

SUPREME COURT OF NIGERIA

9th MARCH, 2007. SC.27\2002

**CORAM:- U. A. KALGO, G. A. OGUNTADE, A. M. MUKHTAR,
W.S.N.ONNOGHEN, C.M. CHUKWUMA-ENEH, JJSC**

EMMANUEL OKAFOR ANOR. APPELLANTS
AND
AUGUSTINE NWEKE RESPONDENTS

LEGAL PRACTITIONERS - Definition - Practice - Entitlement to - Avails only a person whose name (not signature) is on the roll (H1)

LEGAL PRACTITIONERS - Court processes - Competence - Signature - A firm of solicitors - Not being a registered legal practitioner - Motions and processes signed by it - Are incompetent (H2)

LEGAL PRACTITIONERS - Practice - High standards required - Must be maintained - Seeing that legal practice - Is a serious business for serious minds (H3)

APPEALS - Competence - Motion for extension of time - And other processes - That were not properly issued and signed by a legal practitioner - Are struck out as incompetent (H4)

FACTS

In a matter that is pending before the Supreme Court, the defendants/applicants filed a motion before the court praying for inter alia, an order for extension of time within which to apply for leave to cross-appeal. The motion was signed by J. H. C. Okolo SAN & Co. The plaintiff's respondent through their senior counsel filed a counter-affidavit in opposition to the application and raised in their brief of argument on issue as to whether the motion for extension of time is null and void. The contention in the issue is that J. H. C. Okolo SAN & Co., not being a legal practitioner authorized by law to appear or act before the Supreme

Court, the applicants's application for extension of time is null and void.

In reaction, J. H. C. Okolo SAN in his reply brief contended that the provisions in all rules of court merely require a legal practitioner representing a party in any proceeding to sign any process and that the issue as raised is one in which it will be necessary to canvass vital evidence of who signed the documents before arriving at a proper determination. He also submitted that a signature on any document is the attribute that authenticates the document. It is important to note that the reply brief was now signed by J. H. C Okolo SAN and not J. H. C Okolo SAN & Co.

HELD (Unanimously striking out the motion for extension of time per ONNOGHENJSC)

LEGAL PRACTITIONERS - Definition - Practice

1. However section 2(1) of the Legal Practitioners Act, cap 207 of the Laws of the Federation of Nigeria 1990 provides thus:-

“Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll.”

From the above provision, it is clear that the person who entitled to practice as a legal practitioner must have had his name on the roll. It does not say that his signature must be the roll but his name.

Section 24 of the Legal Practitioners Act defines a “legal petitioner” to be:

“A person entitled in accordance with the provisions of this Act to practice as a banister or as a barrister and solicitor, either generally or for the purpose of any particular office proceeding.”

The combined effect of the above provisions is that for a person to be qualified to practice as a legal practitioner he just have his name in the roll otherwise he cannot engage in any form of legal practice in Nigeria. (p. 1426 H)

Court processes - Competence - Signature

2. I had earlier stated that the law does not say that what should be in the roll should be the signature of the legal practitioner but his name. That

apart it is very clear that by looking at the documents, the signature which learned Senior Advocate claims to be his really belongs to J.H.C. OKOLO SAN & CO or was appended on it behalf since it was signed on top of that name. Since both counsels agree that J.H.C. OKOLO SAN & CO is not a legal practitioner recognized by the law, it follows that the said J.H.C. OKOLO SAN & CO cannot legally sign and/or file any process in the courts and as such the Motion on Notice filed on 19th December 2005, Notice of Cross Appeal and Applicants brief of argument in support of the said motion all signed and issued by the firm known and called J.H.C. OKOLO SAN & CO are incompetent in law particularly as the said firm of J.H.C. OKOLO SAN & CO is not a registered legal practitioner. (p. 1427 F)

Practice - High standards required

3. Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both the legally trained minds and those not so trained always learn from our examples. We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country. The law exists as a guide for actions needed for the practice of the law not to be twisted and turned to serve whatever purpose, legitimate or otherwise which can only but result in embarrassing the profession if encouraged. (p. 1428 C)

APPEALS - Competence - Motion for extension of time

4. The conclusion that must be reached in this matter is that the documents are incompetent and are struck out leaving the applicants with the opportunity to present a proper application for consideration by this Court. The effect of the ruling is not to shut out the applicants *but* to put the house of the legal profession in order by sending the necessary and right message to members that the urge to do substantial justice does not include illegality or encouragement of the attitude of '*anything goes.*' -

In conclusion I agree with the submission of learned Senior Advocate of Nigeria for the respondents that the processes filed in this application particularly the motion on notice filed on 19/12/05, the proposed

Notice of Cross appeal and Applicants' brief of argument in support of the said motion on notice are incompetent in that they were not issued by a legal practitioner known to law and are consequently struck out. (p. 1429 A)

B

NOTABLE POINTS OF INTEREST

ONNOGHEN.JSC

1. Need for hallowed counsel to concede in proper issues

C It is rather unfortunate that the offending processes originated from the hallowed chambers of a learned Senior advocate of Nigeria who did not even see them as improper and unacceptable but went on and on to argue that the documents, which in law are supposed to speak for themselves, actually told a lie as to their authentication. It should however be mentioned that learned Senior Advocate for the applicants in filing a reply brief in reaction to the submission of his learned friend silk, signed the said reply brief in the proper way, as follows:-

J.H.C. OKOLO SAN,

E J.H.C. OKOLO SAN & CO.

Applicants Counsel

162 Zik Avenue,

Uwani, Enugu. (p. 1428 E)

F

OGUNTADE.JSC

2. Need for lawyers to avoid wrong but ignored practices

I am not unaware that legal practitioners have formed the habit of signing court processes in their partnership or firm names without indicating the name of the practitioner signing the process. I have had course to deal with such processes in my career on the Bench. I do not however remember a particular occasion when an issue has been made of the propriety of such practice as has been done in this application by senior H counsel for the respondent G. R. I. Egonu Esq., SAN.

It is no justification or an acceptable excuse that because the practice has been followed for a long time for this Court not to respond appropriately to Mr. Egonu's objection. The practice is either right and

acceptable or wrong and unacceptable. (p. 1430 A)

3. Insisting on compliance with the law is not over adherence to technicality

The simple question that arises, in view of the clear provisions of Cap B 207 reproduced above is whether or not J.H.C. OKOLO & CO. SAN' is a person entitled to practice as a barrister and solicitor. It seems to me that only human beings actually called to the Bar could practice or practice by signing documents as a Motion Paper.

The argument that it is an over adherence to technicality to annul the process improperly signed and filed by J.H.C. OKOLO & CO. SAN' fails to overlook the good sense in ensuring that our Laws are strictly enforced and observed. It would have been quite another matter if what is issue is a mere compliance with Court Rules. (p. 1430 H)

REPRESENTATION

J. H. C. Okolo SAN with him Anali Chude for the applicants.

G. R. I. Egonu SAN with him J.V.C. Okoli for respondent.

CASES REFERRED TO

New Nigerian Bank Plc vs Dendag Ltd (2005) 4 NWLR (pt.916) 549 at 573

Izuogu vs Emuwa (1991) 4 NWLR 183) 78 at 85 - 86

Banjo vs Eternal Sacred Orders of cherubim and Seraphim (1975) 3 S.C 37 at 44

Atuyeye vs Ashamu (1987) 1 NWLR (pt. 49) 267 at 281

Reg. Trustees of Apostolic Church Lagos Area vs Akindele (1967) 1 ALL NLR 110

LEAD JUDGMENT BY ONNOGHEN JSC

On the 19th day of December 2005, the applicants filed motion H before this Court praying for the following orders: -

“(i) An order for extension of time within which to apply for LEAVE to (CROSS) Appeal in this suit.

(ii) LEAVE to (CROSS) Appeal against the judgment of the Court of Appeal, Enugu delivered on 25/1/01.

(iii) *Extension of time within which to file the applicants Notice and Grounds in the said (CROSS) Appeal.*

B (iv) *An order deeming the said Notice and Grounds of Appeal herein exhibited as properly filed and served, subject to the payment of the requisite court fees thereon.*

C (v) *An order for leaves to file and argue the grounds of mixed law and facts contained in the said. Notice and Grounds of Appeal, at the hearing.”*

The motion was signed by
J.H.C. OKOLO, SAN & CO.

D APPLICANT’S COUNSEL
162B ZIK AVENUE
UWANI, ENUGU.

There is an affidavit of 22 paragraphs in support of the aid motion to which has been exhibited a NOTICE OF (CROSS) APPEAL (PROPOSED) which applicants want deemed properly filed and served upon payment of requisite filing fees. The said Notice of Cross Appeal is again signed by J.A.C. OKOLO, SAN & CO and it is exhibit A attached to the said affidavit.

F Finally, the applicants also filed a brief of argument in respect of the application as required by the rules of this Court on the 19th day of December, 2005. Like the previous two documents, the brief was signed by J.H.C. OKOLO, SAN & CO.

G On the 6th day of March, 2005 the respondents filed a Counter Affidavit in opposition to the application while learned Senior Counsel for the respondents, G.R.I. EGONU SAN, filed the Plaintiffs’ - Respondents’ Brief of Argument in which he raised the issue, inter alia:

H “(1) *Whether the Notice of Motion, Notice of (CROSS) Appeal and the Applicants ‘Brief of Argument for extension of time in this application are null and void.’*”

The above issue and the argument thereon contained in the said brief were adopted and relied upon by learned senior counsel for the

respondents during the oral hearing or argument of the motion on 30th day of January, 2007.

In arguing the issue, learned Senior Advocate referred e court to section 74(1) of the Evidence Act, cap 112, Laws of the Federation of Nigeria, 1990 and submitted that by virtue of that provision this Court is enjoined to take judicial notice of 11 legal practitioners authorized by law to appear or act before it and further submitted that “*J.H.C. OKOLO SAN & CO*” is not a legal practitioner authorized by law to appear or act before the Supreme Court of Nigeria.

Referring to and relying on sections 2(1) and 24 of the Legal Practitioners Act, cap 207, Laws of the Federation of Nigeria, 1990, learned senior counsel submitted that the firm, “*J.H.C. OKOLO SAN & CO*” not being a person whose name is on the roll of Legal Practitioners in Nigeria was not entitled to sign or issue the Notice of Motion, Notice of (CROSS) Appeal and Applicants’ Brief of Argument for Extension of Time in the application and that the said documents as signed and issued by the firm are null and void relying on the Court of Appeal division in *New Nigerian Bank Plc vs Dendag Ltd* (2005) 4 NWLR (pt.916) 549 at 573.

In reaction to the above, learned Senior Advocate for the applicants *J.H.C. OKOLO SAN* filed Applicants Reply To

Respondents Brief on Application For Extension Of Time on e 19th day of January 2007, in which counsel submitted that e argument of his learned friend betrays a misconception in the interpretation placed both on the motion paper and the Applicants’ brief of argument; that a casual look at the Documents confirms that each of them was signed by the party issuing same as the counsel in the proceeding; that it is not the argument of counsel for the respondents that the signature on either document was not that of a legal . Practitioner; that provisions in all rules of court merely require legal practitioner representing a party in any proceeding to sign any process and that the issue as raised is one in which it will be necessary to canvass vital evidence of who signed the documents before arriving at a proper determination. For the above submission learned senior counsel cited and relied upon decision in the case of *Izuogu vs Emuwa* (1991) 4 NWLR 183) 78 at 85 - 86; *Banjo vs Eternal Sacred*

Orders of cherubim and Seraphim (1975) 3 S.C 37 at 44.

It is also the submission of learned senior counsel for applicants that a signature on any document is the attribute that authenticates the document for which counsel referred to Blacks Law Dictionary (Special Deluxe Fifth edition) at page 1239; that the documents in issue were duly signed by “J.H.C. OKOLO (SAN),” a registered Legal practitioner shown on the Rolls of the Supreme Court as No. 1265 and on the Rolls of Senior Advocates of Nigeria as No. 76 that the addition of the words “& CO” not in the signature authenticating the process but in the further description of it known identity is a mere surplursage which cannot take place or displace the signature, for which counsel cited the relied on the views of OPUTA J.S.C. in Atuyeye vs Ashamu (1987) 1 NWLR (pt. 49) 267 at 281; that the decision of the court Appeal in the case of New Nigerian Bank Plc vs Denday Ltd supra is only persuasive and is distinguishable in that the facts are different and that the other two justices who heard the case did not express an opinion on the issue. Learned Senior Advocate then cited and relied, on the case of Reg. Trustees of Apostolic Church Lagos Area vs Akindele (1967) 1 ALL NLR 110 and urged the court to overrule the objection.

It is very important to note that the reply brief was signed by J.H.C. OKOLO SAN not J.H.C. OKOLO SAN & CO.

There is no doubt whatsoever that the motion paper giving rise to the objection as well as the proposed Notice of Cross Appeal and appellants’ brief in support of the said motion were all signed: J.H.C. OKOLO SAN & CO. Learned Senior Counsel for the appellants does not dispute this but stated that since there is a signature on top of J.H.C. OKOLO SAN & CO it is necessary to call evidence to establish the identity of the person who signed the documents for which counsel relied on IZUOGU vs Emuwa supra and Banjo vs Eternal Sacred Orders of Cherubian & Seraphim, also supra.

However section 2(1) of the Legal Practitioners Act, cap 207 of the Laws of the Federation of Nigeria 1990 provides thus:-

“Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the

roll.”

From the above provision, it is clear that the person who entitled to practice as a legal practitioner must have had his name on the roll. It does not say that his signature must be the roll but his name.

Section 24 of the Legal Practitioners Act defines a “legal petitioner” to be:

“A person entitled in accordance with the provisions of this Act to practice as a banister or as a barrister and solicitor, either generally or for the purpose of any particular office proceeding.”

The combined effect of the above provisions is that for a person to be qualified to practice as a legal practitioner he just have his name in the roll otherwise he cannot engage in any form of legal practice in Nigeria. The question that follows whether J.H.C. OKOLO SAN & CO is a legal practitioner recognized by the law?

From the submissions of both counsels, it is very clear that the answer to that question is in the negative. In her words both senior counsel agree that J.H.C. OKOLO SAN CO is not a legal practitioner and therefore cannot practice as s such by say, filing processes in the courts of this country. It is in recognition of this fact that accounts for the argument of learned Senior Advocate for the applicants that to determine he actual person who signed the processes, evidence would have to be adduced which would necessarily establish the fact that the signature on top of the inscription J.H.C. OKOLO SAN & CO actually belongs to J.H.C. OKOLO SAN who is a Legal practitioner in the roll. **I had earlier stated that the law does not say that what should be in the roll should be the signature of the legal practitioner but his name. That apart it is very clear that by looking at the documents, the signature which learned Senior Advocate claims to be his really belongs to J.H.C. OKOLO SAN & CO or was appended on it behalf since it was signed on top of that name. Since both counsels agree that J.H.C. OKOLO SAN & CO is not a legal practitioner recognized by the law, it follows that the said J.H.C. OKOLO SAN & CO cannot legally sign and/or file any process in the courts and as such the**

Motion on Notice filed on 19th December 2005, Notice of Cross Appeal and Applicants brief of argument in support of the said motion all signed and issued by the firm known and called J.H.C. OKOLO SAN & CO are incompetent in law particularly as the said firm of
B J.H.C. OKOLO SAN & CO is not a registered legal practitioner.

In arriving at the above conclusion, which is very obvious having regard to the law, I have taken into consideration the issue of substantial justice which is balanced on the other side of the scale of justice with the
 C need to arrest the current embarrassing trend in legal practice where authentication or franking of legal documents, particularly processes for filing in the courts have not been receiving the serious attention they deserve from some legal practitioners. **Legal practice is a very serious business that is to be undertaken by serious minded practitioners**
 D **particularly as both the legally trained minds and those not so trained always learn from our examples. We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country. The law exists as a**
 E **guide for actions needed for the practice of the law not to be twisted and turned to serve whatever purpose, legitimate or otherwise which can only but result in embarrassing the profession if encouraged.**

It is rather unfortunate that the offending processes originated
 F from the hallowed chambers of a learned Senior advocate of Nigeria who did not even see them as improper and unacceptable but went on and on to argue that the documents, which in law are supposed to speak for themselves, actually told a lie as to their authentication. It should however be mentioned that learned Senior Advocate for the applicants in filing a reply brief in reaction to the submission of his learned friend silk,
 G signed the said reply brief in the proper way, as follows:-

J.H.C. OKOLO SAN

J.H.C. OKOLO SAN & CO.

H Applicants Counsel

162 Zik Avenue,

Uwani, Enugu.

On the other side of the judicial scale in the balancing act is the

issue of substantial justice, which said, had been adequately taken into consideration in this ruling. **The conclusion that must be reached in this matter is that the documents are incompetent and are struck out leaving the applicants with the opportunity to present a proper application for consideration by this Court. The effect of the ruling is not to shut out the applicants but to put the house of the legal profession in order by sending the necessary and right message to members that the urge to do substantial justice does not include illegality or encouragement of the attitude of ‘anything goes.’**

In conclusion I agree with the submission of learned Senior Advocate of Nigeria for the respondents that the processes filed in this application particularly the motion on notice filed on 19/12/05, the proposed Notice of Cross appeal and Applicants’ brief of argument in support of the said motion on notice are incompetent in that they were not issued by a legal practitioner known to law and are consequently struck out, with #1,000.00 costs in favour of the respondent

KALGO JSC

I have had the privilege of reading before now, the ruling just delivered by my learned brother Onnoghen JSC. I entirely agree with his reasoning and conclusions. I therefore find that the application is incompetent and I accordingly strike it out I abide by the order of costs made in the leading ruling

OGUNTADE JSC

I have had the advantage of reading in draft a copy of the lead ruling my learned brother Onnoghen JSC and I agree with his reasoning and conclusion.

The issue under consideration is whether or not it is permissible for a gal practitioner to sign court processes in a partnership name without an additional indication on the process of the name of the practitioner

who is a member of the partnership or firm handling the matter. The motion under consideration in this ruling was signed by “J.H.C. OKOLO & CO., APPLICANT’S COUNSEL, 162B ZIK AVENUE, UWANI, ENUGU”

B I am not unaware that legal practitioners have formed the habit of signing court processes in their partnership or firm names without indicating the name of the practitioner signing the process. I have had course to deal with such processes in my career on the Bench. I do not however
C remember a particular occasion when an issue has been made of the propriety of such practice as has been done in this application by senior counsel for the respondent G. R. I. Egonu Esq., SAN.

It is no justification or an acceptable excuse that because the practice has been followed for a long time for this Court not to respond
D appropriately to Mr. Egonu’s objection. The practice is either right and acceptable or wrong and unacceptable. Mr. Egonu S.A.N. has submitted that under Sections 2(1) and 24 of the Legal Practitioners Act, Cap. 207, Laws of the Federation, 1990, a firm of legal practitioners J.H.C. OKOLO
E SAN & CO.’ not being a person whose name appears on the role of Legal practitioner was not entitled to sign or issue the Notice of Motion before this Court. Counsel relied on *New Nigerian Bank plc. V. Dendag Ltd. (2005) 4 NWLR (Pt.916) 549 at 573*, a decision of the Court of Appeal.

F Now Section 2(1) of the Legal Practitioners Act, Cap 297 of the Laws of the Federation 1990 provides:

“*Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll.*”

G And section 24 of the same Act provides:

“*A person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purpose of any particular office proceeding.*”

H The simple question that arises, in view of the clear provisions of Cap 207 reproduced above is whether or not J.H.C. OKOLO & CO. SAN’ is a person entitled to practice as a barrister and solicitor. It seems to me that only human beings actually called to the Bar could practice or

practice by signing documents as a Motion Paper.

The argument that it is an over adherence to technicality to annul the process improperly signed and filed by J.H.C. OKOLO & CO. SAN' fails to overlook the good sense in ensuring that our Laws are strictly enforced and observed. It would have been quite another matter if what B is issue is a mere compliance with Court Rules.

In conclusion, I uphold the objection of Mr. G.R.I. EGONU, SAN and agree with the views of my brother ONNOGHEN J.S.C. I would uphold the conclusion that the processes filed in the application, particularly the motion on notice filed on 19/12/05 and the proposed Notice of cross appeal is incompetent. I accordingly strike them out with #1,000.00 costs in favour of the respondents. C

D

MUKHTAR JSC

I have read in advance the lead ruling delivered by my learned brother Onnoghen, JSC. I am in full agreement with the ruling that the application s incompetent and so is the proposed notice of cross-appeal. E I also strikes out the application.

CHUKWUMA-ENEH JSC

F

I have read in draft the Ruling just delivered in this matter by my learned her, Onnoghen JSC, and I am in complete agreement with the conclusions reached in the said Ruling and endorse the order of striking out the said processes as incompetent. G

In this matter of an application for extension of time the three processes by the applicants to wit: the notice of motion filed on 19/12/2005, the proposed notice of (cross) Appeal exhibited to the supporting affidavit to the above-mentioned motion and marked Exhibit 'A' and the brief of argument filed on 19/12/2005 have been respectively signed by J.H.C. Okolo, SAN & Co. - thus purporting the processes to have been signed and also authenticated by a legal practitioner in his own right. H However, it has been conceded that J.H.C. Okolo, SAN & Co. is not in

any sense of the term a registered Legal Practitioner vis-a-vis the provision of Sections 2 & 24 of the Legal Practitioners Act 1990.

This is even moreso as J.H.C. Okolo SAN & Co. is nowhere denoted on Roils of Legal Practitioners i.e. as enrolled at the Supreme Court of Nigeria as Legal Practitioner to practice as such in this country. It, therefore, follows willy-nilly that in the circumstances the aforesaid processes cannot be signed nor remotely be authenticated as competent processes notwithstanding that the signature that has been appended on top of J.H.C. SAN & Co. might otherwise come to be the signature of a duly registered Legal Practitioner (in being) recognized to practice as such under legal Practitioners Act 1990. However, a Legal Practitioner is a person entitled according to the provisions of Section 24 of Legal Practitioners Act to practice as a barrister or as barrister and solicitor either generally or of purpose of any particular office or proceedings. The signature that has appended on top of J.H.C. Okolo SAN & Co. with regard to these processes is the signature of J.H.C. Okolo SAN & Co. and so it is a futile venture to seek to drive a wedge between the said signature and J.H.C. Okolo, SAN & Co. They are inseparable in the context.

I hold the view, in this regard therefore that it is completely out of the question for applicants' Counsel to canvass of the necessity firstly of calling evidence to unveil whose signature has been so appended on top of J.H.C. SAN & Co. before the processes are otherwise dumped as the Rules of court have merely required no more than that a legal practitioner do sign and authenticate processes (as the aforesaid ones) as emanating from him on behalf of his client. In this regard the cases of Izuogu v. Emuwa (1991) 4 R (Pt.183) 78 sat 85 - 86 and Banjo v. Eternal Sacred Orders of cherubim & Seraphim (1975) 3 SC 26 relied upon for the proposition are not all fours in view of the peculiar facts and circumstances of the instant matter. Furthermore, the applicants' stance in this matter has been faulted by applicants' reply brief which has been filed by the applicants in response 5 respondents' brief of argument in the said application for extension of time.

It has made a significant difference as it has been properly signed by J.H.C. Okolo, SAN without as submitted by applicants' Counsel the

passage, i.e “& Co.” So far, the said reply brief has not been challenged on rounds by which the aforesaid processes are confronted here. One is minded in this regard to chalk it up to the experience, which the applicants have rightly gained from the challenge stoutly mounted against the three said processes in this matter. In this vein therefore, applicants’ Counsel in all righteousness ought to have withdrawn these processes to come back properly without any quibble.

For all this and much fuller reasons given in the Ruling of my learned other, Onnoghen JSC, endorse the Order that the said processes being competent should be struck out. I abide by the Order on cost therein contained.

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