A REVIEW OF THE LANDMARK JUDGMENT OF THE SUPREME COURT OF NIGERIA IN APC & ANOR. V SENATOR KABIRU CARBA MARAFA & ORS. (SC.377/2019) ON THE EFFECT OF FAILURE TO INDICATE THE NATIONAL IDENTIFICATION NUMBER (NIN) OF COUNSEL ON COURT PROCESSES
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ABSTRACT
Prior to the Judgment of the Supreme Court in APC & Anor. V Senator Kabiru Garba Marafa & Ors., the position of the law concerning the National Identity Management Commission (NIMC) Act No. 23 of 2007 and Mandatory Use of National Identity Number Regulations 2017 was that processes filed in Court must bear the National Identity Number (NIN) of the Counsel who originated the processes. This matter is the first opportunity that the Court had to determine this salient issue and to determine the relevance or otherwise of the Law. In making its pronouncement on the issues posed pertaining to compliance with the NIMC, the Supreme Court essentially filled a lacuna in the law and created a locus classicus. Accordingly, this review highlights the details required for the endorsement of Court processes alongside the consequences for non-compliance with the prescribed procedure for same. The review also concisely examines the decision of the Court on the failure to indicate the NIN on Court processes.

THE IMPORTANCE OF ENDORSING COURT PROCESSES
In the context of this paper, endorsement of Court processes refers to the signing of a Court process as well as the inclusion of information/particulars of the Counsel filing the process on behalf of a party to a suit. Endorsement of Court processes is a fundamental aspect of litigation that is often violated. For a Court process to be duly endorsed under Nigerian law, the Court in SLB Consortium Limited v. NNPC stated thus:

It must have the name of a legal practitioner, must be duly signed by a legal practitioner and where there are multiple lawyers, the name of the lawyer signing must be indicated. The lawyer must also state the name of the law firm he/she is practicing with (if any), address for service, telephone number, National Identification Number and an email address registered with the Nigerian Bar Association.

The question then becomes – whether failure to endorse a Court process will be considered as a mere irregularity or a fundamental defect to the suit? Regarding the signing of Court processes, in Henshaw & Orc v. Henshaw & Orcs, the Court of Appeal held that failure to endorse the Court processes is a matter of compliance with substantive law that goes to the root of the matter and as such can rob the Court of its jurisdiction to hear the matter. The aspect of endorsement addressed in this case was the failure to sign the process and for which the Court treated as not a mere technicality, procedural error or irregularity but a defect which goes to the root of the competence of the action. The inclusion of a signature on a Court process is essential to placing liability should any issue arise from the process and can be raised at any time in the proceeding. It is also for this reason that only individuals and not law firm that can execute court processes.

Similarly, in the case of Mustapha v Suntai, the Court held that failure to put an address of the Counsel in an Originating Process is fatal to the process as it is a mandatory provision of the Rules of Court. Although the courts have pronounced on the mandatory nature of including signature and addresses while endorsing court processes, there has been no pronouncement on the nature/effect of including National Identification Number (NIN).

THE REQUIREMENT OF INCLUDING NIN ON COURT PROCESSES
The National Identity Management Commission Act No. 23 of 2007 (“the Act”) came into force in 2007. The purpose of the Act is basically to establish and regulate a reliable and sustainable system of National Identity Management that enables citizens and legal residents affirm their identity in an environment of innovation and excellence. The Act also established the National Identity Management Commission (“the Commission”) and charged it with implementing the provisions of the Act. The Commission has the mandate to establish,
own, operate, maintain and manage the National Identity Database in Nigeria, register persons covered by the Act, and assign a unique NIN. 10

The Commission, empowered by the Act, 11 created the Mandatory Use of National Identity Number Regulation 2017 ("the Regulation"). The Regulation essentially expanded section 27 of the Act which essentially provided for the transactions which require the use of National Identification Number. By this expansion, the Regulation provided, amongst other things, that NIN must be included on all processes filed in Court. The Regulation provided that NIN is required for filing and registration of criminal and civil actions in Courts or other Arbitration processes. 12 As well as obtaining and processing of probate documents.

**Effect of Non-Compliance**

Although the Act does not clearly provide for any sanction for failure to comply with the provisions of the Act, the Regulations have filled up this lacuna. The sanction generally provided by the Regulation include, amongst others, the imposition of fines. 13 However, the Regulation does not provide a specific sanction for failure to include NIN in a Court process. Regardless, there has been to a large extent, strict compliance with respect to the inclusion of NIN in Court processes.

This NIN requirement, however, became the subject the suit in *APC v. Senator Kabiru Garba Marafa*, 14 when a party claimed the failure of a Counsel to include his NIN invalidated the Court processes filed.

In *APC v. Senator Kabiru Garba Marafa*, an appeal was brought before the Supreme Court against the decision of the Court of Appeal, Sokoto Division. The crux of the matter was the validity and eligibility of the candidates submitted by All Progressive Congress (the 1st Appellant) to Independent National Electoral Commission (179th Respondent) for various elective offices in Zamfara State. The major dispute was whether the 1st Appellant conducted a valid primary election to determine its candidates at the 2019 elections.

The Court of Appeal ("lower Court") earlier overturned the decision of the Trial Court and held that the 1st Appellant did not have lawful candidates to contest elections in Zamfara State. The Appellants being dissatisfied with the decision of the lower Court appealed to the Supreme Court. One of the issues for determination as contained in the Appellants’ Brief of Argument was “Whether considering the evidence before the trial Court, the lower Court was right when it held that the Appellants did not conduct primaries from which candidates emerged for the 2019 general elections.”

In response, the Respondents argued in a Preliminary Objection that the processes filed by the Appellants were incompetent in view of the fact that a mandatory requirement of law was not complied with. Counsel to the Respondents cited section 27 of the Act, discussed above, and Regulation 1 (1) (u) of the Regulation provides that NIN shall be mandatory for the filing of criminal and civil actions in courts.

In resolving the above issue, the Supreme Court held that section 27 of the Act and its accompanying Regulation are not part of the Rules of the Court and therefore cannot apply to the processes filed in the Court. Accordingly, it appears that the non-inclusion of the NIN in Court processes is neither fatal nor of any relevance to the processes.

**THE IMPLICATION OF THE SUPREME COURT’S DECISION**

The decision of the Supreme Court implies that statutory provisions that are not part of the Rules of Court cannot apply to processes filed in Court to the extent of affecting the procedural jurisdiction of the Court. In the instant case non-compliance with the mandatory use of the NIN in all documents prepared by a Lawyer as provided under section 27 of the Act, and Regulation 1 (1) (u) of the Regulation cannot affect the procedural jurisdiction of the Court as same is inapplicable to the processes filed in Court.

**SOME VITAL PRONOUNCEMENTS RESTATE BY THE APEX COURT IN THE JUDGEMENT UNDER REVIEW:**

The Court stated that Election matters are *sui generis* 15 and that by Paragraph 14(2) (a) & (b) of the Electoral Act (2010), after the expiration of the prescribed period for the presentation of Election Petition, no amendment shall be made. 16 On this basis, the Court concluded that fresh issues that were not raised at the Trial Court and Court of Appeal cannot be raised at the Supreme Court in an election or pre-election matter.

The Court further stated that in pre-election matters, an Appellant does not require leave of Court, to appeal relying on section 285(11) of the 1999 Constitution of the Federal Republic of Nigeria. The Court also stated that section 233(3) of the Constitution which provides that appeal from the Court of Appeal to the Supreme Court shall be with leave of Court does not apply to election and election related matters.

**CONCLUSION**

The decision of the Court in *APC & Anor. v Senator Kabiru Garba Marafa & Ors* has clearly settled the law as regards the requirement of including the NIN in Court processes as provided for in the Act and NIN Regulations. Thus, the effect of the decision is that Counsel need not include the NIN on the Court processes as it has been held to be irrelevant on the ground that it was not provided for by the Rules of the Court. However, Counsel should ensure to include NIN on processes in order to avoid unnecessary Preliminary Objection which may delay the course of justice.

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11 NIMC Act 2007, Section 31
12 Mandatory Use of National Identity Number Regulations 2017, Regulations 1 (1) (a)
13 Note 12, Regulations 7
14 Unreported case with Appeal no. SC.377.2019
15 Orbih v Mbakwe & Ors (1984) EPELR (SC)
16 Oke & Anor v Mimiko & Ors. (2013) LPELR-20645 (SC)