



MEMORANDUM OF APPEARANCE IN NIGERIA: IMPLICATIONS OF FILING CONDITIONAL OR UNCONDITIONAL APPEARANCES

Contributors



Ifeoluwa Oyemade
Senior Associate



Oghosa Igbiniedion
Senior Associate

Key Contacts



Mani Ojeah
Managing Partner

Immanioj@manifieldsolicitors.com

INTRODUCTION

The filing of a memorandum of appearance, though often regarded as a routine procedural step in Nigerian civil litigation, carries significant legal consequences for a party's ability to raise jurisdictional objections. The nature of the appearance, whether conditional or unconditional, can determine whether a Defendant is deemed to have waived certain procedural rights, particularly objections relating to service of process or compliance with procedural rules. While procedural defects may be waived through conduct, substantive jurisdiction, being conferred by the Constitution or statute, remains immutable and cannot be cured by acquiescence. The interaction of these principles, in light of statutory provisions and judicial authorities, indicates the importance of acting with strategic care to avoid taking steps that could inadvertently undermine a person's jurisdictional objection(s).

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This article examines the intersection of procedural compliance and jurisdictional objections, with a specific focus on the legal effect of filing a memorandum of appearance in civil litigation.

MEMORANDUM OF APPEARANCE

A memorandum of appearance is filed by a Defendant upon being served with an originating process, indicating an intention to contest the suit or claim of the other party and generally, submit to the court's jurisdiction.

The various Rules of courts in Nigeria prescribe the requirement, manner and form in which a party shall enter an appearance in a suit. The precise time for filing varies among the different courts and jurisdictions but is usually defined in the originating process or applicable rules of court. For instance:

i. Order 11 Rule 1 of the Lagos State High Court (Civil Procedure) Rules 2019 provides that upon being served with an originating process, a Defendant shall, within the prescribed time, file at the Registry of the Court a duly completed Memorandum of Appearance.

ii. Order 9 Rule 1 of the Niger State High Court (Civil Procedure) Rules 2012 provides that upon being served with an originating process, a Defendant shall, within the prescribed time, file at the Registry of the Court a duly completed Memorandum of Appearance.

iii. Order 7 Rule 1 of the Federal High Court (Civil Procedure) Rules, 2019 provides that a Defendant served with an originating process shall within 30 days file its memorandum of appearance.

iv. Order 9 Rule 1 of the National Industrial Court (Civil Procedure) Rules, 2017 provides that a Defendant served with an originating process shall, within fourteen (14) days of the service of the originating process, file a Memorandum of Appearance in the Registry of the Court.

v. Order 9 Rule 1 of the Delta State High Court (Civil Procedure) Rules 2019 provides that upon being served with an originating process, a Defendant shall, within the prescribed time, file at the Registry of the Court a duly completed Memorandum of Appearance.

These procedural requirements to file a memorandum of appearance appear as routine procedural formality, appearing in virtually every civil procedure rule across Nigerian courts, however, this procedure may significantly affect the proceedings.

Types of Appearance

A memorandum may be conditional or unconditional, and the manner of entering appearance is significant. An unconditional appearance implies an intention to submit to the jurisdiction of the court, without any complaints relating to the service of the originating process thereby waiving any procedural irregularities related to these matters. In fact, in certain instances, the courts have indicated that entering an unconditional appearance impacts a litigant's right and ability to raise certain objections to the service or competence of the suit^[1].

In contrast, a conditional appearance is a protest to any irregularity observed by the Defendant in the suit and expressly reserves the right of the Defendant to challenge jurisdiction and the validity of service. It is an indication to the court of an awareness of



the pendency of the suit while stating an intention to raise an objection to the jurisdiction of the court relating to such a dispute. This position has received judicial affirmation in numerous decisions, including the case of *Emeka v. Okadigbo*^[2] where the Court held thus:

[1] *Ansa v. Ntuk* (2009) 9 NWLR (Pt. 1147) 557.

[2] (2012) 18 NWLR (Pt. 1331) 55.

“The entry of a conditional appearance is an appearance under protest and usually means an appearance to object to the court’s jurisdiction. On the other hand, the entry of an unconditional appearance conveys the clear impression that the party concerned has no objection to the suit, and that includes no objection to the way the suit is/was commenced”

Filing a memorandum of appearance is simply to indicate that the suit will be contested and a submission to the jurisdiction of the court. However, a failure to enter an appearance by not filing a memorandum of appearance in a suit does not deprive the court of its jurisdiction to entertain that suit. Once it is established that proper service of the originating process has been effected on the party, the court becomes clothed with jurisdiction and may adjudicate upon the dispute without further recourse to the defaulting party[3].

The Legal Consequence of Filing an Unconditional Appearance

The consequences of filing an unconditional memorandum of appearance can be far reaching. For example, service of the originating process must strictly comply with applicable procedural rules. Personal service is generally required unless leave of court is obtained to serve otherwise. However, service effected after the expiration of the validity period of the originating process is ineffective until the originating process is renewed and the service is regularized. Filing an unconditional memorandum of appearance in the face of defective service generally results in a waiver of all procedural objections related to service.

It is the position of the court that filing a memorandum of unconditional appearance cannot bar a litigant from presenting an objection relating to the jurisdiction of the court.

This was the substance of the decision in the case of **Ogboru v. S.P.D.C. (Nig.) Ltd.**

[4], where the court at page 622, paras. C-D, held thus:

“Where a suit is being challenged on point of law which affects the jurisdiction of the court to entertain a suit before it, the party will not be estopped from raising the point of law on the ground that he has entered an unconditional appearance in the case. Thus, a Defendant who entered an unconditional appearance can question the jurisdiction of a court to try a matter and is not thereby estopped from afterwards raising the jurisdiction of a court cannot be enlarged by estoppel. He cannot by entering an unconditional appearance submit himself to the jurisdiction of the court where the case before the court is not properly constituted.”

[3] Etim v. Regd. Trustees, P.C.N. (2004) 11 NWLR (Pt. 883) 79.

[4] (2005) 17 NWLR (Pt. 955) 596.

It is important to note that the apex court has distinguished between the consequence of a procedural irregularity from a statutory or constitutional irregularity in the case of **Bank of Ireland v. UBN Ltd.**[5], where it held thus:

“Where, as in the instant case, a party enters an unconditional appearance, he thereby gives an indication of the intention to defend the suit and also submits to the jurisdiction of the court as having waived any procedural irregularity such as the manner of service of the third-party notice as distinct from a constitutional or statutory irregularity which can freely be taken up after appearance. Moreover, the appearance in the instant case was unconditional and not a conditional one which would have shown from inception that the third party was coming on protest to contest jurisdiction.”

Therefore, a Defendant who enters an unconditional appearance is deemed to have waived its right to object to matters relating to the service or issuance of the originating process. In **Enterprise Bank Ltd. v. Aroso**[6], the Court of Appeal held as follows:

“Conditional appearance is an appearance under protest and usually means an appearance to object to the court’s jurisdiction. While an unconditional appearance means that the party entering appearance has no complaints and is satisfied with issues of jurisdiction. In the instant case, the appellant entered unconditional appearance. There was thus an irrebuttable presumption that the appellant had no complaints whatsoever on the issuance and service of the writ of summons on the appellant. With the entry of unconditional appearance, an objection to the competence of the writ of summons was no longer a live issue. It was clearly an after-thought. In the circumstance, the appellant’s argument that the trial court lacked jurisdiction was baseless.”

From the foregoing, it can be seen that filing an unconditional appearance does not operate as a total bar to presenting an objection before the court. Consequently, a question arises as to the circumstances in which an unconditional appearance will bar a party from presenting an objection before the court. The case of **M.G.F. Nig. Ltd. v. Gwus International Ltd**[7] is instructive in this regard.

[5] (1998) 10 NWLR (Pt. 569) 178.

[6] (2014) 3 NWLR (Pt. 1394) 256 page 295, paragraph P-H.

[7] [2001] 9 NWLR (2001) 9 NWLR (Pt. 718) 413.

In this case, the Respondent instituted an action against the appellants and allegedly served the originating processes by dropping them at a third-party premises without obtaining leave for substituted service. Upon becoming aware of the suit, the appellants filed both a statement of defence and a preliminary objection challenging service. The trial court dismissed the objection, holding that by filing a defence, the appellants had waived their right to contest service. Aggrieved, the



Appellants filed the instant appeal stating that filing a statement of defence and counter-affidavit did not estop them from presenting a preliminary objection. In resolving the question, the Court of Appeal held thus:

[20] Regulatory Sandbox – Capital Markets Authority <<https://www.cma.or.ke/regulatory-sandbox>> assessed 14th of July 2025

[21] AfDB Regulatory Sandbox Report 2022. Understanding the importance of regulatory sandbox environments and encouraging their adoption. https://www.afdb.org/sites/default/files/documents/publications/afdb_regulatory_sandbox_report_220522 Assessed 14th of July 2025

By entering appearance, a Defendant gives indication of his intention to defend the suit and he also submits to the jurisdiction of the court. If the Defendant disputes the jurisdiction of the court and indicates this on his memorandum of appearance he will thereafter be free to apply to the court by motion on notice to set aside the service on him of the writ. If, however, he enters appearance without protest he will be taken as having waived any irregularity in the manner of the service on him of the writ and as having submitted to the jurisdiction of the court. However, a distinction must be drawn between jurisdiction as a matter of substantive law and jurisdiction as a matter of procedural law. Whilst a litigant can waive the latter, no litigant can confer jurisdiction on the court where the Constitution or a statute or provision of the common law says that the court shall have no jurisdiction. In the instant case, there was no personal service on either of the 1st and 2nd appellants. The Respondent did not deny this. Even if the 2nd Appellant, being a human person, can waive his right of personal service, the 1st Appellant being a corporate body cannot in view of the provisions of the Companies and Allied Matters Act.

Therefore, while an unconditional appearance can act as a waiver to an objection relating to the procedural irregularities, it does not act as a waiver to an irregularity relating to the substantive jurisdiction of the court.

This is so because it is a well-established principle of law that courts are a creation of statutes, and their jurisdiction is conferred by the statute creating that court, rather than the Rules of court. This was affirmed in the case of **Dauda v. Presiding Judge Upper Sharia Court G/Dutse & Anor**[8] where the Court of Appeal, at page 11, paras C-D, held that:

“It is not the Rules of the Court that vests jurisdiction on a Court, rather, it is the Statute creating a Court that vests jurisdiction in a Court.”

This means that while procedural irregularities, such as improper service, may be waived by conduct, such as entering an unconditional appearance and proceeding to defend the suit, substantive jurisdictional defects remain inviolable and can be

[8] (2023) LPELR-60644(CA).

challenged at any stage, provided that they are brought timeously. It must also be noted that parties cannot by agreement or conduct confer or oust the jurisdiction of the court. Indeed, the Court of Appeal in **Ahmadu Bello University v. VTLS Inc**[9]. at 48-49, paras. G-B, held thus:

“By the provision of section 6(1), (2), and (6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the judicial powers vested in the courts extend to all matters between persons or between Government or authority and to any person in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person. Consequently, no person or group of persons by their own private treaty or arrangements can agree to oust the jurisdiction and provisions vested in the courts by the Constitution.”



This principle, however, is without prejudice to the parties' right to, by mutual agreement, designate the forum or mechanism for the resolution of their disputes, including arbitration, mediation, or the choice of a foreign court with competent jurisdiction.

[1] (2021) 10 NWLR (Pt. 1983) 33 and section 6(1)(2), and (6)(b) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended).

"...I would myself say that, having perused the letter attached to the counter-affidavit referred to earlier, it certainly is not satisfactory evidence of German law particularly when it was pointed out that the firm of Solicitors, Messrs Holman Fenwick and Willan, appear to have been "forum hunting".

Nevertheless, it was some evidence of German law and the counter affidavit of the appellants remained unchallenged by the respondents. I think that in the interest of international commercial relations, Courts have to be wary about departing from a forum chosen by parties in their contract. There ought to be very compelling circumstances to justify such a departure."

It therefore means that filing of a memorandum of unconditional appearance does not act as a waiver of a Defendant's right to present an objection emanating from an irregularity which affects or relates to the substantive jurisdiction of the court. It only acts as a waiver of the right to raise objections relating to procedural irregularities stipulated by the rules of court.

Procedural Safeguards and Practical Considerations

The position with respect to the consequences of filing an unconditional memorandum of appearance brings to fore the importance of the need of litigants to carefully consider how their appearance is entered.

In other words, upon being served with an originating process and before entering an appearance in a suit, due diligence must be conducted. While the filing of a memorandum of appearance in compliance with prescribed timelines is both a procedural safeguard and a step towards efficient dispute resolution, the importance of conducting due diligence in reacting and preparing processes in response to an originating process cannot be overemphasised. Failure to conduct due diligence may have far-reaching effects on the administration of the dispute and can compromise a party's position in the suit.

In conducting due diligence, some of the factors to be considered are:

(i) Service of the Originating Process: It is important to ascertain if the originating processes were served in accordance with the stipulations of the law. For example, under the Lagos State High Court Rules^[10], an originating process is to be served personally on a party except with leave of the court. Also, the law prescribes the lifespan of an originating process and service of an expired process is deemed as no service at all.

(ii) Jurisdiction: It is necessary to determine if the court has subject matter jurisdiction over the dispute as well as whether the proper parties are before the court.

(iii) Claims and Reliefs Sought: There is a need to assess the claims and the reliefs sought by the Claimant. The Magistrates Court in Lagos State has a jurisdiction limit of N10,000,000.00 (Ten Million Naira)[1]. Claims exceeding the foregoing sum will be deemed as improperly commenced at a Magistrates Court.

(iv) Timeline for Entering an Appearance and Filing a Defence: The Rules of Court prescribes the timeline for filing a statement of defence and entering an appearance in a suit. It is important to ascertain this timeline and ensure adherence to it.



It is important to ensure that the service of the originating process complies with all statutory and procedural requirements before a memorandum of appearance is filed. It must also be carefully determined if there are any substantive jurisdictional defects or procedural irregularities, before filing a memorandum of appearance, and, where a defect is suspected, a conditional appearance should be filed to preserve the party's rights. It is also essential to file any jurisdictional challenge without delay to prevent an implied waiver, while paying close attention to the specific rules of the relevant court, as requirements for entering a conditional appearance vary across jurisdictions.

Conclusion

In conclusion, the filing of a memorandum of appearance, though perceived as a routine procedural act, may have far-reaching consequences on a party's ability to raise certain objections in the suit. the filing of an unconditional memorandum of appearance may limit a party's ability to raise objections, as such filing is deemed a waiver of that right.



In determining the scope of this waiver, the distinction between procedural and substantive jurisdiction remains critical. It is vital to note that while procedural lapses may be waived by a party either expressly or by conduct, jurisdiction conferred by statute or the Constitution remains immutable and any lack thereof cannot be cured by a party's conduct or acquiescence.

TEL: 0802-740-5535, 0810-424-2598

Email: hello@manifieldsolicitors.com

Adewole kuku street, Lekki. Lagos, Nigeria.

www.manifieldsolicitors.com