

# **ORGANISATION, FUNCTIONING AND PROCESSING OF APPEALS BEFORE THE COMMON LAW DIVISION OF THE SUPREME COURT**

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Cameroon is a bi-jural State with the English Common law operating in the two Anglophone regions of the North West and South west while the French Civil Law operates in the eight francophone regions. These legal systems of law were expanded to Cameroon through colonization by conquest. As a result, Cameroon has continued to apply the Common Law in the Jurisdictions of the Northwest and South West Regions up till sometime in 2016 when the lawyers of these regions amongst other grievances, requested for the creation of a Common law bench at the Supreme Court. To this effect, a committee was put in place headed by the Minister Delegate in the Ministry of Justice who brought out proposals which were forwarded to the President of the Republic who reacted with the creation of a Common Law Division in the Judicial Bench of the Supreme Court. This was through law no 2017/014 of 12 July 2017 to amend and supplement some provisions of law no 2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court. For the purpose of this paper, we shall limit ourselves to the Organisation and Jurisdiction of the Division on the one hand, and the Procedure applicable therein.

## **I- THE ORGANISATION AND THE JURISDICTION OF THE COMMON LAW DIVISION**

### **A-COMPOSITION**

Law no 2017/014 of 12 July 2017 to amend and

supplement some provisions of law no 2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court in its Section 8 provides as follows:

The judicial bench of the Supreme Court shall comprise:

- A civil division
- Commercial division
- Criminal division
- Labour division
- Common law section
- Customary law division

Section 11 continues to provide that each division shall be composed of a president, at least two Justices of the Supreme Court and one or more Advocates General.

Subsection 3 provides that the Judicial Officers appointed to the Common Law Division must have an **Anglo-Saxon** legal background. As of now the common law division is headed by a President who is working together with five other justices all of Anglo-Saxon background.

The registry of the Common Law division is headed by a chief of division who works with a team of three Court Registrars all of Anglo-Saxon background.

## **B- JURISDICTION OF THE COMMON LAW DIVISION**

**Section 37** of the 2006 law has been amended by including common law in its jurisdiction in its subsection (a) as follows.

“the Common Law Division shall have jurisdiction in matters relating to common law, hear appeals against final decisions of tribunals and judgments of courts of appeal”.

By providing that the common law shall have jurisdiction in matters relating to common law may lead to some confusion if not put in context. But getting to the deeper meaning and the spirit of the law, one can say these are matters which either saw the application of English or Nigeria laws.

Another interpretation will be that the division has jurisdiction to hear appeals from courts of appeal where common law is applied. Since for the time being no other jurisdictions apart from those in the North West and the South West Regions apply the common law, it goes without saying that as of now the division is competent to entertain only appeals from the two regions cited above whereas we have already harmonized some areas of our laws which are neither completely civil nor completely common law like the labour, criminal and business laws.

If we want to go by the latter reasoning, it will mean that a body or a procedure all together should be put in place to scrutinize or examine appeals from the North West and the South West Regions to know if the application of common law was made or not. That will mean that matters emanating from these two regions in areas where the laws have been harmonized will be entertained in a different division other than the common law division. In that case, which will be the division competent to hear them then? If that were the case, then the question is yet to be answered.

It is therefore to discard these ambiguities that it was resolved by the head of the Supreme Court that all appeals from the North West and South West Courts of Appeal should systematically be handled in the common law division. This interpretation goes in line with the spirit of the above cited section 37 which implies that, other Courts of Appeal apart from those in the North West and South West Regions may apply the Common Law in the future and this Division will be competent to receive appeals from them.

That said, the division is like any other division in the Supreme Court but has some peculiarities in that it receives appeals in all subject matter. That is civil, criminal, commercial, labour and traditional in so far as they emanate from either the North West or South West court of appeal.

As we speak, the Common Law division has received a number of close to 250 Matters which were pending in other divisions and also received more than 255 appeals directly from the North West and South West Courts of Appeal making it a total of 505 matters.

Amongst these matters the Division has examined 213 which already have Admissibility Rulings. It has also delivered 160 final judgments.

## **II- THE PROCEDURE BEFORE THE COMMON LAW DIVISION**

It should be noted that the procedure applied in the common law division is what is spelt out in law no 2006/016 of the 29 December 2016 laying down the organization and the functioning of the Supreme Court as amended which consists of processing and examination of the appeal which ends up with a Ruling on admissibility on a one hand and the examination on the merit of the appeal which ends up with a final Judgment.

### **A- PROCESSING OF THE APPEAL**

This process requires the Registrar to go through the case file and carry out the following acts:

Request the appellant to provide the name of his counsel within a time limit of 30 days from the date of service of the letter of the Registrar in Chief if the appeal to the Supreme Court was lodged by himself. Failing to do so, he will forfeit his right of appeal. See section 46

After providing the name of the counsel, the Registrar shall verify whether the judgment under appeal has been registered (ie in civil and commercial matters).

If such was not the case, he shall request the appellant to do so within 60 days under pain of inadmissibility of his appeal. See section 52(1).

Where the judgment is registered, the Registrar shall request the briefed counsel by way of letter to file his memorandum of submission in support of the appeal within a time limit of 30 days from the date of service under pain of forfeiture. See section 53(1)

After the said memorandum of submission has been filed, the Registry shall proceed to verify if it is duly stamp (exception made to labour matters). In case it is not, the Registrar shall invite the counsel of the appellant to do so within a period of 15 days under pain of declaring the appeal inadmissible. See section 53(3).

When the memorandum is regularly filed, the Registrar shall immediately issue a report in respect of the memorandum filed. He shall then serve the said memorandum on the counsel of the respondent who shall be required to file a reply within a time limit of 30 days from the date of service. See section 56(2).

Once the said reply is received by the Registrar, he shall request the appellant to file a rejoinder if he deems necessary within a time limit of 15 days. Section 57(3)

The rejoinder shall be served on the respondent who shall be required to file his reply if he deems necessary within a time limit of 15 days. Section 57(3) c.

It is at the end of this process that the case file shall be deemed ready.

As soon as it is ready, the Registrar in Chief of the Judicial Bench shall forward the case file with all the submissions and the Bailiff reports to the President of the said Bench who shall proceed to assign them to Judges/Rapporteurs to study and write a report on the admissibility of the appeal. The Judge at this level shall limit himself to the formalities which were supposed to be fulfilled by the appellant before the Court of Appeal and the Supreme Court such as:

- appeal fees and costs of the reproduction of the case file were paid within the legal time limits,
- time limit the appeal was file
- the form with which the appeal was lodged
- payment of appeal tax before the Supreme Court
- payment of costs of registration where necessary
- time limits for filing the submissions...

When the report is written and forwarded back to the President of the Judicial Bench, he shall transmit same to the Legal Department for the submissions. At the return of the case files from the Legal Department, a court session shall be held by the Panel of the Joint Division to rule on the admissibility of the appeals. Section 58.

### **Admissibility of Appeals**

All appeals to the Judicial Bench of the Supreme Court must go through an admissibility hearing before the Panel of Joint Divisions which can deliver the following Rulings:

**1- A Ruling admitting the appeal**

**2- A Ruling of forfeiture for;**

- failing to provide the name of his counsel (the Appellant) within the legal time limit;
- failing to file memorandum of submissions by counsel of the appellant within the legal time limit;
- filing the memorandum out of time.

Section 54(2) of the above cited law provides that an action for professional fault may be taken against a defaulting lawyer who fails to file his/her submission in support of the appeal within the time limit prescribed by law.

Section 55(2) of the same Law provides that when pronouncing the forfeiture decision, the Supreme Court shall sentence the briefed counsel to pay a fine of 50 000FCFA.

**3- A Ruling on inadmissibility** in cases where either;

- the appeal was filed out of time;
- the appellant failed to pay appeal fee and cost of reproduction of the case file;
- the appellant failed to register the judgment under appeal after been served to do so;
- appellant failed to pay appeal tax of registration of the eventual judgment;
- the appeal was not filed with the proper form;
- the appeal was filed prematurely;
- the appellant failed to stamp the memorandum of submissions after he was serve to do so...

**B- EXAMINATION ON THE MERIT OF THE APPEAL**

Appeals can only be examined on the merit when they must have gone through the admissibility stage and were admitted for hearing. It should be noted that the majority of appeals received in the Common Law Division do not reach this stage.

Examining appeals on the merit requires that the Judge/Rapporteur go to the grounds of appeal raised by the appellant and determine whether they are admissible or not. After this stage the Rapporteur shall equally determine whether the grounds succeed or they fail looking at the Substantive and adjectival laws. Out of the less than 50 percent of appeals which successfully go through the admissibility test, more than 90 percent still fail because the grounds of appeal were not formulated under one of the headings prescribed by section 35(1) of the Law on the Supreme Court or articulated as per this law.

Section 35 (1) of law no.2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court prescribes the grounds upon which an appeal to the Supreme Court may be based.

It states:

*“Grounds on which an appeal may be based include:*

- a) Want of jurisdiction;*
- b) Misinterpretation of the facts of the case or the case file;*
- c) Default, contradiction or insufficient grounds;*
- d) Irregularity:.....*
- e) Breach of law*
- f) Non-response to the submissions of parties or requisitions of the Legal Department;*
- g) Abuse of office;*
- h) Violation of a general principle of law;*
- i) Non-compliance with the jurisprudence of the Supreme Court which ruled in a panel of Joint Divisions of a Bench or of Joint Benches.”*

Section 53 (2) of this same law stipulates as follows:

*“The duly stamped memorandum of submissions in support of the appeal shall cite the provision of the law violated and argue the legal grounds of appeal.”*

This legal provision has been construed to mean that where the complaint in a ground of appeal is that the court below has committed an error in law or general principle of law such ground must cite without error the law or general principle that has been violated or misapplied or misinterpreted, reproduce the provisions of the said law or legal principle and then state in what way the said law or principle has been violated or misapplied or misinterpreted.

Unfortunately many appeals are neither based on any of the above grounds or when based one, the violated section or principle of law is not reproduced and argued following section 53(1) above.



However, Section 35(2) of the above cited law gives powers to the Supreme Court to raise a ground suo moto even when all the grounds raised by the appellant fail. This is the current trend at the Common Law Division.

### **Some Challenges**

The Division just like any other institution faces some challenges which :

- effecting service
- handling more than one cause of action in a Division
- personnel
- training

Conclusively, the common law division has come to stay or better still to be improved upon and it is relying on the collaboration of each and every one of us to come and contribute for this baby put in place by law to grow to become a giant in our judicial arena. That is why we are very delighted to have seen you Dr Enochong Laura and your Organisation take interest in this Division from its earlier stage since 2018 till now. We want to take this opportunity to express our sincere gratitude to you and your team. Like Oliver Twist we asked for more within her powers when we met in Yaounde last year in a similar gathering. We formulated the wish to be exposed to other Regions of Cameroon most especially the North West and South West. Today is a dream come through and we will continue to plead on judicial experts to copy from this organization so that the flame keeps burning and more people exposed to the Common Law Practice at the highest level in our courts

That said, thank you for your kind attention

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