WHO SIGNED THESE PROCESSES?

by Ibifubara Berenibara[1]

Introduction

Litigation or the process of dispute resolution is termed to be a very serious process. It is the process that potentially culminates in the determination of parties' rights and liabilities, which could be of enormous consequence. Legal practitioners are consequently required to treat the process with utmost caution, due regard and give it apt attention.

Unfortunately, the process of dispute resolution has in some instances inclined towards "practice", rather than the guiding rules of court as well as statutes. The laxity displayed by some practitioners in the process eventually culminated in the courts' intervention, by calling for caution in many of their recent decisions.

The above suggests that the need to treat the process of dispute resolution as a serious business has spurred the Supreme Court to urge parties and legal practitioners alike to attach seriousness to the practice of law which begins with client's instructions to the legal practitioner, up to the practitioner's post-judgment activities. One veritable tool used by the courts to achieve this is the call for proper disclosure of the identity of person engaged as legal practitioners.

The guise of a law firm representing a litigant in the opinion of the courts, is not only insufficient in disclosing such an identity of a legal practitioner, but must be deterred as non-compliant with Nigerian law. Of course, the courts have moved some steps further to cautiously acknowledge the relevance and use of Nigerian Bar Association stamps,[2] which have Supreme Court registration numbers peculiar to every legal practitioner qualified to practice in Nigeria and the desirability of

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[2] Nyesom v. Peterside [2016] 7 NWLR (Pt. 1512) 452

affixing such stamps on every court process signed by legal practitioners.[3] Indeed, the courts' storm was recently experienced in private dispute resolution mechanism. This shows that last may not have been seen on this issue.

Signing of Processes – Emerging Issues

It is imperative to note that the practice Rules of various courts provide that a party may conduct his case by himself or by a legal practitioner of his choice.

The High Court of Lagos State for example, imposes the conditions that every originating process shall be prepared by a Claimant or his legal practitioner.[4] Having given the Claimant the latitude to prepare his originating processes, he is under some compulsion to append his signature on the originating process. Where however the originating processes are to be prepared by a legal practitioner, just as it is required of the Claimant to append his signature, the legal practitioner is to ensure that each copy of the originating process is signed by him.[5] The litigant or the legal practitioner's obligation to sign the court processes extends to every pleading as well, as Order 15(2) of the Rules provides that pleadings shall be signed by a legal practitioner or by the party if he sues or defends in person.[6]

The implication of the above provisions is that a court ought not to assume or exercise jurisdiction over a suit where the originating process is not signed either by the litigant or by a legal practitioner representing him, having not been commenced by due process.[7] Where therefore a Writ of Summons for example is not signed by the Claimant or a legal practitioner as compulsorily required by law, that suit is incompetent.[8]

The series of cases that follow the decision of *Okafor v. Nweke*, serve as authoritative answer to the question whether a law firm qualifies as a legal practitioner with the ability to sign court processes, and the general and in deed specific answer given to this question by the court is "No".

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[3] Rule 10 of the Rules of Professional Conduct in the Legal Profession, 2007
[4] Order 6 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules, 2012
[5] Order 6(2)(3) of the Rules
[6] Order 15(2) of the Rules
[7] Madukolu v. Nkemdili [1962] 1 All NLR 587
[8] Okafor v. Nweke [2007] 10 NWLR (Pt. 1043) 521

A test was at a point pitched against the precedent also set by the Supreme Court in *Okafor v. Nweke*. This test was exemplified in the case of *Unity Bank v. Denclag*,[9] where on 30 March 2012, Honourable Justice Mary Odili in her lead judgment had to consider the competence of a notice of appeal which was originally signed and issued by "Ibrahim Hamman & Co." and for which leave was granted by the Court of Appeal to Chief Akande, SAN to replace the last page of the notice of appeal signed by "Ibrahim Hamman & Co." with one to be signed by Chief Akande. The Honourable Justice of the Supreme Court held that:

> *"Going by decision in Okafor v. Nweke (supra) [that a firm of legal practitioners cannot legally sign any process in court], learned counsel for the respondents submits that the implication is that there was no appeal [before the court where a notice of appeal is signed by a firm of legal practitioners]. [However], that sweeping assertion and solution cannot be in keeping with the tenets of substantial justice and the age long principle that a litigant should not be made to suffer for the inadvertence or mistake of counsel. This comes into one of those exceptions that could alleviate the hardship that otherwise would have resulted. Therefore, the process was redeemed and consequently valid".*

Justice Chukwuma-Eneh dissented the decision of Justice Odili and held that the wrongly signed notice of appeal was incurably defective. In *Ministry of Works and Transport, Adamawa State v. Yakubu*,[10] the Supreme Court, per Muntaka-Coomasie JSC (who incidentally was on the Panel that decided the *Unity Bank v. Denclag case*) said:

> *"The questions that easily come to mind are that can an incompetent originating process or processes be amended, or can the incompetence of the process be cured by the amendment?....The fatal effect of the signing of an originating process by a law firm is that the entire suit was incompetent ab initio. It was dead at the point of filing....The originating process, as in this case, is fundamentally defective and*

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9 [2012] 18 NWLR (Pt. 1332) 293

10 [2013] 6 NWLR (Pt. 1351) 481 at 496

incompetent. It is inchoate, legally non-existent and can therefore not be cured by way of an amendment"[11]

Subsequent to the *Denclag* case, and to settle the issue on signing of court processes, the then Chief Justice of Nigeria, Honourable Justice Dahiru Musdapher empanelled a full court of the Supreme Court (that is, 7 Justices of the Supreme Court, including the Chief Justice of Nigeria) with contributions from about 11 amici curiae in the consolidated cases of *First Bank of Nigeria Plc v. Maiwada and Framphino Pharmaceutical v. Jawa International Limited*.[12]

The lead judgment was read by Justice J.A. Fabiyi, JSC, and he noted that:

"Among legal practitioners, we have two schools of thought in respect of the above salient issue. The division is very grave indeed. To put the dispute at rest, the Hon. Chief Justice of Nigeria has empanelled a full court. A host of amici curiae got invitation to address the court on the issue"

Request was made for claimants to be given the opportunity to amend their originating processes signed in the name of a law firm. One of the amici curiae, Mr. A. Adesokan urged the Supreme Court to depart from the decision in Okafor v. Nweke and give the counsel an opportunity to regularise the process.

Several of the amici curiae[13] urged the court to hold that the improper signing of an originating processes is an error of counsel which should not be visited on the litigant. They further requested that the decision in Okafor v. Nweke should be viewed as a technical one, which creates hardship and injustice to the litigants involved. But in his conclusion, Fabiyi JSC acknowledged that the age of technical justice is gone, but that the current vogue is substantial justice, which can only be attained not by bending the law but by applying it as it is; not as it ought to be. Consequently, there is nothing technical in applying the provisions of sections 2(1) and 24 of the Legal Practitioners Act[14] as it is drafted by the Legislature. He hinted further that no one should talk of technicality when a substantial provision of the

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[11] Further decision see *Okarika v. Samuel [2013] 7 NWLR (Pt. 1352) 19 at 43*.
[12] [2013] 5 NWLR (Pt. 1348) 444. Referred to as *FBN v. Maiwada*
[13] Chief Olanipekun, SAN; Dr. Ikpeazu, SAN; and Mr. Paul Ananaba
[14] 6th May 1975, L.F.N. 2004

law is rightly invoked. He emphasised that the Legal Practitioners Act is the law being interpreted, and it is aimed at making legal practitioners responsible and accountable. In his words:

> *"I see nothing technical in insisting that a legal practitioner should abide by the dictates of the law in signing court processes. It is my view that if the decision in Okafor v. Nweke is revisited as urged, more confusion will be created. The decision in Okafor v. Nweke is not in any respect wrong in law and I cannot trace the issue to the domain of public policy. The convenience of counsel should have no pre-eminence over the dictate of the law. The law as enacted should be followed. I do not for one moment see any valid reason why the decision of this court in Okafor v. Nweke should be revisited. It has come to stay and legal practitioners should reframe their minds to live by it for due accountability and responsibility on their part and for the due protection of our profession"*

As noted above, the decision in FBN v. Maiwada was made following a constitution of a full panel with over 11 amici curiae. Hon. Justice Peter-Odili, who delivered the leading judgment (that was dissented to by Justice Chukwuma-Eneh) in the Denclag case, was also part of the panel.

Each of the Justices of the Supreme Court in the FBN v. Maiwada concurred with Fabiyi JSC and held as follows:

> *Hon. Justice Musdapher, CJN – "The purported appeals filed before the Court of Appeal were incompetent and were properly struck out by the Court of Appeal";*
>
> *Hon. Justice Chukwuma-Eneh, JSC – held after an analysis of the issue – "I hereby strike out both notices of appeal in both matters for want of competence and the appeals predicated on the said court processes being ab initio incurably defective";*
>
> *Hon. Justice Mohammed, JSC – held after an analysis of the issue – "I also refuse the request of the appellants to revisit the decision of this court in Okafor v. Nweke (supra) and also dismiss the appellants' appeals";*

Hon. Justice Adekeye, JSC – held after an analysis of the issue "With fuller reasons given by my learned brother, J.A. Fabiyi JSC in the lead judgment, I have also come to the conclusion that this appeal was not filed according to the dictates of the law; it is therefore incompetent and accordingly struck out";

Hon Justice Mary Peter-Odili, JSC – (who delivered the lead judgment in the Unity Bank v. Denclag) held as follows: "From the foregoing and the better articulated reasons in the lead judgment of my learned brother, John Afolabi Fabiyi JSC, I strike out the appeal which is incompetent having been signed by the firm of Mando & Co instead of a human person legally trained and empowered or the appellant himself". She concluded as follows "therefore this appeal is dead on arrival and it is hereby struck out";

Hon. Justice Ariwoola, JSC – "I also hold that the appeal which was not commenced with properly signed originating process is, to say the least incompetent. Accordingly this notice of appeal in this case, is to say the least incompetent and is hereby struck out".

The Supreme Court did not only hold that a provision of rules of court cannot come in aid to regularise the incurably bad process in *SLB Consortium Ltd v. NNPC*[15] it further gave guidelines on how processes are to be signed. In the words of Rhodes-Vivour JSC:

> "*What then is so important about the way counsel chooses to sign processes? Once it cannot be said who signed a process it is incurably bad, and rules of court that seem to provide a remedy are of no use as a rule cannot override the law (i.e. the Legal Practitioners Act). All processes filed in court are to be signed as follows: First, the signature of counsel, which may be a contraption. Secondly, the name of counsel clearly written. Thirdly, who counsel represents. Fourthly, name and address of the legal firm.*"

[15] [2011] 9 NWLR (Pt. 1252) 317

The above put paid to the issue as far as court processes are concerned. It has now found its way into private dispute resolution arrangements, with legal consequences: arbitration. In the case of *Shell Nigeria Exploration and Production Co. Ltd & 3 Ors v. Federal Inland Revenue Service & Anor*[16], decided on 31 August 2016, the Court of Appeal had to determine the competence of a Notice of Arbitration and Statement of Claim signed by two law firms representing the Appellant in arbitration. In opposing the request by the Respondent for the Court to declare the notice of appeal incompetent for improper signing, the Appellants contended that arbitral proceedings are not within the purview of judicial proceedings and that the principles in judicial proceedings, where court processes are to be signed by identifiable legal practitioners, cannot be imported and made mandatory in arbitration. The Court of Appeal held that proceedings before an arbitral tribunal are legal proceedings, and Article 4 of the Rules to the Arbitration and Conciliation Act gives parties a right to be represented or assisted by legal practitioners of their choice. It further held that a legal practitioner is one entitled to practice in accordance with sections 2(1) and 24 of the Legal Practitioners Act. Consequently, since the Appellants were being represented by legal practitioners of their choice, the processes prepared and signed must be by identifiable legal practitioners. Therefore, the notice of arbitration signed by law firms was incompetent and the arbitral tribunal was bereft of jurisdiction to entertain the arbitration.

Incompetence of court or arbitration processes signed by a law firm goes beyond just processes signed by or in the name of law firms. It appears from the decisions above, that one major concern of the court is the infiltration of the legal system by persons who are not qualified legal practitioners as defined by section 2 of the Legal Practitioners Act. It is consequent on this, that the courts have moved a step further to show that the need for proper disclosure of identity is a *sine qua non* to the court exercising jurisdiction where an originating process is signed, not by the litigant but on his behalf.

[16] CA/A/208/2012 [also known as SNEPCO v. FIRS]

Consequent on the above, the Court of Appeal in *Peak Merchant Bank Limited v. Nigeria Deposit Insurance Corporation*[17] had to decide whether an originating process signed for (or on behalf of) a legal practitioner was competent and vested the court with jurisdiction, since the name of a legal practitioner was found on the face of the process.

The relevant fact of the Peak v. NDIC case is that the Notice of Appeal as noted on page 260 of the law report, was signed as follows:

> " (sgd)
>
> *F* Babajide Koku
>
> I.O. Iluyomade
>
> Appellants Solicitors
>
> Suit E.11
>
> Moloney-Lagos"

In this respect, the Court of Appeal found that:

> *"For a notice of appeal to be valid and proper it must be signed by the appellant....It is also as good if the legal practitioner representing him signs it. It is apparent on the face of the notice of appeal that Babajide Koku, the said solicitor to the appellant, did not sign the notice of appeal himself. It was shown that it was signed 'for', the solicitor by a person who neither indicated his name nor his designation. The question to be resolved is whether the notice of appeal signed for Babajide Koku and I.O. Iluyomade is valid."*

In answering the question, Mshelia JCA, recognised the Supreme Court's decisions in Okafor v. Nweke as well as *Ogundele v. Agiri*[18] and held on pages 261-262 that he is of the firm view that:

> *"any person signing process on behalf of a principal partner in the chambers must state his name and designation to show that he is a legal practitioner whose name is ascertainable in the roll of registered legal practitioners. This is to avoid a situation where a clerk, messenger or secretary would sign processes filed in court on behalf of principal partners in the chambers"*

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[17] [2011] 12 NWLR (Pt. 1261) 253. To be referred to as Peak v. NDIC

[18] [2009] 12 SC (Pt. 1) 135

In the circumstances of the case in Peak v. NDIC, the Court concluded that:

> *"A notice of appeal is an originating process which activates the jurisdiction of this court. Since the appellant's counsel decided to sign the notice of appeal on behalf of the appellant, he owes a duty to this client to do so properly. With the position taken by the Supreme Court in Okafor v. Nweke (supra) that processes must be signed by a legal practitioner known to law, that identity of the person who signed the notice of appeal on behalf of appellant's counsel is not irrelevant as contended by respondent's counsel. That relevance of the disclosure of the identity is to assist the court to confirm that the person who signed the document is a legal practitioner. It is my firm view therefore that the non-disclosure of the identity of the person who physically signed the notice of appeal on behalf of the appellant's counsel is not a mere irregularity as contended by respondent's counsel but a fundamental error. The notice of appeal under consideration is in the circumstance fundamentally defective and is liable to be struck out. Failure to properly initiate an appeal is beyond mere technicality. Since there is [no] valid notice of appeal to activate the jurisdiction of this court to determine the appeal on merit, same would be struck out for being incompetent."*

The High Court of Lagos State was also faced with a case similar to Peak v. NDIC. In the case of *Lab-Assist Nigeria Limited & Anor v. Sysmex Europe GmbH & Ors.*[19] The Writ of Summons dated 23 September 2009 and Statement of Claim dated 29 September 2009 have the following particulars:

> " (*sign*)
>
> *f*: Mr. M. I. Igbokwe, SAN
>
> Mike Igbokwe (SAN) & Co.
>
> Claimants' Counsel
>
> 61A, Mainland Way
>
> Dolphin Estate, Ikoyi
>
> Lagos"

[19] Suit No. LD/158/09

The name and designation of the individual whose signature was appended was not disclosed on any of the processes, but there was a name of a legal practitioner under the signature. This is in contrast with the provisions of Orders 6 Rule 1, 6 Rule 2(3) and 15(2) of the rules of the court [similar provisions with Orders 6 Rule 1, 6 Rule 2(3) and 15(2) of the High Court of Lagos State (Civil Procedure) Rules, 2004].

The question is whether the Writ of Summons and Statement of Claim signed "for" or "pp: [*per procurationem*]" Mr. M. I. Igbokwe, SAN was valid in view of the fact that the name and designation of the person that signed was not indicated. This is more so, as the counsel to the claimant argued that the writ of summons was signed by a person known to law, Mike Igbokwe SAN who is a Legal Practitioner.

In view of the requirement that court or arbitration processes must either be signed by the claimant or a legal practitioner, can a signature belonging to an undisclosed person be deemed to be that of a legal practitioner under Section 24 of the Legal Practitioners Act[20] (LPA)? Section 24 of the LPA defines a legal practitioner as:

> "*a person entitled in accordance with the provisions of this Act to practice as a barrister and solicitor either generally or for the purposes of any particular office or proceedings*"

It is important to note further that section 2(1) of the LPA provides that:

> "*subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if his name is on the roll*"

Following from the provisions of sections 2(1) and 24 of the LPA, a person unknown and unidentified cannot be deemed qualified as a legal practitioner to validly sign a court or arbitration process. This submission is in line with the decision of the Supreme Court in the case of Okafor v. Nweke (supra)[21], where Onnoghen JSC found that:

[20] Cap. L11. Laws of the Federation of Nigeria, 2004

[21] Supra, pp. 530-531

> *"However section 2(1) of the Legal Practitioners Act, cap 207 of the Laws of the Federation of Nigeria 1990 provides thus:- 'subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll.' From the above provision, it is clear that the person who is entitled to practice as a legal practitioner must have had his name on the roll. It does not say that his signature must be on the roll but his name.*
>
> *Section 24 of the Legal Practitioners Act defines a 'Legal Practitioner' to be: 'a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purpose of any particular office proceeding.' The combine effect of the above provisions is that for a person to be qualified to practice as a legal practitioner he must have his name in the roll otherwise he cannot engage in any form of legal practice in Nigeria. The question that follows is whether J.H.C. OKOLO SAN & CO is a legal practitioner recognized by the law."*

The question is "whether the signature of an undisclosed person should be recognised as one belonging to a legal practitioner on the roll and entitled to practice as such?" Just like the Supreme Court in Okafor v. Nweke's case where the Court answered that *"...it is very clear that the answer to that question is in the negative. In other words both senior counsel agree that J.H.C. OKOLO SAN & CO is not a legal practitioner and therefore cannot practice as such by say, filing process in the courts of this country"*, the question whether the unidentified signature on the Writ of Summons and Statement of Claim in this suit belongs to a legal practitioner, would be answered in the negative.

In the Sysmex case, Hon. Justice Phillip, CJ in her ruling held:

> *"I would have had no problem at all accepting that signature as that of Mr. Igbokwe SAN if not for the letter 'F' before the name thereunder which signifies to me that the person who signed these processes signed for and on behalf of the learned Silk of counsel for the Claimant herein. The name of this person does not appear on this process so I have no way of knowing whether he is a legal practitioner qualified to sign such process or not. I am therefore having great difficulty accepting that the learned Silk did indeed sign these processes.*

Ordinarily I would have taken this error as one that can be regularised especially as there is pending before me an application to amend the Originating Processes filed in this action but from the standpoint taken by the Supreme Court on this issue especially on the strict interpretation given to the above mentioned provisions of the Legal Practitioners Act it appears that this omission is not an irregularity that can be cured subsequent to the issue and service of these processes"

There is a possibility that the courts will move toward the question of validity of agreements franked by a law firm or signed "for" or "pp" by a legal practitioner without the disclosure of the identity of the person who signed the document. This is because where an instrument is prepared in relation to immovable property, relating to or with a view of the grant of probate or letters of administration, the question of the validity of the instrument may arise, particularly if it was prepared with expectation of reward, but without the disclosure of the identity of the legal practitioner. This is particularly so as a person who prepares such instrument with the expectation of reward will be liable to payment of fine or imprisonment if he is not a legal practitioner.[22] It is advised that the court should in this regard tread cautiously, as unthinkable and irreparable pain and injustice could be meted on parties to agreements where the agreements are declared invalid due to improper disclosure of the legal practitioner who sign the agreements.

Thoughts

One point to take away from the various decisions of the court is that practice of the law, must be as dictated by law and not according to the whims of any person or group of legal practitioners. Consequently, litigants and legal practitioners alike are required to adhere to the law and avoid over dependence on practice, particularly practice that is not borne out of or in tune with any statute or rules of court.

Having affected arbitration processes, there is a potential for letters and agreements signed in the names of law firms to be declared null where not properly

[22] Section 22(1)(d) of the Legal Practitioners Act

signed. Advisedly, lawyers should refrain from signing letters or franking agreements emanating from their offices in the names of the firms, but by identifiable and disclosed legal practitioners. This is particularly so, as the courts may take the crusade to all documents signed by lawyers with potentially adverse effects.

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