

## **BALANCING SPEED AND SAFEGUARDS: RETHINKING ELECTRONIC SERVICE AND THE RIGHT TO BE HEARD IN NIGERIA**

**By**

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### **Abstract**

*This article explored the issues facing the service of court processes in Nigeria and suggested practical reforms that balance speed with safeguards to ensure justice and the right to a fair hearing. Despite recent improvements in electronic services, the justice system still relies too heavily on traditional manual methods, which are slow, unreliable and open to abuse. Proper service is fundamental, as defective service robs the court of its jurisdiction to hear and determine a matter. Using the doctrinal research methodology and relying on statutes, rules of court, practice directions, case law and scholarly works, the article rethinks e-service and the right to a fair hearing, proposing reforms to balance speed and safeguards. Using global best practices, the article argued that electronic service is both necessary and workable and can be implemented without sacrificing safeguards for speed and convenience. The article emphasized that while some Nigerian court rules already permit email service, their implementation and enforcement are ineffective. The article then set out six key reforms, which include amending the court rules across the Federation to allow electronic service; building the digital tools needed to support it, requiring all parties to provide email or other electronic contact details; training court staff and judges; protecting people who have little or no access to digital tech and ensuring strong national leadership and institutional collaboration*

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*to drive the reform. It concluded that with the right rules, digital communication tools, training and compliance, electronic services can help courts work faster while still respecting the constitutional right to be heard.*

**Keywords:** *Electronic Service, Fair Hearing, Access to Justice, Judicial Reform, Court Process Delivery*

## **1. Introduction**

Every lawsuit in both trial and appellate courts must pass through a simple but essential step, which is giving the other party notice. Without that, such matter cannot validly proceed. The court has no power to act, and the person affected has no fair chance to respond. That is why the law treats service of court processes as the foundation of every valid proceeding. Once service fails, everything built on it falls apart. But in Nigeria today, this basic step suffers serious setback. Often times, serving court processes, like writs and notices of appeal, is slow, unreliable and unverifiable.

Some parties intentionally evade service so as to frustrate the litigant or appellant. Others exploit technical rules and loopholes to set aside the entire proceeding. Worryingly, the system still relies on outdated methods such as manual delivery, paper records and handwritten endorsements. This approach makes it difficult to track, enforce or prove that service was actually effected. Even when courts know that a party is aware of a case, they are still bound by law to set aside proceedings where service was not done as prescribed by the law.

This system frustrates both justice and efficiency. It wastes time, increases costs and denies timely access to the courts. Every delay caused by poor service affects someone's right to be heard. And yet, rules of court in most states in Nigeria have remained stuck in the past. There is little consistency across rules of court. Only a few jurisdictions like Rivers State, Lagos State and a few others make room for modern tools like e-filing, email or WhatsApp service. The legal mail system also helps to promote this course. Even where

rules of court and practice directions allow them, courts (especially at trial level) are often reluctant to recognize and admit them due to lack of convincing evidence that the electronic service has produced the desired result of proper service.

This paper therefore seeks to ask a simple but urgent question: how can Nigeria modernize its service of court processes without compromising the right to a fair hearing? We already have parts of the answer, as courts are starting to accept electronic service in limited cases. This paper joins in answering this question so as to balance the speed and convenience that electronic service promises with the safeguards needed to address the risks it poses.

## 2. Service of Court Process – What It Means

To understand why service matters, one must begin with what it actually does. Simply put, service of court processes (whether personal or substituted) is how a party is formally brought within the authority of the court.<sup>11</sup> Until this happens, the court cannot proceed.<sup>2</sup> In a plethora of cases, the courts have overstressed this principle. In *Okoma v Udoh*,<sup>3</sup> the Court of Appeal held that service of process is ‘vital and fundamental as it confers jurisdiction on the court to entertain the matter.’<sup>7</sup>

Where it is not done, or not properly done, everything else collapses. The Black’s Law Dictionary defines service as the formal delivery of a writ, summons or other legal document.<sup>4</sup> The emphasis here is on formality and notice. A party must be put on notice in a manner that the law recognises. Personal awareness is not enough. In

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<sup>1</sup>*Okoye v Centre Point Merchant Bank Ltd.* (2008) All FWLR (Pt. 441) 810;  
*Nwankwo & Anor v INEC & Ors* (2023) LPELR-61158(CA).

<sup>2</sup> *Ibid.*

<sup>3</sup> (2002) 1 NWLR (Pt 748) 438.

<sup>4</sup> B A Garner (ed.), *Black’s Law Dictionary* (10<sup>th</sup> edn. Thomson Reuters 2014) 1576.

*Ononye v Chukwuma*,<sup>5</sup> the court made it clear that even if a defendant knows they have been sued, that knowledge does not excuse the absence of proper service.

The legal framework governing the service of court processes is contained in various rules of court and enabling statutes. The High Court Rules, the Federal High Court (Civil Procedure) Rules 2019, the Customary Court of Appeal Rules, the Court of Appeal Rules 2021 and the Supreme Court Rules 2024 (as amended) all contain provisions governing service. Under these rules, service can be personal, substituted or, in some cases, electronic. Personal service requires direct delivery of court processes to the party concerned. Substituted service, on the other hand, requires a court order authorizing delivery by alternative means such as posting on a door, publishing in a newspaper, or delivering to another person at a known address.

The Court of Appeal Rules (CAR) 2021 now allow notices of appeal to be served personally or by electronic means, including email. Rule 1 of Order 2 of the CAR 2021 states that where a respondent has an electronic mail address, service may be effected by email. But the same rule also provides that if the court is satisfied that the notice has actually been communicated, it will not entertain objections based on non-compliance with the form of service. This is a modest but important shift. The Supreme Court Rules 2024 make similar provisions adding any other electronic means of service other than email. However, as Shima and Aboho have shown, these new provisions are not always enforced.<sup>6</sup> Courts remain inconsistent, and many registrars still prefer physical service even where digital service is expressly allowed.<sup>6</sup> The rules themselves are not always harmonized. Most trial court rules make

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<sup>5</sup> (2005) 17 NWLR (Pt 953) 90.

<sup>6</sup> V A Shima and B Aboho, 'Electronic Filing and Service of Court Processes under the National Industrial Court Rules, 2017 and Court of Appeal (Practice Directions), 2014' <sup>6</sup> Ibid.

no mention of electronic service. This means that even where appellate courts lead the way, the lower courts remain bound to outdated procedures.

More fundamentally, the current framework lacks a clear national standard. Courts interpret rules differently. Registrars apply them unevenly. Litigants or their legal representatives exploit the gaps to their advantage. This opens the door to delay, forum-shopping and abuse of court process. As Olatunji argues, technical objections to service remain a common and effective strategy for stalling cases.<sup>7</sup> What emerges from this framework is a legal regime that recognizes the importance of service but struggles to enforce it with clarity or consistency.

### 3. Service of Court Process as Fundamental to Fair Hearing

Fair hearing is at the heart of proper service of court processes. However, mere awareness of a case is not a substitute for proper service.<sup>8</sup> Under the law, the right to fair hearing is a constitutional guarantee, not a discretionary privilege. This right protects a party and ensures that he is not ambushed or prejudiced. Undoubtedly, the insistence on proper service and not mere awareness is rooted in the supreme law of the land, which is binding on all persons and authorities.<sup>9</sup> Section 36(1) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended guarantees the right of every person to a fair hearing before any court or tribunal.

As the Supreme Court rightly stated in *Torri v National Park Service of Nigeria*,<sup>10</sup> fair hearing is not an abstract notion. It rests on procedures that are just, impartial and transparent. It is not a matter

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<sup>7</sup> Y J Olatunji, 'An Analysis of Service of Originating Process Vis-a-Vis the Legal Implication of Defective Service in Nigeria' [2022] *LAWSAN UniUyo Journal*;1-16.

<sup>8</sup> *Ononye v Chukwuma* (2005) 17 NWLR (Pt953) 90; Anyafulude (2022).

<sup>9</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended) Cap C23 LFN 2004, s 1.

<sup>10</sup> (2011) LPELR-8142(SC).

of form but of substance which must be assessed on the specific facts of the case.<sup>11</sup> The right inevitably includes timely notice of the case, adequate opportunity to respond and equal footing in presenting one's case. Once breached, no matter how compelling the substantive outcome, the entire proceeding collapses. Service of court process is thus the mechanism that activates this right. It therefore follows that without proper service, the right to be heard cannot arise.<sup>12</sup>

#### **4. Procedural Delay and the Burden of Conventional Service**

Conventional service of court processes is one of the factors that contribute to delay in judicial proceedings. Many cases stall not because the issues are complex, but because parties cannot be properly or promptly served, and the court must continue to adjourn until it is satisfied that service has been properly done. The conventional system relies heavily on manual processes. Bailiffs, who are often underpaid and poorly supervised, deliver physical documents with little oversight. Affidavits of service are routinely challenged. And when a party cannot be found, courts must entertain time-consuming applications for substituted service. Each step adds days or weeks to already overburdened dockets. The effect is systemic. In *Integrated Builders v Domzaq Ventures (Nig) Ltd*,<sup>13</sup> the Court of Appeal acknowledged that courts must ensure that both parties are given notice before any decision is taken. But it also stated that failure to serve delays proceedings and produces injustice. This problem is not limited to civil cases. Appeals collapse when notices are not served. Motions are struck out. Judgements are voided. A simple failure in procedure may undo years of litigation.

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<sup>11</sup> *Gbadamosi v. Dairo* (2007) LPELR-1315(SC).

<sup>12</sup> *Skencosult v. Ukey* (1981) 1 SC 6; *Eimskip Ltd v. Exquisite Ind. (Nig.) Ltd* (2003) 4 NWLR (Pt 809) 88.

<sup>13</sup> (2005) 2 NWLR (Pt 909) 97.

According to Asonibare and Akaje, service is one of the procedural bottlenecks in Nigerian judicial system, including the appellate level.<sup>14</sup> Bailiffs often lack transport or cannot locate parties. Documents are misplaced or returned. Records are poorly kept. Court registries do not maintain reliable tracking systems. In most cases, judges have to rely entirely on the bailiff's affidavit of service, which is an unverified account that can easily be denied or challenged. Delays caused by service failures also create incentives for abuse. Frynas notes that many litigants deliberately avoid service as a litigation strategy.<sup>15</sup> They change addresses without notice. They instruct relatives and neighbours to reject documents. Some even obtain injunctions on the basis of *ex parte* applications, knowing that the other party will be unable to challenge the proceedings in time.

Courts often contribute to the problem. Judges vary in how strictly they enforce the rules. Some overlook delay and irregularities in service. Others apply the rules rigidly, even where the party clearly received notice. In *Ecobank (Nig.) Plc v Kunle*,<sup>16</sup> the Supreme Court set aside the entire proceedings because the hearing notice was not served. However, in other cases, courts have excused similar failures where they believe the party was already aware of the case. This uneven approach leads to confusion. What is treated as a fatal defect in one court may be ignored in another. This inconsistency weakens public confidence. Litigants come to see the system as uncertain and open to abuse. Lawyers rely on technical objections to defeat claims that should be decided on their merits. The public sees delay and manipulation not as exceptions, but as standard practice. While the

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<sup>14</sup> A S Asonibare and H T Akaje, 'E-Path to Effective Justice Delivery: The Nigerian Courts in Perspective' (Kwara State University Library).

<sup>15</sup> J G Frynas, 'Problems of Access to Courts in Nigeria: Results of a Survey of Legal Practitioners' [2001] (10)(3) *Social & Legal Studies*;397-419.

<sup>16</sup> (2019) 10 NWLR (Pt 1679) 90.

Constitution guarantees fair and timely hearing, the experience of many litigants often evidences the opposite.

The problem is not with the requirement of service itself. That safeguard must remain. The issue is with how service is done. A system that still relies on physical delivery, handwritten records and bailiff discretion cannot support a modern court process. Justice today requires speed, transparency and proof. Service must be done in a way that is reliable, verifiable and indisputable. The reform being advocated is not about lowering standards, but about using efficient tools to meet them. One such tool is electronic service.

## **5. Electronic Service of Court Processes in Nigeria – Rivers State as a Case Study**

Electronic service is not a new idea. However, it gained momentum during the COVID-19 pandemic, which exposed the limitations of manual litigation and forced courts to adopt remote and contactless procedures. As physical access to courtrooms became restricted, the judiciary had to rely on digital tools to ensure continuity. This created a turning point for embracing electronic service not as an exception, but as a necessary tool for sustaining access to justice. As a result, rules of court started undergoing some amendment to reflect this reality. The Supreme Court Rules 2024 provides as follows:

Any reference in these Rules to an address for service within or outside the Federal Republic of Nigeria, means a physical, postal, or electronic mail address, a GSM telephone number or any other available mode of communication where notices, summons, warrants, proceedings and other documents, etc may be left, sent, posted or transmitted if not required to be served personally.<sup>17</sup>

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<sup>17</sup> Supreme Court Rules 2024, order 3 rule 1.

The Court of Appeal Rules (CAR) 2021 also has similar provisions that embrace service of appellate processes.<sup>18</sup> Both allow notices of appeal to be served by email. If the court is satisfied that the party actually received the notice, it will not reject the service just because it was not done in the usual way.<sup>19</sup>

Rivers State, Lagos States and Imo States are among the states that are setting the pace for eservice of court processes in Nigeria. Lagos and Imo have the Judiciary Information System (JIS) which automate judicial processes. In Rivers State, this trend has taken a bold and operational turn. The High Court of Rivers State (Civil Procedure) Rules 2023 introduced a forward-looking regime that permits service of non-originating processes through platforms such as WhatsApp, Facebook, email, RIVCOMIS and any other electronic means the Chief Judge may approve. To be sure, the Rules provides as follows:

Service of all non-originating Court processes may be made by electronic means such as email, WhatsApp, Facebook, World Wide Web etc posted to the electronic address of the person to be served, in addition to being posted to being posted on RIVCOMIS platform or any other platform that the Chief Judge may direct in writing, and printout of the electronic service shall be confirmation of the service.<sup>20</sup>

Under Order 9 Rule 1(4) of the High Court of Rivers State (Civil Procedure) Rule 2023, such service is valid without the consent of the party being served, and the proof of service is the printout or digital evidence of transmission. It has been argued that from the decision of the Supreme Court in *ENL Consortium Ltd. V Shambilat*

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<sup>18</sup> Court of Appeal Rules 2021, order 2 rules 1(a) and 5.

<sup>19</sup> CAR 2021, proviso to order 2 rule 1(a); SCR 2024, proviso to order 3 rule 2(b).

<sup>20</sup> High Court of Rivers State (Civil Procedure) Rules 2023, order 9 rule 1(4).

*Shelter (Nig.) Ltd.*,<sup>21</sup> even phone calls and text messages may satisfy the notice requirement where properly applied.<sup>22</sup> While these rules still exclude originating processes, they provide a practical route to procedural efficiency. This shift departs from older cases such as *Continental Sales Ltd. v R. Shipping Inc*<sup>23</sup> where consent was required for such service to be valid. This demonstrates a growing legal recognition of digital platforms.

This innovative reform in the High Court of Rivers State (Civil Procedure) Rules 2023 is being implemented through the RIVCOMIS platform, which offers an integrated platform for electronic filing, fee assessment, court assignment and service of processes. Once a case is filed and the first service is effected manually, the system activates an automated cycle where future filings and notices (except hearing notice) are transmitted directly to the registered emails and phones of all parties. Bailiffs are required to follow up every electronic service with a confirming phone call to confirm successful delivery or receipt of the process. RIVCOMIS also tracks every step of case progression, eliminating problems such as duplication of suit numbers, manual errors and loss of documents. Notifications are timestamped, recorded and transmitted via legal mail to ensure transparency and accountability. In contrast to the slow, fragmented manual process, this model strengthens judicial efficiency, minimises room for abuse and promotes real-time justice delivery.

The approach aligns with the position of this this paper to the effect that rules of court should not only recognize on e-service but they should also be matched by infrastructural readiness and administrative discipline to ensure equality, fairness and efficiency.

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<sup>21</sup> (2022) LPELR-58028(SC).

<sup>22</sup> B S Kokpan, 'Legal Analysis of The Essential Innovations in the Rivers State High Court (Civil Procedure) Rules, 2023' (Rivers State University - Department of Jurisprudence and International Law 2024) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4722234](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4722234)> accessed 18 April 2025. <sup>23</sup> (2012) LPELR-7905(CA).

This innovation strengthens the constitutional right to fair hearing by ensuring that no party is denied the opportunity to be heard due to logistical or procedural failures in service. Although the RIVCOMIS appears not to accommodate persons with disabilities, the ICT centre set up in the court complex for lawyers and other users without access to computers or the internet can help to bridge this gap and mitigate the effects of digital divide. These innovations, position Rivers State as a practical model from which other jurisdictions can learn from.

Although the e-service system is a serious step forward, it also has its own concerns and risks which we must not ignore. We are living in a world where there is poor power supply, poor internet connectivity and high data cost which can affect one's availability on the web or social media space. As rightly argued by Kokpan, a message may be sent without being received due to technical barriers such as bandwidth, power failure or device issues.<sup>23</sup> Phone calls and SMS, which do not require internet connection, may sometimes fail due to no fault of the parties. This is one of the reasons why most courts in Rivers State now recommend a combination of electronic and traditional methods of service, where feasible, to cure such risk and enhance evidential integrity.<sup>24</sup>

Also, in practice, electronic service is rarely used and enforced in lower courts like Area Courts (AC), Customary Courts (CC), and even Customary Court of Appeal (CCA). Most lower courts do not have clear rules on electronic service. Their procedures still focus on personal or substituted service. Some registrars, bailiffs and even lawyers are more familiar with these older methods and therefore prefer them over digital alternatives. Some courts too are hesitant in recognizing electronic service. They worry about whether the other party will actually see an email or text message. Sometimes they question whether screenshots, read or delivery receipts or system

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<sup>23</sup> Kokpan (n 22).

<sup>24</sup> *ibid*

logs are enough proof. So even when electronic service is allowed, it is often ignored unless backed by proof of physical service. This hesitation is understandable but somewhat misplaced.

As Onuzulike argues, courts already accept substituted service in situations where personal delivery is difficult.<sup>25</sup> If courts can presume that a newspaper advert or pasted notice will come to the party's attention, there is no reason to distrust verified electronic delivery, especially where the address is provided by the party. In fact, electronic service is often more reliable because it creates a time-stamped record. It therefore allows for digital receipts which can be tracked.

In their research, Shima and Aboho show that courts already use e-filing systems in some jurisdictions,<sup>26</sup> including the National Industrial Court of Nigeria (NICN), which permits electronic service.<sup>27</sup> However, even there, uptake is slow. The problem is not just about the legal recognition of e-service, it is more about institutional enforcement and efficacy. Many court staff are not adequately trained to use these tools. The infrastructure is weak, power supply is unstable and internet access is not always reliable in all localities. There is also no unified national platform for simplicity and uniformity. There is also the issues of exclusion, fairness and digital divide. According to Omodele, digital tools can widen inequality if not carefully managed.<sup>28</sup> Despite how widely

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<sup>25</sup> C Onuzulike, 'Social Media and Substituted Service of Court Processes in Nigeria: An Analysis of Contemporary Trends' [2019] (10)(2) *The Gravitas Review of Business & Property Law*;1-10.

<sup>26</sup> V A Shima and B Aboho, 'Electronic Filing and Service of Court Processes under the National Industrial Court Rules, 2017 and Court of Appeal (Practice Directions), 2014: A Catalyst for Trial within a Reasonable Time in Nigeria' [2018] *Benue State University Law Journal*;298-313.

<sup>27</sup> National Industrial Court of Nigeria (Civil Procedure) Rules 2017, order 7 rule 1(e)(f).

<sup>28</sup> A O Omodele and O A Olugasa, 'The Pros and Cons of Technology in The Judicial Process in Lagos State, Nigeria' [2023] (13)(1) *African Journal of Humanities & Contemporary Education Research*;329-341.

digital devices have spread, the truth is that not every party or even their Counsel has access to email, WhatsApp, smartphones or stable internet. Some of the litigants who choose to do their matters without the service of a legal representative may not be digitally literate to receive electronic copies or service. For this reason, an electronic-only system might exclude the very people it is meant to help. This risk must also be taken seriously as we move for this reform.

Notwithstanding the foregoing risks, the benefits of electronic service abound. It is faster and more convenient. It reduces the risk of evading service. It cuts cost. It allows service to be completed within hours or even minutes, not days or even weeks. And as Sule and Rilwanu show in their review of global trends, many countries have embraced electronic or social media service precisely for these reasons.<sup>29</sup> South African courts have allowed service through WhatsApp. Courts in India and Australia have approved service via Facebook where traditional methods fail or are impracticable.<sup>30</sup>

Although these jurisdictions impose safeguards, they do not outrightly reject technology. The superior courts of record are increasingly adopting the e-service system, and other courts across the federation, including lower courts and tribunals, need to follow suit. To prevent fragmentation, Nigeria needs a unified system of electronic service across all jurisdictions. Without it, lawyers must navigate different platforms and procedures each time they handle a case outside jurisdictions. This places older and less tech-savvy lawyers at a disadvantage, thereby widening the digital gap between them and the Gen Z practitioners. Thus, a standardised system would promote uniformity, reduce learning curve and improve nationwide access to justice.

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<sup>29</sup> I Sule and S M Rilwanu, 'Global Trend in Service of Court Processes through Social Media: Has that Ship Sailed in Nigeria? [2021] (14)(2) *University of Jos Law Journal*;265-285.

<sup>30</sup> *Ibid.*

## 6. Legal Effect of Defective or Improper Service

The law does not treat service as a mere technical requirement. It treats it as a jurisdictional issue. This means that without proper service, a court cannot hear the case, no matter how urgent or important it may be. This is a basic principle of law that has received judicial recognitions. It is settled law that where a process that ought to be served is not served, the entire proceedings are void.<sup>31</sup> In *Idiata v Ejeko*,<sup>32</sup> the Court of Appeal echoed the principle that failure to effect personal service where required robs the court of jurisdiction. The Supreme Court in *APC v Nduul*,<sup>34</sup> struck out an entire appeal because the opposing party was not served with the brief of argument. The court did not inquire into whether the respondent was aware of the matter or whether the outcome was just. It focused solely on the absence of service. That absence stripped the court of jurisdiction. Similarly, in *Unipetrol (Nig.) Plc v Agip (Nig.) Plc*,<sup>33</sup> the court stressed that proper service of a writ is a condition precedent to the validity of any action. Without it, the suit is not properly before the court and any judgment obtained thereupon is a nullity.

These decisions reflect the constitutional link between service and fair hearing. Section 36 of the 1999 Constitution guarantees the right of every person to be heard before a decision is made against them. But in this context, the right to be heard only becomes meaningful if the person is first made aware of the proceedings. Service is the bridge between the party and the court. Where that bridge fails, the right to be heard is denied. As the Court of Appeal put it in *Madueke v Madueke*,<sup>34</sup> a failure to serve a hearing notice violates the principle

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<sup>31</sup> *Africa C. B. PLC v. Losada Nig. Ltd & Anor* (1995) 7 NWLR (Pt. 405) 26; *Uchendu & Ors v Ogboni & Ors* (1999) 5 NWLR (Pt. 603) 337; *Kida v Ogunmola* (2006) 13 NWLR (Pt. 997) 377; *Tsokwa Motors (Nig.) Ltd v United Bank for Arica Plc* (2008) 2 NWLR (pt. 1071) 347.

<sup>32</sup> (2005) 11 NWLR (Pt 936) 349. <sup>34</sup> (2018) 2 NWLR (Pt 1602) 5.

<sup>33</sup> (2002) 14 NWLR (Pt 787) 312.

<sup>34</sup> (2012) 4 NWLR (Pt 1289) 77.

of *audi alteram partem* and renders the entire process fundamentally defective.

Improper service may also arise where a process is served in a way that does not comply with the rules of court. In *Okoma v Udoh*, the court held that service through a party's wife or child, where the rules require personal service, is invalid. In *Odutola v Kayode*,<sup>35</sup> the process was served through the appellant's son, which the court found insufficient. These cases point to a strict procedural standard: not just that service must be done, but that it must be done in the manner prescribed by law. Even where the party admits to being aware of the case, that awareness does not save the proceedings if service was not properly carried out. In other words, the law does not allow the court to substitute actual knowledge for formal service. This was seen in the case of *Ezim v Menakaya*,<sup>36</sup> where the Supreme Court held that a judgment obtained without service of the notice of appeal was a nullity, despite evidence that the party knew about the appeal. The absence of service meant the jurisdiction of the court was never invoked properly.

It therefore means that one mistake in serving a court process can vitiate all the time and effort a party or his Counsel has invested in preparing the entire process (whether originating or non originating). The law gives little or no room for discretion. Courts cannot overlook or excuse defective service based on feelings, sympathy or common sense. A party who is not properly served has the right to set aside the proceedings. This is why any move towards electronic service must be carefully structured and considered. The standard of the law is not lower simply because we are adapting to modern technology. Electronic service must meet the same legal test or threshold as personal or substituted service as prescribed in the rules of court. It must provide proof that the document was actually delivered, it must give the other party clear notice of the case and it

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<sup>35</sup> (1994) 2 NWLR (Pt 324) 1.

<sup>36</sup> (2018) 9 NWLR (Pt 1623) 112.

must be done in strict compliance with rules that leave no doubt as to its validity. Without this, courts may be reluctant to accept electronic service as a reliable alternative.

## **7. Lessons from South Africa and India**

### **a. South Africa**

South Africa legally recognized electronic service with the 2012 amendment of its High Court Rules, which introduced rule 4A to allow delivery of non-originating court processes by email or facsimile, in line with the Electronic Communications and Transactions Act 25 of 2002. The case of *CMC Woodworking Machinery (Pty) Ltd v Pieter Odendaal Kitchens*<sup>37</sup> affirmed this development when it permitted substituted service via Facebook messaging where traditional means had failed. The court accepted that technology has changed how people communicate and found that electronic service, if likely to reach the intended recipient, can meet the demands of justice.<sup>38</sup>

However, the court was aware of the risk of relying solely on this electronic media and ordered a publication in a newspaper alongside the Facebook message to ensure notice and greater reachability. This case illustrates South Africa's pragmatic approach in balancing the law with modern innovations. This case also demonstrates that courts can, in appropriate cases, permit electronic service even where rules do not expressly provide for it.<sup>39</sup> For Nigeria, this implies that courts can rely on their inherent jurisdiction to permit electronic service where justified, especially where the rule of court is silent as to e-service, provided the method chosen brings actual notice to the party as clearly seen in the South African experience.

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<sup>37</sup> (2012) ZAKZDHC 44

<sup>38</sup> *Ibid.*

<sup>39</sup> L B Grové and S M Papadopoulos, 'You Have Been Served... On Facebook! – Service of Process via Social Networking Sites' [2013](76) *THRHR*;424.

## b. India

E-service of court processes in India has evolved into a flexible and tech-driven model that Nigeria can study closely. India began with a legislative amendment to the Code of Civil Procedure in 2002 which permitted electronic service in Rules 9 and 9A.<sup>40</sup> Since then, Indian courts have expanded this foundation through judicial innovation. In the case of *SBI Cards & Payments Services Pvt Ltd v Jadhav*,<sup>41</sup> the High Court sitting in Bombay accepted notice that was made through WhatsApp because of the double blue tick indicating that the recipient has opened the message. In the words of the court:

For the purposes of service of Notice under Order XXI Rule 22, I will accept this. I do so because the icon indicators clearly show that not only was the message and its attachment delivered to the Respondent's number but that both were opened.<sup>42</sup>

In a plethora of other cases, the courts in India have shown willingness to accept e-service made through text message, email, WhatsApp and other electronic means.<sup>43</sup> They have expressly rejected the idea that procedure must depend on outdated modes of communication and instead focus on whether the party actually received notice. This approach addresses evasive defendants, reduces cost and delay, and maintains fidelity to fair hearing. The Indian model demonstrates the importance of embedding e-service in both the rules and judicial culture, while ensuring verifiable delivery. It also shows that reform is not just about recognizing or

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<sup>40</sup> S S Rana & Co, 'India: Changing face of serving Summons: From Post to WhatsApp' <<https://www.lexology.com/library/detail.aspx>> accessed 4 July 2025.

<sup>41</sup> Notice No (2015) 1148

<sup>42</sup> Ibid

<sup>43</sup> Delhi Courts Service of Processes by Courier, Fax and Electronic Mail Service (Civil Proceedings) Rules, 2010; *Central Electricity Regulatory Commission Vs National Hydroelectric Power Corp'n. Ltd. & Ors* D.21216/2010; *Tata Sons Ltd & Ors. v John Doe(s) & Ors* CS(COMM) 1601/2016.

permitting technology but about using it effectively to ensure fair hearing.

### **c. Lessons for Nigeria**

As seen from the comparative analysis, effective electronic service does not merely depend upon codification but on judicial pragmatism, infrastructural readiness and clarity of evidence. South Africa shows that even in the absence of express rules, courts can invoke their inherent powers to permit e-service provided necessary safeguards are in place. For India, courts have recognized WhatsApp service and validating delivery through visible proof like read receipts. Both jurisdictions focus on functionality over form and demonstrate that service is not about rigid formalities but about actual notice and procedural fairness. For Nigeria, reform must go beyond permissive rules. Courts must be equipped, judges and court officials trained and procedures standardized to support digital modes. Without these, e-service will remain underutilized, disputed or ignored as seen in some courts in Nigeria where the judge still demands evidence of physical service even where there is presumption of service upon e-filing. If e-service is properly regulated, it can meet constitutional standard of fair hearing while resolving many of the inefficiencies that plague conventional service.

## **8. Building a Modern and Rights-Based Service Framework in Nigeria**

If service of court processes is to support both fairness and efficiency in the justice system, reform must begin with express recognition and clarity in the rules of court. The first and most urgent step is to amend the rules of courts across the federation to expressly permit and regulate electronic service. These amendments should identify the specific platforms that are allowed such as email, SMS, WhatsApp, Facebook and other verified digital channels with a mandatory phone call notification. They should also define what

amounts to valid proof of service peculiar to each platform. Proof must be verifiable and capable of being authenticated by the court. Such proof includes email delivery receipts, read confirmations, screenshots of messages and phone calls, server logs or automated registry notifications from e-filing platforms. The model adopted by Kenya, where electronic service is only valid if accompanied by clear, electronically generated evidence, offers a working template. This approach safeguards the parties without sacrificing speed.

Second, the court system must invest in a national e-service infrastructure. This does not require large-scale transformation all at once. A phased roll-out is possible. The judiciary can begin by expanding existing e-filing systems in selected courts to include e-service modules. These systems should allow parties to upload documents, designate service addresses, track delivery and generate affidavits of service automatically. Where e-filing is already in use, as in the National Industrial Court and Rivers State High Court, integration with electronic services should follow immediately.

Training is the third pillar of reform. Court officials, registrars and bailiffs must understand the procedures for validating and recording electronic service. Judges must also receive regular training on how digital communication tools work and how to interpret and apply rules governing digital service. As Shima and Aboho correctly observe, reform fails not only for lack of law, but also for lack of capacity and manpower.<sup>44</sup>

Fourth, the law must require parties to provide electronic addresses for service at the start of proceedings. This already exists in appellate courts and some states like Rivers, Lagos, Imo, etc. A similar rule should apply across all courts across the federation. A litigant who uses a lawyer, email address or phone number to file a case should not be allowed to object to being served through the same means unless it is changed as prescribed by the rules of court.

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<sup>44</sup> Shima and Aboho (n 5).

This promotes consistency and removes unnecessary delays in the business of the court.

Fifth, safeguards must be built in to protect vulnerable or digitally excluded parties. For instance, rules should require that electronic service be followed by confirmation through a second channel, such as SMS, printed notice or phone call (where necessary). This is important especially where the receiving party is known to have poor access to email. As a further safeguard to protect fair hearing, courts should retain the discretion to order substituted or physical service where digital service is impractical, unreliable or unverifiable. The principle must remain that service must bring notice, not merely tick a box.

Finally, this reform requires transparent and effective leadership. The National Judicial Council (NJC), the Chief Judge of State High Courts and Heads of Court must coordinate a national policy on service reform. Rule amendments, training manuals, court ICT upgrades, and public legal education should follow a unified plan.

## **9. Conclusion and Recommendations**

This paper has established that proper service is the foundation of every valid judicial proceeding. It gives the court jurisdiction, protects the right to fair hearing and ensures that parties can participate. However, the way service is currently done (manual delivery, poor tracking and inconsistent enforcement) undermines these goals. In most states in Nigeria, the current system is vulnerable to delay, evasion and error. The rules have not caught up with modern communication. Electronic service provides a practical solution which does not weaken legal safeguards required for proper and substituted service. Instead, it strengthens them. It allows courts to serve documents faster, track them accurately and resolve disputes over service more expeditiously. With the right reforms, service of process can support both the right to be heard and the need for efficient justice.

In light of above analyses and reforms earlier suggested, the paper therefore recommends the following:

1. Court rules should be amended to expressly allow and regulate electronic service, including specific communication platforms and accepted forms of proof.
2. The judiciary should establish a unified or national digital infrastructure that enables electronic filing, automated service and verifiable tracking of court processes.
3. Judges, court staff and legal practitioners should be trained periodically on the role of digital technology on service of court processes. This should be made part of the continuing legal education and should be implemented across the Nigerian legal space.
4. All parties should be required to provide a valid and active electronic address for service at the start of proceedings to streamline communication and reduce delay.
5. Rules of court should be amended to include safeguards to protect digitally excluded or vulnerable parties by requiring a mandatory phone call to confirm actual notice and receipt of the mailed process.
6. These reforms should be coordinated through a national judicial policy led by the NJC and heads of court, supported by consistent rules, infrastructure and institutional leadership.