

SUPREME COURT OF NIGERIA
15TH APRIL 2011, SC. 180/2008
CORAM:- A. M. MUKHTAR, W. S. N. ONNOGHEN, F. F. TABAI,
J. A. FABIYI, B. RHODES-VIVOUR, JJSC

SLB CONSORTIUM LIMITED APPELLANT
AND
NIGERIAN NATIONAL
PETROLEUM CORPORATION RESPONDENT

LEGAL PRACTITIONERS - Signature - Court processes - Legal practitioner is to sign - Or write his name on all processes he files in a Court of law (H1)

ACTIONS - Legal personality - Business name is not accorded legal personality in law - It can neither sue nor be sued (H2)

PRACTICE & PROCEDURE - Discretion - Rules of Court - Provisions of O. 26 rule 4(3) of FHC Civil Procedure Rules - And the Legal Practitioners Act - Are mandatory not discretionary (H3)

JURISDICTION - Appeals - Issue of Jurisdiction is fundamental to adjudication - It can be raised at any stage in the proceedings - Even for the first time in the Supreme Court (H4)

FACTS

Plaintiff/appellant in this matter sued defendant/respondent at the Federal High Court, Lagos for breach of contract. The court entered judgment for appellant. Dissatisfied, respondent appealed to Court of Appeal, Lagos. The Court affirmed the judgment of the trial court but nevertheless, sent back the matter to the trial court for a re-hearing on damages.

Thereafter on a return appeal to the Court of Appeal, it held that the trial Court has no jurisdiction to entertain the matter. The Court ordered that the matter being a simple contract should be heard by the State High Court. Aggrieved, appellant has finally approached the Supreme Court. Meanwhile, respondent has filed a preliminary objection. The substance of the objection is that the origi-

nating processes in this action (at the trial court) were signed by a law firm instead of a qualified legal practitioner, as required by Order 26 Rule 4(3) of Federal High Court (Civil Procedure) Rule, 2000.

HELD (Unanimously sustaining the preliminary objection and striking out the appeal per **ONNOGHEN JSC**)

LEGAL PRACTITIONERS - Signature - Court processes

1. The above decision clearly states that a process prepared and filed in a court of law by a legal practitioner must be signed by the legal practitioner and that it is sufficient signature if the legal practitioner simply writes his own name over and above the name of his/or firm in which he carries out his practice. In the instant case, it would have been sufficient if Mr. Adewale Adesokan had simply written or stamped his name on top of Adewale Adesokan & Co, because Mr. Adewale Adesokan is a legal practitioner registered to practice law in the Roll at the Supreme Court; not Adewale Adesokan & Co. (p. 1094 B)

Legal personality - Business name

2. It has been argued that *Cole vs Martins supra* is an authority to the effect that a business name under which a lawyer practices would satisfy the requirements of the Legal Practitioners Act. I doubt it because in law, a business name is not accorded legal personality - it is not recognised as a legal person capable of taking or defending actions in the law courts. In the instant case, Adewale Adesokan & Co is not a legal person. It can only function as such if it describes itself as:

Adewale Adesokan

(Trading under the name and style of Adewale Adesokan & Co). I leave it at that. In any event, see the decision of this Court in *Okafor vs Nweke (supra)* at 62 - 63. (p. 1094 D)

PRACTICE & PROCEDURE - Discretion - Rules of Court

3. It has been argued that non compliance with the provisions of Order 26 Rule 4(3) *supra* is a mere irregularity which had been waived as the same involves the procedural jurisdiction of the court. I hold the view that the submission is misconceived on the authority of *Madukolu vs Nkemdilim supra*. That apart, the provisions of the Legal Practitioners Act, 1990 are statutory and therefore matters of substantive law which cannot be waived. The provisions of the Rules of

Court involved herein are, by the wordings mandatory not discretionary. (p. 1094 F)

Issue of Jurisdiction is fundamental to adjudication

4. The argument that the objection ought to have been taken before the trial court and that it is rather too late in the day to raise same in this Court particularly as the respondents had taken steps in the proceedings after becoming aware of the defect or irregularities is erroneous because the issue involved in the objection is not a matter of irregularity in procedure but of substantive law - an issue of jurisdiction of the courts to hear and determine the matter as constituted and it is settled law, which has been conceded by both counsel in this proceedings - that an issue of jurisdiction is fundamental to adjudication and can be raised at any stage in the proceedings, even for the first time in the Supreme Court.

In the circumstance I find merit in the preliminary objection which is accordingly upheld by me. I hold that the originating processes in this case haven been found to be fundamentally defective are hereby struck out for being incompetent and incapable of initiating the proceedings thereby robbing the courts of the jurisdiction to hear and determine the action as initiated.

In the final analysis the appeal arising from the proceedings initiated and conducted without jurisdiction is hereby struck out for want of jurisdiction. (p. 1094 H)

NOTABLE POINTS OF INTEREST

ONNOGHENJSC

1. Definition of a legal practitioner

To answer that question we have to go to the Legal Practitioners Act, Section 24 of which defines a Legal Practitioner thus:

“Legal Practitioner means a person entitled in accordance with the provisions of this Act to practice as a barrister and solicitor either generally or for the purposes of any particular office or proceedings.”

So a legal practitioner contemplated by Order 26 Rule 4(3) supra is the one defined above. (p. 1092 G)

MUKHTARJSC

2. Jurisdiction can be raised at any stage of proceedings

A court without jurisdiction to hear and determine a case cannot confer

on itself jurisdiction. It is a well known elementary law that the issue of jurisdiction can be raised at any stage of proceedings, even in this court. It is fundamental and the issue is pivotal. It can also be raised by the court suo motu. (p. 1097 D)

B FABIYI JSC

3. Court is competent to hear a case when initiated by due process

It is also desirable to state it here that this court in the case of *Madukolu v. Nkemdilim* (1962) 2 NSCC 374 at 379-380, maintained that a court is competent when, inter alia, *'the case coming up before the court was initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.* (p. 1098 H)

REPRESENTATION

D Mr. Adewale Adesokan, with him S. Edward and Miss Blessing Ukpe for the appellant.

Mr. O. Akoni SAN, with him C. Agbu, B. B. Lawal and Miss F. Badmus for the respondent.

E CASES REFERRED TO

Saude vs Abdullahi (1989) 4 NWLR (pt. 387) 405

Ezomo v. Oyakhire 1985 1 NWLR part 2 page 195

Galadima v. Tambai 2000 11 NWLR part 677 page 1

Nwani v. Bakari (2005) All FWLR (Pt. 281) 1803 at 1825

F Madukolu vs Nkemdilim (1962) 2 NSCC 374 at 379 - 380

Okafor & 2 ors v. Nweke & 4 ors 2007 3 SC part 11 page 55

Okolo vs Union Bank of Nigeria (2004) 3 NWLR (pt. 859) 87 at 108

Mobil Producing (Nig) Unlimited vs LASEPA (2002) 18 NWLR (pt. 798)

G 1 at 36

First bank of Nigeria PLC & Anor. v. Maiwada (2003) All FWLR (Pt. 151) 2001 at 2014

STATUTE REFERRED TO

H Legal Practitioners Act, 1990: s. 2(1) and 24

RULES REFERRED TO

Federal High Court (Civil Procedure) Rules, 2000: O. 26 r. 4(3)

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against judgment of the Court of Appeal Holden at Lagos in appeal NO. CA/L/31/2005 delivered on the 20th day of May, 2008 in favour of the respondent who was the defendant at the court of trial. B

Both counsel for the parties have filed their briefs of argument which were adopted and relied upon at the hearing of the appeal on the 1st day of February, 2011.

The learned Senior Counsel for the respondent, OLAWALE AKONI C ESQ, SAN raised a preliminary objection which was argued in the respondent's brief filed on 9th June, 2009. The substance of the objection is that the originating processes in this action were signed by a law firm instead of a qualified legal practitioner as required by the Rules of Practice of the Federal High Court and the decision of this Court in the D case of Okafor vs Nweke (2007) 3 S. C (pt. II) 55 at 62 - 63.

In arguing the objection, learned Senior Counsel referred the court to the Originating Summons at page 3 of the record of appeal which document is signed by "*Adewale Adesokan & Co*" as the legal practitioner acting on behalf of the plaintiff; that order 26 Rule 4(3) of the Federal E High Court Rules, 2000 provides that pleadings shall be signed by a legal practitioner or the party if he sues or defends in person. It is the submission of learned Senior Counsel that the use of the word "*shall*" in the F above provision clearly means that the provision is mandatory. Relying on the decision of this Court in Okafor vs Nweke supra, learned Senior Counsel submitted that for processes filed in the courts of this country G to be valid, they must be signed by legal practitioners whose names are on the Roll as have qualified to practice as Barristers and Solicitors in Nigeria; that since the Originating Summons was not signed by a legal practitioner as required by law, the trial court lacked the jurisdiction to entertain the matter as constituted thereby rendering the proceedings null and void; that the same defect afflicts the pleadings signed by "*Adewale Adesokan & Co*" and urged the court to sustain the preliminary objection H and strike out the appeal.

In the reply brief filed on the 30th day of June, 2009, learned Counsel for the appellant Adewale Adesokan Esq submitted that the decision of this Court in Okafor vs Nweke supra is not applicable to the Originating Summons and the Amended Statement of Claim filed at the

Federal High Court in the action resulting in the instant appeal; that the respondent is deemed to have waived his right to raise the objection and that the objection is incompetent.

In arguing further, learned Counsel cited and relied on the case of *Cole vs Martins* (1968) All NLR 161 in submitting that where only one person constitutes the practice of law in a law firm, it is correct to describe that person in terms of the registered business name; that Rule 4 of the Registration of Titles (Appeal) Rules which was interpreted in the *Cole vs Martins* (supra) case is very similar to the provisions of Order 26 Rule 4(3) of the Federal High Court (Civil Procedure) Rules, 2000 cited and relied upon by learned Senior Counsel for the respondent; that the decision in the said *Cole vs Martins* (supra) remained the law until the decision in *Okafor vs Nweke* supra which was decided on Friday, 9th March 2007; that the said decision in *Okafor vs Nweke* (supra) has no retrospective effect so as to affect the Originating Summons filed on 30th June, 2000 and the Amended Statement of Claim filed on July 29, 2003, which were legally competent when filed; that the fact that a law is changed does not adversely affect or invalidate any act done under the law prior to the change.

Secondly, it is the contention of learned Counsel that the non compliance with the provisions of Order 26 Rule 4(3) of the Federal High Court (Civil Procedure) Rules 2000 is an irregularity which may result in the setting aside of the proceedings if the objection is raised in limine and before any step is taken in the action by the respondent, relying on Order 3 Rules 1(1) and 2(1) of the said Federal High Court (Civil Procedure) Rules, 2000; that the respondent by filing various processes in response to the Originating Processes now complained of, and participating in the trials and appeals at the lower courts is deemed to have waived his right; that though respondent has couched the objection as being based on jurisdiction, a party can waive procedural jurisdiction by submitting to the jurisdiction of the court as was done in the instant case by the respondent; relying on *Saude vs Abdullahi* (1989) 4 NWLR (pt. 387) 405; *Mobil Producing (Nig) Unlimited vs LASEPA* (2002) 18 NWLR (pt. 798) 1 at 36.

On the competence of the preliminary objection, learned Counsel submitted that for the objection to be competent, it has to be based on the grounds of appeal before this court, which is not the case in the instant matter and urged the court to dismiss the objec-

tion.

In the reply brief of the respondent deemed filed on 1/2/2011, in relation to the reply brief of the appellant, learned Senior Counsel for the respondent submitted that the law that was interpreted in *Okafor vs Nweke* (supra) was the Legal Practitioners Act Cap 207, 1990 sections 2 and 24 thereof which has been in existence since 1962; that the court merely interpreted the provisions of the Legal Practitioners Act, not that it made any new law in *Okafor vs Nweke*. B

On the decision in *Cole vs Martins* (supra) learned Senior Counsel submitted that sections 2 and 19 of the Legal Practitioners Act 1962, which are similar to the present sections 2 and 24 of the Legal Practitioners Act, 1990, were not considered in the said decision and as such the decision was reached per incuriam; that the learned Counsel for the appellant has not demonstrated that Mr. Adewale Adesokan is the only counsel in the law firm of “*Adewale Adesokan & Co*” for the decision in *Cole vs Martins* (supra) to apply. C D

It is the further submission of learned Counsel that the complaint of the respondent affects the foundation of the action since it affects the competence of the commencement of the proceedings, and not procedural in nature, relying on *Okolo vs Union Bank of Nigeria* (2004) 3 NWLR (pt. 859) 87 at 108; *Madukolu vs Nkemdilim* (1962) 2 NSCC 374 at 379 - 380. E

On the competence of the objection, learned Senior Counsel submitted that an issue of jurisdiction can be raised at any stage of the proceeding or even on appeal for the first time; that the objection is grounded on Order 2 Rule 9(1) of the Supreme Court Rules 1999 and once more urged the court to uphold the objection. F

In the case of *Okolo vs Union Bank of Nigeria* supra at page 108, this Court has the following to say on the importance of jurisdiction in adjudication:- G

“Jurisdiction is the pillar upon which the entire case before a court stands. Filing an action in a court of law presupposes that the court has jurisdiction. But once the Defendant shows that the court has no jurisdiction, the foundation of the case is not only shaken but is entirely broken. In effect, there is no case before the court for adjudication and therefore parties cannot be heard on the merits of the case.” H

What then are the conditions precedent to the exercise of a court’s

jurisdiction? Or when is court of law said to be competent to hear and determine a case? In *Madukolu vs Nkemdilim* (1962) 2 NSCC 374 at 379 - 380, this Court stated that a “*a court is competent when:*

B *1. It is properly constituted as regards the number and qualifications of its members of the bench, and no member is disqualified for one reason or another; and*

2. The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its
C *jurisdiction; and*

3. The case coming up before the court was initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. “

The complain of the respondent in the preliminary objection is that
D the originating processes in this action were not signed by a person known to law contrary to the provisions of Order 26 Rule 4(3) of the Federal High Court (Civil Procedure) Rules, 2000, sections 2 and 24 of the Legal Practitioners Act supra and the decision of this Court in *Okafor vs Nweke* (supra) by which the respondent is understood as contending that the
E case, as instituted “*was not initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction. “*

In order 26 Rule 4(3) supra, it is provided thus:

“*Pleadings shall be signed by a legal practitioner or by the party*
F *if he sues or defends in person. “*

The above provision is very clear and unambiguous. Looking at the Originating Summons and the Amended Statement of claim complained of, it is very clear that both were signed by “*Adewale Adesokan & Co*” and that the said “*Adewale Adesokan & Co*” is not a party to the
G action. Is “*Adewale Adesokan & Co*” a legal practitioner so as to come under the provisions of the above order?

To answer that question we have to go to the Legal Practitioners Act, Section 24 of which defines a Legal Practitioner thus:

“*Legal Practitioner means a person entitled in accordance with*
H *the provisions of this Act to practice as a barrister and solicitor either generally or for the purposes of any particular office or proceedings. “*

So a legal practitioner contemplated by Order 26 Rule 4(3) supra is the one defined above. Is “*Adewale Adesokan & Co*” a legal practitioner within the context of Order 26 Rule 4(3) supra? Learned

Counsel for the appellant contends that it is, being a law firm of a sole proprietor while the objection is to the contrary. This takes us to the decision of this Court in *Cole vs Martins* supra, which learned Counsel says is his authority for the above proposition. It is clear from the facts of this case that there is no evidence on record that Mr. Adewale Adesokan, who is legal practitioner whose name is on the roll, is the only legal practitioner practicing law under that trade name. Section 2(1) of the Legal Practitioners Act clearly states that “*subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll.*”

The above is a statutory provision which, even though in existence when *Cole vs Martins* supra was decided, under the Legal Practitioners Act, 1962, it was neither cited nor referred to by this Court in that decision.

However, prior to the decision in *Cole vs Martins* (supra) this Court had decided the case of the Registered Trustees of Apostolic Church Lagos Area vs Rahman Akinde (1967) NMLR 263 in which, following the success of an objection to the application of the appellants for registration as owners of some land, the firm of solicitors of J. A. Cole & Co filed a notice of appeal at the High Court, Lagos against the ruling. In signing the notice of appeal, learned Counsel used his name in which he was called to Bar and enrolled at the Supreme Court i.e. J. A. COLE. After the hearing of the appeal, the trial judge drew attention to the fact that Order 3 Rule 2 of the High Court of Lagos (Appeals) Rules had not been complied with because the firm of J. A. Cole & Co is not a legal practitioner under the Legal Practitioners Act, 1962 and consequently dismissed the appeal upon appeal to the Supreme Court; the court allowed the appeal, holding at page 265 inter alia as follows:

“*The notice filed in this case was given in the prescribed form. It stated the name and address of the legal practitioner representing the appellants as “Messrs. J. A. Cole and Co. 14/16 Abibu Oki Street, Lagos”, and was signed-*

“*J. A. Cole*

For J. A. Cole & Co”

Mr. J. A. Cole is admittedly a duly registered legal practitioner, and entitled to practice as such under the Legal Practitioners Act, 1962. He has no partner in his practice In signing the notice of appeal, Mr. Cole used his own name, that is to say, the name in

which he registered as a legal practitioner. We hold that on any interpretation of the rules that was a sufficient compliance with them, and we do not accept the submission that the addition of the words “for A. J. Cole & Co “ would invalidate the signature if a signature in a business name was not permitted.”

B Emphasis supplied by me.

The above decision clearly states that a process prepared and filed in a court of law by a legal practitioner must be signed by the legal practitioner and that it is sufficient signature if the legal practitioner simply writes his own name over and above the name of his/or firm in which he carries out his practice. In the instant case, it would have been sufficient if Mr. Adewale Adesoka had simply written or stamped his name on top of Adewale Adesokan & Co, because Mr. Adewale Adesokan is a legal practitioner registered to practice law in the Roll at the Supreme Court; not Adewale Adesokan & Co.

It has been argued that Cole vs Martins supra is an authority to the effect that a business name under which a lawyer practices would satisfy the requirements of the Legal Practitioners Act. I doubt it because in law, a business name is not accorded legal personality - it is not recognised as a legal person capable of taking or defending actions in the law courts. In the instant case, Adewale Adesokan & Co is not a legal person. It can only function as such if it describes itself as:

F ***Adewale Adesokan***

(Trading under the name and style of Adewale Adesokan & Co). I leave it at that. In any event, see the decision of this Court in Okafor vs Nweke (supra) at 62 - 63.

G ***It has been argued that non compliance with the provisions of Order 26 Rule 4(3) supra is a mere irregularity which had been waived as the same involves the procedural jurisdiction of the court. I hold the view that the submission is misconceived on the authority of Madukolu vs Nkemdilim supra. That apart, the provisions of the Legal Practitioners Act, 1990 are statutory and therefore matters of substantive law which cannot be waived. The provisions of the Rules of Court involved herein are, by the wordings mandatory not discretionary.***

The argument that the objection ought to have been taken

before the trial court and that it is rather too late in the day to raise same in this Court particularly as the respondents had taken steps in the proceedings after becoming aware of the defect or irregularities is erroneous because the issue involved in the objection is not a matter of irregularity in procedure but of substantive law - an issue of jurisdiction of the courts to hear and determine the matter as constituted and it is settled law, which has been conceded by both counsel in this proceedings - that an issue of jurisdiction is fundamental to adjudication and can be raised at any stage in the proceedings, even for the first time in the Supreme Court.

In the circumstance I find merit in the preliminary objection which is accordingly upheld by me. I hold that the originating processes in this case haven been found to be fundamentally defective are hereby struck out for being incompetent and incapable of initiating the proceedings thereby robbing the courts of the jurisdiction to hear and determine the action as initiated.

In the final analysis the appeal arising from the proceedings initiated and conducted without jurisdiction is hereby struck out for want of jurisdiction.

I however, order that parties bear their costs. Preliminary objection sustained. Appeal struck out.

MUKHTAR JSC

A notice of preliminary objection to the hearing of this appeal on the ground that the appellant filed its originating summons at the Federal High Court when the matter was heard by Jinadu J., and signed as “Adewale Adesokan & Co.”, a person who is not a legal practitioner on the roll of this court, and contrary to this court’s decision in *Okafor & 2 ors v. Nweke & 4 ors* 2007 3 SC part 11 page 55, and Order 27 Rule 4 (3) of the Federal High Court Civil Procedure Rules 2000 was raised by the learned senior counsel for the respondent. The same ground also applies to the amended statement of claim at the Federal High Court.

I will commence the treatment of this objection by looking at the originating summons, a process which initiated the proceeding in the Federal High Court. On page (3) of the record of proceedings which has the concluding part of the originating summons has the following:

‘For Adewale Adesokan & Co.,
Plaintiffs Legal Practitioners,
46, Oyewole Street,
Ilupeju Palmgrove,
Lagos.’

B On top of the above reproduced particulars is a signature. It is
signed alright, but the question is, who is the signatory? Is it a legal
practitioner or the plaintiff in accordance to the provision of Order 2 Rule
of the Federal High Court Civil Procedure Rules? The later part of the
C rule is not applicable here, because the plaintiff is not an individual, but on
the former requirement, I do not know that the signature belongs to a
legal practitioner. The name of the signatory is not on the originating
summons, only the name of the firm of plaintiff’s legal practitioner. Con-
D trary to the contention of learned counsel for the appellant that according
to the case of *Cole v. Mattins* 1968 All N.L.R. 161, the court processes
were competently filed by virtue of the said decision, I am of a different
view, as the following excerpt of the judgment of *Cole v. Martins* supra
captures the purport of the case thus:-

E *“In our view having regard to the context of rule 4 of the Regis-
tration of Titles (Appeals) Rules, the purpose of which on this issue, it
seems to us, is to ensure that the name of the legal practitioner giving
notice of appeal and representing the appellant is clearly known, then it
is a sufficient compliance with the requirement for a legal practitioner to
F sign and give his name, if a legal practitioner practicing alone gives the
name under which he is registered as a business name, as this can only
refer and apply to the legal practitioner’s name. No possible doubt or
confusion can therefore arise in these circumstances.”*

G It is instructive to note here that the requirement, for the name of
the legal practitioner to be given is necessary and important. The empha-
sis here, is on the name together with the signature. On the alternative
position of the situation where a legal practitioner practices alone, this
does not apply to this case, as this is not the position in this case. The
following reproduction of an excerpt of the affidavit in support of the
H originating summons reinforces my stance on this. In the affidavit is the
following:-

*“I, Sunday Edward, Nigerian, Legal Practitioner, of 46, Oyewole
Street, Ilupeju Palmgrove, Lagos do make oath and state as follows:-*

1. That I am counsel in Messrs Adewale Adesokan & Co., Plain-

tiffs Legal Practitioners and I have the Plaintiffs authority to depose to this affidavit on its behalf.”

As can be presumed from the above reproduction of the affidavit Adewale Adesokan was not the only legal practitioner in the firm of Adewale Adesokan & Co. In other words the originating summons could have been signed by any other practitioner in the chambers, and not Adewale Adesokan. The case of *Cole v. Martins* supra has thus not been complied with. That is if the case is the applicable authority as professed by the appellant’s learned counsel. The same argument and reasoning applies to the amended statement of claim. This case is caught by one of the principles enunciated in the case of *Madukolu v. Nkemdilim* 1962 2 NSCC page 374, on the competence of a court, which borders on jurisdiction. The principle as stated in the case is as follows:-

“The case coming up before the court was initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.”

A court without jurisdiction to hear and determine a case cannot confer on itself jurisdiction. It is a well known elementary law that the issue of jurisdiction can be raised at any stage of proceedings, even in this court. It is fundamental and the issue is pivotal. It can also be raised by the court suo motu. See *Ejiofodomi v. Okonkwo* 1982 11 SC 74, *Swissair Transport Co. Ltd. v. African Continental Bank Ltd* 1971 1 All NLR 37, *Ezomo v. Oyakhire* 1985 1 NWLR part 2 page 195, and *Galadima v. Tambai* 2000 11 NWLR part 677 page 1.

The preliminary objection raised by the respondent has merit and should be sustained. I sustain the preliminary objection, and strike out the appeal.

FABIYI JSC

This is an appeal against the judgment of the Court of Appeal, Lagos Division (“the court below” for short) delivered on 20th May, 2008 in favour of the respondent herein. The appellant desires to have the judgment of the court below set aside.

Briefs of argument were filed on behalf of the parties. The respondent observed that the originating processes filed by the appellant in respect of the proceedings at the trial Federal High Court were signed by a law firm instead of a qualified Legal Practitioner as required by

the rules of practice of the Federal High Court and contrary to the decision in the case of *Okafor & Ors. v. Nweke & Ors.* (2007) 3 S.C. (Pt. 11) 55 at 62-63. A Notice of Preliminary objection dated 25th May, 2009 to the hearing of the appeal was filed. The complaint is that since the originating summons was signed by 'Adewale Adesokan & Co. as the Plaintiff's legal practitioner, same is incompetent.

There is no gain-saying the fact that vide Order 26 Rule 4 (3) of the Federal High Court Rules, 2000 processes shall be signed by a legal practitioner or by a party if he sues or defends in person. In reality, 'Adewale Adesokan & Co.' which signed the originating summons is not a legal practitioner known to the applicable Legal Practitioners Act, Cap. 207 of the Laws of the Federation of Nigeria, 1990. This is so, since it is not a person" entitled to practice as a barrister and solicitor with its name on the roll. Refer to the case of *Okafor & Ors. v. Nweke & Ors* (supra). The case of *Cole v. Martins* (1968) All NLR 164 seriously relied upon the appellant was, with due respect, decided per incuriam of the applicable provisions of sections 2 and 19 of the Legal Practitioners Act 1962 which are similar to section 2 (1) of the Legal Practitioners Act 1975 and the Legal Practitioners Act 1990 which provide as follows:-

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

Even then, in the earlier case of *Registered Trustees, The Apostolic Church v. R. Akinde* (1967) NMLR 263, it was firmly held and established that a firm of solicitors is not competent to sign a process. It is not in doubt that the signature of 'Adewale Adesokan & Co.' on the originating summons of the appellant robs the process of competence ab initio as the said firm is not a registered legal practitioner enrolled to practice law as a Barrister and Solicitor in this court. See also *Nwani v. Bakari* (2005) All FWLR (Pt. 281) 1803 at 1825; *First bank of Nigeria PLC & Anor. v. Maiwada* (2003) All FWLR (Pt. 151) 2001 at 2014.

In the prevailing circumstance all the proceedings which rested on the inchoate originating summons are deemed not have taken place in law. One cannot put something on nothing and expect it to stand. This is as stated decades ago in *UAC v. McFoy* (1962) AC 152 at 160.

It is also desirable to state it here that this court in the case of *Madukolu v. Nkemdilim* (1962) 2 NSCC 374 at 379-380, maintained

that a court is competent when, inter alia, ‘*the case coming up before the court was initiated by due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.*’

It has been established that the originating summons signed by a Law Firm of ‘Adewale Adesokan & Co.’ was not initiated by due process. As same is incompetent, this appeal rests on nothing. This appeal must be, and it hereby struck out as the preliminary objection is sustained. B

For the above reasons, I feel that the preliminary objection was well taken. I hereby sustain it and strike out this appeal. I endorse all consequential orders in the ruling of my brother; that relating to costs inclusive C

RHODES-VIVOUR JSC

This Suit highlights the painful realities that confront a litigant when counsel fails to sign processes as stipulated by the Law. The appellant as plaintiff sued the respondent in the Federal High Court for breach of contract and won. He was awarded \$19,840,467.00 as damages, and that was in 2001. The respondent appealed. The Court of Appeal found the judgment of the trial court correct but sent the case back to the trial court for a re-hearing on damages. After hearing, that court reduced the sum, and awarded damages in the sum of \$7,155.053. On appeal the Court of Appeal held that the trial court had no jurisdiction to hear the case. It ordered that the case being simple contract should be heard by the State High Court. Dissatisfied the appellant lodged an appeal before this court. The respondent filed a preliminary objection. The objection being that the originating process (i.e. in the trial court) was not properly signed by learned counsel for the appellant (plaintiff). D
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Okafor and Ors v. Nweke and 4 Ors 2007

Shows clearly how counsel should sign processes, and as long ago as 1967 this court had said the same thing in Okafor (supra) says. See

Reg Trustees of Apostolic Church Lagos v. R. Akindele 1967 NMLR H p. 263

What then is so important about the way counsel chooses to sign processes. Once it cannot be said who signed a process it is incurably bad, and rules of court that seem to provide a remedy are of no use as a

rule cannot override the Law (i.e. the Legal Practitioners Act). All processes filed in court are to be signed as follows:

First, the signature of counsel, which may be any contraption.

Secondly the name of counsel clearly written.

Thirdly, who counsel represents.

B Fourthly name and address of Legal Firm.

In this suit the originating summons was signed but there was no name of counsel. The position is that there must be strict compliance with the Law, clearly spelt out in *Reg Trustees of Apostolic Church Lagos v. R. Akindele (Supra)* and *Okafor V Nweke (Supra)*

C In this case there is signature of counsel, but no name of counsel. A signature without the name is incurably bad.

For this and the much fuller reasoning in the leading judgment delivered by Onnoghen, JSC, the preliminary objection is sustained.

D This appeal is struck out. Parties to bear their costs.

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