

Developing a Legal Framework for Virtual Court Hearing in Nigeria

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Abstract

This article focuses on the legal framework on virtual court hearing in Nigeria. There is a vacuum in the Nigerian legal system that was brought to limelight during the Corona virus pandemic and this gap relates to the issue of justice being denied and delayed in times of emergency such as pandemic, war and even insecurity which halt the flow of human activities and smooth administration of the legal system. Having regard to the mandatory requirements of the fundamental rights' provisions in the Nigerian Constitution which guarantee fair hearing and the right to be tried before a court of law within a reasonable time, it becomes imperative to define the legal foundation for the application of the procedure for virtual court hearing in Nigeria in the absence of an explicit constitutional safeguard. The article considers the legality of virtual court hearing in the Nigerian legal system and the constitutional requirement that trials should be held in public and within a reasonable time. The article observes that though there is no direct constitutional backing for the application of virtual court hearing in Nigeria, there are explicit rules of court regulating the practice as a remedy in the time of emergency. The study finds that the practice of virtual court hearing has already gained recognition in the Nigerian legal system, however, there is need for a constitutional backing on the framework in the light of the conflicting opinions and skepticisms surrounding the practice.

Keywords: Constitutionality, Courtroom, Public place, Virtual court hearing, Virtual hearing application.

Introduction

Fair hearing has always been a human right issue and a fundamental right in almost all jurisdictions. Thus, the integrity of every trial is founded on whether or not the trial is conducted in accordance with law. To this extent, the courts have a special role in ensuring that the fundamental right to fair hearing is strictly adhered to. Salient among the fundamental provisions as provided in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) is the right to be tried within reasonable time. The Constitution provides that any person who is arrested or detained shall be brought before a court of law and that any person charged before a court of law shall be entitled to fair hearing within a reasonable time (1). The Constitution envisages an unhindered access to justice (2) at all time, which is a fundamental pillar of democracy, and which cannot be suspended or limited (3). Therefore, it is important to ensure that the Nigerian judicial institutions continue to perform their functions at all

times to enhance the right to fair trial by an independent and impartial tribunal. This implies that prevailing emergencies like the corona virus pandemic, insecurity and even war ought not to be a reason to suspend judicial proceedings. In Nigeria, the activities of the Indigenous People of Biafra (IPOB) in the Southeast and the Islamic State of West Africa Province (ISWAP) in the Northeast have all increased the insecurity concerns in the country. These have also halted the smooth running of the administration of justice hence the agitations to openly establish the practice of virtual hearing in the Nigerian legal system is gaining more momentum. The corona virus pandemic is one of the emergencies that have caused health concerns globally bringing all human activities to a standstill. In order to meet with the exigencies of the time, some jurisdictions sought for a solution which enabled them to carry out judicial functions during the pandemic. For instance, as England went into lockdown, the United Kingdom's Supreme Court by a statement dated 23rd

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March 2022 posted on its website announced that it would hear all cases and deliver judgments through videoconferencing (4). This brought to the limelight the necessity of virtual court hearing as a permanent and established procedure in some jurisdictions. In Nigeria, apart from the corona virus, other factors such as insecurity, kidnapping, conflicts between cattle herdsmen and farmers, the Islamist Movement of Nigeria (IMN) in Central Nigeria, the Niger Delta Vigilante (NDA), the Indigenous People of Biafra (IPOB) in the Southeast and the Islamic State West Africa Province in the Northeast part of Nigeria have worsened the issue of insecurity in Nigeria thereby halting the smooth administration of Justice. This has contributed immensely to why virtual court hearing should be welcome as part of the Nigerian legal system. This article is discussed as follows: the introductory section sets out what the article seeks to achieve. The section on result and discussion discusses the major thrust of the article. It analyses the concept of virtual hearing and investigates the constitutionality of the practice in Nigeria. This section also examines the challenges of adaptability and how to integrate the practice of virtual hearing into the Nigerian legal system. The final section draws the conclusion and makes recommendations.

Materials and Methods

This study is original research using the doctrinal research method which includes a critical review of primary source materials like the Constitution of the Federal Republic of Nigeria, relevant legislations, case laws as well as secondary materials which include the opinions of experts and learned authors in published material and dictionaries, reports and in the internet.

Results and Discussion

Conceptual Clarification

Virtual Hearing

The term 'virtual hearing' can be used interchangeably with the terms 'videoconferencing,' 'audio virtual communication,' 'remote hearing' or 'hybrid hearing' though they have slight variations. 'Virtual' means being able to see, hear and communicate with another individuals in real time, using electronic means (5). A virtual hearing therefore can be defined as a hearing in court by

means of audio-visual platform and teleconferences applications such as Zoom, google meet, skype, Microsoft Teams, WhatsApp, telegram etc. (6). This is a form of court hearing that enables Judges, lawyers, court staff, security personnel, witnesses, and stakeholders to attend hearings using the internet. The hybrid hearing relates to proceedings held with some of the parties in a particular place usually the open court room or the Judge's chamber while others join online. Full virtual proceeding involves remote hearing in which all the parties including judicial officers and the staff are expected to join the proceeding online from wherever they are.

Hearing in a Physical Court Room

Generally, a Court is a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice or a permanently organised body with independent judicial powers defined by law (7). The time and place of meeting need not necessarily be fixed by law. This is why there is no physical courtroom designated by law as a permanent court. Several courts in Nigeria are holding in rented apartments and in temporary venues. This does not invalidate their proceedings. It is the presence of the bench properly constituted that makes the court. Though, courts are expected to sit within normal working hours, i.e. between 9 am and 4pm on week days, Judges have discretion to order sittings outside these time and days. Thus, a physical court is wherever and whenever the judges decide to sit at any particular time. However, it is expected that the venue of a Court should be decent and accessible to the public and the time should be reasonable.

Virtual Hearing Applications

These are audio visual platforms approved by the court to carry out virtual hearing. These platforms according to the Lagos State High Court Practice Directions 2020 for the Covid 19 Period can be either zoom, Skype or any other audio-visual platform approved by the court (8). The word 'any other audio-visual platform approved by the court' implies that other platforms such as whatsapp video call, telegram video call, micro soft video call and the likes can be used for virtual hearing as long as same is approved by the court. 'Zoom meeting' means a video conference meeting that is held, using zoom.

One can join such meetings, through a webcam or phone. The access to the zoom meeting is by having the login details and the password. It has a feature where documents can be screen-shared to participants and it has the mute and un-mute column.

The Constitutionality of Virtual Court Hearing

The Constitution of the Federal Republic of Nigeria 1999 as amended is the supreme law in Nigeria and the legality or illegality of any law; act or omission in Nigeria is subject to whether or not such law, act or omission is inconsistent with the provision of the Constitution. Any law, act or omission that is inconsistent with the provisions of the Constitution is null and void to the extent of its inconsistency (9). In the case of *Njoku v Jonathan & Ors* (10) the Court of Appeal posited that the “Constitution is the grundnorm and it is sacrosanct, for it is from it that other laws are made, rights created and powers conferred. It is the source from which other tributaries emanate and the 1999 Constitution of the Federal Republic of Nigeria is the foundation upon which the democratic system of Government we practice is anchored.” The Constitution does not make any provision relating to virtual court hearing and as a matter of fact, the legal draftsmen never envisaged that a time will come when it will become an issue as to hearing of cases online. Notwithstanding, the absence of constitutional foundation should not inhibit the adoption of virtual court hearing generally as a legally recognised procedure in Nigeria. The Constitution of the Federal Republic of Nigeria does not suggest that virtual hearing is unconstitutional. For this purpose, it is important to analyse the provisions of the Constitution which stipulate that trials should be held in public. Section 36 (3) and (4) of the Constitution provides:

- (3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal shall be held in public
- (4) Whenever any person is charged with a criminal offence, he shall unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal

The major argument around the above provisions is whether or not hearings conducted in a virtual space can be said to be a public hearing within the contemplation of the provisions of the Constitution. It is important to note here that the Constitution does not define the word ‘public’ hence it is difficult to ascertain what the draftsmen intended to achieve with the usage of the word public.

What is a Public Place?

In the case of *Edibo v State* (11) the term ‘public’ was defined by the Supreme Court of Nigeria as “the use of everyone without discrimination. Anything, gathering or audience which is not private is public”. It also means place to which the public has access (12). The literal rule is best suited for this discussion because the word ‘public place’ as used in the Constitution is not vague nor ambiguous and can be conveniently given its ordinary and dictionary meaning without leading to absurdity. The term “public places,” using the ordinary meaning of the word, implies any enclosed places that is open to, used by, or accessible to the general public. The major factor in determining whether a place is a public place is whether that place can be accessible to the general public. In the case of *Oyeyipo v Oyinloye* (13) the question of what constitutes a public place under section 36 (3) of the Constitution was suggested as being a question of fact. The Court held in that case that a Judge may sit in chambers without excluding members of the public. Conversely, in the case of *Abashi v. COP* (14) the Court held that it is unconstitutional to sit in chambers. In both cases however, the facts are different and the former case was decided based on the appropriate rule of the Supreme Court. In the case of *Ovunwo & Anor v. Woko & Ors.*(15) the Supreme Court held that the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law includes amongst others that all concerned shall be informed of and have access to such place of public hearing. The Court of Appeal in the case of *Kosebinu & Ors v Alimi* (16) the issue was whether or not the court was right to set aside a judgment of a trial court delivered in the Judge’s chamber in violation of section 36(3) of the Constitution. The Court held that for a place to qualify under Section 36(3) of the Constitution as “public” it must be out rightly accessible, and not so accessible on the basis

of the “permission” or “consent” of the Judge.” Flowing from the above case laws, once the requirement of accessibility by the public is satisfied, such hearing can be said to be a hearing in the public as contemplated by the Constitution.

Does Virtual Court Hearing Violate Section 36 of the Constitution?

Virtual Hearing conducted in any videoconferencing application such as zoom qualifies within the concept of public place discussed above and therefore constitutional. The zoom application for instance is an online videoconferencing model which allows for more than 100 participants at a glance provided that they have the password and are able to log into the meeting or court session using the login details. Thus, publishing the links and login details is imperative. This qualifies virtual hearing as public hearing and this should be seen as satisfying the constitutional requirement of public access to the court proceedings or proceedings held in public. The study argues that once the login details are made public, it is immaterial if any member of the public is unable to connect because of lack of browsing data, bad network, or absence of appropriate electronic device. Otherwise, remote court hearing may not be practicable in Nigeria for a longtime. Besides, all that is needed to satisfy the requirement of access to physical court proceedings is allowing the door of the court room open to the public. It does not require faring to the open courts those who desire to attend the courts. That is the private responsibility of the individual. Similarly, the issue of connectivity, availability of browsing data and a device with the requisite facilities to connect virtually are a private issue for the individual. Further points to justify the practice of virtual court hearing include the following

a. The Position of the Supreme Court: The constitutionality of virtual court hearing was deliberately tested by some state Attorneys General at the Supreme Court during the wake of the practice in Nigeria. This was after the National Judicial Council (NJC) rolled out guidelines in 2020 for virtual hearing as a result of the restrictions on physical meetings caused by the Covid 19 pandemic. The Supreme Court however struck out

both suits as being speculative and pre-emptive as no injustice was complained of as a result of the practice. Though the Supreme Court did not decide the suits on their merit, Rhodes-Vivour, JSC thus held that “as of today, virtual sitting is not unconstitutional.” These are the cases of *Attorney General of Lagos State v Attorney General of the Federation & the National Assembly* (17) and *Attorney General of Ekiti State v Attorney General of the Federation & 2 Ors.* (18) The purpose of these suits was to move the apex court to make a direct statement on the issue of virtual sitting in Nigeria within the current legal system. This was to address the speculations and reservations entertained by judges, lawyers and legal scholars on the legality of the practice. In the case filed by the Attorney General of Lagos State, the applicant’s aim was to inquire whether virtual hearing commenced in the Lagos State High Courts or any other court is constitutional with reference to section 36 (1), (3) and (4) of the Constitution which provides that court proceedings should be held in public. The applicant also challenged the power of the National Assembly to amend section 274 of the Constitution which permits the Chief Judge (CJ) of a State to make rules for regulating the practice and procedures in the High Courts as amending that section to vest power on the CJs to make rules prescribing virtual hearing would mean delegating legislative powers to the judiciary. The latter case was by the Attorney General of Ekiti State. It sought to nullify the instruction of the Attorney General of the Federation made on 20th April 2020 to heads of all courts in the country directing virtual court hearing. It stated that the instruction contravened the Constitution, particularly, sections 1(3), 4(6), 5(2) and 6(2), 36(3 and 4), 272 and 274 of the Constitution. Though the Supreme Court did not hear the cases on their merit, the pronouncement which is a form of orbiter that virtual sitting is not unconstitutional has been relied on generally by the court as giving credence to the constitutionality of remote court hearing in Nigeria. Obviously, the decisions of the Supreme Court have provided a leeway to what the judgment of the court would be when the issue of the legality of virtual hearing is raised again at the Supreme Court as these decisions are already serving as a procedural

validation of the practice of hybrid virtual sitting in the lower courts and virtual sitting for the purpose of delivering judgment and rulings by the Court of Appeal. Though the NJC Guidelines were meant to address the challenges of Covid 19 pandemic, several courts including the Court of Appeal Asaba in Delta State of Nigeria delivered several judgments virtually even after the lockdowns were removed.

b. Virtual Court Hearing as an Emergency

Remedy: The major agitation against the constitutionality of virtual hearing is that it is against the tenet of fair hearing as provided under section 36(3) of the Constitution. As a rule of necessity, virtual hearing is regarded as a remedy in times of exigency and should be accommodated accordingly. The Nigerian legal system has shown flexibility in the application of the constitutional safeguards on fair hearing. The Nigerian legal system allows certain applications to be made *ex-parte*. Such applications are brought without informing or putting the other party on notice. This ordinarily is an infraction on the provisions of the Constitution on fair hearing. In the case of *Njokanma & Anor v. Uyana* (19) the Court held: “*ex-parte* motion is one in which the applicant for some cogent reasons, cannot put the other party or parties on notice ... Both are acceptable in law. The general practice; however, is that motions are filed in Court on notice. *Ex-parte* motions are filed but sparingly considered by the Court in extreme or special circumstances.”

The study contends that if an *ex-parte* motion is recognised under the Nigerian legal system as a remedial application in the time of emergency notwithstanding the fact that it robs the respondent of the opportunity of being heard, and ordinarily a violation of the respondent’s constitutional right to fair hearing, then virtual hearing, being a practice during emergency, does not breach the constitutional right to fair hearing.

c. No Express Prohibition of Virtual Court Hearing:

There is no express prohibition of virtual court hearing in the Constitution; neither is there any statute prohibiting the hearing of cases virtually in the courts. The principle of law has remained inviolable to the effect that, whatever is not prohibited is permitted (20). Also, in the case of

INEC v Advance Congress of Democrats (ACD) & Ors. (21), it was held that what is not expressly prohibited is impliedly allowed. Consequently, in the context of the Constitution, virtual hearing having not been prohibited, is impliedly permitted

d. Practice Directions and Guidelines: In order to accommodate virtual court hearings in Nigeria several heads of courts were directed to issue practice directions for VCH in order to provide a legal platform upon which virtual court can be practiced. Though there are no substantive provisions in the statutes establishing the various courts on videoconferencing or virtual sitting hearing generally, there is no doubt that the heads of the various courts which issued the Practised Directions have the constitutional powers to do so (22). The issuance of the practice directions on virtual hearing during the corona virus pandemic and the subsequent application of same where different Judges gave rulings and Judgment virtually connotes that this practice is legal and has been incorporated into the legal system. The Constitution must therefore be interpreted whenever the need arises to give credence to its validity.

Constitutional Amendment Option

First, it is important to understand what a constitution is and what it should contain. In ascertaining the above, reliance is placed on the case of *FCDA v Ezinkwo* (23) where the Court of Appeal held that “the Constitution being the organic law of the country and the *fons et origo* from which all other laws derive their validity. No part of it can be described to be adjectival or procedural law. The Constitution is a substantive law.” Admittedly, matters of procedure should not be found in a constitution. If the Constitution is a substantive law and not procedural then amending it for the purpose of virtual hearing is also not important since the issue of court hearing is a matter of procedure. According to Pinheiro (24): “A Constitution is not meant to provide laws and regulations, for every aspect of a functioning society. It is usually neither practical nor beneficial for a constitution, when envisioned as a long-term, general framework for operation of the State, to go into details. It is impossible to predict how society will look in the future and what its specific circumstances and needs will be.”

He notes further that the Constitution does not provide for the procedures regulating how the executive and the legislative arm of government perform their administrative functions such as how the executive arm of government is to hold its meetings or how the legislature would hold parliamentary sessions (24). It is therefore not necessary to amend the Constitution to specify how the Judiciary should hold court sessions. He states further that virtual hearing relates to how the courts carry out their judicial function in delivery justice and as such a matter of procedure.

This study seeks to differ from the postulations of the learned scholar. It is not correct to maintain as a general rule that a constitution does not contain procedure. The Nigerian Constitution contains a handful of provisions relating to procedures of court. An example is the provision relating to the issue of the jurisdiction of the courts (25). However, why the law makers may not amend the Constitution to provide detail procedures on virtual court hearing, it can provide a general recognition to the practice of virtual court hearing. This becomes the constitutional platform on which the heads of courts would issue practice directions to enable the courts hold hearings virtually.

Evidential Issues on Virtual Court Hearing

The Evidence Act is the statute that regulates evidence in Nigerian courts. The Act sets out the procedures for giving evidence, tendering of documents. Others include the relevancy of facts, admissibility of evidence, burden of proof and issues bordering of hearing of evidence in court. Certain provisions of the Evidence Act shall be considered. The Evidence Act (2011) provides that 'In any proceeding where direct oral evidence of a fact would be admissible, any statement made by a person in a document which seems to establish that fact shall on production of the original document, be admissible of that fact'. (26) The question that arises therefore is: can the original document envisaged by section 83(1) of the Evidence Act be produced and confirmed in a virtual hearing? Furthermore, the Act defines primary evidence as the document itself produced for the inspection of the court (27). Can such primary document be presented during virtual hearing? It is our view that the answer is yes. Section 84 of the Evidence Act 2011 defines 'document' to

include that which is stored in electronic form provided it meets the requirement stated in subsection 2 of that section. Thus, original documents can be in electronic form and such can be inspected electronically and tendered during virtual hearing. Where a relevant document does not exist originally in electronic form the scanned copies of the document filed along with the suit should be admissible as secondary evidence under virtual hearing. The Court should presume such documents genuine until the adverse party proves them otherwise. The burden of proving that the document is not genuine is that of the adverse party.

The provisions of the Evidence Act 2023 (as amended) go further to show that virtual hearing is gaining more grounds in Nigeria. The Act provides that any affidavit sworn before any Judge, officer or other person duly authorised to take affidavits in Nigeria whether in person or through audio visual means may be used in the courts in all cases where affidavits are admissible (28). The use of audio-visual means for affidavit is further provided for under sections 110 and 119(2) of the Evidence Act as amended. The term 'audio visual communication' is defined to mean being able to see, hear and communicate with another individual in real time, using electronic means (29). The above amendments have proven that evidence can be taken through audio visual means.

Virtual Hearing in the Administration of Criminal Justice

In Nigeria, the Administration of Criminal Justice Act (ACJA) enacted in May 2015 provides for the administration of criminal justice and for related matters in the courts. It is the substantive and procedural law that deals on the guidelines to be adhered to in criminal trials. The ACJA does not however have any provisions expressly prohibiting criminal trials held virtually. The Act expressly provides for video hearing of witness in specific instances where the court deems it necessary to protect the identity of the victim or a witness. In such instances, the court may take or receive evidence by video link (30). The Administration of Criminal Justice Law of Delta State 2022 (ACJL) also provides expressly for video conferencing and this move shows the willingness in the legal system to adapt to the trend of technology in justice deliver.

The ACJL provides that in any proceeding, a Judge or Magistrate may either *suo moto* or upon an application of a party direct that evidence be given in the ordinary way or in an alternative way (31). The alternative way to give evidence includes any practical and technical means to enable the judicial officer and the legal practitioner see and hear the witness giving evidence (32). This means hearing which may not be within the court room provided the judicial officer can see or hear the person giving evidence. It is our contention that this law contemplates video conferencing and the likes as a means of virtual hearing. To settle the ambiguity that may arise from the above provision, the ACJL goes further to state that the Judge or Magistrate must give each party an opportunity to be heard either in chambers or if the Judge or Magistrate deems it expedient, through a video link (33).

Adaptability to Virtual Court Hearing in Nigeria: Factors and Challenges

Lack of Technological Know How

Virtual hearing requires high level of technological knowhow in accessing and participating in the proceedings. The fear has been expressed that virtual court hearing may shutout litigants who are not tech savvy or who cannot afford the requisite facilities. The technological knowhow includes how to operate the computer or phones as the case may be, proper acquaintance with the video conferencing platform so as to understand its workings and styles during hearing. This challenge is a burden on the courts, the staffs, the lawyers as well as the litigants. While this challenge does not affect the legality of the procedure it surely affects a section of the Nigerian society, particularly, litigants and courts in rural and remote areas. To this extent, the NJC Guidelines restricted application of the virtual hearing to matters which do not involve the hearing of evidence.

Hacking and Cyber Security

There are fears too that hackers can break into the process. Hackers may breach the video conferencing process with the purpose of stalling the hearing and or even ruling or judgment which they feel might be injurious to them. Furthermore, documents and recordings from virtual hearings that are stored in the website of the court can be tempered with and

even formatted by high internet infiltrators and thereby make these items unavailable for the use of the court and the public. Technological experts should be employed to provide high cyber security to the virtual hearing platforms to be used by the courts.

Lack of Technological Infrastructure

Technological Infrastructural requirements such as the desktop, laptop, smartphone, internet connectivity, printers, devices ensuring uninterrupted power supply, camera, microphones, speakers, display unit, and adequate lighting are necessary for virtual hearing. The absence of these affects the courts, the litigants and the legal practitioners who are to participate in the virtual hearing. In a report to premium times newspaper the Chief Information Officer of the Federal High Court in corroborating this challenge above stated that lack of funds had hampered the installation of virtual court facilities across all its jurisdictions (34). The infrastructure requirements of the courts can be addressed by ensuring budgetary allocation for development of designated website for live court streaming, provision of internet and power supply for courts.

Inadequate Laws Regulating Virtual Court Hearing

This is another challenge that is faced by virtual court hearing. Laws are needed for the effective running of any proceedings. By this we mean the rules of court that govern the workings of the court. Just as there are Rules for normal court proceedings, there should be rules of court expressly regulating virtual proceedings so as to ensure that virtual hearing proceedings are generally and legally admissible under the Nigerian legal system. While there is need for a constitutional framework for the practice of virtual court hearing, there is need for incorporation of this practice in the Rules of Court and Practice Direction. It is expected that more heads of courts would have amended their rules of court since 2020 when the NJC set out the Guidelines. This will allay the uncertainties and doubts on the legality of the practice. In particular, there is need for the amendment of the Matrimonial Causes Rules of 1983 which still expect petitioners seeking for dissolution of marriages and other matrimonial reliefs to be physically present in court

to give evidence no matter where they reside - in the World. Amending these rules to accommodate virtual hearing in deserving circumstances will enhance justice in matrimonial cases in Nigeria.

Bad Network

Network connection is a very important aspect of all virtual meetings including virtual court sittings. Unfortunately, network interconnectivity is a major challenge in Nigeria. Telecommunication networks are still poor in Nigeria and worse in the rural areas. The factors responsible for poor network connections include congestion of the network and poor electricity supply. All telecommunication base stations in Nigeria have standby power generating sets which run for a long time in the absence of power supply from the Power Holding Company of Nigeria (35). Nigeria is a very large country requiring several telecom base stations with the attendant cost of maintenance. Though we argued that the availability of the login details is enough to make virtual hearing public, poor internet connectivity can adversely affect the process of VCH and thereby make it unproductive and unreliable (36). While the judiciary may not be able to direct telecommunication companies to provide good internet connectivity for the purpose of virtual hearing, there is need for adequate funding by the government to enable the courts secure the best of facilities for the practice.

Advantages of Virtual Hearing

Expert Evidence

The Evidence Act provides that when the court has to form an opinion on point of foreign law, customary law or custom, or science or art, or as to identity of handwriting or finger impressions, the opinions of any person skilled in that area in question shall be admissible as expert evidence (37). In many criminal and civil proceedings it is usually expedient to have testimony from expert in areas where the court needs clarifications. There are circumstances however where this expert may not be within the jurisdiction of the court. This includes the fact that they are usually very busy. There are instances where trials have suffered series of adjournments because an expert witness is not available. If video conferencing is permitted, expert witness could still fully focus on work and join the

screen for the virtual hearing and give evidence without delay from any location.

Probono Services

Virtual hearing would be of immense benefit to *probono* lawyers. These are lawyers rendering free legal services. Free legal services are seen as an aspect of social commitment by lawyers to the society. It is a form of giving back to the society. One of the key requirements for lawyers in Nigeria to be inducted as a Senior Advocate is the number of free services offered free to indigent citizens that can not afford legal fees (38). The Rules of professional conduct further mandate that a lawyer assigned to defend an indigent prisoner must not refuse such task except for substantial reasons (39). Free legal services to indigent defendant can be enhanced by the adaptation of virtual court hearing where a lawyer can be at liberty to represent the defendant from the comfort of his home or office without necessarily going through the huddles of heavy traffic and risk of insecurity especially since nothing is expected in return for such brief.

Witness Protection

Witnesses may refuse to come and give evidence for several reasons which include safety and health reasons and other factors which make it inconvenient for the witness to testify. The ACJA 2015 allows evidence to be taken through videoconferencing where the court deems it necessary to protect the identity of the witness in matters relating to some special offences such as kidnapping, anti-terrorism and other high-risk offences (40). This provision is aimed at protecting the witness who might not be willing to give evidence for fear of being attacked by the defendants or his accomplices.

It Saves Time and Reduces Cost of Litigation

One of the most significant benefits of a virtual hearing is the amount of time and money it saves. It is a known fact that the cost of living in Nigeria is on the increase. As a matter of fact, with the current removal of fuel subsidy by the Nigeria government, the cost of transportation has increased by over 200 per cent. The practice of virtual hearing will enable lawyers and litigants to login from the comfort of their homes or offices instead of driving to the courthouse and waiting in the hallway for the hearing to start.

Conclusion

Having regard to the benefits of VCH analysed above there is no doubt that virtual court sitting enhances effective justice delivery and will enrich the Nigerian legal system more than the fears which antagonists of VC practice are entertaining. The law appears settled from the rulings of the Supreme Court, the extant provisions in the Evidence Act 2023 (as amended) and the ACJA that virtual hearing has legal basis in the Nigerian legal system even though there is no explicit constitutional provision for it. The study reveals that access to justice is a fundamental right and same cannot be clogged by narrow interpretation of the Constitution. Therefore, since it is a known and acceptable fact that information communication technology has become the trend in a contemporary society, the legal society should not be left behind and all efforts should be made to embrace the practice of virtual hearing in Nigeria. It is suggested that non contentious aspects in litigation such as motions, plea, and adoption of written addresses, rulings and judgments may be held virtually whether or not in emergency situation. It is recommended that detailed procedural rules should be made by the heads of court to comprehensively regulate the practice of virtual hearing within their jurisdictions as it is only necessary to amend the Constitution to the extent of providing a general foundation for the practice. A procedural guidelines and rules of court for VCH should specify elaborately circumstances in which the court may be moved to sit virtually, what an application for VCH must contain and the physical background or environment in which the lawyers, parties and witnesses may conduct such online proceeding.

Abbreviation

Nil

Acknowledgment

Nil

Author Contributions

Brown E. Umukoro prepared, developed and edited the manuscript. Avwerosuo Oghenedoro conceived the idea, analysed the materials and formulated the framework. Omozue Ogorugba

Moses structured the manuscript and developed part of the arguments.

Conflict of Interest

There is no conflict of interest in relation to this study.

Ethics Approval

Not Applicable

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