JUDICIAL TECHNICALITY: A CLOG IN THE WHEEL OF THE ADMINISTRATION OF JUSTICE?

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Abstract

It is important with regards to note that one of the ills facing and confronting the judicial sector is the issue of judicial technicality, nobly known as "litigating the margin". And its effect on the very aim and goal of the judiciary, which is justice, is on the negative side. This been an issue of consideration in the legal profession. It is no longer doubt that this particular cankerworm has eaten deep into the judicial sector and great is its implication on justice. Lawyers and(or) counsels are now using this technique as a pretext to win cases by all means always regarding the gain not considering what it may cost(justice).

This article poses a question, through its topic, to the current state of judicial technicality in the judiciary, it's influence so far in the judicial sector and its effects. And in entirety, it tends to reveal the negative impact of judicial technicality not only in the judicial sector but also in the circular world and profer solutions.

Keywords: Technicality, adjectival law, substantive law, legal system, court, justice, litigants

1.0 INTRODUCTION

Legal technicality is a colloquial phrase referring to a technical aspect of law.[1] The technicality in judicial process is not really a term of law. According to the Longman dictionary,[2] it is a small detail in law or set of rules, especially one that forces you to make a decision that seems unfair.

Even though there may be no perfect definition of judicial technicality, in the determination of cases by the courts, judgments based on technicality are often differentiated from judgments based on merit.[3] Technicality, like issues arising from the issue of court hierarchy, registering the name of a law firm instead of the name of the named legal practitioner, absence of a judge etc. are different from the cases themselves and no matter the merit, substance and issues of a case, these technicalities are capable of disqualifying justice.

2.0 DIALECTICS OF TECHNICALITIES IN JUDICIAL PROCESS

The result or decision of any litigation by a court of law determines how much trust the society has in the judiciary and the strict adherence to court rules and procedures is a significant feature that pervades the Nigerian advocacy system. Court procedures or rules are mainly laid down to enable and quicken the wheel of justice and to enable orderliness and decorum in the court of law, and they're to be obeyed. However, it shouldn't be a pretext to slaughter justice on the altar of technicality but unfortunately, the aim and reason of

[1] 'Legal technicality' <https://en.m.wikipedia.org/wiki/Legal_technicality> accessed 6 August 2020

[2] See Longman Dictionary

[3] *Azubuike S. 'Technicality in Law – CJN's Misfire and the need to Reload' <https://stephenlegal.ng/technicality-in-law-cjns-misfire-and-the-need-to-reload/> accessed 6 August 2020*

these rules have changed and these rules are now used to thwart legal proceedings just to win the case by all means.

As a matter of fact, some time ago, this feature was once a yardstick used in measuring the efficiency of advocates in the court of law. We knew that long time ago, to be successful in the legal field, one must be an expert in the process of manipulating the court rules in favour of him or her regardless of the side where the sword of justice rests. Those were the days when cases were won even before commencing the suit because the advocates were so sharp in bringing to the notices of the court any non-compliance to the rule of the court. The advocacy formula then was very simple- it was of high similitude to that colloquial rule in the game of soccer allegedly being preached and indoctrinated by unfledged coaches that: "if a defender misses the ball, he must not miss the opponent's leg"[4]. The rule in advocacy then used to be- "if you're sure of not getting substantial justice based on the merit of the case, frustrate the suit by procedural and technical gimmicks ' i.e. "litigate the margins"[5]. These decisions threw into sharp relief the harsh effect of arbitrary mandatory deadlines, and it leaves the common legal practitioner with a serious question: does the judicial system stand for justice?[6]

Indeed, these procedural rules and strict adherence to the court rules are inheritance gotten from the common law of England and obviously, the negativities of these hereditary attributes of the English common law also. The days of the common law were the days when a cause of action would be defeated for failure to file the appropriate writ of form of Action; the days when the courts were being too systematic and unnecessarily concerned with forms, procedures, technicalities, rules and niceties than the need to do justice; the days when the most trivial error on the part of the counsel

[4] Adeola Owoade, Litigating the Margin; A Campaign for its Final Burial (2017)
[5] Ibid.
[6] Vincent Pavlish, Bowles v Russelll: They Got Me on a Technicality, 70 Mont. L. Rev. 147(2009).

or litigant would automatically result in the matter being struck out or judgment entered in against him; the days when the failure of a party to seek the most appropriate remedy from the little available remedies would shut the door of justice on him; the period when forms were equally as, if not more important, than substance.[7] Those were the days of the common law before the induction of equity in jurisdictional processes. During this period, the most common legal maxim used in practice was "forma non observata infertur adnullatio actus" which is to say when forms are not observed, a nullity of the act is inferred.

However, the hey days of technicality are over (not totally) as a way has been paved for the arrival of substantial justice, according to the words of the once upon a time a CJN, Walter Onnoghen in the celebrated case of Dapianlong v Dariyel[8] that "the reign of technical justice is over, on the throne now sits substantial justice, long may you reign, substantial justice". The fact that counsels are also human beings and not excluded from the pitfalls of making mistakes as in the words of Niki Tobi, JSC of blessed in memory, in the case of Abubakar v Yar'adua,[9] that " blunders must take place in the litigation process, and because blunders are inevitable, it is not fair, in appropriate cases, to make a party in the blunder to incur the wrath of the law at the expense of hearing the merits of the case". It is high time the courts of law started upholding and holding on to the tenets of justice as the basis, aim, objective and goal of any litigation process.

The rules of court relating to service are merely a rule of procedure and not a rule of substantive law conferring jurisdiction on a court. In FRN vs. DAIRO (2015)6 NWLR (pt 1454)141[10] the court held that: Rules of court are meant to be obeyed. However, obedience to

[7] Adeola Owoade, Litigating the Margin; A Campaign for its Final Burial (2017)
[8] Dapianlong v dariye[2008] 8 Nigeria weekly law reports (Part 10430) 332.
[9] *[2008] 4NWLR (pt1078)*
[10] [2015]6 NWLR (pt 1454)141

rules must not be slavish to the point that justice in a case is destroyed or thrown overboard. Therefore, if in the course of doing justice, some harm is done to some procedural rules which hurt the rule, the court should be happy that it took such line".

As a matter of fact, laws are made for man and not man made for laws, so in an instance where the letter if the laws will incur injustice, the spirit of the law should be allowed in substitution for the letters of the law regardless of the implicit and explicit letters of the law.

3.0 The Effects and Implications of Technicality in the Judicial Process

The procedural court rules are designed to administer justice effectively, but unfortunately, it's on the contrary. It is now what is used in clogging the wheels of the administration of justice.

In fact, the English philosopher and poet Walter Savage Landon, said in some years ago that when law becomes a science and a system, it ceases to be justice.

"Justice delayed is justice denied"; this sentence is almost turning to a *cliché* in the language of the judiciary as it is no longer a conviction to administer justice.

The decisions of the courts of law influences how much trust the society has in the judiciary. "The judiciary- the last hope of the common man; this statement that has always been a strong conviction, a sentence of hope no longer sees the light of the day. All thanks to the strict and rigid adjectival rules of the court. The common man no longer has any hope since the inception of the procedural rules which must be obeyed in the court of law et pereat mundus.

The electoral process, which is sui generis, has been through a lot, being a sacrificial lamb to technicality as so many electoral cases have been struck out because of a mere or minimal negligence or mistake on the side of either of the counsel which ought to be overlooked.

Considering the case of AGUNBIADE vs. OKE (2015) ALLFWLR (pt. 811)1330 C.A at 1333[11] where the petition of the appellants was struck out on grounds of wrong heading, "Presidential and Assembly Election Tribunal" instead of" National and State House of Assembly Election Tribunal. Also, in the case of Nnalimuo & Ors v. Elodumuo & Ors(2018) LPELR-43898(SC)[12],this is a case where a land was struck out in 2018 by the Supreme Court(47 years after) simply because a writ of summons which initiated the suit was not signed and the accompanying particulars of claim of the plaintiffs was signed in the name of a law firm. These are just tidbits among the innumerous instances of cases struck out on the basis of technicality

Another intrinsic implication of "litigating the margins" is that it punishes the litigants for the sins of the counsels. This of course, is not a good feature to hold on to in the administration of justice. The Supreme Court per Coker, JSC in Doherty v Doherty[13] stated the position quite pungently thus: "it occurs to us that the failure to comply with the conditions of appeal is entirely due in this case to the fault of appellants' solicitors and to shut them out from the hearing of appeal on the merits is to hold them personally responsible for the negligence of their solicitors". In the same vein, His Lordship, Karibi Whyte, JSC in Bello & Ors v A. G. Oyo State[14] was on the same motion that the court will not punish the clients for the carelessness of the counsel. He stated: "... I think I am speaking the mind of all engaged in the administration of justice not only in this court but in all courts in this country that the day the courts allow the inarticulate ignorance of counsel to determine the result of an action before it, that day will herald the unobtrusive genesis of the unwitting enthronement of injustice aided by the Court itself in default".

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[11] *[2015] All Federation Weekly Law Reports (pt. 811)1330*
[12] *[2018]Law Pavilion Electronic Law Reports-43898(SC)*
[13] [1964] 1 All Nigeria Law Reports 299
[14] [1986] 5 NWLR(pt. 45) 825.

Another intrinsic implication of technicality in the judicial process is that it tends to reduce the litigation process to an ordinary 'sporting game' where the best and most cunning player wins the game. For this reason, the supreme court has drummed it into the ears of the judicial workers and administrators of justice that they should be wary and at alert against it. The court per Aniagolu JSC in Afolabi v Adekunle[15] stated that " while recognizing that the rules of court be followed by parties to a suit, it is perhaps necessary to emphasize that justice is not a fencing game in which parties engage themselves in an exercise of outsmarting each other in a whirligig of technicalities, to the detriment of the determination of the substantial issues between them"

Furthermore, when there is importation of legalism into the application or the interpretation of any rule or statute, the law courts are unintentionally converted into workshops of technical justice while the judges being judicial technicians. This possibly, may be the reason why, in EZE VS. FRN (2017) 15 NWLR (PT. 1589)433[16] the Supreme Court sounded it loud and clear, "justices of the Supreme Court are not judicial technicians and the Supreme Court is not a workshop of technical justice."

4.0 Balancing the Legal Tussle: The Way Forward

While this article provided for the meaning, harmful and dangerous effect of technicality in the judicial process, it ceases not to advise on the way forward also to give explicably, dangerous pitfalls to avoid and calling for the final burial concerning technicality in the judicial process.

It is a glint of hope to the emerging trends in legal practice as some new laws and statutes are now in place to give guidance to the legal procedures. Technicality is now under depredation with the high

[15] [1983] LPELR-SC.126/1982
[16] *[2017]15 NWLR (pt.1589)433*

increase rate in the "progressive judges". The new court rules also, are heavy blows on technicality.

An opinion suggested in this article as a reform is to balance the legal tussle between technicality and substantial justice in the judicial process. This relies partly on the legislature. The legislative should identify areas of possible contentions in law and seek to amend them with a view to achieving Justice[17]. The controversies that have paraded the legal scene on the issue of technicalities have always lingered on the interpretation of statutes. The lack of precision and clarity in legal frame works may somewhat move the judges towards applying judicial activism in offensive ways. It therefore behoves the Nigerian legislature to begin thorough examinations of judicial decisions and proscribe amendments to the law where necessary.[18]

One of the opinions regarded as a way to balance the tussle between technicality and substantial justice lies on the counsels, solicitors and lawyers altogether. These people should be made to know and understand the basic court procedures and rules before standing in front of any judge to defend or prosecute a case. It will not be regarded as injustice if a counsel is punished rightly Each day, we call and cry for the final burial of technicality in the court but does that mean court rules should be abolished ultimately and the court of law defiled with contempt? Common lawyers should be made to understand that fatal and costly mistakes from their side may bring injustice (so to say) on themselves and their clients. Actions must be initiated by due process of the law. The main aim and objective of these court rules are to ensure rationality and inspection in the legal processes. But if courts are not enforcing these rules, the legal process will be abused. So, lawyers shouldn't use the ignorance of court rules as pretext against technicality. In fact, if court rules are observed and

[17] Joshua O. Ogwu, An Inspection of the Legal Tussle Between technicalities and substantial justice: a need for balance (2019) ULR online forum
[18] Ibid.

adhered to, it won't deny neither delay justice, so lawyers should try as much as possible to adhere to the court rules to avoid further interference in justice. Vigilantibus et non dormentitus jura subveniunt.

5.0 CONCLUSION

No one is of the view that court rules should be treated with contempt or to be neglected. Neither is this article trying to point accusing finger at technicality. What it undergirds is that, court procedures should not affect justice rather must go hand in hand. The swing must be balanced, swinging to the side of justice and technicality subsequently in accurate order, with none disrupting the other.

Ultimately, while lawyers, standing as counsels should be wary and observant of court rules (regarding any mistake or blunder), to be a good and efficient spokesmen and spokeswomen for their clients, court rules, judicial technicalities, procedural laws should not be strictly adhered to if it is going to be at the expense of justice because lege lata is not lege ferenda.[19]

The court of law is the only place that can help in the rectification of this issue. The legislature can do nothing but a little, it depends solely on the judiciary who interprets these laws.

[19] Park Ki-Gab, Lex Ferenda in International Law (UN ILC Journal 2018)