



KRISPY LEGAL
— ATTORNEYS-AT-LAW —

STRATEGIC DELAY IN LITIGATION: ABUSE OR LEGITIMATE DEFENCE?



WHEN DELAY BECOMES A LITIGATION STRATEGY

Some parties use delay tactics to frustrate, intimidate, or gain unfair advantage.



THE WEAPONISATION OF COURT PROCEDURES

Legal processes meant for justice can be misused to stall, harass, or exhaust opponents.



ADJOURNMENTS AND THE CULTURE OF DELAY

Frequent adjournments waste time, increase costs, and erode public confidence in the courts.



FAIR HEARING WITHIN A REASONABLE TIME

The Constitution guarantees every party the right to a fair hearing within a reasonable time.



JUDICIAL POWERS TO PREVENT ABUSE

Courts have inherent powers to control proceedings and penalize parties who abuse the process.



REFORMING NIGERIA'S LITIGATION PROCESS

Stronger rules, technology, case management, and sanctions can promote speed and efficiency.



**A FAIR SYSTEM DEMANDS
TIMELY JUSTICE.**
LET'S BUILD A PROCESS THAT
SERVES, NOT STALLS.



“ Delay should never be a defence—
justice must not only be done,
but be seen to be done,
promptly. ”

ABOUT KRISPY LEGAL

We are committed to protecting your rights,
defending your interests, and delivering
timely, practical legal solutions.



info@krispylegal.com



www.krispylegal.com



Suite 911, 9th Floor,
Western House,
8/10 Broad Street,
Lagos.



Krispy_legal

STRATEGIC DELAY IN LITIGATION: ABUSE OR LEGITIMATE DEFENCE?

ABSTRACT

Delay in civil litigation stands as one of the most intractable challenges confronting the Nigerian justice system. This essay examines the phenomenon of strategic delay the calculated use of procedural mechanisms to prolong proceedings for tactical advantage, to the prejudice of opposing parties and the administration of justice itself. Drawing primarily on Nigerian constitutional provisions, federal and state court rules, Supreme Court and Court of Appeal decisions, and indigenous academic scholarship, this essay critically evaluates the tension between the adversarial tradition which confers broad procedural latitude on parties and the fundamental right to a fair hearing within a reasonable time guaranteed by section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended). The essay argues that while incidental delay is an inevitable feature of complex litigation, deliberate delay constitutes an abuse of court process that violates constitutional rights, distorts substantive outcomes, and corrodes public confidence in the judiciary. It contends that existing judicial responses, while significantly improved through recent procedural reforms and case-management initiatives, remain insufficient to deter sophisticated delay tactics, and proposes structural reforms appropriate to the Nigerian context.

Keywords: Abuse of court process, Adjournment culture, Case management, Strategic delay, Fair hearing, Judicial reform.

1. INTRODUCTION

The problem of delay in civil litigation is one with which the Nigerian courts have been acquainted for generations. Parties to civil proceedings have frequently found themselves waiting years and in some documented instances, decades before obtaining a final judgment on the merits of their dispute.¹ While structural factors, including court congestion, inadequate judicial manpower, and underfunded court infrastructure, contribute substantially to this reality, a significant and under-appreciated dimension of litigation delay in Nigeria is neither accidental nor systemic: it is strategic. A party who perceives that its substantive position is weak, or whose interests are better served by the protraction of proceedings than by their resolution, has powerful incentives to exploit the machinery of civil procedure as a mechanism of attrition.²

The Constitution of the Federal Republic of Nigeria 1999 (as amended) confronts this problem directly. Section 36(1) guarantees every person the right to a fair hearing within a reasonable time before an independent and impartial court or

tribunal.³ This constitutional guarantee stands in evident tension with the adversarial model of civil litigation inherited from English common law, which vests parties with substantial control over the conduct and pace of proceedings. Reconciling these competing imperatives the constitutional right to expedition and the adversarial right to procedural latitude is the central jurisprudential challenge to which this essay is directed.⁴

This essay proceeds in seven substantive sections. While the first section introduces the work, the second section defines and taxonomises strategic delay, distinguishing it from unavoidable procedural delay. Section three surveys the principal mechanisms through which strategic delay operates in Nigerian courts. To further analyse it, the fourth section analyses the constitutional and legislative framework governing delay while the fifth section examines the judicial response, including the courts' inherent jurisdiction and case management powers. Section seven addresses the human rights dimension with reference to section 36 of the Constitution and related jurisprudence. The eighth

¹ I. P. Enemo, *Civil Procedure in Nigeria* (2nd edn, University of Nigeria Press 2014) 3.

² *Bakare v ACB Ltd* [1986] 3 NWLR (Pt 26) 47 (SC).

³ Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), s 36(1).

⁴ O. A. Oyelaran, 'Delay in the Administration of Justice in Nigeria: Causes, Consequences and Remedies' (2014) 5 *Nigerian Journal of Jurisprudence and Social Policy* 1, 3–5.

section advances a critical assessment of existing law and proposes reforms calibrated to the Nigerian context. A full bibliography concludes the essay.

THE CONCEPT OF STRATEGIC DELAY: DEFINITION AND TAXONOMY

A foundational analytical distinction must be drawn at the outset between delay that is an incidental consequence of the complexity, gravity, or novelty of the dispute before the court, and delay that is deliberately engineered by one party to gain tactical advantage at the expense of the other. The former is an unavoidable cost of a procedural system that accords parties adequate opportunity to prepare and present their cases; the latter is a perversion of that system.⁵

In *Ariori v Elemo*, the Supreme Court of Nigeria made the foundational observation that the administration of justice is not served by an adversarial system that permits indefinite procedural combat as a surrogate for the determination of substantive rights.⁶ Obaseki JSC emphasised that courts must be vigilant to prevent their processes from becoming

instruments through which parties with meritless cases exhaust opponents who have legitimate claims. This observation captures the essence of strategic delay: the weaponisation of procedural rights against the very system of justice those rights are designed to serve.

Strategic delay may accordingly be defined as the deliberate and calculated use of procedural mechanisms individually or cumulatively with the primary or substantial purpose of prolonging proceedings to the advantage of the delaying party, without any genuine forensic justification. A pattern of conduct that goes beyond isolated procedural mistakes; an absence of any legitimate explanation for repeated defaults or applications; and a discernible correlation between the procedural conduct complained of and the substantive weakness of the delaying party's case.⁷

The Supreme Court drew this distinction with precision in *Ude v Nwara*, where Karibi-Whyte JSC observed that the court must distinguish between a party who genuinely requires additional time to prepare an adequate response and one who

⁵ *Obimonure v Erinoshio* [1966] 1 All NLR 250 (SC).

⁶ *Ariori v Elemo* [1983] 1 SCNLR 1 (SC) (Obaseki JSC).

⁷ E. I Nwosu, 'Case Management and the Problem of Delay in Nigerian Courts' (2012) 3 *University of Maiduguri Law Journal* 44, 48.

is merely using procedural process as a shield to delay the determination of the substantive controversy.⁸ The distinction is not always apparent from any single procedural step, but emerges clearly from the cumulative pattern of a party's conduct throughout the life of the proceedings. This cumulative dimension is what makes strategic delay particularly difficult to identify and sanction and particularly pernicious in its effects.⁹

MECHANISMS OF STRATEGIC DELAY IN NIGERIAN CIVIL PROCEEDINGS

A. The Adjournment Culture

The adjournment is the most pervasive and frequently exploited mechanism of strategic delay in Nigerian courts. Court rules across the various High Courts, the Court of Appeal, and the Supreme Court vest the court with a discretion to adjourn proceedings for good cause shown.¹⁰ In practice, however, this discretion is invoked on the flimsiest of grounds: counsel unavailability, purported ill-health of a party or witness, late receipt of

processes, incomplete briefing, or the belated appointment of new counsel. The cumulative effect of serial adjournments each individually defensible, but collectively obstructive is to add months or years to the resolution of disputes.¹¹

In *Bello v AG Oyo State*, the Supreme Court condemned the culture of serial adjournments and affirmed that courts must exercise their discretion to adjourn with reference to the interests of justice as a whole, not merely the convenience of the applicant.¹² The court expressed unambiguous disapproval of the practice of granting adjournments as a matter of course, and emphasised that the right to fair hearing does not entail a right to an unlimited number of opportunities to prepare a case that a diligent party should already have prepared.

The adjournment culture is sustained by a professional tradition among Nigerian legal practitioners that regards adjournment as a near-absolute entitlement of counsel, combined with a judicial culture that is reluctant to refuse adjournment

⁸ *Ude v Nwara* [1993] 2 NWLR (Pt 278) 638 (SC) 659 (Karibi-Whyte JSC).

⁹ A. O. Obilade, *The Nigerian Legal System* (Spectrum Books 1979) 130–132.

¹⁰ Order 3 rule 7, Federal High Court (Civil Procedure) Rules 2009; Order 5 r 1, High Court of Lagos State (Civil Procedure) Rules 2019.

¹¹ O. A. Oyelaran, 'Delay in the Administration of Justice in Nigeria: Causes, Consequences and Remedies' (2014) 5 *Nigerian Journal of Jurisprudence and Social Policy* 1, 7–9.

¹² *Bello v AG Oyo State* [1986] 5 NWLR (Pt 45) 828 (SC).

applications for fear of being held on appeal to have violated a party's right to fair hearing.¹³ This dynamic creates a structural incentive toward delay that court rules alone have proved insufficient to overcome.

B. Late Filing of Pleadings, Processes, and Interlocutory Applications

The deliberate late filing of statements of defence, counterclaims, replies, and interlocutory applications constitutes a second major mechanism of strategic delay. Nigerian court rules prescribe precise timelines for the delivery of pleadings, but these timelines are routinely flouted without meaningful sanction. In *UBA Plc v Jargaba*, the Supreme Court expressed concern at the frequency with which parties filed processes outside prescribed timelines without prior leave of court and affirmed that courts ought not routinely condone such defaults as though the timelines were merely aspirational.¹⁴

The strategic dimension of late filing is most acute in commercial litigation. A defendant who deliberately withholds its statement of defence until the expiry of the

prescribed period, then seeks an extension of time, forces the claimant to expend resources on the extension application, disrupts any fixed trial date, and buys additional months within which its financial or forensic position may improve.¹⁵ How this pattern recurs at multiple stages of the same proceedings, with the cumulative effect of adding years to the resolution of a case as been documented.¹⁶

C. Interlocutory Injunctions as Instruments of Delay

Perhaps no mechanism of strategic delay is more potent in Nigerian practice than the interlocutory injunction. Courts possess wide discretion to grant orders preserving the status quo pending trial.¹⁷ This equitable remedy is routinely sought by defendants not to protect genuine legal rights but to freeze the claimant's position, restrict its business operations, and impose ongoing costs while the substantive proceedings are prolonged. The courts have been progressively alert to this misuse.

¹³ O. A. Oyelaran, 'Delay in the Administration of Justice in Nigeria: Causes, Consequences and Remedies' (2014) 5 *Nigerian Journal of Jurisprudence and Social Policy* 1, 7.

¹⁴ *UBA Plc v Jargaba* [2007] 11 NWLR (Pt 1045) 247 (SC).

¹⁵ *Nwadike v Ibekwe* [1987] 4 NWLR (Pt 67) 718 (SC).

¹⁶ E. I Nwosu, 'Case Management and the Problem of Delay in Nigerian Courts' (2012) 3 *University of Maiduguri Law Journal* 44, 52–55.

¹⁷ *Kotoye v Saraki* [1994] 7 NWLR (Pt 357) 414 (SC) (Belgore JSC).

In *Kotoye v Saraki*, the Supreme Court, per Belgore JSC, was emphatic that the grant of an interlocutory injunction is not a routine exercise: it requires the court to be satisfied that there is a serious question to be tried, that the balance of convenience favours the grant, and that damages would not be an adequate remedy.¹⁸ The court deprecated the tendency to seek injunctions as weapons of commercial warfare rather than as genuine protective relief. In *Tukur v Government of Gongola State*, the Supreme Court further affirmed that courts must be vigilant to identify applications whose dominant purpose is not to protect substantive rights but to obstruct the opposing party's prosecution of its claim.¹⁹

D. Discovery, Interrogatories, and Documentary Obstruction

The discovery process is particularly susceptible to strategic manipulation in Nigerian civil proceedings. Court rules permit parties to seek discovery of documents, delivery of further and better particulars, and answers to interrogatories.²⁰ A defendant with extensive documentary holdings may technically comply with discovery orders

while drowning the claimant in an avalanche of irrelevant material. Conversely, a deliberate failure to give adequate discovery compels the claimant to seek further orders, generating additional hearings and costs.

In *Nwadike v Ibekwe*, the Supreme Court affirmed that courts possess ample power to sanction parties who obstruct the discovery process and confirmed that the deliberate withholding of material documents constitutes not merely a procedural default but a species of fraud on the court.²¹ Notwithstanding this judicial recognition, Sanctions for discovery abuse remain sporadically imposed in Nigerian practice, with courts frequently declining to draw adverse inferences or impose costs consequences even where obstruction is manifest.²²

E. Electoral Litigation and Constitutional Time Constraints

A distinctively Nigerian dimension of strategic delay arises in election petition proceedings. The Constitution and the Electoral Act 2022 impose strict timelines for the hearing and determination of

¹⁸ Ibid.

¹⁹ *Tukur v Government of Gongola State* [1989] 4 NWLR (Pt 117) 517 (SC) 540.

²⁰ Order 26 rr 1–4, High Court of Lagos State (Civil Procedure) Rules 2019.

²¹ *Nwadike v Ibekwe* (1987) CLR 12(B) SC

²² E. I Nwosu, 'Case Management and the Problem of Delay in Nigerian Courts' (2012) 3 *University of Maiduguri Law Journal* 44, 52.

petitions, precisely because the legislature recognised that delay in this context operates as a strategy to allow disputed election winners to enjoy the fruits of contested mandates while genuine grievances remain unresolved.²³

Notwithstanding these constitutional safeguards, how respondents in election petitions routinely deploy serial interlocutory applications challenging jurisdiction, service, locus standi, and competence of the petition precisely to consume the narrow constitutional window within which the petition must be heard has been documented.²⁴ In *Saraki v Kotoye*, Obaseki JSC delivered a compelling condemnation of the use of pre-election litigation to obstruct the assumption of democratically conferred offices, observing that the court's process must never be conscripted as an instrument of political delay.²⁵ In *Dingyadi v INEC (No 2)*, the Supreme Court reaffirmed that constitutional timelines for election petitions are jurisdictional and cannot be

extended by party conduct or judicial discretion.²⁶

F. Appeals and Stays of Execution

The right of appeal is a fundamental constitutional right in Nigeria. However, it is frequently deployed as a vehicle for strategic delay. A losing party at first instance may file an appeal not because it has genuine grounds but because the filing of an appeal provides the basis for an application for stay of execution, thereby forestalling enforcement of a valid judgment.²⁷

In *Abubakar v Yar'adua*, the Supreme Court deprecated the use of appeals and stay applications to frustrate the enforcement of valid court orders and emphasised that courts must scrutinise applications for stay with particular vigilance where the dominant purpose of the application is the frustration of the opposing party's rights rather than the preservation of the appellant's own.²⁸ The court confirmed that the mere filing of a notice of appeal does not automatically

²³ *Peoples Democratic Party v INEC* [2014] 17 NWLR (Pt 1437) 525 (SC); *Owuru v INEC* [2016] 13 NWLR (Pt 1528) 1 (SC).

²⁴ SBO Okpara, 'Abuse of Court Process: A Nigerian Perspective' (2016) 7 *Afe Babalola University Journal of Sustainable Development Law and Policy* 1, 5–8.

²⁵ *Saraki v Kotoye* [1992] 9 NWLR (Pt 264) 156 (SC) 188 (Obaseki JSC).

²⁶ *Dingyadi v INEC (No 2)* [2011] 10 NWLR (Pt 1255) 347 (SC).

²⁷ SBO Okpara, 'Abuse of Court Process: A Nigerian Perspective' (2016) 7 *Afe Babalola University Journal of Sustainable Development Law and Policy* 1, 10–12.

²⁸ *Abubakar v Yar'adua* [2008] 19 NWLR (Pt 1120) 1 (SC).

suspend the enforcement of a judgment and that a stay will only be granted where the applicant can demonstrate that special or exceptional circumstances exist.

THE CONSTITUTIONAL AND LEGISLATIVE FRAMEWORK

The primary constitutional provision governing delay in Nigerian civil proceedings is section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended), which provides: ‘In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.’²⁹

In *Okonkwo v Cooperative & Commerce Bank (Nig) Ltd*, the Supreme Court confirmed that this provision imposes a binding obligation on courts as constitutional institutions to organise their processes so as to permit the resolution of civil disputes within a constitutionally acceptable timeframe.³⁰ This constitutional

obligation falls not only on the court itself but, through the court’s control of its own process, on all parties who participate in proceedings before it.

At the level of subsidiary legislation, the Federal High Court (Civil Procedure) Rules 2009 and the High Court of Lagos State (Civil Procedure) Rules 2019 the two most influential sets of court rules currently in operation in Nigeria confer extensive case management powers on trial judges.³¹ These rules substantially adopt the philosophy of active case management, requiring courts to identify issues at an early stage, fix realistic timetables, and sanction non-compliance. However, Uwaifo has observed that the gap between the letter of these provisions and their enforcement in practice remains wide, with many courts across the federation continuing to operate under outdated rules that make no provision for modern case management techniques.³²

In commercial litigation, the Commercial Division of the Lagos High Court and the Federal High Court have developed internal practice directions and protocols that

²⁹ Constitution of the Federal Republic of Nigeria, 1999 (as amended) s. 36(1).

³⁰ *Okonkwo v Cooperative & Commerce Bank (Nig) Ltd* [2003] 8 NWLR (Pt 822) 347 (SC).

³¹ Federal High Court (Civil Procedure) Rules 2009, High Court of Lagos State (Civil Procedure) Rules 2019

³² HO Uwaifo, *Principles of Nigerian Law of Civil Procedure* (Malthouse Press 2012) 214.

expressly address delay tactics. In *GTB v Innoson (Nig) Ltd*, the Supreme Court took a notably robust approach, declining to permit the appellant to raise procedural objections at a late stage of proceedings that it could and should have raised at the earliest opportunity, affirming the principle that parties must not be permitted to hold procedural points in reserve as tactical weapons.³³

THE JUDICIAL RESPONSE: INHERENT JURISDICTION, CASE MANAGEMENT, AND SANCTIONS

A. Inherent Jurisdiction and the Power to Strike Out

Nigerian courts possess an inherent jurisdiction to prevent the abuse of their process, to strike out or dismiss actions pursued for improper purposes, and to impose sanctions on parties who engage in deliberate delay. This jurisdiction is supplemented by specific court rules empowering the court to dismiss proceedings for want of prosecution or to strike out pleadings that are vexatious, frivolous, or an abuse of process.

In *Ajuwon v Akanni*, the Supreme Court confirmed that dismissal of an action for want of prosecution is an appropriate remedy where a claimant has deliberately failed to prosecute its claim with due diligence, to the material prejudice of the defendant.³⁴ The court emphasised that the interests of justice are served not only by allowing parties to present their cases but equally by ensuring that litigation is resolved within a timeframe that preserves the integrity of the evidence and the ability of parties and witnesses to recall and reconstruct the relevant events.

In *ACB Ltd v Apugo*, the court affirmed that the power to strike out for abuse of process extends to cases where a party has deployed procedural steps not to advance the litigation but to obstruct its determination. The court was clear that an abuse of process does not require bad faith in a narrow sense; it is sufficient that the procedural conduct has the effect, whether intended or not, of undermining the fair disposal of the case.³⁵

B. The National Judicial Council and Judicial Policy

³³ *GTB v Innoson (Nig) Ltd* [2017] LPELR-43747 (SC)

³⁴ *Ajuwon v Akanni* [1993] 9 NWLR (Pt 316) 182 (SC).

³⁵ *ACB Ltd v Apugo* [1995] 6 NWLR (Pt 399) 65 (SC).

The National Judicial Council (NJC) has formally recognised delay as a systemic threat to the legitimacy of the Nigerian judiciary and has adopted the National Judicial Policy, which mandates active case management and expressly requires trial judges to resist unmeritorious adjournment applications.³⁶ In *Adeyemi v Opeyori*, the Supreme Court had earlier affirmed that it is the duty of the court to manage proceedings actively and to prevent one party from using procedural process to oppress or exhaust the other.³⁷

The NJC policy operates substantially as a statement of aspiration rather than as an enforceable code. Trial judges continue to exercise broad discretion in granting adjournments, partly because of the well-established principle that a refusal of adjournment which results in a party being unable to present its case may itself constitute a breach of the right to fair hearing.³⁸ This dilemma between managing delay and preserving procedural fairness lies at the structural heart of the judicial response to strategic delay in Nigeria.

C. Costs Sanctions

Costs orders provide the primary financial deterrent to strategic delay in Nigerian civil proceedings. Where a party obtains an adjournment on terms, the court may order that the costs of the wasted hearing be borne by the applicant.³⁹ In practice, however, costs awards in Nigerian courts are notoriously low relative to actual legal costs incurred, and the prospect of an adverse costs order rarely deters a well-resourced party from deploying delay as a strategy.

In *Egbuna v Egbuna*, the Supreme Court acknowledged the inadequacy of the costs regime as a deterrent to procedural abuse but noted that the remedy lies in the legislative reform of the costs framework rather than in judicial reluctance to impose costs orders.⁴⁰ It was argued that the introduction of indemnity costs as a mandatory sanction for applications found to have been made primarily for tactical purposes, together with a general upward revision of the costs scales applicable across the Federal and State High Courts.⁴¹

³⁶ National Judicial Policy 2012, cl 5.2–5.3 (National Judicial Council, Abuja).

³⁷ *Adeyemi v Opeyori* [1976] 9–10 SC 31 (SC).

³⁸ E. I Nwosu, ‘Case Management and the Problem of Delay in Nigerian Courts’ (2012) 3 *University of Maiduguri Law Journal*, 55–57.

³⁹ *Egbuna v Egbuna* [1989] 2 NWLR (Pt 106) 773 (SC).

⁴⁰ *Ibid.*

⁴¹ M. O Ogundipe and A. I Salami, ‘Judicial Policy, Court Automation and the Problem of Delay in Commercial Disputes in Nigeria’ (2018) 9 *Lagos State University Law Review* 67, 74–76.

THE HUMAN RIGHTS DIMENSION: SECTION 36 CFRN AND FAIR HEARING

The constitutional right to fair hearing within a reasonable time is not a procedural technicality but a substantive fundamental right, the violation of which may ground a successful constitutional challenge to the proceedings or their outcome.⁴² Nigerian courts have consistently affirmed the primacy of this right and its relationship with the broader constitutional architecture of access to justice.

In *FBN Plc v Maiwada*, the Supreme Court emphasised that the constitutional right to fair hearing is not satisfied by a hearing that is formally correct but conducted over such an extended period that the substantive rights of the parties are effectively destroyed by the passage of time.⁴³ The court affirmed that unreasonable delay in civil proceedings, whether caused by the court itself or by the conduct of a party, engages the constitutional guarantee in section 36(1) and may, in an appropriate

case, justify the making of orders designed to vindicate that right.

As argued, section 36(1) imposes not merely a negative duty to refrain from deliberate delay but a positive obligation on the court, as a constitutional institution, to take reasonable steps to prevent parties from using the litigation process as an instrument of oppression.⁴⁴ This analysis finds support in *Adekunle v Rockview Hotel Ltd*, where the Supreme Court affirmed that courts must not passively acquiesce in the exploitation of their processes as vehicles for the destruction of opposing parties' legal rights.⁴⁵

Where a court permits a party to engage in prolonged and deliberate procedural obstruction, the State itself may be implicated, through its judicial arm, in the resulting violation of the opposing party's constitutional right to a fair hearing within a reasonable time.⁴⁶ This analysis has significant implications: it suggests that passive judicial acquiescence in strategic delay is not merely a matter of case management failure but a potential

⁴² Constitution of the Federal Republic of Nigeria 1999 (as amended), s 36(1); *Okafor v AG Anambra State* [1991] 6 NWLR (Pt 200) 659 (SC).

⁴³ *FBN Plc v Maiwada* [2012] 14 NWLR (Pt 1320) 411 (SC).

⁴⁴ S. O Uwaifo, 'Fair Hearing and the Nigerian Judiciary' (2009) 4 *Nigerian Bar Journal* 22, 26–29.

⁴⁵ *Adekunle v Rockview Hotel Ltd* [2004] 4 NWLR (Pt 863) 180 (SC).

⁴⁶ A. O Owoade, 'Access to Justice and the Problem of Undue Delay in Civil Proceedings in Nigeria' (2017) 12 *Ife Juris Review* 18, 24–27.

constitutional wrong, remediable through appropriate constitutional relief.

CRITICAL ASSESSMENT AND PROPOSALS FOR REFORM

A. Evaluating the Existing Framework

The existing Nigerian framework is not devoid of tools for addressing strategic delay. The constitutional guarantee of fair hearing within a reasonable time, the inherent jurisdiction of the courts to strike out abusive proceedings, the NJC's judicial policy on case management, and the case management provisions of the Lagos and Federal High Court rules collectively provide a foundation upon which a more effective response to strategic delay could be constructed.⁴⁷ In practice, however, three structural deficiencies undermine the effectiveness of this framework.

First, the adjournment culture remains deeply entrenched. Trial judges lack clear, prescriptive guidance on the criteria for granting adjournments, and the fear of appellate reversal for denial of fair hearing creates a systematic bias toward accommodation of delay applications.⁴⁸

Second, the costs regime is ineffective as a deterrent: awards of costs in Nigerian courts remain nominal, bear no relationship to actual expenditure, and cannot deter well-resourced parties for whom adverse costs orders are an acceptable cost of doing business. Third, the gap between the modern court rules of Lagos and the Federal High Court and the practice of the State High Courts across the federation is considerable, with many State courts operating under outdated rules that provide no case management infrastructure.

The limitation period also creates a structural vulnerability. A defendant who is aware that a claim is approaching limitation may have a strong incentive to prevaricate during pre-action correspondence, thereby allowing the period to expire before proceedings are issued.⁴⁹ In *New Nigerian Bank Plc v Okonkwo*, the Supreme Court confirmed the court's power to refuse to allow a party to take advantage of the limitation rule in circumstances of its own deliberate delay, but the circumstances in which this power will be exercised remain narrow and the evidential burden heavy.⁵⁰

⁴⁷ M. O Ogundipe and A. I Salami, 'Judicial Policy, Court Automation and the Problem of Delay in Commercial Disputes in Nigeria' (2018) 9 *Lagos State University Law Review* 67, 78–81.

⁴⁸ *Onyekwere v Onyekwere* [1999] 5 NWLR (Pt 601) 103 (SC).

⁴⁹ Limitation Law Cap L67 LFN 2004, s 8.

⁵⁰ *New Nigerian Bank Plc v Okonkwo* [2000] 3 NWLR (Pt 650) 552 (SC).

B. Proposals for Reform

Three priority reforms are proposed. First, the National Judicial Council should promulgate a binding national Practice Direction on Adjournments and Procedural Delay, setting out specific, non-discretionary criteria for the grant of adjournments, prescribing escalating costs consequences for repeated adjournment applications, and empowering trial judges to impose conditional orders requiring a party to comply with a procedural step by a specified date on pain of automatic dismissal or striking out of its case or defence.⁵¹ Such orders, which have proved effective in comparable jurisdictions, would fundamentally alter the incentive structure for strategic delay.

Second, the legal costs framework across the federation requires comprehensive legislative reform. The current scales are historical artefacts that bear no relationship to the real cost of modern litigation. The proposal for indemnity costs as the default sanction for applications found to be tactical in purpose merits legislative

adoption.⁵² In addition, courts should be empowered and encouraged to make costs orders immediately upon the conclusion of each interlocutory application rather than reserving costs to the conclusion of proceedings, which reduces the deterrent value of costs sanctions.

Third, the deployment of technology electronic filing, electronic service, and virtual hearings for procedural applications has the potential to reduce the logistical opportunities for delay while improving transparency in the management of proceedings. Electronic filing systems, where properly implemented, substantially reduce filing delays and create an auditable record that assists courts in identifying patterns of obstructive conduct.⁵³ Virtual hearings for interlocutory applications eliminate the counsel-unavailability excuse that is the most common justification for adjournment applications in Nigerian practice.⁵⁴

⁵¹ I. P. Enemo, *Civil Procedure in Nigeria* (2nd edn, University of Nigeria Press 2014), 121–123.

⁵² M. O Ogundipe and A. I Salami, 'Judicial Policy, Court Automation and the Problem of Delay in Commercial Disputes in Nigeria' (2018) 9 *Lagos State University Law Review* 67, 78–81.

⁵³ A. O Ameh, 'Electronic Filing and Case Management in the Nigerian Courts: Prospects and

Challenges' (2020) 6 *Journal of Private and Property Law* 33, 37–39.

⁵⁴ A. O Owode, 'Access to Justice and the Problem of Undue Delay in Civil Proceedings in Nigeria' (2017) 12 *Ife Juris Review* 18, 29–32; A. O Ameh, 'Electronic Filing and Case Management in the Nigerian Courts: Prospects and Challenges' (2020) 6 *Journal of Private and Property Law* 33, 42–44.

CONCLUSION

Strategic delay in Nigerian civil litigation is a persistent, rational, and inadequately sanctioned litigation strategy. Its victims are not merely the opposing parties who are worn down and financially overwhelmed in the course of proceedings that stretch far beyond any reasonable timeframe. They include the courts themselves, whose institutional authority is eroded each time their processes are conscripted in the service of obstruction rather than adjudication, and the wider public, whose confidence in the rule of law depends on the capacity of the justice system to resolve disputes fairly and expeditiously.⁵⁵

The Supreme Court of Nigeria has on numerous occasions condemned strategic delay and affirmed the constitutional obligation of courts to deliver justice within a reasonable time. From *Ariori v Elemo* to *GTB v Innoson*, the court has consistently articulated the principle that procedural mechanisms may not be weaponised against the very system of justice they are designed to serve.⁵⁶ Yet the articulation of principle has outpaced its enforcement. The structural, cultural, and resource

deficiencies that sustain the adjournment culture and the broader phenomenon of strategic delay have proved resistant to judicial exhortation alone.⁵⁷

The answer to the question posed in the title of this essay is clear: strategic delay that is deliberately engineered for tactical advantage is not a legitimate exercise of adversarial rights but an abuse of court process. It violates the constitutional guarantee of fair hearing, distorts the outcomes of civil disputes in favour of those with the resources to sustain prolonged litigation, and subverts the foundational principle that justice delayed is justice denied. What is required is not merely judicial condemnation of this phenomenon but structural reform: binding national practice directions on adjournments, a reformed costs regime that imposes real deterrents, updated court rules incorporating active case management frameworks, and investment in the technological infrastructure of the courts. Only through such reform can Nigerian civil justice move from a system in which delay is rational to one in which it is

⁵⁵ O. A. Oyelaran, 'Delay in the Administration of Justice in Nigeria: Causes, Consequences and Remedies' (2014) 5 *Nigerian Journal of Jurisprudence and Social Policy* 1, 14–16.

⁵⁶ *Ariori v Elemo* [1983] 1 SCNLR 1 (SC), *GTB v Innoson (Nig) Ltd* [2017] LPELR-43747 (SC)

⁵⁷ *Abiodun v The State* [2007] 18 NWLR (Pt 1066) 492 (SC).

genuinely costly for those who deliberately
cause it.⁵⁸

⁵⁸ A. O Owoade, 'Access to Justice and the Problem of Undue Delay in Civil Proceedings in Nigeria' (2017) 12 *Ife Juris Review* 18, 32–34; M. O Ogundipe and A. I Salami, 'Judicial Policy, Court

Automation and the Problem of Delay in Commercial Disputes in Nigeria' (2018) 9 *Lagos State University Law Review* 67, 83.