

LEGAL RESEARCH AND DOCUMENTATION IN A LAW OFFICE

BY

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The importance of legal research and efficacious documentation in a law office cannot be overemphasised. This is due largely to the simple reason that there cannot be a law office properly so-called without the two; for without legal research, a lawyer can predict what the outcome of a case of his before the court would be. In a similar manner, proper documentation in a law office is a sine-qua-non to an effective legal practice in that a well-arranged library, coupled with chronologically-arranged case files and a well-managed computerised filing system will in no small measure contribute to the success of such law office. The nexus between the two is that proper documentation and management of the library, case files, filing system and other documentation-related activities will result in quick and efficient legal research while the reverse situation will produce an opposite result. There is therefore a need to master the two arts. There must be maintained a delicate balance.

In the course of this talk, we shall, together, be looking at the meanings of some basic concepts such as ‘legal research’ ‘law office/law firm’, and ‘documentation’. We will then examine and discuss together, even though I will be the anchor-man, how efficient legal research and result-oriented documentation can be achieved in a law office.

Conceptual Issues

Legal Research

Legal Research, according to *Wikipedia*, is the process of identifying and retrieving information necessary to support legal decision-making. In its

broadest sense, legal research includes each step of a course of action that begins with an analysis of the facts of a problem and concludes with the application and communication of the results of the investigation.

It encapsulates the whole process of going to court with respect to a given case, starting from when a lawyer is briefed by his client; through when the cause of action is identified; to the preparation of your client's case; up to when judgment is finally given in the case.

Law Office/Law Firm

A law office/firm is a business entity formed by one or more lawyers to engage in the practice of law. The primary service provided by a law office/firm is to advise clients (individuals or corporations) about their legal rights and responsibilities, and to represent their clients in civil or criminal cases, business transactions, and other matters in which legal advice and other assistance are sought.

While smaller law firms/offices tend to focus on particular specialties of the law (e.g. patent law, labour law, tax law, criminal defence, personal injury, etc.); larger ones are usually composed of several specialized practice groups, allowing the firm to diversify their client base and market, and to offer a variety of services to their clients.¹

In terms of organisation, law offices are organised in a variety of ways, depending majorly on the jurisdiction in which the firm carries out its practices. The common arrangements, as we all know, include the sole proprietorship (with its attendant consequences), general partnership (which allows spread of risks), professional corporations (quite uncommon in Nigeria but in much use in countries like the US and the UK), Limited Liability

¹ Wahab Egbewole in *Effective Management of a Law Firm as Business* delivered at the Yusuf Ali & Co; 2010 Meeting in Ghalib House Ilorin argued that law office is a business and must be so managed

Company (also in less use in Nigeria), and limited liability partnership (LLP) (a new trend that is being embraced by Nigerian legal practitioners).

Suffice to say that the advantages of economies of scale associated with partnership law firms are yet to be put into proper use in Nigeria as a lot of legal practitioners prefer to set up a sole proprietorship rather than forming a partnership with other colleagues. The major concern here is the issue of sharing profits among the different partners. It is seriously suggested that these advantages should be put into consideration by lawyers whenever they want to decide whether to go into a partnership or not.

Documentation

Documentation refers to the collation, synopsising, and coding of printed materials for future reference. With regards to law office, documentation extends to include the way and manner of arranging the firm's library, the manner of managing the firm's case files, the filing system generally, the use of computer to file documents as alternative and back up to hard copy, the maintenance of e-library, the creation of firm's website, among several others.

Essential Tips for Ensuring Effective Legal Research in a Law Firm

Since it is impossible for any lawyer to know every law and court cases off hand, conducting legal research is important. It can provide relevant information to help in taking a certain position or making judicial decision. A lawyer, judge, attorney and even law student must know how to conduct effective legal research for him to succeed in whatever legal quest he has embarked upon.

An efficient and successful legal research usually involves the use of one or all of the following three stages:

- Finding primary source of law or finding primary authority e.g. cases, statutes, regulations etc;
- Searching secondary authorities such as law reviews, legal dictionaries, legal treatises and legal encyclopaedia for background information about a legal topic (this will be of more use especially where the researcher is not too familiar with the area of law in question);
- Searching non-legal sources for investigative or supporting information.

a) ***Relying on Primary Sources of Law***

Upon the presentation of a case before a law office, the first step to take is to identify the legal issues involved. This should be accurately analysed to ensure that all the legal questions and issues are brought out. In doing this, it is very essential to bear in mind that nearly all legal principles are unlikely to be absolute and almost invariably there will be qualifications or exceptions which, depending upon the relevant context will require careful consideration as to whether any such exceptions or modifications are applicable to the present case at hand.

Having identified the legal issues/questions involved, the next point of call is to thrash out the issue of jurisdiction. A lawyer should ask himself: which court has jurisdiction on this cause of action? Or, if on the defence side, can I seek a dismissal or striking out order based on the fact that the case has been instituted in a wrong jurisdiction or that the court is not properly constituted, etc? The reason for this is obvious, as we all know how pivotal the issue of jurisdiction is.²

After settling the issue of jurisdiction, it is expected that the lawyer will then consider the applicable laws and cases (precedents) to the case at hand. The starting point should be the primary sources. Primary sources,

² See generally *Madukolu V Nkedilim* (1962) 2 SCNLR 341; *Nkporonwi V Ejire* (2009) 9 NWLR (Pt.1145) 131.

for the avoidance of doubt, include sources such as statutes, cases, regulations, etc.

With regards to applicable statutes/laws, a legal research strictly so-called should be able to pay attention to the language of the statutes. Note should be taken of where such language is absolute, and where it is permissive or, better put, where it is qualified. In other words, a lawyer must be mindful of cross-references which are often used to qualify rights and duties created under the statutes and should be industrious enough to look them up so as to make an informed decision on the components of the suit in question. He must be able to track down all of these references--and any references they make--so that he can have a complete idea of what the first law says. There may be definitions or processes that must be met before the elements of the law in question can be proven. Depending on the case and charges in question, this can be a fairly complex process. Knowing the legislative history of the statutes to be relied upon will also help a lot.

If the case has to do, for instance with breach of fundamental rights guaranteed by the Constitution, it is expected that the lawyer will arm himself with the provisions of Chapter Four, and pay particular attention to the fact that the rights guaranteed and protected under that Chapter can be derogated from.³

The starting point in such a case should be the Constitution as a primary source because of the weight it carries as the *grund norm* in Nigeria.⁴ Case laws on enforcement of fundamental rights, another primary source, can then be researched and relied upon. It will be somehow awkward for a lawyer to argue on a cause of action on enforcement of fundamental rights, placing heavy reliance on writings of

³ It is also important in considering such a case to check properly in order to discover that your opponent will not raise the issues identified in Chapter Two of the Constitution which are ordinarily not justiciable.

⁴ It is appreciated that the issue of *grund norm* is no longer debatable in Nigeria since democratization in 1999. The only reservation is whether the present Constitution (as amended) can qualify as one.

authors/scholars in textbooks and other journal articles, while leaving out statutes, rules of courts and case laws. Hence, the need for a lawyer to know when he is expected to rely on primary sources for the purposes of his research works and when he can conveniently rely on secondary sources.

It is of equal pertinence that a lawyer acquaints himself with the workings of the hierarchy of the Nigerian courts. This is of paramount importance because it will affect his legal research one way or the other. By the way and manner the rule of precedent operates, a lawyer must know that the decision of the Supreme Court is binding on all the courts below it; while that of the Court of Appeal will equally bind other courts below that hierarchy, and so on and so forth. It will therefore be suicidal, amateurish and unpardonable for a lawyer in his legal research to be placing heavy reliance on persuasive authorities while he leaves out the binding ones.⁵

Even on binding authorities, a lawyer must bring his assiduousness to the fore by properly and deeply researching binding authorities. It is safer to rely on recent binding decisions of the court before which you are appearing than to rely on old decisions of that court. Doing the latter will be foolhardy as that court may have overruled itself or that authority may no longer represent the position of the law. In this regard, a lawyer must be very fastidious to ensure that the case he is relying on is on all fours with the one he has brought before the court, or where it is not on all fours, that he can distinguish the latter from the former.

Lastly, it is very essential that a lawyer makes the rules of the various courts his closest companion. This really helps to win cases at times despite the fact that the courts have severally held that technicality should no longer hold uncontrollable sway over the doing of justice. A

⁵ See *Diamond Bank Ltd V Partnership Investment Co. Ltd* (2009) 12 SC (Pt2) 159 @ 178

sagacious mastery of the rules of court can frustrate the other party as it may be relied upon to ask for a strike-out order or even a dismissal because it is settled that the court is a court which cherish and jealously guide and enforce its procedure.

b) Relying on Secondary Sources

Secondary sources such as law reviews, legal dictionaries, legal treatises and legal encyclopaedia for background information about a legal topic can also be relied upon in the quest for an error-free and excellent legal research. These sources become handy especially when the matter presented before a lawyer is technical in nature. A perfect example in this regard will be a case dealing with exploration of oil and gas in Nigeria or patent or copyrights or other technical areas. In as much as there are legislations (primary source) on these questions, a lawyer will be doing himself a great deal of good to take his time to consult secondary sources on these various topics. He can equally consult, as a point of start, legal dictionaries to get the meanings of certain technical terms. Textbooks on Oil and Gas Law, Patent and Copyrights Laws among others will help a lawyer in the excellent preparation of his case before going to court.

Even in respect of non-technical legal subjects, the legal research of a lawyer will be boosted if he sets aside time for researching the secondary sources as this will give him better understanding of the cause of action and enhance his flow of thought in his pleadings and arguments before the court.

Even though they are of persuasive nature, journal articles of scholars on various legal topics may be consulted in the process of preparing pleadings and other legal documents as the courts are at times swayed

by the opinions of jurists therein contained. For instance, the courts, including the Supreme Court, have been found to rely on textbooks or journal articles of the likes of Prof Itse Sagay, Prof (Emeritus) Ijalaye, Akinola Aguda, Winfield and Jolowitz on Torts, Dias on Jurisprudence, just to mention a few.

Before reliance can be successfully placed on secondary sources, the lawyer in the picture must be very acquainted with where and how to source for documents. In this regard, he can make use of his library or other bigger libraries around his office. Of particular use to him in researching secondary sources is the internet. With the advent of the internet, and the advancement in technological development, there has come to be a colossal change in the way research works generally and legal researches in particular, are being carried out.

The World Wide Web (also known as the internet) has introduced a new dimension to legal research. Unlike before when researchers buried their heads in the labyrinth of ragged books and had to go from one library to another in search of hardcopy materials, the internet now makes researching so easy as a voluminous research work can be carried out without leaving the cosiness of one's room. Free materials can be accessed through the various search engines on the internet such as Google, Mamma, Ask, Askjeeve, Lycos, among several others. In a similar manner, materials to which researchers are expected to subscribe before access are also available. Such websites like the Hein online, Westlaw, LexisNexis, etc, provide access to millions of searchable research materials at infinitesimal subscription costs.

A lawyer is expected to take advantage of this technological innovation to further buttress his legal research skills and the acceptability of same before the court. The refrain now is that we live in a global village and there is nothing new in the world. What you are having challenges with

in the corner of your office is likely to have been resolved a long time ago in other climes.

The most important thing about this source is that it provides background information on the cause of action before the court, and makes researching the primary sources easier than it would ordinarily have been.

c) Relying on Non-legal Sources

There are times when a lawyer will have to rely on non-legal sources to ensure the success of his case before the court. This is often the case where fields in which the lawyer is not an expert are involved in his case. For instance, where a case deals with Medical negligence, a lawyer may need to consult non-legal materials such as Medical periodicals, journals, textbooks, and other materials, so as to dig out information on the liability of a Medical Doctor in such a situation. The importance of such consultation is that it will arm the lawyer with the minimum information needed to prepare his pleadings and brief of argument, and more importantly, since it is expected of lawyers to cross-examine a Medical Expert (just like any other expert) and make him say ‘I don’t know’ in his own field, to effectively cross-examine such expert when called as a witness, you must have a smattering knowledge of that field.

Newspaper articles coupled with non-legal internet materials are all of monumental use to a lawyer when researching for his case(s) which is/are technical in nature.

General Comments

Throughout the research work, it is advisable for a lawyer to keep a research log so that he can cross-check that he is on track and where he is not, so that he can retrace his step. He is also expected to prune the scope of the work by making sure it only contains what is necessary for the sake of the work. What is necessary depends again on the task to be achieved: be it drafting or settling pleadings, considering the evidence that may be required, advising on a particular controversy, preparing submissions on an interlocutory application, preparing the final address (at the time of preparing the opening), preparing argument on appeal or application for special leave, or substantive submissions in the High Court or other courts. It is habitual for some lawyers to embark on needless and fruitless voyage all in the name of writing a brief. In election petition, there are lawyers who write so many pages of unconvincing and ego-boosting addresses/brief of argument, thereby slowing down the work of the Tribunal. Sixty per cent of such write up are repetitions and outright irrelevances. Little wonder the new Practice Direction for the 2011 Election Petition restricts such brief to maximum of 40 pages. It is therefore important that we prune the scope of our legal research so that at the end of it all we will only produce what is necessary and not what is superfluous.

It is equally pertinent that we set research time limit for our works. But no matter how short the time may be, leave time to look for the potentially applicable statutory provisions, the relevant procedural rule requirements and the leading authorities on the point(s) in issue. To be able to do this, it might be necessary to burn the candles, even though there is a need to be mindful of the likely effect of working late nights on your appearance and concentration in court the next day.

Finally, and more importantly, where primary sources in form of case law are relied upon, make sure the authority you are relying upon is the latest edition, in case the position of the law has changed. Otherwise, slothfulness on the part of a lawyer will only make him look stupid and foolish when he is told by the court that the authority he seeks to rely upon no longer binds the court.

Achieving Proper Documentation

As already stated, documentation has to do with the arrangement and management of legal documents in a law office. The following tips are considered essential to achieving this.

- **Library:** To ensure a complementary relationship between proper documentation and excellent legal research, there is a need for a lawyer's library to be properly managed. Management must be by an expert librarian who knows how to arrange the books in the library in a way that will ensure and sustain easy location of materials. The easier it is to find materials, the more the time that will be saved in the course of conducting legal research and the more the quality of the resulting legal research. Please do employ a qualified Librarian even if on par time basis.
- **Filing System:** Another important tip for proper documentation is to maintain an effective filing system. The cases being handled by the firm must be arranged in a way that will make for easy access. More importantly, there is a need to take advantage of the available technology. Now that computers are available, legal secretaries must be trained to understand the correlation between proper documentation and the use of the documented materials. Folders and subfolders should be created on the computer in respect of each case in a way that promotes easy retrieval.

A case file in respect of a particular case must contain all the information/materials on that case: the pleadings, motions, affidavits, addresses, and other processes relating to the case. Folders containing forms and precedents should also be created. These folders and subfolders must be arranged in a chronological order so that it can be accessed easily even when the Secretary is not around.

- ***Establishment of/Subscription to E-Library:*** Since the world is going paperless by the day, a law office should plan towards having an e-library, or where this cannot be single-handedly funded, two or more firms may come together to establish one and provide access only to their members. This will go a long way to save time and money. In the advanced climes, there are Legal Documents Management System softwares which help a law office in managing its documents at little cost. Alternatively, where firms cannot afford to digitalise their libraries, they can subscribe to online libraries which can be used at any time. There is no doubt that online libraries are easier to access than physical libraries where you have to comb the whole library before you can find the materials you are looking for.
- ***Creation of Website:*** It will also be of monumental advantage for a law office to have its own website. This will ensure proper documentation and easier access to the firm's legal documents. Such website may contain legal forms and precedents as well as the judgments of the court involving the chambers. Views of his lawyers on various topical legal issues in form of articles may also be posted onto the site. This, apart from providing a One-Stop Shop information centre on behalf of the firm, will also enhance easy retrieval of documents.

In sum, proper documentation is a feat that a law office must strive to achieve because its achievement means more efficiency, more access, more saved time, and more saved cost.

Conclusion

The nexus between legal research and proper documentation in a law office has been pointed out. It has been shown that a well-arranged library and a proper use of the computer by secretaries to file cases and other documents of a law office have a direct effect on the quality of legal research produced. It is left for us to ruminate over and imbibe the suggestions made therein whenever we seek to embark on legal research on behalf of our numerous clients. We must always avert our minds to the importance of relying on primary sources; and to the fact that primary sources can be complemented by both secondary and non-legal sources. By so doing, it is believed; there will be a noticeable improvement in the quality of legal research churned out by lawyers.