

# ACCEPTABLE PERFORMANCE STANDARDS FOR RESIDENT JUDGES

## Expected issues for discussion

1. What role do the Registrars play under Statutory Instrument 1998 No. 26?
2. Does a judge have powers to extend time limits set out under O.X B?
3. Does absence of a Registrar affect performance of a judge? If so, how and to what extent?
4. What powers do Registrars have under the Rules (as amended)
5. How to uniformly apply the Civil Procedure (Amendment) Rules.
6. The role of a judge, the advocate and the Centre for Arbitration and Dispute Resolution (CADR) in the implementation of the Civil Procedure Rules.
7. The management of Operational Funds by the recipients
8. The distinction between the powers of Deputy Registrars and District Registrars
9. Whether there could be a possibility for Registrars and some more experienced Chief magistrates to serve as commissioners of Assize (judges on call) as a means of fighting backlog.
10. How far have the 2000 Annual Resident Judges' workshop Recommendations/Resolutions been implemented?
12. What problems exist in criminal trials/appeals and how to solve them?
13. How to balance equally court time between criminal and civil cases.
14. What is the solution for backlog in criminal, civil and election petition cases?
15. The terms and conditions of service for Registrars
16. Whether it is possible to follow time tables set out in the Rules especially O.XB of Civil Procedure Rules?
17. To what extent is plea-bargaining being done and if it is being done, whether it is done within the legal limits.

24. Whether there should be flexibility for the 60-day requirement within which to write and deliver judgement.
25. To what extent are the new Rules being applied especially the Scheduling Conference.
26. What is the solution in respect of part heard cases where a presiding judge is either on transfer or other assignments.
27. Whether decentralized High Court Registries have powers to re received notices of appeal to Court of Appeal.
28. What should be done to help litigants without legal representation receive fair hearing in courts?

### **Agreed actions as summarized from the group discussion**

#### GROUP ONE

#### **VIEWS ON ORDERS 5, 6 AND 8 OF THE CIVIL PROCEDURE (AMENDMENT) RULES, 1998**

1. O.5 r. 1(9) about the 15 days within which to file an application for extension of time to serve is too long. It is recommended that;
  - (i) It is reduced to 7 days.
  - (ii) Registrar should hear the application
  - (iii) Dismissal under O.5 r 2 (1)(b) and (c) shall be by the Registrar
2. O.5r.2 (2) The format of the summary of evidence must be such that it enables the judge to: -
  - (i) Know the type of case and nature of defence and know names of witness.
  - (ii) The unrepresented litigants may not file list of authorities.

## **GROUP TWO**

### **PROBLEM AREAS THAT NEED FURTHER ACTION**

1. The summaries of evidence in practice are too brief.
2. List of documents and authorities sometimes referred to are unavailable or nonexistent.
3. There is no provision for calling additional witnesses outside those mentioned in the list, yet this could be necessary during the trial.
4. Litigants filing documents out of time, how are these handled?
5. Filing of documents to be strictly enforced
6. Rule 8 should be clarified
7. Practice Directions should be issued to enable smooth applications of the Rules.

### **RECOMMENDATIONS.**

1. The summaries of evidence should be detailed and should contain the substance of the litigant's case.
2. Copies of documents and cases cited should be filed with the pleadings. Any additional documents and authorities may be brought in with leave of court.
3. Additional Witnesses not mentioned in the lists may be called with leave of court.
4. The requirement for Registrars to seal and date documents should be enforced/adhered to.

## **GROUP THREE**

### **POINTS OF REFERENCE**

- (a) What was this amendment (Order XB) all about?
- (b) What are the pitfalls noticed so far?

## **(b) Pitfalls**

In practice Rule O.XB not yet fully a reality, why?

(i) Key players have not yet grasped the concept

(ii) Time tables set out by the Rules are unrealistic.

(iii) Stake holders are not very keen especially on scheduling conference for various reasons

(iv) The question of unrepresented litigants - how do we handle this issue? The Rules have not provided for them.

(v) It was noted that some Registrars abuse their power

(vi) Rules, Directions or Regulations governing scheduling conferences and ADR are not yet in place.

(vii) Most lawyers are not yet clear about what follows what in the sequence of events.

(viii) The Rules have a proviso for extension of time for scheduling conference but is silent on what happens to the proceedings if there is no such application and or extension.

(ix) Rules also give powers to the judge to impose upon parties in mediation a member of the Bar or of the Bench to conduct ADR. This is however contrary to the nature of mediation; i.e parties to be given a free hand to choose ADR.

## **WAY FORWARD**

1. The amendment to the Rules was a good move, which has yielded results and should be emphasized.
2. There should be sensitization of all key players.
3. Scope of ADR should be widened to involve both the Bench and Bar in the process.
4. Right now ADR is not mandatory. Studies should be conducted on whether

- 8 The group adopted as provisional guidelines a format drawn by Lady Justice Arach Amoko in conducting scheduling conference. The format is to be polished up and if necessary issued as direction.
9. It was also resolved that backlog of old cases should be integrated into the case load and dealt with at the same time - applying the same Rules instead of putting them on separate tracks and give their own time schedules.
10. Registrars should play their role under O.46 CPR and monitor the implementation of the programme of case management.