

*PRE-ACTION PROTOCOL AND PRE-EMPTIVE REMEDIES PROVISIONS IN THE LAGOS  
STATE HIGH COURT: THE JOURNEY SO FAR*

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**INTRODUCTION**

In recent times, there has been a lot of plausible innovations happening in the administration of justice in Nigeria, especially as it relates to the civil procedure and practice. In this regard, it has long been an established fact that Lagos State has always been the champion of procedural reforms in the justice delivery sector in Nigeria. This is particularly so when it comes to making Court Rules that reflect keeping up with global trends through positive changes in the practice of civil matters. It was in this vein that Lagos State introduced the Pre-action Protocol Requirements as a core component of the High Court Civil Procedure Rules in 2012.<sup>1</sup> The objective behind the introduction of Pre-action Protocol was to ensure that parties explore the possibility of amicable settlement prior to filing a suit in court and that where litigation becomes inevitable, the parties must have exchanged information that would enable each party understand the other party's case and, therefore, appropriately streamline the areas in dispute by sieving the grain from the chaff. In effect, it aims at preventing litigation in situations where it is avoidable. However, as laudable as the Pre-action Protocol goals appear to be, litigants and counsel within the Lagos State jurisdiction soon discovered that its general application as a precondition to the initiation of all suits could lead to injustice in certain situations. A recurrent example involved matters of urgency where giving the other party notice

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<sup>1</sup> See Order 3, Rule 2(1) (e) as well as the Preamble to the Lagos High Court (Civil Procedure) Rules, 2012 as well as Order 3, Rule 2(1) (e) of the same 2012 Rules which made Pre-action Protocol Form O1 one of the documents that must accompany a writ of summons. In effect, it made compliance with Pre-action Protocol a mandatory precondition to the institution of a suit.

of the intention to sue would negatively impact the *res* by putting it at the risk of being dissipated, destroyed, altered, sold or utilized (as the case may be) by any of the parties in such a detrimental manner which would render litigation pointless.

It was in a bid to cure this mischief that the Lagos State, once again, in its usual innovative way, introduced Pre-emptive Remedy<sup>2</sup> provisions through Practice Direction No. 2 to the High Court of Lagos State (Civil Procedure) Rules, 2019.<sup>3</sup> In the context of the Lagos State High Court Practice Direction No. 2, pre-emptive remedies are judicial tools used to ensure the continuing existence of the *res* while the action is yet to be instituted or pending compliance with the Pre-action Protocol. In other words, they aim to preserve the *res* pending compliance with Pre-action Protocol requirements/formal commencement of the suit through any of the established modes of commencing a suit.

As appropriate as the foregoing may seem, it is of essence to point out that the provisions relating to the application, grant and practice of pre-emptive remedies as set out in the Practice Direction are not without hitches and flaws. It suffices to say that the use and application of the pre-emptive remedies have generated challenges for both the Bar and the Bench. This paper aims to discuss the nature, essence, and challenges of pre-emptive remedies and give recommendations in the bid to limit the almost overwhelming challenges bedevilling the operation of pre-emptive remedies in civil litigation within Lagos State.

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<sup>2</sup> Except otherwise stated, reference to “pre-emptive remedies” in this paper is as used in High Court of Lagos State (Expeditious Disposal of Civil Cases) Practice Direction No. 2 of 2019 Pre-action Protocol.

<sup>3</sup> High Court of Lagos State (Expeditious Disposal of Civil Cases) Practice Direction No. 2 of 2019 Pre-action Protocol.

## THE ESSENCE OF PRE-EMPTIVE REMEDIES WHILE COMPLYING WITH PRE-ACTION PROTOCOL: PRESERVATION OF THE RES

The ultimate goal of pre-emptive remedies, just like any other injunctive relief, is the preservation of the *res*.<sup>4</sup> It is elementary that for litigation to serve its ultimate purpose, the *res* must continue to exist until the final determination/resolution of the subject dispute. The absence of *res* implies a waste of the precious judicial time. The court, in the absence of *res*, would give an empty verdict, and the successful party would have nothing to enjoy at the end of litigation. In other words, where the *res* no longer exists at the time judgment is given, the judgment is rendered nugatory. The need to prevent dissipation of the *res* in lawsuits has gained approval from writers,<sup>5</sup> judges<sup>6</sup> and lawyers over the years. Thus, the use

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<sup>4</sup> *Res*, according to Babalola's Dictionary, means:

“(1) a thing, affair, matter and circumstances; (2) the subject matter of the litigation; (3) the prop or fulcrum of the litigation; (4) the pivot of which the cause of action is founded upon but not the same as the cause of action. *Oyefeso v Omogbehin*)”

See page 330 Babalola's Law Dictionary of Judicially defined words and Phrases published in 2018.

<sup>5</sup> Abimbola Akeredolu & Chinedum Umeche of Banwo & Ighodalo: 'Litigation and Dispute Resolution' (6<sup>th</sup> Ed., Global Legal Group Ltd, London) (GLI - Litigation & Dispute Resolution 2017, 6th Edition) 231-232 while relying on C. I. Umeche and P. N. Okoli: *Between use and abuse: An examination of the efficacy of interim and interlocutory injunctions in Nigeria* acknowledge that the court would grant interim injunction to preserve the *res*.

<sup>6</sup> Wali, JSC in *United Spinners Ltd. v. C.B. Ltd (2001) 14 NWLR (Pt 732) 195 at 214, para B* held thus:

“The primary duty of all courts (both trial and appellate) is to preserve the *res* (subject matter of litigation) so that at the end of the exercise, whatever decision is reached is not rendered nugatory.” See also *Kigo v. Holman* (1980) 5-7 SC p. 49, paras. 30-35.

of legal apparatus like pre-emptive remedies<sup>7</sup> and injunctive reliefs are indispensable.

The importance of *res* cannot be over emphasized as it is a donor of courts' jurisdiction. In the case of **National Insurance Commission v First Continental Insurance Co. Ltd.**, the Court of Appeal, while describing *res* and its importance, held thus:

“The *res* of course is what is being litigated upon, *it is the subject matter of the action of which both parties seek to preserve for itself, it is what the courts have a duty to preserve its existence in order to give judgment of the court an effect...*”<sup>8</sup>

The foregoing postulation further underscores the importance of preserving *res*. A preservative order is pre-emptory in nature and content,<sup>9</sup> and this, in itself, brings to fore the essence of pre-emptive remedies.

#### **UNDERSTANDING PRE-ACTION PROTOCOL**

As noted in the introductory part of this paper, the pre-emptive remedies provisions applicable to civil litigation in Lagos State is a child of necessity, birthed by the practical application of the Pre-action Protocol requirements of the Lagos High Court Civil Procedure Rules. Therefore, it becomes practically impossible to discuss pre-emptive remedies as it applies to Lagos High Court civil litigation without delving into Pre-action Protocol.

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<sup>7</sup> ‘Pre-emptive remedies’ was defined in the 2019 Practice Direction to mean injunctive reliefs seeking to restrain an act.

<sup>8</sup> (2007) 2 NWLR (Pt. 1019) p. 610 at 628 G - H

<sup>9</sup> See Tobi, JCA (as he then was) in *Emerah v Chiekwe* [1996] 7 NWLR (Pt. 462) 536 at 547, paras. B-C.

As the name suggests, pre-action protocols (which appear to have been introduced to the common law jurisdiction when they were established in the United Kingdom in 1998,<sup>10</sup> based on the recommendations in the 1996 Lord Woolf's Access to Justice report) are simply court-prescribed pre-litigation steps and conduct that the prospective litigants and their counsel must observe prior to instituting a matter in court. In this regard, they involve the exchange of information and documents between parties and/or their counsel with a view to narrowing the matters in dispute and exploring the possibility of amicably resolving the disputes without the necessity of litigation. Granger and Fealy described Pre-action Protocol thus:

“The protocols are, in short, ‘codes’ of responsible pre-action behaviour, drafted by the profession. Their provisions are designed to encourage a sensible exchange of views and a pooling of information between the parties even before a dispute develops into litigation - all with a view to the promotion of early settlements or at least the minimisation of expense through greater ‘focusing’ on the real issues.”<sup>11</sup>

Order 1, Rule 1(2) of The High Court of Lagos State (Civil Procedure) Rules, 2019<sup>12</sup> simply defined Pre-action Protocol thus:

*“Pre-action protocol means steps that parties are required to take before initiating proceedings in court as set out in Form O1 of these rules.”*<sup>13</sup>

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<sup>10</sup> The England and Wales Civil Procedure Rules, 1998 (CPR).

<sup>11</sup> Ian Granger, Micheal Fealy with Martin Spencer, *The Civil Procedure Rules in Action* (2<sup>nd</sup> Ed., Cavendish Publishing Limited, 2009) 6-7.

<sup>12</sup> The Interpretation section of the Lagos Rules.

<sup>13</sup> Form O1, which is a Form on oath that a Claimant or his legal practitioner is mandated to depose to and file as part of the originating processes that must accompany the writ or summons, mandates the deponent to state that:

It must be noted that in most climes, elaborate provisions on the Pre-action Protocol, particularly as they relate to different heads of claim, do not usually form part of the main body of the Rules of Court. In this regard, the Courts would set out the steps and conducts expected of a potential claimant through the issuance of practice directions.<sup>14</sup> Under the Lagos State Civil Procedure regime, the Preamble to Practice Direction No. 2 sets out the purpose and expectations of the Court regarding the parties to litigation. Paragraph 3 of the Preamble puts it thus:

“Prior to commencement of proceedings, the court will expect parties to have engaged in pre-trial correspondence sufficient to:

- a. understand each other’s position;
- b. make decisions about how to proceed;
- c. try to settle the issues;
- d. consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;
- e. support the efficient management of those proceedings;
- f. reduce the cost of and delay in resolving the dispute.”<sup>15</sup>

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- i. he made attempts to settle the matter out of court but that the attempts were unsuccessful;
  - ii. he must also give particulars of the attempts made and exhibit the evidence of the attempts made; and
  - iii. he, by a written memorandum to the defendant, set out his claims and options for settlement.

<sup>14</sup> See, for example, Practice Direction Pre-Action Conduct, 2010 as well as the United Kingdom Practice Direction - Pre-Action Conduct And Protocols (updated 1 October 2020) at <<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol>> last visited 27 May 2021; the High Court of Lagos State (Expedition Disposal of Civil Cases) Practice Direction No. 2 of 2019; The Trinidad and Tobago Supreme Court of Judicature Practice direction: Pre-action Protocol, 2005 <<https://www.ttlawcourts.org/index.php/component/attachments/download/6085>> last visited 27 May 2021.

<sup>15</sup> See Para. 3 of the High Court of Lagos State (Expedition Disposal of Civil Cases) Practice Direction No. 2 of 2019 Pre-action Protocol.

The above-referenced expectations bring to fore the mandatory nature of compliance with the Pre-Action Protocol. As a matter of fact, the fact that Order 5, Rule 1(2) of the Lagos High Court Rules, 2019 makes Form O1 a mandatory process to be filed with the originating processes further underscores its mandatory nature. This is further reinforced by Order 5, rule 1(3), which states that failure to comply with Order 5, rule 1(2) (which makes Form O1 part of the documents that accompany a writ) shall nullify the action. In other words, without full compliance with the Pre-Action Protocol, any action so instituted amounts to a nullity<sup>16</sup>. In this regard, the pre-action protocol as a precondition to the institution of an action at the Lagos High Court is similar to the statutorily mandated pre-action notice peculiar to statutory bodies.<sup>17</sup> The Supreme Court, in the case of *Ntiero v. N.P.A*, described pre-action notice thus:

“A Pre-Action Notice connotes some form of notification or information required by law or imparted by operation of law, contained in an enactment agreements or contracts which requires compliance by the person who is under legal duty to put notice the person to be notified, before the commencement of any legal action against a person.”<sup>18</sup>

Furthermore, generally, the Lagos High Court Registry does not accept for filing any originating processes without having a Pre-action Protocol bundle prepared in line with the dictates of Practice Direction No. 2.

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<sup>16</sup> Order 7 Rule 1 and Order 5 Rule 1 (3) of the High Court of Lagos State (Civil Procedures) Rules 2019

<sup>17</sup> See Section 42(2) of the Asset Management Corporation of Nigeria Act, 2010 (as amended); Section 17 of the Companies and Allied Matters Act, 2020; and Section 55 (3) Federal Inland Revenue Service (Establishment) Act 2007; and Section 92 (1) of the Nigerian Port Authority Act, 1999.

<sup>18</sup> *Ntiero v. N.P.A* [2008] 10 NWLR (Pt. 1094) 129 at 146 paras D-E

### **SCOPE AND APPLICATION OF PRE-ACTION PROTOCOL**

In view of the objectives of Pre-action Protocol, the aim is to ensure that the protocol is observed by all litigants in varying degrees. The nature, scope and extent of its application to any particular matter is determined by the head of claim the matter falls under, as well as certain other peculiarities. It is for this reason that the Courts have made particular protocols tailored to different heads of claims. Be that as it may, there is always a general provision in Practice Directions that covers matters that do not fall under any of the specific heads of claim.<sup>19</sup> Under the Trinidadian and Tobagonian 2005 Practice Direction on Pre-action Protocol, paragraph 4.1. caters for cases with no approved protocol thus:

*“In cases not covered by an approved protocol, the court will expect the parties, in accordance with the overriding objective and the matters referred to in Part 1.1. (2) (a), (b) and (c) of the CPR, to act reasonably in exchanging information and documents relevant to the claim and generally in trying to avoid litigation.”*

Commenting on the approved protocol for specific heads of claims, Granger and Fealy, while dealing with the areas covered by the pre-action protocol under the English and Welsh Civil Procedure Rules (CPR), noted thus:

*“Pre-action protocols have so far been produced for personal injury claims, for clinical disputes and (on a pilot basis) for road traffic accidents. The personal injury and clinical negligence protocols are printed in Part C and are considered in detail in Chapters 25 and 26*

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<sup>19</sup> For Lagos, see General Pre-action Protocol at page 03 of Practice direction No. 2. In England and Wales, Practice Direction - Pre-Action Conduct and Protocols applies “...to disputes where no pre-action protocol approved by the Master of the Rolls applies.” See [https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd\\_pre-action\\_conduct](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct) last visited 27 May 2021.

*below. Furthermore - and very importantly - paragraph 4.1 of the general practice direction on protocols provides that:*

*In cases not covered by any approved protocol, the court will expect the parties, in accordance with the overriding objective and the matters referred to in CPR 1.1(2) (a), (b) and (c), to act reasonably in exchanging information and documents relevant to the claim and generally in trying to avoid the necessity for the start of proceedings.*

*The general aim of encouraging reasonable pre-action behaviour is thus effectively extended to actions of all types. (As to the question of pre-action behaviour in the context of costs, see the judgments of the Court of Appeal in Ford v GKR Construction [2000] 1 All ER 802 - especially of Lord Woolf at p 810 - and in London Borough of Brent v Aniedobe (1999) unreported, 23 November.)”<sup>20</sup>*

A list of all the protocols in force in England and Wales as at 1 October 2020 is contained in Practice Direction - Pre-Action Conduct and Protocols.<sup>21</sup>

As noted earlier, apart from the general pre-action protocol, the Lagos State High Court, through Practice Direction No. 2, has so far issued

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<sup>20</sup> Ian Granger, Micheal Fealy and Martin Spencer *The Civil Procedure Rules in Action* (2<sup>nd</sup> Ed., Cavendish Publishing Limited) 6. For a list of all the Protocols in Force in England and Wales as at 1 October 2020, see

<sup>21</sup> Practice Direction - Pre-Action Conduct and Protocols <[https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd\\_pre-action\\_conduct](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct)> last visited 27 May 2021. For an updated list as at 19 May 2021, see CPR - Pre-Action Protocols <https://www.justice.gov.uk/courts/procedure-rules/civil/protocol> last visited 27 May 2021.

protocols for Defamation,<sup>22</sup> Mortgages,<sup>23</sup> Land Matters,<sup>24</sup> Recovery of Debts,<sup>25</sup> and Recovery of Premises.<sup>26</sup>

In the recent case of *BRORON OIL & GAS LTD v. PETROMARINE (NIG) LTD*<sup>27</sup>, the Court of Appeal held as follows:

"...The said Pre-Action Protocol is introduced in its Preamble in this manner: 1. Pre-Action Protocols explain the conduct and sets out the steps required of parties prior to the commencement of proceedings to which the High Court of Lagos State (Civil Procedure) Rules apply. They are issued by the Chief Judge of Lagos State and form an integral part of the High Court of Lagos State (Civil Procedure) Rules. 2. This Pre-Action Protocol applies to all actions instituted at the High Court of Lagos State... (Emphasis mine). Being an integral part of the High Court of Lagos State (Civil Procedure) Rules, the said Pre Action Protocol is regarded as or deemed to be inbuilt in the said Rules of Court. It cannot be read or interpreted outside the said Rules of Court. The Pre-Action Protocol in paragraph 1 goes on to provide: 1. Where parties resort to litigation after attempts at settlement in accordance with this Practice Direction have remained unsuccessful, a Pre-Action Protocol Form 01, accompanied by all pre-action correspondence duly acknowledged and exchanged between the parties and cogent evidence that ADR has been considered in accordance with this Protocol, must be made on oath (collectively referred to as the "Pre-Action Protocol Bundle" or "P-A-P-B") and filed at the Registry with the appropriate originating process and other originating documents."

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<sup>22</sup> See pages 11 to 13 of Practice Direction No. 2.

<sup>23</sup> See pages 14-19 to 13 of Practice Direction No. 2.

<sup>24</sup> See page 20 of Practice Direction No. 2.

<sup>25</sup> See pages 21 to 24 of Practice Direction No. 2.

<sup>26</sup> See pages 25 to 26 of Practice Direction No. 2.

<sup>27</sup> (2023) LPELR-61012(CA)

Considering the foregoing, and as noted by Granger and Fealy,<sup>28</sup> the general impression is that all litigants are mandated to comply with the pre-action protocol before approaching the court. However, this is not always the case, as all the jurisdictions considered have provisions allowing parties to approach the court without first complying with pre-action protocol. This is a marked exception to the general rule regarding compliance with pre-action protocol.

In England and Wales, the draftsmen of the protocols recognise the fact that there may be certain situations when compliance with the protocols may defeat the purpose of instituting an action or where compliance with the protocols is just not suitable or in the interest of justice. In paragraph 2.2 of the Pre-Action Conduct Practice Direction issued in April 2010, it is noted thus:

*“2.2 There are some types of application where the principles in this Practice Direction clearly cannot or should not apply. These include, but are not limited to, for example -*

- (1) applications for an order where the parties have agreed between them the terms of the court order to be sought (‘consent orders’);*
- (2) applications for an order where there is no other party for the applicant to engage with;*
- (3) most applications for directions by a trustee or other fiduciary;*
- (4) applications where telling the other potential party in advance would defeat the purpose of the application*

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<sup>28</sup> See fn. 29.

(for example, an application for an order to freeze assets).”<sup>29</sup> [Emphasis, ours]

In similar vein, the English and Welsh Pre-action Protocol on Judicial Review specifically considered the difficulty of compliance with the protocols in very urgent matters. The Protocol recognises that demanding compliance will not be appropriate in very urgent cases and, therefore, expects the claimant to immediately file a claim. Paragraph 16 of the Protocol states that:

*“This protocol will not be appropriate in very urgent cases. In this sort of case, a claim should be made immediately. Examples are where directions have been set for the claimant's removal from the UK or where there is an urgent need for an interim order to compel a public body to act where it has unlawfully refused to do so, such as where a local housing authority fails to secure interim accommodation for a homeless claimant. A letter before claim, and a claim itself, will not stop the implementation of a disputed decision, though a proposed defendant may agree to take no action until its response letter has been provided. In other cases, the claimant may need to apply to the court for an urgent interim order. Even in very urgent cases, it is good practice to alert the defendant by telephone and to send by email (or fax) to the defendant the draft Claim Form which the claimant intends to issue. A claimant is also normally required to notify a defendant when an interim order is being sought.”*<sup>30</sup>

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<sup>29</sup> See paragraph 2.2., page 1 of Practice Direction Pre-Action Conduct <[https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/practice\\_directions/pd\\_pre-action\\_conduct.pdf](https://www.justice.gov.uk/courts/procedure-rules/civil/pdf/practice_directions/pd_pre-action_conduct.pdf)> last visited 27 May 2021

<sup>30</sup> Pre-Action Protocol for Judicial Review <[https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_jrv](https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_jrv)> last visited 27 May 2021.

Still on the English and Welsh Pre-action Protocols, under the Practice Direction - Pre-Action Conduct and Protocols (which applies to disputes where no pre-action protocol approved by the Master of the Rolls applies), paragraph 13 thereof states that in urgent matters, the Court will not concern itself with whether parties have complied with the Protocol.<sup>31</sup> Similarly, paragraph 2.1(ii) of the Pre-Action Protocol for Construction and Engineering Disputes states that a claimant is not required to comply with the Protocol before commencing proceedings to the extent that the proposed proceedings include a claim for injunctive relief.<sup>32</sup>

In similar vein, the English and Welsh courts do not demand compliance with the pre-action protocols before approaching the court, where, by reason of complying with the protocols, a claimant's claim is at risk of becoming time-barred under any other legislation which imposes a time limit for bringing an action. In such circumstances, the parties will apply for stay of proceedings while they comply with the applicable protocol.<sup>33</sup>

The Trinidad and Tobago Practice Direction adopts the same approach in catering for situations where compliance with pre-action protocol is not suitable. Usually, the window to bypass compliance is open to parties in instances where it is impossible or not feasible for parties to comply with pre-action protocol due to statute of limitation or in matters of real

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<sup>31</sup> See Practice Direction - Pre-Action Conduct and Protocols [https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd\\_pre-action\\_conduct](https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct) last visited 27 May 2021.

<sup>32</sup> Pre-Action Protocol for Construction and Engineering Disputes 2<sup>nd</sup> edition <[https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_ced](https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_ced)> last visited 27 May 2021.

<sup>33</sup> See paragraph 17 of Practice Direction - Pre-Action Conduct and Protocols; paragraph 12.1. Pre-Action Protocol for Construction and Engineering Disputes 2<sup>nd</sup> edition; paragraph 11, Pre-Action Protocol for Disease and Illness Claims <[https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_dis](https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_dis)> last visited 27 May 2021; paragraph 10 Pre-Action Protocol for Housing Conditions Claims (England) <[https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot\\_hou](https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_hou)> last visited 27 May 2021.

urgency. In this regard, the Trinidad and Tobago Practice Direction provides thus:

*“Parties will not be expected to observe this direction in urgent claims or where a period of limitation is about to expire and the period between the expiration of the limitation period and the date the claimant instructs an attorney-at-law to act on his behalf in relation to the proposed claim is too short to allow for compliance with this direction, or for other good and sufficient reason there should not be compliance provided that the reasons for non-compliance are set out fully in the claim form or statement of case. However, in the case where the limitation period is about to expire, the claimant’s attorney-at-law should give as much notice of the intention to issue proceedings as is practicable, and in appropriate cases the court might be invited to extend the time for service of the claimant’s supporting documents, if any, and/or for service of any defence or alternatively, to stay proceedings while the recommended steps are followed.”<sup>34</sup>*

From the foregoing consideration of the respective positions in England & Wales and Trinidad and Tobago, it is clear that the courts have simplified the approach applicable to the situation where the claimant is not expected to comply with the Protocol first before filing a claim. Urgent matters are treated differently from statutory limitation matters thus:

- A. in urgent matters where, for example, injunctive reliefs are required, the claimant approaches the court without the need of subsequently complying with the protocol;

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<sup>34</sup> See paragraph 2.2. of the Trinidad and Tobago Supreme Court of Judicature Practice direction: Pre-action Protocol, 2005  
<<https://www.ttlawcourts.org/index.php/component/attachments/download/6085>> last visited 27 May 2021.

- B. in matters where time-bar applies, the claimant files his claim first, then applies for a stay to enable the parties subsequently comply with the applicable protocol.

In all these cases, these jurisdictions have kept it simple by ensuring a claimant with a claim falling within the recognised exceptions, does not need to go through any intricate procedural steps in order to take benefit of the exemptions.

However, the foregoing is not necessarily the approach under the Lagos State High Court civil litigation regime. Although, as noted earlier, the Lagos State Practice Direction No. 2 has special provisions permitting a claimant to approach the court (to seek preservative orders) without first complying with pre-action protocol, it did so by establishing a seemingly *sui generis* procedure under the caption Pre-emptive Remedies. It is to this we now turn.

***PRE-EMPTIVE REMEDIES PROVISION UNDER PRACTICE DIRECTION NO. 2***

The Pre-emptive Remedies provisions, which form part of Practice Direction No. 2, are, without a doubt, special provisions for many reasons. They are specifically made to cater for special circumstances stated therein. It provides thus:

*“1. Where in the interest of justice or to prevent irreparable damage or serious mischief, there is a need for pre-emptive remedies to be ordered by the court, the affected party must file either the memorandum of claim with its accompanying documents and the memorandum for settlement, in the case of a Respondent, together with an ex parte originating application for pre-emptive remedy sought supported by an affidavit and a written address in the registry.*

2. *After the remedy is either granted or refused by the court, the Judge is to order the parties to continue with full compliance of the Protocol.*
3. *Where an order of injunction is granted ex-parte and parties are unable to settle before the order abates, the judge may extend its lifespan until compliance with the Protocol is complete.”<sup>35</sup>*

From the foregoing, it is clear that an intending claimant can only invoke the pre-emptive remedies provision where the court needs to order pre-emptive remedies because:

- i. the interest of justice permits; or
- ii. there is a need to prevent irreparable damage; or
- iii. serious mischief.

In these situations, rather than initiating the action by way of any of the conventional originating processes, that is, writ of summons, originating summons, originating motion or petition, the Practice Direction permits a deserving applicant to come to court by way of an *ex-parte* originating application. In this regard, the applicant, usually the claimant, files the following documents:

- i. memorandum of claim with its accompanying documents;
- ii. memorandum for settlement;
- iii. an *ex-parte* originating application praying for the pre-emptive remedy sought;
- iv. affidavit in support of the *ex-parte* originating application; and
- v. written address.

Upon the Court’s grant or refusal of the pre-emptive remedy sought vide the *ex-parte* originating application, the Judge shall then order the

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<sup>35</sup> See Page 07 of Practice Direction No. 2.

parties to continue with full compliance with Pre-action Protocol. Eventually, upon full compliance with the pre-action protocol, the claimant shall then file the writ of summons (or any other applicable originating process) and other accompanying documents.

It must be noted that this is a novelty. It is the only situation under the Lagos State High Court (Civil Procedure) Rules where a suit can be initiated by way of *ex-parte* originating application (without filing a writ of summons or originating summons or originating motion or petition).

It is also the only means of approaching the Court under the High Court of Lagos State (Civil Procedure) Rules in a manner that bypasses Pre-action Protocol. It is an invention of the draftsmen of the Practice Direction No. 2 and is only peculiar to the Lagos State High Court for the time being.

In terms of the mode of commencement, that is, by way of an application seeking the preservation of the *res*, it may be argued that the concept is not entirely novel. This argument draws force from the procedure adopted in initiating matters under the Asset Management Corporation of Nigeria (AMCON) Practice Direction, 2013.<sup>36</sup> By paragraph 4.1. of the AMCON Practice Direction, 2013, the claimant is allowed to file any application before filing his claim form. Of a greater force is the provision of section 50(1) of Asset Management Corporation of Nigeria Act 2010 (as amended) which provides thus:

**“Where the Corporation has reasonable cause to believe that a debtor or debtor company has funds in any account with any eligible financial institution, it may apply to the court, before, or at the time of filing of action for debt recovery or other like action or at any time after the filing of action and before or after the service of the originating process by which such action is commenced on the debtor or debtor company by motion ex parte for**

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<sup>36</sup> Asset Management Corporation of Nigeria (Special Debt Recovery Practice Direction).

*an interlocutory order freezing the debtor or the debtor company's account.” [Emphasis, ours]*

The effect of this is that the claimant in an AMCON matter may approach the court by way of an *ex parte* application. Although both Practice Direction No. 2 and the AMCON Act permit the applicant to approach the court *ex parte* before filing his claim, by way of nomenclature, Practice Direction No. 2 specifically calls the *ex parte* process to be filed “*ex parte originating application*” while the AMCON Act uses the conventional term “*motion ex parte*” despite the fact that it may be filed before filing an action. This immediately brings to fore the basis of comparison between the conventional *motion ex parte* and *ex parte originating application* under Lagos State High Court Practice Direction No. 2. It is interesting to note that similarities and dissimilarities between the conventional *motion ex parte* and *ex parte originating application* under Lagos State High Court Practice Direction No. 2 abound.

***JUXTAPOSING MOTION EX-PARTE FOR INJUNCTION WITH EX-PARTE ORIGINATING APPLICATION UNDER THE PRACTICE DIRECTION NO. 2.***

Generally, the word *ex-parte* suggests that only one party is involved and that it is to the exclusion of the other party, who might or might not be affected by the outcome of the proceedings. The 11<sup>th</sup> edition of Black's Law Dictionary defines the word “*ex parte*” as something:

*“...done or made at the instance and for the benefit of one party only, and without notice to, or argument by, anyone having an adverse interest; of, relating to, or involving court action taken or received by one party without notice to the other, usu. For temporary or emergency relief...”<sup>37</sup>*

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<sup>37</sup> Black's Law Dictionary (11<sup>th</sup> Edition, 1995) p. 722

Usually, an ex-parte application is by way of a motion, and may be used for several purposes, as Achike JCA (as His Lordship then was) explain in the case of **7Up Bottling Co. v. Abiola & Sons Ltd.**, some of which may not directly affect the interest of the other party to the suit.<sup>38</sup> However, it is important to immediately note that the motion ex-parte that is the subject of interest in the instant juxtaposition is a motion ex-parte for injunctive relief.

A motion ex-parte, in this context, is usually defined in contradiction to a motion on notice and conventionally prays for an interim order pending the time the court hears the other party.<sup>39</sup> As Nnaemeka-Agu JSC noted in **Kotoye v. CBN**:

*“By their very nature injunctions granted on ex-parte applications can only be properly interim in nature. They are made, without notice to the other side, to keep matters in status quo to a named date, usually not more than a few days, or until the respondent can be put on notice. The rationale of an order made on such an application is that delay to be caused by proceeding in the ordinary way by putting the other side on notice would or might cause such an irretrievable or serious mischief. Such injunctions are for cases of real urgency. The emphasis is on ‘real.’”*<sup>40</sup>

A broad consideration of the nature and purpose of the grant of a motion *ex-parte*, as Nnaemeka-Agu, JSC succinctly put above, establishes the fact that it shares very similar agenda to that of the pre-emptive remedies’ *ex-parte* originating application. A motion *ex-parte* for injunction, just as with the *ex-parte* originating application under Practice Direction No. 2,

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<sup>38</sup> See *7Up Bottling Co. v. Abiola & Sons Ltd.* [1989] 4 NWLR (Pt. 114) 229 at 237, para. F. An example quite common is a motion *ex-parte* for substituted service where it has been difficult or impossible to effect personal service on a defendant.

<sup>39</sup> See *Kotoye v. CBN* [1989] 1 NWLR (Pt. 98) 419 at 440, paras. D-E.

<sup>40</sup> *Kotoye v. CBN (supra)*

may seek a preservative order or pre-emptive remedies. In both cases, the primary concern is usually to preserve the *res* or restrain the other party from doing an act or mandate him to do an act. The interpretation of pre-emptive remedies in Practice Direction No. 2 further gives credence to the similarity between a motion ex-parte and the ex-parte originating application. The Practice Direction interprets pre-emptive remedies to “include injunctive reliefs seeking to restrain an act...”

As noted above, despite the apparent similarities between the conventional motion ex-parte for injunction and the ex-parte originating application, the dissimilarities are quite noticeable. They range from the period/times they can be filed, the prayers sought, the life span, the scope to accompanying documents.

**Lifespan:** by the provisions of the Order 43, Rule 3 (3) and (4) of the High Court of Lagos State (Civil Procedure) Rules,<sup>41</sup> an order of interim injunction made pursuant to a motion ex-parte abates after seven (7) days and can only be further extended for another seven (7) days from the date the extension is granted.<sup>42</sup> Speaking on the life span of an injunctive order made on a motion ex-parte, the Court of Appeal in **Skye Bank Plc. v. Haruna & Ors**, put it thus:

*“...ex parte orders are by their very nature not intended or meant to last forever, but to have a short life span, usually for 7 or 14 days depending on the rules of court unless renewed...”*<sup>43</sup>

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<sup>41</sup> High court of the Lagos state (civil procedure) Rules, 2019

<sup>42</sup> By Order 26, Rule 10 of the Federal High Court (Civil Procedure) Rules, 2019, an order made on a motion ex-parte has a different life span. It cannot last for more than a period of 14 days after the party affected has filed an application to discharge or vary it or for another 14 days after the application to discharge or vary it has been argued.

<sup>43</sup> (2014) LPELR- 41078 (CA)

With regard to the pre-emptive remedies ex-parte originating application, although it is also designed to have a short life span, the Practice Direction does not prescribe a definite lifespan for the pre-emptive orders made pursuant to the ex-parte originating application. Be that as it may, an order so made may last for a reasonably longer period than that of a motion ex-parte order, depending on how long it will take the parties to fully comply with pre-action protocol and eventually file a claim in court.<sup>44</sup> The net effect of this is simply that the period required for compliance with pre-action protocol determines the life span of the Order.

It suffices to say that under the Lagos Rules, an interim preservative order cannot be made to last beyond 14 days<sup>45</sup>. This is unlike in a pre-emptive remedy order, which, by implication of the relevant provision under the Practice Direction No. 2, can be made pending full compliance with the Pre-action Protocol. It is therefore a misapplication of the Rules to restrict the life span of pre-emptive order to seven days as obtainable in some courts that lump up the two.

That is to say, the tenure of a pre-emptive order is determinable by the appropriate Pre-action Protocol. For instance, if the subject matter of the pre-emptive remedy is land, then the order and/or the return date after granting a pre-emptive remedy order must be for at least 30 days, taking into account the compliance period, mandated under the pre-action protocol.<sup>46</sup> Likewise, if it were to be a libel or defamation dispute, 14

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<sup>44</sup> Practice Direction No. 2 gives the judge the power to extend the lifespan of an order for Pre-emptive remedies until full compliance with the Protocol (i.e. Pre-action Protocol). See Practice Direction of the High Court of Lagos State No. 2 of 2019, page 07.

<sup>45</sup> *Ibid.*

<sup>46</sup> See Paragraph 1.2 of page 20 of the High Court of Lagos State (Expedition Disposal of Civil Cases) Practice Direction No. 2 of 2019 on Pre-action Protocol.

days, at the barest minimum, must be applicable.<sup>47</sup> Thus, the practice in which some judges grant pre-emptive orders for a period shorter than the pre-action protocol period prescribed by the practice direction does not align with the period mandated under the pre-action protocol practice direction. It negates the essence of granting the Order. This is the first area of attention that both the bar and the bench need to take cognizance of.

***Accompanying Documents:*** by the Court's Rules, a motion ex-parte may be supported by an affidavit and shall be accompanied by a written address.<sup>48</sup> Order 43, Rule 3(2) of the Lagos Rules also forbids an application for injunction to be made ex-parte except a motion on notice was filed along with the motion ex-parte. In effect, a motion on notice for injunction must be filed along with the motion ex-parte before the court can entertain the motion ex-parte. This is particularly so in view of the fact that the injunctive order made on the motion ex-parte is granted pending the determination of the motion on notice for the injunction.

However, with respect to the ex-parte originating application, Practice Direction No. 2 stipulates that the ex-parte originating application is to be filed with:

- a) an accompanying affidavit;
- b) a written address; and

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<sup>47</sup> It should be noted that the provisions on pre-emptive remedies in the High Court of Lagos State (Expeditious Disposal of Civil Cases) Practice Direction No. 2 of 2019 on Pre-action Protocol did not expressly provide for a duration within which the order shall lapse. However, it is inferable from the Practice Direction that the order is made to preserve the res pending compliance with pre-action protocol. This point was also noted in the article by Dr. Muiz Banire, SAN, titled "*Pre-emptive Remedies from the Preservation of Res: An appraisal of enforcement challenges*" *Gravitas Review of business and property law* of December, 2021, Vol. 12 No. 4, page 52.

<sup>48</sup> Order 43 rule 1 & 2 of the High Court of Lagos State (Civil Procedure) Rules 2019.

c) the Memorandum of Claim.

In the case of the Respondent who also seeks pre-emptive remedies under the Practice Direction No. 2, he is mandated to file, along with the ex-parte originating application:

- a) an accompanying affidavit;
- b) a written address; and
- c) memorandum of settlement.<sup>49</sup>.

It must be noted that unlike the motion ex-parte, which must have a motion on notice filed along with it, the ex-parte originating application, by its very nature, does not demand the filing of a motion on notice along with it. As shall be further discussed anon, the fact that no motion on notice is filed along with the ex-parte originating application has been a constant source of trouble for both the bench and the bar. In any situation that a motion on notice is filed, that renders the pre-emptive application incompetent; or where the relief sought is made to be contingent on the hearing and determination of motion on notice. It is instructive to recall again that, at this stage, no suit is in existence.

***Time to Apply:*** it is established that a motion ex-parte is filed after the claim has been filed (not before).<sup>50</sup> However, the ex-parte originating application under Practice Direction No. 2 can only be filed before the claimant files his claim. It is a purpose-specific originating application that cannot be filed after the claim has been filed because it serves the purpose of preserving a state of affairs before the claim is filed. Therefore, once the claim is filed, the ex-parte originating application

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<sup>49</sup> Practice Direction of the High Court of Lagos State no.2 of 2019 page 07

<sup>50</sup> As pointed out earlier in this paper, the only known exception is under section 50 of the AMCON Act and the AMCON Practice Direction, 2013 where the claimant is permitted to file a motion ex-parte before filing his claim.

cannot be filed again and no court can grant the pre-emptive remedies under the Practice Direction No. 2 again. Similarly, once there is compliance with the pre-action protocol, the application is incompetent.

Despite the identified marked differences between the motion ex-parte and ex-parte originating application, some of the challenges faced in the filing, hearing and grant of the pre-emptive remedies ex-parte originating application still stem from the fact that some judges and counsel still place it on the same pedestal with the injunctive motion ex-parte.

**Condition for Grant:** It is instructive to note that whereas, to succeed in application for interim injunction, the Applicant must demonstrate existence of typical injunctive requirements such as:

- a. Substantial issue to be tried;
- b. Balance of convenience;
- c. Irreparable damage or injury;
- d. Conduct of the parties; and
- e. Undertaking as to damages.<sup>51</sup>

The above requirements are not *stricto sensu* applicable for the consideration and determination of an application for pre-emptive remedies. Accordingly, all that an applicant for pre-emptive remedies needs to demonstrate through the affidavit are that:

- a. it is in the interest of justice to grant the application;
- b. there is the necessity to prevent irreparable damage of the *res*; or
- c. if, the application is not granted, there will be serious mischief<sup>52</sup>.

All these are to be gathered from the relevant documents before the court as stated above, particularly the affidavit in support of the interim

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<sup>51</sup> Adeleke v. Lawal [2014] 3 NWLR (Pt. 1393) 1 at 17, paras. G-H

<sup>52</sup> Paragraph 1 of page 7 of the High Court of Lagos State (Expeditious Disposal of Civil Cases) Practice Direction No. 2 of 2019 on Pre-action Protocol

application. Hence, once the court is satisfied with any of these parameters, the pre-emptive order must be naturally and automatically granted.

While describing the distinctive nature of pre-emptive action, the Court of Appeal in the case of *BRORON OIL & GAS LTD v. PETROMARINE (NIG) LTD (SUPRA)* held thus:

“The Respondent herein commenced the action by an Originating Motion Ex parte pursuant to the Pre-Action Protocol (Expeditious Disposal of Civil Cases). Obviously, it was not an interlocutory application. Having regard to the clear provisions of the said Pre Action Protocol, which make its provisions an integral part of the High Court (Civil Procedure) Rules, can one, confidently and without equivocation, describe the said Originating Motion Ex parte as an originating process that can be deemed to have commenced the action pursuant to the High Court (Civil Procedure) Rules? In my considered opinion, I do not think so. I am guided by the intention of the Pre-Action Protocol, as prescribed in its preamble, as well as by the provisions of Order 5 of the High Court (Civil Procedure) Rules. The Pre-Action Protocol in its preamble, sets out its intention thus: Pre-Action Protocols explain the conduct and sets out the steps required of parties prior to the commencement of proceedings to which the High Court of Lagos State (Civil Procedure) Rules apply. (Emphasis mine). The provisions of the Pre-Action Protocols would reveal that the purport behind its enactment was to encourage alternative dispute resolution leading to settlement out of Court by parties, and to have the parties resort to litigation only after attempts at settlement in accordance with this Practice Direction have remained unsuccessful. Paragraph 3 of the Pre-Action Protocol, which empowers the lower Court to make pre-emptive orders, provides: 3. 1. Where in the interest of justice or to prevent irreparable damage or serious mischief, there is a need for pre-

emptive remedies to be ordered by the Court, the affected party must file either the memorandum of claim with its accompanying documents and the memorandum for settlement, in the case of a Claimant or the response to the memorandum of claim with its accompanying documents, in the case of a Respondent, together with an ex parte originating application for the pre-emptive remedy sought supported by an affidavit and a written address in the Registry. 2. After the remedy is either granted or refused by the Court, the Judge is to order the parties to continue with full compliance of the Protocol. (Emphasis mine). In granting the Mareva injunctive orders on 7/9/2020, the lower Court, per Ogala, J., ordered the Respondent to proceed with full compliance of the suit and serve the Appellant, as respondent therein, with the Motion on Notice. This Order was in line with the provisions of Paragraph 3 of the Pre-Action Protocol. Ogala, J., further recommended accelerated hearing of the Motion on Notice, page 62 of the Record of Appeal. And the question is: what is full compliance of the Protocol? To my mind, this would simply be proceeding with the other provisions of Protocol, by filing and serving the memorandum of claim with its accompanying documents and the memorandum for settlement. Subsequent to the full compliance with the Protocol, if settlement out of Court fails, would then be compliance with the High Court (Civil Procedure) Rules, particularly Order 5 thereof, reproduced above. This would entail filing a Statement of Claim; the list of witnesses to be called at the trial; written statements on oath of the witnesses except witnesses on subpoena; copies of every document to be relied on at the trial; the Pre-Action Protocol Form 01 with necessary documents. The Rules further caution that failure to comply with the foregoing shall nullify the action."

*CHALLENGES BEDEVILLING THE ENFORCEMENT OF THE PROVISIONS OF THE PRACTICE DIRECTION ON PRE-ACTION PROTOCOL VIS-À-VIS PRE-EMPTIVE REMEDIES*

As noted in the introductory section of this paper, when the Lagos State High Court (Civil Procedure) Rules, 2012 (2012 Lagos Rules) introduced pre-action protocol into the civil litigation regime in Lagos State, it did so through a general application of pre-action protocol to all matters in a manner that emphasised the innovative approach more than its practical application. Basically, paragraph 2(2)(e) of the Preamble to the 2012 Lagos Rules introduced pre-action protocol as an active case management tool which claimant and his counsel are required to comply with in order to achieve the overriding objective of the Rules. Apart from stating the meaning of pre-action protocol in Order 1, Rule 2(3) of the 2012 Lagos Rules,<sup>53</sup> the only other significant mentions are in Order 3, Rule 2(1) and Rule 8(2)(d)<sup>54</sup> and Form O1.<sup>55</sup> Apart from the Preamble and Form O1 to the 2012 Lagos Rules, there was no Practice Direction on pre-action protocol setting out a timeline for the exchange of pre-action protocol correspondence or the compliance period generally. No matter the nature of the claim or the urgent nature of the preservative orders required, every claimant was expected to comply with pre-action protocol before approaching the court. The authors of *The Blue Book 2013 - Practical Approach to the High Court of Lagos State (Civil Procedure) Rules, 2012* identified the issues involved therein thus:

“As noted earlier, by virtue of Order 3, Rule 2(1) (e) and Order 3, Rule 8(2)(d), compliance with pre-action protocol is a pre-condition to filing a writ of summons or originating summons under the Rules. This may turn out to defeat the very essence of litigation in matters

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<sup>53</sup> It simply interpreted pre-action protocol to mean the steps that parties are required to take before issuing proceedings in court as set out in Form O1 to the Rules.

<sup>54</sup> Both of which made it mandatory to file pre-action protocol Form O1 along with the writ of summons or originating summons.

<sup>55</sup> It is a Statement of Compliance with pre-action Protocol.

where exigency of time requires an immediate intervention by the court. An appropriate example is a situation where injunctive reliefs are urgently required to protect the *res* from clear and present danger of destruction. In this situation, compliance with pre-action protocol may sound the death knell on the *res* that one seeks to protect. In other words, it may be said that pre-action protocol under the Rules has buried *quia timet* and any other emergency situation. Another issue of interest is where the action will become statute-barred if not immediately instituted; or an order freezing the assets of the defendant is immediately required in order to avoid an opportunity for the defendant to surreptitiously move same out of jurisdiction. In these instances, the urgency involved renders complying with pre-action protocol requirement unwise.”<sup>56</sup>

The only saving grace for the claimants and their counsel was that, due to the absence of a pre-action protocol compliance timeline, they could issue the written memorandum today and file their claim the next day. It was that ludicrous and, clearly, not thought through.<sup>57</sup>

The foregoing, therefore, created the need for reform and necessitated the issuance of Practice Direction No. 2. Clearly, issuing specific protocols of different heads of claim including specific timelines for exchange of correspondence and pre-action protocol compliance generally was necessary and, therefore, accommodated in Practice Direction No. 2. Furthermore, as it has been severally noted above, based on need to ensure that the pre-action protocol timelines do not stifle matters of

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<sup>56</sup> Muiz Banire, Ajibola Basiru and Kunle Adegoke “The Blue Book: 2013 - Practical Approach to the High Court of Lagos State (Civil Procedure) Rules, 2012” (3rd Edition) Published By Ecowatch Publications (Nig.) Ltd. 38-39.

<sup>57</sup> For further reading on Pre-action Protocol application under the 2012 Lagos Rules, see The Blue Book, 2013 - Practical Approach to the High Court of Lagos State (Civil Procedure) Rules, 2012.

urgency which the court would need to deal with pending compliance with pre-action protocol,<sup>58</sup> the draftsmen of Practice Direction No. 2 decided to innovate by introducing the Pre-emptive Remedies provisions. Before the court can order pre-emptive remedies, i.e. prior to filing a claim, the applicant must establish that it is in the interest of justice for the court to make the order, or there is a serious need to prevent irreparable damage, or serious mischief, as remarked above.

Despite the good intentions of the draftsmen, the pre-emptive remedies process in Practice Direction No. 2 appears to be a challenging process. In practice, the major challenge that the application of the Pre-emptive remedies provisions of Practice Direction No. 2 has posed stems from the fact that it originates a relief without a claim being filed and enables the applicant to initiate an ex-parte process without filing a corresponding motion on notice. Some judges and many legal practitioners appear not to be on the same page with the draftsmen of the pre-emptive remedies' provisions of Practice Direction No. 2.

#### ***CHALLENGES FACING THE PRE-EMPTIVE REMEDIES PROCEDURE***

Due to its novel nature, the pre-emptive remedies procedure has been plagued with several challenges. Some of these challenges have been identified in the preceding paragraphs of this paper, and some others are identified hereunder.

##### ***Lack of Proper Awareness***

At the early stage of the life of pre-emptive application, practice and experience showed that the administrative staff of courts were not fully abreast of the provisions of the 2019 Practice Direction No. 2 on pre-emptive remedies. On more than one occasion (from the writer's

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<sup>58</sup> Particularly those identified in the quote in the preceding paragraph from The Blue Book 2013.

experience), the Lagos State High Court Registry refused to accept the ex-parte originating application for filing on the ground that no originating process (writ of summons or originating summons) was filed along with it. It took special effort on the part of the counsel involved and with mother luck in aid, coupled with the intervention of senior court officials willing to be properly guided before the ex-parte originating application would be accepted for filing at the Registry.

The attitude of the Registry in those situations clearly suggests that the Lagos State judiciary did not properly educate its officials (particularly the ones charged with filing of processes in court) on the pre-emptive remedies ex-parte originating application procedure as laid out in Practice Direction No. 2. Every officer in the Registry of the court, particularly those charged with screening of processes brought for filing, ought to possess, at least, a working understanding of the Practice Direction. However, the Registry's lack of understanding appears understandable in view of the fact noted earlier that some judges equally do not understand it, too. It only speaks to the level of unpreparedness of the Lagos State Judiciary then with regard to the pre-emptive remedies procedure in practice. It also displays the importance of continuous capacity building for the staff.

#### ***THE ATTITUDE OF THE JUDICIARY TO THE GRANT OF PRE-EMPTIVE REMEDIES***

The judiciary, in the context of this section of the paper, includes the support staff of the courts and the Registry generally. Practice has shown that some judges, with due respect, appear not to have a good understanding of the pre-emptive remedies procedure as stated in Practice Direction No. 2. Generally, judges have been admonished to be

cautious in granting ex-parte orders.<sup>59</sup> As noted by Tobi, JCA (as His Lordship then was) in **N.A.A. v. Orjiako**, the reluctance to grant ex-parte orders is usually based on the likelihood to breach fair hearing and, together with it, the *audi alterem partem* rule.<sup>60</sup> In hearing an ex-parte originating application under Practice Direction No. 2, some judges lean too much on these admonitions regarding ex-parte order and simply order the applicant to put the other party on notice.

In effect, despite the fact that Practice Direction No. 2 neither provides for nor envisages the filing of a motion on notice, some judges, rather than considering the ex-parte originating application on the strength of the materials placed before them, simply order the applicant to put the defendant/respondent on notice by filing and serving a motion on notice. Obviously this is an abnormality and a misconception of the rule. This hesitation was apparent in the ruling of the Court delivered in the unreported *Suit No.: LA/3698GCM/2019: Chief Jamiu Oloruntoyin v. Chief Biliaminu Abisogun & 6 Ors.*<sup>61</sup> (delivered on the 12th day of December 2019), on an ex-parte originating application for pre-emptive remedies brought under Practice Direction No. 2. In a manner that exhibited an apparent lack of understanding of the nature and essence of pre-emptive remedies procedure under Practice Direction No. 2, His Lordship held thus:

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<sup>59</sup> See Oguntade, JCA (as he then was) in *Ilori v. Benson* [2000] 9 NWLR (Pt. 673) 570 at 581, paras. B-C where His Lordship noted that opined the grant of ex parte orders require the highest degree of caution and circumspection and that it must be sparingly used and only to prevent a prospective but irreversible injury. See also *Egbuchulam v. Onyemeh* [1993] 1 NWLR (Pt. 272) 732 at 740-741, paras. H-B; *N. A. A. v. Orjiako* [1998] 6 NWLR (Pt. 553) 265 at 281, paras. D-E.

<sup>60</sup> [1998] 6 NWLR (Pt. 553) 265 at 281, paras. D-E.

<sup>61</sup> Unreported ruling of the High Court of Lagos State delivered on December 12, 2019 by Hon. Justice I.O. Harrison in *Suit No.: LA/3698GCM/2019*)

*“That it’s not the policy of this Court to hear ex-parte motions of this nature as it will want to hear the other side and determine the issues holistically on its merits.”*

With due respect, in the context of the pre-emptive remedy’s provisions of Practice Direction No. 2, this is an aberration. All that is required of a judge hearing the ex-parte originating application is to grant or refuse the pre-emptive remedies reliefs sought based on the materials placed before the court, particularly considering the threat to the res. Although similar in many ways to the conventional ex-parte motion, it is not in the same class and ought to attract a different consideration. It is also important to add that once the other side is put on notice, the application before the court ceases to be an ex-parte application, with the likely consequential effect of perishing the res.

In a similar vein, it has been observed that some judges, upon granting the reliefs sought in the ex-parte originating application, treat the order as if its life span is same with that of the Order 43 motion ex-parte order. In the ruling of the Court on the 28<sup>th</sup> day of July 2020 in the case of ***Suit No. LD/3954GCM/2020: Prince Ademola Oniru & Anor v. Attorney General of Lagos State & 3 Ors***, the learned Judge stated thus:

“Leave is Granted to the Applicant for interim injunction restraining the 1<sup>st</sup> and 2<sup>nd</sup> Defendants or their respective agents, privies from acting on or engaging in acts capable of causing breakdown/breach of public order and peace in or around Oniru Beach pending the Court’s Order compliance full Pre-action Protocol.”<sup>62</sup>

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<sup>62</sup> Unreported ruling of the High Court of Lagos State delivered on July 28, 2020 by Hon. Justice Idowu Alakija in ***Suit No. LD/3954GCM/2020: Prince Ademola Oniru & Anor v. Attorney General of Lagos State & 3 Ors***

The Court further ordered that:

“This Order, being interim in nature, shall be for a period of 7 days commencing from today the 28<sup>th</sup> of July 2020 and shall lapse at expiration of 7 days.”

From the foregoing extract, it is clear that the court agreed with the entitlement of the applicant to the grant of pre-emptive remedies in compliance with the Practice Direction No. 2 but went further to give an order in the nature of an interim injunctive relief under Order 43, Rule 3(3) of the High Court of Lagos State (Civil Procedure) Rules, 2019, which specifically stipulates that:

***“An order of injunction made upon an application ex parte shall abate after 7 days”***

Our judges must appreciate the fact that the ex-parte originating application is not regulated by the provisions of Order 43 of the High Court of Lagos State (Civil Procedure) Rules, 2019 so as to impose the duration stipulated therein on the pre-emptive Order; it is sui generis and regulated by the special provisions in the pre-emptive remedies section of Practice Direction No. 2.

As noted above, such pre-emptive order must last or outlast the period of pre-action protocol compliance and not otherwise. Consequently, the court must avoid the practice of fixing determinable period for the order prior to the full compliance with pre-action protocol as this is capable of defeating the essence of pre-emptive remedies granted by the court.

A case in point recently is that of Suit ***No: LD/11364LMW/2021 Solnik-Nigeria Limited v Amytorix Company Nigeria Limited & 2 Ors.*** wherein the court granted manifestly contradictory orders in respect of an application for pre-emptive remedies. First, the Court granted the pre-emptive remedy pending pre-action protocol compliance. Had the court

stopped here, the Court would have done what it was entitled to do under the Practice Directions. Unfortunately, the Court, perhaps assuming that the pre-emptive order, which it just granted, was akin to a regular interim injunction, proceeded to hold that the order shall subsist until the next adjourned date.

Apart from the contradiction inherent in such orders, the damage inherent in it ultimately became manifested in the case under reference because, due to official engagement, the court could not sit on the next adjourned date which was also the date when the order was made to expire. The case was adjourned to a week thereafter. Upon resumption of proceedings, the order which was made to last pending compliance with pre-action protocol and *till the next adjourned date* was adjudged to have lapsed and the attempt to resurrect same by way of extension was rejected rightly by the court notwithstanding that pre-action protocol had still not been fully complied with. This already defeated the rationale behind granting the Order in the first instance. The word ‘resurrection’ was consciously used to circumvent the bar which the court still rejected.

The implication of adjudging that the pre-emptive orders had expired was that there was nothing before the court as the initial grant of the ex-parte originating application automatically renders lifeless the initiating application, as such, that ended the entire proceeding naturally. The net effect of this is that the entire exercise became defeated as the essence of the pre-emptive remedy would not be appreciated or accomplished. Therefore, judges must avoid adjourning matters which originate under Paragraph 1 of page 7 of the High Court of Lagos State (Expedition Disposal of Civil Cases) Practice Direction No. 2 of 2019 on Pre-action Protocol to periods shorter than the period within which there can be full compliance with the Pre-action Protocol. One must not, however, be misconstrued to be saying that courts should not give a return date which will keep the applicant on his toes, rather than idling away after obtaining pre-emptive remedies order, but caution must always be exercised so that

the adjourned dates are affixed for post-pre-action periods. The truth remains, however, that once the relief is granted, the jurisdiction or competence of court to grant lapses. It has no more vires to entertain anything after except extension in deserving situations. The safest thing therefore is to grant the Order to last the pre-action period upon which it automatically lapses. The alternative is as stated earlier, fixing return to a later date to assure compliance. The idea of vacating pre-emptive order arises not upon grant.

Having said this, another pertinent area is the effect of a substantive action not having been instituted before the pre-action protocol period and as stipulated by the pre-action remedies i.e. Paragraph 3. For example, where parties are unable to settle before the order abates, the court is given the discretion to extend the life of the order pending full compliance with the pre-action protocol. In this wise, it is important to point out that no application need necessarily be made by the Applicant/Claimant before the judge exercises the discretion to grant the extension. It can, but only be a surplusage, where the Applicant/Claimant applies for such extension. However, the import of Order 43 might be staring us in the face.

Finally on this point, what happens when the order has already lapsed? Does it imply, as the judge held in the *Solnik's* case<sup>63</sup>, that the order cannot be resurrected or extended, thereby defeating the essence of the pre-action remedy? I certainly do not think so and find it absurd if this were the case. This is against the objective of the pre-emptive remedy itself, which is to preserve the *res*. After all, the court of law has an obligation at all times to preserve the *res*. This the position in the case of *Ilona v. Idakwo* [2003] 11 NWLR (Pt. 830) 53 at 87, paras. B-C per Edozie, J.C.A. Also. In the Apex Court's decision of *Amaechi v. INEC* [2008] 5

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<sup>63</sup> Suit No: LD/11364LMW/2021

**NWLR (Pt. 1080) 227 at 393, para. H, Onnoghen, J.S.C. (as he then was) held thus:**

“Authorities abound to the effect that the court can, as in any other equitable remedy, grant an order of injunction where it is not specifically claimed but appears to it incidentally necessary so as to protect established right on record”

**In A. G. Enugu State v. Avop Plc [1995] 6 NWLR (Pt. 399) 90 at 121, para. D, Tobi, J.C.A. (as he then was) held thus:**

“I can even go further to say that the power of all superior Courts to make preservative orders inherent in them, in the exercise of their inherent jurisdiction as provided for in section 6(6)(a) of the 1979 Constitution are clearly born with the power to make preservative orders. I would rather like to think the power is not even confined only to the superior courts. It goes down the line to all courts of record.”

**In the case of *Azuh v. UBN Plc. [2014] 11 NWLR (Pt. 1419) 580 at 606, paras. B-F*, Kekere-Ekun, J.S.C. laid out the power of courts to grant interim and interlocutory injunctions as well as the purpose of granting them thus:**

“It is also well settled that an order of injunction is usually granted to protect a party's existing legal right from invasion by another... There is no doubt that the power to grant an interim or interlocutory order of injunction is one of the inherent powers of a court of law for the enhancement of the administration of justice. By virtue of the powers conferred on the High Court by Section 6(6)(a) of the 1999 Constitution (as amended) and the provisions of Order 8 Rule 7 (2) of the High Court (Civil Procedure) Rules 1988 of Bendel State applicable in Delta State, the High Court has the power to grant an ex-parte order of interim injunction upon the fulfilment of certain conditions. There is also no doubt, as argued by the learned senior counsel for the respondent, that the court has a duty to preserve

the res or subject matter of litigation. The grant of an order of interim or interlocutory injunction is an equitable remedy within the discretionary powers of the court. As with all exercise of discretion, the power must be exercised judicially and judiciously, taking all relevant circumstances into account.”

So, therefore, if the essence of the existence of court is to preserve the *res*, the provision of Section 6(6)(c) of the 1999 Constitution, is a further enabling provision to preserve the *res* under the inherent powers of the court, even when the rules of the court does not so provide.

Further, although the provisions used the word ‘extend’, such word ought to be construed liberally applying the mischief rule of interpretation. To this end, one’s expectation would have been that the court, if unable to extend the order as a result of its lapse, would have renewed same in line with the objective of the pre-emptive remedy. This is the only interpretation that aligns with the course of justice. The apex court has enjoined that the interest of justice as well as the objective of a provision must be considered in an application of the rules. This I believe is where the wisdom lies.

It is, however, important to note that the judges that fall into the category described above do not constitute the majority of the Bench. This is so because several judges have delivered laudable and notable rulings on pre-emptive remedies in identical circumstances. In the earlier cited case of ***Chief Jamiu Oloruntoyin v. Chief Biliaminu Abisogun & 6 Ors.***, the Respondent therein filed a Notice of Preliminary Objection challenging the competence of the ex-parte originating application without first filing a writ of summons. In a ruling delivered on the 27<sup>th</sup> day of February 2020, His Lordship, Honourable Justice S. A. Onigbanjo, dutifully explained the jurisprudential underpinning of the ex-parte originating application thus:

“For the avoidance of doubt the 1<sup>st</sup> preamble to the General Pre-action Protocol in the said practice Direction states as follows “Pre-action Protocols explains the conduct and sets out the steps required of parties prior to the commencement of proceedings to which the High Court of Lagos State (Civil Procedure) Rules apply. They are issued by the Chief Judge of Lagos State and a form an integral part of the High Court of Lagos State (Civil Procedure) Rules”. The 2<sup>nd</sup> Preamble states that “this Pre-Action Protocol applies to all actions instituted at the High Court of Lagos State etc. To me therefore since the Honourable Chief Judge of Lagos State is statutorily and constitutionally empowered to make rules for regulating the practice and procedure of the High Court of Lagos State by section 274 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) then it must follow from the foregoing provisions of the said Practice Direction No. 2 of 2019 relied upon by the applicant in instituting this suit an integral part of the High Court of Lagos State Civil Procedure Rules relating to forms of commencement of action in this court. The institution of this suit by way of Ex-Parte Application with accompanying processes in compliance with the Pre-Emptive Remedies provisions of the said Practice Direction cannot be faulted... The forgoing being the case, I am consequently satisfied from the reliefs prayed for in the originating Ex-Parte application being basically injunctive reliefs as well as with the accompanying processes filed by the claimant in court on 9/12/19 that this suit was properly instituted in accordance with the provisions of Order 5 of the High Court Lagos Civil Procedure Rules, 2019.”<sup>64</sup>

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<sup>64</sup> Unreported ruling of the High Court of Lagos State delivered on December 12, 2019 by Hon. Justice S. A. Onigbanjo in Suit No.: LA/3698GCM/2019)

The jurisprudence on pre-emptive remedies under Practice Direction No. 2 is still in its embryonic stage, and, therefore, appellate courts' decisions on it are still scanty. While the opinions of the appellate courts on it are awaited, the challenges associated with it continue to put its suitability in issue.

### ***Ex-parte Originating Application as a Tool for Approaching the Court***

As noted while discussing the lack of awareness challenge, the propriety of approaching the court without filing a claim remains a challenge faced in the practice relating to the use of ex-parte originating applications. Apart from the Registry's lack of awareness, legal practitioners have had to question its propriety.<sup>65</sup> It is, in fact, not unnatural for the procedure to raise eyebrows and also understandably that some judges have exhibited the reluctance to go with the flow. It may also explain why some judges simply treat the ex-parte originating application as if it were a motion ex-parte for injunction.

### ***The Concept of Full Compliance***

Paragraph 2 of the pre-emptive remedies provisions in the Practice Direction stipulates:

*“After the remedy is either granted or refused by the court, the Judge is to order the parties to continue with full compliance of the Protocol.”*

This is an area that has presented a challenge to the court and litigants. A simple application of this provision dictates that litigants are not expected to by-pass compliance with pre-action protocol despite the invocation of the pre-emptive remedies provisions of Practice Direction No. 2. On the contrary, compliance is only suspended pending the

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<sup>65</sup> See, for example, Suit No.: LA/3698GCM/2019: *Chief Jamiu Oloruntoyin v. Chief Biliaminu Abisogun & 6 Ors. (supra.)*

determination of the ex-parte originating application. At the risk of repetition, practice has shown that due to a lack of proper understanding of the procedure, and the fact that rather than just granting or refusing the pre-emptive remedies reliefs in the application, some judges command that the other party be put on notice and, through that medium, find themselves enmeshed in the substantive suit when the claim has not been filed. Due to this, the entire process becomes muddled up and, at that stage, the whole essence of directing full compliance with the applicable pre-action protocol becomes unappealing. In the case of *Mrs. Osakpemwen Dorcas Ogbeide v. Attorney General of Lagos State & 3 Ors*<sup>66</sup>, while the applicant's counsel was waiting for the judge to direct full compliance, the judge hinted (albeit off record) that counsel ought to have filed his writ of summons and statement of claim. In that particular case, on the direction of the court, the other parties had been put on notice and several contentious processes had been exchanged. It was, therefore, unreasonable to still expect full compliance in that situation. It is also not unusual for some judges to insist on the originating processes to be filed or even filed before considering the application. All these are aberrations to the pre-emptive remedy requirements. Such judicial officers often forget that such filed suits are incompetent ab initio. In instances where this has been done, confusion usually sets in upon the eventual filing of the new originating processes in compliance with pre-action protocol. It often raises abuse of process objection, as two actions will appear to be running simultaneously.

The simple way to avoid this and ensure that full compliance is followed after the ex-parte originating application is granted or refused is for the court to ensure that both the Bench and the Bar keep faith with the pre-emptive remedies provisions of the Practice Direction No. 2. When the ex-parte originating application comes before a judge, all that is required is

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<sup>66</sup>Unreported Case of High Court of Lagos State in *Suit No. ID/3434GCM/2019*

for the judge to determine the application based on the materials before the court. The judge does not need to direct that the other party be put on notice. If the judge believes that the application ought not to be granted, then it should be refused rather than directing that the other party be put on notice. Thereafter, in strict adherence to the provisions of paragraph 2 of the pre-emptive remedy provisions of the Practice Direction No. 2, the judge shall then *order the parties to continue with full compliance of the applicable Protocol.*

### *Legal Practitioners and Couching the Reliefs*

As if the confusion in the judicial arm is insufficient, lawyers equally compound issues in the way and manner they couch their relief in this regard. Since the introduction of pre-action protocol in the 2012 Rules, a vast majority of legal practitioners have displayed inadequate understanding when it comes to adherence to, application of and compliance with Pre-action Protocol. This is particularly so with regard to pre-emptive remedies. When it comes to the practice and procedure relating to the pre-emptive remedy provisions in Practice direction No. 2, the main identifiable issue legal practitioners face concerns the proper way to couch the relief sought in the ex-parte originating application. In this regard, it is not in issue that the pre-emptive remedies granted pursuant to the Practice Direction No. 2 ex-parte originating application are interim in nature, i.e., granted on a preliminary basis pending a particular time or intervening event.<sup>67</sup> As Nwodo, JCA rightly noted in *Animashaun v. Bakare*, “***An interim order should be granted until a named date or named event.***”<sup>68</sup> (Emphasis, Ours)

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<sup>67</sup> See Black’s Law Dictionary, (11<sup>th</sup> Edition, 2019) page 972 for the meaning of “interim” and page 1545 for the meaning of “interim relief”.

<sup>68</sup> [2010] 16 NWLR (Pt. 1220) 513 at 537 at para. A

However, the issue legal practitioners face is how to properly couch the pre-emptive remedies sought in a manner that meets the intendment of the Pre-emptive remedy provisions of Practice Direction No. 2. It is an established position of the law that the court will not grant a relief or prayer not sought.<sup>69</sup> Therefore, where the court finds that the reliefs sought are couched in a manner that they portray a different intendment than that in the pre-emptive remedy provisions of Practice Direction No. 2, the application may fail on this ground alone.

It is not uncommon for practitioners to couch the relief in the ex-parte originating application in a manner that makes the intervening/terminal event of the order sought, the hearing of a motion on notice as if it were an Order 43 Motion Ex-parte.<sup>70</sup> A consideration of the pre-emptive remedy's provisions of Practice Direction No. 2 establishes that couching the relief in a manner that making the intervening/terminal event the determination of a motion on notice is wrong and may cause a failure of the application. At times, the reliefs are couched in a manner to abide the determination of the suit that is even still at the embryonic stage, or even non-existent. These are the various confusions that have made the application and operation of the pre-emptive remedy maximally ineffective.

From the provisions of paragraphs 2 and 3 of the pre-emptive remedy provisions of Practice Direction No. 2, the proper way to couch the reliefs in the ex-parte originating application becomes manifest. The aforementioned paragraphs 2 and 3 provide thus:

“2. After the remedy is either granted or refused by the court, **the Judge is to order the parties to continue with full compliance of the protocol.**”

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<sup>69</sup> See *Akinrimisi v. Maersk* [2013] 10 NWLR (Pt. 1361) 73 at 85 para. E, Muntaka Coomassie J.S.C

<sup>70</sup> See Order 43 of the High Court of Lagos State (Civil Procedure) Rules, 2019.

3. Where an order of *injunction is granted ex parte* *and parties are unable to settle before the order abates, the judge may extend its life span until compliance with the Protocol is complete.* (Emphasis, Ours)

Although the draftsmen of Practice Direction No. 2 failed to clearly state the intervening event pending which occurrence the pre-emptive remedies are to be made, looking at the paragraph 2 quoted above, it is reasonable to conclude that the intervening event envisaged by the draftsmen is ***full compliance with the applicable pre-action protocol***. This is particularly so in view of the fact that the aim is to prevent irreparable damage or mischief pending full compliance with the pre-action protocol and subsequent institution of the claim. Based on the foregoing, the proper way to couch the injunctive relief in the ex-parte originating application is:

***“an order... pending full compliance with the applicable pre-action protocol.”***

Any prayer which falls short of the fore-going cannot be deemed to have been properly couched. It suffices to say the Practice Direction has limited the scope of prayers that could be sought by applicants seeking pre-emptive remedies, as distinct from other interim injunctive reliefs. In addition, and at the risk of repetition, the memorandum and other documents ought not to have been exchanged then, otherwise the application becomes incompetent.

### ***Proper Order to Make***

As noted above, the pre-emptive remedies ought to be granted pending full compliance with the applicable protocol. However, the judge, in making the order, may make the order with a named date as the return date. Where this occurs, it is deemed to be in conformity with paragraph 3 of the pre-emptive remedy’s provisions of Practice Direction No. 2. This

enables the applicant in favour of whom the pre-emptive remedies are granted to report to court on the named date on the status of the compliance with the applicable protocol. In this regard, where the court finds that there is still a room for amicable resolution among parties, paragraph 3 allows the Judge to extend the life span of the order rather than allowing it to abate. In this regard, the pre-emptive remedies must always have an initial lifespan (the return date) that fully accommodates the time-frame set out of in the Practice Direction for the relevant protocol. It is only at this point that the Judge may consider extending the life span of the order. Again, once there is compliance and the suit is filed, the court loses jurisdiction to deal further. The proceeding based on that originating application must terminate at that stage.

### ***Conclusion/Recommendations***

It is fair to say that the challenges associated with the implementation of the pre-emptive remedies provisions of Practice Direction No. 2 transcend mere teething problems. Based on experience from its practical application so far, as lofty as it is in the department of filling the vacuum of urgent matters within the context of pre-action protocol compliance, it would appear that the pre-emptive remedies provisions were rushed into force without a proper enlightenment of the stakeholders on its procedural application. Ordinarily, due to its novelty, it is not a procedure that should be left in the realm of learning-on-the-job.

There is also the question of whether it is actually required when the simpler route of making pre-action protocol inapplicable to urgent matters could simply be adopted. As shown in the body of this paper, this is the approach adopted in some other jurisdictions where the Lagos State High Court borrowed the pre-action protocol concept.<sup>71</sup> In this regard, it

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<sup>71</sup> See Footnotes 37, 38, 39, 40, 41, 42 and 43 above.

may not be out of place to reconsider its suitability vis-à-vis the approach adopted by other jurisdictions to accommodate urgent matters within the context of pre-action protocol. In urgent matters and matters subject to time bar, England & Wales and Trinidad and Tobago adopted simplified approach of allowing the claimant to file his claim without first complying with the pre-action protocol. Where desirable, the court may then stay proceedings while parties comply with the applicable protocol. This approach, without a doubt, would raise fewer dusts than the pre-emptive remedies provisions of Practice Direction No. 2 has brought with it. I must however confess that knowing the nature of the practitioners in our jurisdiction, the likelihood of abuse is rife. Thus, this may not be advisable.

This paper has given an overview of pre-emptive remedies under the practice direction in the Lagos State High Court Practice Direction No. 2 particularly as it relates to Pre-action Protocol. Having considered the good, the bad and the ugly of the concepts in this paper and the reference to judicial and statutory authorities, the following are recommended:

- a. the Judiciary should ensure that all stakeholders are properly trained on the pre-emptive remedies' procedure. It ought to put in place necessary facility to train and equip the administrative staff of the judiciary with the relevant knowledge, experience and skills needed to appreciate the nature of pre-emptive remedies pending full compliance with the Pre-Action Protocol. Pre-emptive remedies should be included in subsequent amendment to the High Court of Lagos State (Civil Procedure) Rules, as this will broaden the scope of injunctive reliefs under the rules of court;
- b. relevant praecipe forms should be provided in the Practice Direction to further serve as guides to all stakeholders in the Judiciary; and
- c. in the alternative, the whole concept of pre-emptive remedies as a way of accommodating urgent matters within the pre-action protocol enforcement can be jettisoned. In this regard:

- i. the Lagos State High Court may adopt the tested simplified approach of allowing the claimant to file his claim without first complying with the pre-action protocol in deserving cases;
- ii. where desirable, the court may then stay proceedings while parties comply with the applicable protocol;
- iii. this may be taken a notch higher by ensuring that originating processes that seek to by-pass compliance with pre-action protocol are screened to determine the presence or otherwise of the urgency or other extenuating circumstances before accepting them for filing;
- iv. in another alternative, the entire idea of pre-action protocol may be jettisoned to pave way for the return to the old regime where a claimant files for ex parte injunctions in urgent matters requiring same. At least, most other jurisdictions in Nigeria have rejected the pre-action protocol device without any apparent loss being shown to have been occasioned by their refusal to adopt this innovation as part of their Rules. I am not persuaded in this regard however.