

**SUPREME COURT OF NIGERIA**

9<sup>TH</sup> FEBRUARY 2007 SC. 18/2003

**CORAM:- A. I. KATSINA-ALU, A. M. MUKHTAR,  
M. MOHAMMED, W. S. N. ONNOGHEN, I. F. OGBUAGU, JJSC**

EKE UMAZI NDUKWE ..... APPELLANT  
AND

1. THE LEGAL PRACTITIONERS

DISCIPLINARY COMMITTEE ..... RESPONDENTS

2. MADAM NWANAAGWU

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LEGAL PRACTITIONERS - Disciplinary committee - Jurisdiction - Lies in respect of infamous conduct in a professional respect - And not in the commission of any crime (H1)

TRIBUNALS - Jurisdiction - Administrative tribunal - Trial of crime - Where a complaint doubles as a crime under the Criminal Code - Admission donates jurisdiction - Without prior trial by court (H2)

CONSTITUTIONAL LAW - Charges - Fair hearing - S. 36 (6)(a) 1999 Constitution - Information about a criminal charge - Manner of framing charge - Varies before an Administrative Tribunal and a court of law (H3)

TRIBUNALS - Charges - Before a professional tribunal - Need not be formal - No miscarriage of justice occurred in this case - Because of absence of a formal charge - For appellant understood the charge (H4)

TRIBUNALS - Quorum - Appeals - Briefs - Absence of reply brief - On issue of quorum of tribunal members - And the typographic error in adding a name mistakenly in the judgment - Shows acceptance of that issue (H5)

TRIBUNALS - Judgments - Complaint against - Based on variation in the panel - Is not fundamental - More so when an administrative tribunal -

Has power to decide its own procedure (H6)

APPEALS - Professional misconduct - Findings of fact - Evaluation of evidence - Where properly done by trial court - Appellate court will not substitute its own views (H7)

TRIBUNALS - Appeals - Clemency - Disciplinary tribunals - Addition to appellant's punishment - For professional misconduct would have been considered - Punishment of appellant being lenient - Will not be disturbed (H8)

### **FACTS**

Appellant is a legal practitioner in Abia State. His professional services were retained by 2nd respondent in respect of execution in Nigeria of judgment obtained in Cameroun against three Nigerians. Appellant took steps to execute the foreign judgment at the Ohafia High Court, Abia State. In the process he recovered N25,000.00 out of the total judgment. 2nd respondent over time lost confidence in appellant's manner of conducting the case and consequently debriefed him. But appellant refused and or neglected to pay 2nd respondent the N25,000 recovered from the sale of movable assets of the judgment debtors. 2nd respondent petitioned the office of the Chief Justice of Nigeria, which forwarded the petition to the Nigerian Bar Association for investigation. At the end, the Bar filed a complaint against the appellant before the 1st respondent on allegations of professional misconduct.

At the conclusion of hearing, appellant was found guilty of infamous conduct in a professional respect. He was suspended from the Bar with a direction that he should not engage in practice as a legal practitioner for a period of one year. Being dissatisfied with that decision, appellant has now appealed to the Supreme Court.

**HELD** (Unanimously dismissing the appeal per **ONNOGHEN JSC**)

***Disciplinary committee - Jurisdiction***

1. In fact appellant contends that the 2<sup>nd</sup> respondent never demanded for

the money in his possession. The question is whether appellant; a legal practitioner can be said to have ever entertained the slightest thought of being accused of stealing by conversion when he maintained throughout that the 2<sup>nd</sup> respondent never demanded for the money in his possession. I hold the view that the complaint against the appellant speaks for itself and it is simply that appellant was being accused of infamous conduct in a professional record and not of the commission of any crime let alone the offence of stealing by conversion. It should also be noted that throughout the trial appellant never raised an objection to the complaint being of a criminal nature or plead to the jurisdiction of the 1<sup>st</sup> respondent to hear his matter.

That apart, by the provisions of section 10 of the Legal Practitioners Act, the 1<sup>st</sup> respondent was established to exercise and does exercise disciplinary jurisdiction over members of the Legal Profession. The 1<sup>st</sup> respondent has no jurisdiction to try criminal cases neither has it ever pretended to have such jurisdiction by even attempting to exercise any. (p. 1019 F/ 1022 B)

***Jurisdiction - Administrative tribunal - Trial of crime***

2. The above decision of this court clearly establishes the principle that where a charge or complaint against a person before an administrative tribunal or body doubles as a crime under the criminal code and the person accused has admitted committing the offence or offences the administrative tribunal or body has the jurisdiction to proceed to sanction the erring officer without first referring the matter for trial and determination before a court of competent jurisdiction because the admission of guilt discharges the burden of proof placed by law on the accuser. This clearly is an exception to the general rule that where an allegation against a person before an administrative tribunal is also an offence under the criminal code, the administrative tribunal cannot hear the complaint except the criminal aspect of same has been heard and determined by a court of competent jurisdiction as decided by this court in a number of cases including Garba v. University of Maiduguri supra, etc.

(p. 1021 F)

***Charges - Fair hearing***

3. It is not disputed that the 1<sup>st</sup> respondent is not a court of law exercising jurisdiction in criminal matters under the criminal code and applying the provisions of the Criminal Procedure Act. It is conceded by both parties that the 1<sup>st</sup> respondent is an Administrative Tribunal or body exercising quasi-judicial functions or jurisdiction. I agree with the learned counsel for the 1<sup>st</sup> respondent that as an administrative body or tribunal, the 1<sup>st</sup> respondent possesses the capacity to determine its procedure by virtue of Rule 9 of the Legal Practitioners (Disciplinary Committee) Rules Cap. 207, Laws of the Federation 1990 and that the said “*capacity is restrained only by the caution that such procedure meets the demands of natural justice and in accordance with the Evidence Act.*”

It is principally in that light that one can properly appreciate the provisions of section 36(6) (a) of the 1999 Constitution which is designed to apply not only to formal courts exercising criminal jurisdiction but also to police officers effecting arrest of a suspect, administrative tribunal or bodies or generally speaking judicial or quasi judicial bodies. In fact the current trend is to apply the principles of fair hearing or natural justice to purely administrative bodies which are now expected to have the duty to act fairly in the exercise of their duties as such bodies particularly where their decisions affect the rights and obligations of people. When viewed in that light it becomes very clear, and I hereby hold that His word “*charged*” as contained in the said section 36(6) (a) of the 1999 Constitution is not limited to a formal charge as recognized in the Criminal Code and the Criminal Procedure Act and applied by courts of competent jurisdiction but extends to complaint or information as to the offence with which a person is accused delivered to the person so accused or charged in a language that he understands with sufficient details of the alleged offence. The information may not necessarily be in writing as when a police officer, in the course of his duties, arrests a person for an offence. He is duty bound to inform him of the “charge” for which he stands arrested in a language that he understands and the detail of the nature of the offence. (p. 1025 B)

***Charges - Before a professional tribunal***

4. It is very clear from the record that appellant never protested to the mode of charging him before the 1<sup>st</sup> respondent neither has he complained that he did not understand the charges against him. B

Neither did he object to the hearing of the charges against him without a formal charge or charges being filed. Appellant rather went ahead and testified before the 1<sup>st</sup> respondent and participated in the trial fully but turns round to complain about the absence of formal charge before the 1<sup>st</sup> respondent. I do not think that he should be allowed to do so, granted, without conceding, that a formal charge was needed to be drafted and filed in the matter. C

In any event, this court, on similar relevant facts, decided in Okike v. L.P.D.C (No. 2) supra at pages 93, 113 and 116 as follows:- D

*“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. Therefore what needs to be known to the legal practitioner concerned is the substance of the allegations against him before the proceedings started..... The precise nature of the allegations against the appellant were communicated to the appellant, he was well aware of the complaints against him. The appellant had fair notice of the allegations against him. Where the allegations 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 per MUSDAPHER, JSC.* E F G

From the statement of the law as handed down by this Court in the above passages, I have no hesitation in holding that having regard to the facts and circumstance of this case, the appellant has not satisfied this Court that the absence of a formal charge in the proceedings before H

the 1<sup>st</sup> respondent resulted in any miscarriage of justice calling for our intervention. On the contrary I agree with the above decision of this Court that under the rules of the 1<sup>st</sup> respondent a formal charge need not be drafted and filed against any legal practitioner “charged” with offences relating to professional misconduct provided the complaints against him have been sufficiently brought to his notice in the language he understands with sufficient details of the offences alleged, as was done in the instant case. I therefore resolve the second issue also against the appellant. (p. 1025 F/H/ 1027 D/ 1028 G)

***Absence of reply brief - On issue of quorum of tribunal members***

5. It must be noted that appellant filed no reply brief in his action. It therefore means that learned counsel for the appellant concedes the contention of the learned counsel for the 1<sup>st</sup> respondent that by the combined effect of item 1 of the second schedule to cap 207 Laws of the Federation 1990 as amended by section 15(a) and (b) of Decree No. 21 of 1994 read together with section 11(2) of Decree No. 21 of 1994 the quorum of the Disciplinary Committee shall be five persons three of whom shall be as stated in the enactment. It is clear from page 23 of the record that six and five persons as members were present at the hearing and judgment and that they all belong to the class of persons provided in section 11(2) of Decree No 21 of 1994. From the above, it is my considered view that the argument of learned counsel for the appellant on the issue of quorum is misconceived and is consequently discountenanced by me.

On the alleged participation of Mr. Nwanodi at the delivery of the judgment when he did not participate in the hearing of evidence, learned counsel for 1<sup>st</sup> respondent had submitted that the inclusion of the name of Mr. Nwanodi in the record of that day is an error committed by the typist who inadvertently included that name particularly as the panel in which Mr. Nwanodi is a member held proceedings soon after the delivery of the judgment in question. As I stated earlier in this judgment there is no reply brief by the appellant. (p. 1031 B)

***TRIBUNALS - Judgments - Complaint against***

6. It has to be noted that learned counsel for the appellant has not accused Mr. Nwanodi of being a signatory to the judgment delivered that day, in fact he concedes that he is not a signatory thereto. It is equally not the case of the appellant that the decision of the 1<sup>st</sup> respondent was not deliberated upon by the members of the panel before it was arrived at and reduced into writing by the Chairman who signed and read same in public. It is important to note that at the delivery thereof five of the six members who heard evidence were present and none dissented or expressed a contrary opinion. It is very clear therefore that the fact that the other members did not express a contrary opinion confirms their agreement with the judgment as read by the Chairman of the panel and I therefore come to the irresistible conclusion that the decision of the 1<sup>st</sup> respondent in the circumstances of the case cannot be vitiated.

In the case of Adeigbe v. Kusimo supra at 264, ADEMOLA, CJN stated the position thus:-

*"The complaint against a hearing that was not always before the same bench does not pertain to any matter that goes to the jurisdiction of the court. It is at bottom a complaint that the judgment cannot be satisfactory on the ground that as the persons who gave it had not seen and heard all the witnesses they could not appraise the evidence as a whole and decide the facts properly..... We are therefore of the opinion that variations in the Bench does not make a judgment a nullity. They may make it unsatisfactory and it may have to be set aside for this reason but whether they do or not depends on the particular circumstances of the case."*

Applying the decision of this Court supra to the facts of this case I hold the firm view that the facts and circumstance of this case do not warrant the setting aside of the decision of the 1<sup>st</sup> respondent the same having been found to be in very substantial compliance with the relevant law and rules applicable to the proceedings of the 1<sup>st</sup> respondent who is not a regular court of law but an administrative tribunal or body with power to decide its own procedure and lay down rules for the conduct of inquiry regarding discipline within the legal profession.

(p. 1032 A)

***APPEALS - Professional misconduct - Findings of fact***

7. The law remains that an appellate court is reluctant to upset a finding of fact made by a trial court which had the opportunity of listening to witnesses testify and observing their demeanour and that evaluation of evidence and the ascription of probative value thereto are the primary functions of a trial court which saw, heard and assessed the witnesses. Where a trial court clearly evaluated the evidence of the parties and justifiably appraised the facts, it is not the business of an appellate court to substitute its own views of the facts for those of the trial court. It is only where the trial court is moved to have abdicated this function or in carrying out the function makes an unsound finding that an appellate court can justifiably step in to do so or set aside such unsound finding for being perverse.

It has to be always borne in mind that the complaint against the appellant is mainly that he collected client's money which he failed or refused to pay over to the client and there is sufficient evidence on record to support the finding that this was the case. The finding is also supported by the testimony of the appellant himself who has in effect substantially admitted the accusation. There is therefore nothing to be analyzed by the 1<sup>st</sup> respondent. The finding is not perverse and I find no legal basis for this court to disturb the same. I also do not agree that appellant was found liable for a different complaint from that for which he was charged. (p. 1035 D/ 1038 A)

***TRIBUNALS - Appeals - Clemency***

8. This Court has the power, in considering appeals of this nature, to either add to, reduce or caution and discharge an appellant where the appeal is not allowed as in this case but the facts must support the exercise of that discretion. In the instant case the respondents have not asked the court to add to the sentence which I would have considered very seriously having regard to the gravamen of the offence which does not only affect the appellant as a legal practitioner but the reputation of all members of the legal profession in general and the urgent need to try to

bring the current wave of professional misconduct under some meaningful control for the good of the nation in general and the legal profession in particular. Since there is no such request, I will not consider it.

I however consider the suspension of the appellant for a period of one year to be very lenient and hold the view that it be not disturbed. B (p. 1038 H)

## **NOTABLE POINTS OF INTEREST**

### **ONNOGHEN JSC**

#### *1. Manner of conversion for the offence of stealing*

From the above provisions, it is very clear that what is proscribed is the act of dealing with goods or property which lawfully comes into the possession of the person in a manner inconsistent with the right of the true owner provided that it is also established that there is an intention on the part of the defendant or accused in so doing to deny the owner's right or to assert a right which is inconsistent with that of the owner. Thus the conversion must be to the use of the person converting or to the use of any other person with intent to permanently deprive the owner of the goods, and in the case of money there must exist the intent to use it at the will of the person who converts it, notwithstanding the fact that he intends to repay same to the owner on a later date. In the instant case, the facts and circumstances do not even suggest that appellant intended to use the money recovered on behalf of the 2<sup>nd</sup> respondent neither has it been alleged that appellant spent the money so recovered nor withheld the money with the intention of spending same. (p. 1019 C)

### **OGBUAGU JSC**

#### *2. Judgments - All panel members need not be present*

Now, the Committee is a Tribunal and not a regular court. Even in a court that a Panel is constituted including the two Appellate courts in this country, it has been held that, it is not necessary for all the Justices that heard the matter to be present during the delivery of their Judgment. Indeed, one of them can read out and deliver the Judgment of the Court in the open court. See the case of Okino v. Obanabira & 4 ors. (1999) 12

SCNJ. 27. In the instant case, that the Chairman signed the Judgment alone, I hold, does not and will not nullify or vitiate the said proceedings and the Judgment. Again, the Appellant and his learned counsel who have not shown what miscarriage of justice that has been occasioned to the B Appellant by that fact or act, are again, relying on mere technicality that no longer lives with our courts. There is the legal presumption of regularity expressed in the Latin maxim of “*Omnia praesuntur rite esse acta*” which principally, is applied to judicial, official and quasi-judicial acts. I C too, hold that in this particular circumstances, there was never a variation in the quorum of the membership of the Panel both at the hearing and at the date of the delivery of the Judgment. (p. 1051 H)

3. *Brief of appeal should be succinct and brief*

D Finally, I note that the Brief of the Appellant is of forty-six pages. I wish to observe and this is also settled, that a Brief, is not a place to give evidence. It is *supposed to* contain submissions tied to the evidence contained in the Record of Appeal. See *Benjamin Obasuyi v. Business Ventures Ltd. (2000) 5 NWLR (Pt. 658) 663 @ 690 (a)*. A Brief by its name, E should and ought to be brief. By way of an advise, insulting language by learned counsel in a Brief, should please, be avoided. See observation of Tobi, JCA (as he then was), in the case of *Mokwe v. Williams (1997) 11 F NWLR (Pt. 328) 339 @ 321 C.A.* (p. 1055 A)

**REPRESENTATION**

Ubong Akpan Esq. for the Appellant.

G Dele Oye Esq. for the 1st Respondent with his is Prisca Okonkwo Esq. N.I. Quakers Esq. for the 2nd Respondent with him is Chike Okafor Esq.

**CASES REFERRED TO**

H Benjamin Obasuyi v. Business Ventures Ltd. (2000) 5 NWLR (Pt.658) 663 @ 690 @  
Afokwe v. Williams (1997) 11 NWLR (Pt. 328) 339 @ 321 C.A  
Okino v. Obanabira & 4 ors. (1999) 12 SCNJ. 27  
Idowu v. LPDC (1962) All NLR 128

M.D.P.D.T v. Okonkwo (2001) 7 NWLR (pt. 711) 206

Oshinye v. Police (1960) 5 FS.C 105

Adewusi v. Queen (1963) 1 All NLR 316 at 319

Sagoe v. Queen (1963) 1 All NLR 290 at 294 - 295

R. v. Orizu (1954) 14 WACA 455

B

R v. Williams (1953) 1 All ER 1068

R v. Cockburn (1968) 1 All ER 466

Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo (2001)  
7 NWLR (pt.711) 206 at 237 - 238

C

Dangote v. C.S.C. Plateau State & ors. (2001) 9 NWLR (pt.717) 132 at  
159

Alalade v. Accountants Disciplinary Tribunal of ICAN (1975) All NLR  
136

Okike v. LPDC (No. 2) (2005) 7 S.C (pt. 111) 75 at 96

D

### **STATUTES & RULES REFERRED TO**

Legal Practitioners Act 1990 (as amended) ss. 10, 11, & 12(7)

Constitution of the Federal Republic of Nigeria, 1999 S. 36(6)

Criminal Code Ss. 383 & 390

Legal Practitioners (Disciplinary Committee) Rules, Rule 9

E

### **LEAD JUDGMENT BY ONNOGHEN JSC**

F

This is an appeal against the decision of the Legal Practitioners  
Disciplinary Committee on Petition No. BB/DCNB/021 delivered on the  
7<sup>th</sup> day of October 2002 pursuant to the provisions of section 12(7) of  
the Legal Practitioners Act, Cap. 207 Laws of the Federation 1990 as  
amended by the Legal Practitioners (Amendment) Decree No. 21 of 1994.

G

The appellant is a legal practitioner with a law firm in Abia State  
where he carries out his law practice. In the course of that practice his  
professional services were retained by the 2<sup>nd</sup> respondent, Mrs. Nwanna  
Awa Agwu, a business woman based in the Cameroon, in respect of the  
execution of judgment obtained in Cameroon for CFA 20,000,000.00  
against three fellow Nigerians namely Ebi Eme; Ume Ukpai and Uka Mbila  
Philip. An agreement evidencing the transaction was entered into by the

H

appellant and the 2<sup>nd</sup> respondent.

Appellant took steps to execute the foreign judgment at the High Court of Abia State, holden at Ohafia in the process of which he recovered only N25,000.00 out of the total judgment debt. The appellant discontinued the proceedings against the 3<sup>rd</sup> defendant Uka Mbila Philip in circumstances which the 2<sup>nd</sup> respondent considered controversial. The sum of N25,000.00 recovered was from FIFA and sale of the movable property of the judgment debtors. The 2<sup>nd</sup> respondent eventually lost confidence in the appellant's conduct of the case and consequently debriefed him but the appellant refused and or neglected to pay the 2<sup>nd</sup> respondent the N25,000.00 recovered from the sale of movable assets of the said judgment debtors or any part thereof, in spite of repeated demands. At the end, the 2<sup>nd</sup> respondent petitioned the office of the Chief Justice of Nigeria which petition was forwarded to the Nigeria Bar Association for investigation at the end of which the said Bar filed a complaint against the appellant with the 1<sup>st</sup> respondent on allegations of professional misconduct. The complaint, as reproduced by the appellant in the Appellant's Amended Brief of Argument deemed filed by this Court on 16/11/06 at page 6 thereof and relevant to the proceedings is inter alia, that:

“..... *In his capacity as a Legal Practitioner for the Petitioner he recovered the sum of N25,000.00 in part settlement of judgment debt but refused to pay it over to the Petitioner.*”

At the conclusion of the hearing by the 1<sup>st</sup> respondent a decision was handed down on the 7<sup>th</sup> day of October 2002 in which the 1<sup>st</sup> respondent found the appellant guilty of infamous conduct in a professional respect pursuant to the provisions of section 11(a) of the Legal Practitioners Act, Cap. 207, Laws of the Federation 1990 and suspended the appellant from the Bar with a direction that appellant should not engage in practice as a legal practitioner for a period of one from the 7<sup>th</sup> day of October, 2002. Appellant is dissatisfied with that decision and has consequently appealed against same to this Court.

In the Appellant's Amended Brief of Argument settled by learned counsel for the appellant, UBONG ESOP AKPAN Esq. and deemed filed on 16/11/06 which was adopted in argument of the appeal, the following

four issues have been identified for the determination of the appeal:

*“(1) Whether the first complaint against the Appellant before the LPDC amounted to a crime (Ground 4).*

*(2) Whether the LPDC proceedings were initiated by due process of law (Ground 3).*

*(3) Whether the LPDC was in the circumstances of this case properly constituted when it made its finding of guilt against the appellant (Ground 1 and 2).*

*(4) Whether the actual decision of 7<sup>th</sup> October 2002 was lawful, credible and sustainable. (Grounds 5, 6 and 7).”*

On the other hand, learned counsel for the 1<sup>st</sup> respondent, DELE OYE Esq. in the 1<sup>st</sup> respondent’s brief of argument deemed filed on 27/4/06 identified two issues for determination. These are as follows:-

*“(a) Whether the decision of this Court in M.D.P.D.T v. Okonkwo (2001) 7 NWLR (pt. 711) 206 is applicable in the circumstances of this case, even though there was an allegation of misconduct (against the appellant) which would appear to have criminal implications.*

*(b) Whether in the circumstances of this case there had been a breach of the Appellant’s right to a fair trial capable of vitiating the hearing and determination reached on the allegation of professional misconduct raised against the appellant herein.”*

Looking at the 2<sup>nd</sup> Respondent’s Amended Brief of Argument deemed filed on 27/4/06 settled by N. I. QUAKERS Esq., of counsel the following three issues have been identified for determination.

*“i. Whether the finding of the LPDC on the 2<sup>nd</sup> respondent’s petition amounted to a finding of guilt for the offence of stealing?*

*ii. Whether there is any feature in the proceedings before the LPDC, especially the absence of a formal charge and the composition of the LPDC on the day it delivered its ruling, that amounted to a denial of fair hearing to the Appellant to invalidate the decision of the LPDC finding the appellant guilty of infamous conduct in a professional respect?*

*iii. Whether the decision being appealed is supported by the weight of evidence before the LPDC?”*

In arguing appellant’s issue No. 1 learned counsel to the appellant

O. E. AKPAN Esq. referred the court to pages 2, 23 and 26 of the record where the first complaint against the appellant is stated and submitted that three elements appear from the complaint and that these are:

“1<sup>st</sup> that E. U. Ndukwe acted as Legal Practitioner to the petitioner.

2<sup>nd</sup>, that E. U. Ndukwe, in that capacity recovered and held N25,000 on behalf of the petitioner;

3<sup>rd</sup>, that E. U. Ndukwe refused to pay the N25,000 over to the petitioner;” and that they allege that the appellant came into possession of N25,000 with the initial consent of the petitioner, but that he thereafter dealt with that sum:

(a) in a manner inconsistent with the petitioner’s title to it, and

(b) in a manner aimed at depriving the petitioner permanently of the use of her money by refusing to pay it over; that the first complaint against the appellant therefore alleges the crime of stealing by conversion under sections 383 and 390 of the Criminal Code, Oshinye v. Police (1960) 5 FS.C 105; Adewusi v. Queen (1963) 1 All NLR 316 at 319; Sagoe v. Queen (1963) 1 All NLR 290 at 294 - 295; R. v. Orizu (1954) 14 WACA 455; R v. Williams (1953) 1 All ER 1068; R v. Cockburn (1968) 1 All ER 466.

Referring to the case of Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo (2001) 7 NWLR (pt. 711) 206 at 237 - 238 learned counsel submitted that if the test stated therein is applied to the facts of this case the facts will not support a charge in a court of law for which appellant would have been found guilty under sections 383 (1) (2) (a), (b) and (f) and section 390(c) or 390(9) of the Criminal Code; that the 1<sup>st</sup> respondent had no jurisdiction to try the 1<sup>st</sup> complaint since that complaint charged the appellant with the criminal offence of stealing by conversion covered by section 383 and 390 of the Criminal Code and relied on Garba v. University of Maiduguri (1986) 1 NWLR (pt. 18) 550.

On his part, learned counsel for the 1<sup>st</sup> respondent submitted that the decision of this court in M.D.R.D.T v. Okonkwo supra and similar decisions which compel the trial of criminal allocation by a court does not apply in the circumstances of this case. Learned counsel re-

ferred to the testimony of the appellant on record and stated that appellant admitted still having the money he collected on behalf of the 2<sup>nd</sup> respondent in his possession and submitted that having clearly admitted the unjustified retention of client's funds appellant cannot be heard to contend that he ought to have been tried before a court of competent B jurisdiction before facing the 1<sup>st</sup> respondent; that where there is an admission of the particulars of a criminal allegation the matter need not be referred first to a court for trial, relying on *Dangote v. C.S.C .Plateau State & ors.* (2001) 9 NWLR (pt. 717) 132 at 159 and that where the C allegation is substantially of a professional misconduct in character it need not be referred to a court of law first, relying on *Alalade v. Accountants Disciplinary Tribunal of ICAN* (1975) All NLR 136; *Okike v. LPDC* (No. 2) (2005) 7 S.C (pt. 111) 75 at 96; sections 10(1) (b) and 11(1) of the Legal Practitioners Act, Cap. 207 Laws of the Federation 1990. D

On his part, learned counsel for the 2<sup>nd</sup> respondent in the 2<sup>nd</sup> Respondent's Amended brief deemed filed on 27/4/06 and adopted in argument of the appeal, submitted that the submission of counsel for the appellant on this issue is misconceived and that the cases of *Denloye v. E Medical and Dental Practitioners Disciplinary Committee* (1968) All NLR 298 at 304; *Garba v. University of Maiduguri* (1986) 1 NWLR (pt. 18) 550 and *M.D.P.D.T. v. Okonkwo* (2001) 7 NWLR (pt. 711) 206 at 237 are inapplicable to the facts and circumstances of this case in that the F complaint of the 2<sup>nd</sup> respondent did not suggest an allegation of crime neither did the petition of the 2<sup>nd</sup> respondent suggest the commission of a crime by the appellant. Learned Counsel referred to the letter under the hand of the Chairman of the Committee at page 2 of the record and stated G that it contains only allegation of misconduct; that there is a difference between a sanction for withholding of money recovered by a legal practitioner for a client and the offence of stealing and that infamous conduct in a professional respect is viewed from the norms of the legal profession: that since appellant came upon the money in question lawfully and H was never alleged to have spent it at his will or misappropriated same, his liability for infamous conduct was definitely not based on allegation of commission of crime of stealing and conversion under S. 390 of the

Criminal Code as argued by learned counsel for appellant. Arguing further, learned counsel submitted that the submission by appellant at page 42 of the brief as to whether (a) the petitioner demanded for her money to be returned? (b) the appellant refused to accede to a demand for return of the money?" as well as the answers supplied therein removed the case from stealing by conversion; that the case of MDPDT v. Okonkwo supra at 235 cited and relied upon by counsel for the appellant is distinguishable from the facts of this case in that the court held that where infamous conduct cannot be established without proving facts that would amount to an offence covered by the Criminal Code, a disciplinary tribunal should yield to the criminal courts established for the trial of such offence and that the Okonkwo's case eventually decided that the offence with which Dr. Okonkwo was charged did not come under the purview of the criminal code.

The simple question that needs an answer in the issue under consideration is whether the complaint against the appellant amounts to an allegation of the commission of a crime of stealing by conversion under the criminal code as contended by learned counsel for the appellant. The complaint is simply that the appellant ".....while acting as legal practitioner for the petitioner recovered the sum of N25,000 in part settlement of judgment debt but refused to pay it over to the petitioner.

Learned Counsel for the appellant has referred the court to sections 383(1) (2) (a) (b) and (f), 383(3) and 390 of the Criminal Code as making provisions grounding the complaint of stealing by conversion thereby rendering the complaint against the appellant criminal in nature and deny the 1<sup>st</sup> respondent, upon decided authorities, of the jurisdiction to entertain the same without a competent court first determining the criminal aspect of the complaint. The question then is what do the said sections of the criminal code provide?

Section 383(1)

"A person who fraudulently takes anything capable of being stolen, or fraudulently converts to his own use or to the use of any other person anything capable of being stolen is said to steal that thing.

(2) A person who takes or converts anything capable of being

*stolen is deemed to do so fraudulently if he does so with any of the following intents:-*

- (a) an intent permanently to deprive the owner of the thing of it;*
- (b) an intent permanently to deprive any person who has any special property in the thing of such property;* B
- (f) in the case of money; an intent to use it at the will of the person who takes or converts it, although he may intend afterwards to repay the amount to the owner.*
- (3) The taking or conversion may be fraudulent although it is effected without secrecy or attempt at.....”* C

From the above provisions, it is very clear that what is proscribed is the act of dealing with goods or property which lawfully comes into the possession of the person in a manner inconsistent with the right of the true owner provided that it is also established that there is an intention on the part of the defendant or accused in so doing to deny the owner’s right or to assert a right which is inconsistent with that of the owner. Thus the conversion must be to the use of the person converting or to the use of any other person with intent to permanently deprive the owner of the goods, and in the case of money there must exist the intent to use it at the will of the person who converts it, notwithstanding the fact that he intends to repay same to the owner on a later date. In the instant case, the facts and circumstances do not even suggest that appellant intended to use the money recovered on behalf of the 2<sup>nd</sup> respondent neither has it been alleged that appellant spent the money so recovered nor withheld the money with the intention of spending same. D

**In fact appellant contends that the 2<sup>nd</sup> respondent never demanded for the money in his possession. The question is whether appellant; a legal practitioner can be said to have ever entertained the slightest thought of being accused of stealing by conversion when he maintained throughout that the 2<sup>nd</sup> respondent never demanded for the money in his possession. I hold the view that the complaint against the appellant speaks for itself and it is simply that appellant was being accused of infamous conduct in a professional record and not of the commission of any crime let alone the** E

**offence of stealing by conversion. It should also be noted that throughout the trial appellant never raised an objection to the complaint being of a criminal nature or plead to the jurisdiction of the 1<sup>st</sup> respondent to hear his matter.**

B In any event, what was the reaction of the appellant the complaint of the 2<sup>nd</sup> respondent? It is very clear from the record that appellant admitted receiving on behalf of the 2<sup>nd</sup> respondent by way of part payment of execution of judgment the sum of N25,000.00 which he failed to  
C pay over to the 2<sup>nd</sup> respondent. Now, granted that I am wrong in holding that the complaint against the appellant does not charge him with the commission of the offence of stealing by conversion, which I very much doubt, can it still be said that the matter ought first to have been referred to and settled by a court of competent jurisdiction before disciplinary  
D proceedings can be commenced against the appellant? The relevant law is as settled by this court in the case of *Dangote v. C.S.C. Plateau State* (2001) 9 NWLR (pt. 717) 132 at 159 per KARIBI-WHYTE, JSC, *inter alia* as follows:-

E *“The contention of the appellants is that even on the facts respondents should have waited for the criminal prosecution of the appellant before taking any disciplinary action arising from the criminal offences alleged against him. The decisions of F.C.S.C. v. Laoye (supra); Garba*  
F *v. University of Maiduguri (supra) UNTHMB v. Nnoli (1994) 8 NMLR (pt. 363) 376 were cited and relied upon. These are decisions where the allegations of the commission of criminal offences have been denied and disputed. In such cases the burden rests on the accuser to prove the*  
G *commission of the alleged criminal offences beyond reasonable doubt this burden can only be discharged by a court established by law and constitutionally vested with powers to exercise criminal jurisdiction. The decisions have not considered and have not decided the situation where the administrative body has proceeded to exercise its jurisdiction to im-*  
H *pose sanctions where the person accused has admitted the commission of criminal offences.*

*It cannot be disputed that where there is an admission of the commission of the criminal offences alleged the question of establishing the*

*burden on the accuser to establish the commission of the offences does not arise. Accordingly, the question of violating the rights of the accused is not an issue. It seems preposterous to suggest that the administrative body should stay the exercise of its disciplinary jurisdiction over a person who had admitted the commission of the criminal offences. The inevitable inference is that criminal prosecution should be pursued thereafter before disciplinary proceedings should be taken. I do not think the provision of the law and effective administration contemplates or admits the exercise of such circuitous route to the discipline of admitted wrongdoings. It is established law that after a plea of guilty by the accused before the court exercising jurisdiction in respect of criminal offences, the court must formally proceed to conviction without calling upon the accuser to prove the commission of the offence by establishing the burden of proof required by law - see S. 218 of the Criminal Procedure Act; see also R. v. Wilson (1959) SCNLR 462; (1959) 4 FSC 175.*

This is because the admission of guilt on the part of the accused had satisfied the required burden of proof.

In the instant case there is nothing precluding the respondents from resorting to the relevant necessary administrative machinery and of imposing the appropriate applicable sanctions after the admission of the appellant of the commission of the offences of conspiracy and theft alleged against him had been established.”

Emphasis supplied.

**The above decision of this court clearly establishes the principle that where a charge or complaint against a person before an administrative tribunal or body doubles as a crime under the criminal code and the person accused has admitted committing the offence or offences the administrative tribunal or body has the jurisdiction to proceed to sanction the erring officer without first referring the matter for trial and determination before a court of competent jurisdiction because the admission of guilt discharges the burden of proof placed by law on the accuser. This clearly is an exception to the general rule that where an allegation against a person before an administrative tribunal is also an offence under**

**the criminal code, the administrative tribunal cannot hear the complaint except the criminal aspect of same has been heard and determined by a court of competent jurisdiction as decided by this court in a number of cases including Garba v. University of Maiduguri supra, etc.**

**That apart, by the provisions of section 10 of the Legal Practitioners Act, the 1<sup>st</sup> respondent was established to exercise and does exercise disciplinary jurisdiction over members of the Legal Profession. The 1<sup>st</sup> respondent has no jurisdiction to try criminal cases neither has it ever pretended to have such jurisdiction by even attempting to exercise any.** Therefore in whatever angle one looks at the issue under consideration, it must be resolved against the appellant and I hereby order accordingly.

On issue No. 2, learned counsel for the appellant refers the court to the Legal Practitioners (Disciplinary Committee) Rules, Legal Notice No. 69 of 1965 as Amended by Statutory Instrument No 17 of 1994 paragraph 4 thereof and submitted that the proceedings of the 1<sup>st</sup> respondent in the instant case ought to have been originated by a charge formulating the offences charged and notice of which ought to have been served on the appellant before the trial, but that the instant proceeding was not so initiated and therefore not in accordance with due process, learned counsel further submitted; that the provisions of paragraph 4 of S.1 No. 17, of 1994 should be interpreted as imperative particularly as the procedural provisions is for the benefit of the person accused of an offence, relying on the Secretary of State for Defence v. Warn (1968) 3 N.M.L.R. 609 at 614; Okegbu v. State (1979) 11 S.C. 1 at 51-52; that failure by the respondent to give a charge to the appellant with sufficient information of the offence for which he was to be tried offends appellant's right as enshrined in section 36(a) of the 1999 Constitution. Learned counsel then stated that *"The charge may not conform strictly with the form prescribed under the Criminal Procedure Law, but it must be a charge framed in such a way that it discloses to the person to be tried, full details of the essential elements of the offence which he is to defend himself against. For the main purpose of a charge is to give the person accused of com-*

*mitting an offence notice of the case against him. See Fard v. IGP (1964) 1 All NLR 6 at 7-8”*

Learned counsel further submitted that in the following cases formal charges were framed:-

LPDC v. CHIEF FAWEHINMI (1985) 2 NWLR (pt.7) 300; Denloye v. Medical and Dental Practitioners Disciplinary Tribunal (1968) 1 All NLR 306; Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo (2001) 7 NWLR (pt. 711) 206 and that failure by the 1<sup>st</sup> respondent to present the appellant with a formal charge before the trial was a fundamental breach of the appellant’s right to fair hearing particularly as he was found guilty of an offence which was not contained in a charge brought to his notice and the essential ingredients of which were never disclosed.

On his part, learned counsel for the 1<sup>st</sup> respondent submitted that as a domestic tribunal, the 1<sup>st</sup> respondent is structured with some form of latitude and as such by virtue of Rule 9 of the Legal Practitioners (Disciplinary Committee) Rules, Cap 207, Laws of the Federation 1990, the 1<sup>st</sup> respondent has the capacity to determine its procedure subject to the caution that such procedure meets the demands of natural justice. Learned counsel then submitted that appellant had adequate information, knowledge and particulars of the charge raised against him in the proceedings in question. Referring to page 22 of the record, counsel stated that it reveals the allegations made by the Nigerian Bar Association against the appellant at the commencement of the proceedings and the appellant duly responded by denying the allegations; that appellant heard and understood the allegations against him and proceeded with the trial and cannot now be heard to complain that a formal charge was not brought against him. Citing and relying on the case of Okike v. LPDC (No. 2) supra learned counsel submitted that the word “charge” should be construed to mean a process by which all the essential elements of an allegation are brought to the notice of the respondent. Counsel referred the court to the decision on similar facts, in the case of Okike v. LPDC (No. 2) supra at page 93, 113 and 116 thereof and submitted that the decision of this court in LDPC v. Chief Fawehinmi supra and Medical and Dental Practitioners

Disciplinary Tribunal v. Okonkwo supra are inapplicable to the facts of this case.

On his part, learned counsel for the 2<sup>nd</sup> respondent submitted that an allegation of denial of the right to fair hearing must not be made omnibus but on a firma terra and that from the facts, appellant was given adequate time and ample opportunity to defend himself. Referring to page 10 of the appellants brief, learned counsel stated that appellant therein admitted that LPDC took evidence from both parties and adjourned proceedings to 31<sup>st</sup> July, 2002 for judgment; that appellant does not deny that the petition containing certain allegations was brought to his attention neither has he claimed not to have understood the allegations therein; that appellant duly responded to the allegations. Referring to section 36(6) of the Constitution, learned counsel submitted that appellant not having been charged with a criminal offence cannot properly take refuge under the said section and that all formalities associated with formal criminal trials do not apply to quasi-judicial proceedings before Disciplinary Tribunals such, as the 1<sup>st</sup> respondent. On the other hand learned counsel submitted that section 36(6) of the 1999 Constitution does not prescribe a format through which an accused person should be informed promptly and in detail of the nature of his offence and that the 1<sup>st</sup> respondent does not apply the provisions of the Criminal Procedure Act or Criminal Code and cannot be expected to draft a formal charge after an accused had been promptly informed in the language he understands of the nature and details of the allegations against him; that no where has this court held that a denial of fair hearing would occur where a formal charge is not drafted in a proceeding before the 1<sup>st</sup> respondent and urged the court to resolve the issue against the appellant.

Section 36(6) (a) of the 1999 Constitution provides thus:-

*“Every person who is charged with a criminal offence shall be entitled to - be informed promptly in the language that he understands and in detail of the nature of the offence.”*

On the other hand, paragraph 4 of the Statutory Instrument No. 17 of 1994 provides thus:

*“4. References of case to Tribunal by Panel.*

*In every case where in pursuance of section 10(1) of the Act the Disciplinary Committee 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.”*

**It is not disputed that the 1<sup>st</sup> respondent is not a court of law exercising jurisdiction in criminal matters under the criminal code and applying the provisions of the Criminal Procedure Act. It is conceded by both parties that the 1<sup>st</sup> respondent is an Administrative Tribunal or body exercising quasi-judicial functions or jurisdiction. I agree with the learned counsel for the 1<sup>st</sup> respondent that as an administrative body or tribunal, the 1<sup>st</sup> respondent possesses the capacity to determine its procedure by virtue of Rule 9 of the Legal Practitioners (Disciplinary Committee) Rules Cap. 207, Laws of the Federation 1990 and that the said “capacity is restrained only by the caution that such procedure meets the demands of natural justice and in accordance with the Evidence Act.”**

**It is principally in that light that one can properly appreciate the provisions of section 36(6) (a) of the 1999 Constitution which is designed to apply not only to formal courts exercising criminal jurisdiction but also to police officers effecting arrest of a suspect, administrative tribunal or bodies or generally speaking judicial or quasi judicial bodies. In fact the current trend is to apply the principles of fair hearing or natural justice to purely administrative bodies which are now expected to have the duty to act fairly in the exercise of their duties as such bodies particularly where their decisions affect the rights and obligations of people. When viewed in that light it becomes very clear, and I hereby hold that His word “charged” as contained in the said section 36(6) (a) of the 1999 Constitution is not limited to a formal charge as recognized in the Criminal Code and the Criminal Procedure Act and applied by courts of competent jurisdiction but extends to complaint or information**

as to the offence with which a person is accused delivered to the person so accused or charged in a language that he understands with sufficient details of the alleged offence. The information may not necessarily be in writing as when a police officer, in the course of his duties, arrests a person for an offence. He is duty bound to inform him of the “charge” for which he stands arrested in a language that he understands and the detail of the nature of the offence. You may call it a caution if you wish. It is usually on that basis that the suspect is cautioned before he volunteers a statement in answer to the “charge” or allegations against him. What later takes place in the court of law where a formal charge is drafted, filed and a copy served on the accused to which he formally pleads either guilty, or not guilty is a formality required by the specific provisions of the Criminal Procedure Act, which in this case does not apply to the 1<sup>st</sup> respondent.

At page 23 of the record, the Nigerian Bar Association laid out the allegation against the appellant before the 1<sup>st</sup> respondent as follows:-

*“The complaint against the Respondent, E. Ndukwe, Esq. is that in his capacity as legal practitioner for the petitioner he recovered the sum of N25,000.00 in part settlement of judgment debt but refused to pay it over to the petitioner. The respondent was alleged while acting as legal practitioner for the petitioner to have compromised the case of his client in breach of his instruction.”*

At the said page 23, appellant responded to the charge thus:-

*“I deny all the allegations.”*

**It is very clear from the record that appellant never protested to the mode of charging him before the 1<sup>st</sup> respondent neither has he complained that he did not understand the charges against him** which, from the passage quoted above, are two:-

(a) that he, as legal practitioner representing the petitioner recovered N25,000.00 as part payment of judgment debt but refused to pay it over to the petitioner, and,

(b) compromising the case, of his client;

**Neither did he object to the hearing of the charges against him without a formal charge or charges being filed. Appellant rather**

went ahead and testified before the 1<sup>st</sup> respondent and participated in the trial fully but turns round to complain about the absence of formal charge before the 1<sup>st</sup> respondent. I do not think that he should be allowed to do so, granted, without conceding, that a formal charge was needed to be drafted and filed in the matter. It should also be noted that prior to the proceedings before the 1<sup>st</sup> respondent a copy of the petition of the 2<sup>nd</sup> respondent was duly served on the appellant who had even had to appear before the Hon. Attorney-General of Abia State on the same petition of the 2<sup>nd</sup> respondent, so he knew all along the complaints against him by the 2<sup>nd</sup> respondent. He does not say that what the Nigerian Bar Association charged him with before the 1<sup>st</sup> respondent is different from the complaint of the 2<sup>nd</sup> respondent neither has he complained that the 1<sup>st</sup> respondent found him guilty of a different offence from what he was petitioned against.

**In any event, this court, on similar relevant facts, decided in Okike v. L.P.D.C (No. 2) supra at pages 93, 113 and 116 as follows:-**

*“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. Therefore what needs to be known to the legal practitioner concerned is the substance of the allegations against him before the proceedings started..... The precise nature of the allegations against the appellant were communicated to the appellant, he was well aware of the complaints against him. The appellant had fair notice of the allegations against him. Where the allegations 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 per MUSDAPHER, JSC.*

At page 113, EJIWUNMI, JSC expressed similar opinion following words:-

“..... 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—. It is my view that it will amount to undue technicality to  
 B 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 ex-  
 C pected 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.”

My learned brother, now of blessed memory PATS-ACHOLONU,  
 D JSC at pages 115-116 of the report put the matter in his characteristic graphic way thus:-

“..... the characteristics or feature of a charge do not lie in procedural formalism but rather in the context of the unrighteous act being  
 E brought to the knowledge of the person so indicted in good lucid and really understandable English as in the present case. In the case before us now, the charge as I choose to call it, the document was couched in simple prose and he was requested to appear before the Peers of his  
 F 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  
 G of the appellant to fully grasp the nuance associated with the procedure in handling his case by the Respondents.”

**From the statement of the law as handed down by this Court in the above passages, I have no hesitation in holding that having regard to the facts and circumstance of this case, the appellant has  
 H not satisfied this Court that the absence of a formal charge in the proceedings before the 1<sup>st</sup> respondent resulted in any miscarriage of justice calling for our intervention. On the contrary I agree with the above decision of this Court that under the rules of the 1<sup>st</sup> re-**

**spondent a formal charge need not be drafted and filed against any legal practitioner “charged” with offences relating to professional misconduct provided the complaints against him have been sufficiently brought to his notice in the language he understands with sufficient details of the offences alleged, as was done in the instant case. I therefore resolve the second issue also against the appellant.**

On issue No. 3, learned counsel for the appellant submitted that the decision of the 1<sup>st</sup> respondent in respect of the instant case does not qualify as a legal decision and/or in the alternative one of those who participated in the delivery of the judgment but did not hear evidence renders the proceedings unlawful and thereby liable to be set aside. Referring the court to the record learned counsel stated that the judgment was delivered by the Chairman of the 1<sup>st</sup> respondent and was signed by him only; that no other member was recorded as agreeing with the judgment, nor signed the judgment along with the Chairman in gross violation of paragraph 16(b) of the Legal Practitioners (Disciplinary Committee) Rule; that by the said paragraph 16(b) it is the committee itself, not an individual member, that can give judgment and direction of the type contemplated therein and that a pronouncement by only one member is not sufficient for the purpose; that since the committee is comprised of persons and there is no provision for quorum but by the provision of section 27(1) (a) of the Interpretation Act, cap. 192 Laws of the Federation 1990 the 1<sup>st</sup> respondent can act by at least 6 members of those persons, but that they did not sign the judgment.

In the alternative counsel submitted that since the judgment was delivered jointly with a person who did not participate in the hearing of the matter, the judgment is invalid; relying on *Adeigbe v. Kusimo* (1965) All NLR (1990) Reprint) 260 at 263 learned counsel stated that the reasons stated in that case do not avail the respondents in the instant appeal and urged the court to resolve the issue in favour of the appellant.

On his part, learned counsel for the 1<sup>st</sup> respondent submitted that the 1<sup>st</sup> respondent was properly constituted at all times material to the facts and circumstances of the case; that the complaint of the absence of

a member of the panel that heard the matter at the delivery of the judgment cannot in any way impeach the proceedings provided the tribunal did form a quorum at the time of delivery of the judgment; that there were five consistent members of the panel that heard the evidence and delivered the judgment and that there is no evidence on the face of the record that Mr. Nwanodi was involved in the delivery of the judgment particularly as he neither signed the judgment or directions nor participated in its reading and lint the mere erroneous reflection of his name on record cannot be interpreted to mean that he actually participated in the act to the decision delivered by the Chairman was already deliberated upon by all the members prior to its delivery by the Chairman who was mandated to sign the decision. Learned counsel further submitted that the appellant having admitted that Mr. Nwanodi neither heard evidence nor subscribed to the directions cannot in the same breath contend that the mere presence of Mr. Nwanodi should nullify the proceedings as a party cannot approbate and reprobate, relying on *Ude v. Nwara* (1993) 2 NWLR (pt. 278) 638. Learned counsel then cited and relied on the dictum of ADEMOLA, CJN in *Adeigbe v. Kusimo* supra at 264 and submitted that a mere variation in the composition which does not affect the substance of the inquiry cannot touch on the competence of the directions particularly as the name of Mr. Nwanodi was erroneously included in the record.

On the sub-issue of quorum, learned counsel for the 1<sup>st</sup> respondent referred to item 1 of the second schedule of cap. 207 Laws of the Federation 1990 and submitted that the quorum of the committee is five, three of whom shall be the Chairman, any justice of the Court of Appeal; any two judges or two Attorneys-General or four members of the Nigerian Bar Association; that there were six members present at the hearing while five members were present at the delivery of the decision; and urged the court to discountenance the argument on quorum.

On his part, learned counsel for the 2<sup>nd</sup> respondent submitted that the presence of Mr. Nwanodi at the delivery of the judgment did not invalidate the findings of the 1<sup>st</sup> respondent, particularly as the 1<sup>st</sup> respondent is not a court, properly so called; that once the 1<sup>st</sup> respondent had

reached a decision in writing which was pronounced in public in accordance with rule 12 of the LPDC Rules, it is valid and binding and that the presence or absence of any member who sat and heard a case does not affect the collective decision of the 1<sup>st</sup> respondent and urged the court to resolve the issue against the appellant. B

**It must be noted that appellant filed no reply brief in his action. It therefore means that learned counsel for the appellant concedes the contention of the learned counsel for the 1<sup>st</sup> respondent that by the combined effect of item 1 of the second schedule to cap 207 Laws of the Federation 1990 as amended by section 15(a) and (b) of Decree No. 21 of 1994 read together with section 11(2) of Decree No. 21 of 1994 the quorum of the Disciplinary Committee shall be five persons three of whom shall be as stated in the enactment. It is clear from page 23 of the record that six and five persons as members were present at the hearing and judgment and that they all belong to the class of persons provided in section 11(2) of Decree No 21 of 1994. From the above, it is my considered view that the argument of learned counsel for the appellant on the issue of quorum is misconceived and is consequently discountenanced by me.** C D E

**On the alleged participation of Mr. Nwanodi at the delivery of the judgment when he did not participate in the hearing of evidence, learned counsel for 1<sup>st</sup> respondent had submitted that the inclusion of the name of Mr. Nwanodi in the record of that day is an error committed by the typist who inadvertently included that name particularly as the panel in which Mr. Nwanodi is a member held proceedings soon after the delivery of the judgment in question. As I stated earlier in this judgment there is no reply brief by the appellant.** F G

In any event, the status of the 1<sup>st</sup> respondent as an administrative tribunal or body must be constantly kept in focus so as not to confuse its proceedings and judgments with those of the regular courts constituted by three or more members just as the Court of Appeal and say, the Supreme Court where each member of the panel that heard a particular case H

must render his own opinion or judgment/decision in writing. Even there all those who said and heard the case need not be present when the judgment is read in court. **It has to be noted that learned counsel for the appellant has not accused Mr. Nwanodi of being a signatory to the judgment delivered that day, in fact he concedes that he is not a signatory thereto. It is equally not the case of the appellant that the decision of the 1<sup>st</sup> respondent was not deliberated upon by the members of the panel before it was arrived at and reduced into writing by the Chairman who signed and read same in public. It is important to note that at the delivery thereof five of the six members who heard evidence were present and none dissented or expressed a contrary opinion. It is very clear therefore that the fact that the other members did not express a contrary opinion confirms their agreement with the judgment as read by the Chairman of the panel and I therefore come to the irresistible conclusion that the decision of the 1<sup>st</sup> respondent in the circumstances of the case cannot be vitiated.**

**In the case of Adeigbe v. Kusimo supra at 264, ADEMOLA, CJN stated the position thus:-**

*"The complaint against a hearing that was not always before the same bench does not pertain to any matter that goes to the jurisdiction of the court. It is at bottom a complaint that the judgment cannot be satisfactory on the ground that as the persons who gave it had not seen and heard all the witnesses they could not appraise the evidence as a whole and decide the facts properly..... We are therefore of the opinion that variations in the Bench does not make a judgment a nullity. They may make it unsatisfactory and it may have to be set aside for this reason but whether they do or not depends on the particular circumstances of the case."*

Applying the decision of this Court supra to the facts of this case I hold the firm view that the facts and circumstance of this case do not warrant the setting aside of the decision of the 1<sup>st</sup> respondent the same having been found to be in very substantial compliance with the relevant law and rules applicable to the proceed-

**ings of the 1<sup>st</sup> respondent who is not a regular court of law but an administrative tribunal or body with power to decide its own procedure and lay down rules for the conduct of inquiry regarding discipline within the legal profession.** No miscarriage of justice is apparent on the face of the record by the erroneous reflection of the name of Mr. B Nwanodi in the panel of the 1<sup>st</sup> respondent that delivered the decision of the 1<sup>st</sup> respondent in this matter neither has learned counsel for the appellant demonstrated any miscarriage of justice resulting therefrom in his argument on the issue before this Court. I therefore resolve the issue C against the appellant.

On issue No. 4, learned counsel for the appellant submitted lifted that the judgment of the 1<sup>st</sup> respondent which purports to punish the appellant does not reflect analysis and consideration of issues arising in the matter; that the 1<sup>st</sup> respondent “*manufactured*” evidence for the 2<sup>nd</sup> D respondent and found the appellant guilty of an offence not alleged against him nor disclosed in the complaint before it. Referring specifically to the judgment learned counsel stated that it spans only two and a half pages and that the findings of facts were made without analyzing the facts. E Learned counsel admitted that the 1<sup>st</sup> respondent summarized the facts before it but stated that the said facts were not analyzed, or appraised or evaluated; that it is not enough for a court to summarize or recite or restate evident, relying on *Imeh v. Okogbe* (1993) 9 NWLR (pt. 316) F 159; *Mogaji v. Odofin* (1978) 4 SC 91 at 93-95; *Atoyebi v. the Governor of Oyo State* (1994) 5 NWLR (pt. 344) 290; that a tribunal charged with the performance of judicial functions should normally state reasons for its conclusions and that to decide without reason leaves room for arbitrariness relying on *Agbaneco v. UBN Ltd.* (2000) 7 NWLR (pt 666) 534 G at 547-557.

Referring to the finding of the 1<sup>st</sup> respondent at page 27 of the record learned counsel submitted that the finding that the 2<sup>nd</sup> respondent had not been paid any amount by the appellant despite her repeated demands or that the 2<sup>nd</sup> respondent came to Nigeria from Cameroun for the purpose is utterly false as it is not supported by evidence on record. H

Referring to page 26 of the record particularly the portion that sets

out the complaint against the appellant, learned counsel submitted that the 1<sup>st</sup> respondent did not make any specific finding of fact to the effect that the petitioner demanded for her money to be returned; or that the appellant refused to accede to the demand; particularly as it is the duty of  
B the court to consider and make relevant findings on the issues placed before it, relying on *Udengwu v. Uzuegbu* (2003) 9 MJSC 70 at 82; that if the 1<sup>st</sup> respondent had been clear in its mind about what it was considering, it would have been apparent that there was no evidence to found a  
C case of prior demand for N25,000.00 and an alleged refusal by the appellant to pay; that the finding of the 1<sup>st</sup> respondent of “*failure to pay over money*” to the 2<sup>nd</sup> respondent was not the basis of the complaint before it particularly as the words “*failure*” and “*refusal*” are not identical in meaning; that the 1<sup>st</sup> respondent’s finding that appellant was guilty of  
D infamous conduct suffers from the following defects:

(a) it was based on a snappy short cut decision.

(b) not one tenable reason was tendered by the LPDC for the finding.

E (c) the LDPC did not even pretend that it had subjected the evidence to any type of analysis;

(d) the finding of failure to pay money is different from the complaint of refusal to pay the money.

F (e) no evidence of demand for refund and or refusal to accede to the demand existed on record;

(f) the infamous conduct was therefore not proved and urged the court to resolve the issue in favour of the appellant and allow the appeal.

G On his part, learned counsel for the 1<sup>st</sup> respondent’s reaction to issue No. 4 is as argued in his issue No. 1 in which he submitted that appellant admitted the unjustified retention of the money in question and was therefore properly found liable by the 1<sup>st</sup> respondent; that appellant did confirm that the 2<sup>nd</sup> respondent had prior to the filing of petition  
H against him dragged the appellant before the Attorney-General of Abia State seeking to collect her money.

In reacting to the issue, learned counsel for the 2<sup>nd</sup> respondent submitted that an appellate court is usually reluctant to upset a finding of

fact made by a trial court which had the opportunity of listening to witnesses and observing their demeanour while testifying and that evaluation of evidence and the ascription of probative value are the primary functions of the trial court, which saw, heard and assessed the witnesses, and submitted that there is nothing on record to show that the finding of the 1<sup>st</sup> respondent is perverse and relied on the case of Oduwole v. Aina (2001) 17 NWLR (pt. 741) 1 at 47; Udengwu v. Uzuegbu (2003) 13 NWLR (pt. 836) 36 at 156; Nwaezema v. Nwayieke (1990) 3 NWLR (pt. 137) 230 at 239.

Learned counsel then submitted that the respondent properly evaluated the evidence before coming to its decision and that this court cannot in the circumstance intervene and urged the court to resolve the issue against the appellant and dismiss the appeal.

**The law remains that an appellate court is reluctant to upset a finding of fact made by a trial court which had the opportunity of listening to witnesses testify and observing their demeanour and that evaluation of evidence and the ascription of probative value thereto are the primary functions of a trial court which saw, heard and assessed the witnesses. Where a trial court clearly evaluated the evidence of the parties and justifiably appraised the facts, it is not the business of an appellate court to substitute its own views of the facts for those of the trial court. It is only where the trial court is moved to have abdicated this function or in carrying out the function makes an unsound finding that an appellate court can justifiably step in to do so or set aside such unsound finding for being perverse - see Oduwole v. Aina (2001) 17 NWLR (pt. 741) 1 at 47; Udengwu v. Uzuegbu (2003) 13 NWLR (pt. 836) 36 at 156.**

From page 24 of the record the 2<sup>nd</sup> respondent testified alia:-

*“The respondent got the Cameroun judgment registered and proceeded to enforce it. Some of the movable properties of the judgment debtors were sold but the long and short of the matter was that the respondent never paid to me any amount out of the money he recovered from the judgment debtors. I had to come from the Cameroun to Nigeria several times but the respondent did not pay any sum of money to me*

.....”

Under cross-examination by the appellant, the 2<sup>nd</sup> respondent stated thus:

“The total money which you told me you collected was about N25,000.00. The Assistant Chief Registrar of Abia High Court Mr. Morgan Ubiadah said that the money had been paid to you..... It is true that you and I had appeared before a panel headed by Attorney-General, Abia State over the matter ..... You told me to go back to Cameroun. I did. When I came back nothing was still paid to me.”

After the 2<sup>nd</sup> respondent had been cross examined by the appellant, the 2<sup>nd</sup> respondent closed her case and the appellant opened his case by tendering and relying on his reply to the petition of the 2<sup>nd</sup> respondent dated 26/6/2001 and added that “the amount so far paid to me by the Registrar is less than N25,000.00. There is still a balance of N5,000.00 unpaid till today..... I still have N18,000.00 in my hand which I have not paid to her...”

Under cross examination by Oye Esq. appellant stated inter alia thus:-

“It is true that the client’s money has been in my possession for the last two years. I have never hidden this fact which I also disclosed to A-G Abia State when trying to settle the matter.....”

In answer to question by the LPDC, appellant stated thus:-

“I confirm that I still have N18,000.00 of the petitioner’s money in my possession. Even if I take 25% of the amount as the agreed legal fee to be paid to me, I am still owing the petitioner some money. .... I do not have the whole money to be refunded to the petitioner here now.”

In the judgment of the 1<sup>st</sup> respondent appears the succinct summary of the cases as put forward by both parties to the case and the judgment of the 1<sup>st</sup> respondent. The summary is direct and to the point relevant to the issue for determination; it includes the following:

“The lynch pin of her reply to questions put to her under cross examination is that although the respondent admitted that he collected a total of about N25,000.00 (twenty five thousand naira) on her behalf; she had not been paid any amount by the Respondent in spite of repeated

*demands which entails her coming from Cameroun to Nigeria on several occasions for the purpose of collecting her money”.*

As regards the case of the appellant, the 1<sup>st</sup> respondent stated thus:-

*“Shorn of all irrelevances, the sum total of his evidence is that it is true that he collected a sum of about N25,000.00 on behalf of the petitioner. He said that he paid N1,000.00 to the petitioner’s son out of the money. Some part of that aforesaid money also got trapped in the hand of one Morgun Ubiadah of the High Court Registry Official. He admitted that at the time of filing of the petitioner’s complaint and even up to the hearing of this matter he still had in his hand N18,000.00 as client’s money which he had not paid to the petitioner. In answer to questions put to him by Dele Oye Esq., the respondent said that he kept the aforesaid client’s money because the petitioner told him she had lost interest in pursuing the case...”*

The 1<sup>st</sup> respondent then concluded thus:-

*“The petitioner, frail old woman who is a widow strikes us a (sic) witness of truth. We accept her testimony which has in fact been confirmed by the evidence of the respondent himself. The respondent did not seriously dispute the fact that he received client’s money which he did not pay to the client for a period of over two years. The money even up till now remains unpaid. We therefore have no hesitation in finding you Mr. Eke Umazi Ndukwe, legal practitioner guilty of infamous conduct in a professional respect pursuant to the provisions of sections 11(1) of the Legal Practitioners Act, cap 207 of the Laws of the Federation of Nigeria 1990...”*

It is the above finding that learned counsel for the appellant has attacked vigorously. It is very clear that the finding that the petitioner 2<sup>nd</sup> respondent in this appeal, is a frail old woman who is a widow and strikes the members of the 1<sup>st</sup> respondent as a witness of truth is completely within the province of the 1<sup>st</sup> respondent to make particularly as it involves the 1<sup>st</sup> respondent exercising the opportunity of watching or seeing the said 2<sup>nd</sup> respondent testify before it and observing her demeanor. Also the finding that the 2<sup>nd</sup> respondent is a witness of truth falls within that province and this Court being an appellate court cannot substitute its

own finding for that of the trial tribunal and, in fact, is in law not capable of so doing. **It has to be always borne in mind that the complaint against the appellant is mainly that he collected client's money which he failed or refused to pay over to the client and there is sufficient evidence on record to support the finding that this was the case. The finding is also supported by the testimony of the appellant himself who has in effect substantially admitted the accusation. There is therefore nothing to be analyzed by the 1<sup>st</sup> respondent. The finding is not perverse and I find no legal basis for this court to disturb the same. I also do not agree that appellant was found liable for a different complaint from that for which he was charged.** Whether appellant failed or refused to pay over to the 2<sup>nd</sup> respondent the sum recovered is of no moment, the truth of the matter being that he did not pay the money to 2<sup>nd</sup> respondent as required of him by the profession he professes to practice. I therefore resolve the issue against the appellant.

During argument in court learned counsel for the appellant had urged the court to exercise its prerogative of mercy/clemency on the appellant who, according to learned counsel, has now fully paid over the sum of N25,000.00 to the 2<sup>nd</sup> respondent by cautioning and discharging the appellant. He cited and relied on case No. FSC/344/1959 IN THE MATTER OF NEDD, Vol. 9, Digest of Supreme Court cases by Fawehinmi pages 761-762 for the plea of clemency.

It must be noted that the payment took place after the judgment of the 1<sup>st</sup> respondent was pronounced and therefore does not form part of the main record though learned counsel for the appellant filed a supplementary record to reflect the state of affairs.

However, looking at the decision of the 1<sup>st</sup> respondent which gave “*direction that you Eke Umazi Ndukwe, Legal Practitioner be suspended from the Bar and we also order you not to engage in practice as a Legal Practitioner for a period of one year commencing from today, 7<sup>th</sup> October, 2002,*” it is clear that the punishment was not severe particularly as it did not strike out the name of the appellant from the roll of Legal Practitioners in Nigeria. It merely suspended his right to practice as a legal practitioner for a period of one year. **This Court has the power, in**

considering appeals of this nature, to either add to, reduce or caution and discharge an appellant where the appeal is not allowed as in this case but the facts must support the exercise of that discretion. In the instant case the respondents have not asked the court to add to the sentence which I would have considered very seriously having regard to the gravamen of the offence which does not only affect the appellant as a legal practitioner but the reputation of all members of the legal profession in general and the urgent need to try to bring the current wave of professional misconduct under some meaningful control for the good of the nation in general and the legal profession in particular. Since there is no such request, I will not consider it. B C

I however consider the suspension of the appellant for a period of one year to be very lenient and hold the view that it be not disturbed. D

In conclusion I find no merit in the appeal which is accordingly dismissed and the application for the exercise of prerogative of mercy on the appellant is refused. The judgment of the 1<sup>st</sup> respondent is hereby affirmed with a further order that the one year suspension of the appellant will now take effect from today, the 9<sup>th</sup> day of February, 2007 being the day the appeal is decided and the judgment of the 1<sup>st</sup> respondent affirmed. E F

I make no order as to costs.

Appeal dismissed.

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### KATSINA-ALU JSC

I have had the advantage of reading in draft the judgment delivered in my learned brother Onnoghen JSC. in this appeal. I entirely agree with his reasoning and conclusion. There is nothing I can usefully add. G H

I too dismiss the appeal. I also abide by the order as to costs.

MUKHTAR JSC

This appeal that emanated from the decision of the disciplinary committee set up under Section 11(2) of the Legal Practitioners Act, Cap 207 Laws of the Federation 1990, has in the appellant's amended brief of argument, four issues for determination, distilled from seven grounds of appeal. The issues have been dealt with extensively in the lead judgment written by my learned brother Onnoghen, JSC. I would however by way of emphasis like to comment on issue (ii) in the appellant's amended brief of argument, which reads thus:-

“(2.) Whether the LPDC proceedings were initiated by due process of law.

By virtue of the provision of section 4 of the Legal Practitioners (Disciplinary Committee) Rules, the process of initiating a disciplinary proceedings is as set out below:-

“*In any case where in pursuance of section 10(1) of the Act the Disciplinary Committee is of the opinion that a prima facie case, 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 Nigeria Bar Association is of the opinion that a prima facie case is shown*”.

The said section 10 of the Legal Practitioners Act mentioned in the supra rule stipulates as follows:-

“10.(1) There shall be a committee to be known as the legal practitioner's 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 whose name is on the roll has misbehaved in his capacity as a legal practitioner or should for any other reason be the subject of proceedings under this Act.

Learned counsel has made heavy weather of the absence of formal charge in the proceeding before the Disciplinary Committee, albeit from the Nigerian Bar Association. The pertinent question to ask at this stage is what should a charge be in this context?

In a disciplinary proceedings on professional misconduct, as this case, a charge could be a complaint by the Nigerian Bar Association at the instance of a complainant who feels aggrieved by the conduct of a lawyer, and not a formal framed charge as in a criminal proceedings.

Now, on the first day of the proceedings on 18/6/2003, Dele Oye B Esq. who represented the Nigerian Bar Association, as is evidenced on page (1) of the proceedings stated the complaint against the appellant thus:

*“The complaint of misconduct against the respondent E. Ndukwe C Esq. is that in his capacity as a legal practitioner for the petitioner he recovered the sum of N25,000.00 in part settlement of judgment debt but refused to pay it over to the petitioner. The respondent was alleged while acting as legal practitioner for the petitioner to have compromised the D case of his client in breach of his instruction.”*

It is on record that the appellant denied all the allegations, and after the petitioner had closed her case, the appellant was allowed to open his defence, as is evidenced on the third day of the record of proceedings. What then is the fuss made on the absence of a charge or lack of fair E hearing? There is no doubt whatsoever that the appellant knew very well of the misconduct he was alleged to have committed as is evidenced by the correspondences between the appellant and the parties and he even tried to justify his action. This is in accord with the purport of a charge, F which is to understand the reason why you are before a court of law, tribunal or committee, as in this case. In short, the point is, the appellant understood why he was facing the Legal Practitioners’ Disciplinary Committee. The argument of learned counsel is based on technicalities which G the appellant wants to capitalize on and distort the cause of justice. The most important thing is that the appellant was very much aware of the misconduct that was the subject of the proceedings before the legal practitioners disciplinary committee.

I agree with the reasoning and conclusion reached, in the lead H judgment and also dismiss the appeal for it is completely devoid of any merit. I abide by all the consequential orders made in the lead judgment.

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MOHAMMED JSC

The appellant in this appeal is a Legal Practitioner who was tried and convicted by the Legal Practitioners Disciplinary Committee after finding him guilty of infamous conduct in a professional respect. He was sentenced to a suspension term of one year within which he should not engage in practice as a legal practitioner. The suspension term was to commence from 7<sup>th</sup> October 2002.

The appellant who was not happy with this decision of the Legal Practitioners Disciplinary Committee, in exercise of his right of appeal under Section 12(7) of the Legal Practitioners Act CAP 207, Laws of the Federation of Nigeria 1990, as amended by the Legal Practitioners (Amendment) Decree No 21 of 1994 has now appealed to this court. His further amended Notice of Appeal contains seven grounds of appeal. From these grounds of appeal, the appellant in his appellant's brief of argument identified the following four issues for determination,

*“(1) Whether the first complaint against the Appellant before the LPDC amounted to a crime (Ground 4).*

*(2) Whether the LPDC proceedings were initiated by due process of law (Ground 3).*

*(3) Whether the LPDC was in the circumstances of this case properly constituted when it made its finding of guilt against the appellant. (Grounds 1 and 2).*

*(4) Whether the actual decision of 7<sup>th</sup> October 2002 was lawful credible and sustainable.”*

In the brief of argument filed on behalf of the Legal Practitioners Disciplinary Committee defending its judgment in this appeal as the 1<sup>st</sup> Respondent, two issues were formulated while in the 2<sup>nd</sup> Respondent's brief of argument three issues were identified for determination.

In the leading judgment of my Learned brother Onnoghen JSC with which I entirely agree, the issues as formulated in the appellant's brief of argument were thoroughly considered and effectively resolved. The facts giving rise to the present appeal are not at all in dispute. The appellant, a legal practitioner was briefed by the 2<sup>nd</sup> Respondent in this

appeal to register a foreign judgment obtained from a court in the Republic of Cameroon and execute the same in Nigeria against the judgment debtors who then were resident in Nigeria. The appellant accepted this brief and proceeded to register and execute the foreign judgment in the process of which he was able to recover the sum of N25,000.00 but B failed to pay this sum to his client the 2<sup>nd</sup> Respondent inspite of several demands by her in course of which she made several trips from Cameroon to Nigeria. Dissatisfied with the conduct of the appellant, the 2<sup>nd</sup> Respondent petitioned against him resulting in the investigation by the Nigeria C Bar Association which found the complaint against the appellant substantiated justifying his being tried by the 2<sup>nd</sup> Respondent. In the proceedings before the 2<sup>nd</sup> Respondent which commence on 18-6-2002, both the appellant and the 2<sup>nd</sup> Respondent testified and were duly cross-examined. D The 2<sup>nd</sup> Respondent in a considered judgment found the appellant guilty of unprofessional conduct as a member of the legal profession and directed for his suspension accordingly.

In the course of the proceedings before the 2<sup>nd</sup> Respondent, the appellant, a legal practitioner on trial for unprofessional conduct, admitted in no uncertain terms that he collected some money due to his client from the execution of a judgment in favour of the client but failed to pay that sum of money to the client inspite of repeated demands up to the time of his trial by the 2<sup>nd</sup> Respondent. These clear admissions are contained at page 24 of the record of this appeal where the appellant said:- F

*“All I want to add is that the amount so far paid to me by the Registrar is less than N25,000.00. There is still a balance of N5,000.00 unpaid till today xxxxx I paid N1,000.00 to the Petitioner’s son. At a point when the petitioner decided to debrief me, I explained all the steps I had taken to her. She said that she was not going to pursue the matter any further. I still have N18,000.00 in my hand which I have not paid to her xxxxxxxx I confirm that I still have N18,000.00 of the petitioner’s money in my possession. Even if I take 25% of the amount as the agreed legal fee to be paid to me I am still owing the petitioner some money I made the same disclosure to the A-G Abia State. I do not have the whole money to be refunded to the petitioner here now.”* G H

Thus from the story told by the appellant himself regarding the prevailing situation in the course of his trial before the 2<sup>nd</sup> respondent on the compliant against him, it is not at all in dispute that he unjustifiably retained his client's money and failed to deliver it to her notwithstanding B her filing a petition against him. Certainly where a legal practitioner without any justification held on to his client's money, all right thinking members of the legal profession must view this misconduct with great concern not only for the protection of the public particularly clients like the C 2<sup>nd</sup> Respondent but also for the protection and preserving the good name of the legal profession.

With this, I say I entirely agree with my learned brother Onnoghen JSC in his judgment that there is no merit at all in this appeal which I D hereby dismiss.

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### OGBUAGU JSC

The facts of this case leading to the instant appeal, are not very E much in dispute. They have been admirably stated in the lead judgment of my learned brother, Onnoghen, JSC, which I had the advantage of reading before now. I adopt the same as mine. For purposes of emphasis, I will make my own contribution.

F When this appeal came up for hearing on 16<sup>th</sup> November, 2006, Akpan, Esq., learned counsel, for the Appellant, moved their motion dated and filed 19<sup>th</sup> of August, 2005 to amend the Appellant's Amended Notice of Appeal and his Brief of Argument which was not opposed and G was duly granted. After adopting the Appellant's Amended Brief and urging the suit to allow the appeal, the learned court stated/submitted that assuming that the court does not agree with the Appellant's Brief, that there is the need for clemency. He referred to the case or decision of "this Court", IN THE MATTER OF THE LEGAL PRACTITIONER'S H ORDINANCE (CAP. 110 OF THE REVISED EDITION 1948) IN THE MATTER OF ROBERT ARCHIBOLD NEDD" dated 3<sup>rd</sup> March, 1960 - per Ademola, FCJ - a certified photocopy of which he later made available to us. He finally urged the Court to exercise its clemency as, accord-

ing to him, the Appellant made in attempt to pay.

In respect of the said plea, Mr. Oye referred the Court to page 26 of the Records. Quakers, Esq., told the Court that the issue of payment, was not made an issue before the 1st Respondent. He referred to page 24 of the Records and left the issue to the discretion of this Court. Mr. Akpan then stated that he will plead for a Warning and that “it will not happen again”.

In view of the copious Amended Brief of the Appellant through his learned counsel - Akpan Esq. and the respective Respondent’s Briefs, I will deal with the merits of the appeal. As to the Issues of the parties, I will deal even briefly, with Issues (one) and thereof 2 of the Appellant and the 2<sup>nd</sup> Respondent and Issue (one) 1 of the 1<sup>st</sup> Respondent. At page 2 of the Records, is the letter of the Chairman of the Disciplinary Committee of the Nigerian Bar Association (hereinafter called “the NBA”) - Aiku, Esq., (SAN) dated 12<sup>th</sup> October, 2005 to the Secretary of the 1<sup>st</sup> Respondent. It is headed - “Re: Complaint of Misconduct against E. U. Ndukwe, Esq.” and it reads inter alia, as follows:

“The complaint of misconduct against the above-named legal practitioner contained in a petition of Madam Nwana A. Agwu is that:

*“(1). E. U. Ndukwe Esq., while acting as legal practitioner for the petitioner recovered the sum of N25,000 in part settlement of judgment debt but refused to pay it over to the petitioner: and*

*(2) E. U. Ndukwe Esq., while acting as legal practitioner for the petitioner in breach of his (sic) instructions compromised the case of the petitioner”.*

I note that at page 3 of the Records, the Petition of the 2<sup>nd</sup> Respondent, had been forwarded at the instance of the Chief Justice of Nigeria, to the then President of the NBA - O. C. J. Okocha, Esq. (SAN). At pages 7 to 12 thereof, is the response of the Appellant to the said Chairman of the said Committee of the NBA dated 26<sup>th</sup> June, 2001, on the direction of Okocha, Esq., (SAN). It is headed thus: “RE COMPLAINT AGAINST BARRISTER EKE UMAZI NDUKWE LEGAL PRACTITIONER IN OHAFIA ABIA STATE”. The first paragraph of this respondent/reply/letter, reads inter alia, as follows:

*"I have been directed by the President NBA OCJ OKOCHA (SAN JP) to forward my reply/response to the petition written against me by one Madam NWANNA A. AGWU a native of Ohafia but based in Camerouns to you, hence this letter. The petition was addressed to the B Chief Justice of Nigeria who referred same to the President NBA....."*

At pages 15 to 19 thereof, is a copy of the letter dated 5th January, 2001, written by the Appellant, to the Chief Registrar, Administrative Division Judicial Headquarters, Umuahia. It is also headed as his letter to the NBA (supra). It was/is in response to a letter dated 5<sup>th</sup> December, C 2000. The second paragraph of this letter, reads as follows:

*"I will firstly congratulate Madam Agwu the complainant for being the first client I have had in twenty-two years of my practice who had a complaint against me in my professional capacity. I am not claiming to D be a saint but I am by my nature, background and belief above certain levels of meanness like compromising my name or integrity. People who honestly know me can attest to this fact"*

At pages 21 and 22 thereof, is a copy of his letter dated 11/5/2001 E to the Attorney-General, Ministry of Justice, Umuahia. It reads, inter alia, as follows:

*"I am sure that Madam Agwu the petitioner has no basis for her petition against me, she has gotten herself confused and thinks that propagating falsehood will assist her, may I crave your indulgence to adopt my F explanation to her first petition addressed to the Chief Judge of Abia State. I also enclose the copy of her said petition addressed to the Honourable Chief Judge for your information."*

*It is Madam Agwu who is creating what ever problems she claims G to have over this case for herself because she is the one who has made the matter last till date. She collected her file from me under the pretext that she was no longer pursuing the matter up till then she showed no signs of disgust as I explained each step I took to her satisfaction."*

*I recall that I spent almost an hour explaining to her that she was H taking a wrong decision by wanting to collect her file but she would not agree."*

*I will once more suggest that both sides be invited for a face to*

*face thrashing out of this matter so as to put it to rest. It is I who should be complaining that madam Agwu breached the terms of our contract by debriefing me without cause”.*

I note at page 6 thereof, that the petition, was copied to ten (10) different persons, bodies, institutions and organizations but to the Police B or any law enforcement agency.

Finally, at page 23 of the Records, are the Proceedings of the 1<sup>st</sup> Respondent on 18<sup>th</sup> June, 2002. The following appear inter alia:

*“Dele Oye Esq. for NBA*

C

*Respondent present, appears in person.*

*Dele Oye, Esq.: The complaint of misconduct against the respondent E. Ndukwe, Esq. is that in his capacity as a legal practitioner for the petitioner he recovered the sum of N25,000 in part settlement of judgment debt but refused to pay it over to the petitioner. The respondent was alleged while acting as legal practitioner for the petitioner to have compromised the case of his client breach of his instruction”.*

D

*[the underlining mine]*

The Appellant then stated, as follows:

E

*“I deny all the allegations”*

I have taken pains to go this far in order to show firstly, that it is the Appellant in his Brief, who is raising the issue of complaint against him before the 1<sup>st</sup> Respondent, as amounting to crime and at paragraph F 1.3 of the Brief, of “*The lack of a drafted charge*” and “*The source of the Problem*”. Ironically, in paragraph 1.2 (1) thereof, the following appear;

*“the appellant did not even see that the main issue, the financial side of the allegations, (receiving N25,000 and refusing to pay it over) was the main focus of the committee’s concern, and that the so called unlawful compromise of suit was incapable of proof (the committee did not even waste it’s time on this second allegation):”*

G

In the Judgment of the 1<sup>st</sup> Respondent, at page 27, of the Records, the following appear, inter alia:

H

*“..... The grouse of the petitioner was that although the respondent succeeded in getting some of the moveable of the judgment debtors sold to satisfy part of the judgment debt, the respondent never*

*paid any money to the petitioner. The petitioner who was ordinarily resident in the Republic of Cameroon had to come to Nigeria several times for the purpose of recovering the judgment debts but all her efforts were of no avail because the respondent had compromised the claims of the petitioner by not sincerely pursuing the sale of the immovable properties of judgment debtors”.*

So, if I or one may ask, where is the complaint against the Appellant before the 1<sup>st</sup> Respondent amounting to crime? I see none. In any case, from the Records, I see no where, the Appellant ever complained or even raised any objection as to the jurisdiction of the 1<sup>st</sup> Respondent entertaining and determining the complaint against him if he was genuinely and honestly contending that the complaint against him, amounted to his committal of a criminal offence and therefore, it was the regular court that is competent to try him. Even if it were a criminal trial, the provision of Section 167 of the C.P.L. (Criminal Procedure Law) is apposite - i.e. that any objection to a charge for any formal defect on the face thereof, shall be taken immediately after the charge has been read over to the accused and not later. So be it. Again, it is the duty of an accused person who appears for himself or his counsel, to raise the said objection promptly.

As a matter of fact, from what I have demonstrated hereinabove. Sections 10(1) (b) of the Legal Practitioners Act, Cap. 207, Laws of the Federation, 1990 (hereinafter called “the Act”) provides as follows:

*“The Body of Benchers shall be responsible .....*

*(b) the exercise of disciplinary jurisdiction over members of the legal profession and over students seeking to become legal practitioners”*,

Section 11(i) thereof provides as follows:

*“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 the person who is a member of the legal profession has misbehaved in his capacity as such or should for any reason be the subject of proceedings under this*

Act”.

These provisions which are clear and unambiguous, put beyond any doubt that the 1<sup>st</sup> Respondent, has the jurisdiction to hear and determine the said complaint against the Appellant and not a regular court. In fact, in the case of *LPDC v. Chief Gani Fawehinmi* (1985) 2 NWLR (Pt. B 7) 300, also cited in the Appellant’s Brief, it is therein conceded that this Court, held/decided that the 1<sup>st</sup> Respondent, is a Tribunal created by statute and not a pre-trial investigator. That its duty, is purely adjudicative to consider and determine any case charging a Legal Practitioner with misbehaviour of the code of conduct for Legal Practitioners and that its Direction is equivalent to a sentence passed by a court of law after conviction or a finding of guilt. However, the case of *Charles Okike v. LPDC* (2005) 7 S.C (Pt. iii) 75 @ 93, 94, 113, 115-116; (2005) 1 SCNJ, 596; (2005) All FWLR (Pt. 274) 337, has put to rest, the meaning of “charge” in the Act, as a process by which all the essential elements of any allegations, are brought to the notice of the respondent.

For decided authorities in respect of raising objection and when to do so. See the cases of *R. v. Ntia* (1946) 12 WACA 54; *Ejilikwu v. The State* (1993) 7 NWLR (Pt. 307) 544 @ 583; (1983) 9 SCNJ. 152; *Ugwu v. The State* (2002) 4 SCNJ, 282 @ 290 and recently, *John Agbo v. The State* (2006) 6 NWLR (Pt. 977) 583; (2006) 1 SCNJ. 323 @ 356; (2006) 1 S.C. (Pt. II) 73 @ 96-97; (2006) Vol. 135 LRCN 808 @ 846-847 and (2006) 2 SCM 1 @ 24.

Since, the Appellant and his learned counsel, have not shown any embarrassment caused to the Appellant who acquiesced or consented to the hearing or proceeding or any miscarriage of justice occasioned as a result. I dismiss the said issue and all the arguments proffered in the Brief in respect thereof as being, with respect, bogus. It is no other thing, than their relying on technicality and the courts, lean against it. See the cases of *The State v. Gwonto* (1983) 1 SCNLR 142 and *Igbokwe v. Nlenchi* (1996) 2 NWLR (Pt.429) 185 & 202 just to mention but a few.

I have also shown earlier in this Judgment, that live Appellant clearly, adequately and conclusively, had the information and knowledge of the nature and particulars of the complaint against him. He denied the charge,

cross-examined the petitioner and in fact, thereafter, testified on his own behalf after the close of the Petitioner's case. He even admitted or confirmed that he still had in his possession, the sum of N18,000.00 (Eighteen thousand naira) of the Petitioner's money. He even admitted under B cross-examination by Dele Oye, Esq., that it is true that the Petitioner's money, has been in his possession for the past/last two years. I will touch on this later having regard to the submission or statement in his Brief. So, the Appellant and his learned counsel, cannot be heard of any C complaint about the absence of a formal charge. I find as a fact and hold that his. Issues Nos. 1 and 2 and all the arguments in respect thereof, are an afterthought. I reject them in their entirety. If however, the learned counsel for the Appellant insist, that the Appellant should be tried before D a regular court on a formal charge in what he contends amounts to a crime, it is not late. But to now in this appeal, challenge the jurisdiction of the 1<sup>st</sup> Respondent and the proceedings initiated at the hearing by it, in my respectful view, is completely misconceived.

On Issue 3 of the Appellant, I note at page 23 of the Records, that E on 18<sup>th</sup> June, 2005 which was the date the matter was heard, six (6) members were present. The Chairman was Alhaji Abdullahi Ibrahim CON, SAN. Oguntade, JCA (as he then was), Oyeyipo, C.J. and Ajakaiye, C.J., (both retired). Chief B. O. Benson, SAN and Chief Emmanuel Toro SAN F were members present. Mr. Nwobidike Nwanodi, Esq., (sic), was recorded as No. 5 of the members who were absent with an apology. But at page 26 thereof, when the Judgment was delivered, although Ajakaiye, C. J. was absent with an apology, Mr. Nwobidike Nwanodi Esq. (sic), G was present. It is conceded or admitted in the Appellant's Brief by Mr. Akpan the learned counsel for the Appellant, that Nwanodi, Esq., neither heard evidence nor subscribed to the Directions. Yet he submitted that the "presence" of Mr. Nwanodi, nullified the proceedings. Wonders it is said, shall never end. So, how can or could the presence of Mr. Nwanodi H on the date the Judgment was delivered and who it is admitted never heard or subscribed to the Directions, nullify the proceedings? I or one may ask. The whole thing sounds or appears to me, very absurd in the extreme and amounts to stretching this straight forward matter, too far

as has been done in the Appellant's Brief. It is most regrettable and unfortunate.

In the first place, the Quorum of the 1<sup>st</sup> Respondent, is prescribed by the combined effect of item 1 of the 2<sup>nd</sup> schedule of the Act, Section 11(2) of Decree No. 21 of 1994 as amended by Section 15 (a) and (b) of the same Decree. Both at the hearing of the case and the date Judgment was delivered, the three (3) compulsory persons, were present.

Secondly, and this is also settled, a mere variation the composition of a Panel or tribunal or court, which does not affect the substance of the inquiry, cannot touch or affect, the judgment or decision, of such a body neither does such variation, render the judgment or decision, a nullity. Significantly, the learned counsel for the Appellant, cited the case of Adeigbe & anor. v. Kusimo (which he spelt as Usimo) & ors. (1965) All NLR (1990 Reprint) 260 @ 263-264 - per Ademola, CJN also cited and relied on in the 1<sup>st</sup> Respondent's Brief. In both Briefs, the relevant pronouncements, were reproduced (although not fulfill by the 1<sup>st</sup> Respondent). It is as follows:-

*"..... The complaint against a hearing that was not always before the same bench does not pertain to any matter that goes to the jurisdiction of the court. It is at bottom a complaint that the judgment cannot be satisfactory on the ground that as the persons who gave it had not seen and heard all the witnesses, they could not appraise the evidence as a whole and decide the facts properly. Thus, it is a complaint on the soundness of the judgment itself, and not a complaint that is extrinsic to the adjudication. We are therefore of the opinion that variation in the bench do not make the judgment a nullity; They may make it unsatisfactory and it may have to be set aside for this reason but whether they do or not depends on the particular circumstances of the case".*

*[the underlining mine]*

I note that the Appellant in his brief, most conveniently, omitted in their reproduction, the sentence underlined by me.

Now, the Committee is a Tribunal and not a regular court. Even in a court that a Panel is constituted including the two Appellate courts in this country, it has been held that, it is not necessary for all the Justices

that heard the matter to be present during the delivery of their Judgment. Indeed, one of them can read out and deliver the Judgment of the Court in the open court. See the case of Okino v. Obanabira & 4 ors. (1999) 12 SCNJ. 27. In the instant case, that the Chairman signed the Judgment alone, I hold, does not and will not nullify or vitiate the said proceedings and the Judgment. Again, the Appellant and his learned counsel who have not shown what miscarriage of justice that has been occasioned to the Appellant by that fact or act, are again, relying on mere technicality that no longer lives with our courts. There is the legal presumption of regularity expressed in the Latin maxim of “*Omnia praesuntur rite esse acta*” which principally, is applied to judicial, official and quasi-judicial acts. I too, hold that in this particular circumstances, there was never a variation in the quorum of the membership of the Panel both at the hearing and at the date of the delivery of the Judgment. This issue, with respect, is frivolous and lacks merit. It is dismissed by me together with all the submissions in respect thereof.

In respect of Issue 4 of the Appellant, I should have ignored it; but for the strong language appearing in the arguments/submissions in respect thereof. In paragraph 7.2, the following appear - “*SNAPPY, SHORT CUT JUDGMENT DEVOID OF ANALYSIS OR EVALUATION OF EVIDENCE*” and at paragraph 7.3, the following is stated thus: “*THE TRIBUNAL PERVERSLY SUMMED UP THE PETITIONER’S EVIDENCE*”.

It should be noted that the evidence of both the Petitioner/2<sup>nd</sup> Respondent and that of the Appellant and the respective cross-examination, were brief. The facts of the case, were not in dispute. It is settled that what is admitted, need no further proof. The Appellant cross-examined the 2<sup>nd</sup> Respondent. In his defence, he tendered his letter or Reply dated 26<sup>th</sup> June, 2001 which was admitted in evidence as Exhibit 8. The Statement of defence in respect of one of the Petitioner’s Judgment debtors - Eka Philip, was admitted in evidence and marked Exhibit 9. As I stated earlier in this Judgment, the Appellant under cross-examination by Dele Oye, Esq., stated as follows:

“*It is true that the client’s money has been in my possession for the*

last two years .....”.

Then, in answer to a question from the 1<sup>st</sup> Respondent, the Appellant, had these to say, as follows:

*“I confirm that I still have N18,000 of the Petitioner’s money in my possession. Even if I take 25% of the amount as the agreed legal fee to be paid to me, I am still owing the petitioner some money; I made the same disclosure to A-G Abia State. I do not have the whole of the money to be refunded to the petitioner here now”.*

[the underlining mine]

What else did the Appellant and his learned counsel want the 1<sup>st</sup> respondent to write? I or one may ask. The above, is from the mouth or evidence of the Appellant. The 1<sup>st</sup> Respondent, should have summarily, given Judgment on the spot, but in its wisdom, it reserved judgment in order to give a considered decision. It should be noted that no pleadings were filed and exchanged. The Appellant after his evidence, closed his case and did not call any witness as it was not necessary in the circumstances of his testimony and admission. The learned counsel for the Appellant, wants or submitted that the 1<sup>st</sup> Respondent, should have written a long Judgment where it will analyze or evaluate the evidence before it. He submitted further that although the 1<sup>st</sup> Respondent summarized the evidence before it, but that it did not analyze the said facts nor appraise or evaluate it. If I may ask, what evidence was it to analyze, appraise or evaluate? Is it the said admission of the Appellant who said it is true and confirmed that he still had or has in his possession for the past/last two (2) years - i.e. as at 2002, the 2<sup>nd</sup> Respondent’s money and even at the date of the said Judgment? I wonder loudly and visibly! It is really disgusting to me, to say the least. The 1<sup>st</sup> Respondent, is accused in the Appellant’s Brief, of manufacturing evidence for the 2<sup>nd</sup> Respondent and that it found the Appellant guilty of an offence not alleged against him nor disclosed in the complaint before it. To worsen matters, although the 1<sup>st</sup> Respondent was most lenient in suspending from the Bar the Appellant for a period of one (1) year from engaging in practice as a Loyal Practitioner commencing from 7<sup>th</sup> October, 2002 a period that elapsed since 7<sup>th</sup> October, 2003, and he should have resumed if he has not already re-

signed his private legal practice, the Appellant has from the Brief, regrettably, ridiculed the 1<sup>st</sup> Respondent who should have struck out his name from the Roll of Legal Practitioners and by his appeal, stressed the 2<sup>nd</sup> Respondent. I don't like this at all. This is terrible! This is monstrous!

B This is really very unfair to the 1<sup>st</sup> Respondent or its said Panel members! It is even stated in the Brief, that if the 1<sup>st</sup> Respondent had been clear in its mind about what it was considering, it would have been apparent, that there was no evidence to find a case of prior demand by the 2<sup>nd</sup> Respondent and refusal to pay by the Appellant and so on.

Remarkably, those unjustly maligned in the Appellant's Brief of giving "*snappy, short cut Judgment devoid of analysis or evaluation of evidence*", perversely summing up the Petitioners evidence, "*manufacturing evidence for the 2<sup>nd</sup> Respondent and finding the Appellant guilty of an offence not alleged against him nor disclosed in the complaint before it*", are legal Giants and legal luminaries of impeccable character. The members of the Panel who heard evidence culminating in the said Judgment, are the Chairman of the Panel who is a SAN and a former

E Attorney-General of the Federation, a former Justice of the Court of Appeal now a Justice of this Court, two Chief Judges (now retired) and two distinguished SENIOR ADVOCATES OF NIGERIA!

Frankly speaking, I do not find anything perverse in the Judgment

F of the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent (although that was not necessary in my respectful view since the Appellant admitted the facts and the debt in his evidence), believed the 2<sup>nd</sup> Respondent who the members saw testify and described her as a "*frail old woman and a widow*". It described her as a witness of truth and accepted her testimony which it stated "*has in fact been confirmed by the evidence of the Respondent (now Appellant) himself*". Indeed and in fact, one of the bodies the 2<sup>nd</sup> Respondent copied or sent a copy of her Petition is "*5 Widows (sic) Association of Abia State, Government House, Umuahia*".

H As I stated at the beginning of this Judgment, Mr. Akpan pleaded with the Court for leniency and for a warning. From what I have adumbrated in this Judgment, with the greatest respect, the said plea, is woefully belated. If the learned counsel had initially, confined himself to this

plea, since the facts are not disputed, perhaps, may be, the Court should have exercised its discretion but how? One or I may ask. I too, refuse the plea.

Finally, I note that the Brief of the Appellant is of forty-six pages. I wish to observe and this is also settled, that a Brief, is not a place to give evidence. It is supposed to contain submissions tied to the evidence contained in the Record of Appeal. See Benjamin Obasuyi v. Business Ventures Ltd. (2000) 5 NWLR (Pt. 658) 663 @ 690 (a). A Brief by its name, should and ought to be brief. By way of an advise, insulting language by learned counsel in a Brief, should please, be avoided. See observation of Tobi, JCA (as he then was), in the case of Mokwe v. Williams (1997) 11 NWLR (Pt. 328) 339 @ 321 C.A.

In conclusion, it is from the fore-going and the fuller reasons in the said Judgment of my learned brother, Onnoghen, JSC, that I agree with his conclusion that the appeal stands dismissed. I too, dismiss it and I abide by the consequential orders including that on costs.

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