



**PRACTICE DIRECTIONS
ON ADJOURNMENTS AND
ADOPTION OF
PROCEEDINGS IN PART
HEARD TRIALS IN COURT
2024**



JUDICIAL SERVICE

COMPENDIUM OF PRACTICE DIRECTIONS &
ADMINISTRATIVE GUIDELINES IN GHANA
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A. Long Title

A direction to ensure proper management and control of adjournments and time by courts including adoption of proceedings in part heard cases, to prevent delays and ensure efficient, effective and expeditious disposal of cases.

A. Citation

These Practice Directions may be cited as **Practice Directions on Time Management, Adjournments and Adoption of Proceedings in Part Heard Trials in Courts 2024.**

B. Preamble

- Taking note of the inimical effect that improper and uncontrolled adjournments and delays have on effective justice delivery;
- Recognizing that courts have both inherent and statutory powers to adjourn proceeding in appropriate circumstances;
- Recognizing that the power to adjourn cases must be exercised in good accord with the overriding purpose of the rules of court;
- Recognizing that in the administration of justice, transfers, ill health, death, resignations, retirements, and other vicissitudes of life from which the Judiciary is not spared, unavoidably necessitate the transfer of part heard cases from one Judge to another and this may also cause delays in court.

- And being informed by the judgment of the cases of **Agyemang (subst'd) by Banahene & ors v Anane**¹ and **Republic v. Dr. Stephen, Kwabena Opuni, and 2 ORS**², which dealt with the adoption of proceedings for continuation in civil and criminal trials respectively, for the hearing of cases within reasonable time and
- Guided by provisions in Rules of Court requiring that the rules be interpreted and applied to achieve speedy and effective justice, avoid delays and unnecessary expense that as far as possible all matters in dispute between parties may be completely, effectively and finally determined and multiplicity of proceeding concerning any such matters avoided.

I direct that adjournments and **until statutory provisions are made, the resolution of adoption of proceedings of partly heard civil and criminal cases for continuation by a new judge or a court differently constituted** be managed and controlled in the following manner.

C. Application:

This direction shall apply to trials of civil and criminal cases in the District, Circuit and High Courts of Ghana.

This direction shall not apply to the Supreme Court, Court of Appeal and the High Court when exercising their appellate jurisdiction.

¹ [2013-14] 1 SCGLR 241

² Unreported, Criminal Appeal, Case No H2/25/2023 dated 3rd July, 2023

D. Complementary Nature of Direction

This direction shall be read in harmony with the provisions of Order 37 of the High Court (Civil Procedure) Rules, 2004 (C.I 47) (on Adjournments and Delays); Order 27 of the District Court Rules, 2009 (C.I 59) (on Duty to Avoid Delay); and Sections 169, 186 and 263 of the Criminal and other offences Procedure Act 1960 (Act 30) (as amended) (on adjournments generally) except that in the event of any irreconcilable conflict between the Directions and the above, the above Rules of Court shall prevail.

This Direction shall complement paragraph 5 of the **Practice Direction on Disclosures and Case Management in Criminal Proceedings [2017-2020] 1 SCGLR 362** and the **Practice Direction on Effective Case Completion Planning Strategies [2017-2020] 1 SCGLR 422**.

E. Adjournment at the Sole discretion of the Judge

- (1) All adjournments shall be subject to the discretion of the judge³
- (2) A judge may, in the exercise of his discretion, grant or refuse to grant an adjournment in the interest of justice and the adjournment shall be granted only where it is extremely necessary.⁴

³ Section 69 of the Evidence Act, 1975 (NRCD 323); paragraph (a) of subsection 169, 186, and subsection (1) of section 263 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30); rule (3) of Order 36 and rule (1) of Order 37 of the High Court (Civil Procedure) Rules, 2004 (C.I 47) as amended; *Mahama v. Soli* [1976] 2 GLR 99; *Republic v. High Court (Fast Track Division) Accra*; *ex parte Sian Goldfields Ltsd (Aurex Management and Investment AG/SA Interested Party* [2009] SCGLR 204, 209; *Ali Yusi Issa (No.2) v. the Republic* [2003-2004] 1 SCGLR 174, 186.

- (3) In granting an adjournment on stated grounds, a judge must be satisfied that the grounds are proven.
- (4) In determining whether an adjournment should be granted in the interest of justice, the judge shall not consider only the interests of the litigants⁵ in the particular case, but should also take into account the effect of the adjournment on court resources; the competing claims of litigants in other cases awaiting hearing in the particular list, and the interest of co-accused persons.⁶
- (5) The judge shall also consider the applicable case management strategy, and the public interest in achieving the most efficient use of court resources.⁷
- (6) Without prejudice to the generality of subparagraph (4) the circumstances under which a case may be adjourned in the interest of justice include where:
 - (a) party is short-served or not served with a process which if not duly served, the proceedings in question cannot justly be held;

⁴ Section 69 of the Evidence Act, 1975 (NRCD 323); paragraph (a) of subsection 169, 186, and subsection (1) of section 263 of the Criminal and Other Offences (Procedure) Act, 1960 (Act 30); rule (3) of Order 36 and rule (1) of Order 37 of the High Court (Civil Procedure) Rules, 2004 (C.I 47) as amended; *Mahama v. Soli* [1976] 2 GLR 99; *Republic v. High Court (Fast Track Division) Accra*; *ex parte Sian Goldfields Ltd (Aurex Management and Investment AG/SA Interested Party)* [2009] SCGLR 204, 209; *Ali Yusi Issa (No.2) v. the Republic* [2003-2004] 1 SCGLR 174, 186. See also *Omenyo v. Poku and Another* [1961] GLR 778

⁵ *Sasu v. Amua-Sekyi* [1987-88] 2 GLR 221

⁶ Adjournalment [2-0200] Court's Power of adjournment
<https://www.judcom.nsw.gov.au/publications/benchbks/civil/adjournment.html>
accessed 29th August 2023

⁷ *Sali v. SPC Ltd* (1993) 67 ALJR 841; *Maxwell v. Keun*, [1928] 1 KB 645; *State Pollution Control Commission v. Australian Iron and Steel Pty Ltd* (1992) 29 NSWLR 487 at 493-494

- (b) a party, a party's Lawyer or party's witness is absent, provided the absence is not the fault of the party at whose instance the adjournment is to be granted;⁸ and their presence is needed for continuation of hearing of the case
- (c) Proven⁹ indisposition of a party, a lawyer or witness whose presence is needed for the continuation of hearing of the case.
- (d) The parties' genuine desire to attempt settlement.¹⁰ The judge may grant adjournment in such circumstances for a specified period as the judge considers necessary to achieve settlement¹¹ which is yet to be completed. The judge shall however monitor the progress of the settlement in considering whether or not to grant further adjournments;
- (e) The adjournment sought is short, for example, until the following day, for very exceptional reasons.¹²
- (f) A party wishes to engage the services of a lawyer except that such an adjournment shall not exceed 14 days in an instance. In determining whether to grant an adjournment under this head the judge shall have regard to the circumstances of the case including the fact that

⁸ *Walker v. Walker* [1967] 1 WLR 327

⁹ The production of a medical certificate is a good reason to grant an adjournment: *Adjabeng v. Kwabla* [1960] GLR 37. The Court is however not obligated to halt proceedings because of the ill-health of counsel or a party: *Mensah & Ors v. Mensah & Ors* [1992-1993] GBR 1432

¹⁰ Sections 72 and 73 of the Courts Act, 1993 (Act 459)

¹¹ Subrule (1C) of Order 32 of C.I 47 as amended

¹² *Carryer v. Kelly* [1969] 2 NSWR 769

- i. the right to engage a lawyer is not absolute; while the right to be heard is absolute
- ii. A party should not be refused an adjournment if failure to engage a lawyer is shown not to be deemed to be his fault.

(g) A party engages a new lawyer who has not been able to procure the record of proceedings after diligent effort.¹³

(7) Except otherwise determined by the judge, the circumstances under which an adjournment shall not be deemed to be in the interest of justice include:

- a) that a party or the party's lawyer is not ready to proceed with the trial;
- b) the absence of a party or a party's representative simpliciter;
- c) the absence of a lawyer¹⁴ without cause. The judge may, however, after considering the record of attendance of the lawyer and the party, and where the justice of the case demands, adjourn the case to a later time or date on such terms as the court considers proper;
- d) the absence of a witness whose absence is not due to the conduct of the party calling the said witness;¹⁵

¹³ *Adu v. the Republic* [1976] 1 GLR 55

¹⁴ *Omaboe v. Kwame* [1978] GLR 122.

¹⁵ *Republic v. Maikankan and Others* [1973] 2 GLR 222

- e) the alleged indisposition of a party, a witness or a lawyer when present in Court;
- f) that all parties to the suit or their lawyers have agreed that the case be adjourned with no justifiable cause shown;¹⁶ and
- g) where from the history of the case, a party or a party's lawyer has unreasonably caused delay in the proceedings.¹⁷

F. Application for Adjournment

- (1) Application for an adjournment shall be made and granted only in accordance with this direction.
- (2) An application shall be made in writing addressed to the Registrar of the Court and copied to every other party and/or the lawyer of every other party.
- (3) An application shall set out in reasonable detail the reason for the adjournment and shall be accompanied by supporting documents in proof of the stated reason.
- (4) An application shall be made not later than three (3) clear days preceding the date fixed for the hearing of the case.

¹⁶ *Sydney City Council v. Ke-Su Investment Pty Ltd.* (1985) 1 NSWLR 246

¹⁷ *Seatec Ltd. v. Penton Hook Farms Ltd. and Another* [1984-86] 1 GLR 605

- (5) The Registrar of the Court shall as soon as practicable, upon receipt of an application for adjournment, bring the application to the attention of the judge.
- (6) Unless the judge directs otherwise, an application for adjournment shall not excuse the attendance of all other parties and their lawyers.
- (7) A judge may in an exceptional case, hear an oral application for adjournment in court on any day the case is listed for hearing. The judge shall hear and rule on the application immediately after it is made and shall take steps to ensure that all other parties are heard on the application.
- (8) No reason for adjournment shall be binding on the judge and every reason shall be considered having regard to the entire circumstances of the case including the previous conduct of the party or lawyer making the application.
- (9) Where a judge doubts the evidence supporting the reasons for the adjournment, the judge shall take immediate steps to resolve the doubt.

G. Avoiding Delays in criminal proceedings

- (1) It shall be the duty of the prosecution and defence to assist the court to expedite trials of criminal cases.
- (2) The prosecution shall take urgent steps to comply with all pre-trial disclosure orders of the court and meet the time-lines contained in such orders.

(3) Where there has been undue delay in filing of witness statement and the judge is satisfied that sufficient disclosures have been made to allow the parties prepare for the trial, the judge may proceed to take evidence-in-chief without a witness statement.

(4) For the purposes of so satisfying himself, the judge shall make the necessary inquiries and issue such orders as to ensure that material disclosures have been made for the trial to proceed.

H. Duty of the Judge in avoiding Delays

(1) The judge shall, when a case has been fixed for trial, ensure that s/he proceeds with the trial as scheduled.

(2) The judge shall consider the overall conduct of parties and lawyers especially in delays and adjournments to award the appropriate costs, including punitive costs where necessary to deter further delay of proceedings.¹⁸

(3) In his discretion, the judge may adjourn a case to a specific date but shall not adjourn a case sine die unless in an exceptional case such as the death of a party.

(4) When an adjournment is granted, the judge shall give directions for the next sitting to ensure that, as far as possible, the matter will be ready to proceed at the next date.¹⁹

¹⁸ Mensah & Ors v. Mensah & Ors (n 7).

- (5) If a court does not sit on a particular day because the day was declared a public holiday or for some reason, there was no sitting at all, every case which ought to have been called but for the non-sitting, shall be called the next sitting day.²⁰
- (6) If a court does not sit on a particular day because of some reason such as the health of the judge, every case which ought to have been called but for the non-sitting, shall be adjourned to a date fixed by the Court with due notice to the Parties and their lawyers.
- (7) If a court has notice that it cannot sit for a particular reason, it shall use its best endeavours to communicate before the said date through the Registrar to the Parties and their lawyers via email or text message and shall ensure that they are duly informed of the next date before the said day.

I. Duty of the Lawyer in avoiding Delays

- (1) It shall be the duty of a lawyer to co-operate with the judge to expedite the trial of the suit in the interest of the client.²¹
- (2) A lawyer shall conduct the business of his client in court in a manner that avoids delays.²²

²⁰ Rule (3) of Order 80 of C.I 47; *Asamoah v. Marfo* [2011] 2 SCGLR 833, 839.

²¹ Rule 34 of the Legal Profession (Professional Conduct and Etiquette) Rules, 2020 (L.I 2423)

²² Rule 95 of L.I. 2423

- (3) A lawyer who is engaged in an ongoing suit before the court shall apply for the record of proceedings at the time of filing a notice of appointment of solicitor.
- (4) A lawyer shall personally attend Court proceedings concerning a matter unless he has applied for an adjournment in which case he shall arrange for another lawyer to hold his brief.²³
- (5) A lawyer who holds the brief of another lawyer is deemed to be fully instructed on the brief and unless the judge otherwise directs shall proceed to conduct the case as scheduled before the Court.
- (6) A lawyer shall appear in Court before the commencement of the proceedings of the case in which he is to appear.

J. Duty of the parties to avoid delays

- (1) Parties to a suit shall endeavour to appear personally. Representatives shall be sent only in exceptional cases.
- (2) Parties or their representatives shall appear in court before the commencement of the proceedings in their case and shall refrain from conduct that would occasion delay in the court proceedings of the Court.
- (3) Except as otherwise directed by the judge, relative to changing turns, a plaintiff shall be ready to proceed to prosecute his or her case and a defendant shall upon the

²³ Rule 98 of L.I. 2423

close of the plaintiff's case be ready to prosecute his defence.

K. Duty of the Registrar in adoption of record in part heard matters

Before the proceedings in a partly heard civil or criminal case is adopted by the court, Registrar of the court shall ensure that:

- a) Certified true copies of the proceedings are available for the study of the Judge. On application by parties or their Lawyers and payment thereof, the Registrar shall make available certified true copies to be served on the Parties or their Counsel before the date fixed for hearing.
- b) Cause all exhibits tendered in the matter to be made available for inspection by parties and the court.

L. Duties Of The Judge in the adoption of record in part heard matters

- (1) Unless there exists any matter that would result in a miscarriage of justice, the court shall adopt the proceedings for continuation.
- (2) That appeal against the decision of the court on the adoption of the proceedings shall not serve as a stay of proceedings.
- (3) That in determining whether the adoption of proceedings would result in a miscarriage of justice, the court shall consider the following;
 - i. The length of time that the case has been on the court calendar;
 - ii. The stages which the trial has reached;

- iii. The number of witnesses already called;
- iv. The disputed issues/ number of counts an accused person stands charged;
- v. The nature of the evidence adduced, both oral and documentary;
- vi. The availability of witnesses who have already testified;
- vii. Possible loss of memory by the witnesses;
- viii. The availability of all documentary evidence of adduced at the trial;
- ix. The quality and reliability of the record or transcript;
- x. Whether any defect in the record is capable of being cured in the interest of substantial justice;

N. GENERAL CONSIDERATIONS

a) The length of adjournment requested or applied for.

Where the length of the adjournment may result in injustice, the court must exercise discretion to abridge the request or refuse it.

b) Matters to be considered before Adjournment because of the absence of the parties.

• Plaintiff

- i. Court should proceed unless it would impact the interest of justice.
- ii. Documentary evidence must justify the request for an adjournment.
- iii. Did the Plaintiff take any steps to prevent the absence of a witness?