

SUPREME COURT OF NIGERIA

15TH JULY, 2005. SC. 58/2004

**CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE, I. L. KUTIGI,
A. O. EJIWUNMI, D. MUSDAPHER, I. C. PATS-ACHOLONU,
S. A. AKINTAN, JJSC**

CHARLES OKIKE APPELLANT
AND
THE LEGAL PRACTITIONERS
DISCIPLINARY COMMITTEE RESPONDENT
(No.2)

LEGAL PRACTITIONERS - Complaint against - How pursued under the law - Misconduct - Will lead to disbarment - Which is designed to protect the public - And be a punishment to the legal practitioner (H1)

LEGAL PRACTITIONERS - Disciplinary Tribunal - Complaint - On procedural process - Where appellant had the opportunity to complain in the proceedings before the respondent - But refused to do so - Complaint before the NBA Committee is late (H2)

PRACTICE & PROCEDURE - Disciplinary Tribunal - Legal Practitioners - Charges - Nature of - Where the allegation in the petition - Contains all the essential elements - It is not necessary - To make reference to particular breaches of the Rules (H3)

FAIR HEARING - Breach of - Cannot be raised - Where appellant deliberately decided to opt out of trial - When he had adequate information about hearing date (H4)

JURISDICTION - Legal Practitioners Disciplinary Committee - Has jurisdiction - To try matters - Where appellant is charged - For infamous conduct - Pertaining to the legal profession (H5)

FACTS

Before the Legal Practitioners Disciplinary Committee, the appellant, Mr. Charles Okike was to have his name struck off from the roll of legal practitioners. The appellant was further ordered to refund to his client, through the petitioner the sum of 123,000 Us Dollars, the money he misappropriated and refused to pay to his client. The matter started as a result of the petition written by Alhaji Salisu Mohammed addressed to the Chief Justice of Nigeria. The petitioner alleged that the appellant as a legal practitioner and representing a Japanese Company received a sum of N14,000,500.00 on behalf of his client, the Japanese company. The Chief Justice forwarded the petition to the President of NBA for investigation who in turn sent a copy of the petition to the appellant requesting him to furnish his response and forward it to the Nigerian Bar Association Disciplinary Committee. The NBA Disciplinary Committee found a prima facie case of misconduct against the appellant and wrote a letter to the secretary of the Legal Practitioners Disciplinary Committee.

The appellant thereafter wrote his response to the letter. He was ordered to appear before the Disciplinary Committee on several occasions but he failed to honour the summonses. The appellant habitually wrote on several occasions that the whole matter was a flaw procedure wise. The Disciplinary Committee after considering the unchallenged evidence before it, decided that the allegation of infamous conduct had been proved against the appellant and gave a direction that the appellant's name be struck out of the roll and that he refunds the sum of 123,000 Us dollars to the petitioner. Being dissatisfied, the appellant has now appealed to the Supreme Court.

ISSUES FOR DETERMINATION

“1. Whether the learned members of the Legal Practitioners Disciplinary Committee had jurisdiction to entertain the proceedings and give its directions of 3rd April, 2003, especially in view of the absence of any formal charges against the appellant, the questionable locus standi of the complainant, ALHAJI SALISU MOHAMMED which led to violations of the Evidence Act and the failure to comply with other conditions precedent to the exercise of their jurisdiction.

2. Whether in view of the entire circumstances surrounding the proceedings before the Legal Practitioners Disciplinary Committee, the appellant can be said to have been denied a fair hearing and the Legal Practitioners Disciplinary Committee said to have violated the appellant's right under Section 33(1) and (3) of the Constitution of the Republic of Nigeria."

HELD (Dismissing the appeal per **MUSDAPHER JSC**, Kutigi JSC Dissenting)

LEGAL PRACTITIONERS - Complaint against

1. Now it is, I think, a fair characterization of a legal practitioner's responsibilities in this country, that he stands as a "shield" in defence of right and to ward off wrong. In a profession charged with such responsibilities there must be exacted those qualities of truth speaking, of a high sense of honour, of the strictest observance of fiduciary responsibility; see *IN RE Edewor* (1968) All NLR226. It is by and large the profession itself through its appropriate agents and committees, as sifting agencies, that is to determine what infamous conduct will lead to the disbarment of a legal practitioner. See *In Re Idowu* (1971) 1 All NLR 126. Disbarment, designed to protect the public, is a punishment imposed on the legal practitioner. It is accordingly entitled to procedural due process as enshrined in the Legal Practitioners Act, as amended, and the Legal Practitioners (Disciplinary Committee) Rules, also as amended, and indeed the Constitution of the Federal Republic of Nigeria.

Now, by Rule 2A(1) a complaint by any person against a legal practitioner shall be forwarded in writing by the complainant or the person aggrieved to any of the listed persons. There is no doubt that Alhaji Salisu Mohammed duly put his complaint in writing to the Chief Justice of Nigeria and who endorsed the petition to the Chairman of the Nigerian Bar Association in accordance with the provisions of Rule 2 by virtue of which he "*caused the complaint to be investigated.*" The appellant contended that there was no investigation by the NBA's Committee, but that cannot be correct because in its letter dated 19/10/2001, earlier referred to in this judgment, the NBA wrote to the Secretary of the respondent in compliance

with the provisions of Rule 3 of the aforesaid rules that “..... *The committee duly considered all the available materials and felt satisfied that a prima facie case of misconduct was shown*”
(p. 2550 D)

B

Complaint - On procedural process

2. There is no provision in the rules that the NBA must inform the appellant how it went about its investigation, so long as the appellant was given an opportunity to defend the accusations made against him. In any event, what is on appeal before this court is the decision of the respondent and not the decision of the NBA or its Committee. Whatever procedural lapses that occurred before the NBA or its Committee is not an issue that this court can competently adjudicate upon. The appellant had the ample opportunity to complain in the proceedings before the respondent, but he refused to do so. It is now too late for him to complain about the procedural due process before the NBA Committee. Subveniunt Leges, Subveniunt Jura Succvrrit Lex. (The law assists those who are vigilant, not those who sleep!) (p. 2551 C)

E

Legal Practitioners - Charges - Nature of

3. The complaint that it was the Committee of the NBA that sent the report of the prima facie case to the secretary of the respondent and not the NBA itself cannot be justified having regard to the letter written on the NBA letter head at page 1 of the record of proceedings. Clearly there is no substance in this complaint. With reference to the question of a formal charge, there is no doubt that Rule 3 of the aforesaid Rules provides that:

“*In any case where in pursuance of Section 10(10) of the Act the NBA is of the opinion that a prima facie case is shown against a legal practitioner, the NBA shall forward a report of such a case to the secretary together with all the documents considered by the NBA, and a copy of the charges on which the NBA is of the opinion that a prima facie case is shown.*”

In my view, the word “charges” used under the rule does not mean and cannot mean formal charges in a criminal trial before a criminal court. Although proceedings under the Regulations are adversary proceedings,

they are not criminal in nature, they are at best quasi-criminal. Therefore, what needs to be known to the legal practitioner concerned is the substance of the allegation against him before the proceedings started. In this case, the appellant collected money for his client and instead of putting the money into a client's bank account, he misappropriated it with *animo furandi*, i.e., with intention of stealing it. The allegation is professional misconduct and not stealing or theft. The precise nature of the allegations against the appellant were communicated to the appellant, he was well aware of all the complaints against him. The appellant had fair notice of the allegations against him. Where the allegation contained in the petition before the disciplinary tribunal, as opposed to criminal tribunal, contains all the essential elements and enough information it is not necessary to make reference to particular breaches of the Rules as in a criminal case - See MDPDT if. Okonkwo (supra) and Idowu v. LPDC (1962) All NLR 128 - as it will be necessary in a criminal trial. In my humble opinion, the absence of a formal charge did not occasion any miscarriage of justice, the appellant was well aware of the complaint against him. He even admitted the complaint and asked for time within which to pay the client's money that he misappropriated. Courts and tribunals are enjoined to decide matters on the merits and should be wary of sacrificing justice on account of technicality. In the instant case the respondent based its decision or direction on the unchallenged and admitted evidence that the appellant, a legal practitioner, with intent to steal, deprived his client, a judgment creditor, the proceeds of judgment. The appellant not only admitted to the petitioner, Alhaji Salisu Mohammed, but also paid in part and promised to sell some of his properties to pay the balance. I also find no merit in this part of the complaint. (p. 2551 F)

FAIR HEARING - Breach of

4. On the other points raised in this issue, it is my view, that the appellant who was given ample opportunity to appear before disciplinary tribunal, but deliberately refused to do so, had waived all his rights of complaint against the procedural defects. The appellant deliberately decided to opt out of the trial when he had adequate information about the hearing date.

Indeed the matter had to be adjourned several times to enable the appellant appear to defend himself. It is too late for the appellant now to turn round to complain of want of fair hearing or raise the issue of the validity of the power of attorney or the locus of the petitioner. Indeed it is common ground that the appellant had dealings with the petitioner on this matter. I find no merit on issue No. 1 and I resolve it against the appellant.

Considering all the circumstances of the instant case, I cannot find any violation of the right of fair hearing meted out against the appellant As mentioned while discussing issue No. 1, the appellant voluntarily decided to opt out of his disciplinary trial. He has himself to blame for his failure to attend the proceedings. He was warned on several occasions that the proceedings might proceed in his absence, yet he refused to appear. In my view, the appellant has no mouth to claim that he was denied fair hearing. (pp. 2553 A / 2555 G)

JURISDICTION - Legal Practitioners Disciplinary Committee

5. Now, I think it is settled law that any person accused of a criminal offence must be tried in a “court of law” recognised for that purpose in the Constitution. No other tribunal, investigation panel, or committee will do. The respondent herein has no authority to try the appellant for the offence of misappropriation or theft under the Penal Code Law or the Criminal Code - Sofekun v. Akinyemi (supra). The argument of counsel for the appellant, that the respondent herein was exercising a criminal jurisdiction cannot be correct. The appellant was to appear before the respondent to answer a complaint of infamous conduct arising out of and pertaining to the legal profession and not as an ordinary criminal charge with the criminal offence of stealing or criminal misappropriation. In the former case the respondent has clearly the jurisdiction to entertain the matter. See In Re Idowu (1971) 1 All NLR 126. In any event, the respondent was established by law to exercise disciplinary jurisdiction over members of the legal profession (see Section 10 of the Legal Practitioners Act, as amended), the respondent never pretended to exercise ordinary criminal jurisdiction on the appellant and indeed has not done so. Most professions, if not all, provide in-house machinery to suspend or expel from practice a professional who does not

comply with professional standards; the bar is no exception. The central means by which the bar itself controls the conduct of legal practitioners and jealously guards its reputation for the maintenance of high professional standards is the application of disciplinary sanctions for infractions of its Code of Conduct. The direction by the respondent to disbar the appellant is a disciplinary measure and not a criminal punishment. But even though the respondent was merely concerned with disciplinary jurisdiction and not criminal, yet it must be guided by the principles of fair hearing as enshrined in the Constitution. (p. 2554 F)

NOTABLE POINTS OF INTEREST

UWAIS CJN

1. Charge against legal practitioner need not be formal

The respondent is a Committee of the Body of Benchers established pursuant to the provisions of Sections 10(1) (b) and 11 of the Act, Cap. 207. It can be seen that it is not the charge forwarded to the respondent that gives it jurisdiction to “try” a legal practitioner against whom a complaint is made, but Section 10(1)(b) of the Legal Practitioners Act.

I now return to the complaint that a formal charge was not forwarded to the respondent by the Disciplinary Committee of the Nigerian Bar Association. It is true that Rule 3 mentions a copy of a “charge” as one of the documents to be forwarded to the respondent. The word “charge” has been defined in Black’s Law Dictionary, Special Deluxe, 5th Edition, to mean “*an accusation*” and “*in criminal law, to indict or formally accuse.*” In my opinion, the procedure before the respondent is not the same as the trial before a criminal court where the accused is arraigned and his plea is taken to commence the trial. Nowhere in the Legal Practitioners (Disciplinary Committee) Rules is it stated that the proceedings before the Disciplinary Committee shall begin with the taking of a plea on the charge forwarded by the Nigerian Bar Association to it in the same manner as in a criminal proceeding. (p. 2557 E)

2. Issue of locus standi, and denial of fair hearing

As to the locus standi of the complainant I only need to draw attention to the provisions of Rule 2A which states that “*a complaint by any person against a legal practitioner shall be forwarded in writing.*” The rule does not state that the complainant must be the actual person offended or cheated. Therefore the complainant in this case is qualified and competent to make a complaint against the appellant in writing as he had done. It is immaterial whether he is a donee of the power of attorney.

I therefore see no merit in issue No. 1 by the appellant and it fails.

On the second issue for determination on whether the appellant was given a fair hearing by both the disciplinary committee of the Nigerian Bar association and the respondent, I am satisfied that the appellant amply knew before both Committees the nature of the complaint against him. He chose to avoid answering the complaint by raising technicalities in the manner he replied the Disciplinary Committee of the Nigerian Bar Association and ignoring the summons sent to him 7 times by the respondent. The procedure before the Disciplinary Committee of the Nigerian Bar Association does not require him to appear before the Committee because nowhere in Rule 2A(2) of the Legal Practitioners (Disciplinary Committee) Rules is the procedure for investigating any complaint is mentioned. Therefore the Committee is free to adopt any procedure it deems fit. In this case it chose to write the appellant for him to show cause why the complaint against him should not be referred to the respondent and the appellant responded in writing by his letter of 27th June, 2001. He therefore cannot complain that he was denied fair hearing by the Investigation Committee. (p. 2558 H)

KUTIGI JSC (Dissenting)

3. *No finding of guilt against appellant*

Starting from the judgment or ruling or direction of the respondent on page 44 of the record which I have reproduced above, it is evident as noted earlier that the respondent made no finding of “guilty” or “not guilty” against the appellant before proceeding to give its direction or sentence. Indeed there was no finding of any fact or thing in the ruling or direction, not to talk of the ingredients of the offence charged of which there was

none. The omission in my view is fatal. There was no finding because I believe in the first place there was no charge against the appellant.
(p. 2572 C)

4. How to prefer a valid charge of misconduct

The kind of charge required is in my view nothing more than a concise statement of the allegation of infamous conduct in a professional respect which the appellant or a legal practitioner has committed. There is clearly no charge on the printed record. The letter dated 19/10/2001 on page 1 of the record by Mr. Bandele Aiku, SAN., Chairman of NBA Disciplinary Committee set out above, cannot in my view amount to such a charge. It merely states that the Committee “felt satisfied that a prima facie case of misconduct was shown against the legal practitioner.” This is to say the least very vague. What kind of misconduct? Which acts constituted the misconduct? So what was the appellant supposed to defend? The letter of complainant/agent, Alhaji Salisu Mohammed, cannot also be elevated to the level of a charge. A complaint is a complaint only and not a charge envisaged by the law. And that is why it is necessary for the NBA Disciplinary Committee to have conducted a thorough investigation in the first place and draw up the charges.

The appellant could only have been validly charged and convicted of “*infamous conduct*” in a “*professional respect*”, being the only offence or charge permitted under the Legal Practitioners Act. He was never charged as such and therefore the respondent could not validly give any direction (see Sections 11 & 12 of the Legal Practitioners Act (as amended), and Rules 14 & 15 of the Legal Practitioners (Disciplinary Committee) Rules). These omissions to say the least are in my view fatal to the entire proceedings. They are at the root of the proceedings. They are the foundation pillars, if I may say so. (p. 2573 B)

5. Sentence/direction not founded on a judgment is a nullity

If I may go back to the judgment/ruling/direction of the respondent reproduced earlier, apart from making no finding of fact or anything at all, there is also nowhere in it where the respondent said it “*accepted*”

or “agreed with,” the evidence of the lone witness before it proceeded to pass its sentence or directives against the appellant. It appears that there is no judgment in this appeal, but only a sentence. The omission is fatal. I think bodies or committees like the respondent should never be allowed leisurely and without due process to terminate people’s lives or people’s means of livelihood without strict adherence to the rules of natural justice and the rule of law. The respondent, it appears to me, seemed to be more interested in getting the name of the appellant removed from the list of Legal Practitioners before satisfying itself that the appellant had misconducted himself, which could only have been demonstrated in a considered judgment. There is no such judgment on the printed record. Any direction or sentence not founded on a judgment is therefore a nullity and I so hold. (p. 2573 G)

D 6. *Jurisdiction - Condition precedent to - Unaddressed defences*

I am completely satisfied from the NBA Committee Chairman’s letter on page 1 of the record and reproduced above that none of the issues or defences raised by the appellant in his response letter was addressed by the NBA Committee, as none of them was referred to in their letter. Moreover, although the appellant’s response letter was before the respondent when it heard the case, no reference was made to it and consequently none of the defences raised therein nor the explanations offered therein were considered. A thorough investigation of a complaint to the N.B.A. Disciplinary Committee is a condition precedent to the exercise of jurisdiction by the respondent. It was not fulfilled. In fact the client/principal Mr. Kaihara never testified and there was no evidence that the appellant collected the judgment debt herein.

G It is settled that a court that lacks jurisdiction to entertain a suit is incompetent to pronounce a judgment in respect of any aspect of the case before it and the consequence of a court doing a case where it lacks jurisdiction is that the result is a nullity. So also is the case where the party bringing the complaint lacks the locus standi to lodge the complaint as in this case, the result is a nullity. (p. 2574 D)

H

7. *Fair hearing analyzed - Nature of charge against appellant*

The expression “*fair hearing*” which has been variously interpreted in numerous judgments in the common law countries does not require quantitative analysis. Fair hearing denotes and imports the concept and practice, speaking jurisprudentially, of a very fundamental tenet which behoves of the court, tribunal, or any quasi judicial body to conduct its affairs so transparently open that it accords all the parties involved in any B
disputation the opportunities of marshalling their case adroitly to their possible best so that a common man in the street can easily see and declare that the person affected has been freely allowed to put his case forward C
for consideration. You cannot complain of lack of fair hearing when you refused to co-operate.

There is also the question as to the nature of the charge against him not being laid. In legal parlance what indeed is a charge? It is indeed D
a denouement by which an authorized person or body invested by statute could lay a complaint against someone tending to show that an offence or some form of breach of law or ethics of the profession has been committed. It equally imports some elements of delinquency or inappropriate act E
which stigmatizes and renders one liable to be disciplined if proved. The characteristics or features of a charge do not lie in procedural formalism but rather in the contents of the unrighteous act being brought to the knowledge of the person so indicted in good, lucid and readily understandable F
English, as in the present case. (p. 2586 A)

8. *When court tribunal can act on one party's evidence*

The obdurate, stubborn, lackadaisical and offensive manner he treated the respondents who called on him many times to avail them of his own G
side of the story smacks of someone impervious to reason, unconcerned and unresponsive to the dictates of law and order. As you make your bed so you lie on it. It is a cardinal principle of our law that where evidence is given and some allegations are made against someone who has the H
opportunity of repudiating it but he chooses to ignore it or treat same with levity then the court or tribunal or whichever body that is seised of the proceedings would act on what it has in its possession. In the present case the respondents cannot be blamed for the decision they took having

regard to the unco-operative attitude of the appellant.

The behaviour of the appellant in not in anyway co-operating is difficult to understand as he knows or ought to know that any decision taken without this co-operation would damnify him and put him at a risk of severe punishment of some sort. (p. 2586 H)

AKINTAN JSC

9. *Fair hearing* - When *audi alteram partem* is not breached

The principle of fair hearing is not only a common law right, but also a constitutional right in Nigeria. It is specifically provided for in Section 36(1) of the 1999 Constitution. That subsection of the 1999 Constitution provides, inter alia, that in the determination of his civil rights and obligations, a person shall be entitled to a fair hearing within a reasonable time by a court or tribunal established by law and constituted in such a manner as to secure its independence and impartiality. There are a number of attributes which a trial must scale through before being regarded as complying with the fair hearing rule. One of such attributes relevant to the instant case is that expressed in the Latin maxim: *audi alteram partem*, that is, hear the other side. The allegation of the appellant is that he was not heard by the Disciplinary Committee.

The *audi alteram partem* rule is, however, not breached if the appellant was given adequate opportunity to appear and present his case or defence to the case made against him but he chose not to avail himself of the opportunity as in the instant case. The appellant can, therefore, not complain that he was denied a fair hearing by the Committee not hearing his defence in the case since he chose to stay away from the hearing. (p. 2591 D)

REPRESENTATION

Nelson Uzuegbu, for the Appellant.

Dele Oye, (with him, Marcel Osigbmhe and Prisca Okonkwo), for the respondent.

CASES REFERRED TO

LPDC v. Fawehinmi (supra) per Aniagolu, JSC., at p.381

Idowu v. LPDC (1962) All NLR 128

Omo v. JSC (2000) 7 S.C. (Pt. 11) 1; (2000) 12 NWLR (Pt. 682) 444.

Jonason Triangle Ltd v. C.M. and P Ltd (2002) 9.10 S.C. 153; (2002) 15 NWLR (Pt. 789) 176

Nuhu v. Ogele (2003) 12 S.C. (Pt. 1) 32; (2003) 16 NSCQLR 390

MDPTD v. Okonkwo (2001) 3 S.C. 76; (2001) 7 NWLR (Pt. 711) 206

WAEC v. Mbamalu (1992) 3 NWLR (Pt. 230) 481

Adigun v. A-G Oyo State (1987) 1 NWLR (Pt. 53) 678

Garba v. Unimaid (1986) All NLR 149 at 229

STATUTES & RULES REFERRED TO

Constitution of the Federal Republic of Nigeria, 1999 s. 36(2) & (3)

Evidence Act ss. 118 & 188

Legal Practitioners Act (as amended in 1994) ss. 10, 11, 12(7), 13(2), 112

Legal Practitioners Disciplinary Committee Rules, 1965 rr. 2A (2) & (3), 3, 6(3)7

LEAD JUDGMENT BY MUSDAPHER JSC

This is an appeal against the “*direction*” or decision of the Legal Practitioners Disciplinary Committee of the Body of Benchers established under Section 11 (1) of the Legal Practitioners Act, Cap. 207 as amended by Legal Practitioners (Amendment) Act No. 21 of 1994 and brought to this court in pursuance of Section 12(7) thereof. The “*direction*” was given by the Committee in its proceedings No. BB/DCNB/016 of 3rd April, 2003, whereby the appellant Mr. Charles Okike, was to have his name struck off from the Roll of Legal Practitioners. The appellant was further ordered to refund to his client, through the petitioner, the sum of 123,000 United States Dollars, the money he misappropriated and refused to pay to his client. The matter started as a result of the petition written by one Alhaji Salisu Mohammed dated the 27th September, 2000, addressed to the Chief Justice of Nigeria. The petitioner alleged that the appellant as a legal practitioner and representing a Japanese Company called KAIYOU SYSTEMS LTD misappropriated the sum of N14,500,000.00 which he received on behalf of his client. The petitioner claimed to be a donee of a

power of attorney granted by the Japanese company aforesaid empowering him to collect the money. The Chief Justice of Nigeria forwarded the petition to the President of the Nigerian Bar Association for investigation. In his letter dated the 21st day of May, 2001, the President of the Nigerian Bar Association sent a copy of the petition to the appellant requesting him to “furnish us with your written response to the allegation.” The response was to be forwarded direct to the Nigerian Bar Association Disciplinary Committee, “through its chairman, Chief Bandele Aiku, SAN.” The appellant was given 21 days within which to react to the allegations made against him. On the 27th June, 2001, the appellant made his responses to the allegations direct to the Chairman of the Nigerian Bar Association Disciplinary Committee.

In pursuance of Rule 2A (2) and Rule 3 of Legal Practitioners Disciplinary Committee Rules L.N. 69 of 1965 as amended by Section 117 of 1994, the Nigerian Bar Association Disciplinary Committee communicated its decision to the Secretary of the Legal Practitioners Disciplinary Committee, which had been established under Section 11(1) of the Legal Practitioners Act, as amended, aforesaid.

The Nigerian Bar Association Disciplinary Committee, after duly considering “all the available materials and felt satisfied that a prima facie case of misconduct” was established against the appellant, wrote a letter addressed to the Secretary of the Legal Practitioners Disciplinary Committee dated 19/10/1991 enclosing the petition and all the relevant materials it considered relevant in its deliberations. The Chief Justice of Nigeria was also sent copy of the letter so that he might “consider the need to exercise his power of suspension of the legal practitioner under Section 13(2) of Legal Practitioners Act”.

In its letter of 2nd May, 2002, the Legal Practitioners Disciplinary Committee, under its powers pursuant to Section 11(1) of the Legal Practitioners Act, as amended, summoned the appellant to appear before it from the 18th-20th days of June, 2002, when it would consider the petition laid against him. The Committee also enclosed a copy of the petition for the response of the appellant. The appellant on the 5th of June, 2002, addressed a letter to the Secretary of the Disciplinary Committee as follows:-

“RE: BB/DCNB/016 CHARLES OKIKE, ESQ

I humbly acknowledge receipt of a notice dated the 2nd day of May which was received on the 17th May, 2002, inviting me to respond and defend myself against allegations contained in the petition of one ALHAJI SALISU IBRAHIM MOHAMMED. A copy of the petition dated 27th September, 2000, and two of the petitions supporting documents were also received by me. B

I feel constrained to immediately point out only a few relevant facts as follows:-

1. That by a letter dated 2nd October, 2000, a copy of the said complaint was forwarded to the Nigerian Bar Association by the Chief Justice of Nigeria for investigation in accordance with relevant rules. C

2. That by a letter dated 21st May, 2001, the President of the Nigerian Bar Association asked me to respond to the allegations in the said petition as part of their investigative activities. A copy of the said petition was enclosed together with 8 supporting documents in contrast to the same petition you annexed to your notice which has only two supporting documents. D

3. That by a letter dated 27th June, 2001, I duly and effectively responded to the petition. Since your notice does not refer to or exhibit the report of the Nigerian Bar Association investigation, nor the charges in which the NBA is of the opinion that a prima facie case has been made, I must humbly ask; at whose report, on whose authority and on what grounds this complaint is being listed for hearing from the 18th to 20th June, 2002, by the Legal Practitioners Disciplinary Committee of the Body of Benchers? E F

I find the above anomalies even more disturbing and strange because in my response to the NBA investigation I stated quite clearly that the Power of Attorney on which the said ALHAJI SALISU IBRAHIM MOHAMMED based his petition is forged and that he does not have the permission or consent of my client, MR. KAIHARA of KAI-YOU SYSTEMS INC to present this petition or continue to harass or intimidate me in his name. G H

In the circumstances I would humbly ask that these obvious and serious substantive and procedural anomalies and irregularities be investigated and cleared up as soon as possible.

Thanks.

Yours faithfully

PP. Charles Okike & Associates.

Signed:

B *Charles C. Ikechi Okike”.*

The Secretary to the Committee, Mr. Maidama, replied the appellant’s above letter on the 8th of June, 2002, and informed the appellant that the “*appropriate place to raise*” the issues contained in the appellant’s aforesaid Setter “is before the Committee itself on the dates mentioned”.

C “*I would therefore advice you to appear before the Committee on those dates so that you could be able to raise them.*” The appellant was in all summoned to appear before the Disciplinary Committee, on seven different occasions to answer the complaints made against him, but the appellant

D failed to honour the summonses. On each occasion the appellant was invited to attend the sitting of the respondent’s committee, the appellant was duly informed and warned that his refusal to attend the respondent’s proceedings might result in the respondent proceeding to hear the petition against him in his absence as provided by Regulation 7 of the Legal Practitioners (Disciplinary Committee) Rules L.N. 69 of 1975, as amended by E S.I No. of 1994.

The appellant habitually would also write to acknowledge the receipt of the hearing notice, but would continue to state that the “whole F matter is fundamentally flawed substantively and procedurally”. The appellant would always question the competence of the Disciplinary Committee and also the bona fide of Alhaji Salisu Ibrahim Mohammed.

G The matter came before Disciplinary Committee for hearing of the petition on the 3rd of April. 2003, at the Court of Appeal premises, Abuja. After satisfying itself that the appellant was served and that the appellant “acknowledged the receipt of the hearing notice” and he wrote a letter in response to the Summons, the Committee admitted from the bar the appellant’s said letter dated 31/3/2003 as Exhibit “A” and the previous Hearing Notices as Exhibits B - B6 and also the appellant’s responses H to the Hearing Notices as Exhibits C to C6. In doing so the committee invoked the provisions of the aforesaid Regulation 7 and proceeded with the hearing of the matter. At the hearing, Alhaji Salisu Ibrahim Mohammed

was the only witness called. He testified and tendered Exhibit D - a copy of his petition referred to above; Exhibit E, the power of attorney granted him by Mr. Kaihara, Exhibit F, a letter to Kano Branch of the NBA and appellant's reply in response to the NBA Kano letter to Exhibit "G". The witness concluded his testimony thus:-

"The respondent (appellant herein) has since my appointment as Mr. Kaihara's attorney paid to me N70,000.00. The N70,000.00 was paid to me in three instalments. Respondent gave my representative to whom he paid directly a paper to sign for the amount paid. Mr. Kaihara wrote me a letter showing that I was appointed as attorney to collect money for him from his creditors (sic) (debtors) and withdrawing instructions previously given the respondent (letter received on evidence as Exhibit "H"). The judgment debt was N14.5million, the amount so far sent to Mr. Kaihara is N51,000.00 United States Dollars was remitted to Mr. Kaihara. The amount due to be paid to Mr. Kaihara is N123,000.00, United States Dollars. The respondent personally approached me pleading that I should allow him more time to pay as he had properties including generators to sell but he failed to pay or neglected to pay".

The Disciplinary Committee after considering the unchallenged evidence before it, both oral and documentary whereat the appellant admitted the allegation, decided that the allegation of infamous conduct in a professional respect had been proved against the appellant and gave a direction, to wit-

"(a) Ordering the registrar to strike the appellant's name off the roll; and

(b) Ordering the appellant to refund the sum of N 123,000 United State Dollars to the complainant petitioners".

It is against this direction aforesaid that the appellant has now appealed to the Supreme Court under the provisions of Section 12(7) of the Legal Practitioners Act as amended.

The Notice of Appeal contains 10 grounds of appeal:-

1. The learned members of the Legal Practitioners Disciplinary Committee erred in law when they failed to resolve or address the issue of the substantial and fundamental procedural irregularities raised by the

applicant which affected their jurisdiction to hear the proceedings.

PARTICULARS

a. The appellant wrote several letters to the respondent complaining of fundamental, procedural and substantive errors in the process by which the proceedings were initiated.

b. The right to question a jurisdictional defect cannot be defeated by the procedure adopted to do so.

c. The appellant was denied a fair hearing by the failure of the committee to resolve the issue of jurisdiction one way or the other.

2. The learned members of the Legal Practitioners Disciplinary Committee erred in law when they exercised jurisdiction in proceedings where the complainant, ALHAJI SALISU MOHAMMED, had no locus standi to seek the reliefs he was given.

PARTICULARS

a. The alleged Power of Attorney on which the complainant stated he was basing his allegations against the appellant was not authenticated or attested to in any way by a notary public or other necessary person.

b. Neither the respondent herein nor the NBA

Disciplinary Committee adverted their minds to nor investigated the appellant's argument that the said Power of Attorney was forged.

c. The complainant, ALHAJI SALISU MOHAMMED, purported to bring the proceedings on behalf of a disclosed principal, KAI-YOU SYSTEMS INC, but the respondent ordered the refund of the sum of USD 123,000 to the complainant and not KAI-YOU SYSTEMS INC.

d. There was no evidence of any agreement to pay United States Dollars to either the complainant or Kai-You Systems Inc. in respect of an alleged judgment debt denominated in naira.

e. The alleged Power of Attorney did not relate to the bringing of disciplinary proceedings against the appellant before the respondent.

3. The learned members of the Legal Practitioners Disciplinary Committee erred in law in exercising jurisdiction to strike the name of the appellant from the Roll of Legal Practitioners.

PARTICULARS

a. At no time were any formal charges drawn up and served on

the appellant accusing him of being 40
guilty of infamous conduct in any professional respect.

b. The Committee did not make any finding or adjudge the appellant to be guilty of infamous conduct in any professional respect before purporting to strike his name from the Roll of Legal Practitioners. B

c. At no time did any notice issued by the respondent and served on the appellant disclose that the proceedings pending before them were between NBA v. Charles Okike, Esq.

d. At no time was the appellant informed that as a result of the proceedings before the respondent he may be liable to be punished under Section 12(1)(c)(i) Legal Practitioners Act by having his name struck from the Roll of Legal Practitioners. C

4. The learned members of the Legal Practitioners Disciplinary Committee erred in law when they failed to satisfy themselves that the conditions precedent to the exercise of their jurisdiction were complied with and thus denied the appellant a fair hearing. D

PARTICULARS

a. There was no report or proper report of the NBA investigation of the allegation against the appellant by the complainant, ALHAJI SALISU MOHAMMED, tendered before the respondent or served on the appellant. E

b. There was no evidence of any decision by the NBA to present a complaint against the appellant to the respondent committee. F

c. There was no evidence that the NBA conducted an investigation into the allegations against the appellant involving the tendering of documents and making of statements under Oath or the cross-examination of witnesses, or when, where, and by whom such investigation was conducted. G

d. The appellant had complained continuously for several months about the substantial procedural irregularities.

e. No proper notice was served on the appellant in respect of the proceedings of 3/4/03. H

5. The learned members of the Legal Practitioners Disciplinary Committee erred in law when they purported to act on the oral allegation of the complainant of the existence of a judgment debt of N 14.5 million in favour of KAI-YOU SYSTEMS INC, in violation of Section 132(1)

of the Evidence Act.

PARTICULARS

a. The provisions of the Evidence Act apply in proceedings before the respondent Committee as they do in civil proceedings.

B b. The complainant has no locus standi to tender documents or refer to matters involving KAI-YOU SYSTEMS INC. when the complaint was not brought in its name.

C 6. The initiation and conduction of proceedings before the respondent Committee as presently established amounts and amounted to a violation of Section 36(3) of the 1999 Constitution of the Federal Republic of Nigeria and a denial of the appellant's rights to fair-hearing in the determination of his civil rights and obligations.

PARTICULARS

D a. Rule 12 of the Legal Practitioners (Disciplinary Committee) Rules, as amended, directs that the Respondent Committee's proceedings should be held in private.

b. The proceedings of the respondent Committee were in fact held in private.

E c. The basis of the proceedings before the respondent Committee was for the recovery of an alleged debt owed to KAI-YOU SYSTEMS INC.

F 7. The learned members of the Legal Practitioners Disciplinary Committee erred in law in initiating proceedings based on the alleged findings of the NBA Disciplinary Committee that a prima facie case had been established against the appellant.

PARTICULARS

G a. The NBA Disciplinary Committee is not a court or Tribunal established by law or the Constitution.

b. In purporting to investigate the allegations against the appellant the NBA Disciplinary Committee did not act as a Court or Tribunal thus denying the appellant a fair hearing.

H c. The NBA Disciplinary Committee has no power or authority to make a finding of a prima facie case against the appellant, since same is a judicial or quasi-judicial determination outside its powers to give.

d. There was no evidence that the NBA executive considered any report by the NBA Disciplinary Committee or was involved in submitting the case to the respondent.

8. The appellant was denied a fair hearing by the Legal Practitioners Disciplinary Committee which showed malice and bias both during and after the proceedings. B

PARTICULARS

a. The alleged NBA report was not sent by the respondent to the appellant for 10 months in spite of repeated demands.

b. The allegations of the appellant were not resolved or addressed by the respondent Committee. C

c. The publication in various Newspapers of the Notice of its proceedings of October 21st and 22nd, after its direction of 3rd April, 2003 and in violation of Rule 12 of its own Rules is malicious and biased as it shows the respondent was the prosecutor rather than the NBA. D

d. The respondent Committee deliberately refused to serve the appellant with official notification of its directions of 3rd April, 2003, until same had been announced on NTA Network News of 28th January, 2004, and given wide publicity in January and February, 2004, (10 months later) through the publication of same in the Punch, Vanguard and THIS DAY Newspapers of 5th, 6th and 10th February, 2004, respectively. E

e. The appellant never wrote to the respondent Committee saying that he would not attend their sitting. F

f. There is no evidence that the complainant was ever present except on 3rd April, 2003.

g. The appellant was given only 7 days notice of the proceedings of 3rd April, 2003. G

9. The learned members of the Legal Practitioners Disciplinary Committee erred in law in entertaining these proceedings against the appellant when the primary claim was for the recovery of an alleged debt.

PARTICULARS

a. The determination of whether the appellant is owing money involves a determination of his civil rights and obligations which in accordance with Section 36(1) & (3) of the 1999 Constitution must be H

entertained in a court of law or tribunal established by law and constituted in such a manner as to secure its independence and impartiality and whose proceedings are held in public.

B b. Neither the respondent nor the NBA Disciplinary Committee is such a Court or Tribunal contemplated by Section 36(1) and (3) of the 1999 Constitution of the Federal Republic of Nigeria.

C c. The stated purpose of the alleged Power of Attorney granted to the complainant, ALHAJI SALISU MOHAMMED, is for the recovery of monies allegedly owed to KAI-YOU SYSTEMS INC. by the appellant and not for the purpose of disbaring the appellant.

10. The learned members of the Legal Practitioners Disciplinary Committee erred in law when they assumed jurisdiction to entertain proceedings in which the allegations against the appellant is that he misappropriated a client's funds.

D PARTICULARS

a. The complainant's allegations amount to an allegation of a criminal offence by the appellant under the Penal Code Law.

E b. Neither the respondent nor the NBA Disciplinary Committee is a criminal court established for the trial of the offence of misappropriation.

c. The appellant was not and had not been convicted in a court of law established by or pursuant to the Constitution of the offence of misappropriation.

F In pursuance of the provisions of the Rules of this court, briefs of argument were filed and exchanged. At the hearing of the appeal, learned counsel for the parties relied on the submission canvassed in their respective written briefs of argument. In his brief for the appellant, the learned counsel identified, formulated and submitted two issues for the determination of the appeal. The issues are:-

G *"1. Whether the learned members of the Legal Practitioners Disciplinary Committee had jurisdiction to entertain the proceedings and give its directions of 3rd April, 2003, especially in view of the absence of any formal charges against the appellant, the questionable locus standi of the complainant, ALHAJI SALISU MOHAMMED which led to viola-*
H *tions of the Evidence Act and the failure to comply with other conditions*

precedent to the exercise of their jurisdiction.

2. Whether in view of the entire circumstances surrounding the proceedings before the Legal Practitioners Disciplinary Committee, the appellant can be said to have been denied a fair hearing and the Legal Practitioners Disciplinary Committee said to have violated the appellant's right under Section 33(1) and (3) of the Constitution of the Republic of Nigeria."

The respondent's counsel, in its brief, has formulated more or less the same issues.

The learned counsel for the appellant, when arguing issue No. 1, attacked the decision of the Disciplinary Committee on five points.

1. It is argued that under the Legal Practitioners Disciplinary Committee Rules as amended, there must be proper investigation by the Nigerian Bar Association. See Rules 2A(2) and 3, and also Section 112(e) of the Legal Practitioners Act as amended. It is argued that since the NBA's investigation is to ascertain whether a prima facie case is made out or not, the rules of natural justice must apply vide *LPDC v. Fawehinmi* (1985) 2 NWLR (Pt. 7) 300 at 381. It is further submitted that after the appellant had responded in writing to the NBA's Committee, he heard nothing from them and the appellant was not informed when or how a prima facie case was made out against him. The appellant was not given the opportunity to explain his own side of the story. See *Garba v. Unimaid* (1986) All NLR 149. at 229. It is alleged that the hearing before the Disciplinary Committee was conducted in breach of fair hearing. It is further submitted that the proceedings before the NBA Disciplinary Committee was also conducted in breach of the principle of fair hearing.

2. It is further submitted that there was a procedural lapse when the NBA Disciplinary Committee directly reported to the respondent Committee instead of the NBA when it found a prima facie case made against the appellant. In the instant case, there was no input from the NBA Executive Committee that there was a prima facie case against the appellant. Learned counsel referred to *LPDC v. Gani Fawehinmi supra*. *A.G. Of Bendel State v. A.G. Of The Federation & 22 Ors.* (1981) 10 S.C. (Reprint) 1; (1981) All NLR 85.

3. It is also argued that by Rule 3 of the Legal Practitioners Dis-

disciplinary Committee Rules, the documents to be forwarded to the respondents Committee by the NBA must include “..... *a copy of the charge on which the NBA is of the opinion that a prima facie case is shown.*” It is submitted that there can be no trial of a legal practitioner for professional misconduct unless charges are framed and served on him. See LPDC v. Fawehinmi supra at 339 see also Medical And Dental Practitioners Disciplinary Tribunal v. Okonkwo (2001) 3 SCNJ 186, where this court held that there should be a charge which discloses the essential elements of the offence. The failure of the appellant to attend proceedings before the respondent was partly informed by the appellant complaining that no charges had been framed or served on him. It is submitted that Rule 6(2) of the aforesaid rules provides “..... *or in the case of the legal practitioner against whom charges have been brought*” It is argued that by not hearing the proceedings based on formal charges brought by the NBA, or ensuring that formal charges had been served on the appellant, the respondent Committee had acted without jurisdiction since a condition precedent was not complied with.

4. It is submitted that by Rule 6(3) of the aforesaid Rules when the appellant was served with the Hearing Notice dated 20th of March 2003, the appellant in his letter of 31st March, 2003, clearly stated he was not given 30 days notice of the hearing. It is submitted that there was no proper notice of the hearing of the petition against the appellant.

5. Under this head, the appellant is doubting the genuineness of the Power of Attorney granted to the petitioner, Alhaji Salisu Mohammed. In any event, it is further argued that the donee of Power of Authority has no authority to sue in his own name but in the name of the donor. See Vulcan Gases v. Gesellschafty (2001) 5 SCNJ 55. United Nigeria Co. Ltd. v. Nahman And Ors. (2000) 9 NWLR (Pt. 671) 117 where it was confirmed that it was wrong for an agent to sue in his name but can only sue in the name of the principal. The learned counsel for the appellant submitted that Alhaji Salisu Mohammed had no locus to present the petition. The alleged power of attorney was not executed before a Notary Public or in any way authenticated vide Section 118 of the Evidence Act.

The respondent’s counsel, on the other hand, argued the appel-

lant's first issue as his second issue. It is submitted that the appellant's complaint on the preliminary investigation and report by the Committee of the Nigerian Bar Association is unfounded and is lacking in substance. It is submitted that the appellant was accorded fair hearing before the NBAs Committee. It is submitted, that the procedural standard by which the petition was brought before the NBA's Committee is the same standard by which the NBA's Committee secured the appellant's response. It is submitted that hearing of parties to a dispute need not be oral, it could be by written document whether by way of explanation and accusation so long as both sides are given the same mode of hearing. See WAEC v. Mbamalu (1992) 3 NWLR (Pt. 230) 481; Adigun v. A-G Oyo State (1987) 1 NWLR (Pt. 53) 678. What is required to constitute a fair trial is that a fair and equal opportunity is given to the parties to correct or contradict any information upon which a decision might be reached. Baba v. NCATC (1991) 5 NWLR (Pt. 192) 388. Board of Education v. Rice (1911) AC 179.

With respect to the complaint on the "*charges*" it is submitted that a copy of the NBA Disciplinary Committee Report with all the relevant papers containing the entirety of the allegations were forwarded to the appellant. This is the practice of the respondent and the appellant was given the opportunity to appear before the respondent and make any representation in his defence to the allegations. It is submitted that the Rules of the Legal Practitioners Disciplinary Committee do not envisage the drafting of a formal charge so long as the allegation constitutes sufficient particulars of breach of duty by a Legal Practitioner to his client in Rules 49(a) and (b) of the Rules of Professional Conduct, which if proved would constitute an infamous conduct under Section 12 of the Legal Practitioners Act as amended. See MDPTD v. Okonkwo (2001) 3 S.C. 76; (2001) 7 NWLR (Pt. 711) 206; Idowu v. LPDC (1962) All NLR 128. It is again submitted that the appellant cannot complain as there was no breach of fair hearing and the appellant was well aware of the allegations against him.

On the issue of Power of Attorney and the locus standi of the Alhaji Salisu Mohammed, the learned counsel for the respondent firstly submits that under Section 183 of the Evidence Act there is the presumption that a Power of Attorney is properly executed and authenticated by a Notary Public. The appellant did not appear at the hearing to raise the

complaint. It is now too late for him to do so. It is further submitted that there is uncontradicted evidence that the appellant in pursuance of the power of attorney had paid the sum of N70,000.00 to the said Alhaji Salisu Mohammed.

B Now it is, I think, a fair characterization of a legal practitioner's responsibilities in this country, that he stands as a "shield" in defence of right and to ward off wrong. In a profession charged with such responsibilities there must be exacted those qualities of truth speaking, of a high sense of honour, of the strictest observance
C of fiduciary responsibility; see IN RE Edewor (1968) All NLR 226. It is by and large the profession itself through its appropriate agents and committees, as sifting agencies, that is to determine what infamous conduct will lead to the disbarment of a legal practitioner. See
D In Re Idowu (1971) 1 All NLR 126. Disbarment, designed to protect the public, is a punishment imposed on the legal practitioner. It is accordingly entitled to procedural due process as enshrined in the Legal Practitioners Act, as amended, and the Legal Practitioners (Disciplinary Committee) Rules, also as amended, and indeed the
E Constitution of the Federal Republic of Nigeria.

Now, by Rule 2A(1) a complaint by any person against a legal practitioner shall be forwarded in writing by the complainant or the person aggrieved to any of the listed persons. There is no doubt that
F Alhaji Salisu Mohammed duly put his complaint in writing to the Chief Justice of Nigeria and who endorsed the petition to the Chairman of the Nigerian Bar Association in accordance with the provisions of Rule 2 by virtue of which he "*caused the complaint to be investigated.*" The appellant contended that there was no investigation by the NBA's
G Committee, but that cannot be correct because in its letter dated 19/10/2001, earlier referred to in this judgment, the NBA wrote to the Secretary of the respondent in compliance with the provisions of Rule 3 of the aforesaid rules that "*..... The committee duly considered all the available materials and felt satisfied that a prima facie case of misconduct was shown*"

H There is no provision in the rules that the NBA must inform the appellant how it went about its investigation, so long as the appel-

lant was given an opportunity to defend the accusations made against him. In any event, what is on appeal before this court is the decision of the respondent and not the decision of the NBA or its Committee. Whatever procedural lapses that occurred before the NBA or its Committee is not an issue that this court can competently adjudicate upon. The appellant had the ample opportunity to complain in the proceedings before the respondent, but he refused to do so. It is now too late for him to complain about the procedural due process before the NBA Committee. Subveniunt Leges, Subveniunt Jura Succvrrit Lex. (The law assists those who are vigilant, not those who sleep!) C

The complaint that it was the Committee of the NBA that sent the report of the prima facie case to the secretary of the respondent and not the NBA itself cannot be justified having regard to the letter written on the NBA letter head at page 1 of the record of proceedings. D Clearly there is no substance in this complaint. With reference to the question of a formal charge, there is no doubt that Rule 3 of the aforesaid Rules provides that:

“In any case where in pursuance of Section 10(10) of the Act the NBA is of the opinion that a prima facie case is shown against a legal practitioner, the NBA shall forward a report of such a case to the secretary together with all the documents considered by the NBA, and a copy of the charges on which the NBA is of the opinion that a prima facie case is shown.” E F

In my view, the word “charges” used under the rule does not mean and cannot mean formal charges in a criminal trial before a criminal court. Although proceedings under the Regulations are adversary proceedings, they are not criminal in nature, they are at best quasi-criminal. Therefore, what needs to be known to the legal practitioner concerned is the substance of the allegation against him before the proceedings started. In this case, the appellant collected money for his client and instead of putting the money into a client’s bank account, he misappropriated it with animus furandi, i.e., with intention of stealing it. The allegation is professional misconduct and not stealing or theft. The precise nature of the allegations against the appellant were communicated to the appellant, he was well aware of G H

all the complaints against him. The appellant had fair notice of the allegations against him. Where the allegation contained in the petition before the disciplinary tribunal, as opposed to criminal tribunal, contains all the essential elements and enough information it is not necessary to make reference to particular breaches of the Rules as in a criminal case - See MDPDT v. Okonkwo (supra) and Idowu v. LPDC (1962) All NLR 128 - as it will be necessary in a criminal trial. In my humble opinion, the absence of a formal charge did not occasion any miscarriage of justice, the appellant was well aware of the complaint against him. He even admitted the complaint and asked for time within which to pay the client's money that he misappropriated. Courts and tribunals are enjoined to decide matters on the merits and should be wary of sacrificing justice on account of technicality. In the instant case the respondent based its decision or direction on the unchallenged and admitted evidence that the appellant, a legal practitioner, with intent to steal, deprived his client, a judgment creditor, the proceeds of judgment. The appellant not only admitted to the petitioner, Alhaji Salisu Mohammed, but also paid in part and promised to sell some of his properties to pay the balance. I also find no merit in this part of the complaint.

On the other points raised in this issue, it is my view, that the appellant who was given ample opportunity to appear before disciplinary tribunal, but deliberately refused to do so, had waived all his rights of complaint against the procedural defects. The appellant deliberately decided to opt out of the trial when he had adequate information about the hearing date. Indeed the matter had to be adjourned several times to enable the appellant appear to defend himself. It is too late for the appellant now to turn round to complain of want of fair hearing or raise the issue of the validity of the power of attorney or the locus of the petitioner. Indeed it is common ground that the appellant had dealings with the petitioner on this matter. I find no merit on issue No. 1 and I resolve it against the appellant. Issue 2 deals with the complaint by the appellant that he was denied fair hearing by the respondent and that his guaranteed rights under Section 33(1) and (3) of

the Constitution have been violated. It is submitted that in proceedings of this nature, the issue of fair hearing is paramount as held in the case of LPDC v. Fawehinmi (supra). It is submitted that the appellant wrote several letters complaining about substantial issues of jurisdiction, the respondent Committee ignored all these letters and instead of addressing the issues raised, the respondent said appellant would not appear before it. It is submitted that where the issue of jurisdiction is raised, it must first of all be considered before anything else. Learned counsel referred to Galadima v. Tambai (2000) 6 S.C. (Pt. I) 196; (2000) 6 SCNJ 190; Nuhu v. Ogele (2003) 12 S.C. (Pt. 1) 32; (2003) 16 NSCLR 390. The appellant further argues that so far as the allegations against the appellant amounts to the admission of a criminal offence then the respondent committee has no jurisdiction to entertain a complaint of misappropriation under the Penal Code. Learned counsel referred to Denloye v. MDPDC (1968) 1 All NLR 135; Garba and Ors. v. University of Maiduguri (supra) the case should have been heard by a criminal court. It is also submitted that the proceedings before the respondent were held in “*private*” while the Constitution provides under Section 36(3) such proceedings should be held in public. It is argued that the proceedings were rendered null and void. Learned counsel referred to the case of Menakaya v. Menakaya (2001) 9-10 S.C. 1; (2001) 9 SCNJ 1, see also Nuhu v. Ogele (supra). It is further submitted that there “was clear evidence of bias and malice” during the proceedings before the respondent committee contrary to Section 36(1) of the Constitution: See Kenon v. Tekam (2001) 7 S.C. (Pt. III) 49; (2001) 7 SCNJ 620 where at page 634 - 635, this court showed how to determine whether a court or tribunal was guilty of bias. Learned counsel gave instances of bias when the tribunal or the secretary refused to answer his complaints in the letters he wrote in response to the hearing notices.

The learned counsel for the respondent on the other hand argued that the appellant was accorded all the essentials of procedural and substantive due process. It is argued that the record of proceedings profoundly shows that the appellant was given sufficient opportunities to present his response to the petition alleging professional misconduct against him. The appellant contemptuously and vainly failed to respond to the hearing notices sent to

him. Within a period of 6 months, the appellant was invited to attend the sitting of the respondent on 7 different occasions, but he failed to honour any. Learned counsel relied on *R. v. Hendon Rural District Council Ex.P Charley* (1993) 2 KB 696; *Omo v. JSC* (2000) 7 S.C. (Pt. 11) 1; (2000) B 12 NWLR (Pt. 682) 444; *Jonason Triangle Ltd v. C.M. and P Ltd* (2002) 9-10 S.C. 153; (2002) 15 NWLR (Pt. 789) 176.

Now, I think it is settled law that any person accused of a criminal offence must be tried in a “court of law” recognised for that purpose in the Constitution. No other tribunal, investigation panel, or C committee will do. The respondent herein has no authority to try the appellant for the offence of misappropriation or theft under the Penal Code Law or the Criminal Code Sofekun v. Akinyemi (supra). The argument of counsel for the appellant, that the respondent herein was D to appear before the respondent to answer a complaint of infamous conduct arising out of and pertaining to the legal profession and not as an ordinary criminal charge with the criminal offence of stealing or criminal misappropriation. In the former case the respondent has E clearly the jurisdiction to entertain the matter. See *In Re Idowu* (1971) 1 All NLR 126. In any event, the respondent was established by law to exercise disciplinary jurisdiction over members of the legal profession (see Section 10 of the Legal Practitioners Act, as amended), the F respondent never pretended to exercise ordinary criminal jurisdiction on the appellant and indeed has not done so. Most professions, if not all, provide in-house machinery to suspend or expel from practice a professional who does not comply with professional standards; the bar is no exception. The central means by which the bar itself controls G the conduct of legal practitioners and jealously guards its reputation for the maintenance of high professional standards is the application of disciplinary sanctions for infractions of its Code of Conduct. The direction by the respondent to disbar the appellant is a disciplinary measure and not a criminal punishment. But even though the H respondent was merely concerned with disciplinary jurisdiction and not criminal, yet it must be guided by the principles of fair hearing

as enshrined in the Constitution. See LPDC v. Fawehinmi (supra) per Aniagolu, JSC., at p.381.

“In the instant appeal, the civil rights and obligations of a legal practitioner in the practice of that profession are called in for questioning and determination by the Legal Practitioners Disciplinary Committee. Section 33(1) of the Constitution, in my view, applies to the proceedings in that determination, the Legal Practitioners Disciplinary Committee comes in as a “tribunal” envisaged by that subsection of Section 33 in those proceedings.”

Considering all the circumstances of the instant case, I cannot find any violation of the right of fair hearing meted out against the appellant. As mentioned while discussing issue No. 1, the appellant voluntarily decided to opt out of his disciplinary trial. He has himself to blame for his failure to attend the proceedings. He was warned on several occasions that the proceedings might proceed in his absence, yet he refused to appear. In my view, the appellant has no mouth to claim that he was denied fair hearing.

The other complaints of the appellant are merely speculative as there is no shred of evidence to support the allegations of any bias against the members of the tribunal. A tribunal that has the duty of hearing a disciplinary complaint against a member of the profession relating to the question whether he was guilty of an infamous conduct cannot be said to be partial merely because the appellant wanted it to answer some questions before he answers its summons and has refused to do so. I find no merit in this issue. It is resolved against the appellant.

In the result, the two issues having been resolved against the appellant, this appeal fails and is dismissed by me.

UWAIS CJN

I have had the advantage of reading in draft the judgment read by my learned brother, Musdapher JSC I agree with him that this appeal is devoid of merit.

The first issue for determination, formulated by the appellant, is whether the respondent had the jurisdiction to entertain the complaint from the Disciplinary Committee of the Nigerian Bar Association, having regard to the fact that the Disciplinary Committee did not forward a formal charge to the respondent. Rule 2A sub-rule(2) of the Legal Practitioners (Disciplinary Committee) Rules, as amended by Statutory Instrument No. 17 of 1994, provides as follows:-

“(2) A complaint received by any of the persons specified in sub-rule (1) of this rule shall be forwarded to the Nigerian Bar Association which shall cause the complaint to be investigated,”

The complaint in this case was received by me and I forwarded it to the President of the Nigerian Bar Association (NBA) as enjoined by the rule. The latter forwarded the complaint to the Disciplinary Committee of the Nigerian Bar Association for the purpose of investigation. Rule 3 of the aforementioned Rules provides:-

“3. In any case where in pursuance of Section 10(1) of the (Legal Practitioners) Act, the Nigerian Bar Association is of the opinion that a prima facie case is shown against a legal practitioner, the Nigerian Bar Association shall forward a report of such a case to the Secretary together with all the documents considered by the Nigerian Bar Association and a copy of the charges on which the Nigerian Bar Association is of the opinion that a prima facie case is shown.”

Section 10(1) (b) of the Legal Practitioners Act, Cap. 207, which is the provision relevant to Rule 3, states:-

“10. (1) The Body of Benchers shall be responsible for -

(b) the exercise of disciplinary jurisdiction over members of the legal profession and over students seeking to become legal practitioners.” and Section 11(1) provides:-

“11.(1) There shall be a committee of the Body of Benchers to be known as the Legal Practitioners Disciplinary Committee (in this Act referred to as “the disciplinary committee”) which shall be charged with the duty of considering and determining any case where it is alleged that a person who is a member of the legal profession has misbehaved in his capacity as such or should for any other reason be the subject of proceed-

ings under this Act.”

The respondent is a Committee of the Body of Benchers established pursuant to the provisions of Sections 10(1) (b) and 11 of the Act, Cap. 207. It can be seen that it is not the charge forwarded to the respondent that gives it jurisdiction to “try” a legal practitioner against whom a complaint is made, but Section 10(1)(b) of the Legal Practitioners Act. B

I now return to the complaint that a formal charge was not forwarded to the respondent by the Disciplinary Committee of the Nigerian Bar Association. It is true that Rule 3 mentions a copy of a “charge” as one of the documents to be forwarded to the respondent. The word “charge” C has been defined in Black’s Law Dictionary, Special Deluxe, 5th Edition, to mean “an accusation” and “in criminal law, to indict or formally accuse.” In my opinion, the procedure before the respondent is not the same as the trial before a criminal court where the accused is arraigned and his plea is taken to commence the trial. Nowhere in the Legal Practitioners (Disciplinary Committee) Rules is it stated that the proceedings before the Disciplinary Committee shall begin with the taking of a plea on the charge D forwarded by the Nigerian Bar Association to it in the same manner as in a criminal proceeding. As a matter of fact, the following provisions of E Rules 4, 7, 8, 9(2) make it clear that the proceedings before the respondent, apart from the absence of plea taking, are different from those in a criminal proceedings:-

“4. (1) In addition to the person against whom proceedings are brought, the complainant shall also be a party to the proceedings as well F as anybody else considered by the Chairman of the Disciplinary Committee to have an interest in the proceedings.

(2) Every party to the proceedings shall be entitled to be heard by the Disciplinary Committee either personal’ or through counsel of his choice.” G

“7. If any party fails to appear at the hearing, may within one calendar month from the pronouncement of the findings and direction of the Disciplinary Committee and upon giving notice to every other party H and to the Secretary, apply to the Disciplinary Committee for a rehearing and the Disciplinary Committee, if satisfied that it is just that the case such terms as to costs or otherwise as it deems fit.”

“9. (2) In all proceedings before the Disciplinary Committee, the provisions of the Evidence Act shall apply, as they do in civil proceedings.”

In determining whether a “charge” had been forwarded by the Nigerian Bar Association to the respondent, one needs only to allude to the first paragraph of the letter dated 19th October, 2001, which was sent to the Secretary of the respondent by the Chairman of the Nigerian Bar Association Disciplinary Committee, Mr. Bandele A. Aiku, SAN. It reads:-

“The complaint of misconduct against the above named (Charles Okike, Esq.) legal practitioner, contained in a petition of Alhaji Salisu Ibrahim Mohammed dated 27th September, 2000, is that: Charles Okike, as legal practitioner for Kaiyou Systems Inc., a Japanese Company, collected judgment debt in the sum of N 14,500,000.00 but failed to account in full to his client.”

As to the locus standi of the complainant I only need to draw attention to the provisions of Rule 2A which states that “a complaint by any person against a legal practitioner shall be forwarded in writing.” The rule does not state that the complainant must be the actual person offended or cheated. Therefore the complainant in this case is qualified and competent to make a complaint against the appellant in writing as he had done. It is immaterial whether he is a donee of the power of attorney.

I therefore see no merit in issue No. 1 by the appellant and it fails.

On the second issue for determination on whether the appellant was given a fair hearing by both the disciplinary committee of the Nigerian Bar association and the respondent, I am satisfied that the appellant amply knew before both Committees the nature of the complaint against him. He chose to avoid answering the complaint by raising technicalities in the manner he replied the Disciplinary Committee of the Nigerian Bar Association and ignoring the summons sent to him 7 times by the respondent. The procedure before the Disciplinary Committee of the Nigerian Bar Association does not require him to appear before the Committee because nowhere in Rule 2A(2) of the Legal Practitioners (Disciplinary Committee) Rules is the procedure for investigating any complaint is mentioned. Therefore the Committee is free to adopt any procedure it deems fit. In this case it chose to write the appellant for him to show cause why the complaint against

him should not be referred to the respondent and the appellant responded in writing by his letter of 27th June, 2001. He therefore cannot complain that he was denied fair hearing by the Investigation Committee.

With regard to the hearing before the respondent, Rule 7 quoted above gives the respondent the power to proceed with the hearing of the complaint where the party to the proceedings after being served with the hearing summons fails to appear at the hearing. This was the position in this case. Therefore the appellant cannot complain that he was denied fair hearing by the respondent. Rather, he deliberately refused to appear before the Disciplinary Committee.

Consequently, this issue also fails. On the whole, the appeal fails and it is hereby dismissed. The direction given by the respondent against the appellant, is hereby upheld.

D

BELGORE JSC

The Legal Practitioners Disciplinary Committee, it must be pointed out, is not a tribunal but a fact finding and house-cleaning body to maintain discipline and decorum of the legal profession. The existence of Nigeria as a nation is a product of law, the Constitution, and this makes the legal profession a unique body whose internal discipline must not be taken for granted. That is why ample provisions have been made in corpus juris for the training and controlling of the members of the profession; a lot of time and resources have been devoted to this profession. Law and order go hand in hand and any breakdown of law and order can throw the country into a state of anarchy. That is why, instead of appeal from “*Direction*” of Legal Practitioners Disciplinary Committee being to High Court, or if it is regarded as “*superior tribunal*”, to Court of Appeal, the appeal is directly to Supreme Court.

It can thus be seen that the law recognises prompt and effective disciplinary action against any erring legal practitioner in the case of infamous conduct in any professional respect.

As fully set out in the judgment of my learned brother, the appel-

lant was offered all opportunities humanly available to present his case to the Committee; he chose to write letters to the secretary instead. He was given more than ample opportunity to appear before the Committee to present his case, but he chose to keep away. The complainant claimed he had Power of Attorney from the client on behalf of whom the appellant received money which he was accused of misappropriating or converting; instead of contesting the Power of Attorney, he decided to write claiming the power was a forgery. He was the one to prove this alleged forgery but he refused to appear before the Committee to prove this. It is therefore surprising to hear the appellant complaining of lack of charges against him and that he never had fair hearing.

CHARGES:

In normal criminal cases an accused person is arraigned in court on charges framed in accordance with the format of the relevant law, explaining the offence committed and spelling out the ingredients of that offence. “*Infamous conduct in any professional respect*” is an act or omission which in the opinion of the Disciplinary Committee is such that will bring the profession into disrepute. The Committee members are learned men of repute within the profession, and their opinion, once formed, should be respected. The formal charge as in criminal legislation is not what is required. The question to ask always is: Did the person before the Committee understand the complaint against him? My learned brother, Musdapher, JSC., extensively conferred to all the letters and replies between Secretary to the Committee and the appellant that there is no iota of doubt he knew what professional misconduct he was being accused of. He was accused of converting to his own use his client’s money without client’s consent. He wrote to the (complainant) to give him time to pay the whole money in issue and in fact sent in a minuscule amount. The sum he received on behalf of his client, which he failed to pay over to it, is \$ U.S. 123,000.00. Therefore all along the appellant clearly knew the complaint against him. Before a Committee, rather than a judicial tribunal, the all important thing is for the person the complaint is lodged against to clearly understand the complaint he is facing. This is very true of the appellant in this matter. I find no substance in the issue 1 about the

so-called failure to have a formal charge. ?

FAIR HEARING

In any body where a person is accused of misdeeds, he cannot be found culpable without being afforded a fair hearing. He must be told clearly what he is alleged to have done and asked to present his side of the story. Simply put, he must be offered unimpeded opportunity of being heard. The principle is clear and it is unimpeded opportunity. Once this is given, it is no longer the fault of the investigating body if the person complained against failed to avail himself of the opportunity so offered him. The Legal Practitioners Disciplinary Committee is exactly what it is called, a “*Committee*” to investigate and make recommendations. It is not a tribunal or Court of Law; it is a quasi-administrative body and because of the strategic importance of legal practice to the administration of justice it must maintain the highest standard of discipline.

The Constitution of the Federal Republic of Nigeria is the supreme law; the fountain of all laws. It provides for Fundamental Rights, but members of the Armed Forces and the Police, who are very much Nigerians too, have in some cases their rights curtailed. They have no say when ordered to war fronts or to face riotous and dangerous crowds. With the possibility of death and serious injuries they are bound to obey superior orders in lawful deployment. This is so because the national security and territorial and sovereign integrity of Nigeria is of paramount and strategic importance than individual freedom. So important is the profession of law that its practitioners must be amenable to discipline in an abridged procedure but given opportunity to appeal against the Disciplinary Committee’s direction to the highest court in the nation, the Supreme Court.

This contention that the appellant has not been afforded fair hearing is grossly misplaced; it manifests a wrong notion of what the legal profession is in strategic security of the nation. No other profession is so favoured.

It is for the foregoing reasons and the reasons fully set out in the lead judgment of Musdapher, JSC, that I find no merit in this appeal and I also dismiss it.

KUTIGI JSC (Dissenting)

(DISSENTING): This is an appeal against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers (hereinafter referred to as the respondent) given on the 3rd day of April, 2003, wherein the respondent Committee directed that the appellant's name be struck off the Legal Practitioners list in Nigeria and further ordered him to refund the sum of \$123,000 to the complainant, one Alhaji Salisu Mohammed (hereinafter referred to as the complainant/agent).

The facts are simple. The appellant, Charles Okike, was briefed by one Mr. A. Kaihara, a Japanese national and Chief Executive of Kai-You Systems Inc, Japan sometime in 1995 in respect of a claim against a company Nabegu & Company Nig. Ltd. of Bello Road, Kano. Suit No. K/118/95 was consequently instituted in a Kano High Court. Judgment was given against Nabegu & Company in the sum of N14,500,000.00 which money was allegedly collected by counsel/appellant on behalf of his client. Of the sum, <-recovered, it was alleged that the appellant remitted US\$ 51,000 to Mr. Kaihara in Japan and has failed or omitted to remit the balance of US \$123,000. Apart from \$51,000 already paid, the only witness in the case, Salisu Ibrahim Mohammed, the complainant/agent, stated in his evidence that the appellant also paid the sum of N70,000 direct to him.

After persistent demands for the payment of the said balance, the principal, Mr. Kaihara, allegedly withdrew his brief from the appellant and instructed and or appointed Alhaji Salisu Mohammed as his agent to recover the unpaid sum from the appellant. The appointment was by a Power of Attorney sent to him from Japan. This was in October, 1996. As earlier noted the agent succeeded in recovering only N70,000 from the appellant who failed to honour his numerous promises to pay. The agent in September, 2000, made a written complaint against the appellant to the Honourable, the Chief Justice of Nigeria bordering on "*misappropriation of client's funds duly collected from the Law Court*," and urging the Honourable, the Chief Justice "*to call the appellant to order as his attitude is most unbecoming of a lawyer*." See the letter on pages 3 & 4 of the record.

The Honourable Chief Justice of Nigeria forwarded the letter of complaint to the Nigerian Bar Association which through its Disciplinary Committee sent a copy of the complaint to the appellant urging him to furnish his written response to the allegation made against him. The forwarding letter is dated 21st May, 2001, (see page 6 of the record). The appellant responded by letter dated 27th June, 2001, and addressed to Chief Bandele Aiku, SAN., Chairman, Nigerian Bar Association Disciplinary Committee, Mokola, Ibadan, (see pages 7-10 of the record). Because of its importance to the proceedings I will reproduce it hereunder -

“CHARLES OKIKE

ESQ.

41 Unity Road,
P.O. Box 11104,
Kano, Nigeria
27th June, 2001.

Chief Bandele Aiku, SAN,
The Chairman,
NBA Disciplinary Committee,
Shodak House (1st Floor), 18, Oyo Road,
Mokola, Ibadan - Nigeria

Dear Sir,

RE: RESPONSE TO PETITION FOR ALLEGED PROFESSIONAL
MISCONDUCT - INVESTIGATION ACTIVITIES

I humbly acknowledge receipt of a petition dated 27th September 2000 written by one Alhaji Salisu Ibrahim Mohammed through the office of the President of Nigerian Bar Association on 7/6/2001.

I must state immediately that in so far as the said petition purports to be written by and on behalf of Alhaji Salisu Ibrahim Mohammed, I can make no meaningful response since I do not have a client/solicitor relationship with him. Neither, as I will explain shortly, am I liable to him in any way whatsoever.

Insofar, however, as the said petition purports to be written by Alhaji Salisu Ibrahim Mohammed on behalf of Mr. A. Kaihara of Kai-You Systems Inc, Japan, I must state categorically that the said Alhaji Salisu

Ibrahim Mohammed does not have the written or verbal authority or consent of Mr. A. Kaihara of Kai-You Systems Inc, Japan, to present this petition. I state further that the said Alhaji Salisu Ibrahim Mohammed had never had the express written authority, instruction or consent of the said
B *Mr. Kaihara of Kai-You Systems Inc. Japan to do anything in this matter and is otherwise motivated.*

I hereby defend the above position by stating as follows -

1. The said Alhaji Salisu Ibrahim Mohammed (hereinafter called the Petitioner) claims to have been appointed in October, 1996, by Mr. A.
C *Kaihara of Kai-you Systems Inc to act and collect all unpaid sums from the said Barrister Charles Okike by a Power of Attorney granted to him by the said Mr. Kaihara.*

2. However, the Power of Attorney attached to the petition is not stated to be signed by any particular person on behalf of Kai-You Systems
D *Inc. and is clearly deficient in law. Apart from its deficiency in law, it is in fact a false document as the signature on the Power of Attorney is not that of Mr. A. Kaihara of Kai-you Systems Inc. but made to look like his signature. I enclose herewith a clear copy of my original letter of instruction*
E *(the one attached to the petition is a fax copy with the signature unclear and certainly not provided to the petitioner by Mr. A. Kaihara) and my Power of Attorney which were both issued on the letterhead of my client Mr. A. Kaihara of Kai-you Systems Inc. and both stated to be signed by*
F *him in his capacity as Managing Director.*

3. The petitioner has deliberately failed to inform this Honourable Commission that on the 25th September, 1999, the said Mr. A. Kaihara had written a complaint against me, on the instigation of the said petitioner and one Mr. Kumar, to the Chairman of the Kano Branch of the Nigerian
G *Bar Association. Even though the allegations in the complaint are wildly inaccurate and deliberately misleading, the complaint was sent directly from Japan and signed by Mr. A. Kaihara in his capacity as Managing Director of Kai-You Systems Inc. A copy of the said complaint is enclosed with the genuine signature.*

4. The complaint has been and was being heard by the NBA Kano
H *in conjunction with a related petition where several other documents*

have come to light which show an intention on the part of Alhaji Salisu Ibrahim Mohammed and Mr. Kumar; who was a former partner of Mr. A. Kaihara until several thousands of dollars was allegedly embezzled by him, to misrepresent facts and mislead both the NBA Kano and Mr. A. Kaihara. Perhaps, the petitioner could also explain the circumstances under which his petition can co-exist in conjunction with one written by his alleged principal. B

5. I state the above facts to show that the petitioner is also intent on misleading this Honourable Commission by using a falsified and fraudulent Power of Attorney. Although the petitioner somehow succeeded in persuading my client, Mr. A. Kaihara of Kai-You Systems Inc. into presenting the complaint to the NBA Kano, he could not do the same in this case and I state categorically, once again, that the petitioner does not have the consent, authority or permission of Mr. A. Kaihara of Kai-You Systems Inc. to present this petition and same is done without his knowledge. For the avoidance of doubt and rather than ask you to reply only this response, we present below the telephone number, fax number and e-mail number of Mr. A. Kaihara of Kai-You Systems Inc. and humbly but strongly advise that a direct contact be made with him to determine whether he is aware of this petition or condones it. C D E

6. Although it is clear I have had some problems with my client as some of the attachments to this petition show, these problems have been blown completely out of proportion for any improper purpose. The Petitioner, as at now, is completely unaware of the status of my relationship with Mr. A. Kaihara of Kai-You Systems Inc. and I maintain cannot and should not be allowed to use a legally defective and fraudulent Power of Attorney to intimidate and harass me. F G

7. I have already taken legal advise on any legal recourse I may have against the said Alhaji Salisu Ibrahim Mohammed for his reckless use of a document which is not properly executed or in fact signed by any identifiable person who had or can be shown to have had the right and capacity to sign it and would hope Disciplinary Committee of the NBA would be cautious in acting on this petition in the circumstances and without further investigations as to its provenance and authenticity. Thanks. H

Yours faithfully,
Charles C. Ikechi

Okike

cc: O. C. J. OKOCHA, ESQ., SAN.,
President,
Nigerian Bar Association,
Manuchim Chambers (3rd Floor)
17 ID, Aba Road,
Port-Harcourt.

C ADDRESS OF MR. A. KAIHARA

KAI-YOU SYSTEMS INC.
293-10 TAISHOU-CHO TENRI
CITY NARA 632-0071 JAPAN.
TELEPHONE NUMBER - 81-743-62-5375
D FAX NUMBER 81 -743-62-4672

E-MAIL ENSO352@NIFTY.NE JP (ATTENTION MR. A. KAIHARA)”

After the appellant’s response dated 27/6/2001 above, then came the reaction of the NBA Disciplinary Committee Chairman, Chief Aiku E SAN., letter dated 19th October, 2001, on page 1 of the record. It reads -
“*NIGERIAN BAR ASSOCIATION*

19th October, 2001

National Secretariat,
Ozumba Mbadiwe Street,
(Plot 1261 Adeola Hope well,
Victoria Island, Lagos.

The secretary,
Legal Practitioners Disciplinary Committee,
Room 41, Court of Appeal Headquarters, Garki, Abuja.

Dear Sir,

G Complaint of Misconduct Against Charles Okike. Esq.

The complaint of misconduct against the above named legal practitioner contained in a petition of Alhaji Salisu Ibrahim Mohammed dated 27th September, 2000, is that: Charles Okike, as legal practitioner for Kaiyou Systems Inc., a Japanese Company, collected judgment debt
H in the sum of N 14,500,000.00 but failed to account in full to his client.

The NBA Disciplinary Committee made a copy of the petition available to Charles Okike, Esq. for his reaction. Charles Okike, Esq, reacted by a letter dated 27th June, 2001, which does not appear to meet the complaint against him.

The Committee duly considered all the available materials and felt satisfied that a prima facie case of misconduct was shown against the legal practitioner. In the result, the petition and all relevant materials are enclosed herewith for:

(1) the Chief Justice of Nigeria to consider the need to exercise his power of suspension of the legal practitioner under Section 13(2) of the Legal Practitioners Act, Cap. 207 Laws of the Federation of Nigeria, 1999, in the interim; and

(2) the hearing of the petition by the Legal Practitioners Disciplinary Committee.

*Yours faithfully,
Bande A. Aiku, SAN.,
Chairman*

NBA Disciplinary

Committee”

Thereafter the Secretary of the respondent issued series of notices on appellant starting with the one dated 2/5/2002 and ending with the one dated 20/3/2003 (which was never received), asking the appellant to appear before it to defend himself against the allegations in the complaint of the agent, Alhaji Salisu Mohammed. The record shows that the appellant responded to the notices received by demanding to be served with the NBA. Disciplinary Committee Report of its investigations into the matter (if any), and or the formal charge or charges drawn up by the NBA Disciplinary Committee against him. He also raised jurisdiction and procedural defects in the processes.

All the appellant's objections and or demands were brushed aside by the respondent until the case was decided in his absence and against him on 3/4/2003 when the agent/complainant Alhaji Salisu Mohammed, H testified as the only witness in the case. After the testimony of Alhaji Salisu Mohammed then came the judgment or ruling or direction of the respondent. It reads:

“Committee: After carefully considering the unchallenged evidence before the Committee, oral and documentary, it is hereby decided that the name of the respondent, Charles Okike, Esq., be struck off the Legal Practitioners list in addition to the respondent refunding the sum of \$ 123,000 to the complainant.”

It must be stressed here now that the respondent in its direction above made or recorded no finding of fact of any kind against the appellant whatsoever.

The appellant was not found guilty of any misconduct as stipulated under Section 12 of the Legal Practitioners Act (as amended) by Decree No. 21 of 1994 (see also Rules 14 & 15 of the Legal Practitioners (Disciplinary Committee) Rules). The directions therefore have no foundation to stand on. I will say more on this later.

Dissatisfied with the respondent Committee’s direction above, the appellant has appealed to this court. He has in his brief submitted two (2) issues for resolution as follows -

1. Whether the learned members of the Legal Practitioners Disciplinary Committee had jurisdiction to entertain the proceedings and give its directions of 3rd April, 2003, especially in view of the absence of any formal charges against the appellant, the questionable locus standi of the complainant, Alhaji Salisu Mohammed which led to violations of the Evidence Act and failure to comply with other conditions precedent to the exercise of their jurisdiction.

2. Whether in view of the entire circumstances surrounding the proceedings before the Legal Practitioners Disciplinary Committee, the appellant can be said to have been denied a fair hearing and the Legal Practitioners Disciplinary Committee said to have violated the appellant’s rights under Section 36(1) and (3) of the Constitution of the Federal Republic of Nigeria.

Before delving into the issues, I intend to first of all set out briefly the procedure generally followed when an allegation of professional misconduct is made against a legal practitioner as follows -

(1) When an allegation or complaint is lodged against a legal practitioner pertaining to his profession, the complaint or allegation will

normally be referred to the Disciplinary Committee of the Nigerian Bar Association for investigation as was rightly done by the Honourable, the Chief Justice of Nigeria through the President of the Nigerian Bar Association, O. C. J. Okocha, SAN., in this case. But did the Committee carry out any investigation in this case? The appellant said there was none as he was never invited. B

(2) If after its investigation, the NBA Disciplinary Committee is of the opinion that no prima facie case is shown against the legal practitioner, that is the end of the complaint or allegation. Most of the complaints or allegations against legal practitioners end at this stage and never get to the respondent for trial. C

(3) Where after investigations, the NBA Disciplinary Committee is of the opinion that a prima facie case is shown against the legal practitioner, the Committee shall then forward to the Secretary of the respondent, Legal Practitioners Disciplinary Committee:- D

a. its report of such investigation or case together with all the documents considered by the NBA Committee.

b. a copy of the charges on which the NBA Committee is of the opinion that a prima facie case is shown (see Rule 3 of the Legal Practitioners (Disciplinary Committee) Rules). E

It goes without saying therefore that if a legal practitioner is going to be tried as was the case with the appellant, the legal practitioner must be supplied with the NBA Committee Report as well as a copy of the charges by the respondent's Secretary to enable him prepare his defence. F

The appellant in issue (1) contends that conditionalities (i), (2) and (3) above are conditions precedent to the exercise of jurisdiction by the respondent. And that having failed to satisfy the conditions, the entire exercise conducted by the respondent is null and void and of no legal effect whatsoever. The appellant also contends that no hearing notice of the case was served on him on the day it was heard. Added to these is the fact that the N.B.A. Disciplinary Committee woefully failed to address the challenges and or defences posed in his response letter to the NBA Committee dated 27/6/2001 already set out above, particularly the want of locus standi on the part of the complainant/agent, Alhaji Salisu Mohammed, G H

to lodge the complaint despite the fact that the address, telephone, fax and e-mail numbers of the client/principal (Mr. Kaihara) were supplied to the NBA Disciplinary Committee.

B Appellant's issue (2) is essentially the effect of the totality of his grudges or grievances against the respondent as elaborated in issue (1) and that it is evident that in view of the circumstances surrounding the entire proceedings before the respondent, it is doubtless that he has been denied a right of fair hearing as enshrined in Section 36 of the Constitution. He C also said that the defences raised in his response letter dated 27/6/2001 above as well as the explanations offered were never considered by the respondent just like the case with the NBA Committee.

A number of authorities were cited including -
LPDC v. Fawehinmi (1985) 2 NWLR (Pt. 7) 320 Garba & Ors. v. Uni-
D versity Of Maiduguri (1986) All NLR 149.

Att. Gen. Of Bendel State v. Att. Gen. Of The Federation & Ors.
(1981) 10 S.C. (Reprint) 1; (1981) All NLR 85 United Nigeria Co. Ltd,
v. Nahman & Ors. (2000) 9 NWLR (PT. 177).

E Dr. E. O. A. Adenloye v. Medical And Dental Practitioners Disciplinary Committee (1968) 1 All NLR 135 Kenon v. Tekam (2001) 7 S.C. (Pt. III) 49; (2001) 7 SCN 620.

The court was urged to allow the appeal and answer the two issues in the negative and declare the trial a nullity.

F The respondent filed respondent's brief in reaction to appellant's brief. The main points raised therein can be summarised thus -

(a) That the appellant was given several opportunities of stating his defence to the Petition but he disdainfully refused to appear before the respondent.

G (b) That there was uncontradicted evidence that the appellant received certain monies for and on behalf of his client which he refused to release to the said client despite repeated demands.

(c) That the petition was investigated by the Nigerian Bar Association and was validly heard and determined by the respondent.

H (d) That the respondent never proceeded against the appellant for any offence under the Penal or Criminal Code.

(e) That there was no basis for any malice or likelihood of bias on the part of the respondent as shown by the record before the court.

(f) The appellant was accorded all the essentials of procedural and substantive due process before the respondent.

We were referred to a number of cases which include -

Abubakar v. Unipetrol Nig. Plc (2002) 4 S.C. (Pt. II) 100; (2002) 8 NWLR (Pt. 769) 242

Adigun v. Att. Gen. Of Oyo State (1987) 1 NWLR (Pt. 53) 678

Idowu v. L.P.D.CC1962) All NLR 128

Ariori & Ors. v. Elemo & Ors. (1981) NSCC

M.D.P.DT. v. Okonkwo (2001) 3 S.C. 76; (2001) 7 NWLR (Pt. 711) 206

Onyeabuchi v. INEC (2002) 4 S.C. (Pt. II) 27; (2002) 8 NWLR (Pt. 769) 414

Vulcan Gases Ltd. v. G.F. Industries Ltd. (2001) 5 S.C. (Pt. I) 1; (2001) 9 NWLR (Pt. 719) 610

Wilson v. Att. Gen. Bendel State (1985) 1 NWLR (Pt. 4) 572

We were urged to dismiss the appeal and uphold the direction of the respondent against the appellant.

I have carefully read through the record before us as well as the briefs filed by the parties in the appeal. In view of the nature of the order which I intend to make finally in the appeal, I want to go straight to the points which I consider vital in arriving at my decision.

Starting from the judgment or ruling or direction of the respondent on page 44 of the record which I have reproduced above, it is evident as noted earlier that the respondent made no finding of “guilty” or “not guilty” against the appellant before proceeding to give its direction or sentence. Indeed there was no finding of any fact or thing in the ruling or direction, not to talk of the ingredients of the offence charged of which there was none. The omission in my view is fatal. There was no finding because I believe in the first place there was no charge against the appellant.

The Legal Practitioners (Disciplinary Committee) Rules clearly provides amongst others as follows -

“15. *Findings of Disciplinary Committee of Legal Practitioner*

is found not guilty

If, after the hearing, the Disciplinary Committee adjudges that the allegations of infamous conduct in a professional respect have not been proved, the Disciplinary Committee shall record a finding that the legal practitioner is not guilty of such conduct in respect of the matters to which the allegation relates.

“16. Findings and Direction of Disciplinary Committee if Legal Practitioner is found guilty

If, after the hearing, the Disciplinary Committee finds that the allegation of infamous conduct in a professional respect, has been proved, the Disciplinary Committee may, if it thinks fit, give a direction -

(a) ordering the Registrar to strike the legal practitioner’s name off the roll; or

(b) suspending that legal practitioner from practice by ordering him not to engage in practice as a legal practitioner for such period as may be specified in the direction/ or

(c) admonishing the legal practitioner.”

Every legal practitioner must know what a “charge” is, or what it looks like. There can be no pretence here.

The kind of charge required is in my view nothing more than a concise statement of the allegation of infamous conduct in a professional respect which the appellant or a legal practitioner has committed. There is clearly no charge on the printed record. The letter dated 19/10/2001 on page 1 of the record by Mr. Bandele Aiku, SAN., Chairman of NBA Disciplinary Committee set out above, cannot in my view amount to such a charge. It merely states that the Committee “felt satisfied that a prima facie case of misconduct was shown against the legal practitioner.” This is to say the least very vague. What kind of misconduct? Which acts constituted the misconduct? So what was the appellant supposed to defend? The letter of complainant/agent, Alhaji Salisu Mohammed, cannot also be elevated to the level of a charge. A complaint is a complaint only and not a charge envisaged by the law. And that is why it is necessary for the NBA Disciplinary Committee to have conducted a thorough investigation in the first place and draw up the charges.

The appellant could only have been validly charged and convicted of “*infamous conduct*” in a “*professional respect*”, being the only offence or charge permitted under the Legal Practitioners Act. He was never charged as such and therefore the respondent could not validly give any direction (see Sections 11& 12 of the Legal Practitioners Act (as amended), and Rules 14 & 15 of the Legal Practitioners (Disciplinary Committee) Rules). These omissions to say the least are in my view fatal to the entire proceedings. They are at the root of the proceedings. They are the foundation pillars, if I may say so.

If I may go back to the judgment/ruling/direction of the respondent reproduced earlier, apart from making no finding of fact or anything at all, there is also nowhere in it where the respondent said it “*accepted*” or “*agreed with*,” the evidence of the lone witness before it proceeded to pass its sentence or directives against the appellant. It appears that there is no judgment in this appeal, but only a sentence. The omission is fatal. I think bodies or committees like the respondent should never be allowed leisurely and without due process to terminate people’s lives or people’s means of livelihood without strict adherence to the rules of natural justice and the rule of law. The respondent, it appears to me, seemed to be more interested in getting the name of the appellant removed from the list of Legal Practitioners before satisfying itself that the appellant had misconducted himself, which could only have been demonstrated in a considered judgment. There is no such judgment on the printed record. Any direction or sentence not founded on a judgment is therefore a nullity and I so hold.

I have earlier on reproduced appellant’s response letter to the complaint of Alhaji Salisu Mohammed. He offered some explanations. Rejoined issues and raised certain defences notably the issue of locus standi of the complainant to lay the complaint relying on a forged or false Power of Attorney despite the fact that the complaint by Mr. Kaihara himself at the NBA Kano Branch was being investigated. I am completely satisfied from the NBA Committee Chairman’s letter on page 1 of the record and reproduced above that none of the issues or defences raised by the appellant in his response letter was addressed by the NBA Committee, as none of them was referred to in their letter. Moreover, although the appellant’s

response letter was before the respondent when it heard the case, no reference was made to it and consequently none of the defences raised therein nor the explanations offered therein were considered. A thorough investigation of a complaint to the N.B.A. Disciplinary Committee is a condition precedent to the exercise of jurisdiction by the respondent. It was not fulfilled. In fact the client/principal Mr. Kaihara never testified and there was no evidence that the appellant collected the judgment debt herein.

It is settled that a court that lacks jurisdiction to entertain a suit is incompetent to pronounce a judgment in respect of any aspect of the case before it and the consequence of a court doing a case where it lacks jurisdiction is that the result is a nullity. So also is the case where the party bringing the complaint lacks the locus standi to lodge the complaint as in this case, the result is a nullity.

In the entire circumstances of the case, there is no alternative other than to answer the appellant's two issues in the negative each. I answer them each in the negative.

The appeal therefore succeeds and it is hereby allowed. The direction by the respondent given on 3rd April, 2003, is declared null and void. The direction including the entire proceedings before the respondent on the said date are set aside. There will be no order as to costs.

EJIWUNMI JSC

I have had the privilege of reading in its draft form the judgment just delivered by my learned brother, Musdapher, JSC. But I wish to say a few words of my own. This appellant is a legal practitioner and resides in Kano where he carries out the practice of his profession. It would appear that it was in the course of his practice that he acted for a Japanese Company known as Kaiyou Systems Inc. to collect a judgment debt in the sum of N14,500,000.00 and which he allegedly failed to account to his client. As a result of his failure to remit this sum to his client, it would appear that his client then reported the matter to one Alhaji Salisu Ibrahim who in turn, wrote a letter of complaint as related to Hon. Justice M.L. Uwais,

the Chief Justice of Nigeria. His Lordship the Chief Justice of Nigeria then forwarded the letter of complaint with his Lordship's letter dated 2nd October, 2000, to O.C.J. Okocha, Esq., SAN., the then President of the Nigerian Bar Association. And because of what I may have to say later in connection with the issues raised in this appeal, that letter of the Chief Justice of Nigeria is reproduced hereunder. It reads in part:-

"My Dear President,

Re Complaint of Professional Misconduct Against Charles Okike.

Esq. m

I forward herewith, for your necessary action, a letter of complaint by Alhaji Salisu Ibrahim Mohammed of No. 10 Bompai Road, Kano, against Charles Okike, Legal Practitioner of the firm of Charles Okike & Associates, 245 Unity Road, P.O. Box 11104, Kano. The letter speaks for itself.

Yours sincerely

Sign

M.L. Uwais, GCON

Chief Justice of Nigeria"

O.C.J. Okocha, Esq, then took necessary action by forwarding a letter dated 21st May, 2001, to the appellant, a copy of which was forwarded to Chief Bandele Aiku, SAN., the Chairman of the NBA Disciplinary Committee.

The copy of that letter reads thus:-

"Dear Mr. Okike,

Re: PETITION AGAINST YOU FOR ALLEGED PROFESSIONAL MISCONDUCT - INVESTIGATION ACTIVITIES

Kindly find enclosed herewith a copy of a petition received against you, whereby certain allegations of professional misconduct have been levelled against you.

You will please furnish us with your written response to the allegations against you. Your response should be forwarded direct to the NBA Disciplinary Committee through its Chairman, Chief Bandele Aiku, SAN., while a copy should be endorsed to the undersigned. The full address of the Chairman is:

CHIEF BANDELE AIKU, SAN
SHODAK HOUSE (1ST FLOOR)
18 OYO ROAD
MOKOLA

B

P.O. BOX 54
IBADAN . NIGERIA

Thank you and please let us have your response within twenty-one (21) days of the date of your receipt of this letter.

C

Yours faithfully
NIGERIAN BAR ASSOCIATION
O.C.J. OKOCHA, (SAN, JP) PRESIDENT

The appellant responded by forwarding a letter dated 27th June, 2001, to Chief Bandele Aiku, SAN., the Chairman, NBA Disciplinary Committee which he ended as follows:-

D

“Although it is clear I have had some problems with my client as some of the attachments to this petition show, these problems have been blown completely out of proportion for an improper purpose. The Petitioner as at now, is completely unaware of the status of my relationship with MR. A. KAIHARA of KAI-YOU SYSTEMS INC. and I maintain cannot and should not be allowed to use a legally defective and fraudulent Power of Attorney to intimidate and harass me. I have already taken legal advise on any legal recourse I may have against the said ALHAJI SALISU IBRAHIM MOHAMMED for his reckless use of a document which is not properly executed or in fact signed by any identifiable person who had or can be shown to have had the right and capacity to sign it and would hope that this Honourable Disciplinary Committee of the NBA would be cautious in acting on this petition in the circumstances and without further investigation as to its true provenance and authenticity.”

G

Then by a letter dated 2nd May, 2002, A.U. Maidama, Secretary, Body of Benchers (Legal Practitioners) wrote to the appellant thus:-

“Charles Okike, Esq	Room 41,
Charles Okike & Associates	Court of Appeal HQ,
No. 245 Unity Road	Abuja ,
Kano.	

H

Dear Sir,

RE: BB/DCNB/016 Charles Okike, Esq.

TAKE NOTICE that the Legal Practitioners Disciplinary Committee of the Body of Benchers will be sitting from the 18th to 20th of June, 2002, by 9.00am at COURT OF APPEAL HQ Garki Area 3 Abuja, to consider the petition laid against you by Alhaji Salisu Ibrahim Mohammed.

Please find enclosed a copy of the petition for your response.

You are expected to appear before the Committee at the given dates to defend yourself against the allegations in person or in company of a Legal Practitioner of your choice.

Failure to attend may necessitate the Committee to consider the petition and give its decision in accordance with the provisions of the Legal Practitioners Disciplinary Committee Rules of Procedure.

Yours faithfully

Maidama A.U. Esq., Secretary”

The appellant responded to the above letter with which he was invited to defend himself before the Legal Practitioners Disciplinary Committee in company of a Legal Practitioner of his choice. His letter reads:-

“MAIDAMA A.U. ESQ,

The Secretary,

Legal Practitioners Disciplinary Committee of

The Body of Benchers

Room 41

Court of Appeal HQ,

Garki - Area 3

Abuja.

Dear Sir,

RE: BB/DCNB/016 CHARLES OKIKE. ESQ.

I humbly acknowledge receipt of a notice dated 2nd May, 2002, which was received on 17th May, 2002, inviting me to respond and defend myself against allegations contained in the petition of one ALHAJI SALISU IBRAHIM MOHAMMED. A copy of the petition dated 27th September, 2000, and two of the petition’s supporting documents were

also received by me.

I feel constrained to immediately point out only a few relevant facts as follows:

1. That by a letter dated 2nd October, 2000, a copy of the said
B complaint was forwarded to the Nigerian Bar Association by the Chief Justice of Nigeria for investigation in accordance with relevant rules.

2. That by a letter dated 21st May, 2001, the President of the
C Nigerian Bar Association asked me to respond to the allegations in the said petition as part of their investigative activities. A copy of the said petition was enclosed together with 8 supporting documents in contrast to the same petition you annexed to your notice which has only 2 supporting documents.

3. That by a letter dated 27th June, 2001, I duly and effectively
D responded to the petition. Since your notice does not refer to or exhibit the report of the Nigerian Bar Association investigation, nor the charges on which the NBA of the opinion that a prima facie case has been made, I must humbly ask; at whose request, on whose authority and on what grounds this complaint is being listed for hearing from the 18th to 20th
E June, 2002, by the Legal Practitioners Disciplinary Committee of the Body of Benchers? I find the above anomalies even more disturbing and strange because in my response to the NBA investigation, I stated quite clearly that the Power of Attorney on which the said ALHAJI SALISU
F IBRAHIM MOHAMMED based his petition is forged and that he does not have the permission or consent of my client MR. KAIHARA OF KAI YOU SYSTEMS INC. to present this petition or continue to harass or intimidate me in his name. In the circumstances, I would humbly ask that these obvious and serious substantive and procedural anomalies and irregularities be investigated and cleared up as soon as possible.

G Thanks.

Yours faithfully

PP: Charles Okike & Associates

Charles C. Ikechi Okike”

H It is clear from the above letter that the appellant rather than preparing himself to appear before the committee to defend the allegation

against his inquiry in the letter the source of the complaint. A letter dated 7th June, 2002, was promptly written by A.U. Maidama, Esq., to the appellant wherein he was advised to appear before the committee as previously stated complaints known.

The Record shows that the appellant did not attend the hearing date for which he was duly notified. It is also manifest from the Record that he did not attend any of the hearing dates fixed by the committee and which were duly communicated to him. The last letter dated 20/3/03 from the Body of Benchers (Legal Practitioners Disciplinary Committee to him with which he was advised about the hearing of the complaint against him reads follows:-

“Room 41
Court of Appeal HQ
Abuja Charles

Charles Okike
Dear Sir

20th March, 2003

RE: BB/DCNB/016 CHARLES OKIKE. ESQ

Your letter dated 9th December, 2002, on the above subject matter refers. The Committee finds your attitude rather curious. As a legal practitioner, you are expected to accord the Committee its due respect but rather it appears as if you are more interested in engaging in fruitless exercises by trying to portray the Committee as being particularly interested in your matter. Your questions, to say the least, display your total disregard to the same due process you are relying on. As I had earlier pointed out to you in my letter, if you have any objections to raise against the petition made against you (which was duly investigated and forwarded to this Committee by the Nigerian Bar Association) (please find copy of the report enclosed), the proper venue to raise them would have been before the Committee at its sitting and not by way of queries to the secretariat or the Hon. Chairman.

Already, according to the NBA report, a prima facie case of misconduct had been established against you.

THEREFORE TAKE NOTICE that the above matter in which you are the respondent will be coming up on the 3rd and 4th April, 2003, at the COURT OF APPEAL HQ, Conference Room, Abuja, at 9.00am for

hearing. Failure to attend will necessitate the Committee to consider THE PETITION AGAINST YOU and give its decision in accordance with the provisions of the Legal Practitioners Act.

*Yours faithfully
Maidama, A.U. Esq
Secretary”*

B

Upon receipt of that letter, appellant wrote to A.U. Maidama, Esq Secretary, Legal Practitioners Disciplinary Committee thus:-

C

*“31st March, 2003,
MAIDAMA A.U. ESQ.,
The Secretary
Legal Practitioners Disciplinary Committee of
The Body of Benchers
Room 41, Court of Appeal HQ.,*

D

*Garki - Area 3
Abuja
RE: BB. DCNB/106 CHARLES OKIKE, ESQ.*

I humbly acknowledge receipt of a letter dated 20/3/03, dispatched E on 24/3/03 and received by me on 27/3/03 which informs that the Legal Practitioners Disciplinary Committee of the Body of Benchers will consider a petition against me on 3rd and 4th April 2003 -14 days after the letter was written and 7 days after the letter was received.

F

Since the said letter (which does not name the petitioner or the application) refers to my previous response of 9/12/02 and not my most recent response of 13/3/03, I am once again enclosing copies of all your previous letter, and all my responses, fully adopting those responses and confirming my respect for all duly followed process and procedures.

G

I continue to assert that this whole matter is fundamentally flawed, substantively and procedurally and that the strange and curious one page document you have suddenly discovered and describe as an NBA Report can only confirm my assertions.

*Thanks.
Yours faithfully
Charles C. Ikechi Okike”*

H

On the 3rd of April, 2003, the body of the Legal Practitioners Disciplinary Committee duly constituted met and commenced with its proceedings. Though the respondent was absent, the body heard the evidence of the only witness, Salisu Ibrahim Mohammed. The Committee then resolved thus:-

“After carefully considering the unchallenged evidence before the Committee, oral and documentary, it is hereby decided that the name of the respondent, Charles Okike, Esq, be struck off the Legal Practitioners List in addition to the respondent refunding the sum of \$123,000 to the complainant.”

After the appellant was duly informed of the decision of the Legal Practitioners Disciplinary Committee, he began an appeal to this court against the decision of the Committee. Pursuant thereto, appellant filed a Notice of Appeal with ten grounds of appeal. And in his Brief of Argument, he distilled therefrom two issues for the determination of his appeal. They are:-

“(1) Whether the learned members of the Legal Practitioners Disciplinary Committee had jurisdiction to entertain the proceedings and give its directions of 3rd April, 2003, especially in view of the absence of any formal charges against the appellant, the questionable locus standi of the complainant, Alhaji Salisu Mohammed, which led to violations of the Evidence Act and the failure to comply with other conditions precedent to the exercise of their jurisdiction. (Grounds of Appeal Nos. 2,3,4,5 & 7)

(2) Whether in view of the entire circumstances surrounding the proceedings before the Legal Practitioners Disciplinary Committee, the appellant can be said to have been denied a fair hearing and the Legal Practitioners Disciplinary Committee said to have violated the appellant's rights under Sections 33(1) and (3) of the Constitution of the Federal Republic of Nigeria. (Grounds of Appeal Nos. 1,6,8,9 & 10)

In respect of the 1st issue, the appellant is questioning whether the respondent had the jurisdiction to entertain the complaint from the Disciplinary Committee of the Nigerian Bar Association as the Disciplinary Committee did not forward a formal charge to the respondent. It is his submission that as the provisions of Section 10(7) of the Act and the Legal Practitioners

Disciplinary Committee Rules as amended in 1994 were breached, the Committee had no jurisdiction to hear the complaint made against him.

The Rules that are relevant to convene the Disciplinary Committee of the Nigerian Bar Association under the Legal Practitioners (Disciplinary Committee) Rules as amended by the Statutory Instrument No. 17 of 1994 and Section 10(1)(b) of the Legal Practitioners Act, Cap. 207 are as follows:

“(2) A complaint received by any of the persons specified in sub-rule (1) of this rule shall be forwarded to the Nigerian Bar Association which shall cause the complaint to be investigated.

(3) In any case where in pursuance of Section 10(1) of the (Legal Practitioners) Act the Nigerian Bar Association is of the opinion that a prima facie case is shown against a legal practitioner, the Nigerian Bar Association shall forward a report of such a case to the Secretary together with all the documents considered by the Nigerian Bar Association and a copy of the charges on which the Nigerian Bar Association is of the opinion that a prima facie case is shown.”

I have earlier in this judgment set out the steps that were taken by the Honourable Justice M.L. Uwais, the Chief Justice of Nigeria, to inform the Nigerian Bar Association of the complaint against the appellant. And upon the receipt of the letter of complaint, the Nigerian Bar Association referred it for the consideration of the body charged with the duty of investigating such complaints. I am therefore satisfied that the complaint against the appellant was properly brought before the Disciplinary Committee of the Nigerian Bar Association in accordance with the provisions of Section 10(1)(b) of the Legal Practitioners Act, Cap. 207 and which reads:-

*“10(1) The Body of Benchers shall be responsible for
(b) The exercise of disciplinary jurisdiction over members of the legal profession and over students seeking to become legal practitioners.”*
And Section 11(1) which provides:-

“11 (1) There shall be a committee of the Body of Benchers to be known as the Legal Practitioners Disciplinary Committee (in this Act referred to as “the Disciplinary Committee”) which shall be charged

with the duty of considering and determining any case where it is alleged that a person who is a member of the legal profession has misbehaved in his capacity as such or should for any other reason be the subject of proceeding under this Act.”

Part of the argument of the appellant is that no formal charges were drawn up against him to defend. Hence he further argued that without such a charge laid against him and before the Disciplinary Committee, the latter lacks the jurisdiction to hear and determine any alleged complaint against him. Let me immediately say that it is a misconception to argue that it is the charge alleged against a Legal Practitioner that vests jurisdiction on matters such as this. In my view, the exercise of disciplinary powers over Legal Practitioners by the respondent is embedded in the above quoted provisions of Sections 10(1) (b) and 11(1) of the Legal Practitioners Act, Cap. 207.

I think it is also necessary to observe that while there can be no doubt that Rule 3 provides inter alia that “*the Nigerian Bar Association shall forward a report of such a case to the Secretary together with all the documents considered by the Nigerian Bar Association and a copy of the charges on which the Nigerian Bar Association is of the opinion that a prima facie case is shown*”, the reference to “*charges*” in the above provisions should not be read to mean that only a formal charge or charges would suffice to bring home to the person concerned the complaint brought against that person. In the case in hand, the complaint against the appellant was that of professional misconduct and this was forwarded with the reports that were compiled concerning the allegation against him. It is my view that it will amount to undue technicality to contend that because the word “*charge*” was not used, the allegation against the appellant was not brought to his knowledge and therefore he was not made aware of the complaint against him. In this context, it must be borne in mind that the proceedings before the respondent is not expected and indeed not required to be conducted as a full scale criminal trial. If that then be the position, the word “*charge*” read in that context is simply a “*complaint*” that discloses a prima facie case that deserves to be investigated and determined by the respondent. It is for this reason that Legal Practitioners in the position

of the appellant are invited by the respondent to explain their role with regard to the complaint brought to the attention of the respondent. In my view therefore, I find no merit in respect of this issue.

On the 2nd issue, the appellant contends that he was denied fair hearing. There can be no doubt that the appellant was invited to appear before the respondent. I have earlier in this judgment referred to some of the letters written to the appellant and the responses made to them by him. It cannot therefore be meritorious for him to argue that he was not kept informed of the dates scheduled by the respondent for the hearing of the complaint. But in his unfortunate display of arrogance and lack of proper appreciation of what may result from his failure to attend to the invitation of the respondent to present his own side of the complaint against him, the appellant did not appear at the hearing as scheduled by the respondent. Hence the respondent heard and determined the merits of the complaint against him in his absence. On this question as to whether he was denied fair hearing by the respondent, may I with respect refer to what I said in this respect in *Alsthom S.A. v. Saraki* (2005) 1 S.C. (Pt. 1) at pp. 14-15. It reads:-

“There is no doubt at all that the principle of fair hearing is fundamental to all court procedure and proceedings, and like jurisdiction, the absence of it vitiates proceedings, however well conducted. See *Salu v. Eveibon* (1994) 6 NWLR (Pt. 348) 23 at 40; *Ceekay Traders v. G.M. Co. Ltd* (1992) 2 NWLR (Pt. 222) 132; *Atano v. A.G. Bendel State* (1988) 2 NWLR (Pt. 75) 201.

Fair hearing, according to our law, envisages that both parties to a case be given an opportunity of presenting their respective cases without let or hindrance from the beginning to the end.

*It also envisages that the court or tribunal hearing the parties’ case should be fair and impartial without showing any degree of bias against any of the parties. See *Elike v. Nwakwoala & Ors* (1984) 12 S.C. 301; *Isivaka Mohammed v. Kano N.A.* (1968) 1 AII NLR 424.”*

It follows having regard to the above principles and the facts on record in this appeal, it is my view that the appellant’s issue 2 must fail.

In the result, I also dismiss the appeal for the above reasons and

the fuller reasons given in the lead judgment of my learned brother, Musdapher, JSC. The direction given by the respondent against the appellant is hereby upheld.

B

PATS-ACHOLONU JSC

I have read in draft the judgment of my learned and noble Lord, Musdapher JSC., and. I agree with him. The mainstay of the appellant's case is that he was not given a fair hearing before the imposition of punishment or before being disciplined. The facts of the case demonstrate the various efforts made by the respondent to get the appellant's co-operation with the enquiries and findings of the respondent. He used all sorts of subtle, ungainly and stultifying methods to spurn, elude, ignore, snub and literally, so to speak, hold in contempt the efforts the respondent was making to get his own side of the story.

He complained glibly of lack of fair hearing. The expression "fair hearing" which has been variously interpreted in numerous judgments in the common law countries does not require quantitative analysis. Fair hearing denotes and imports the concept and practice, speaking jurisprudentially, of a very fundamental tenet which behoves of the court, tribunal, or any quasi judicial body to conduct its affairs so transparently open that it accords all the parties involved in any disputation the opportunities of marshalling their case adroitly to their possible best so that a common man in the street can easily see and declare that the person affected has been freely allowed to put his case forward for consideration. You cannot complain of lack of fair hearing when you refused to co-operate.

There is also the question as to the nature of the charge against him not being laid. In legal parlance what indeed is a charge? It is indeed a denouement by which an authorized person or body invested by statute could lay a complaint against someone tending to show that an offence or some form of breach of law or ethics of the profession has been committed. It equally imports some elements of delinquency or inappropriate act which stigmatizes and renders one liable to be disciplined if proved. The

characteristics or features of a charge do not lie in procedural formalism but rather in the contents of the unrighteous act being brought to the knowledge of the person so indicted in good, lucid and readily understandable English, as in the present case. In the case before us now, the charge, or as I choose to call it, the denouement, was couched in a simple prose and he was requested to appear before the peers of his profession. It is not an indictment wearing a criminal garb. The issue before us is as to whether the act of the appellant constituted a gross misconduct to affect his status in the profession of the Bar. Therefore, to latch or clutch on the defence of improper charge laid, shows the inability of the appellant to fully grasp the nuances associated with the procedure in handling his case by the respondents.

The obdurate, stubborn, lackadaisical and offensive manner he treated the respondents who called on him many times to avail them of his own side of the story smacks of someone impervious to reason, unconcerned and unresponsive to the dictates of law and order. As you make your bed so you lie on it. It is a cardinal principle of our law that where evidence is given and some allegations are made against someone who has the opportunity of repudiating it but he chooses to ignore it or treat same with levity then the court or tribunal or whichever body that is seised of the proceedings would act on what it has in its possession. In the present case the respondents cannot be blamed for the decision they took having regard to the unco-operative attitude of the appellant.

The behaviour of the appellant in not in anyway co-operating is difficult to understand as he knows or ought to know that any decision taken without this co-operation would damnify him and put him at a risk of severe punishment of some sort.

In the final analysis the appeal fails and I abide by the order in the lead judgment.

AKINTAN JSC

The appellant is a legal practitioner. He was accused by one of

his clients, Kaiyou Systems Ltd., of receiving an amount of money on behalf of the client which he failed to pay to his said client. The client is a foreign based company. The total amount received by the appellant on behalf of his said client was N14,500,000. As all efforts made by the client to recover the money from the appellant failed, the company therefore B sought the assistance of one Alhaji Salisu Mohammed to assist in recovering the money from the appellant. To that end, the company gave a power of attorney to the said Alhaji Salisu Mohammed. Armed with the power of attorney given to him by the foreign company, Alhaji Salisu Mohammed C contacted the appellant and demanded for the money he collected on behalf of his said client. The appellant did not deny receiving the money on behalf of his said client, but he appealed to Alhaji Salisu Mohammed to give him time to source for the money so that he could pay up the D said amount. According to the evidence given at the hearing before the Legal Practitioners Disciplinary Committee (hereinafter referred to as the Committee), Alhaji Salisu Mohammed told the Committee, inter alia, that the appellant had since his appointment as Mr. Kaihara's attorney, paid to him N70,000 out of the total amount the appellant collected on behalf of E his said client. The man said further that the N70,000 was, in fact, paid in three installments. The appellant thereafter pleaded with Alhaji Salisu Mohammed that he should allow him (appellant) more time to pay "as he had properties including generators to sell" which would enable him F raise the balance of US \$123,000.

This was the position when Alhaji Salisu Mohammed decided to seek the assistance of the Honourable Chief Justice of Nigeria through a petition he sent to the Honourable Chief Justice.

G The Honourable Chief Justice referred the petition to the Nigerian Bar Association. It is the same petition that was finally referred to the Legal Practitioners Disciplinary Committee for action. On receipt of the complaint, the Committee wrote to the appellant inviting him to appear H before the Committee. It enclosed copies of the petition and other related documents in its possession along with the letter. The appellant received the letter. But instead of appearing before the Committee, he replied by raising objections on various grounds among which is that the procedure

adopted by the Committee was not in accordance with the rules under which the Committee took the action against him. He also queried the validity of the power of attorney issued to Alhaji Salisu Mohammed.

The Committee reacted by telling the appellant in another letter that all his objections were matters the appellant could raise when he appeared before the Committee. He was then again given another date on which he was to appear and present his defence to the allegation made against him. But he again failed to honour the invitation. However, when the appellant refused to honour several invitations sent to him, the Committee decided to proceed with his matter in his absence in line with its Rules. During the hearing before the Committee, evidence was taken from Alhaji Salisu Mohammed. At the hearing the Committee came to the conclusion that the appellant was guilty of professional misconduct. The Committee then gave the following directions:

"(a) Ordering the register to strike the appellant's name of the roll: and

(b) Ordering the appellant to refund the sum of 123,000 U.S. Dollars to the complainant/petitioner."

The present appeal is from the above decision of the Disciplinary Committee. The appellant filed 10 grounds of appeal against the decision of the Disciplinary Committee. Surprisingly, the appellant directed his attacks in all the grounds of appeal on alleged technical and procedural deficiencies in the procedure adopted by the Committee to entertain the complaint against him. He did not appeal against the severe punishment by which his name was struck off the roll of legal practitioners. He formulated two issues as arising for determination in the appeal in his brief of argument filed in this court. The two issues, inter alia, are: (1) whether the Disciplinary Committee had jurisdiction to entertain the proceedings and give the direction it gave in the matter; and (2) whether, the appellant had been denied fair hearing by the Committee.

The main attack launched against the direction in the appellant's issue 1 is that there was no proper investigation aimed at ensuring that there was a prima facie case as required by the Rules under which the Committee acted. It is submitted that the Committee ought not to have

assumed jurisdiction in the matter since a prima facie case was not made against the appellant. The procedure adopted is also said to be defective in that no formal charge was preferred against the appellant. In issue 2, it submitted that the appellant was denied a fair hearing when the Committee made its decision in the case without hearing the appellant. He also accused the Committee of acting on a defective power of attorney given to Alhaji Salisu Mohammed.

One of the main questions canvassed by the appellant in support of his contention that the appeal should be allowed is that no formal charge was preferred against him. This allegation cannot stand in that the rules does not provide for the form in which a charge against a legal practitioner accused of professional misconduct should be. All that is required in Section 10(1) of the Legal Practitioners Act is that if the Nigerian Bar Association is of the opinion that if a prima facie case is shown against a legal practitioner, the Nigerian Bar Association “shall forward a report of such a case to the secretary together with all the documents considered relevant by the Nigerian Bar Association, and a copy of the charges on which the Nigerian Bar Association is of the opinion that a prima facie case is shown

The word “*charge*” is defined in Black’s Law Dictionary, 6th edition, 1990, page 232 as “*to accuse*”, and in a criminal case it is defined on page 233 of the same book as “the specific crime the defendant is accused of committing. Accusation of a crime by a formal complaint, information or indictment.” In the instant case, the facts made available to the Nigerian Bar Association are the petition written by Alhaji Salisu Mohammed in which he set out the amount received by the appellant on behalf of his client; the appellant’s admission of receiving the said sum on behalf of his said client; evidence that he paid N70,000 out of the amount in three installments to Alhaji Salisu Mohammed and that he pleaded with the same man for time to enable him source for the balance by selling some of his properties. It is the same evidence that the Nigerian Bar Association passed on to the Disciplinary Committee for necessary action.

The fact that the appellant admitted receiving the amount of money on behalf of his client, refunded part of the money and pleaded for time to

raise the balance, is clear evidence that he had appropriated the money he collected on behalf of his client. I have no doubt that the evidence presented to the Nigerian Bar Association was sufficient to support its decision that a prima facie case was made against the appellant that he committed an act of professional misconduct.

On the allegation that a formal charge was not preferred against the appellant, I believe that since the Legal Practitioners Act does not prescribe any specific form in which such a charge should take, I hold that presenting the allegations made against the appellant satisfied the requirement of presenting the charges made against the appellant As defined above, the word “charge” is nothing but accusation, or accusation of crime in a case of a criminal charge. The case against the appellant at that stage was one of professional misconduct. It was not yet one of criminal conversion or stealing even though there were sufficient facts to support the criminal aspects. That was not the business of the Committee. I therefore hold that the allegation that the Nigerian Bar Association failed to ensure that there was a prima facie case before referring the matter to the Disciplinary Committee must fail. So also is the allegation that no formal charge was preferred against the appellant. The facts disclosed clearly show that the allegation of professional misconduct was made out or rightly preferred against the appellant as required by the Legal Practitioners Act.

The question that the appellant was denied fair hearing cannot also be sustained. This is because although the appellant was given adequate opportunity to appear and defend himself against the allegation of professional misconduct made by the Committee of the professional body to which he belonged, he, however, chose not to appear before the Committee. As the Rules governing the procedure which the Committee must follow permits the hearing of the appellant’s case in his absence, the proceedings in this case was therefore quite in order.

The principle of fair hearing is not only a common law right, but also a constitutional right in Nigeria. It is specifically provided for in Section 36(1) of the 1999 Constitution. That subsection of the 1999 Constitution provides, inter alia, that in the determination of his civil rights and obligations, a person shall be entitled to a fair hearing within a

reasonable time by a court or tribunal established by law and constituted in such a manner as to secure its independence and impartiality. There are a number of attributes which a trial must scale through before being regarded as complying with the fair hearing rule. One of such attributes relevant to the instant case is that expressed in the latin maxim: *audi alteram partem*, that is, hear the other side. The allegation of the appellant is that he was not heard by the Disciplinary

Committee.

The *audi alteram partem* rule is, however, not breached if the appellant was given adequate opportunity to appear and present his case or defence to the case made against him but he chose not to avail himself of the opportunity as in the instant case. See *Orugbo v. Una* (2002) 9-10 S.C. 61; (2002) 16 NWLR (Pt. 792) 175; *Otapo v. Sunmonu*(1987)2NWLR(Pt. 58)597; *Olaniyan v. University of Lagos* (1985) 2 NWLR (Pt. 9) 599; *R.N.H.W. v. Sama* (1991)2NWLR(Pt. 177) 64; and *Ewu v. University of Port Harcourt* (1995) 8 NWLR (Pt. 414) 419. The appellant can, therefore, not complain that he was denied a fair hearing by the Committee not hearing his defence in the case since he chose to stay away from the hearing.

For the reasons I have given above and the fuller reasons given in the leading judgment written by my learned brother, Musdapher, JSC, which I have read before now and which I also adopt, I also dismiss the appeal and uphold the direction given by the respondent against the appellant. I make no order on costs.

E

F

G

H

B

C

D

E

F

G

H