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The Supreme Court of Nigeria and the Stains of Justice by Technicalities: Why APC v Machina is wrong

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Abstract

This study appraises the case of APC v Machina which was decided by the Supreme Court of Nigeria on Monday 6th February 2023 on grounds of technicalities. In this case, the court seems to have exhumed the corpse of age-long Blackstone and clung to the medieval practice of forms rather than the substance. Many questions and controversies with conflicting thoughts and opinions have since greeted the said decision. Regrettably, the imbroglio generated has cast doubts on the judiciary as the last hope of the common man and has questioned its stance on the interest of justice. This study, therefore, examines the apex court's decision in a bid to amplify the correct application of the principles of technical and substantial justice in the dispensation of justice in the Nigerian legal system. The study adopts the doctrinal research method of examining several documents, including law reports, statutes, law texts, and journals articles. The central argument is that technical justice is no justice at all as there can be no true justice unless the substance of a matter is examined.

Keywords: Supreme Court of Nigeria, Substantive Justice, Justice by Technicalities, Pre-election matters.

1.0 INTRODUCTION

APC v Machina,⁸¹⁵ the case under review involves a pre-election dispute between the All Progressive Congress (APC) and one of the members of the party i.e. Honourable Bashir Sheriff Machina. In Nigeria, before every general election, political parties are by law required to choose from among party members qualified candidates for the contest.⁸¹⁶ In practice, a primary election is the most common method of selecting these party flag-bearers. However, this process of choosing candidates for the general election is, more often than not, undermined by party elites who often deploy money, and in some cases sumptuous offers to influence selection processes with the overall aim of serving their interests.⁸¹⁷ This, in turn, usually hinders the emergence of credible candidates and gives rise to controversies and litigations within the parties.⁸¹⁸ Primarily, pre-election matters are governed by the Constitution of the Federal Republic of Nigeria (CFRN), 1999 (as amended), and the Electoral Act 2022. The CFRN⁸¹⁹ defines pre-election matters and recognises three different types of pre-election matters^{820, 821}. The said provision⁸²² of the CFRN has been judicially considered by the Supreme Court in several cases.⁸²³ The first type of pre-election matters encompasses complaints by an aspirant directed at his political party. This first component which is largely a politically charged matter is the thrust of the instant case. Here, Honorable Bashir Sheriff Machina is the complainant, while APC is the political party. Honorable Bashir Sheriff Machina's complaints were directed at APC, his political party.

The complainant's complaints contain allegations that there has been a failure on the side of APC to comply with the Electoral Act, and party constitution in the conduct of the party's

⁸¹⁵ SC/CV/1689/2022; Machina v Lawan – The Controversial Supreme Court Decision(2023)
<<https://barristerng.com/download-judgment-machina-vs-lawan-the-controversial-supreme-court-decision/>>
28/3/2023

⁸¹⁶ Section 84, Nigerian Electoral Act 2022.

⁸¹⁷ Iwok Iniobong Party primaries: Politicians bank on the massive deployment of money (2022)
<https://businessday.ng/politics/article/party-primaries-politicians-bank-on-massive-deployment-of-money/>
accessed 5/4/2023

⁸¹⁸ Lucky, Ovwasa O. "Money politics and vote buying in Nigeria: The bane of good governance." *Mediterranean Journal of Social Sciences* 5.7 (2014), 99; Albert, Isaac Olawale. "Explaining 'godfatherism in Nigerian politics.'" *African Sociological Review/Revue Africaine de Sociologie* 9.2 (2005): 79-105.

⁸¹⁹ Section 285(14)

⁸²⁰ Paragraphs (a)–(c), Section 285(14), CFRN

⁸²¹ Section 285(14), CFRN.

⁸²² Section 285(14), CFRN

⁸²³ APC v Umar (2019) 8 NWLR (PT. 1675) 564, Kusamotu v APC (2019) 7 NWLR (PT.1670) 51. See also, the Supreme Court decision of APC v Dele Moses & ORS (2021) 14 NWLR (PT 1796) 278 @ 319 PARAS E-G, Per Augie J.S.C., where the Apex court summarised the meaning of pre-election matters under Section 285(14)(a) - (c) of the CFRN.

primary election, in respect of the selection and nomination of candidates for Yobe North Senatorial District. In determining the case, the Trial Court, following established judicial precedents that in the conduct of its primaries, the court will never allow a political party to act arbitrarily and that a party must obey its own constitution,⁸²⁴ agreed with Honorable Bashir Sheriff Machina. The Court of Appeal upheld the decision of the trial court, but the Supreme Court invalidated the gains of Honourable Bashir Sheriff Machina at both the Trial Court and the Court of Appeal and opened the already glaringly closed door for Ahmed Lawan to contest for the senate seats in his constituency after he lost his bid at the presidential primaries. As expected, the outcome of this matter generated an avalanche of rancorous and blistering criticism against the Supreme Court. The dominant perception of the general public was that the apex court has returned to the dark days of technical legalisms and formalism at the expense of substantial justice.⁸²⁵ As a matter of fact, the outcome of APC v Machina led the Nigerian judiciary on the slippery path to bitter public opprobrium.⁸²⁶ This study draws from this hotly contested judgment to provide an exploration of the principles and practice of substantive and technical justice and to determine which, in the event of a dispute, should prevail in court. The critical question at this juncture is whether or not the irregularity complained of by APC at the Supreme Court is so fundamental and impacts the case's merit that it should not be dismissed as a mere technicality.

2.0 KEY CONCEPTS

The most essential aspect of the public discontent which weighed heavily against the Supreme Court in APC v Machina centers on the question of justice. And as the primary business of the courts is to do justice, more so, the Supreme Court's law lords are rightly designated as Justices. The courts are also rightly referred to as the Temple of Justice. This concept will therefore be the first to be considered. To start with, the Ninth edition of the Black's Law Dictionary defines 'justice' as "The fair and proper administration of laws".⁸²⁷ Further, the same dictionary defines

⁸²⁴ Uzodinma v Izunaso (No.2) (2011) 17 NWLR (PT. 1275) 30, APC v Lere.

⁸²⁵ People are seeing these developments as unjustifiable judicial "gifts" of undeserved candidacies to individuals who under the Electoral Act and common decency no longer have the right to contest in the senatorial election because they cannot eat their cakes and still have them. The dominant perception is that the duo has already voluntarily opted out of the senate race well before the Supreme Court resurrected them, a clearly unacceptable development that is well outside of the prescriptions of the Electoral Act regarding the lawful participation in elections into political offices.

⁸²⁶ Lawan v. Machina: Supreme Court judgement sparks controversies(2023) [dailypost.ng <https://dailypost.ng/2023/02/08/lawan-vs-machina-supreme-court-judgement-sparks-controversies>](https://dailypost.ng/2023/02/08/lawan-vs-machina-supreme-court-judgement-sparks-controversies) 7/4/2023

⁸²⁷ The Ninth edition of the Black's Law Dictionary, p. 942

‘substantial justice’ as “Justice fairly administered according to rules of substantive law, regardless of any procedural errors not affecting the litigant’s substantive rights; a fair trial on the merits.”⁸²⁸ Interestingly, the Black’s Law Dictionary, unlike other general-purpose dictionaries, is the preeminent gold standard for the language of the law, relied upon by major legal jurisdictions around the world. It is the most practical, comprehensive, scholarly authority for legal definition since 1891.⁸²⁹ Going by this definition, until an administration of laws is carried out in fairness it cannot be said that justice has been done. It is even more important to understand that in defining substantive justice, the Black’s Law Dictionary places a premium on the “determination of suit per the substantive law”. It is thus clear that justice and fairness are complementary concepts that cannot be separated from each other, and as such the courts are duty-bound to, at all costs uproot every stumbling block on the way in accompanying justice. This is in tandem with the Latin maxim *fiat justitia ruat caelum*, which means “let justice be done though the heaven falls.”⁸³⁰

In the same vein the doctrine of equity, which is one of the cornerstones of the Nigerian legal system dictates that justice must be administered in accordance with what is fair and just in all circumstances.⁸³¹ Consequently, unless and until decisions of courts follow these dictates of the doctrine of equity, justice is meaningless. The courts, therefore, are saddled with an enormous responsibility to always ensure that their verdicts are fair and just. And as will be shown later in this study, the majority decision in *APC v Machina* cannot be said to be fair and just, meaning that justice was not served. Another important component of the key concepts in this study is the concept of ‘technicality’. In *Benedict Orji v Ozo Nne Illoputaife & Ors*,⁸³² the Court of Appeal, relying on the 6th edition of Black’s Law Dictionary, defined this term to mean “Immaterial, not affecting the substantial rights, without substance.” By this means, the court has authoritatively declared that any matter that does not impinge on the substantive right of a party in a suit should be viewed as mere technicalities. In the same vein, Justice Niki Tobi in *Yusuf v Adegoke & Anor*⁸³³ held,

⁸²⁸ Ibid, p. 943.

⁸²⁹ Black's Law Dictionary, <<https://karnatakajudiciary.kar.nic.in/hcklibrary/PDF/Blacks%20Law%206th%20Edition%20-%20SecA.pdf>>; <<https://legal.thomsonreuters.com/en/products/law-books/blacks-law-dictionary>> accessed 6/4/2023.

⁸³⁰ Mahfud, Muh Afif, Eryln Indarti, and Sukirno Sukirno. "Agrarian Justice and Contextuality in Maxim Fiat Justitia Ruat Caelum and Fiat Justitia Ne Pereat Mundus." *Kanun Jurnal Ilmu Hukum* 23.1 (2021), 65-79.

⁸³¹ Uweru, Bethel Chuks. "Repugnancy Doctrine and Customary Law in Nigeria: A Positive Aspect of British Colonialism." *African research review* 2.2 (2008), 286-295.

⁸³² *Benedict Orji v Ozo Nne Illoputaife & Ors* [2011] LPELR-9199 (CA) 24, Para A-E.

⁸³³ (2007) LPELR – 3534 (SC).

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 on the rules of court with little or no regard for 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 for the injustice that will be caused to the opponent.⁸³⁴

In this case, the court showed that issues of technicalities are essentially limited to abstract legalisms. It is profitable to bear in mind that the practice of technical justice is rooted in the Common Law of England which is one of the main sources of the Nigerian legal system.⁸³⁵ Hence, in inheriting the Common Law of England, the Nigerian legal system did so with its rigid rules and technicalities. Because of the rigidity and technicalities of the Common Law of England, a cause of action could be defeated for failure to file the appropriate writ or Form of Action.⁸³⁶ The most trivial error on the part of a plaintiff would automatically result in the matter being struck out or judgment entered in favour of the opponent. Even where a party failed to seek the most appropriate remedy, this could shut the door of justice on him.⁸³⁷ All these were the testimonies of the Common Law days. However, with the emergence of the equitable jurisdiction of the Chancery Courts, justice has been made to focus on fair and just outcomes as against abstract legalisms. With regard to the case under review which is an electoral matter, technical justice is much more dangerous because it has a way of provoking widespread discontent which is capable of causing a breakdown of law and order in society. It should also be borne in mind that in every electoral matter, to do justice is to ensure that the people's votes count. It means that the person who takes over political power should be the particular person whom the people anticipated, elected, and declared the winner. In all, if the court through the instrumentality of technical defeats nullifies the choice of the electorate and imposes someone else, it follows that the law has failed to deliver justice.

⁸³⁴ Adedeji v The State (1992) 4 NWLR (Pt. 234) 248, at page 265.

⁸³⁵ See for example *Pinnels v Cole*⁸³⁵ where the court per *Lord Coke* recognized that the plaintiff ought to fail in his action based on the merit of the case, yet succeeded as a result of the technical flaw in the defendant's pleadings. During that period, the Common Law position used to be expressed in the full Latin maxim: *'forma non observata infertur adnullatio actus'* i.e. when forms are not observed, a nullity of the act is inferred.

⁸³⁶ Ibid.

⁸³⁷ Ibid.

3.0 ANALYSIS OF APC v MACHINA

3.1 Facts

Pursuant to the Independent Electoral Commission (INEC) guidelines which required political parties in Nigeria to nominate their party flag bearers in preparation for countries general election which was to be conducted later, on 28th May 2022, the All Progressives Congress (APC) conducted their party's primary election to produce its senatorial aspirant for the Yobe senatorial district.⁸³⁸ Two candidates, Hon. Bashir Sheriff Machina and Senate President, Armed Lawal showed interest, but the Senate President in a letter to APC, voluntarily withdrew his participation in the May 28 primary election in order to contest the presidential primary.⁸³⁹ Thus, the Senate President did not participate in the primary for National Assembly elections, as he was at the time a presidential aspirant and contested for the ticket of the ruling party, which was held on June 8, 2022.⁸⁴⁰ The Senate President eventually lost the APC presidential primary to a former Lagos governor, Asiwaju Bola Tinubu, who later emerged as the APC presidential candidate.⁸⁴¹ APC conducted another primary on 9th June 2023 in which Machina did not participate and Lawan won. Accordingly, APC forwarded Lawan's name to INEC as its candidate. The move infuriated Machina who instituted an action at the Federal High Court, Damaturu, challenging the actions of his party and seeking the order declaring him as the party's authentic senatorial aspirant for the Yobe North Senatorial District for the 2023 National Assembly election. In the suit against APC which was commenced by Originating Summons,⁸⁴² and in Machina's affidavit, allegations of criminality and forgery were raised against the APC. At both the Federal High Court and Court of Appeal, Machina won the case. APC, therefore, proceeded on appeal to the Supreme Court. Before the Supreme Court, the question was whether Machina's case was properly commenced at the trial court in Damaturu, considering that allegations of criminality were raised in the grounds of the Originating Summons and facts establishing criminality were adduced by Machina in the accompanying

⁸³⁸ lawan's Rough Road to Secure APC's Yobe North Senatorial Ticket (2023) <<https://www.thisdaylive.com/index.php/2023/02/08/lawans-rough-road-to-secure-apcs-yobe-north-senatorial-ticket/>> accessed 7/4/2023; **Ahmed Y. Hassan**, 2023:INEC, election timetable and conduct of party primaries (2022) <<https://www.thecable.ng/2023-inec-election-timetable-and-conduct-of-party-primaries>> accessed 7/4/2023

⁸³⁹ UPDATED: Machina loses as S'Court affirms Lawan as Yobe senatorial candidate (2023) <<https://punchng.com/breaking-machina-loses-as-scourt-affirms-lawan-as-yobe-senatorial-candidate/>>7/4/2023.

⁸⁴⁰ Ibid.

⁸⁴¹ Abdullateef Salau, 'Machina's Loss: Supreme Court Has Strengthened Democracy – Lawan' (Daily Trust 6/2/2023) <https://dailytrust.com/machinas-loss-supreme-court-has-strengthened-democracy-lawan/> accessed 18/2/2023.

⁸⁴² Originating Summons is an appropriate mode of commencement of action when a party seeks an interpretation of law and actions and sets questions for the court to determine or answer. It is used when the facts are not contentious and supported by an affidavit, which sets out the facts.

affidavit.⁸⁴³ On February 6, 2023, the Supreme Court, with a split judgment of three to two, voided Machina's victory, and ruled that Lawan was the All APC senatorial candidate for Yobe North.⁸⁴⁴

3.2 Holding

The brief of argument filed by APC at the Supreme Court in the case contains six issues for the determination of which issue number one is central.⁸⁴⁵ The remaining five issues are, to a large extent, mere repetitions of issue one. The court, therefore, extensively addressed the issue one which states:

Whether in the circumstances of the appeal before the court below, especially with the allegation of fraud in the midst of other irreconcilable conflicts in the numerous affidavits, further affidavits filed by the parties in support of their various conflicting positions, the court below was correct to hold that the trial court was right to have adjudicated the first respondent's case on the first respondent's originating summons.⁸⁴⁶

Honourable Machina, on his part, filed his brief of argument and raised two issues for determination. As required by law, each of the parties, through her counsel, adopted the relevant written arguments at the hearing of this appeal on February 1, 2023.⁸⁴⁷ The court considered the issues raised and gave its decision in favour of APC on the grounds that Machina wrongly adopted Originating Summons to invoke his case at the Federal High Court.⁸⁴⁸ Justice Centus Chima Nweze, who delivered the majority judgment of the Supreme Court, held that Machina ought to have commenced his case at the Federal High Court with a Writ of Summons in view of grievous allegations in his suit against the defendants.⁸⁴⁹ The judgment states that hostile issues were involved in Machina's matter that could not be resolved through originating summons. Accordingly, the court allowed the appeal and set aside the judgment of the Court of Appeal, Gombe Judicial Division, sitting in Abuja, delivered on November 28, 2022, which affirmed the judgment of the Federal High Court, Damaturu Judicial Division, delivered on September 28, 2022, and all the orders made therein.⁸⁵⁰ Ultimately, the court struck out

⁸⁴³ Ibid (note 22).

⁸⁴⁴ Lawan v Machina: Supreme Court judgement sparks controversies(2023) [dailypost.ng <https://dailypost.ng/2023/02/08/lawan-vs-machina-supreme-court-judgement-sparks-controversies>](https://dailypost.ng/2023/02/08/lawan-vs-machina-supreme-court-judgement-sparks-controversies) 7/4/2023

⁸⁴⁵ SC/CV/1689/2022, p.7

⁸⁴⁶ Ibid.

⁸⁴⁷ SC/CV/1689/2022, p.10

⁸⁴⁸ SC/CV/1689/2022, p.44-46

⁸⁴⁹ Ibid.

⁸⁵⁰ SC/CV/1689/2022, p.50

Honorable Machina's suit.⁸⁵¹ However, Justices Adamu Jauro and Emmanuel Agim disagreed with the majority decision and held that both the Federal High Court and the Court of Appeal were correct in their findings in declaring Machina as APC's Senatorial candidate for the Yobe North.⁸⁵² According to them, Lawan never participated in the APC primary held on May 28, as he withdrew voluntarily to participate in the presidential primary held on June 8. The minority decision held that the conduct of another primary on June 9, where Lawan emerged was in breach of the provisions of the CFRN⁸⁵³ and Electoral Act,⁸⁵⁴ as the APC never canceled the one held on May 28 before organising another. Besides, the minority decision held that Lawan had in an undisputed letter to APC, voluntarily withdrawn his participation in the May 28 primary election for the presidential primary. The minority decision contended that INEC was specific that it witnessed the May 28 primary that produced Machina but did not witness that of June 9, because there was no notification from APC to that effect. The minority decision, therefore, dismissed the appeal by APC for being incompetent and unmeritorious.

4.0 DISCUSSION

4.1 Why APC v Machina is wrong

As established above, the main reason the Supreme Court voided the victory Honorable Machina had at the lower courts is that Machina's matter deals with fraud and should have been instituted by way of Writ of Summons and not Originating Summons. The apex court is of the view that the fact that the Federal High Court practice direction provides that pre-election matters be instituted by way of Originating Summons is not enough reason to disregard the need to adopt the appropriate form of commencement of the action.⁸⁵⁵ By the rules of the court, an allegation of fraud ought to be brought by way of a Writ of Summons, but Machina's action was commenced by an Originating Summons contrary to the provisions of the Federal High Court (Civil Procedure) Rules, which provides that a writ of summons shall be the form of commencing any proceedings where the claim is based on or includes an allegation of fraud. In view of the foregoing, the central question that this study seeks to answer is whether this irregularity is so fundamental and impacts negatively the merit of the case. As will be argued

⁸⁵¹ SC/CV/1689/2022, Ibid

⁸⁵² Seye Olumide and Ameh Ochojila, Lawan in, Machina out: Supreme Court decision splits lawyers/ <https://guardian.ng/news/lawan-in-machina-out-supreme-court-decision-splits-lawyers/>

⁸⁵³ Section 285, CFRN.

⁸⁵⁴ Section 84 (5), Electoral Act.

⁸⁵⁵ More so, the Supreme Court has held in a plethora of authorities that the rules of the court supersede a practice direction.

Order 3 Rules 2 (b) of The Federal High Court (Civil Procedure).

here, the irregularity is not so fundamental and should not have impacted negatively the merit of APC v Machina. This is because the facts of the case show that Honorable Lawan was not properly elected as the party's candidate at the legally held primary. Also, the decision of APC to hold another primary election in June without canceling the May 28 election, which was not monitored by INEC, APC's actions clearly violated the provisions of the Electoral Act⁸⁵⁶. To the mind of an average reasonable member of society, the foregoing facts which are known to the whole world are conclusive and unimpeachable. To such an average reasonable member of society, the contestations around the issues of High Court Rules being superior to Practice Direction hold very little relevance.

It is trite that Rules of Court are part of the machinery of justice made by the Courts to regulate their proceedings. They are designed to assist in obtaining justice with ease, certainty, and dispatch. They partake of the nature of subsidiary legislation by virtue of the Interpretation Act⁸⁵⁷ and consequently have the force of law. Accordingly, as a general rule, the Rules of the Court must be obeyed by litigants and they are binding on all the parties before the Court.⁸⁵⁸ It must, however, be understood that not every non-compliance with the Rules of Court is necessarily fatal to the case of a party or to the process filed by a party in a matter. One of the most firmly established principles of judicial adjudication is that the Rules of Court must never be interpreted to defeat the course of justice and that where the effect of strict adherence to a provision of the Rules of Court will hinder the Court from performing its primary duty of doing substantial justice between parties to a dispute, and cause injustice, the Court must jettison the provision in favour of substantial justice.⁸⁵⁹ This principle has been consistently reiterated by the Supreme Court over the years and a few instances will be mentioned as examples. In UTC (Nig.) Ltd. v Pamotei⁸⁶⁰, Belgore, JSC, (as he then was) stated that: "Rules of procedure are made for the convenience and orderly hearing of cases in Court. They are made to help the cause of justice and not to defeat justice. The rules are therefore aids to the Court and not masters of the Court. For Courts to read rules in the absolute without recourse to the justice of the cause, to my mind, will be making the courts slavish to the Rules. This certainly is not the

⁸⁵⁶ Section 84(5), Electoral Act.

⁸⁵⁷ Section 18 (1)

⁸⁵⁸ Aromolaran v. Oladele (1990) 7 NWLR (Pt. 162) 359; Duke v Akpabuyo Local Government (2005) 19 NWLR (Pt. 959) 130; Owners of the MV "Arabella" Vs. Nigeria Agricultural Insurance Corp (2008) 11 NWLR (Pt. 1097) 182; Agip (Nig.) Ltd. v Agip Petroli International & Ors. (2010) 5 NWLR (Pt. 1187) 348.

⁸⁵⁹ Order 5 Rule 1(2) of the High Court of Lagos State (Civil Procedure) Rules 2012

⁸⁶⁰ (1989) 2 NWLR (Pt. 103) 244 at page 296 F.

raison d'etre of the Rules of Court." In *Federal Government of Nigeria v Zebra Energy Ltd.*

⁸⁶¹Belgore, JSC, (as he then was) again stated

...Procedure is a guide to smoothen the passage of suit; to direct the parties what to do and to guide the Court to arrive at the justice of a case... The Court shall never be shackled by procedure; the case is not made for a procedure, it is the other way round. Once the procedure employed has brought into focus the issues the parties contest and there is no miscarriage of justice it will not matter that the procedure is not the correct one. Getting to the destination is what is important; it does not matter the means used. This Court will certainly not disturb a clear case of justice between the parties by suo motu raising for the parties procedural abnormalities..., what is relevant in a case of this nature is the question of the justice of the case.⁸⁶²

In *Fidelity Bank Plc v Monye*,⁸⁶³ Adekeye, JSC, made the point thus: "Rules of Court touch upon the administration of justice. They are promulgated to regulate matters in Court and to assist parties in the presentation of their case within a procedure made for the purpose of a fair and quick dispensation of justice. The Courts have leaned heavily on the side of doing justice... The rules must be understood as made with that fundamental principle in the background. Whatever the case may be in the Court proceedings, the rules are no more than an adjunct to the course of justice. The Court must never interpret a rule of Court to defeat access to justice which is guaranteed by the Constitution." It is in this wise that the Supreme Court categorically stated that any non-compliance with the Rules of Court is prima facie an irregularity and not a ground for nullity, unless such non-compliance amounts to a denial of natural justice or affects substantial justice in the trial of a case; not when it in no way affects the justice of the trial of a case.⁸⁶⁴

The drafters of the High Court (Civil Procedure) Rules of practically every State, recognized this principle and they have a provision in all the Rules of Court to the effect that "where in beginning or purporting to begin any proceedings 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 the Rules, whether in respect of time, place, manner,

⁸⁶¹ (2002) 18 NWLR (Pt. 798) 162.

⁸⁶² Pages 204 – 205.

⁸⁶³ (2012) 10 NWLR (Pt. 1307) at page 32 F-H.

⁸⁶⁴ *Okoye v. Nigerian Construction Co. Ltd.* (1991) 6 NWLR (Pt. 199) 501; *Famfa Oil Ltd. Vs. Attorney General of the Federation* (2003) 9-10 SC 31; *Osigwe Vs. PSPLS Management Consortium Ltd.* (2009) 3 NWLR (Pt. 1128). 378; *Okoro v. State* (2012) 4 NWLR (Pt. 1290) 351; *Adama Vs. State* (2018) 3 NWLR (Pt. 1605) 94

form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings or any document, judgment or order therein." Thus, where the facts are glaringly clear, the Court should ignore mere technicalities in order to do substantial justice." This principle resonated through the lead and contributory judgments of the five Justices who heard the matter and it is applicable in the present case. In *Ufoegbunam v Okongwu*, the court held, "... non-compliance with the mandatory provisions of an Act is fatal whereas non-compliance with the rules of Court may be an irregularity which can be waived...non-compliance at the beginning of the process cannot be condoned or corrected but the non-compliance that can occur and can be corrected in the course of the action can be condoned."⁸⁶⁵ The Judge may give any direction as he thinks fit to regularize such steps." In *Nosiru Bello v AG Oyo State*⁸⁶⁶, the Supreme Court held as follows: "The picture of law and its technical rules triumphant, and justice prostrate may no doubt have its admirers. But the spirit of justice does not reside in forms and formalities, nor technicalities, nor is the triumph of the administration of justice to be found in successfully picking one's way between pitfalls of technicalities. Law and all its technical rules ought to be but a handmaid of justice and legal inflexibility (which may be becoming of law) may, if strictly followed, only serves to render justice grotesque or even lead to outright injustice. The Court will not endure that mere form or fiction of law, introduced for the sake of justice, should work a wrong, contrary to the real truth and substance of the case before it."⁸⁶⁷

The combined effect of the foregoing holdings is an irresistible conclusion that non-compliance with the Rules of Court is, prima facie, an irregularity and not a ground for nullity. Therefore, the majority decision of the Supreme Court in *APC v Machina* is wrong. The apex court ought to have

considered the case on its merit and not on mere technicalities as it has done. Truly, strict adherence to legal rules and procedures is necessary, essentially to ensure consistency and predictability in the administration of justice, but when these legal rules and procedures result in unjust outcomes, they should be jettisoned in the interest of justice. In the instant case, there was clearly a strict adherence to legal rules and procedures and this has resulted in an unjust outcome. It is expedient for judicial officers to constantly reflect on whether their decisions

⁸⁶⁵ *Ufoegbunam v Okongwu* (2018) LPELR-45086(CA).

⁸⁶⁶ (1986) 5 NWLR Pt. 45 Pg. 828.

⁸⁶⁷ See also: *Obasi v. Mikson Establishment Industries Limited* (2016) LPELR-40704(SC); *Adeyemi v. State* (2014) LPELR-23062(SC); *MFA & Anor. v. Inongha* (2014) LPELR-22010(SC).

produce just and fair outcomes, particularly, the Supreme Court being the final arbiter of justice. More so, the Judge, as the head of his court, has the authority and discretion to lawfully change any rule of procedure that might obstruct justice.⁸⁶⁸ This is not to say that the courts should completely shun the procedures or the rules of court and focus strictly on substantive justice. It is important, in the interest of justice, for Courts to prioritize substantive justice over technical justice except where such technicalities will amount to injustice on the other party.

4.2 Justice: The missing link in APC v Machina

Lord Denning once said, “My root belief is that the proper role of the judge is to do justice, if there is any rule of law which impairs the doing of justice, then it is the province of the judge to do all he legitimately can to avoid the rule, even to change it, so as to do justice in the instant case before him.”⁸⁶⁹ The Master of the Rolls also had cause to tease at a legal dinner when he said, “Unlike my brother judges here, who is concerned with law I am concerned with justice.”⁸⁷⁰ In line with this position of Lord Denning, there are various dicta by Nigerian judges pitching their tent with the spirit of the law as opposed to its form. In *Eze v FRN*⁸⁷¹ the court stated, “Justices of the Supreme Court are not judicial technicians and Supreme Court is not a workshop of technical justice.” In *Dapianlong v Dariye*⁸⁷² the court stated, “The reign of technical justice is over, on the throne now sits substantial justice, long may you reign, substantial justice.” Per Okoro JCA, in the case of *Balogun v E. O. C. B (Nig.) Ltd*, held, “Good law, in my opinion, must have a human face; good law should not patronize technicalities that will give rise or room to undeserved victories in litigation. Good law should discourage technicalities... good law will not encourage a situation where a party in litigation will only return home with pyrrhic victory which in reality is no victory at all.” *Akeredolu Abraham & Ors*⁸⁷³ is also illustrative. In this case, the Supreme Court held that “Technicality in the administration of justice shuts out Justice. A man denied justice on any ground, much less a technical ground, grudges the administration of justice, it is, therefore, better to have a case heard and determined on merit than to leave the Court with a shield of 'victory' obtained on mere technicalities”. Furthermore, in *Josiah v The State*⁸⁷⁴ his Lordship, Oputa JSC (as he then

⁸⁶⁸ *Nishizawa Limited v Jethwani* (1984) 12 SC 234; *Broadbank of Nigeria v Olayiwola & Sons* (2005) 1 SCM 65.

⁸⁶⁹ Lord Denning: *The Family Story*, Butterworths London, 1981, p. 174).

⁸⁷⁰ *Ibid.*

⁸⁷¹ (2017) 15 NWLR (pt. 1589) 433.

⁸⁷² *Dapianlong v Dariye* [2008] 8 NWLR (Part 1036) 332.

⁸⁷³ (2018) LPELR- 44067 (SC).

⁸⁷⁴ [1985]1 NWLR (Pt. 1) 125.

was) held, “Justice is not a one-way traffic. It is not for the appellant alone. Justice is not even a two-way traffic. It is really three-way traffic”. The court should see that parties to the case at hand and the society at large should be made to perceive that justice has been done and still maintain their faith in the court as the last hope of the common man. To this end, it is the view, most respectfully, shared by this study that a court of law must be seen to be interested in doing justice to parties or the issues before it rather than being an advocate of injustice. In light of the foregoing positions of the courts, there is no justification for the Supreme Court decision in *APC v Machina*.

4.3 The Dangers of Technicalities

APC v Machina, like many other cases where justice has been murdered on the gallows of technicalities, has shown vividly the inherent danger of technical justice. In *Chiwendu v Mbamali*⁸⁷⁵ Kayode Eso, JSC supports this view when he stated:

Care should be taken by the court always not to sacrifice justice on the altar of technicalities. The time is no more when disputes are dealt with rather on technicalities and not on the merit... The modern trend towards the abandonment of this type of technical difficulty is crystallised in the case of *Re Vandervells Trusts (No2) White & others V. Vandervell Trustees Limited* (1974) 3 All E.R. 205. There, Lord Denning M.R. puts the matter most forcefully. I respectfully approve of the dictum of the learned Master of the Rolls when he said: 'Counsel for the executors stressed that the points taken by counsel for the trustee company were not covered by the pleadings. He said time and again: this way of putting the case was not pleaded; no such trust was pleaded; and so forth. The more he argued, the more technical he became. I began to think we were back in the bad old days before the Common Law Procedure Acts when pleadings had to state the legal result, and a case would be lost by the omission of a single averment. All that has been swept away. It is sufficient for the pleader to state the material facts. He need not state the legal result...' ⁸⁷⁶

In *Nipol Ltd v Bioku Investment & Property Co. Ltd*⁸⁷⁷ the court also held: "...Technicality in the administration of justice shuts out justice. A litigant sent out of court without a hearing is denied justice. It is, therefore, better to have a case heard and determined on merit than to leave the court with a shield of victory on a mere technicality"⁸⁷⁸ The Supreme Court in *Trans Bridge*

⁸⁷⁵ (1980) 3-4 S.C.31.

⁸⁷⁶ Ibid at p.81-82.

⁸⁷⁷ (19923 N.W.L.R. (Pt. 232) 727.

⁸⁷⁸ Ibid at p. 783.

*Co. Ltd v Survey Int. Ltd*⁸⁷⁹ also held: "It would be tragic to reduce judges to a sterile role and make automation of them. I believe it is the function of judges to keep the law alive, and in motion, and to make it progressive for the purpose of arriving at the end of justice, without being inhibited by technicalities, to find every conceivable but acceptable way of avoiding narrowness. Short of a judge being a legislator, a judge to my mind must possess an aggressive stance in interpreting the law."²³ *Kayode Eso, JSC in State v Gwonto*⁸⁸⁰ says: "The court has for some time now laid it down as a guiding principle that it is more interested in substance than in mere form. Justice can only be done if the substance of the matter is examined. Reliance on technicalities leads to injustice."²⁹ Rules of procedure are therefore meant to guide parties and the Court in achieving the sole end of justice. It is not meant to circumvent true justice (substantive justice) for procedural justice. Hence, *Oliver, J.* in the case of *Burston Finance v Wilkins*³ stated the purpose of the practice rules of the superior courts: "The rules of the Supreme Court are the instrument through which the courts act to secure justice, their servants not their tyrants". The above classic exposition of the learned jurist amplifies the rationale behind practice rules and procedures. They are not meant to clog the wheel of justice but to aid it. Hence, they are to be used for that purpose only and nothing more. The paradox of practice rules of court is that, though they are designed for the promotion of efficiency in the administration of justice, on the contrary, they are being used by advocates to grind the driving wheel of substantive justice to a halt.

Another inherent danger in the practice of technical justice is that it practically visits the sins of counsel on the litigants. This obviously is not a good practice of law. The rule of litigation is that the sins of a counsel should not be visited on the litigants. A party to action should not suffer a reverse or detriment as a result of procedural flaws made by his counsel. The Supreme Court per *Coker, JSC in Doherty v Dohert*⁸⁸¹ stated the position quite pungently thus: "It occurs to us that the failure to comply with the conditions of appeal is entirely due in this case to the fault of appellants' solicitors and to shut them out from the hearing of the appeal on the merits is to hold them personally responsible for the negligence of their solicitors".⁸⁸² In the same vein, *Karibi Whyte, JSC in Bello & Others v A.G Oyo State*⁸⁸³, stated the same view that the

⁸⁷⁹ (1986) 4 N.W.L.R.(Pt. 37) 576.

⁸⁸⁰ (1983) 1 S.C.N.L.R.142.

⁸⁸¹ (1964)1 All N.L.R.299.

⁸⁸² Ibid. See also *Nwadike v. Nwadike* (1987) 4 N.W.R.(Pt. 65) 394, *African Continental Bank Ltd. v. Elosiuba & Ors.* (1991) 3 N.W.L.R. (Pt 178) 133, *Kalu & Ors. v. Igwe & Ors.* (1991) 3 N.W.L.R. (Pt. 178)168, *Onagoruwa & Ors. v. U.B.N.* (1992) 1 N..W.L.R.(Pt. 217) 289 and *Odutola v. Kayode* (1994) 2 N.W.L.R. (Pt.341) 1.

⁸⁸³ (1986)5 N.W.L.R. (Pt. 45) 825.

Court will not visit the carelessness of counsel on the client. His Lordship stated: "...I think I am speaking the mind of all engaged in the administration of justice not only in this court but in all courts in this country that the day the courts allow the inarticulate ignorance of counsel to determine the result of an action before it, that day will herald the unobtrusive genesis of the unwitting enthronement of injustice aided by the court itself in default".⁸⁸⁴Hence, the law is trite that a court of law should be wary of allowing a party to suffer from the procedural errors made by his counsel. Apparently, this rule of law was completely undermined in *APC v Machina*. It is submitted that a good advocate is made from a sound knowledge of the law on the subject matter of his client's action and a mastery of the facts. A good advocate, as Lord Hewart put it, "must claw the facts. If he does not, all the virtues and brilliant improvisations will not help him. They must all be retained in his memory so long as the case lasts; dates, names, times, exhibit numbers."⁸⁸⁵ This is one thing that is grossly sacrificed in the practice of clinging tenaciously to technicalities alone.

5.0 CONCLUSION

The majority decision of the Supreme Court in *APC v Machina*, although, lawful in that it preserves the tenets of technical justice, however, betrays the course of substantive justice. The core objective of electoral justice is to bring peace to society. Justice, therefore, ought to aim at discovering the truth and have the courage to pronounce that truth without fear or favour. There should be a conscious effort to build on people's confidence in the judiciary. The judiciary being a major stakeholder in the sustenance of our democracy should play its role with thirst and hunger for the enthronement of justice, probity, integrity, and credibility in the electoral process for the sake of conscience, respect for the Constitution and fear of God. where non-compliance with the rules cannot affect or cause any miscarriage of justice, undue technicality should not be listened to in order to attain substantial justice. The solution to this is to merge all objections with the hearing of the substantive suit and to incorporate all interlocutory appeals into the main case, such that the determination of the court can be made known on both in a single judgment, rather than pursue common issues of amendment or injunction up to the Supreme Court whilst the main case is guillotined thereby, on the altar of technicality. In all, Judges must always bear in mind the admonition of Lord Atkin in the *United Australia Ltd v Barclays Bank Ltd*³⁰ (cited with approval by the Supreme Court in *UTC (Nig.)*)

⁸⁸⁴ Ibid at p.871.

⁸⁸⁵ See Kayode Jegede, S.A.N. "The Legal Profession, Our Noble Heritage" in *Legal Thoughts- Essays in Honour of Prof. B.O. Iluyomade* (ed. I.A. Yakubu) (2005) p. 94.

Ltd v Pamotei⁸⁸⁶ that: "When these ghost of the past (meaning forms of actions) stand in the path of justice clanking their medieval chains, the proper cause for the judges is to pass through them undeterred."⁸⁸⁷

⁸⁸⁶ (1989) 2 NWLR (Pt. 103) 244

⁸⁸⁷ *ibid* at p.160.