

**SUPREME COURT OF NIGERIA**  
4TH DECEMBER, 2009 SC. 190/2006  
**CORAM:- A. I. KATSINA-ALU, M. MOHAMMED,**  
**W. S. N. ONNOGHEN, C. M. CHUKWUMA-ENEH,**  
**M. S. MUNTAKA-COOMASSIE, JJSC**

ANAMELECHI ITEOGU ESQ. ....	APPELLANT
AND	
THE LEGAL PRACTITIONERS	
DISCIPLINARY COMMITTEE .....	RESPONDENT

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PARTIES - Actions - Privity of contract - Applicability - What petitioner needs to sustain his complaint against appellant - Is not privity of contract but locus standi - Which he has established by proving sufficient interest (H1)

LEGAL PRACTITIONERS - Power of Attorney - Clients - Whether petitioner is appellant's client - Since the donors donated the power - In their capacity as representatives of petitioners' community - Petitioner is appellant's client (H2)

EVIDENCE - Proof - Amount received by appellant - Whether proved - Petitioner did prove by documentary evidence that it was as he averred - Appellant had the burden of proving he did not receive the full sum - Which he failed to discharge (H3)

ACTIONS - Reliefs awarded - Challenge to - Propriety - Appellant never challenged award of N9.5 m to petitioner at the hearing - It is therefore too late for him to raise that issue at this stage (H4)

LEGAL PRACTITIONERS - Disciplinary Committee - Propriety of punishment - Infamous conduct - Though respondent did not use the word 'infamous' - It is clear it did find appellant liable for infamous conduct - Punishment was therefore proper (H5)

**FACTS**

Appellant was petitioned against by one Bishop Antigha ("the complainant") before the Legal Practitioners Disciplinary Committee

(‘respondent’). It was the case of complainant that appellant received the money paid by the Federal Government to Ibaka Community, of which complainant is a member, as compensation for the compulsory acquisition of their land, but refused to pay over to the complainant his own share, contrary to the Rules of Professional Conduct in the Legal Profession (‘the Rules’). In his reaction to the petition, appellant denied acting for complainant in the transaction. He also claimed he only collected half of the money being alleged by the petitioner for the said Ibaka Community, which amount he paid over to the community after deducting his fees.

It was undisputed that appellant acted in the transaction under a power of attorney donated by representatives of Ibaka Community. It was a term of the power of attorney that on collection of the compensation amount, appellant was to pay to each individual claimant his entitlements in accordance with the list of claimants given to him. It was also undisputed that complainant was No. 281 on the list and that he was not paid any sum whatsoever by appellant. After hearing, respondent found appellant liable for misconduct in a professional respect contrary to Rules 24 and 49 (a) and (b) of the Rules and prescribed punishment to him as provided by s. 12 of the Legal Practitioners Act. These included the payment of complainant’s entitlements to him and the striking out of appellant’s name from the roll of legal practitioners. Aggrieved, appellant has brought this appeal against the decision of respondent.

### **ISSUE FOR DETERMINATION**

*“Whether, having regard to the material before the Committee and the Law, the Committee was right in coming to the conclusion that the Appellant was guilty of misconduct in a professional respect and directing that the Appellant’s name be struck off the Roll of Legal Practitioners in Nigeria as well as ordering the Appellant to pay to the petitioner the sum of N9,500,000.00 (Nine million, five hundred thousand naira).”*

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

### **Privity of contract - Applicability**

1. Both parties agree that the petitioner is a native of Ibaka Community and that his land was among those acquired by the Government and for which he was to be paid compensation like others in the

same circumstance. The petitioner's names also appeared as No. 281 in the list of claimants of the compensation - exhibit 7. What the petitioner needs to sustain his complaint against the appellant is not privity of contract but locus standi which he has established by proving that he has sufficient interest in the subject matter. (p. 2393 D/G)

***Whether petitioner - Is appellant's client***

2. The Power of Attorney was donated by the representatives of Ibaka Community to the appellant in their representative capacity; the membership of Ibaka Community includes the petitioner who was also a claimant in respect of the compensation and who was, by that Power of Attorney to have been paid his money or compensation individually but was not. I hold the considered view that by the terms of the Power of Attorney, the facts of the case which are not disputed, the petitioner was a client of the appellant just like the rest of the members of Ibaka Community for the purposes of the power donated by their representative to the appellant. (p. 2394 A)

***Amount received by appellant - Whether proved***

3. On the question of the amount actually received by the appellant as compensation for the acquired land, documents were tendered, admitted without objection, to show that what was paid to the appellant was N47,543,754.75. By exhibit 3, original letter from the Federal Ministry of Defence addressed to the petitioner to which were attached certified true copies of other documents, it is clear, and the respondent is correct in holding that it has been proved that appellant collected N47,543,754.75 by way of compensation on behalf of Ibaka Community. The petitioner haven introduced evidence in proof of the payment of that sum of money the burden shifted on the appellant to prove the fact that he only received N23,646,974.53 from the said Ministry of Defence which appellant failed or neglected to do. (p. 2394 C)

***Reliefs awarded - Challenge to - Propriety***

4. On the award of N9.5 million to the petitioner by the respondent, it is on record that the appellant never challenged the claim of the petitioner to that sum at the hearing, it is rather too late for him to raise that issue at this stage. Appellant had ample opportunity to cross

examine the petitioner on that claim but failed to utilise same thereby rendering the evidence on the issue to be unchallenged. The respondent was in the circumstance right in acting on same in making the award. (p. 2395 A)

**B *Propriety of punishment - Infamous conduct***

5. It is also the case of appellant that the respondent did not find the appellant liable for “infamous conduct” and as such he ought not to have been punished under section 12 of the Legal Practitioners Act.

**C** It is true that the respondent did not use the word “infamous” in its findings.

It is clear that the respondent intended to and in fact did find the appellant liable of infamous conduct and consequently metted out the appropriate punishment under the law. (p. 2395 B/E)

**D**

***NOTABLE POINT OF INTEREST***

***CHUKWUMA-ENEH JSC***

***1. Need misconduct to be in professional capacity***

**E** For the case against the appellant to stick at all on the peculiar facts of the case it is incumbent on the respondent to show that the misconduct for which the appellant has been arraigned before the Tribunal pertains to his conduct in his professional capacity i.e. arising from one of Solicitor/Client relationship; as it is settled in *Re G. Idowu* (1971) 1 ANLR 126 that only misconducts in a professional capacity  
**F** can sustain a charge of misconduct before the Tribunal under the Act. (p. 2398 H)

***REPRESENTATION***

**G** S. Larry Esq. for the appellant with him is O. Odanwu (Miss) and I. Tabai (Miss).

Dr. Garba Tetenti for the respondent with him are Ngede A. Idakwo Esq. and Anita Ikongbeh (Miss)

**H *CASES REFERRED TO***

Dagaci vs Dagaci (2006) 1S.C (pt.1) 87

AKINGBOYE V. ALAO (1973) 4 WSCA 128

Okike vs LPDC (NO. 2) (2005) 7 S.C (pt. 11) 75

DAVIES V. DAVIES (1960) 3 AER 248 at 253 - 254

Adewunmi vs A-G of Kaduna vs Hassan (1985) 2 NWLR (pt. 8) 483  
Thomas vs The Most Rev. Olufosoye (1986) 1 NWLR (pt. 18) 669 at 683 & 691

Adesanya vs President of the Federal Republic of Nigeria & anor. (1981) 1 ALL NLR (pt. 1) 1 at 35, (1981) 5 SC. 112 at 184

B

**STATUTES & RULES REFERRED TO**

Legal Practitioners Act, Cap 207 L. F. N., 1990, s. 12

Evidence Act, s. 111

Criminal Code, s. 383

Rules of Professional Conduct in the Legal Profession, Rules 24 & 49 C

**LEAD JUDGMENT BY ONNOGHEN JSC**

This is an appeal against the decision of the Legal Practitioners Disciplinary Committee delivered on the 7th day of June, 2006 in D which the appellant, a Legal Practitioner, was found liable for misconduct in a professional respect contrary to Rules 24 and 49 (a) and (b) of the Rule of Professional Conduct in the legal profession, punishable under section 12 of the Legal Practitioners Act, Cap. 207, Laws of the federation of Nigeria, 1990, as amended, and the appellant was therein ordered to pay the sum of N9,500,000.00 (Nine E million, five hundred thousand naira) to the petitioner, Bishop Ndarake James Antigha in addition to the name of the appellant being directed to be struck off the Roll of Legal Practitioners.

F

The complaints against the appellant are as follows:-

*“1. That you Anamalechi Iteogu as counsel received the sum of N47,543,754.75 (Forty seven million, five hundred and forty three thousand, seven hundred and fifty four naira, seventy five kobo) from the Ministry of Defence as compensation for land acquired by G the Federal Government for the establishment of Naval Base of Akwa Ibom State but refused, and neglected to pay over to Bishop Ndarake James Antigha (the complainant) his own share as one of the claimants shown in the schedule of claims, all contrary to Rules 24 and 49 (a) and (b) of the Rules of Professional Conduct in the Legal Profession and section 12 of the Legal Practitioners Act 1990 as amended H by Decree 21 of 1994.*

*2. That you Anamalechi Iteogu as counsel received the sum of N47,543,754.75 (Forty seven million, five hundred and forty three*

thousand, seven hundred and fifty four naira, seventy five kobo) on behalf of your clients from the Ministry of Defence as compensation for land acquired by the Federal Government of Nigeria, but failed to properly account for the said sum to your clients all contrary to Rules 24 and 49(a) and (b) of the Rules of Professional Conduct in the Legal Profession and Section 12 of the Legal Practitioners Act, 1990 as amended by Decree 21 of 1994. “

In reaction to the charge/complaint, the appellant denied acting for the petitioner in the transaction or collecting any money for the petitioner or receiving the sum of N47,543,754.75 for Ibaka Community from the Ministry of Defence but admitted collecting the sum of N23,646,974.52 for the said community, which sum, appellant contended he paid over to the community after deducting his professional fee.

At the conclusion of the hearing, the respondent found the appellant liable for infamous conduct and consequently directed that his name be struck off the roll of Legal Practitioners and ordered the appellant to pay the sum of N9,500,000.00 to the petitioner being his share of the compensation paid by the Federal Ministry of Defence. The appellant is dissatisfied with the decision/direction and has consequently appealed to this Court.

The Learned Senior Counsel for the appellant, I.N. UMEZURIKE, SAN, in the appellant’s brief filed on 12/2/07 and adopted and relied upon at the hearing of argument in the appeal, has formulated a single issue for the determination of the appeal. The issue is as follows:-

“ *Whether, having regard to the material before the Committee and the Law, the Committee was right in coming to the conclusion that the Appellant was guilty of misconduct in a professional respect and directing that the Appellant’s name be struck off the Roll of Legal Practitioners in Nigeria as well as ordering the Appellant to pay to the petitioner the sum of N9,500,000.00 (Nine million, five hundred thousand naira).* “

It is the submission of Learned Senior Counsel for the appellant that the respondent did not prove the charge levelled against the appellant, particularly as the respondent did not prove:-

(a) that the appellant acted for the petitioner in a professional respect;

(b) that the appellant received from the Ministry of Defence a specific amount for the petitioner, and

(c) that the said sum so collected for the petitioner was converted by the appellant.

It is the contention of the Learned Senior Counsel that the respondent failed to establish the fact that the petitioner was appellant's client as a result of which Learned Senior Counsel submitted that there was no privity of contract between the petitioner and the appellant, relying on the case of *Tweddle vs. Atkinson* (1861) IB & S, 393; *Dunlop Pneumatic Tyre & Co. Ltd vs. Selfridge & Co. Ltd* (1915) AC 847; *Ajayi vs R.T. Briscoe (Nig) Ltd* (1964) 1 ALR. Comm. 315; *Philip Ebhota & ors vs Plateau Investment and Property Development Co. Ltd* (2006) 5 WRN 1 31- 33; *Chuba Ikpeazu vs A.C.B.* (1965) NMLR 374, 379. B  
C

It is the further submission of Learned Senior Counsel that the petitioner lacks locus standi to petition against the appellant as the petitioner was not a client of the appellant, nor does he have sufficient interest, relying on *Adesanya vs President of the Federal Republic of Nigeria & anor.* (1981) 1 ALL NLR (pt. 1) 1 at 35; *Thomas vs The Most Rev. Olufosoye* (1986) 1 NWLR (pt, 18) 669 at 683 & 691. D  
E

It is the contention of Learned Senior Counsel that the second count/charge is vague as the clients are not named or the location of land in respect of which the compensation was paid described or named; that it was not proved that appellant received the sum of N47,543,754.75 from the Federal Ministry of Defence and that the appellant ought not to have been found liable by the respondent in the circumstances; that the documents tendered by the petitioner were not certified as prescribed by section 111 of the Evidence Act and as such the respondent ought not to have relied on them even though the appellant never objected to their admissibility, relying on *IBWA Ltd vs Imano Nig. Ltd & anor.* (2001)17 WRN 1, 19 - 20, *Alade vs Olukade* (1976) 2 S.C 183, 189. F  
G

It is the further submission of the Learned Senior Counsel that it was not proved that appellant collected the sum of N47,543,754.75 from the Ministry of Defence as the cheque with which the money was allegedly paid to the appellant was not tendered particularly as the appellant denied receiving such an amount; that it was not proved H

that the petitioner was entitled to N9,500,000.00 which the respondent awarded to him particularly as the petitioner was not appellant's client neither did the appellant receive any money on his behalf; that the charge against the appellant amounted to a criminal offence of conversion under section 383 the Criminal Code and therefore outside the jurisdiction of the respondent; that the respondent ought to have referred the matter to an appropriate court for prosecution after which it would have continued with proceedings if the appellant was convicted of the offence; that the respondent was in error in ordering the name of the appellant to be struck off the Roll when there was no finding of infamous conduct against the appellant as required under section 12 of the Legal Practitioners Act.

In conclusion, Learned Senior Counsel urged the court to allow the appeal and set aside the decision/direction of the respondent or in the alternative substitute a reduced punishment of admonition. On his part, DR. GARBA TETENGI, Learned Counsel for the respondent, in the respondent's brief of argument filed on the 14th day of March, 2008 adopted the single issue identified by Learned Senior Counsel for the appellant but submitted that the complaint against the appellant was proved to warrant the sanction meted out to the appellant; that contrary to the ingredients identified by Learned Senior Counsel for the appellant as needed to be established by evidence, the relevant material particulars of the first complaint against the appellant, which were in fact proved, are:

- (a) whether the petitioner had locus to complain against the unprofessional conduct of the appellant;
- (b) that the appellant had received the sum of N47,543,754.75 as compensation for the land acquired in Akwa Ibom to which the petitioner was entitled to some part, and
- (c) that the appellant neglected/and or refused to pay over to the petitioner his own part of the compensation.

It is the submission of Learned Counsel for the respondent that the principle of privity of contract does not apply to the facts of this case as what is required of the petitioner is to show sufficient interest in the subject matter of compensation and that the appellant directly or indirectly owed him (petitioner) a professional duty, which was clearly done in this case; that there is evidence on record that the petitioner is a member of Ibaka Community and was entitled to re-

ceive compensation for his land which was acquired, as evidenced in exhibit 7, the list of claimants, which evidence was never challenged thereby demonstrating clearly that the petitioner has sufficient interest in the subject matter, relying on *Adesanya vs President, Federal Republic of Nigeria*, supra; *Fawehinmi vs NBA (NO.2) (1989) 3S.C (pt.11) 1*; *Adewunmi vs A-G of Kaduna vs Hassan (1985) 2 NWLR* B (pt. 8) 483; that by exhibit 3, a letter from the Federal Ministry of Defence to the petitioner, the complainant proved that the sum of N47,543,754.75 was paid to the appellant which thereby shifted the burden on the appellant to prove that that was not the amount he collected which appellant failed to discharge, as there is no documentary evidence to prove that appellant received only N23,646,974.53, relying on *Arabambi vs Advance Beverages Ind, Ltd (2005) 12S.C (pt. 1) 60*; *Durosara vs Ayorinde (2005) 3 - 4 S.C 14*; *Plateau State vs A-G Federation (2006) 1S.C (pt. 1)*; *Ojo vs Dharoro (2006) 2-3 S.C 105* and *Dagaci vs Dagaci (2006) 1S.C (pt.1) 87*; that it is not true that the documents were not certified as contended particularly as some of the documents from the Federal Ministry of Defence and of Works were official correspondence in their originals. C E

On the third ingredient of the complaint, learned Counsel submitted that the respondent established the fact that appellant refused and/or neglected to pay the petitioner his own part of the compensation; that the Power of Attorney under which appellant acted enjoined the appellant to pay all the claimants individually, which appellant failed to do. F

On the second complaint, learned Counsel submitted that the respondent established the fact that appellant collected the sum of N47,543,754.75 on behalf of his clients as compensation and that appellant failed to properly account for the sum so collected to his clients; that even if it is held that appellant collected N23.6 million he never told the clients what happened to the balance. G

On the award of N9.5 million to the petitioner, learned Counsel submitted that the claim was not challenged by the appellant; that the complaint against the appellant was not criminal in nature but purely on professional misconduct; that the respondent was not bound to use the word "*infamous*" in its findings under section 12 of the Legal Practitioners Act as the words used by the respondent suffi- H

ciently conveyed the fact that appellant was found liable for infamous conduct; relying on *Okike vs LPDC (NO. 2) (2005) 7 S.C (pt. 11) 75*.

Finally learned Counsel urged the court to dismiss the appeal and affirm the decision/direction of the respondent.

B From the record before this Court, the facts are straight forward, it is not disputed that the Federal Government acquired land from Ibaka Community, Akwa Ibom State for the building or establishment of a naval base; that the petitioner is a member of Ibaka Community in Mbo Local Government Area of Akwa Ibom State and was one of those whose land was acquired for that purpose and therefore entitled to compensation; that after the acquisition, evaluation was carried out and a list of claimants drawn up - see exhibit 7; that by exhibit 7, the name of the petitioner appears as NO. 281; that D the people of Ibaka Community consulted and retained the professional services of the appellant, a legal practitioner for the purpose' of, inter alia, securing the release of the compensation money from the Government of the Federal Republic of Nigeria for the land acquired for the said naval base and for which the community, through E their representatives donated a Power of Attorney to the appellant, exhibit D4; that by clause 5 of the said Power of Attorney, the appellant was to "*pay compensation money so collected to us and all other claimants individually and accordingly to the schedule of payment*"; that the petitioner was one of the claimants but was not paid; that F appellant by virtue of the Power of Attorney collected the compensation money from the Federal Ministry of Defence; that the compensation money was N47,543,754.75 though appellant claimed he was only paid the sum of N23,646,974.53. while the respondent and the G petitioner contend that the appellant was paid the whole of the compensation money - N47,543,754.75. However, whether the appellant was paid part of the whole amount, the fact remains that nothing was paid by the appellant from whatever sum he received as compensation for Ibaka Community to the petitioner for his own portion H of land acquired by the government.

It should be borne in mind that appellant admits the fact that he did not pay any money out of the sum collected from the Federal Ministry of Defence by way of compensation to the petitioner. His reason, as has been argued in the appellant's brief include the con-

tention that the petitioner was never his client in respect of the transaction and as such there is no privity of contract between the appellant and the petitioner. Secondly that the petitioner, not being a client of the appellant has no locus standi to complain about the non payment of his share of the compensation money since appellant did not collect any money on the petitioner's behalf. The question to be answered is whether the contention of the appellant is borne out of the evidence on record.

To begin with, the Power of Attorney at page 50 of the record of appeal stated in its preamble, inter alia, as follows:-

*"THIS Power of Attorney is made this Day of 3rd March 1998 by the undersigned whose names, addresses, and signatures appear below are the True representatives of IBAKA Community in Mba Local Government Area of Akwa Ibom State ..... do hereby appoint Messrs. ANAMELECHI ITEOGU & CO ,,... to be our Lawful Attorney and to do all or any of the things specified herein..... "*

As stated earlier in this judgment **both parties agree that the petitioner is a native of Ibaka Community and that his land was among those acquired by the Government and for which he was to be paid compensation like others in the same circumstance. The petitioner's names also appeared as No. 281 in the list of claimants of the compensation - exhibit 7.** It is therefore very clear and I agree with the finding by the respondent that the petitioner has sufficient interest in the compensation money collected by the appellant enough to sustain his complaint of non payment of same against the appellant. The issue of privity of contract is clearly not relevant to the facts of this case. It must be emphasized that by the Power of Attorney, appellant undertook by clause 5 thereof *"To pay compensation money so collected to us and all other claimants INDIVIDUALLY AND ACCORDING TO THE SCHEDULE OF PAYMENT."* It is on record that the petitioner's name appear as NO. 281 on the list of claimants but was never paid by the appellant. **What the petitioner needs to sustain his complaint against the appellant is not privity of contract but locus standi which he has established by proving that he has sufficient interest in the subject matter** - see *Adesanya vs President of the Federal Republic of Nigeria supra* and *Fawehinmi vs NBA (NO.2) also supra*.

On the question as to whether the petitioner was a client of the

appellant or not, the contention is unfortunate in view of the established and undisputed relevant facts to wit; ***the Power of Attorney was donated by the representatives of Ibaka Community to the appellant in their representative capacity; the membership of Ibaka Community includes the petitioner who was also a claimant in respect of the compensation and who was, by that Power of Attorney to have been paid his money or compensation individually but was not. I hold the considered view that by the terms of the Power of Attorney, the facts of the case which are not disputed, the petitioner was a client of the appellant just like the rest of the members of Ibaka Community for the purposes of the power donated by their representative to the appellant.***

***On the question of the amount actually received by the appellant as compensation for the acquired land, documents were tendered, admitted without objection, to show that what was paid to the appellant was N47,543,754.75. By exhibit 3, original letter from the Federal Ministry of Defence addressed to the petitioner to which were attached certified true copies of other documents, it is clear, and the respondent is correct in holding that it has been proved that appellant collected N47,543,754.75 by way of compensation on behalf of Ibaka Community. The petitioner haven introduced evidence in proof of the payment of that sum of money, the burden shifted on the appellant to prove the fact that he only received N23,646,974.53 from the said Ministry of Defence which appellant failed or neglected to do.*** Appellant never tendered the cheque from his bank to confirm what he received from the Ministry if actually it was less than the amount claimed by the Ministry.

Learned Senior Counsel for the appellant has submitted that the documents tendered by the petitioner were official documents which are public documents and were to have been certified. While it is correct to say that the only secondary evidence of a public document admissible in evidence is a certified true copy, the documents in question were duly certified while those not so certified were original correspondences addressed from the Ministries of Defence and Works to the petitioner in person and were tendered by the petitioner, see exhibit 3.

***On the award of N9.5 million to the petitioner by the respondent, it is on record that the appellant never challenged the claim of the petitioner to that sum at the hearing, it is rather too late for him to raise that issue at this stage. Appellant had ample opportunity to cross examine the petitioner on that claim but failed to utilise same thereby rendering the evidence on the issue to be unchallenged. The respondent was in the circumstance right in acting on same in making the award.*** B

***It is also the case of appellant that the respondent did not find the appellant liable for “infamous conduct” and as such he ought not to have been punished under section 12 of the Legal Practitioners Act. It is true that the respondent did not use the word “infamous” in its findings; it found in the following terms:*** C

*“That the Respondent is liable of the most gracious act of misconduct in a professional respect as alleged against him in flagrant breach of Rules 24 and 49 (a) and (b) of the Rules of Professional Conduct and. Punishable under section 12 of the Legal Practitioners Act, Cap 207, LFN 1990 (as amended). “* D

***It is clear from the above finding that the respondent intended to and in fact did find the appellant liable of infamous conduct and consequently metted out the appropriate punishment under the law.*** E

The conduct of the appellant in this matter leaves much to be desired. It is, to put it mildly rather unfortunate. Here is a legal practitioner in whom much trust was reposed but who failed to live up to expectation. Granted that appellant was unaware of the existence and claim of the petitioner in respect of the compensation, which is however not borne out of the evidence on record, why, for God’s sake did the appellant not take steps to meet the petitioner even half way upon becoming aware of the petitioner’s unsatisfied claims to compensation. What would it have caused the appellant to have given his law practice a human face? Nothing, but his failure to do so has proven to be very expensive indeed. Is it not said that penny wise, pound foolish? F

From the evidence on record, it is very clear that from the onset, appellant had no intention of paying the claims of the petitioner despite the numerous petitions written by the petitioner in search G H

of justice, including a report to the police. If after the appellant had become aware of the claims of the petitioner, he/appellant had taken steps to pay the petitioner, the petitioner would not have reported the matter to the Nigerian Bar Association for investigation and redress. It is on record that when the petitioner reported the matter to the police, the Ibaka Community duly identified the petitioner as one of them yet the appellant would not be moved. How true that those that the gods want destroyed they first make mad!!

In conclusion I find no merit whatsoever in this appeal which is accordingly dismissed. The judgment/decision/direction of the respondent in the matter is hereby affirmed.

Appeal dismissed.

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***KATSINA-ALU JSC***

I have had the advantage of reading in draft the judgment delivered by my learned brother Onnoghen JSC. I also hold that the appeal has no merit whatsoever and must therefore be dismissed. I dismiss it and abide by the order as to costs.

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***MOHAMMED JSC***

I have been privileged before today to read in draft the judgment just delivered by my learned brother Onnoghen, JSC. I am completely with him in his finding that there is no merit in this appeal. The evidence is overwhelming that the appellant who was briefed by the Ibaka Community, including the petitioner, to collect compensation money for land acquired by the Federal Government collected the money but failed to personally pay members of the Community.

Following this conduct of the appellant, the Petitioner who was number 281 on the list of the beneficiaries of the payment of compensation was not paid. The appellant did not even cross-examine the petitioner on this evidence. The conduct of the appellant as a counsel was indeed grossly infamous. This appeal must fail and the same is hereby dismissed.

**CHUKWUMA-ENEH JSC**

The salient facts and circumstances of this case on appeal to this court from the decision of the Legal Practitioners Disciplinary Committee (herein called the “Respondent”) can be gleaned from the two pronged complaints preferred against one Anamelechi Iteogu, the Legal Practitioner involved in this matter (herein known as the “Appellant”). The two complaints are as follows:

“1. That you Anamalechi Iteogu as counsel received the sum of N47,543,754.75 (Forty seven million, five hundred and forty three thousand, seven hundred and fifty four naira, seventy five kobo) from the Ministry of Defence as compensation for land acquired by the Federal Government for the establishment of Naval Base of Akwa Ibom State but refused and neglected to pay over to Bishop Ndarake James Antigha (the complainant) his own share as one of the claimants shown in the schedule of claims, all contrary to Rules 24 and 49(a) and (b) of the Rules of Professional Conduct in the Legal Profession and Section 12 of the Legal Practitioners Act 1990 as amended by Decree 21 of 1994.

2. That you Anamalechi Iteogu as counsel received the sum of N47,543,754.75 (Forty seven million, five hundred and forty three thousand, seven hundred and fifty four naira, seventy five kobo) on behalf of your clients from the Ministry of Defence as compensation for land acquired by the Federal Government of Nigeria, but failed to properly account for the said sum to your clients all contrary to Rules 24 and 49 (a) and (b) of the Rules of Professional Conduct in the Legal Profession and Section 12 of the Legal Practitioners Act, 1990 as amended by Decree 21 of 1994.”

Both parties have called evidence in the matter, at the conclusion of which the Respondent found the complaints proved and in its decision directed that the appellant in addition to his name being struck off the Roll of Legal Practitioners do pay the sum of N9,500,000.00 to the petitioner i.e. one Bishop Ndarake James Antigha.

Being aggrieved by the decision he has appealed to this court by Filing a notice of appeal on 29/6/20006 containing 3 (three) Grounds of Appeal. He has filed his brief of argument on 12/2/2007 which has been adopted and relied upon at the oral hearing of the appeal in this court. The sole issue raised in the said brief of argument

is as follows:

“Whether, having regard to the material before the Committee and the Law, the Committee was right in coming to the conclusion that the Appellant was guilty of misconduct in a professional respect and directing that the Appellant’s name be struck off the Roll of Legal Practitioners in Nigeria as well as ordering the Appellant to pay the sum of 9,500,000.00 (Nine million, five hundred thousand naira).”

The respondent has reacted by filing its brief of argument on 14/3/2008 in which it has adopted and relied upon before this court. In it, it has raised three issues for determination as follows:

(a) whether the petitioner had locus standi to complain against the unprofessional conduct of the appellant.

(b) that the appellant has received the sum of N47,543,754.75 as compensation for the land acquired in Akwa Ibom to which the petitioner was entitled to some part, and

(c) that the appellant neglected/and or refused to pay over to the petitioner his own part of the compensation.

I have set out the above resume so as to enable me discuss a couple of issues crucial and relevant to resolving this matter. In this vein, I adopt and rely on the detailed facts and the cases of the parties as ably set out in the lead judgment of my learned brother Onnoghen JSC, of which I have had the advantage of a preview before now.

The appellant has taken the important issue of lack of locus standi of the petitioner i.e. Bishop Antigha to maintain this action against him. If I understand his case, the appellant is challenging the matter firstly, on the ground that the instant action is not maintainable where there does not exist Solicitor/Client relationship between him and Bishop Antigha, and secondly that based on the facts of this case that he has collected the petitioner’s share of the compensation money from the Army authority in the sum of N9.5 million i.e. on his behalf. Thirdly, that it has not been showed that his conduct in the circumstances tantamount to an infamous conduct within the Act.

I think that for the case against the appellant to stick at all on the peculiar facts of the case it is incumbent on the respondent to show that the misconduct for which the appellant has been arraigned before the Tribunal pertains to his conduct in his professional capac-

ity i.e. arising from one of Solicitor/Client relationship; as it is settled in *Re G. Idowu* (1971) 1 ANLR 126 that only misconducts in a professional capacity can sustain a charge of misconduct before the Tribunal under the Act.

This requirement derives from construing of the Act as a whole. And, I think it is a point which has to be disposed of first as it is capable of stalling the case; it goes to the root of the case. This is fundamental as the relationship in the circumstances cannot be at large. Therefore a legal practitioner cannot be punished under the Act, for all misconducts but only misconducts in a professional capacity or respects (underling for emphasis). In other words, the respondent has to bring the instant misconduct within that narrow ambit by showing that the appellant has acted in his professional capacity to collect the compensation money in this matter on behalf of Ibaka Community of which the petitioner is a member. The courts of law do not intervene unless one of the parties to the dispute having the necessary locus standi to do so, invokes their judicial powers. The term locus standi means standing to sue. See: GOURIET V. UNION OF POST OFFICE WORKERS & ANOR.. (1977) 2 WLR 310; (1978) A/C 435 at 496 Per Lord Diplook and SENATOR ABRAHAM ADESANYA V. PRESIDENT OF THE FEDERAL REPUBLIC OF NIGERIA & ANOR. (1961) 5SC. 112 at 184. Let me now examine the matter against the backdrop of the appellant's contention raised above.

That is to say, are there pieces of evidence in this case pointing to the fact that the appellant has acted in his professional capacity in collecting the compensation money under a Power of Attorney - Exhibit D4 executed between the representatives of Ibaka Community and the appellant. Firstly, the Power of Attorney has minced no words in spelling out clearly that the appellant has been retained in his professional capacity as Solicitor by the Ibaka Community of Mba Local Government of Akwa-Ibom to collect the compensation money payable to the claimants individually according to the Schedule of payment and it is clearly so provided in Clause 5 of the Power of Attorney. The preamble of the Power of Attorney is as follows:

*"THIS Power of Attorney is made this Day of 3<sup>rd</sup> March 1998 by the undersigned whose names, addresses, and signatures appear below are the True representatives of IBAKA Community in Mba*

*Local Government Area of Akwa Ibom State..... do hereby appoint Messrs. ANAMELECHI ITEOGU & CO..... to be our Lawful Attorney and to do all or any of the things specified herein.....”*

I am satisfied that the appellant, in this matter at all material times has acted in his professional capacity and that sequel to the terms of the Power of Attorney - Exhibit D4, it has created Solicitor/ Client Relationship between him and Ibaka Community including the petitioner Bishop Antigha.

The point has to be made that based on the circumstances of this case, the appellant and the Ibaka Community has also all the features of a fiduciary relationship. See: AKINGBOYE V. ALAO (1973) 4 WSCA 128, making the appellant in every respect accountable for the compensation money to the payees whose names have appeared in the Schedule of Payment individually.

To be clothed with the locus standi on the peculiar facts of the matter, the respondent in addition to proving that the appellant has acted in his professional capacity in this matter has to prove that he has interest in the compensation money collected by the appellant on behalf of Ibaka Community entitling him to maintain the action and that the appellant on having collected his share of the compensation money has refused and/or neglected to pay him his claim after several demands, in this regard, Exhibit 7- a compendium of the names of the claimants upon which the computation of the compensation money has been based has showed all the payees numbered serially and the petitioner Bishop Antigha has been showed as at No.281. The Tribunal has found that he is entitled to the sum of N9,500,000.00. The appellant has not refuted this finding on the petitioner’s entitlement before the Tribunal nor in this court.

This relationship has placed certain responsibility on the appellant to the extent that any conduct of his that runs contrary to the Rules of Professional Conduct in the Legal Profession may amount to a misconduct. See: DAVIES V. DAVIES (1960) 3 AER 248 at 253 - 254. I have come to these conclusions based on the findings of the Tribunal, which I find impeccably well established. And I go on to set out these grounds based on the accepted facts before the Tribunal. The Tribunal has in its decision made specified findings, including:

Firstly, at p.l 18 of the record it states thus:

*“We hold that the respondent breached the Power of Attorney*

*by failing to act within the express provision which obliged him to pay compensation money so collected to donees and all other claimants, individually and according to the Schedule of Payment”.*

Before this finding the Tribunal has earlier found that “both agree (i.e. the appellant and the people Ibaka Community) that the Power of Attorney Exhibit D4, regulates their relationship and relied on it as the basis of the complaint against the Appellant”.

Secondly, at P. 121 of the Record it has found as follows:-

“This submission overlooks the fact that both parties agreed that the amount of compensation due to the owners of Ibaka land was N47,543,754.75. So what has been admitted need no further proof. The Respondent, who claimed that he actually collected 50% because of corruption and unlawful conduct of a third party, known only to the Respondent, has the burden of proof. The complainant, in my view, has discharged the burden when he tendered documents which showed the sums paid as compensation for Ibaka land acquired and list of persons entitled to be paid. More importantly, the Respondent failed to inform the donors of the Power of Attorney that only 50% of their entitlement was actually paid to him. The Committee believes that if the Respondent truly collected 50% of the compensation, he should have reported to the authority and the Donors of the Power of Attorney.”

Thirdly, at p.122 to p.123 of the record it has found thus:

“The third question is answered affirmatively that the total amount due to the Ibaka Community for the land acquired, which was N47,543,754.75, was indeed, paid to Barrister Anamelechi Iteogu.”

“The petitioner, Bishop Ndarake, gave evidence concerning his root of title, evidence of survey and enumeration by officials of Federal Ministry of Works. It was obligatory for the Respondent to confront him under cross-examination with a view to showing that he was not entitled to benefit from the compensation. The Respondent failed to ask any question. This body has no reason to doubt the eligibility of Bishop Ndarake to benefit from compensation money and we so hold.”

Fourthly, at p. 123 of the record it states thus:

“.....can Anamelechi Iteogu be held responsible for Bishop Ndarake’s denial of what was due to him? We

answer the question in the negative."

It went on at p. 124 of record to hold "*that Anamelechi Iteogu is held responsible for Bishop Ndarake's denial of what was due to him from the Compensation money.*"

Fifthly, i.e. on the quantum of compensation due to the petitioner from the total sum of N47,543,754.75. The Tribunal at the same p. 124 has said:

"*in the circumstances and on the uncontroverted evidence of the petitioner, we hold that the petitioner is entitled to N9,500,000.00 (Nine million, five hundred Thousand naira) as compensation for the shrine and the farmland owned by him.*"

In this court, having gone through the appellant's brief of argument and submissions they have not dented in any way the above valid findings of the Tribunal, which have established beyond doubt the solicitor/client relationship between the appellant and the people of Ibaka Community of Akwa-Ibom. I hold that they are properly grounded on the facts of the case and rightly acted upon by the Tribunal. These findings have once more settled the questions that the appellant collected the sum of N47,543,754.75 as compensation money due to Ibaka people from the Ministry of Defence and that the amount due to the petitioner has formed part of the total sum of money so collected by the appellant, which has yet to be paid by the appellant to the petitioner notwithstanding his demands, it otherwise amounts to infamous conduct.

From the foregoing reasons I am satisfied that the petitioner has discharged the onus on him on the above ingredients of the complaints preferred against the appellant and that the Tribunal's finding that petitioner, Bishop Antigha, has the requisite locus standi to institute this matter is well grounded and is entitled to N9,500,000.00.

Furthermore, to show that the appellant's case is conceived in dishonesty and so lacking any basis, for even on the reduced amount of N23,646,974.52, that is 50% of the compensation money, which the appellant has conceded he has received from the Ministry of Defence, he dishonestly has not disclosed the scenarios of these facts to his clients. Nor is there any iota of evidence that in good faith he has discharged albeit, to an extent of his obligations, under clause 5 of the Power of Attorney, Exhibit D4, by paying to the petitioner any

part of the compensation money even on pro rata basis. The appellant's case, with respect, is conceived in deceit and it is a clear case of shirking of professional responsibility to his clients amounting to professional misconduct.

I agree with the Tribunal that the appellant's conduct in this matter has to be seen as a misconduct in the context of "...any conduct that constitutes an infraction of acceptable standard of behaviour or ethics of the legal profession, of any conduct which connotes conduct despicable and morally reprehensible as to bring the legal profession into disrepute if condoned or unpunished, will amount to misconduct." There can be no doubt that on the facts of this case his conduct amounts to an infamous conduct.

Without deciding the point even though deducible from the surrounding facts of this case, the appellant, on having conceded that he has collected the compensation sum even by 50% as to the total sum of money paid as compensation money for the land so acquired for "Naval Base" at Akwa Ibom has thereby put himself in a fiduciary position vis-a-vis the payees named on the Payment Schedule and so accountable to each and everyone of them that is to say individually. In other words, he has to be taken as holding the said sum of money so collected on trust. In the circumstances any cestui que trust behalf of whom he is holding the funds in this case including the petitioner is entitled after demands have been made to sue in default of the fiduciary failing and/or neglecting to pay over his entitlement. The appellant is also accountable on these grounds albeit on invoking the principles of unjust enrichment to disgorge the petitioner's entitlement of N9.5 millions. In the circumstances, there is no hiding place for the appellant as he cannot be allowed to so enrich himself in the most unconscionable circumstances of this case. Solicitors must practice their profession within the ambience of the rules of the legal profession.

The appellant has not showed any remorse and so has to take the consequences of his misconduct.

I therefore find no merit whatsoever in the appellant's case in this appeal and for the findings ably expatiated in the lead judgment of my learned brother Onnoghen JSC, I also hold that it should be dismissed. I also dismiss the appeal and abide by the orders contained in the lead judgment.

**MUNTAKA-COOMASSIE JSC**

I have had a preview of the lead judgment just delivered by my learned brother, Walter Onnoghen JSC. His Lordship has painstakingly considered the issue submitted to us for our consideration. It is my humble view that his Lordship has calmly arrived at a just and correct decision, in this wise and with all sense of responsibility I am in full agreement with the lead judgment. There is no controversy whatsoever that the Appellant 'herein voluntarily admitted the collection of the sum paid as compensation by the federal Ministry of Defence to the petitioner. He further agreed that he failed or refused to pay any money out. His flimsy reason for not doing the right thing has been that the petitioner has never been his client, it does not pay for a reasonable person like the Appellant to always be unnecessarily pedantic and legalistic especially where the Appellant cannot boast of adducing any evidence to buttress his ridiculous and empty arguments.

What the Appellant did certainly amounted to infamous conduct unbecoming of a respected legal practitioner. It goes without saying that the Respondent was not bound to say in so many words that it found the Appellant guilty of "Infamous conduct". The Appellant failed to act in a noble and reasonable manner because he foolishly thought nothing adverse could happen to him. He was proved wrong, I entirely agree with his Lordship Walter Onnoghen JSC, that the appeal lacks merit. Same is therefore dismissed. The respondents decision is reasonable and correct same is further affirmed.

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