can drop their armour of litigation and seek for settlement of issues for contest or the entire action in an atmosphere of trust and understanding of the role of the court. If a court has no pre-trial room the court room should be converted to pre-trial rooms. During pre-trial it is submitted that the court has power to exclude non-interested parties from the hearing. It should be scheduled to time and date. It is incongruous for a court to have pre-trial and trial proceedings in one cause list in the same court room. It suggested that the better option is for the court to have pre-trial days when counsel need not robe but be formally dressed. It is in a pre-trial proceeding that a Judge that wants to be pedantic or reconciliatory is expected to remove his wig and gown and descend to the level of the parties may be with the bandage of sympathy and cloak of friendship or familiarity. Where the parties feel that the pre-trial judge had gotten too much into the arena, if they are not able to settle, the case should be recommended for trial of the facts in issue by another Judge who would not organise a pre-trial. Inside the Court the business of adjudication should then take off seriously.

7.0 CONCLUSION

The matters considered in this article may appear not to be of much importance but they carry great consequences on the image of the legal profession and the people who rely on the legal system for the resolution of their conflicts on transactional and covenantal relationships. The Legal profession cannot continue to act as if they do not matter. The expectation from the profession is much and in a developing society it goes to language and action. The minimal things may matter greatly.