OALP

DISPUTE RESOLUTION PRACTICE

NEWSLETTER

1st Quarter 2025

INTRODUCTION

The first quarter of 2025 witnessed landmark judicial decisions and policy advancements across Nigeria and key international jurisdictions, offering critical clarity on evolving legal issues. In Nigeria, the Supreme Court ("Supreme Court or SC") and appellate courts delivered pivotal decisions on diverse matters including the scope of the Treasury Single Account (TSA) framework, the admissibility of evidence in litigation, and the assessment of damages in aviation-related claims. The courts also upheld regulatory restrictions in the broadcasting sector, affirming the legality of limitations on the direct relay of foreign news by terrestrial broadcasting stations.

Beyond case law, procedural innovations and policy developments took centre stage. This edition of our Quarterly Newsletter examines the newly introduced High Court of the FCT, Abuja (Civil Procedure Rules) 2025, highlighting key innovations aimed at enhancing procedural efficiency, including stricter timelines for filings and expanded digital case management tools.

Internationally, courts addressed high-profile matters, from digital platform regulation in the United States to arbitration and tax treaty interpretation in the UK. The U.S. Supreme Court ruled on the constitutionality of restrictions on TikTok, while the UK Supreme Court clarified the limits of habeas corpus in child welfare cases and the taxation of oil revenues under international treaties. Meanwhile, arbitration and insolvency law saw notable judicial developments, with courts emphasizing procedural diligence in arbitration and refining the standards for recognizing foreign judgments in bankruptcy proceedings.

This edition of our Newsletter dissects these developments, providing insightful perspectives on their broader implications for legal practitioners, policymakers and businesses. We trust that this review will provoke thoughtful discourse on the key legal developments shaping our current dispute resolution landscape.

RECONDITE CASES

We analysed several significant decisions from both Nigerian and foreign courts, including a decision of the SC affirming that in fatal civil aviation accident cases, a claimant may recover damages for emotional pain, suffering, and loss of companionship and affection, in addition to special damages. Additionally, we examined a decision of the English Court of Appeal, which held that a bankruptcy petition cannot be based on an unrecognized foreign judgment, as such a judgment does not constitute a "debt" capable of founding bankruptcy proceedings. The court emphasized that a creditor must first register the judgment under a statutory scheme or initiate an action on the judgment at common law before relying on it in bankruptcy proceedings.

OUTLINE

CBN v Ochife & 3 Ors - Suit No: SC/CV/268/2021.

The Inspector General of Police, Commissioner of Police (FCT), and the Officer in Charge of SARS are not Ministries, Departments, or Agencies of the federal government and, therefore, do not fall under the TSA framework.

Ezebube v, FRSC – [FHC/L/CS/253/2024]

The Federal Road Safety Corps cannot criminalize or impose a fine for driving with faded vehicle number plates.

Brittania-U (Nig.) Ltd. v. Chevron (Nig.) Ltd. [2025] 3 NWLR (Pt. 1979) 197

The Federal High Court lacks the jurisdiction to hear and determine a matter of simple contract that relates to the participation, alienation or acquisition of interest in Oil Mining Leases.

Mairami & Anor v. Gonidinari [2025] LPELR-80093(CA)

An affidavit deposed to by a Litigation Secretary based on information given by the client results in inadmissible hearsay evidence and carries no weight.

Ukegbu v. N.B.C. [2025] 2 NWLR (Pt. 1976) 283

Nigerian Broadcasting Code 2002 restricting direct relay of foreign news by terrestrial broadcasting stations is a reasonably justifiable law.

Rivers State House of Assembly & Anor v Govt of Rivers State & Ors [2025] LPELR-80539 (SC)

Mere deposing to an Affidavit is not conclusive proof of a party member's defection to another political party.

Raphael v. Ubamacco Ventures Ltd [2025] 2 NWLR (Pt. 1975) 141

A clerical error in typing the appeal number at the top right corner of an amended notice of appeal cannot be a good and legitimate ground for preliminary objection to an appeal.

OUTLINE

Anibaba v. Dana Airlines Limited & Anor [SC/CV/1191/2022]

A Claimant can claim damages for emotional pain, suffering and loss of companionship and affection in addition to special damages in a fatal civil aviation accident matter.

TikTok Inc. v. Garland 604 U.S. [2025]

The Protecting Americans from Foreign Adversary Controlled Applications Act, which prohibits TikTok from operating in the United States after January 19, 2025, unless the Chinese company that owns it divests its assets, does not infringe upon the First Amendment.

The Father v. Worcestershire County Council [2025] UKSC 1

A care order made under the Children Act 1989 does not constitute detention for the purposes of habeas corpus, and the remedy of habeas corpus is not available to challenge the lawfulness of such an order.

Collins and 4 Ors v. Wind Energy Limited [2025] EWHC 4

An Arbitrator's refusal to grant an adjournment is not ground for setting aside a Final Award when parties fail to act diligently.

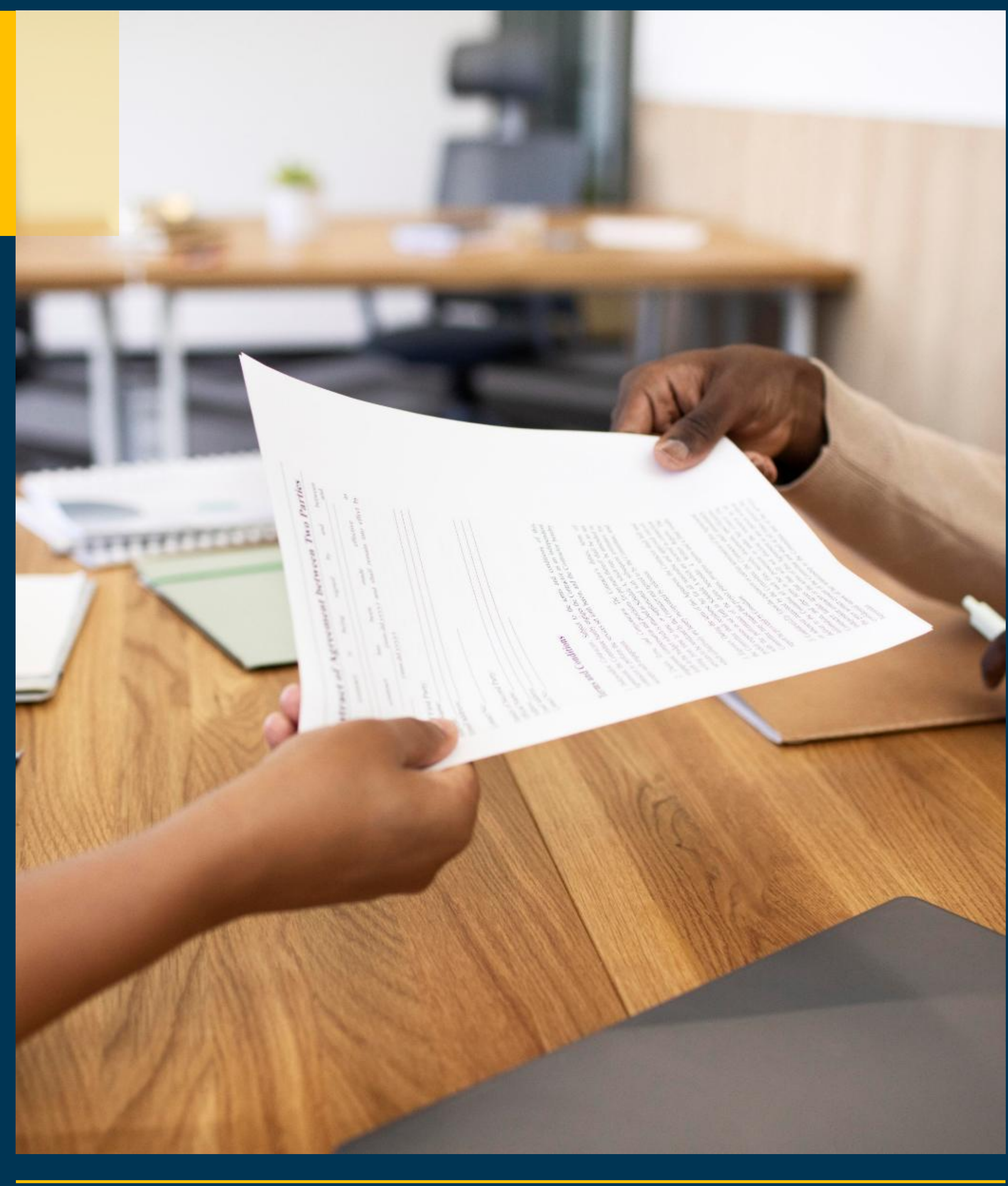
Royal Bank of Canada v. Commissioners for His Majesty's Revenue and Customs [2025] UKSC 2

Payments made by BP to Royal Bank of Canada for rights to oil extracted from the UK Continental Shelf do not constitute income from 'immovable property' under the UK-Canada Double Taxation Convention.

Servis-Terminal LLC v Drelle [2025] EWCA CIV 62

A bankruptcy petition cannot be presented on the basis of an unrecognised foreign judgment, as it does not constitute a "debt" capable of founding bankruptcy proceedings, and the creditor must first register the judgment under a statutory scheme or bring an action on the judgment at common law.

RECONDITE CASES



THE INSPECTOR GENERAL OF POLICE, COMMISSIONER OF POLICE (FCT), AND THE OFFICER IN CHARGE OF SARS ARE NOT MINISTRIES, DEPARTMENTS, OR AGENCIES (MDAS) OF THE FEDERAL GOVERNMENT AND, THEREFORE, DO NOT FALL UNDER THE TSA FRAMEWORK – **CBN v Ochife & 3 Ors - SC/CV/268/2021.**

Facts of the Case

The 1st Respondent commenced garnishee proceedings vide a motion ex parte at the Federal High Court (the trial Court) to enforce a judgment obtained against the 2nd to 4th Respondents (Inspector General of Police, Commissioner of Police, Intelligence Response Team, SARS) in Suit No: FHC/ABJ/CS/156/2018. The trial court granted a Garnishee Order Nisi directing the CBN to show cause why it should not pay the judgment sum of N50,000,000.00. The CBN disputed liability, stating it maintained no accounts in the names of the 2nd to 4th Respondents. The trial Court noted that the CBN's affidavit to show cause was filed out of time and no step had been taken to regularise it, and was thus incompetent and it disregarded same. Consequently, the trial Court found that the averments in the affidavit in support of the motion ex-parte were deemed not contested and it granted the Garnishee Order Absolute against the Appellant.

Dissatisfied with the trial court's decision, CBN appealed the decision to the Court of Appeal ("CA") on grounds of jurisdiction. The CA held that the affidavit to show cause was wrongly disregarded by the trial Court as the rules governing garnishee proceedings did not prescribe a time limit within which a garnishee must file its affidavit to show cause, so long as it does so before the adjourned date for considering the making of the Garnishee Order Absolute. However, the CA found that the Appellant had not satisfactorily shown cause and subsequently dismissed the Appeal. The Appellant then appealed to the Supreme Court distilling 4 issues for the determination.

Issue for Determination

Although the appeal was determined on four issues, the core dispute centred on whether the lower court was right or justified in relying on Section 124 of the Evidence Act, 2011 to reject the CBN's denial of having accounts in the judgment debtor's names and to hold that the Judgment Debtors are MDAs (Ministries, Department and Agencies) whose accounts are with the Appellant under the Federal Government Treasury Single Account Policy.

Decision of the Court

In addressing the first and second issue raised by the Appellant on whether the lower court was right to hold that a garnishee cannot raise the issue of jurisdiction where the judgment debtor is not contesting the judgment; and ought to have invalidated the garnishee order absolute pronounced by the trial court without the consent of the Attorney-General of the Federation. The Supreme Court suo motu raised the issue of jurisdiction of the lower court to determine the issue of procedural jurisdiction of the trial court. In determining the validity of issues 1 and 2 raised by the Appellant, Abiru JSC distinguished between procedural and substantive jurisdiction. His Lordship held that failure to comply with a condition precedent, such as obtaining the fiat of the Attorney General of the Federation, is a matter of procedural jurisdiction and such issues must be raised at the earliest opportunity, and failure to do so results in waiver of the irregularity, however, matters of substantive jurisdiction which if resolved against a party renders the entire proceedings a nullity can be raised at any time.

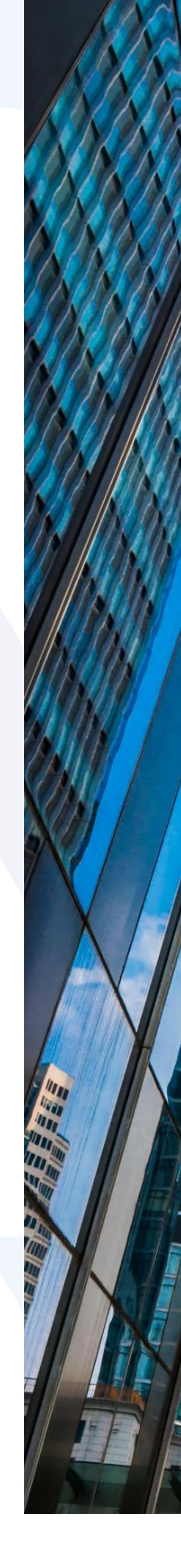
The Appellant did not raise the issue of the Attorney General's fiat at the trial court, and thus, it could not be raised on appeal. The SC found that the lower Court did not have jurisdiction to entertain the issue of failure of the 1st Respondent to obtain fiat of the Attorney-General and its decision with respect to that issue is a nullity. Consequently, the Court discountenanced issue 1 and 2 formulated by the Appellant and thereby struck out the issues and arguments canvassed thereon.

> ***His Lordship held that failure to comply with a condition precedent, such as obtaining the fiat of the Attorney General of the Federation, is a matter of procedural jurisdiction and such issues must be raised at the earliest opportunity, and failure to do so results in waiver of the irregularity***

The SC went further to hold that Issue three, which bothers on whether the lower court rightly invoked its powers under Section 15 of the Court of Appeal Act and Order 20 Rule 11 of the Court of Appeal Rules, 2016, depended on the success of Issues 1 and 2. Since those issues failed, Issue 3 had no value. The SC then struck out Issue 3 and the arguments canvassed thereon, and proceeded to determine the appeal solely on the fourth issue for determination.

The Court emphasised the importance of evaluating evidence based on preponderance of evidence in civil matters. It noted that the primary onus of proof in garnishee proceedings lies with the judgment creditor. The SC held that the lower court failed to properly evaluate the depositions of the first respondent vis-à-vis that of the Appellant. Rather, the lower Court only considered the depositions of the Appellant alone and found that it amounted to mere denial without specifics. The SC found that, had the lower Court properly evaluated the depositions of the 1st Respondent, it would have found that they also contained mere assertions without specifics. The SC also noted that the lower court pursuant to section 124 of the Evidence Act, wrongly held that all government ministries, departments, and agencies (MDAs) maintain accounts with the Appellant under the TSA policy and as such, the Appellant cannot be allowed to simply deny that it is not maintaining any account for the Judgment Debtors who are MDAs. However, the Supreme Court held that the lower Court ought to have found that the judgment debtors (Inspector General of Police, Commissioner of Police FCT, and O/C Intelligence Response Team) were not MDAs and thus did not fall under the TSA policy.

“The Supreme Court noted that it is generally reluctant to interfere with concurrent findings of fact by lower courts unless such findings are perverse.”



Further, the SC found that in view of the fact that none of the judgment creditors can be described as MDAs, the first Respondent needed to have done much more than depose to mere statements contained in his affidavit to show that CBN maintained accounts in the names of the judgement debtors under the TSA policy. The SC also held that the lower Court embarked on an unnecessary voyage via section 124 of the Evidence Act in looking for facts that were not relevant to the issue before it as the Appellant's denial of maintaining accounts for the judgment debtors was credible and preponderated over the first respondent's assertions. The Supreme Court noted that it is generally reluctant to interfere with concurrent findings of fact by lower courts unless such findings are perverse. In this case, the lower court's findings were perverse as they were based on incorrect assumptions and improper evaluation of evidence. The Supreme Court resolved issue 4 in favour of the Appellant and set aside the decision of the lower court. The garnishee proceedings commenced by the first respondent was thereby dismissed and the Appellant discharged.

Brief comments

The Supreme Court's decision in CBN v. Ochife & Ors is significant in several respects. The SC rightly held that the Inspector General of Police, the Commissioner of Police (FCT), and the Officer in Charge of SARS are not MDAs and, therefore, do not fall under the TSA framework. This reinforces the need for judgment creditors to provide specific evidence linking a judgment debtor's accounts to a garnishee bank rather than relying on broad statutory presumptions.

The Court also reaffirmed the principle that jurisdictional objections must be raised at the earliest opportunity. While procedural jurisdiction can be waived if not timely raised, substantive jurisdiction going to the inherent competence of a court remains an issue that can be raised at any time.

This procedural approach may have broader implications for appellate practice, particularly in cases where issues of jurisdiction are raised without prompting from the parties.

A key point of divergence within the Court was Ogunwumiju JSC's dissent, particularly regarding the interpretation of Section 84 of the SCPA. Her Lordship's reasoning that Section 84 conflicts with the supremacy and enforcement provisions of the Constitution is compelling, as it challenges the conventional view that the consent of the Attorney-General is a prerequisite for garnishee proceedings involving public institutions. If adopted, this reasoning could significantly alter the legal landscape by removing a procedural barrier that has often shielded government funds from enforcement. However, as a dissenting opinion, it does not constitute a binding precedent and remains persuasive rather than authoritative.

THE FEDERAL ROAD SAFETY CORPS CANNOT CRIMINALIZE OR IMPOSE A FINE FOR DRIVING WITH FADED VEHICLE NUMBER PLATES – Ezebube v FRSC [FHC/L/CS/253/2024]

Facts of the Case

The Plaintiff commenced this action vide an originating summons filed on 13 February 2024 at the Federal High Court Lagos Judicial Division (the Court) seeking interpretation of section 5(g) and 10 (3)(f) of the Federal Road Safety Commission Act 2007 (**FRSC Act**). In the main, the Plaintiff sought answers to the question, whether the Federal Road Safety Corps ("**Defendant**" or "**FRSC**') can penalize or threaten to penalize a person for the depreciating quality, durability, fading or peeling off of the colours and characters of the vehicle number plates designed and produced by the Defendant. The Plaintiff claimed that officers of the Defendant threatened to impound his vehicle and impose a fine on him if he fails to immediately visit their office to pay for a vehicle number plate in replacement of his faded vehicle number plate. The Plaintiff argued that the Defendant, being statutorily charged with designing and producing vehicle number plates and doing so with poor materials, cannot punish the Plaintiff for using the vehicle number plates he paid to procure which had faded due to the low quality.

The Defendant on the other hand submitted that although the FRSC is responsible for the quality of vehicle plate numbers produced it does not take responsibility for the defect and durability of the plate numbers in the hand of the vehicle owners. The Defendant further submitted that it neither regulate nor control the manner in which motorists such as the Plaintiff wash or handle their plate numbers or other extraneous elements that may have resulted in the fading of the Plaintiff's plate number. Ultimately, the Defendant submitted that the Plaintiff ought to have applied for the plate number to be in place by the state motor licensing authority rather than expecting the Defendant to replace it at no cost.

Issue for Determination

Whether the Defendant can make it an offence and impose penalty against the Plaintiff and other Nigerians for driving vehicles with faded vehicle number plates due to poor quality production as they were designed and produced by the Defendant.

Decision of the Court

The Court found that the Defendant did not deny the allegation that its officers threatened to penalise the Plaintiff if he continued driving with faded vehicle number plates by impounding his vehicle and issuing a fine and found that this failure to traverse or specifically deny this allegation amounts to an admission. The Court held that the Defendant failed to show the provision of the law which criminalizes the use of faded vehicle number plates. The Court further relied on section 36(12) of the Constitution of the Federal Republic of Nigeria 1999 as amended, which provides that a person shall not be convicted of a criminal offence unless the offence is defined and the penalty prescribed by written law, to hold that the Defendant cannot punish the Plaintiff for use of faded vehicle number plates as such an offence is not prescribed by law.

In answering the various questions posed by the Plaintiff, the Court held that by virtue of section 5(g) and 10 (3)(f) of the FRSC Act, the Defendant is charged with the responsibility of designing and producing vehicle number plates and is therefore responsible for the quality of the vehicle number plates, while the durability of same cannot be the sole and absolute responsibility of the Defendant. Further, the Court held that since the Defendant is responsible for designing and producing the plates, the Defendant is liable for any defect or poor quality noticed at the point of issuance and sale of the vehicle number plates, but not liable for its durability when put in use by the Plaintiff and other motorists as durability will be determined by how the vehicle number plates are put to use by motorists.

Notably, the Court held that the Defendant cannot penalise the Plaintiff for any depreciating quality, durability, fading or peeling of the colour and characters of the vehicle plates designed and produced by the Defendant, as such is not backed by any known law. Importantly, the Court held that the use of faded vehicle number plates is not an offence or an act that can be criminalized under the FRSC Act. The Defendant cannot therefore unilaterally impose penalty against the Plaintiff without a Court order. The Court also held that there is no provision in the FRSC Act that imposes a duty on the Defendant to replace faded vehicle plate numbers of the Plaintiff or other motorists at no cost.

Ultimately, the Court held that the Defendant cannot criminalise the use of faded vehicle number plates, and the defendant also has no duty to replace faded vehicle number plates at no cost

Brief comment on the Decision

This judgment reinforces the constitutional principle that no one can be penalised for an act unless expressly criminalized by law. By applying section 36(12) of the Constitution, the Court rightly curbed the FRSC's attempt to impose penalties without statutory backing. The decision upholds the fundamental rule of legality, ensuring that government agencies operate within the confines of the law rather than acting on discretion.

Importantly, the Court struck a balance between holding the FRSC accountable for the initial quality of number plates while recognising that durability depends on use. The ruling clarifies that while motorists cannot be penalised for faded plates, they also cannot demand free replacements from the FRSC. Instead, they must procure new plates at the prescribed cost when necessary.

This decision is significant in preventing arbitrary enforcement actions by the FRSC and protecting motorists from undue harassment. It reaffirms that regulatory agencies cannot create offences or impose penalties beyond what is expressly provided by law.

THE FEDERAL HIGH COURT LACKS JURISDICTION TO HEAR AND DETERMINE A SIMPLE CONTRACT THAT RELATES TO THE PARTICIPATION, ALIENATION OR ACQUISITION OF INTEREST IN OIL MINING LEASES – **Brittania-U (Nig.) Ltd. v. Chevron (Nig.) Ltd. [2025] 3 NWLR (Pt. 1979) 197**

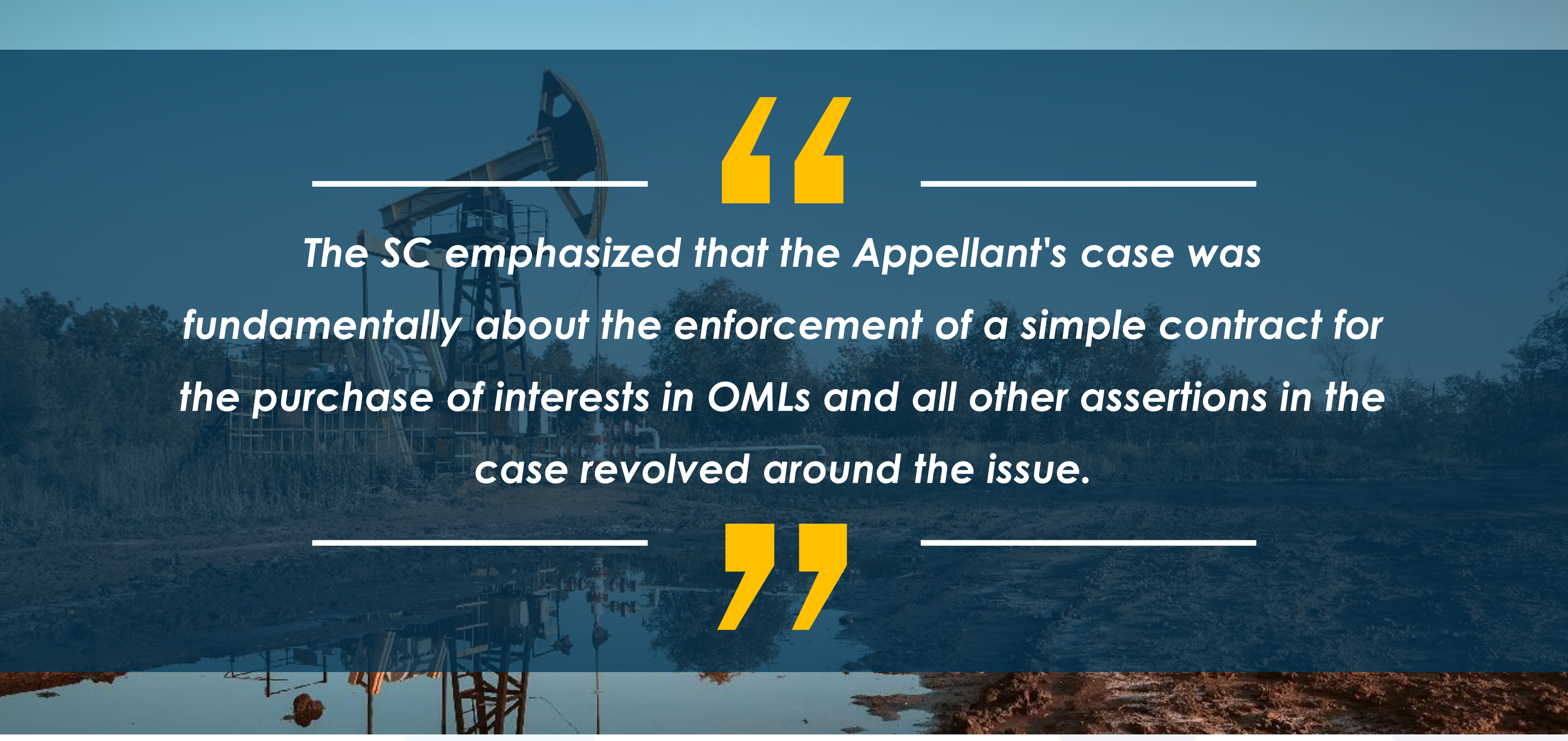
Facts of the Case

Brittania-U (Nig) Ltd's (Brittania-U or the Appellant) case is that it entered into a binding contract with Chevron (Nig) Ltd (Chevron or the First Respondent) for the purchase of a 40% interest in Oil Mining Leases (OMLs) 52, 53, and 55 in Nigeria, owned by the First Respondent. The Appellant asserted that it made a final binding offer of $1,015,000,000, which was accepted by Chevron through various oral and written representations. Additionally, the Appellant contended that it had provided an irrevocable standby letter of credit for $250,000,000 and a firm letter of commitment from its bankers for the remaining $765,000,000, thereby fulfilling all conditions for the contract. However, Chevron later informed Brittania-U that its bid did not meet certain criteria, including the requirement for the OMLs to be sold individually and the need for financial support to meet Chevron's internal treasury requirements. Brittania-U argued that these reasons were baseless, false and made in bad faith. The Appellant sought declarations from the Federal High Court (the trial Court) affirming the existence of a binding contract, specific performance of the contract, and damages for breach of contract.

The respective respondents filed notices of preliminary objection, contesting the jurisdiction of the trial Court to entertain the Appellant's case on the grounds that it was a matter of simple contract and urged the trial Court to dismiss the Appellant's claims for failure to disclose a reasonable cause of action. The trial Court ruled that it had jurisdiction to hear the Appellant's case. Consequently, the respondents appealed to the Court of Appeal, which found that the Appellant's claims were based on a simple contract, depriving the Federal High Court of jurisdiction. The Court of Appeal allowed the respondents' appeal, set aside the trial Court's ruling, and struck out the Appellant's case for want of jurisdiction and for disclosing no reasonable cause of action. Miffed with the decision of the lower Court, the Appellant appealed to the Supreme Court.

Issue for Determination

Though the appeal was determined on three issues, the crux of the appeal at the SC was: Whether the Federal High Court lacked jurisdiction to entertain a suit predicated on a contract in relation to the participation, alienation or acquisition of interest in Oil Mining Leases.



Decision of the Court

The SC upheld the decision of the Court of Appeal that the Federal High Court lacked jurisdiction to entertain the Appellant's suit. It was reiterated that the jurisdiction of the Federal High Court is limited to matters explicitly enumerated in Section 251(1) of the 1999 Constitution, and simple contract disputes do not fall within this jurisdiction. The SC emphasized that the Appellant's case was fundamentally about the enforcement of a simple contract for the purchase of interests in OMLs and all other assertions in the case revolved around the issue. which should be determined by the State High Court. The SC found that the case does not involve the Federal Government of Nigeria or any of its agencies and does not turn on the interrogation of the correctness of an executive or administrative decision made by any such agency and had nothing to do with the operations and management of the OMLs assets. The SC reiterated that simple contracts connected with or pertaining to mines and minerals including oil fields, oil mining, geological survey and natural gas are not within the exclusive subject matter jurisdiction vested in the Federal High Court. Hence, the Court found that the trial Court lacks the jurisdiction to entertain the matter.

In all, the SC allowed the appeal in part, holding that the trial Court acted without jurisdiction. The SC however, set aside the CA's order striking out the suit and held that the proper order to make, after coming to the conclusion that the Federal High Court has no jurisdiction to entertain a case, is on transferring the case to the appropriate State High Court with jurisdiction.

Brief comments

This decision reinforces the well-established principle that the Federal High Court lacks jurisdiction over matters grounded in simple contracts, even when they relate to oil and gas assets. The Supreme Court's reasoning aligns with its decision in **Onuorah v. K.R.P.C.** [2005] 6 NWLR (Pt. 921) 393 at 405, paras A-D, where it held that contract disputes do not fall within the exclusive jurisdiction of the Federal High Court unless they involve a federal agency, or a subject matter expressly listed in Section 251(1) of the Constitution.

Notably, the Court clarified that the sale or transfer of interests in Oil Mining Leases, when framed as a contractual dispute rather than a challenge to an administrative or regulatory decision, remains within the jurisdiction of the State High Court. The judgment also underscores the proper procedural approach in such instances, rather than striking out the suit for want of jurisdiction, the appropriate order is to transfer it to the State High Court with the requisite jurisdiction, in line with the provision of section 22 of the Federal High Court Act. This ensures that litigants are not unduly prejudiced by procedural missteps and preserves access to justice.

AN AFFIDAVIT DEPOSED TO BY A LITIGATION SECRETARY BASED ON INFORMATION GIVEN BY THE CLIENT RESULTS IN INADMISSIBLE HEARSAY EVIDENCE AND CARRIES NO WEIGHT – **Mairami & Anor v. Gonidinari [2025] LPELR-80093(CA)**

Facts of the Case

The Applicants filed an application for an extension of time to appeal against a judgment delivered on September 28, 2015, in Suit No. BOHC/MG/CV/005/2012. The judgment was delivered against the Applicants in 2015. The Application was supported by six (6) paragraphs affidavit deposed to by a Litigation Secretary in the law firm of the Applicants' Counsel and a written address while the Respondent filed a counter affidavit of twelve (12) paragraphs. According to the Applicants, barely a month after the judgment in Suit No. BOHC/MG/CV/005/2012 was given, their village was attacked by Boko Haram insurgents, forcing them to flee to Cameroon as Internally Displaced Persons ("IDPs"). They remained in Cameroon for several years until they recently returned to Nigeria. Upon their return, they consulted a lawyer, who informed them that the time to file an appeal had long expired. Consequently, they filed an application seeking leave of Court to appeal out of time.

The Respondent opposed the application and filed a counter affidavit. In its response, the Respondent disputed the Applicants' claims, arguing that they had never left the village but had been living there all along. He asserted that the Applicants' claim of displacement to Cameroon was false. To support his position, the Respondent relied on a Counter Affidavit deposed to by his son wherein he stated that the Respondent, his father, was the village head (Bulama) of the village of the parties and the Applicants never left the village at any point.

Issue for Determination

The Court adopted the sole issue formulated by the Applicant which is *"whether the Applicant is entitled to the relief sought".*

Decision of the Court

The court, in its ruling, noted that for an application for an extension of time within which to appeal to succeed, the applicants must satisfy two fundamental conditions to wit; (x) provide good and substantial reasons for the delay in filing the appeal and (y) show that they have a prima facie (valid) ground of appeal, which has a reasonable prospect of success. The court referred to settled judicial authorities to hold that both conditions must be met cumulatively. That is, even if the applicants established strong grounds of appeal, the application would still fail if they could not provide a good and substantial reason for the delay in filing. The Court stated that the applicants failed to provide credible proof to support their alleged reason for the delay and the Respondent's Counter Affidavit, which stated that the Applicants never left the village, effectively challenged their claim of being IDPs in Cameroon.

> ***The Court further held that while Section 115(4) of the Evidence Act, 2011 allows a deponent to swear to facts derived from a third party, provided they disclose the source and believe the information to be true, such depositions carry little probative value as they amount to inadmissible hearsay***

Further, the Court considered the admissibility of the Applicants' supporting affidavit, being deposed to by a Litigation Secretary in the law firm of the Applicants' Counsel. It was found that the deposition of the Litigation Secretary is not direct evidence of the attack but hearsay, which is inadmissible in law outside the limited exceptions captured in the Evidence Act, and in any event carries little weight. According to the Court, it is strange that a client will brief or instruct a litigation secretary on his matter. The Court further held that while Section 115(4) of the Evidence Act, 2011 allows a deponent to swear to facts derived from a third party, provided they disclose the source and believe the information to be true, such depositions carry little probative value as they amount to inadmissible hearsay. It emphasized that while the existence of the information could be established, its truth remained uncertain. Also, it was found by the Court that given that the deposition in the Counter Affidavit of the Respondent was not controverted by way of a Further Affidavit, the facts deposed to in the Counter Affidavit of the Respondent were more compelling than the Applicants' Affidavit.

The Court concluded that since the supporting affidavit of the Applicant was entirely based on second-hand information, its contents, where they sought to establish the truth of the events, amounted to inadmissible hearsay evidence. As such, the evidence lacked probative value and could not serve as a basis for the exercise of the Court's discretion in favour of the Applicants. Consequently, the Court refused the Applicants' application and dismissed same for being devoid of merit

> ***Both conditions must be met cumulatively, meaning that even strong grounds of appeal cannot salvage an application where the reason for delay is unsubstantiated.***

Brief comments

The Court's decision reinforces the principle that an application for leave to appeal out of time is not granted as a matter of course but must satisfy two conditions: (i) providing a good and substantial reason for the delay, and (ii) demonstrating a prima facie ground of appeal with a reasonable prospect of success. Both conditions must be met cumulatively, meaning that even strong grounds of appeal cannot salvage an application where the reason for delay is unsubstantiated.

More significantly, the ruling clarifies the evidentiary weight of affidavits deposed to by third parties. While Section 115(4) of the Evidence Act 2011 permits a deponent to swear to facts obtained from others, such affidavits carry little probative value if they seek to establish the truth of an event rather than merely relay information. In this case, the Litigation Secretary's affidavit, being second-hand information without personal knowledge, amounted to inadmissible hearsay and was rightly disregarded. This underscores the need for affidavits supporting substantive claims to be deposed by individuals with direct knowledge, failing which they may be struck out for lack of evidentiary value.

NIGERIAN BROADCASTING CODE 2002 RESTRICTING DIRECT RELAY OF FOREIGN NEWS BY TERRESTRIAL BROADCASTING STATIONS IS A REASONABLY JUSTIFIABLE LAW - **Ukegbu v. N.B.C. [2025] 2 NWLR (Pt. 1976) 283**

Facts of the Case

The Appellant instituted an action at the Federal High Court (the trial Court) against the Nigerian Broadcasting Commission ("**NBC**") ("**the 1st Respondent**") and three other parties as Co – Respondents over a directive issued in the Nigerian Broadcasting Code wherein NBC announced that (x) terrestrial (local) broadcasting stations cannot directly relay foreign news content from a foreign station but can air short excerpts for a limited time; and (y) religious broadcasts must not contain unverifiable claims that could mislead the public. The Appellant contented that these regulations violated his fundamental human rights under Sections 38 and 39 of the 1999 Constitution which protects freedom of thought, conscience, religion, and expression. In response, the Respondents filed a notice of preliminary objection challenging the jurisdiction of the trial Court on the grounds that the Appellant did not have the legal standing (locus standi) to initiate the suit because he was not directly affected, the case was not justiciable, and some reliefs sought against the 2nd and 3rd Respondents were outside the Court's jurisdiction.

The trial Court dismissed the Preliminary Objection for lacking in merit on the ground that every citizen has the right to approach the court for enforcement of fundamental human rights. The Court thereafter proceeded to hear the full case on its merit. At the end of trial, the trial Court delivered its judgment and held that the Appellant failed to prove that he was personally affected more than the public. The trial Court also stated that NBC did not ban foreign news, rather it only restricted direct relay, which was seen reasonable and in the national interest. The trial Court ruled that the directive was constitutional under Section 39 of the 1999 Constitution and thus dismissed the application for lacking in merit.

Dissatisfied with the judgment of the trial Court, the Appellant appealed to the Court of Appeal whilst discontinuing his case against the 2nd – 4th Respondents. The Lower Court upheld the decision of the trial court and dismissed the appeal. Still dissatisfied with the Court of Appeal's decision, the Appellant further appealed to the Supreme Court.

Issue for Determination

Although the appeal was determined on four issues, a key issue relevant to broadcasting restriction was: *Whether the Nigerian Broadcasting Code restricting or controlling the direct relay of foreign news is not a law that is reasonably justifiable in a democratic society within the meaning of S. 39(3) of the 1999 Constitution.*

“The Supreme Court further held that the provision of the NBC Code is in tandem with the conventional universal practice of using excerpts of news as no country conscious of its national security.”

Decision of the Court

The Supreme Court, in its judgment considered the provisions of Section 39 of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the “Constitution”), Section 2(1(d) of the National Broadcasting Act, 2004 and the forward to the Nigerian Broadcasting Code 2nd Review, 2002 authored by the then Director General of NBC to hold that the NBC Code did not ban foreign news entirely but merely restricted its direct relay. The Supreme Court further held that the provision of the NBC Code is in tandem with the conventional universal practice of using excerpts of news as no country conscious of its national security and independent existence would leave open its media space as a codeless broadcasting environment and allow foreign news to be relayed directly which act will be detrimental to its sovereignty. Consequently, this issue was resolved against the Appellant. On the whole, the Supreme Court found the Appellants appeal unmeritorious and dismissed same.

> *The Supreme Court's ruling aligns with global broadcasting norms, where direct relay of foreign news is often regulated to protect national sovereignty and prevent undue external influence on public opinion.*

Brief comments

This case underscores the delicate balance between freedom of expression and the government's regulatory authority over broadcasting. While Section 39(1) of the Constitution guarantees the right to receive and disseminate information, this right is not absolute. Section 39(3) permits restrictions where they are reasonably justifiable in a democratic society, particularly on grounds of national security, public order, or to prevent external influence over domestic discourse. The Supreme Court's ruling aligns with global broadcasting norms, where direct relay of foreign news is often regulated to protect national sovereignty and prevent undue external influence on public opinion.

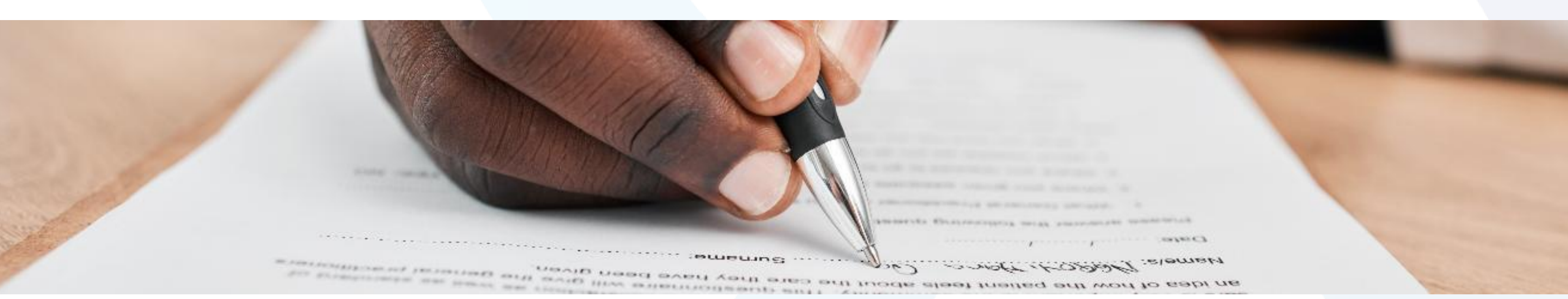
By upholding the NBC's directive, the Court reaffirmed the government's authority to regulate broadcasting content in line with national interests. This ensures that the media space is not left open to unrestricted foreign narratives that could shape domestic perspectives in a way that may not align with national priorities. In this light, the decision reinforces the principle that freedom of expression, while fundamental, must yield to reasonable regulatory measures designed to protect national interests.

MERE DEPOSING TO AN AFFIDAVIT IS NOT CONCLUSIVE PROOF OF A PARTY MEMBER'S DEFECTION TO ANOTHER PARTY – **Rivers State House of Assembly & Anor v Govt of Rivers State & Ors [2025] LPELR-80539 (SC)**

Facts of the Case

The Rivers State House of Assembly (Appellants) filed an Originating Summons at the Federal High Court (the trial Court), seeking to restrain the Central Bank of Nigeria and the Accountant-General of the Federation from allocating funds to the Rivers State Government (1st Respondent) until the passing of an Appropriation Law for 2024 and to restrain the 1st Respondent from withdrawal of funds from any of the accounts operated by the 1st Respondent until the passing of an Appropriation Law for 2024 by the Appellant. At the end of the trial, the trial Court granted the reliefs sought by the Appellants. Dissatisfied with the decision of the trial Court, the 1st Respondent appealed to the Court of Appeal (the lower Court). The lower Court set aside the judgment of the trial Court for want of jurisdiction. The Appellants being dissatisfied with the decision of the Lower Court, appealed to the Supreme Court.

At the Supreme Court, the 1st Respondent filed a preliminary objection that the action was academic on the grounds that the 2024 financial year having lapsed on 31st December, 2024, the suit leading to this appeal that seeks to prevent the 4th and 7th Respondents from releasing funds belonging to Rivers State to the 1st and 8th Respondents on the basis that the 2024 Appropriation Law of Rivers State has become moot and merely academic and cannot be validly entertained by a Court. The 2nd and 3rd Respondents equally filed a preliminary objection for the failure of the Appellants to seek leave to appeal. The Supreme Court consolidated the various appeals against the lower Court's judgment and heard them alongside the appeal. One of the appeals consolidated with the present appeal is the 1st Respondent cross-appeal in Appeal No. SC/CV/1174B/2024 against the decision of the Court of Appeal that the 2nd Appellant and 26 members of the Rivers State House of Assembly who were said to have defected are still legitimate members of the Rivers State House of Assembly.



Issue for Determination

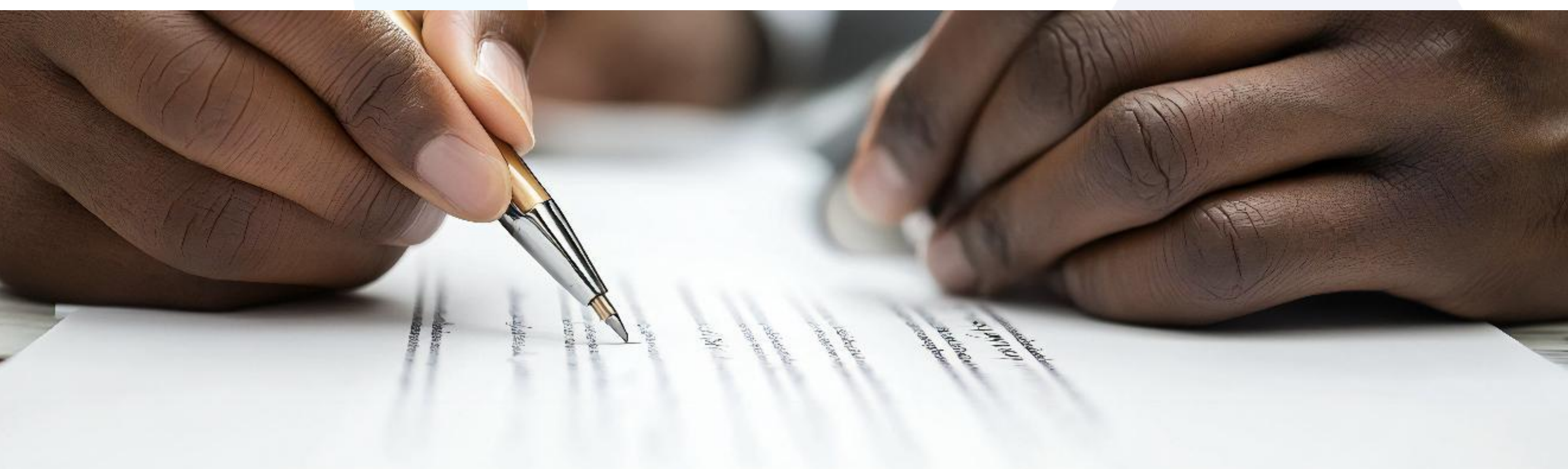
Among the several issues considered by the SC in determining the appeal was: Whether the 2nd Appellant and 26 members of the Rivers State House of Assembly who were said to have defected are still legitimate members of the Rivers State House of Assembly.

Decision of the Court

Decision on the Preliminary Objections

The Supreme Court started its decision by determining the preliminary objections raised to the appeal. On the 1st respondent's objection that the suit is academic and cannot be entertained by the Court, the Supreme Court relied on the decision of the Court of Appeal in Appeal No. CA/ABJ/CV/133/2024 wherein the Court of Appeal affirmed the Federal High Court's decision in Suit No. FHC/ABJ/CS/1613/2023, nullifying the Appropriation Law of Rivers State 2024 on the ground that it was passed by only four (4) members of the Rivers State House of Assembly. The SC found that the suit is not limited to the release of such funds under the 2024 Appropriation Law of Rivers State alone and seeks to stop such release of funds until an Appropriation Law has been duly made by the House of Assembly of Rivers State. The Apex Court held that the decision constitutes a judgment in rem and is therefore binding, final, conclusive and enforceable against all persons at all times. Therefore, the refusal of the 1st and 8th Respondents to comply with the said judgment which led to the filing of a new suit is a live issue and the said suit raises unceasingly live constitutional issues. Thus, holding that the suit is not academic.

On the 2nd and 3rd Respondents' objection to the Appellant's failure to seek leave to appeal, the Supreme Court held that the ground of appeal being challenged relates to the decision of the Court of Appeal that the subject matter of the suit falls outside the jurisdiction of the trial Court. Therefore, the SC held that the issue is that of jurisdiction and founded on pure law. Accordingly, the objection by the 2nd and 3rd Respondents on this point was dismissed.



Decision on the Merit

The SC considered the sole issue raised by the Appellants on whether the Court of Appeal correctly held that the trial Court has no jurisdiction to entertain and determine Suit No. FHC/ABJ/CS/984/2024. The Supreme Court held that Suit No. FHC/ABJ/CS/984/2024 is not a fresh action with a subject matter independent on its own, but an action to stop the release of funds to the 1st and 2nd Respondents to compel compliance with the judgment of the Federal High Court in suit No. FHC/ABJ/CS/1613/2023 by causing the making of the Appropriation Law by the Rivers State House of Assembly properly constituted as prescribed by the 1999 Constitution. The Court therefore held that the trial Court had the jurisdiction to hear and determine the matter and resolved the sole question in the appeal in favour of the Appellants.

On the Cross-Appeal which centred on whether sections 102 and 109(g) of the 1999 Constitution and the doctrine of necessity give validity to the proceedings of the Rivers State House of Assembly constituted by less than one-third of all the members of the Rivers State House of Assembly and the actions of the Government of Rivers State on the basis of such proceedings, the SC held that there must be a House of Assembly for any constitutional processes therein to take place and the claim that the 27 members are no longer members of the Rivers State House of Assembly on the basis of an alleged defection is a continuation of the 8th Respondent's determination to prevent them from participating in the proceedings of the House. The Court further held that what is clear is that the 2nd cross-respondent and the other 26 members of the Rivers State House of Assembly are still valid members of the Rivers State House of Assembly and cannot be prevented from participating in the proceedings of that House by the 8th Respondent in cahoots with the 4 members of the Rivers State House of Assembly and as such, sections 102 and 109 of the Constitution cannot be invoked in aid of an unconstitutional enterprise. Further, the Court held that the doctrine of necessity cannot be invoked to justify the continued existence of a deliberately contrived illegal or unconstitutional status quo.

Hon. Justice Nwosu-Iheme, J.S.C., in concurring with the lead judgment held that defection being a destination that must be arrived at goes beyond waving of flags on the television and swearing to affidavit. Thus, if a person defects from one Political Party to another, there is bound to be empirical proof of such a defection. His Lordship further held that for a person or group of persons to be said to have defected, the Political party from where they defected must, at least, be aware of such defection, and the political party where they defected must also have evidence of their new members. On the whole, the cross-appeal was held to lack merit and was consequently dismissed and the part of the judgment of the Lower Court affirming the judgment of the Trial Court in Suit No. FHC/ABJ/CS/984/2024 was affirmed.

Brief Comment on the Decision

The SC considered the sole issue raised by the Appellants on whether the Court of Appeal correctly held that the trial Court has no jurisdiction to entertain and determine Suit No. FHC/ABJ/CS/984/2024. The Supreme Court held that Suit No. FHC/ABJ/CS/984/2024 is not a fresh action with a subject matter independent on its own but an action to stop the release of funds to the 1st and 2nd Respondents to compel compliance with the judgment of the Federal High Court in suit No. FHC/ABJ/CS/1613/2023 by causing the making of the Appropriation Law by the Rivers State House of Assembly properly constituted as prescribed by the 1999 Constitution. The Court therefore held that the trial Court had the jurisdiction to hear and determine the matter and resolved the sole question in the appeal in favour of the Appellants.

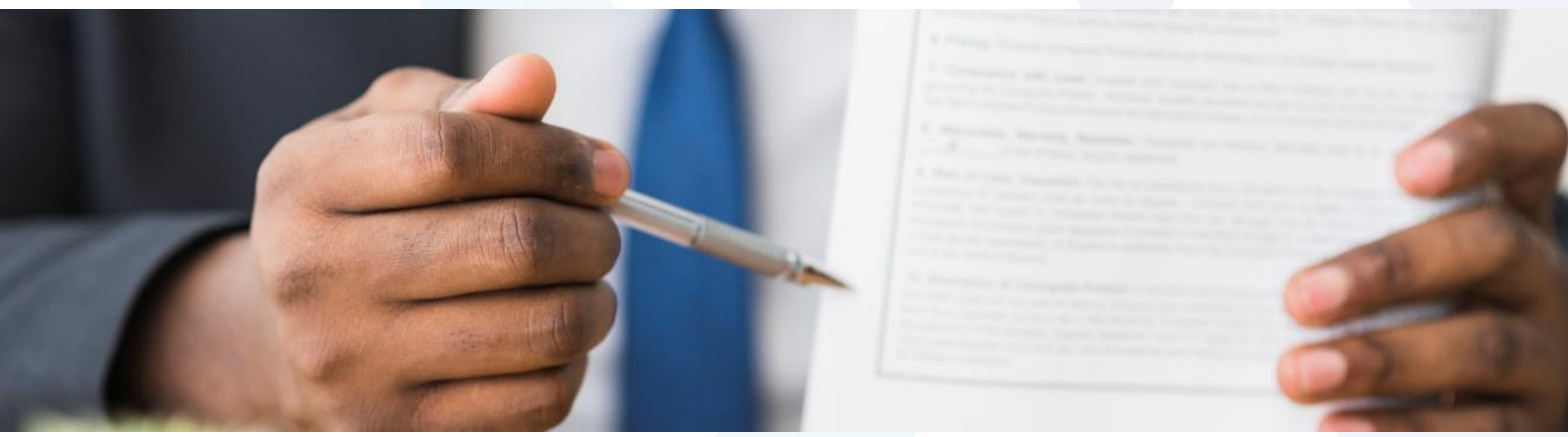
By requiring empirical proof such as official records from both the former and new political parties confirming resignation and acceptance, this decision curtails the potential for politically motivated claims of defection and prevents arbitrary exclusions of legislators from legislative proceedings. Although this position may appear rigid given the open and widely acknowledged nature of the legislators' actions and demonstrations of defection, it reflects the Supreme Court's commitment to upholding constitutional and legal principles over political narratives. Ultimately, the ruling establishes a clear legal framework, preventing arbitrary determinations of defection and reinforcing the principle that legislative membership cannot be altered without due process.

A CLERICAL ERROR IN TYPING THE APPEAL NUMBER AT THE TOP RIGHT CORNER OF AN AMENDED NOTICE OF APPEAL CANNOT BE A GOOD AND LEGITIMATE GROUND FOR PRELIMINARY OBJECTION TO AN APPEAL - **Raphael v. Ubamacco Ventures Ltd [2025] 2 NWLR (Pt. 1975) 141**

Facts of the Case

The respondent filed an action against the appellant, who was once its employee under the undefended list procedure. The respondent claimed N878,022 as money converted by the appellant, who, during his employment, was given goods to sell but recorded a stock shortage of that amount; furthermore, he admitted in writing to converting the money for personal use and promised to refund it, which he failed to do. The Respondent served the Appellant with a demand letter, and he refused or failed to refund the money. In response to the Respondent's action, the Appellant filed a notice of preliminary objection and an application for extension of time to file his notice of intention to defend denying the conversion of the money for his personal use. He alleged that he was induced to sign the undertaking and that he part-paid ₦110,000 of the sum claimed to the respondent through the Police.

At the conclusion of the hearing, the trial court dismissed the appellant's preliminary objection and entered judgment in favour of the respondent. Dissatisfied, the appellant appealed to the Court of Appeal, which upheld the trial court's decision. Still aggrieved, the appellant further appealed to the Supreme Court and later sought leave to amend his original notice of appeal. The Supreme Court granted the request, deeming the amended notice properly filed and served on the respondent. However, the respondent objected, arguing that the original notice was incurably defective as it had been filed without prior leave and that the amended notice, bearing a different appeal number, related to a different or non-existent appeal.



Issue for Determination

Among the issues considered by the SC in determining the preliminary objection raised by the Respondent was *Whether clerical error in stating the appeal number can ground a preliminary objection to an appeal.*

Decision of the Court

The Supreme Court dismissed the respondent's preliminary objection, characterising it as a baseless attempt to waste the court's time. On the first limb of the objection, which challenged the validity of the original notice of appeal, the court emphasised that the appellant had obtained leave to amend the notice of appeal and that the amended notice had been deemed properly filed and served by a prior order of the court. Since that order remained binding and had not been set aside, the respondent's attempt to challenge the competency of the original notice was misguided and constituted an abuse of the court's process. The SC, therefore, struck out that leg of the objection.

Regarding the second limb of the objection, which argued that the amended notice of appeal was defective due to a clerical error in the appeal number, the Supreme Court held that such a minor typographical mistake could not serve as a legitimate ground to invalidate the appeal. The court likened the respondent's argument to "stirring a storm in a teacup" and reaffirmed that procedural technicalities should not override the substance of a case. Since the amended notice of appeal correctly identified the subject matter and decision being appealed, the clerical error was of no legal consequence.

In conclusion, the court dismissed the preliminary objection in its entirety, reiterating that it lacked merit and only served to delay the substantive hearing of the appeal.

This ruling aligns with the court's consistent stance that justice should not be sacrificed on the altar of mere technicalities.

Brief comments

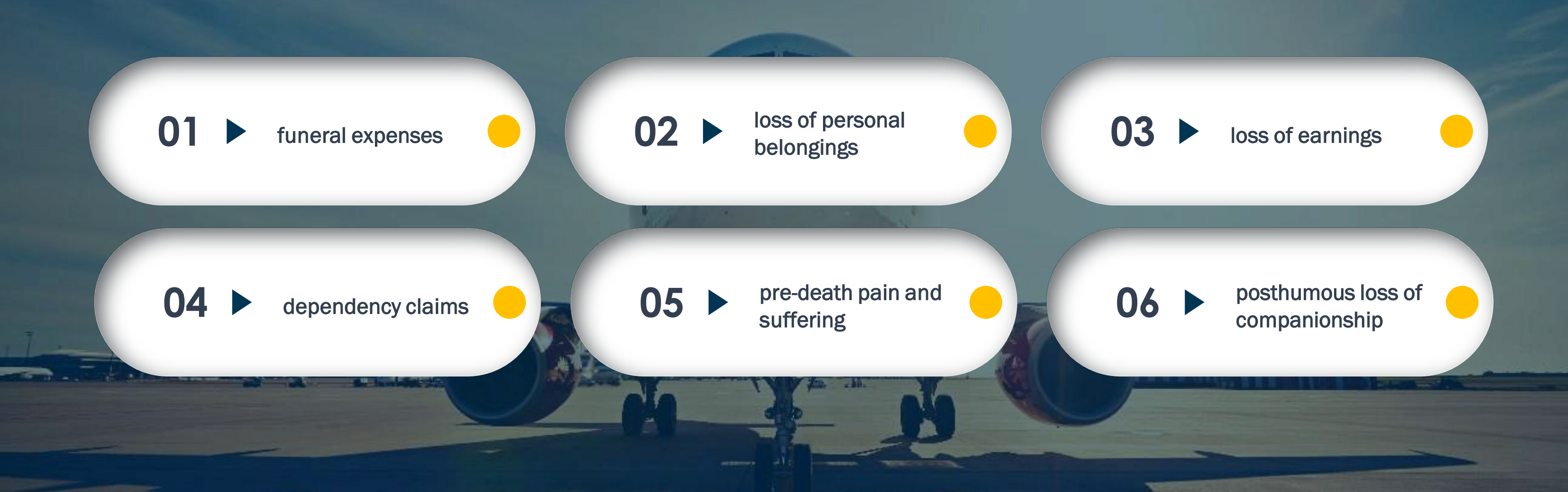
The Supreme Court's decision reaffirms the principle that procedural technicalities should not be used to obstruct the course of justice. By dismissing the respondent's preliminary objection, the court underscored that a clerical error in stating the appeal number does not, by itself, render an appeal incompetent, particularly where the subject matter and decision being challenged remain clearly identifiable. This ruling aligns with the court's consistent stance that justice should not be sacrificed on the altar of mere technicalities. It also serves as a reminder that once an appellate court grants leave to amend a notice of appeal and deems it properly filed, such an order stands unless set aside, and any challenge to the appeal must focus on substantive rather than procedural grounds.

A CLAIMANT CAN CLAIM DAMAGES FOR EMOTIONAL PAIN, SUFFERING AND LOSS OF COMPANIONSHIP AND AFFECTION IN ADDITION TO SPECIAL DAMAGES IN A FATAL CIVIL AVIATION ACCIDENT MATTER – **Anibaba v. Dana Airlines Limited & Anor [SC/CV/1191/2022].**

Facts of the Case

On 03 June 2012, Dana Airlines Limited (the 1st Respondent and 1st Defendant at the trial Court) was contracted to convey Mrs. Anibaba (now deceased) amongst other passengers from Abuja to Lagos on flight 9J-992, but crashed in Iju-Ishaga, Lagos State causing the death of about 153 passengers on board including the deceased. Mr. Anibaba (the Appellant and deceased's husband) being aggrieved, commenced this action at the Federal High Court Lagos ("trial Court"), in his capacity as the Personal Representative of the deceased, alleging that the incidence which caused the death of the deceased was as a result of the negligent act of the pilot, one Mr. Peter Simon Waxtan, whose Personal Representative is the 2nd Respondent in this suit. The Appellant also claimed that the death of the deceased caused him and her dependents, enormous financial and emotional loss.

The reliefs sought at the trial Court by the Appellant were predicated on



The trial Court rendered its decision on 20 February 2020, awarding the Appellant the sum of $61,000 (Sixty-One Thousand American Dollars) as general damages along with a post-judgment interest of 10% per annum until the judgment sum is fully satisfied, while refusing the other heads of damages claimed by the Appellant.

Being dissatisfied with the decision of the trial Court, the Appellant appealed to the Court of Appeal, Lagos Division ("lower Court"), and on 09 June 2022, the lower Court delivered its decision allowing the appeal in part, reviewing the judgment sum upward to $250,000 (Two Hundred and Fifty Thousand American Dollars) for pain, suffering and loss of companionship, but however ordered that the Naira equivalent be calculated at the exchange rate prevailing as of the date the cause of action arose (03 June 2012).

Being dissatisfied with the part of the decision of the lower Court

01 — that the Judgment sum be converted to Naira at the prevailing exchange rate as of the date of the cause of action instead of the date of judgment ;

02 — that the Appellant was not entitled to bring an additional claim under the Fatal Accidents Law and the Administration of Estate Law of Lagos State;

03 — refusing to grant several heads of damages claimed by the Appellant despite cogent evidence presented; and

04 — increasing the judgment sum to $250,000 only for pain, suffering and loss of companionship which the Appellant still considered to be inadequate, the Appellant appealed the decision to the Supreme Court and on 17 January 2025, the Supreme Court, unanimously allowed the appeal in part.

Issue for Determination

Among other issues considered by the Supreme court was *"whether damages for pain, suffering, loss of companionship and affection are recoverable under the relevant laws".*

Decision of the Court

The apex Court disagreed with the Respondent's Counsel that damages for pain, suffering, loss of companionship, and affection fall under the category of non-compensatory damages prohibited by Article 29 of the Montreal Convention ("**Convention**"). The SC held that a read of Article 29 of the Convention as domesticated only prohibits punitive, exemplary and other non-compensatory damages in claims which the Convention governs, and by no means should the list be extended to include what was not intended by the provision of the Convention. In essence, Article 29 allows the Court to grant compensatory damages which are not readily quantifiable in monetary terms, such as pain, loss of companionship, and emotional distress which is intended to indemnify a claimant for losses that flow naturally from the wrongful act or omission of the defendant.

The Court held that damages for pain, suffering, loss of companionship and affection fall within the ambit of general damages, which are compensatory in nature and that these heads of damages address non-economic harm naturally arising from the wrongful act of the defendant, and consequently the apex Court affirmed the findings of the trial Court and the re-assessment of the lower Court on damages awarded based on pain, suffering, loss of companionship and affection on the premise that they were properly grounded on the evidence presented. The SC held that although the trial Court did award the sum of $61,000 in damages for the pain, suffering, loss of companionship and affection caused to the Appellant, the lower Court considered same to be inadequate which explains the decision of the lower Court to review the sum upward to the sum of $250,000.

> *General damages are presumed by law to flow from the wrong without requiring specific proof, while special (economic) damages must be specifically claimed and strictly proved.*

Brief comments

This decision further clarifies the nature of damages recoverable in civil aviation claims, particularly in the carriage of passengers, baggage, and cargo. To fully appreciate the Supreme Court's reasoning, it is essential to consider: (a) general damages, (b) economic or special damages, (c) compensatory and non-compensatory damages, and (d) the applicability of Article 29 of the Convention to such claims.

General damages are presumed by law to flow from the wrong without requiring specific proof, while special (economic) damages must be specifically claimed and strictly proved. Compensatory damages aim to restore a claimant to their original position before the wrongful act, whereas non-compensatory damages, such as punitive or exemplary damages, serve a deterrent purpose.

Under Article 29 of the Montreal Convention which is domesticated in Nigeria, only compensatory damages are recoverable in civil aviation claims, excluding punitive or other non-compensatory damages. The Supreme Court's decision aligns with this principle, affirming that claimants in fatal aviation accident cases can recover damages for emotional pain, suffering, and loss of companionship and affection, in addition to special damages. This approach is consistent with the objective of compensatory damages—to restore the claimant to their pre-incident position and is in line with the Court's earlier ruling in **Mekwunye v. Emirates Airlines** [2019] 9 NWLR (Pt. 1677) 191.

THE PROTECTING AMERICANS FROM FOREIGN ADVERSARY CONTROLLED APPLICATIONS ACT, WHICH PROHIBITS TIKTOK FROM OPERATING IN THE UNITED STATES AFTER JANUARY 19, 2025, UNLESS THE CHINESE COMPANY THAT OWNS IT DIVESTS ITS ASSETS, DOES NOT INFRINGE UPON THE FIRST AMENDMENT – **TikTok Inc. v. Garland 604 U.S. [2025]**

Facts of the Case

The Petitioners, TikTok Inc. and ByteDance Ltd., filed a lawsuit against the US Attorney General - Merrick Garland in the Court of Appeals for the District of Columbia Circuit (“the DC Court”) challenging the constitutionality of the Protecting Americans from Foreign Adversary Controlled Applications Act (“the Act”). The Act prohibits the operation of certain applications, including TikTok, in the United States (US) unless they are divested from foreign adversary control. In December 2024, the DC Court rejected the Petitioners’ arguments and found that the Act does not contravene the Petitioners’ First Amendment rights nor violate the Fifth Amendment. The Supreme Court granted certiorari for the Petitioners’ appeal on an expedited schedule owing to the provision in the Act that companies controlled by foreign adversaries must divest themselves of control by foreign entities by 19.01.2025. The case was consolidated with a lawsuit filed by Tikotok content creators (Firebaugh v. Garland) which also challenged the Act arguing that it violates the First Amendment rights of TikTok and its users.

The Petitioners argued that the Act imposes a severe burden on the expressive activities of TikTok Inc., an American company and that TikTok's content curation and recommendation algorithms are forms of protected speech under the First Amendment. They argued that the Act's prohibition on TikTok's operation in the US constitutes a content-based and speaker-based restriction, necessitating strict scrutiny. The Petitioners also highlighted that the Act specifically targets TikTok and ByteDance Ltd, amounting to content-based discrimination, as it singles them out for disfavoured treatment compared to other applications.

Furthermore, they contended that the Act is not narrowly tailored to achieve the government's purported national security interests, suggesting that less restrictive alternatives were not adequately considered by Congress. They pointed out that the Act is both overbroad and underinclusive, exempting other applications that could pose similar risks. Lastly, the Petitioners referenced historical practices and precedents, arguing that even during times of heightened national security concerns, the US did not resort to suppressing speech.

The Respondent argued that the Act addresses significant national security concerns related to TikTok's data collection practices and the potential for content manipulation by the Chinese government, given that ByteDance Ltd - TikTok's parent company, is subject to Chinese laws that could compel the release of data gathered by Tiktok to the Chinese intelligence agencies. The Respondent contended that the Act is content-neutral, targeting the control of the application by a foreign adversary rather than the content itself, with the primary aim of preventing the Chinese government from accessing sensitive data of the US users and manipulating contents for geopolitical purposes. The Respondent asserted that even if the Act implicated First Amendment rights, it should be subject to intermediate scrutiny, as it advances important governmental interests unrelated to the suppression of free speech and does not excessively burden speech. The Respondent also maintained that the Act is narrowly tailored to address the specific national security risks posed by TikTok, with the divestiture[1] requirement being a targeted solution that allows TikTok to continue operating in the US if it is no longer controlled by a foreign adversary.

Issue for Determination

Whether the Act violates the First Amendment as applied to the petitioners?

Decision of the US Supreme Court

The Supreme Court, in its *per curiam* decision of 17.01.2025, upheld the constitutionality of the Act, concluding that it does not violate the First Amendment rights of the Petitioners. The Court held that the Act is a content-neutral regulation aimed at addressing national security concerns rather than suppressing speech based on its content. The Court found that the Act's prohibitions and divestiture requirement are justified by a content-neutral rationale of preventing the Chinese government from accessing sensitive data and manipulating content.

The Court applied intermediate scrutiny, concluding that the Act advances important governmental interests unrelated to the suppression of free expression and does not burden substantially more speech than necessary to further those interests. The Court emphasised that the Act's prohibitions are narrowly tailored to address the specific national security risks posed by TikTok. The Court found the government's national security justifications compelling, noting the extensive data collection practices of TikTok and the potential for covert content manipulation by the Chinese government. The Court accorded substantial deference to the predictive judgments of Congress and the Executive Branch regarding national security threats.

The Court concluded that the Act is narrowly tailored to address the government's national security concerns. The Court rejected the Petitioners' proposed alternatives, such as disclosure requirements and a national security agreement, finding that they would not adequately mitigate the risks posed by TikTok's foreign control. Although the Court recognized the inherent narrowness of its decision considering that data collection is a common practice in this digital age, but justified its holding based on the "*vast swaths of sensitive data*" Tiktok obtains from its users.

Concurring Opinions

Justice Sotomayor concurred in part agreeing that the Act survives the petitioners' First Amendment challenge but opined that the Court should have clearly held that the Act **implicates** the First Amendment because it imposes a disproportionate burden on expressive activity even though it does not violate the First Amendment. Justice Gorsuch concurred with the judgment, expressing reservations about the content-neutrality of the Act and the use of classified evidence. He emphasised the importance of transparency and the need for Congress to consider less restrictive alternatives.

Brief Comments

This decision reinforces the growing global trend of prioritizing data protection and national security over unfettered digital platform access. By upholding the restrictive provisions of the Act, the U.S. Supreme Court affirmed that governments could impose restrictions on foreign-owned platforms without necessarily infringing upon free speech rights, provided such restrictions are content-neutral and tailored to address legitimate security concerns.

From a Nigerian perspective, the ruling underscores the increasing regulatory scrutiny over data sovereignty and foreign tech companies' control over user information. Nigeria's Data Protection Act 2023 already imposes strict obligations on data controllers, and this decision may inspire local policymakers to adopt stronger regulatory measures, particularly against foreign-owned digital platforms perceived as national security risks.

Additionally, the ruling highlights how courts may balance constitutional free speech against national security interests. Nigerian courts have historically exercised caution in reviewing executive actions on security matters, as seen in the 2021 Twitter suspension. If Nigeria enacts legislation targeting foreign-controlled platforms, courts could draw from the U.S. Supreme Court's reasoning in this case, applying intermediate scrutiny to determine whether restrictions serve a significant governmental interest without unduly burdening free expression.

Ultimately, this ruling could serve as a persuasive authority for other jurisdictions, including Nigeria, in shaping digital sovereignty laws and judicial responses to challenges against them.

A CARE ORDER MADE UNDER THE CHILDREN ACT 1989 DOES NOT CONSTITUTE DETENTION FOR THE PURPOSES OF HABEAS CORPUS, AND THE REMEDY OF HABEAS CORPUS IS NOT AVAILABLE TO CHALLENGE THE LAWFULNESS OF SUCH AN ORDER – **The Father v. Worcestershire County Council [2025] UKSC 1**

Facts of the Case

The Appellant [father of two children] in this appeal, applied for a writ of habeas corpus in March 2024 to seek the release of his two children from the custody of Worcestershire County Council (Council). The children were placed in foster care under a Care Order issued by a District Judge – D.J. Solomon in the Family Court on 09.06.2023, pursuant to Section 31 of the Children Act 1989. This Care Order granted the Council parental responsibility for the children, allowing them to be placed with foster carers. The Appellant contended that the children were unlawfully detained by the Council and challenged the legality of the Care Order on several grounds.

The Appellant raised three primary arguments: first, that the children were detained by virtue of the Care Order; second, that the Care Order was unlawful because it was not initiated by a local authority as required by Section 31(1) of the Children Act 1989; and third, that the order was made without jurisdiction because the threshold conditions under Section 31(2) were not met. Contrarily, the arguments of the Council, among others, were that the Care Order was appropriate and that the Children were not being detained as argued by the Appellant.

On 15.04.2024, the High Court dismissed the Appellant's application for a writ of habeas corpus, holding that the appropriate course of action was for the father to appeal the Care Order, and that the application for the writ of habeas corpus was "inappropriate" and "wrong". Upon appeal, the Court of Appeal determined that the High Court hearing was procedurally unfair and that the Judge did not give proper reasons and consequently set aside the Care Order on these grounds. However, the Court of Appeal proceeded to reconsider the issues presented by the Appellant and upon reconsideration, the Court of Appeal dismissed the Appellant's application, citing two grounds. Firstly, that the application for a writ of habeas corpus was not the correct procedural mechanism to challenge the Care Order; and secondly, that the children were not being detained as argued. The father subsequently appealed to the Supreme Court.

Issue Before the Supreme Court

Whether an application for habeas corpus is an appropriate and legitimate procedure to use to challenge the Care Order, notwithstanding other procedural avenues available to do so?

The Supreme Court, in essence, agreed with the Council's contention that the children were living in a normative family environment with foster carers, rather than being detained.

Decision of the Supreme Court

The Supreme Court ultimately dismissed the father's appeal, affirming that the children were not detained in the legal sense and that habeas corpus was not the appropriate remedy for challenging the care order. The Supreme Court was of the view that the ordinary exercise of parental responsibility by a local authority pursuant to a care order, or the exercise of delegated authority by foster parents, does not amount to a restriction on a child's liberty that would amount to detention and thus trigger the applicability of habeas corpus. The Supreme Court, in essence, agreed with the Council's contention that the children were living in a normative family environment with foster carers, rather than being detained. The Court stated that: *"a child living with foster parents under a care order is not detained but is simply living in the same type of domestic setting as any other child of their age would be. That is not the kind of detention at which the writ of habeas corpus is aimed."*

The Court emphasized that the correct procedural route for contesting such orders is through appeal or application for discharge under section 39(1) of the Children Act 1989. The Supreme Court went on to consider the viability of invoking the writ of habeas corpus in the event that the children were deemed to be detained. Following some decided cases on the point, the Supreme Court arrived at the conclusion that the remedy of habeas corpus would not be applicable even if the children were deemed to be detained. The Supreme Court held that, in proceedings for habeas corpus, the legality of a care order assumes relevance only in circumstances where the order explicitly authorizes the detention of a child or where, pursuant to the order, a local authority, in the exercise of parental responsibility, may validly consent to the deprivation of a child's liberty, thereby constituting detention.

Interestingly, the Supreme Court recognized that in extreme or unusual circumstances, where a local authority or foster parents improperly exercise parental responsibility or delegated authority, respectively, such actions may culminate in the deprivation of a child's liberty, thereby constituting detention. Hence, in such exceptional cases, the writ of habeas corpus would provide an appropriate remedy. However, the resultant order would specifically direct the release of the child from the unauthorized detention, rather than invalidating or terminating the care order in its entirety. However, in the case, it was the view of the Supreme Court that there were no extreme or unusual circumstances to come to that conclusion and thus allow habeas corpus to succeed.

Brief Comment on the Decision

This case underscores the limits of habeas corpus as a remedy in child welfare proceedings, reinforcing that care orders issued under statutory frameworks do not equate to unlawful detention. It highlights a crucial distinction: while habeas corpus is a powerful tool for challenging state-imposed restrictions on liberty, it is not an all-encompassing remedy for contesting family court decisions made in the best interests of a child.

For Nigeria, where habeas corpus serves as a key safeguard against arbitrary detention under Section 35 of the 1999 Constitution, this decision offers valuable insight into its potential (and limits) in family law matters. Nigerian courts have not widely considered habeas corpus in the context of care orders or child custody disputes. However, the reasoning in this case could guide judicial interpretations, clarifying that habeas corpus is inapplicable where no true “detention” exists. The decision also aligns with Nigeria’s Child’s Rights Act 2003, which prioritizes the best interests of the child. If Nigerian courts were faced with a similar case, they might rely on this framework to emphasise that placing a child in alternative care under lawful authority does not constitute detention warranting habeas corpus relief. Instead, disputes over custody or care orders should be addressed through proper family law channels, such as appeals or applications for discharge.

AN ARBITRATOR'S REFUSAL TO GRANT AN ADJOURNMENT IS NOT A GROUND FOR SETTING ASIDE A FINAL AWARD WHEN PARTIES FAIL TO ACT DILIGENTLY – Collins and 4 Ors v. Wind Energy Limited [2025] EWHC 4

Facts of the Case

This action was commenced by the Claimants to set aside a Final Award in LCIA Arbitration No. 225475 on the ground of serious procedural irregularity under section 68 of the Arbitration Act 1996 ("**AA**"). The Claimants argued, among other things, that the arbitrator's refusal to grant a reasonably long adjournment amounted to a breach of duty under section 33 of the AA which mandates fairness and impartiality in proceedings. The Claimants submitted a Request for Arbitration on 20.04.2022 concerning whether a letter of indemnity was valid and binding and whether the Defendant, Wind Energy Limited, was in breach of the letter of indemnity by failing to cover the Claimants' ongoing costs of related litigation which amounted to approximately £850 million due to joint liability in related litigation. The arbitration proceedings were closely related to a prior litigation matter initiated by Mr. Suppipat, a Thai Businessman and associated companies. The litigation concerned, among other things, whether he had been deprived of his rights in relation to the Defendant [Wind Energy Ltd – "**WEL**"] by the Claimants and others. This action resulted in the judgment of Calver J in Suppipat v Narongdej [2023] EWHC 1988 (Comm), delivered on 31.07. 2023 (the **Suppipat Judgment**), in which the Claimants were found jointly and severally liable for approximately £850 million. Following this, a post-judgment Freezing Order was issued against the Claimants on 31.07.2023, restricting their assets.

A sole Arbitrator was appointed on 05.08.2022 and issued a procedural order regarding the conduct of arbitration on 30.09.2022. In the arbitration proceedings, the Claimants posited that their dismissal from their positions at WEL by the other board members, coupled with the prevention of WEL from reimbursing their legal costs incurred during the prior litigation by Mr. Suppipat, constituted a deliberate attempt to compromise their ability to defend themselves in the litigation. Subsequently, the Claimants, through their counsel, Signature Litigation, sought a stay of arbitration claiming that WEL had brought a parallel action in Thailand in respect of the same subject matter and the impending judgment would impact on their claimed losses, but did not mention the Freezing Order. The Arbitrator refused the application. The next day, on 01.08. 2023, Signature Litigation informed the Arbitrator that it was no longer instructed in the arbitration with immediate effect. The Claimants then wrote to the Arbitrator, stating that they were in the process of securing new legal representation and requesting a variation of the arbitration timetable. This request was denied.

The Claimants first informed the Arbitrator about the Freezing Order on 28.08. 2023—two weeks before the scheduled hearing—when they sought an adjournment. The Arbitrator granted a short adjournment in response to this request. On 13.09. 2023, during a separate litigation hearing, the Claimants orally applied for permission to use certain UK Gilts for arbitration-related expenses. However, the Court directed them to formally apply for any variation of the Freezing Order.

Subsequently, the Claimants requested another adjournment of the arbitration hearing until "the issue of the Freezing Order is resolved." The Arbitrator refused this request, noting that there was no evidence of a pending application to vary the Freezing Order. The Claimants later informed the Arbitrator that Ms. Collins was not in an emotional state to attend the hearing and that Mr. Lakhaney would only be available for cross-examination virtually. When the hearing proceeded on 04.10.2023, the Claimants were absent and unrepresented. Again, on 06.10.2023, the Claimants were not present or represented, except for Mr. Lakhaney, who was cross-examined remotely.

On 17.11.2023, the Arbitrator issued her Award, rejecting the Claimants' claim and allowing the Defendant's counterclaim.

Issue for determination

Whether the failure of an Arbitrator to grant an adjournment amounts to a breach of duty under section 33 of the Arbitration Act 1996 and form grounds for setting aside an arbitral award?

Decision of the Court

The Court considered section 33 of the Act, which mandates an Arbitrator to act fairly and impartially between the parties, giving each party a reasonable opportunity to present its case and respond to its opponent's case, as well as section 68 on challenging an award. The Court also considered Article 14 of the LCIA Rules, which requires an arbitrator to act fairly, provide each party with a reasonable opportunity to present its case and respond to its opponent's case, and adopt procedures suited to the circumstances of the arbitration while avoiding unnecessary delay and expense.

The Court cited the Court of Appeal's decision in **Terluk v. Berezovsky** [2010] EWCA Civ 1345, where it found an arguable case that the trial judge was wrong to refuse an adjournment to allow the defendant in a libel case time to obtain legal representation but ultimately dismissed the appeal due to uncertainty about the source of funding for legal representation.

Considering the facts before it, the Court rejected the Claimants' argument that the Arbitrator breached her duty under section 33 of the AA by granting a short adjournment of the evidential hearing from 11.09.2023 to 04.10.2023 in response to their application of 28.08.2023 and then proceeding with the hearing on 04.10. 2023 despite their requests for reconsideration, citing their continued difficulties in securing legal representation and the 1st Claimant's mental health issues. The Court found that the Arbitrator acted within her discretion in denying the adjournment request. The Claimants failed to demonstrate that refusing this request would lead to a failure of justice, especially since the 1st Claimant's health issues were communicated at a late stage.

The Court further noted that the Claimants failed to raise the issue of the Freezing Order and its impact on their ability to secure representation until the last minute. It also emphasized that the Arbitrator had a duty to prevent unnecessary delay and was right not to grant a lengthy or open-ended adjournment. Even after their adjournment request was denied, the Claimants still failed to formally apply for a variation of the Freezing Order or provide any indication of when such a variation might be secured, demonstrating a lack of diligence. The Court also noted that the email informing the Arbitrator of the 1st Claimant's ill health was not a request for adjournment, nor was it interpreted as such, and rightly so.

Ultimately, the Court found that the Arbitrator's decision to proceed with the hearing on 04.10.2023 was fair and consistent with her duties under section 33 of the AA and Article 14 of the LCIA Rules. The Claimants had ample opportunity to address any issues arising from the Freezing Order and secure legal representation but failed to make any realistic efforts to do so. The Court found no merit in the Claimants' challenge and dismissed their claim against the Award.

Brief comments

The case underscores the importance of diligence in arbitration proceedings and highlights how delays or failures on a party's part can impact their ability to contest awards effectively. The court's decision also reinforces Arbitrators' discretion in managing proceedings while ensuring fairness under statutory obligations.

It also emphasizes the importance of procedural fairness, a principle that is also central to Nigerian arbitration law under the Arbitration and Mediation Act (AMA) 2023. The decision on the arbitrator's discretion to deny an adjournment request due to the Claimants' late communication parallels Nigerian courts' approaches, which uphold arbitrators' authority unless there is clear evidence of bias or unfairness. This reinforces the need for parties in arbitration to act diligently and communicate effectively in the course of proceedings.

PAYMENTS MADE BY BP TO ROYAL BANK OF CANADA FOR RIGHTS TO OIL EXTRACTED FROM THE UK CONTINENTAL SHELF DO NOT CONSTITUTE INCOME FROM 'IMMOVABLE PROPERTY' UNDER THE UK-CANADA DOUBLE TAXATION CONVENTION – **Royal Bank of Canada v. Commissioners for His Majesty's Revenue and Customs [2025] UKSC 2**

Facts of the Case

The dispute in this case revolves around payments made by BP Petroleum Development Ltd (“BP) to the Royal Bank of Canada (**RBC**) for rights to oil extracted from the United Kingdom (**UK**) Continental Shelf. RBC is a corporation duly incorporated and tax-resident in Canada, with its registered office situated within the territorial boundaries of Canada. RBC engages in the provision of banking services within Canada, as well as in select international jurisdictions. Notably, RBC maintains a branch office in London, UK.

In the 1980s, RBC extended a loan facility to Sulpetro Limited ("**Sulpetro**"), a Canadian oil exploration and production company with global operations. The loan facility by RBC was made at its head office in Canada. One of Sulpetro's subsidiaries, Sulpetro (UK) Limited ("**SUKL**"), had been granted a licence to undertake oil exploration and exploitation activities in the Buchan field, situated in the North Sea, UK. Pursuant to the agreement between Sulpetro and SUKL, Sulpetro undertook to bear the costs associated with exploration and exploitation activities in the Buchan field, in exchange for receiving the entirety of the oil extracted from the field. In 1986, SUKL was divested to BP, along with Sulpetro's rights to receive oil from SUKL. As part of the sale agreement, BP undertook to make certain payments to Sulpetro, including "royalty" payments (the "**Payments**") in respect of production activities undertaken at the Buchan field. The Payments were calculated as approximately 50% of the amount by which the market value of each barrel of oil produced at the Buchan field exceeded US$20.

In the 1990s, Sulpetro encountered financial difficulties, ultimately leading to its receivership. Pursuant to a court order, RBC, as a creditor of Sulpetro, became entitled to receive the Payments that had been payable to Sulpetro. Subsequent to Sulpetro's receivership, BP transferred its interest in the Buchan field to Talisman Energy Inc. ("**Talisman**"), which was later acquired by Repsol. Consequently, during the tax years pertinent to the dispute (specifically, the periods from 2008 to 2015), the Payments were made by Talisman to RBC.

Commissioners for His Majesty's Revenue and Customs ("**HMRC**") sought to tax the Payments in the UK under Article 6(2) of the UK-Canada Double Taxation Convention ("**DTC**"), which grants taxing rights over income from "immovable property," including rights to natural resources. Article 6(2) of the DTC provides a comprehensive definition of "immovable property", which encompasses, inter alia, *"rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources."*

Pursuant to Article 6 of the DTC, income derived from immovable property situated in the UK may be subject to taxation in the UK, notwithstanding the tax residency of the income recipient in Canada. This provision enables the UK to assert taxing rights over income generated by immovable property located within its territorial boundaries. HMRC argued that Sulpetro held economic ownership of the oil through its funding and contractual rights, creating a taxable "right to work" under Article 6(2) of the DTC. The payments were intrinsically tied to oil extraction, making them UK-source income and thus taxable by UK. RBC argued that the payments were taxable in Canada, asserting they arose from a financial arrangement, not a "right to work" the oil field. That only SUKL legally held the UK extraction licence; Sulpetro was a financial investor, not an operator. Thus, the payments reflected a debt repayment arrangement, not compensation for resource exploitation.

Both the First-tier Tribunal and Upper Tribunal held in favour of the HMRC. However, the Court of Appeal, in a unanimous decision delivered by Lady Justice Falk (with whom Lady Justice Asplin and Lord Justice Nugee concurred), overturned the decisions of the First-tier Tribunal and the Upper Tribunal. The Court of Appeal held that the Payments did not constitute "income from immovable property" within the meaning of the DTC but fell within the purview of the "business profits" Article. Consequently, the Court of Appeal held that as the Payments were not attributable to a permanent establishment of RBC in the UK (as defined in the Treaty), the DTC conferred an exclusive taxing right over the Payments to Canada. Dissatisfied with the decision of the Court of Appeal, HRMC appealed to the Supreme Court.

Issue Before the UK Supreme Court

Three issues were formulated for the determination of the Supreme Court. The issue relevant in this regard is issue 1, that is, - were the Payments that BP made to RBC *"consideration for" those rights because they were made in return for Sulpetro agreeing to give up those rights so that BP could acquire those rights from Sulpetro (UK) under its own Illustrative Agreement?*

The issue revolves around the proper characterization of payments made by BP to RBC, pertaining to the rights to oil extracted from the UK Continental Shelf, for the purposes of the DTC. Specifically, on whether these payments should be classified as "income from immovable property" within the meaning of Article 6 of the DTC.

Decision of the UK Supreme Court

The UK Supreme Court, in a 4-1 decision, ultimately decided that the Payments made by BP to RBC for the rights to extract oil from the UK Continental Shelf did not constitute income from 'immovable property' under the DTC. The Supreme Court held that the Payments were for financial rights rather than directly tied to the physical property. Therefore, these Payments were not subject to the same tax treatment as income derived from immovable property. The Supreme Court justified its decision by emphasizing the legal distinction between financial arrangements and operational rights under Article 6(2) of the DTC. In the view of the Supreme Court, Article 6(2) explicitly ties taxing rights to “immovable property,” which the Court defined narrowly as rights embedded in licences or property ownership, not financial derivatives.

The Supreme Court rejected HMRC’s argument that Sulpetro held an indirect “right to work” through its financial support of SUKL. It stressed that Article 6(2) requires direct legal entitlement to exploit resources, not economic influence or contractual benefits. That SUKL alone held the UK government-issued licence to extract oil, making it the sole entity with operational rights, and Sulpetro had no legal authority to explore, extract, or manage the Buchan Field, despite funding its subsidiary. The Supreme Court further held that the Payments were structured as financial obligations linked to oil sales, not as royalties or consideration for granting extraction rights. Since Sulpetro lacked the legal licence to work the field, its agreement with BP did not confer a taxable "right to work" under Article 6(2) of the DTC. Moreso, the Court held that the Payments were rightfully taxable in Canada where RBC resided and fell outside the UK’s jurisdiction under the DTC.

The Supreme Court emphasized that mere economic interest in resources (e.g., profit-sharing) does not equate to a legal "right to work" under the DTC. The licence held by SUKL was distinct from Sulpetro’s financial arrangements with RBC. In essence, the majority applied a "common sense" approach, requiring a direct nexus between payments and immovable property.

The Supreme Court emphasized that mere economic interest in resources (e.g., profit-sharing) does not equate to a legal "right to work" under the DTC.

”

Dissenting Judgment

However, Lord Briggs dissented, arguing that the majority erred by focusing solely on legal ownership of the oil extraction licence held by SUKL while ignoring the economic reality of Sulpetro’s control. He held that the Payments were sufficiently linked to resource exploitation and thus should be taxable in UK.

> *By rejecting HMRC's argument that Sulpetro's financial interest in the Buchan Field constituted a "right to work" under Article 6(2) of the UK-Canada DTC.*

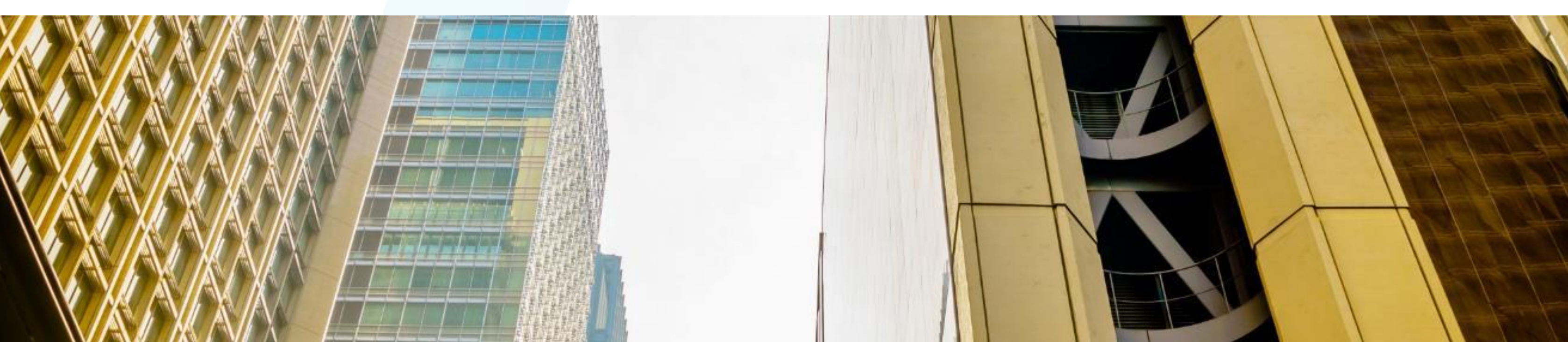
Brief Comment on the Decision

This decision reinforces the importance of a strict legal interpretation of taxation treaties in cross-border transactions. By rejecting HMRC's argument that Sulpetro's financial interest in the Buchan Field constituted a "right to work" under Article 6(2) of the UK-Canada DTC, the Court set a precedent that taxation of income from natural resources must be based on direct legal ownership and not on broader economic influence.

This ruling is significant for international financial institutions and businesses engaged in cross-border transactions, including those operating in Nigeria. It highlights the necessity of clearly structuring financial arrangements to prevent unintended tax liabilities in foreign jurisdictions. Nigerian tax authorities and courts may draw insights from this case when interpreting double taxation treaties (DTTs), particularly where disputes arise over whether income derives from financial arrangements or the exploitation of natural resources.

The case underscores the limits of aggressive tax claims based on economic substance rather than strict legal entitlement. Nigeria, like the UK, must balance its tax enforcement powers with the need to uphold treaty commitments. The decision serves as a reminder that tax authorities cannot extend their reach beyond what is expressly provided in treaties. It also highlights the importance of precise legal drafting in contracts and financial agreements to avoid tax disputes across jurisdictions.

A BANKRUPTCY PETITION CANNOT BE PRESENTED ON THE BASIS OF AN UNRECOGNISED FOREIGN JUDGMENT, AS IT DOES NOT CONSTITUTE A "DEBT" CAPABLE OF FOUNDING BANKRUPTCY PROCEEDINGS, AND THE CREDITOR MUST FIRST REGISTER THE JUDGMENT UNDER A STATUTORY SCHEME OR BRING AN ACTION ON THE JUDGMENT AT COMMON LAW – **Servis-Terminal LLC v Drelle [2025] EWCA CIV 62**



Facts of the Case

The appellant, Mr. Valeriy Drelle, was the former CEO of Servis-Terminal LLC, a company incorporated in Russia. Servis-Terminal LLC was declared bankrupt, and its trustee in bankruptcy-initiated proceedings against Mr. Drelle concerning a loan of RUB 2 billion made in December 2011 to Fort Steiton LLC, a Russian company, with a personal guarantee from Fort Steiton's owner, Mr. Motylev. Intercom Capital LLC, another company controlled by Mr. Motylev, assumed the obligations of Fort Steiton regarding the loan on 05.112014. However, Intercom failed to repay the loan, leading Servis-Terminal LLC to obtain judgments against both Intercom and Mr. Motylev, but the company did not recover the full amount owed.

The proceedings against Mr. Drelle were based on Article 53(3) of the Civil Code of the Russian Federation. It was alleged that Mr. Drelle failed to act in good faith or reasonably when he procured the company to make the loan to Fort Steiton. The Arbitrazh Court of Yaroslavl Oblast ruled on 24.05.2019 that Mr. Drelle had not acted in good faith or reasonably, as he failed to verify the financial position of Fort Steiton or Mr. Motylev. Consequently, the court ordered Mr. Drelle to pay damages amounting to RUB 2 billion. Mr Drelle's appeals against the judgment were unsuccessful. The Second Arbitrazh Court of Appeal upheld the judgment on 06.08.2019, and his cassation appeal to the Arbitrazh Court of Volgo-Vyatsky District was also dismissed. On 17.02.2020, he was refused permission to appeal to the Russian Supreme Court. On 09.10.2020, Servis-Terminal LLC served a statutory demand on Mr Drelle, who was residing in London, under section 268(1)(a) of the Insolvency Act 1986, claiming the RUB 2 billion based on the judgment and the dismissal of the appeals. On 14.10. 2020, Servis-Terminal LLC presented a bankruptcy petition against Mr. Drelle, asserting that he was indebted to the company in the sum of RUB 2 billion based on the unpaid judgment debt.

The petition was heard by ICC Judge Burton in June 2022, who ruled on 09.03.2023 that the debt claimed in the petition was not subject to a genuine and substantial dispute. Consequently, a bankruptcy order was made against Mr. Drelle on 31.03.2023. Mr. Drelle appealed, but the appeal was dismissed by Richards J on 11.03.2024. Richards J held that the lack of recognition proceedings for the judgment in England did not prevent it from being the basis of a bankruptcy petition and declined to interfere with ICC Judge Burton's conclusion that the alleged debt was not subject to a substantial dispute. Mr. Drelle then challenged Richards J's decision in the Court of Appeal, advancing four grounds of appeal, primarily arguing that the unrecognised foreign judgment could not be the basis of a bankruptcy petition.

Issue Before the Court

The basic issue for determination before the Court of Appeal was whether a bankruptcy petition can be presented based on a payment ordered by a foreign court when the foreign judgment had not undergone recognition proceedings within the jurisdiction of England and Wales.

Decision of The Court

The Court of Appeal, comprising Newey, Popplewell, and Snowden LJJ, handed down a landmark decision, reaffirming the primacy of Dicey Rule 45. This rule states that "the effect of a foreign judgment must be determined in accordance with the principles of the conflict of laws of the forum." In simpler terms, Dicey Rule 45 requires that a foreign judgment be recognised and enforced in accordance with English law, rather than being automatically recognised and enforced. The court allowed the appeal, holding that a bankruptcy petition cannot be presented based on an unrecognised foreign judgment. In a significant ruling, the court emphasized that an unrecognised foreign judgment has "no direct operation" in England and Wales and cannot be used as a "sword" to initiate bankruptcy proceedings. The court also held that such a judgment does not constitute a "debt" under sections 267 and 268 of the Insolvency Act 1986. A "debt" under the Insolvency Act 1986 requires a liquidated sum payable immediately or at a certain future time. The 2 billion RUB liability from the Russian judgment was deemed unenforceable in England without recognition, thus failing to meet the statutory definition.

Also, the Court of Appeal rejected the Respondent's argument based on Dicey Rule 51, which states that "a foreign judgment which is final and conclusive on the merits and not impeachable under any of Rules 52 to 55 is conclusive as to any matter thereby adjudicated upon and cannot be impeached for any error either of fact or of law." The court held that this rule only applies when a Claimant relies on a foreign judgment defensively, rather than as a "sword."

Newey LJ noted that *"the fact that a foreign judgment can be deemed conclusive on points decided in it may be important where an application is made for recognition. However, it does not follow that an unrecognised foreign judgment can provide the basis for other proceedings."* The Court emphasized that foreign judgments involve an exercise of sovereign power and cannot bypass domestic recognition requirements.

Brief Comment on The Decision

The decision provides a critical clarification on the limits of foreign judgments in English insolvency proceedings. By holding that an unrecognised foreign judgment cannot constitute a “debt” under the Insolvency Act 1986, the Court of Appeal reaffirmed the fundamental principle that foreign judgments have no automatic effect in England and must undergo recognition before they can be enforced. This decision strengthens procedural safeguards in cross-border insolvency cases, ensuring that English courts do not inadvertently extend jurisdiction to foreign court rulings without proper legal scrutiny.

A key takeaway from this case is that creditors seeking to rely on foreign judgments in England must first initiate recognition proceedings under established statutory schemes, such as the Administration of Justice Act 1920 or the Foreign Judgments (Reciprocal Enforcement) Act 1933 or pursue enforcement at common law. This ruling prevents creditors from bypassing recognition procedures by using unrecognised judgments as the foundation for bankruptcy petitions. It also reinforces the distinction between using a foreign judgment defensively (where it may be conclusive under Dicey Rule 51) and using it as a “sword” to initiate proceedings, which the Court expressly rejected.

For Nigerian courts and legal practitioners, this case underscores the importance of recognition requirements in cross-border disputes. Nigeria’s framework for enforcing foreign judgments, governed by the Reciprocal Enforcement of Judgments Ordinance and the Foreign Judgment (Reciprocal Enforcement) Act, similarly requires foreign judgments to be final, conclusive, and from a superior court of a reciprocating country before they can be enforced. The ruling in Servis-Terminal LLC v. Drelle aligns with this approach, reinforcing that foreign judgments cannot be directly used to commence bankruptcy or other enforcement proceedings without first passing through a legally prescribed recognition process.

This case serves as a cautionary precedent for creditors pursuing cross-border debt recovery. It highlights the need for careful legal planning when structuring international transactions, ensuring that foreign court judgments can be effectively enforced in relevant jurisdictions. Additionally, it underscores the necessity for Nigerian creditors and businesses engaging in foreign disputes to be aware of recognition laws in their target enforcement jurisdictions to avoid procedural pitfalls.

A REVIEW OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2025

A REVIEW OF THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY (CIVIL PROCEDURE) RULES 2025

The Chief Judge of the Federal Capital Territory, by virtue of **Section 259** of the 1999 constitution of the Federal Republic of Nigeria (as amended), recently issued the High Court of the Federal Capital Territory (Civil Procedure) Rules 2025 ("the **2025 Rules**") which amended the High Court of the Federal Capital Territory Civil Procedure Rules 2018 ("the **2018 Rules**"). Pursuant to the amendment, the 2025 Rules came into effect on 03.03.2025.

In this publication, we review the significant amendments and comment briefly on the effect the amendment is likely to have on civil proceedings before the High Courts of the FCT. We will proceed to highlight the notable differences between the 2018 Rules and the 2025 Rules.

Order 8 Rule 6 (13) – The Life Span of Originating Processes

The 2025 Rules provide notable amendments to what was obtainable under the 2018 Rules in relation to the lifespan of an originating process and the period within which to seek an extension in the event of expiration. Under the 2025 Rules, the validity of the existence of an originating process has been extended from six to twelve months in the first instance and an application for the renewal of an originating process can be made to the Court within 14 days of expiration of the originating process as against the practice under the 2018 Rules[4] which was previously to be brought before the expiration of the originating process. The extension of lifespan of an originating process and the timeframe for renewal enhances procedural efficiency and reduces unnecessary urgency in filing renewal applications.

Order 9 Rule 11 (3) – Service of Processes

Order 9 Rule 11 (3) of the 2025 Rules requires an application for substituted service of a process after the applicant has attempted personal service of the process as against the discretion of the party bringing the application for substituted service either before or after an attempt has been made to serve the originating process by substituted means. The new provision for substituted service under the 2025 Rules aims to ensure that parties take all available steps to serve processes by personal means unless it becomes impracticable, and the only option would be resorting to the court for leave to serve processes by substituted means. Under the 2018 Rules[5], an application for substituted means would be entertained where it appears to the Court (either after or without an attempt at service) that for any reason prompt service could not be conveniently effected.

The requirement to attempt personal service before seeking substituted service strengthens procedural fairness and ensures due diligence in serving court processes.

4. *Order 6 Rule 6 (1) (12) of the 2018 Rules.*
5. *Order 7 Rule 11 (3) of the 2018 Rules.*

Order 11 Rule 1 –
Entering Appearances

The 2025 Rules, in Order 11 Rule 1, enlarges the time within which a defendant is allowed to enter an appearance in a suit after being served with an originating process from 7 days provided in the 2018 Rules[6] to 21 days. By extending the time for entering an appearance from 7 days to 21 days, the 2025 Rules provides defendants with a more reasonable window to respond to originating processes.

Order 18 Rule 1 –
Filing of Reply

Order 18 Rule 1 of the 2025 Rules enlarges the time within which a claimant can file a reply to the statement of defence to 14 days upon receipt of the service of the statement of defence as against the 7 days period provided for under the 2018 Rules[7]. This affords the Claimant a reasonable time to prepare and file a Reply where necessary and is likely to reduce the frequency of applications seeking to regularize replies filed out of time.

Order 30 Rule 1 (4) –
Motions and Applications

By the 2025 Rules[8], the time within which an applicant may respond to an address filed by an opposing party is reduced from 7 days to 5 days after being served with the written address. The 2018 Rules specified that the court may deem written addresses as adopted after 2 days while the 2025 Rules only state that the written addresses may be deemed adopted without specifying a time period.[9]

Order 33 Rule 2 –
Security of an absconding Defendant

The 2018 Rules[10] provided that a defendant may abscond from Nigeria which might lead to the obstruction of an impending judgment against him, the Court is required to issue a warrant to ensure the defendant's appearance before the Court. However, the 2025[11] Rules prescribes that a summons be issued to ensure the attendance of the defendant on a date specified on the summons issued by the Court.

6. *Order 9 Rule 1(3) of the 2018 Rules.*
7. *Order 18 Rule 1 pf the 2018 Rules.*
8. *Order 30 Rule 1 (4) of the 2015 Rules.*
9. *Order 30 Rule 4 of the 2025 Rules; and Order 43 Rule 4 of the 2018 Rules.*
10. *Order 53 Rule 2(2) of the 2018 Rules.*
11. *Order 33 Rule 2 of the 2025 Rules.*

Order 34 Rule 1 – Undefended List

The 2025 Rules[12] prescribes a flexible form of hearing and determining a suit brought under the undefended list. In the 2018 Rules, an action brought via an undefended list could only be heard in an open court and determined for either transfer to the general cause list or eventually decided as an undefended action. The 2025 Rules gives Judges the *vires* to hear and determine actions brought via the undefended list procedure in chambers. Additionally, a defendant served with a writ for an undefended list action has the opportunity to notify the Court registry, within 21 days[13] of receipt of the service, of an intention to defend the suit as opposed to the 5 days prescribed in the 2018 Rule.[14]

Allowing judges to hear undefended list matters in chambers and extending the defendant's response time from 5 to 21 days enhances procedural flexibility and fairness.

Order 34 Rule 3(a) – Summary Proceedings for Possession of Landed Property Occupied by Squatters or Without the Owner's Consent

The 2025 Rules introduces the requirement that a claimant must include documentary evidence annexed to its affidavit in support of the originating summons which was not included under the 2018 Rules. Order 60 Rule 3(a) of the 2018 Rules provided that a claimant shall file in support of the originating summons an affidavit stating his interest in the land without more. Mandating documentary evidence for summary proceedings on land possession claims ensures stronger evidentiary support and minimizes frivolous claims.

Order 38 Rule 2 – Trial Proceedings

Order 38 Rule 14 of the 2025 Rules provides that 'where the party beginning a trial has concluded his evidence, the court shall ascertain whether the other party intends to call evidence. Where the other party declines to call evidence, the party beginning shall within 15 days file a final written address'. However, Order 32 Rule 14 of the 2018 Rules provided that 'where the party beginning a trial has concluded his evidence, the court shall ascertain whether the other party intends to call evidence. Where the other party declines to call evidence, the party beginning shall within 21 days after the close of evidence file a written address, thus, reducing the number of days allowed to file a written address from 21 days to 15 days.

12. *Order 34 Rule 1 of the 2025 Rules.*
13. *Order 34 Rule 3(1) of the 2025 Rules.*
14. *Order 35 Rule 3(1) of the 2018 Rules.*

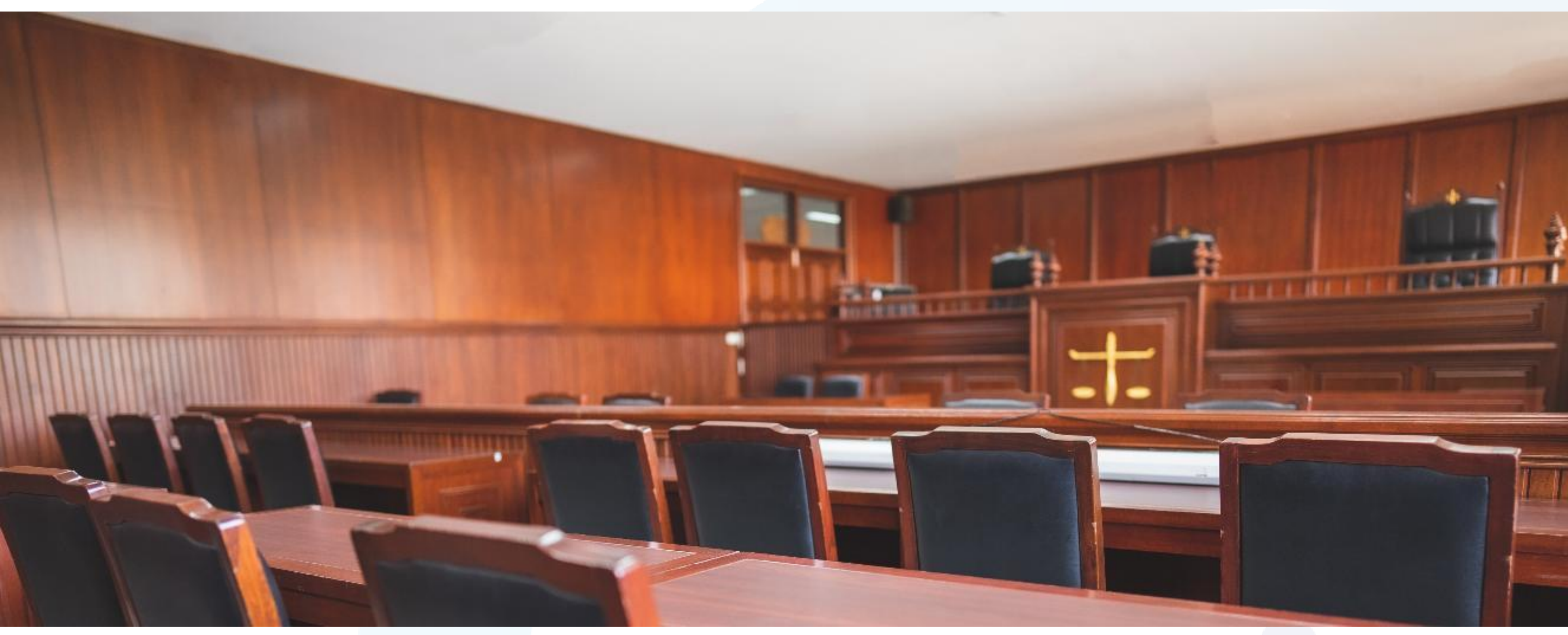
Order 39 Rule 2 – Filing of Final Written Address

Order 39 Rule 2 of the 2025 Rules provides that a written address shall be printed on white A4 size paper, in Times New Roman font size 14, set out in paragraphs, numbered serially in 1.5 spacing while order 33 Rule 2(i) of the 2018 Rules provided that 'a written address shall be printed on white A4 sized paper set out in paragraphs, numbered serially'.

Standardizing formatting requirements for written addresses ensures uniformity and readability in legal documents, which has also been introduced in the Rules of the appellate courts.

Order 41 – Fast Track Proceedings

Order 41 Rule 2 of the 2025 Rules provides 'that fast-track proceedings shall be applicable only to (a) Banker/customer transactions; (b) Commercial transactions. Order 41 Rule 3 of the 2025 Rules provides that 'the substantive monetary claim in actions under this order shall not be less than ₦100,000,000'. Order 41 Rule 7 of the 2025 Rules provides that 'all causes under the order shall attract a non-refundable fast track fee of ₦500,000 only.' However, previously under Order 37 Rule 4 of the 2018 Rules, it provided that 'the fast-track court shall have jurisdiction to hear and determine cases on (i) banker/customer disputes; (ii) commerce and industry; (iii) landlord and tenant; (iv) federal capital territory or area council revenue'. Order 37 Rule 4(f) of the 2018 Rules provided that 'the monetary claim in paragraphs (a) and (b) above is not less than ₦50,000,000' and Order 37 Rule 6 (3) of the 2018 Rules provided that 'where a matter is placed on the fast track, a filing fee of ₦100,000 shall be paid by the applicant.'



Order 46 Rule 8 – Appeals to Districts/Magistrate Courts

The inference to be drawn from order 46 Rule 8 of the 2025 Rules is that all appeals from lower courts shall be heard by one or more judges of the court. This was not the case under the 2018 Rules which specifically provides for the constitution of the court in civil appeals to be a sole judge[15].
Mandating that appeals from lower courts be heard by one or more judges rather than a sole judge could enhance deliberation and appellate scrutiny.

Order 48 Rule 4 (b) – Court sitting and Vacation

Order 48 Rule 4 (b) 2025 Rules provides that ‘subject to the directions of the Chief Judge, sittings at the high court for the dispatch of civil matters will be held on every weekday except during the week ending with Good Friday and beginning with Easter Monday. Order 48 Rule 4 (e) 2025 Rules provides that subject to the directions of the Chief Judge, sittings at the high court for the dispatch of civil matters will be held every weekday except during the annual vacation effective from any week in July.

However, under order 52 Rule 4(b) of the 2018 Rules, it provided that ‘subject to the directions of the Chief Judge, sittings at the high court for the dispatch of civil matters will be held on every weekday except during the week beginning with Easter Monday. Order 52 Rule 4(e) provided that ‘subject to the directions of the Chief Judge, sittings at the high court for the dispatch of civil matters will be held on every weekday except during the annual vacation effective from the last week of July. The inference to be drawn from the new Order 48 Rule 4(b) of the 2025 Rules is that the Courts will be required to sit every weekday except (i) weeks ending with good Friday, (ii) weeks that begin with easter Monday, and (iii) during the annual vacation in July.

15. *Order 50 Rule 8 of the 2018 Rules.*

Order 52 Rule 5 (3) – Proceeding in Forma Pauperis

The introduction of order 52 Rule 5 (3) of the 2025 Rules requires that a legal practitioner reports to the Chief Judge as opposed to the registrar as prescribed in the 2018 Rules,[16] if such legal practitioner becomes aware of the true financial status of an indigent party he represents.

Order 50 – Computation of Time

Order 50 Rule 5 of the 2025 Rules provides that 'any party who defaults in performing an act within the time authorized by the court or under these rules shall pay to the court an additional fee of 500 Naira for each day of such default at the time of compliance. This provides that every application for enlargement of time shall be accompanied by proof of compliance with Rule 5 (1) of this order. However, Order 49 Rule 5 of the 2018 Rules provided that 'any party who defaults in performing an act within the time authorized by the court or under these rules shall pay to the court an additional fee of 200 Naira for each day of such default at the time of compliance'.

The new Order 50 Rule 5 of the 2025 Rules clearly shows that there is an increase in the amount to be paid by a party who defaults in complying with the time prescribed by the Rules to carry out an act. The 2025 Rules introduces a requirement that an application for enlargement of time must be accompanied with the proof of payment. This introduction is without doubt, an attempt to keep parties on their toes in ensuring that court processes are filed timeously and within the prescribed time.
Increasing default fees and requiring proof of payment for time extensions discourage delays and enforce stricter compliance with procedural timelines.

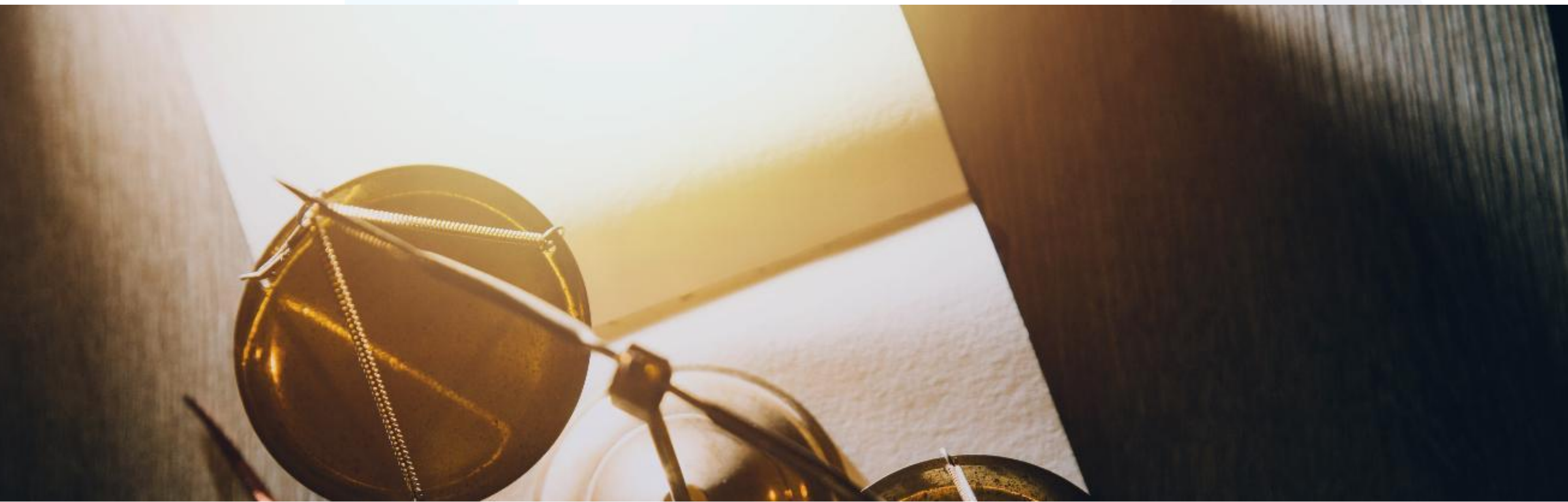
16. *Order 54 Rule 5(3) of the 2018 Rules.*

Order 52 Rule 2 –
Change of Practitioner

In the 2018 Rules[17], there was a stipulated time within which the party or legal practitioner could bring an application for change of counsel. However, the 2025 Rules only provide that the application can be brought by the party or their legal practitioner. Additionally, the 2025 Rules allows legal practitioners the opportunity to choose to withdraw or discontinue representation of a party.

Order 56 Rule 4 –
Grant of Probate or Administration in General

By order 56 Rule 4 of the 2025 Rules, there is an extension of the time within which the grant of administration shall be issued after the death of the deceased. In the instance of a deceased with a will, the grant of administration can only be issued after 14 days of his death, while a grant of administration for a deceased without a will can only occur after 21 days of his death which was originally 7 days and 21 days under the 2018 Rules.[18]



Order 24 Rule 1 –
Amendment of processes

Order 24 Rule 1 of the 2025 Rules provides that amended processes can no longer be filed along with an application seeking leave to amend the process. This is because of the requirement that the amended process when filed must display the order granting leave to amend the process. Consequently, applications for leave to amend a process will no longer include a prayer for a deeming order of the proposed amended process.

17. Order 55 Rule 2 of the 2018 Rules.
18. Order 62 Rule 1(3) of the 2018 Rules.

CONCLUSION

The 2025 Rules introduces substantial procedural reforms designed to enhance judicial efficiency, minimize delays, and promote procedural clarity in civil litigation before the High Courts of the FCT. Notable changes include extended timelines for filing key processes, stricter service requirements, and increased financial penalties for non-compliance. These amendments signal a move toward a more structured and disciplined judicial process, reinforcing the need for diligence in procedural adherence. As the legal community navigates these changes, practitioners must stay abreast of the new requirements to ensure compliance, mitigate risks of procedural missteps, and facilitate smoother case management.

EDITORIAL TEAM

Abiola Tella
Senior Associate &
Team Lead

Cyril Mbonu
Associate

Ismail Balogun
Associate

Abdulmajeed Moshood
Associate

Amos Ubale
Associate

Daniel Peter
Associate

Emmanuel Dema
Associate

Toyin Ihinmikalu
Associate

Chioma Ngige
Associate

Contact Us

Lagos
The Adunola, 401 Close,
Banana Island, , Ikoyi, Lagos,
Nigeria
lawyers@olaniwunajayi.net

Abuja
4th Floor Leadway House, Plot
1061, Cadastral Avenue,
Central Business District, Abuja,
Nigeria.
ap@olaniwunajayi.net

Port Harcourt
House 17, Road 315, Flat
5, BICS Suites, 25 Herbert
Macaulay Street, Old
GRA, Port Harcourt, Rivers
State, Nigeria

London
29th Floor, 30 St Mary Axe,
London. EC3A 8AF, United
Kingdom
+44 (0) 207 337 6012