

# THE IMPLICATIONS OF LEGAL TECHNICALITY ON RULE OF LAW AND ADMINISTRATION OF JUSTICE

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## Abstract

This article is a deconstruction of functions of legal technicality and the implications of technical elements on the rule of law and administration of justice in Nigeria. The discretions of court to depart from the provisions of its rules create a problem of uncertainty in the administration of justice and seemingly violate the principle of rule of law. It is discovered that the main purposes of technicality embedded in adjectival laws are designed to ensure justice is done in a certain, predictable and stable manner when the court or persons acting in judicial capacities are called upon to apply the substantive law within a given legal system. This article expounds judicial pronouncements and reviews some literatures; it was discovered that without legal technicalities, there cannot be justice because adjectival rules are part of the rules that are made to be obeyed to achieve rule of law. Thus, it is argued that legal technicality is made to regulate the dispensation of justice by the self-regulated legal system. In this article, it is recommended that in the administration of justice, justice should be prefigured by the application of the applicable adjectival laws unless any provision of law dictates otherwise. This concludes by advocating that the courts should always insist that litigants must comply with all the provisions of relevant laws in pursuit of justice.

**Keywords:** Technicality, adjectival law, substantive law, legal system, court, justice, Litigants

## I. Introduction

The words ‘legal technicality’ is generally taken to represent, ordinarily, a strict adherence to the words of statutes to determine the spirit of justice. This is because, ‘law is not a brooding omnipresence in the sky, but the prophecy of what the Court will do’. In giving life to the abstract concept known as legal technicality, His Lord Justice Niki Tobi JSC (as he then was) notes<sup>1</sup> that:

A technicality in a matter could arise if a party is relying on abstract or inordinate legalism to becloud or drown the merits of a case. A technicality arises if a party quickly takes an immediately available opportunity, however infinitesimal it may be, to work against the merits of the opponent’s case. In other words, he holds and relies tenaciously unto the rules of Court with little or no regard to the justice of the matter. As far as he is concerned, the rules must be followed to the last sentences, the last words and the last letters without much ado, and with little or no regard to the injustice that will be caused the opponent

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<sup>1</sup> In *Adedeji v The State* (1992) 4 NWLR (Pt. 234) 248, at page 265

While this article is not advocating that justice should be sacrificed on the altar of mere regularities, it encourages the courts to insist that the laws should be obeyed and complied with by all litigants before the Court. It is argued that it is only when the laws are followed that we have the rule of law and justice will be seen to be done. This article focuses on the provisions of law that unlined the doctrine of legal technicality and pronouncement of the superior courts in Nigeria on legal technicality related provisions of law. This article is divided into eight subsections. The first subsection highlights the concept known as legal technicality in Nigeria. The second subsection discusses the Nigerian Legal System and underscores the differences between adjectival laws and administrative law. Third subsection distinguishes between mere irregularities in procedures and legal technicality that are mandatory. The fourth subsection explains how the court treats mere irregularities and substantial irregularities. In the same manner, subsection five deals with the concepts of fair hearing, rule of courts and administration of justice in Nigeria.

The focus of subsection six is the effects of legal technicalities in administration of criminal justice. The seventh subsection examines the general legal implications of legal technicality on rule of law and administration of justice. are considered as well as the effects of same on rule of law and administration of justice in Nigeria. The last subsection summaries the article and makes some recommendations on in respect of litigants' failure to hold fast to the provisions of laws.

## II. **Dialectics of Legal Technicality**

The general principle of moral ethos that underlines the negation of strict adherence of application of law during the administration of justice is factored by the fact that laws are made for man and not the other way round. Thus, where the letters of law<sup>2</sup> will occasion injustice to any other party in a judicial litigation or adjudication, the spirit of the law should be applied notwithstanding the direct, explicit and implicit letter of the law. Otherwise, the party who succeeds by invoking the letters of the law will '*leave the Court with a shield of victory obtained on mere technicalities*'.<sup>3</sup> Technicality becomes an issue in a matter and it is said to be a 'mere technicality' where a party places absolute reliance on inordinate legalism to becloud or drown the merits of a case and escape from his legal liability,

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<sup>2</sup> Especially rule of Courts

<sup>3</sup> *Akeredolu v Abraham & Ors* (Supra).

responsibility or detriment. In other words, it arises when a party relies on or holds tenaciously unto the rules of Court with little or no regard to the justice of the matter.<sup>4</sup> Technicalities represent the law as contained in the law books: blind, abstract, inactive and brutish, and it stands on one side during the administration of justice.

On the other side of administration of justice is the principle known as rule of law which requires absolute application of the related law without fear, favour, partiality and or any other extraneous consideration. The administration of justice must be ruled by the dictates of the law- as the law is. Rule of law requires that citizens should be governed by accepted rules, rather than by the arbitrary decisions of rulers<sup>5</sup> and administrators of the judiciary. ‘Where the law is subject to some other authority’, the saying as imputed to Plato, ‘and has none of its own, the collapse of the State is not far off; but if law is the master of the government and the government is its slave, then the situation is full of promise and men enjoy all the blessings that the gods shower on a State’.<sup>6</sup>

The whole purpose of law and rules of Court is to ensure that the affairs of the Court during the administration of justice are carried out in an orderly fashion with reasonable degree of certainty that prescribed acts have been duly complied with by the parties in the interest of justice.<sup>7</sup> Thus, where the law prescribes a way of carrying out an act, such is the only way to be followed, when a date is specified for the doing of an act, that date becomes sacrosanct. This is because the rules of Courts and practice direction are made to be obeyed and no favour should be shown for not obeying same.<sup>8</sup> However, it has also been judicially noted that strict and unreasonable adherence to technicality in the administration of justice shuts out justice.<sup>9</sup>

However, where there is a need to approach the Court to enforce a right, duty, responsibility, obligation or redress, guaranteed by the law, the spirit of justice will have to look at the legal procedures and processes to see whether the provisions of the law that established the Court, the rules, regulations and practice directions of the Court is followed. This is the focal point of this study, an attempt to deconstruct the need for litigants to strictly adhere to the fundamental provisions of adjectival laws in

<sup>4</sup> *Osareren v FRN* (2018)10 NWLR (PT.1627) 221 at page 226.

<sup>5</sup> Alok Kumar Yadav, ‘Rule of Law’ 2017, 4:3, International Journal of Law and Legal Jurisprudence Studies, 205-220,

<sup>6</sup> *Ibid*,

<sup>7</sup> *F.S.B.Int. Bank Ltd Vs. Imano (Nig.) Ltd* (2000) 11 NWLR (Pt.679) 620 at 634

<sup>8</sup> *Williams v Hope Rising Funds Society* (1982), 2 Sc 145 quoted with approval in *Jimoh O. Ojugbele v Mr. Musefiu O. Lamiidi* (1999) LPELR-CCN/1/99, Ratio 2.

<sup>9</sup> *Akeredolu v Abraham & Ors* (2018) LPELR- 44067 (SC).

order to enforce the provisions of substantive laws. This is because a legal system is a system of general rules, which are created and applied consistently with procedural justice and fairness.<sup>10</sup>

### **III. Nigerian Legal System, Adjectival Law and Administration of Justice**

A legal system is the interaction between the law and the people in a society in order to maintain the peace, State social order (founded on ideals of freedom, equality and justice)<sup>11</sup> and good government. Simply put, a legal system is a set of laws of a country and ways in which they are interpreted and enforced.<sup>12</sup> The legal system is regulated, mostly by procedural or adjectival law.<sup>13</sup> Accordingly, it is imperative that a healthy legal system must meet the eight fundamental conditions internationally recognised for the safeguard of impartiality in the application of the law, that is: (1) a system of rules; (2) promulgation and publication of the rules; (3) avoidance of retroactive application; (4) clear and intelligible rules; (5) avoidance of contradictory rules; (6) practicable rules; (7) consistency of rules over time and (8) congruence between official actions and declared rules.<sup>14</sup> These essentialities represent the fact that every legal system must have three necessary attributes: ‘the laws must be general; equal and certain, to ensure justice and adherence to the rule of law.’<sup>15</sup>

The laws that enable Courts and the rules made for the Courts are the pivotal controls put in place to ensure that the substantive law<sup>16</sup> of a given country are interpreted and enforced with certainty, predictability and stability. Thus, the rule of law requires that normativity and law application reach a degree of development sufficient to provide for certainty, predictability and stability<sup>17</sup> to prevent arbitrariness and sentiments in the application of the substantive law. It could be argued that the procedural laws are the fuel through which the administration of justice is ran. In fact, it is the adjectival law that gives both meaning and life to the substantive law. Therefore, just like the substantive law, the principle of rule of law dictates that the provisions of the adjectival law must be enforced by the Courts during the

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<sup>10</sup> Stéphane Beaulac, ‘The Rule of Law in International Law Today’, in Dans G. Polambella & N. Walker (Dir.) *Relocating the Rule of Law*, (Hart Publishing 2009), 197-223.

<sup>11</sup> Section 17 of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

<sup>12</sup> Collins Online English Dictionary < <https://www.collinsdictionary.com/dictionary/English/legal-system> > Accessed 17 October, 2019.

<sup>13</sup> Body of law that sets forth the methods, rules, and procedures for Court cases.

<sup>14</sup> Stéphane Beaulac (n10), 203.

<sup>15</sup> F. A Hayek, *The Political Idea of the Rule of Law* (National Bank of Egypt 1955), 34.

<sup>16</sup> The part of law that establishes, defines, and regulates rights, including law of contracts, tort, wills, marriage, criminal responsibility etc.

<sup>17</sup> Stéphane Beaulac (n10), 206.

administration of justice strictly to the letter without favour, fear or sentiment. The judiciary has the duty to act in accordance with the dictates of the law as it stands and not as critics would like it to be. In this sense, naïve idealism is but a pale imitation of legal certainty.<sup>18</sup> Thus, legal justice implies the application of the law as it is. This ordinarily implied that all the laws of the land, including procedural laws and rules of courts must be adhered to by all the litigants seeking justice before the court.

However, in approaching the Court, there are high chances of making mistakes which in turn may lead to defect, failure, or mistake in a legal proceeding or lawsuit.<sup>19</sup> These possible mistakes are normally described as irregularities: departures from a prescribed rule or regulation prescribed by the adjectival law that is not punishable.

#### **IV. Treatment of Irregularities (technicalities) in the Process of Justice Administration**

The provisions of the Rules of Court are intended for the orderly conduct of cases before the Court and are therefore required to be complied with by all litigants and prospective litigants.<sup>20</sup> There are broadly speaking two types of irregularities in Law: substantial irregularities and non-substantial irregularities. The treatment the Court will accord a given irregularity depends on its nature and effect in law. When a non-substantial irregularity is discovered and proved to exist during a judicial procedure, if curable, the Court will grant leave to the party in error to correct the irregularity subject to the conditions specified by the trial Court. Most of the adjectival laws provide succor for parties who failed or show lack of in-depth knowledge of the technicalities involved in preparation and filing of processes before a given Court. For example, the National Industrial Court Rules, 2007,<sup>21</sup> provides that failure to comply with any of the rules may be treated as an irregularity and the Court may give any direction it deems fit in the circumstances.

The implication of this provision is simply that a non-compliance (failure to exhibit maximum standard of technical know-how) with the provisions of the rules is not intrinsically fatal to the proceedings, and the Court has the discretion under the

<sup>18</sup> Ahuraka Isah, 'Supreme Court's Judgements follow Law, Not Sentiments', 16 February, 2016, @ [m.guardian.ng/features/law/supreme-court-s-judgements-follow-law-not-sentiments/](http://m.guardian.ng/features/law/supreme-court-s-judgements-follow-law-not-sentiments/). Accessed 04/09/19.

<sup>19</sup> <https://legal-dictionary.thefreedictionary.com/irregularities>. Accessed 04/09/2019.

<sup>20</sup> Offornze D. Amucheazi & Paul U. Abba, *The National Industrial Court of Nigeria: Law, Practice and Procedure*. (Wildlife Publishing House, 2013) 124.

<sup>21</sup> See Order 5, Rule 1, the National Industrial Court Rules, 2007 (NIC Rule, 2007).

rules to waive such non-compliance. Generally, a Court may bend forward or backward and direct a departure from the provisions of its rule where the interest of justice so requires<sup>22</sup> to accommodate technical defects in a given proceeding.

Therefore, where a procedural irregularity can be cured without causing any injustice to the adverse party, an amendment would be readily granted to rectify the anomaly and restore normalcy. Such discretionary power may be granted to correct the name of a party even if doing so will have the effect of substituting a new party, provided the Court is satisfied that the mistake in question, being sought to be corrected, is honest, genuine and not one which will overreach and unduly encumber the adverse party. Indeed, the Court in deserving cases, can also allow a plaintiff to amend his writ even after final judgment in the proceedings has been entered, for the purpose of substituting a party's correct name for the incorrect one.<sup>23</sup> The Court may enlarge the time provided by the rules for the doing of anything to which the rules apply, or may direct a departure from the provisions of the rules in any other way where departure is required in the interest of justice.<sup>24</sup>

On the other hand, once an irregularity is found to be substantial, the process becomes incompetent because same is ineffectual in conferring jurisdiction on the Court. It is the law that an incompetent process cannot be amended.<sup>25</sup> The Supreme Court in *Dickson Ogunseinde Virya Farms Ltd v Societe Generale Bank Ltd & Ors*<sup>26</sup> reiterates that:

A litigant cannot be heard to complain about fair hearing when the applications (s)he placed before the Court were incompetent. 'That is the exception to the fair hearing principle as it only applies where the party has the right to be heard and when that right does not exist on account of a process that is incompetent or dead on arrival, then the party has no leg on which to stand to cry out about fair hearing.

Substantial irregularity is any irregularity that goes to the root of the proceedings or process. For instance, the failure to commence proceedings with a valid writ of summons goes to the root of the case and any order emanating from such proceedings is liable to be set-aside as incompetent and nullity because, 'it clearly borders on the issue of jurisdiction and the competence of the Court to adjudicate on the matter'.<sup>27</sup>

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<sup>22</sup> Order 21, Rule 2, Court of Appeal Rules, 2016.

<sup>23</sup> Hon. Justice Mossud Abdurrahman Oredola, J.C.A. in *Njoku & Ors v Onwunelega*, (2017) LPELR-43384(CA) (Pp. 41-42).

<sup>24</sup> Order 2, Rule 31, Rules of Supreme Court of Nigeria

<sup>25</sup> *Nigeria Army v Samuel* (2013) 14 NWLR (Pt. 1375) 466 at 483.

<sup>26</sup> (2018) LPELR-43710(SC)

<sup>27</sup> *Kida v Ogunmola* (2006) All FWLR (Pt. 327) 402 at 412-413, (2006) 13 NWLR (Pt.997) 377 at 394

It is trite law that an originating process which is not signed by the litigant himself or a legal practitioner known to law is a substantial irregularity, and will be deemed as an irredeemable failure to comply with the appropriate rules and same will be treated as incompetent process.<sup>28</sup> Another instance of substantial irregularity that is incurable is when a process i.e., election petition is not filed within the time specified<sup>29</sup> or the fees statutorily prescribed<sup>30</sup> are not paid. Generally, other forms of substantial irregularities include where a matter is filed before a Court that lacks jurisdiction to entertain the matter, non-service of relevant processes (including hearing notices) and in all these situations the procedure will amount to nullity.<sup>31</sup>

#### V. Difference between Mere Technicality and Substantial Technicality

It is now settled law that Courts should not decide cases or resolve issues on mere legal technicalities.<sup>32</sup> One good example is when a litigant inadvertently approaches a Court for the redress by a wrong procedure. A person whose rights have been violated must be free to seek redress for such wrongs in the Courts. It will amount to mere technicalities or irregularities to base a defence to such action on the fact that the action was instituted by wrong procedure.<sup>33</sup> Also, a contention that a particular document was not tendered at particular stage of the trial will go to no issue, at best, it will be considered as a mere technicality which cannot vitiate or influence the outcome of the procedure.<sup>34</sup>

An irregularity is substantial when it touches on the legality of the whole proceedings or process and in such situation, the technical failure is not a mere technicality but an irregularity that is transcendent to the *rem* of validity. A substantial irregularity is the one which causes a proceeding to have a smell of judicial sacrilege and to allow that kind of trial which is hostile to the law to stand is in itself, denial of fair of hearing.<sup>35</sup> A breach of a mandatory constitutional provision is more than a mere technicality, it is fundamental. The breach vitiates the entire proceedings before

<sup>28</sup> *Kaka v Daniel* (2009) 14 NWLR (Pt. 1161) 416; *Oshiomole v Airhiavbere* (2013) 7 NWLR (Pt. 135) 376

<sup>29</sup> Electoral Petitions must be filed within 21 of the announcement of the elections results. See section 285 (5), Constitution of the Federal Republic of Nigeria (First Alteration) Act, 2010.

<sup>30</sup> Paragraph 3 (4), First Schedule to the Electoral Act, 2010 (as amended).

<sup>31</sup> *Okafor v A. G. Anambra State* (1991) 6 6 NWLR (Pt. 200), 659.

<sup>32</sup> *Egolum v Obasanjo* (1999) 7NWLR (Pt. 511) 255, 413

<sup>33</sup> See General Sani Abacha & Ors v *Chief Gani Fawahinmi* (2000) 6 NWLR (Pt. 660) 228.

<sup>34</sup> *Madumere v Ole Okafor & Ors*. Unreported Supreme Court of Nigeria Judgement delivered on the Tuesday, April 2, 1996.

<sup>35</sup> *Ojasanmi v FGN: (2018) LPELR-44331(CA)*

the Court.<sup>36</sup> Commenting on this position of law, the Supreme Court rules that:

To suggest that because the hearing was in open Court, the delivery of judgment in chambers is a technicality as no miscarriage of justice was occasioned thereby, is to beg the issue. The delivery of judgment is, in my respectful view, part of the hearing of a cause or matter. A breach of a mandatory constitutional provision is more than a mere technicality; it is fundamental. And it is no argument that there has been no miscarriage of justice.<sup>37</sup>

Again, no matter the degree of grievous harm done to the victim of a crime, it will be idle and a complete misconception, to suggest that failure of taking the plea of the defendant as established by the law is a mere technicality because no miscarriage of justice was occasioned thereby to the defendant. Such an argument or contention will, with the greatest respect and humility, amount to begging the issue.<sup>38</sup> So also, a litigant must adhere strictly to his pleading, hence a litigant who ignores his pleadings and made a different case at the hearing will not be allowed to claim that such inconsistency is a mere technicality.<sup>39</sup> It is the law that parties must be consistent in presenting their cases to the Court. This means that the pleadings and the oral evidence should tell the same story because this goes to the root of the case and the rule of pleadings.

It is loud law that parties are bound by their pleadings not to tell stories while giving oral evidence in contradiction from their pleadings. 'The case of a party is first made in the pleadings and because the pleadings have no mouth and not the intelligence to talk, the human being who is possessed of the two, narrates the content of the pleadings to the Court'.<sup>40</sup> In effect, a party cannot move out of his pleadings and give evidence of facts not duly pleaded therein, such departure is not in the eye of law a mere technicality but a substantial irregularity that goes to the root of the departing party's case since same has the potentiality to overreach and do injustice to the other party.<sup>41</sup>

It is an irredeemable irregularity for judicial officer(s) who did not sit through

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<sup>36</sup> *Alhaji Nuhu v Alhaji Ogele* (2003) 18 NWLR (Pt. 852) 251

<sup>37</sup> *Ifezue v Mbadugha* (1984) 1 SCNLR 427; (1984) All NLR 256.

<sup>38</sup> See *Ogbonna Okeke v The State* (2018) LPELR-45053 (CA).

<sup>39</sup> *Kode v Yussuf* (2001) 4 NWLR (Pt. 703) 392

<sup>40</sup> *Mojeed Suara Yusuf v Madam Idiatu Adegoke & Ors*, Supreme Court of Nigeria Judgment delivered on Friday, the 20th day of April 2007 S.C. 15/2002

<sup>41</sup> *Kode v Yussuf* (Spra).



a trial to deliver judgment in the case. The main function of the trial Court is to see and observe the witnesses. ‘He watches their demeanor, candour or partisanship, their integrity, manner etc. He can therefore decide on their credibility and this affects a substantial part of his findings of fact’.<sup>42</sup> The opportunity of a Court or Tribunal to observe the demeanour of a witness is an indispensable aspect of procedural jurisprudence, which is rooted in fair hearing.<sup>43</sup> Consequently, the Supreme Court in *Adeleke v Oyetola*<sup>44</sup> held that the decision of the Electoral Tribunal was a nullity because Justice Obiora who read and pronounced the majority judgment at the Tribunal was evidently absent from the proceedings, at least, one of the days of the trial and the failure of the absent panelist to be present on that day meant that the tribunal lacked the authorities to have given any judgment in the entirety of the matter.

The Supreme Court’s majority decision in *Adeleke v. Oyetola* follows the West African Court of Appeal authority in the case of *Nana Tawiah v. Kwesi Ewudzi*,<sup>45</sup> where it was discovered that at least two of the Tribunal members who gave judgment were not present throughout the proceedings, and did not hear all the evidence. Thus, the Court (WACA) came to the conclusion that the absence of the judges “vitiates the whole trial, and in my opinion this Court has no option but to declare the whole proceedings before the Tribunal and the Provincial Commissioner’s Court a nullity”.<sup>46</sup> Based on this long tradition and trite law, ascribing the decision on *Adeleke v. Oyetola* to technicality as suggested by *Senator Enyinnaya Abaribe*<sup>47</sup> in a veiled reference to the Supreme Court judgements on Osun and Ondo States Election had sought to know the views of the CJN on technicalities’ in judgements, definitely overstressing the mystical concept of technicality in our judicial process.

## **VI. Fair hearing, Rule of Courts and Administration of Justice**

The concepts of fair hearing, rule of law and justice presuppose a society where the interests, rights and justice outlooks of individual may clash and unless and until persons interact with each other, such ideas or practices are inapplicable.<sup>48</sup> It is apposite to note that the right to a fair trial is generally construed in light of the rule of

<sup>42</sup> *Okereke v The State* (2016) 1 SCM 99 at p. 113

<sup>43</sup> *Woluchem v Gudi* (2004) 3 WRN, 20

<sup>44</sup> SC/553/2019

<sup>45</sup> 3 WACA 52

<sup>46</sup> *Ibid.*

<sup>47</sup> While the Senate was screening the would be Chief Judge of Nigeria on the 17<sup>th</sup> of July, 2019.

<sup>48</sup> Randy E. Barnett, ‘Can Justice and the Rule of Law Be Reconciled? Foreword to the “Symposium on Law and Philosophy’’, 1988, 11, *Harvard Journal of Law & Public Policy*, 597-624, 599.

law, as its cardinal requirement.<sup>49</sup> However, while the reality of fair hearing connotes that parties to a matter are afforded equal opportunity, rule of law implies that everything done during the process of litigation is done as specified by the applicable laws without favour, fear and sentiment but that every action by the judicial officers are taken strictly according to the letters of the law. Conceived substantively, justice presupposes the correctness of the outcome of individual cases.

Conceived procedurally, the rule of law speaks to the form of a "fair" legal process. Conflict between these two values arises when the outcome of a "fair" legal system is deemed to be unjust; or when the effort by the legal system to be "just" is deemed by critics to be unfair. The resultant conflict is the manifestation of the divergence between procedural correctness and substantive fairness. When applied to particular cases or controversies, concepts that are different must sometime point in different directions.<sup>50</sup> Thus, at the end of every keenly contested legal dispute, there is tendency for the judgment to be considered as unfair in one hand (by the losing side) and the justice by the winning party. In the actuality of administration of justice every legal effort aiming at resolving or reducing social conflict and promoting social harmony<sup>51</sup> will have to pass through the conflicts of fair hearing, rule of law to arrive at the justice or injustice to the party depending on the outcome and effect of the justice on the litigants.

It seems the law is now tending towards doing substantive justice on the ground that strict adherence to the letters of law (legalism) may amount to injustice to defeat the course of justice on the altar of mere technicalities.<sup>52</sup> This principle of law is based on the provisions of law which the Court is meant to apply because the rules of Courts which form part of the law empowers the Court to depart from the rules of the Court where the justice of the matter before the Court so demand.<sup>53</sup> The High Court of Ondo State (Civil Procedure) Rules makes balance for provisions for fair hearing and rule of law in justice under Order 5<sup>54</sup> of the Rules. In respect of effect of irregularities, Rule 1 (1) of Order 5 provides thus:

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<sup>49</sup> Ana Koprivica, 'Right to a Fair Trial in Civil Law Cases' in Rainer Grote *et.al* (eds.), *Max Planck Encyclopedia of Comparative Constitutional Law* (Max Planck Foundation for International Peace and Rule of Law 2018), 598

<sup>50</sup> *Ibid.*

<sup>51</sup> *Ibid.*, 600

<sup>52</sup> *Ogundalu v Macjob* (2006) 7 NWLR (Pt. 978) 148.

<sup>53</sup> See Order 1, Rule 9 (3), National Industrial Court of Nigeria (Civil Procedure) Rules, 2017.

<sup>54</sup> Order 2, High Court of the Federal Capital Territory, Abuja (Civil Procedure) Rules, 2007 is imperia material with Order 5 of High Court of Ondo State (Civil Procedure) Rules, 2012.

Where in beginning or purporting to begin any proceeding or at any stage in the course of or in connection with any proceedings, there has, by reason of anything done or left undone, been a failure to comply with the requirements of these rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and if so treated will not nullify the proceedings, any step taken in the proceedings, or any document, judgment or order therein.

These provisions were seemingly designed to cure whatever irregularity the lack of technical know-how or mistakes on the part of a litigant, may occasion to the parties before the Court. Since these provisions appear to be for the benefit of both parties, it could be argued to be a provisional instrument to ensure institutional fair hearing to both parties in the case. It is in line with the new era in the law that lay credence to substantive justice rather than sacrifice merit on the temple of mere technicality. However, the applicability of the provisions of Order 5, Rule 1 (1) is curtailed by the provisions of sub rule 2 therein which provides that:

The Court may, on the ground that there has been such a failure as mentioned in sub rule (1), and on such terms as to cost or otherwise as it thinks just, set aside either wholly or in part, the proceedings in which the failure occurred, any step taken in those proceedings or any document, judgment or order therein, or it may exercise its powers under these rules to allow such amendments (if any) dealing with the proceedings generally as it thinks fit.

These provisions, in our humble opinion are to impress it on the litigants that failure to comply with the provisions of the Rules is a failure to apply the law with the possibility of heavy sanctioning by the Court. Thus, Rule 1 of Order 5 of High Court of Ondo State (Civil Procedure) Rules makes provisions to ensure that the civil litigation in the Court is conducted in line with the concept of rule of law and may allow correction of defects in deserving situations.

But the provisions of Rule 2 under the same Order is made to ensure fair hearing to the party when it provides that ‘an application to set aside for irregularity any proceedings, any step taken in any proceedings or any document, judgment or order made therein shall not be allowed unless it is made within a reasonable time and therefore the party applying has not taken any fresh step after becoming aware of the

irregularity.’

Hence, the law has provided a system of fair hearing mechanism for the just determination of nature and effect of technicality in an administration of justice. Thus, determining whether an irregularity is a ‘mere technicality’ or ‘substantial technicality’ has been made a matter that must pass through a legal test within a reasonable time and before the party alleging an irregularity has taken any further or fresh step after becoming aware of the irregularity. The provisions of Order 5, Rule 2 (1) is establishment of trial within trial in Civil Matters just like the trial within trial in criminal cases.

## **VII. Fair Hearing and Technicality in Criminal Justice**

Crimes and offences created by statutes are conduct against the community (State) at large not just one individual, as a result, enforcement is not left to the victim but the State to handle. Therefore, whenever a crime is not prosecuted by the State government except for the fact that the offender is not ascertained and apprehended, the victim is denied fair hearing and the injustice (double jeopardy) is fostered against the victim of the crime. Under the international law and in the interests of justice, the criminal law and judicial system of each State must allow for the prosecution and trial of persons accused of committing these crimes. All persons accused and/or brought to trial must, however, benefit from a series of procedural safeguards and fundamental guarantees designed to ensure that individuals receive a fair trial and are protected from being unlawfully or arbitrarily deprived of their fundamental human rights and freedoms.<sup>55</sup>

In criminal matters, the burden of proof is always on the prosecution. The basic standard of proof in any criminal litigation or in any trial where commission of an offence is in issue is the proof beyond reasonable doubt. That is, the burden of proof required to discharge the burden of proof of specific elements in criminal trial is proof beyond reasonable doubt.<sup>56</sup> Because of the nature of proof required in criminal matters, the issue of fair hearing is mostly one sided: fair hearing always leans in favour of the defendant who is ordinarily presumed innocent by the law. Hence, once

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<sup>55</sup> ICRC Study on Customary International Humanitarian Law (CIHL): Advisory Service on International Humanitarian Law, ‘Judicial Guarantees and Safeguards, 2014, <http://www.icrc.org/customaryihl/eng/docs/homeihl/eng/docs/home>. Accessed 09/08/19.

<sup>56</sup> See *Maune v Abdul* (2001) 4 N.W.L.R. (PT.702) 95 at 105, *Wankey v State* (1993) 5 N.W.L.R. (Part 295) 542 at 551 – 552.

there is any doubt, a doubt which any impartial view of the evidence is induced,<sup>57</sup> it is the duty of the trial Court to give the benefits of that doubt to the defendant<sup>58</sup> and declare him not guilty for the offence(s) for which he is charged.

The effects of technicalities and rule of law in administration of criminal justice is heavy and deeper than in civil cases. In criminal law, the investigators of the allegations of crimes are expected to be tactically and technically sound in order to ensure justice to the society as represented by the victim of the offence. Before a trial of crime in Court, the investigator must have observed and complied, strictly with the provisions of the related criminal adjectival laws.<sup>59</sup> For instance, where the only available evidence against the defendant is the confessional statement but it is proved that the defendant was not afforded the opportunity to consult a legal practitioner of his choice before making, endorsing or writing any statement or answering any question put to him after arrest in line with sections 15 and 17 of ACJL, the trial Court will definitely throw the case to the judiciary's dustbin for the investigator's failure to observe the rule of law in carrying out the investigation.<sup>60</sup>

Since 2015,<sup>61</sup> the rule of law in respect of criminal investigation and administration of criminal justice must be adhered to strictly. 'Certain provisions of Administration of Criminal Justice Act, 2015 (ACJA) are in the pattern of the Judges' Rules and are aimed at providing a guide for the law enforcement officers and ensuring the protection of the innocent as well as the rights of the suspect. However, unlike the case with the Judges' Rules which were cautionary, the provisions of ACJA have the force of law. *'Non-compliance with these provisions would automatically throw a purported confessional statement out of the window. I therefore share the view that the provisions of Sections 15(7) and 17(2), as well as Section 9(3) thereof, which are for the benefit of a suspect, are mandatory'*.<sup>62</sup>

The overall position of the Court in administration of criminal justice is that failure to comply with the provisions of criminal adjectival laws by stakeholders in the enforcement of law against the defendant are not mere failure but violation of the

<sup>57</sup> *COP v Hector Awambor* (2014), Charge NO. B/8CA/2014, unreported case of the High Court of Edo State, delivered on Wednesday the 13<sup>th</sup> Day of April, 2016.

<sup>58</sup> See *Ikemson v State* (1998) 1 ACLR 80 and *Bozin v State* (1998) 1 ACLR 1.

<sup>59</sup> Administration of Criminal Justice Act, (ACJA), 2015, the equivalent at the State levels or the Criminal Procedure Law(s) in the States where ACJL is yet to be passed.

<sup>60</sup> *Zhiya v People of Lagos State* (2016) LPELR-40562(CA)

<sup>61</sup> Section 15(4) of the ACJA.

<sup>62</sup> *Nnaji for v FRN* (2018) LPELR-43925(CA)

rule of law.<sup>63</sup> This is so because every of the provisions of the criminal justice adjectival legal instruments are imperative and mandatory provisions of law except where there are otherwise provisos clearly stated in the law. Therefore, failure to comply with any of the imperative provisions of the criminal adjectival laws will not amount to mere technicality but fundamental violation of fair hearing and rule of law. In the same manner, the Supreme Court has established the law that failure to conduct criminal trials in line with any of the constitutional provisions regulating criminal litigation (i.e. section 36 of the Constitution), cannot be deemed as technicality but constitutional breach<sup>64</sup> with its attendant consequences and effects in law.

### **VIII. Legal Implications of Legal Technicality on Rule of Law and Administration of Justice**

The knowledge of workings and applications of law enhances the rule of law in the societies by making the outcomes of both judicial and administrative enterprises predicable, ascertainable and stabilized system of social and legal justice. Legal practitioners are trained in the rem of the technicality of law and applications of both substantive and adjectival laws in practice of their profession to ensure justice in the society. Though the Court will not ordinarily allow the letter of the law to defeat the spirit and substance of the law, it must be stated that fair hearing cannot be achieved without compliance with the provisions of the adjectival laws in civil and criminal procedures. The purposes of adjectival law are to, in criminal cases, ensure that the system of administration of criminal justice in Nigeria promotes efficient management of criminal justice institutions, speedy dispensation of justice, protection of the society from crime and protection of the rights and interests of the suspect, the defendant, and the victim.<sup>65</sup> In the same vein, the objectives and intent of most of the civil procedure rules are to establish an enduring, equitable, just, fair, speedy and efficient fast-track case management system for all civil matters that are adjudicated upon by the Courts.<sup>66</sup>

As rightly observed by the Supreme Court in *Dickson Ogunseinde Virya Farms Ltd v Societe Generale Bank Ltd & Ors*,<sup>67</sup> ‘the principles of fair hearing can apply only in a case where a party has the right to be heard on a Court process but was

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<sup>63</sup> *Okegbu v State* (1979) 12 NSCC 157, 174

<sup>64</sup> *Ifezue v Mbadugha* (1984)

<sup>65</sup> Section 1 (1) ACJA

<sup>66</sup> N.I.C (Civil Procedure) Rules, 2017.

<sup>67</sup> (2018) LPELR-43710(SC)

denied. To the contrary, if a party has no right to be heard in respect of a process because he did not comply with the Rules of Court, the party cannot be heard to invoke the principles of fair hearing.<sup>68</sup> This is because laws are not made to be flaunted but to be obeyed by all and sundry. A litigant should not be allowed disregard the provisions of law without consequences that is the core of the doctrine of rule of law. Once the courts begin to overlook the failure of litigants to abide with the dictates of procedural laws, an average reasonable person will not come out of court to say that justice is seen to be done.

### **IX. Conclusion**

The article has shown that laws are made to be obeyed and laws must be obeyed. In operation, substantive law of a society has no life until given by the Courts within the legal system which must apply the adjectival law in giving life to substantive law. Therefore, one can safely conclude that the implications of technicality on rule of law and administration of justice are to deepen rule of law and maintain certainty, predictability and stability in the administration of justice. In reality, the Courts will not allow disobedience to the rule of law without repercussions, tolerate irregularities without backlashes or encourage a party to bankrupt the rule of law without consequences. This is because, laws are made to be obeyed, and whoever wishes to benefit from the law must know the technicalities of the law or hires legal practitioners trained in the technicalities of the law to handle his case for him. This is what lawyers are trained to do: to follow the law to the letter.

It is admitted that mere regularities should not be allowed to defeat the justice of a suit before the court. However, where the rules of court or other procedural laws specify certain steps litigants must take in pursuit of his case, courts should insist that such steps are taken. Thus, it is herein suggested, firstly, that once there are written provisions of procedural law, the court must always insist that such written provisions should be complied with and should not be treated as mere irregularities. This is to ensure that the outcome of a litigation is ascertainable. Secondly, the court discretions to consider legal technicalities as mere technicalities should be subjected to the approval of the opposing litigants. Thus, where any of the opposing parties refused to tolerate or waive a discovered failure to comply with the dictate of law, the court must insist that such an abnormalities be corrected immediately. Finally, the court should explain in its judgements, rulings and orders, where legal technicality is in issue, the

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<sup>68</sup> See *Sosanya v Onadeko* (2005) 2 SC (Part 11) 13.

reason(s) for considering such technicalities as mere or substantial technicalities. It is humbly submitted that if these suggestions are followed, the problems associated with where to place legal technicalities: mere or substantial, and the public complainants associated with courts using legal technicality to defeat justice will be reduced drastically. This will also encourage filing of quality processes before the court upon which quality and sound judicial justice will be produce by the court. It will make the outcome of judicial actions predictable, ascertainable and satisfying.