

The Supreme Court on 13 July 2020, struck out the suits filed by Lagos and Ekiti state governments challenging the validity and constitutionality of virtual hearings. The Court found that the suits were premature and speculative in nature. The Court also found that the suits are incompetent for want of cause of action as no right has been infringed or breached and there was no dispute. The Court, per Olabode Rhodes-Vivor JSC, expressed the view that it is better to await the passage of the Constitution of the Federal Republic of Nigeria (Alteration) Bill, 2020 and that it is only after the National Assembly has passed the said bill seeking to include virtual hearing in the Constitution that the constitutionality or otherwise of the said enactment can be challenged. Consequently, the Court held that there was no dispute arising from the suits and as an aside, found that virtual hearings are constitutional.

Indeed, the findings of the Supreme Court stated above accords with our opinion in our paper titled "Review of the Practice Directions by various Courts for the conduct of Court Proceedings during Covid-19" wherein we opined that virtual proceedings are constitutional and satisfy constitutional requirements. The said paper can be viewed here <https://bit.ly/2CtAdNG>.

For ease of reference, please see below an extract of our opinion on the issue:

"The Bill, which was introduced by Senator Opeyemi Bamidele, Chairman of the Senate Committee on Judiciary, is geared towards ensuring that virtual hearings are enshrined in the Constitution. Constitutional amendment is a lengthy and laborious exercise and waiting for this process to be completed before commencing proceedings via remote hearing as a practice will further occasion hardship on litigants and practitioners. While the proposed amendment will help remove any uncertainty about the constitutionality of virtual hearings as presently codified in the Practice Directions released by the various courts, it is our considered opinion that it is not entirely correct that virtual proceedings cannot satisfy the constitutional requirement that proceedings must be held in public. For example, the Federal High Court and the NIC Practice Directions provide that notice of remote hearings shall be stated on the cause list and the Court's website. This makes the proceedings accessible to the public especially in circumstances where all the information required to participate in the proceedings are contained in the notice. Assuming without conceding that virtual proceedings do not satisfy the requirement of being held in "public", since virtual proceedings were introduced to ensure public safety in response to COVID-19, the proviso in section 36(4)(a) of the Constitution will apply to allow courts to sit other than in public for the protection of public health. The said section provides that:

"36(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: Provided that-

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice.

“Thus, without undermining the steps already taken towards the amendment of the Constitution and the suit now filed by Lagos State Government seeking a determination of this issue at the Supreme Court, we believe that the Practice Directions made by the various courts towards expediting judicial processes through virtual proceedings are not contrary to the Constitution.”