

SUPREME COURT OF NIGERIA
25TH MAY, 2012. SC. 204/2002 (CONS.)
CORAM:- **D. MUSDAPHER CJN, M. MOHAMMED,**
C. M. CHUKWUMA-ENEH, J. A. FABIYI, O. O. ADEKEYE,
M. U. PETER-ODILI, O. ARIWOOLA, JJSC

FIRST BANK NIGERIA
LTD & ANOR (SC.204/2002)
FRANPHINO PHARMACEUTICAL LTD.
O.E. ABANK (SC.269/2005) APPELLANTS
ALHAJI SALMAN MAIWADA
(SC.204/2002)
AND
1. JAWA INTERNATIONAL LTD. RESPONDENTS
2. DEPUTY SHERIFF HIGH COURT
OF LAGOS STATE (SC.269/2005)

STATUTES - Interpretation - Literal rule - Legal Practitioners Act s. 2(1) & 24 - The section simply ensures - That only qualified legal practitioners - Sign court processes (H1)

STATUTES - Interpretation - Role of Judge - In statutory interpretation - Judge should not flout the constitutional duty of legislature - To make laws (H2)

CONFLICT OF LAWS - Statutes & Rules of Court - Legal Practitioners Act - Where there is conflict - Provisions of the Act supersedes the rules (H3)

LEGAL PRACTITIONERS - Law firm - Signing of process - Propriety - Registration of law firm under CAMA s.573(1) - Does not entitle the firm to validly sign process (H4)

TECHNICALITIES - Statutes - Interpretation - Legal Practitioners Act s.2(1) & 24 - Applying substantive provisions of the law - Does not imply technical justice (H5)

FACTS

Plaintiff/1st respondent commenced this action at the High Court

of Plateau State, Jos seeking inter alia, damages and declaratory reliefs in respect of landed property in Jos. By way of preliminary objection defendants/appellants urged the court to dismiss 1st respondent's claim on the ground that issues between them had been determined to finality by another court in Suit No. PLD/J/51/1994 when the plaintiff's suit was dismissed in its entirety. However, the court refused the application of appellants because of a pending appeal at the Supreme Court against certain aspects of the decision in PLD/J/51/1994.

Being dissatisfied, appellants appealed to the Court of Appeal, Jos Division. Counsel for 1st respondent raised preliminary objection on the ground that the appellant's appeal is incompetent, not having being signed by a legal practitioner known to sections 2, 4, 7, 23 and 24 of the Legal Practitioners Act. The court in its ruling, struck out the appeal. Appellants became aggrieved. Hence, they filed further appeal at the Supreme Court. 1st respondent also raised preliminary objection on the same ground as he did at the Court of Appeal. Appellants are asking the court to depart from its earlier ruling in Okafor v. Nweke.

ISSUE FOR DETERMINATION

Whether a court process not personally signed by a legal practitioner duly registered in the roll of this court as dictated by the applicable provisions of the Legal Practitioners Act is valid or competent.

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

STATUTES - Interpretation - Literal rule

1. In interpreting the law, the court was invited to embark upon purposive interpretation. It was contended that a negative interpretation of the law should be avoided as such is against the canon of interpretation of laws. It is not in doubt that in deserving situations, purposive interpretation should be employed by the court. The purpose of a legislation is of paramount factor. The purpose of sections 2(1) and 24 of the Act is to ensure that only a legal practitioner whose name is on the roll of this court should sign court processes. It is to en-

sure responsibility and accountability on the part of a legal practitioner who signs a court process. It is to ensure that fake lawyers do not invade the profession. This, in my considered opinion, accords with the sacred canon of interpretation of law. Generally, where the words of a statute are clear and unambiguous, the court should give same its ordinary literal interpretation. This is often referred to as the literal rule. It is the most elementary rule of construction. Literal construction has been defined as the interpretation of a document or statute according to the words alone. A literal construction adheres closely to the words employed without making differences for extrinsic circumstances.

In my considered opinion, the words employed in drafting sections 2(1) and 24 of the Act are simple and straight forward. The literal construction of the law is that legal practitioners who are animate personalities should sign court processes and not a firm of legal practitioners which is inanimate and cannot be found in the roll of this court. (p. 1759 E)

STATUTES - Interpretation - Role of judge

2. I am at one with the pungent views expressed above. I agree that a judge should be firm and pungent in the interpretation of the law but such should be 'short of a judge being a legislator.' This is because it is the duty of the legislature to make the law and it is the assigned duty of the judge to interpret the law as it is; not as it ought to be. That will be flouting the rule of division of labour as set out by the Constitution of the Federal Republic of Nigeria, 1999. The provisions of sections 2(1) and 24 of the Act as reproduced above remain the law and shall continue to be so until when same is repealed or amended. For now, I see nothing amiss about the law. (p. 1760 H)

CONFLICT OF LAWS - Statutes & Rules of Court

3. Let me say it bluntly that where the provisions of an Act like the Legal Practitioners Act is at play, as herein, provisions of Rules of court which are subject to the law must take the side line. (p. 1761 D)

Law firm - Signing of process - Propriety

4. As pointed out by S. E. Elema, Esq. in his brief of argument, it has been argued in some quarters that a law firm registered as a business name under section 573(1) of the Companies and Allied Matters Act, Laws of the Federation of Nigeria 2004
B **(CAMA) is entitled to practice and sign processes in its registered name. In my considered view, such is a misconception of the law. The said section 573(1) of Companies and Allied Matters Act Provides as follows:-**

C ***“Every individual firm or corporation having a place of business in Nigeria and carrying on business under a business name shall be registered in the manner provided in this part of this Act if...”***

The above is not an authority that can be relied upon to
D **uphold the view that a process signed and filed by a firm of legal practitioners which has no live is valid in law. The general provision of the law as in section 573(1) of Companies and Allied Matters Act is subject to the specific provisions of section 2(1) and 24 of the Legal Practitioners Act. (p. 1761 E)**

E

Statutes - Interpretation - Legal Practitioners Act s.2(1) & 24

5. There is also the view of some counsel that the decision in Okafor v. Nweke had to do with technical justice. I agree that the age of technical justice is gone. The current vogue is substantial justice. But substantial justice can only be attained not by bending the law but by applying it as it is; not as it ought to be. There is nothing technical in applying the provisions of sections 2(1) and 24 of the Legal Practitioners Act as it is
F **drafted by the Legislature. The law should not be bent to suit the whims and caprices of the parties/counsel. One should not talk of technicality when a substantive provision of the law is rightly invoked. It follows that no injustice is done to the litigant since the result of the irregularity is an order striking out the suit or process which leaves the real legal practitioner with an opportunity to come back to court to lift his veil and file a proper process as the legal practitioner whose name is on the roll of this court. The court should consider**
H **such an application on its merits. Such will enhance good**

practice culture amongst legal practitioners generally. I earnestly feel that I have made a point. (pp. 1762 A/1765 C)

NOTABLE POINT OF INTEREST

ADEKEYE JSC

1. Supreme Court judgment – Circumstances for departure

The Supreme Court will overrule itself and depart from its previous decisions upon an application to that effect in the court pursuant to Order 6 Rule 5 (4) Supreme Court Rules 2002 as amended if any of or the combination of any of the following circumstances arise -

1. The decisions must be clearly shown to be
 - a. Vehicles of injustice or real likelihood of injustice perpetrated.
 - b. Given per incuriam.
 - c. Clearly erroneous in law.
 - d. If such decision is inconsistent with the Constitution.
 - e. Where there have been developments which rendered the

previous decision no longer good law or which would render the decision or pronouncement in the judgment oppressive.

(p. 1772 D)

REPRESENTATION

David Mando for the Appellants in SC.204/2002

A. Adesokan-for the Appellants in SC.269/2005

Godwin Obla with John Alu and K. Ekwueme for the Respondent in SC.204/2002

Wale Taiwo with O. Osinaike for the Respondent in SC.269/2005

Amici Curiae

Mr. J. B. Daudu, SAN with A. Adedeji, Esq.

Chief Wole Olanipekun, SAN with F. Araromi; A. Ali (Miss)

A. Oniyangi; S. Abbah and C. Uwanedo

Dr. O. Ikpeazu, SAN with A. Ejesieme;

O. Iloegbunam; I. Nwabueze and M. Ekwechi, S. S. Elema, Esq.

Chief O. J. Onoja, A. A. Adedeji, Esq., G. Oyewola, Esq.

Wale Taiwo, Esq. with O. Osinaike, Esq., A. Adesokan, Esq., P. C.

Ananaba, Esq., Dr. O. Olatawura

CASES REFERRED TO

- Ibrahim v. Barde (1996) 9 NWLR (Pt. 474) 513
Ventures v. FCNB (1998) 4 NWLR (Pt.547) 546
IBWA v. IMANO Nig. Ltd. (1988) 2 NSCC 245
Okotie-Eboh v. Manager (2005) 2 MJSC 125
B FMBN v. Olooh (2002) 4 SC (Pt. 11) 177
Kraus Thompson Org. v. NIPSS (2004) 5 SC (Pt.1) 16
Okulate v. Awosanya (2000) 2 NWLR (Pt.246) 530
Rossek v. ACB Ltd. (1993) 8 NWLR (Pt. 312) 382
C Ewete v. Gyang (2003) 6 NWLR (Pt. 816) 345
Adegoke Motors Ltd. v. Adesanya (1989) 3 NWLR (Pt. 109) 250
Ogundele v. Agiri (2009) 18 NWLR (Pt. 1173)
Oketade v. Adewumi (2010) 8 NWLR (Pt.1195) 63
S.L.B. Consortium Ltd. v. N.N.P.C. (2011) 4 SCNj 211
D Mucknor-Maclean v. Inlaks Ltd. (1980) 8-10 SC 1
Adesokan v. Adetunji (1994) 5 NWLR (Pt. 346) 540

STATUTES & RULES REFERRED TO

- Legal Practitioners Act Cap L11 LFN 2004, ss. 2, 4, 7, 23 and 24
E Companies and Allied Matters Act Cap C20 LFN 2004, ss. 19(2) (b)
(i), 573, 574, 575 and 671
Constitution of Federal Republic of Nigeria 1999, ss. 231(3), 241(1)(b)
Court of Appeal Act Cap 75 LFN 1990, s. 31
Interpretation Act Cap 192 LFN 1990
F Evidence Act 1990 (as amended), ss. 54, 122(2)(J)
Supreme Court Rules 2002 (as amended), O. 1 r. 2, O. 6 r. 5(4)
Court of Appeal Rules Cap 62 LFN 1990, O. 1 r. 2
Rules of Professional Conduct, 50(c)

G
BOOK REFERRED TO

Black's Law Dictionary 6th Ed. p. 993

LEAD JUDGMENT BY FABIYI JSC

- H This is an appeal against the judgment of the Court of Appeal, Jos Division ("*the court below*" for short) delivered on 27th March, 2002.

It is apt to state the relevant facts which are material to the determination of the core or central issue in this appeal. The plaintiff

at the trial court sought declaratory reliefs in respect of landed property in Jos; setting aside of warrant of possession and damages in the sum of N1,000,000:00 against the defendants for trespass.

By way of preliminary objection the appellants urged Uloko, CJ to dismiss the plaintiff's claim on the ground that issues between them had been determined to finality by Oyetunde, J in Suit No. PLD/J/51/1994 when the plaintiff's suit was dismissed in its entirety. Uloko, CJ was duly addressed on the point. At the end of the day, Uloko, CJ refused the application because there was a pending appeal at the Supreme Court against certain aspects of the decision in PLD/J/1994 and that the suit being touted as *res judicata*, to that extent, could not have been determined to finality. The defendants felt dissatisfied and appealed to the court below. Thereat, learned counsel for the respondent raised preliminary objection. Paragraph (a) of the preliminary objection which is of moment at this point reads as follows:-

"(a) The appeal of the appellants is incompetent in that the Notice of Appeal was neither signed by the Appellants nor by a Legal Practitioner acting on their behalf."

In respect of the above, it was submitted on behalf of the respondent that the Notice of Appeal in issue was neither signed by the appellants nor by a legal practitioner. It was contended that David M. Mando & Co. is not a legal practitioner known to and prescribed by sections 2, 4, 7, 23 and 24 of the Legal Practitioners Act 1962 since there is no name like that on the Roll of Legal Practitioners. On that score, the court below was urged to strike out the appeal for being incompetent.

Mr. David Mando on the other hand submitted that the firm of David M. Mando & Co. is a firm of legal practitioners acting for the appellants. He submitted that under the Companies and Allied Matters Act (CAMA) it was not necessary for a legal practitioner to register his firm as a partnership before engaging in legal practice. He urged the court below to discountenance the objection.

On this point, the court below upheld the aspect of the preliminary objection and struck out the notice of appeal. The appellants felt dissatisfied and have appealed to this court. The core issue in my considered opinion is –

Whether a court process not personally signed by a legal prac-

itioner duly registered in the roll of this court as dictated by the applicable provisions of the Legal Practitioners Act is valid or competent.

Among legal practitioners, we have two schools of thought in respect of the above salient, issue. The division is very grave indeed. To put the dispute at rest, the Hon. Chief Justice of Nigeria has empanelled a full court. A host of amici curiae got invitation to address the court on the issue. On 27th February, 2012 when the appeal was heard, Mr. David Mando, learned counsel for the appellants adopted the brief of argument as well as the reply brief filed on behalf of his clients. He urged the court to set aside and/or overrule the decision of this court in *Okafor v. Nweke* (2007) 10 NWLR (Pt. 1043) 521. He urged that the decision in *Registered Trustees of the Apostolic Church v. Rahman Akindele* (1967) All NLR 110 and *Cole v. Martin* (1968) All NLR 16 should be restored.

In the same manner, Mr. Obla, learned counsel for the respondent adopted the brief of argument filed on behalf of the respondent and urged the court not to depart from the decision in *Okafor v. Nweke*. He associated himself with the views and submissions expressed in the brief of argument filed by Mr. J. B. Daudu, SAN as amicus curiae. He observed that in the *Registered Trustee's* case, J. A. Cole, a registered legal practitioner signed for J. A. Cole and Co. as contained in the writ of summons.

Mr. J. B. Daudu, SAN appeared as amicus curiae on invitation in his capacity as the President of the Nigerian Bar Association. He adopted the brief of argument filed by him and advanced oral submissions. He submitted that the narrow issue is whether a court process is invalid if it fails to carry the name of a legal practitioner who is registered in the roll of this court. He submitted that such a process is invalid and therefore null and void. He referred to the cases of *Okafor v. Nweke* (supra) and *SLB Consortium Ltd. v. NNPC* (2011) 3 SCNJ 185 at 191. He observed that it has been argued that insistence on process being signed by a real legal practitioner is a mere technicality. Senior counsel advanced three reasons why the court should not depart from its decision in *Okafor's* case. He maintained that - (1) the applicable provision of section 2(1) of the Legal Practitioners Act remains the law until it is amended by the Legislature; (2) if the court departs from its decision, it will lead to more confusion and lack of responsibility on the part of counsel. He cited *Atake v. President of*

the Federation (1982) 11 SC 63; (3) references being made to sections 574 and 575 of the Companies and Allied Matters Act (CAMA) which relate to general provisions cannot supplant the special provision made in the Legal Practitioners Act. Senior counsel strongly felt that the absence of a named legal practitioner on the court process in issue to wit: the notice of appeal rendered the process incompetent and invalid as the signatory is that of a firm carrying on business as legal practitioners which is not registered in the roll of legal practitioners in Nigeria. He opined that the lapse is grievous, as it creates a jurisdictional issue of immense proportions; the result of which is that the court below cannot rightly countenance the said notice of appeal which was rightly struck out. B
C

Chief Wole Olanipekun, SAN also appeared as *amicus curiae* (friend of the court). He adopted the brief of argument filed by him. He orally submitted that the court has not overruled the decision in the Registered Trustee's case and *Cole v. Martin's* case. Senior counsel referred to section 231(3) of the Constitution and seriously felt that the issue relates to technicality. He maintained that if the decision is retained, there should be saving grace for pending cases between 1968 and 2007. According to the senior counsel, the decision is being employed as a sword by counsel with weak cases. E

Dr. O. Ikpeazu, SAN also appeared as *amicus curiae*. He adopted the brief of argument filed by him. Senior counsel submitted that there is a conflict between the decision in the Registered Trustees and *Cole v. Martin* cases on the one part and the cases of *Okafor v. Nweke* and *SLB Consortium Ltd. v. NNPC* on the other part. He observed that the later cases never mentioned any of the two previous cases. Senior counsel observed that between 1968 and 2007, many cases have been filed under the tag of 'and Co'. He felt that there may be hardship in matters that were filed before the decision in *Okafor v. Nweke*. He submitted that if the court will not depart from the decision in *Okafor v. Nweke*, there must be savings for such pending cases. F
G

Mr. S.E. Elena also appeared as *amicus curiae*. He adopted the brief filed by him to support the upholding of the decision in *Okafor v. Nweke*. He urged the court not to depart from the decision. H

Chief O. J. Onoja also appeared as a friend of court. He adopted

the brief of argument filed by him to urge the court to depart from its decision in *Okafor v. Nweke*. He felt it has to do with technicality for which injustice may arise. He urged for savings in respect of pending cases if the decision is retained.

Mr. A.A. Adedeji as *amicus curiae* adopted his brief. He also urged the court to depart from the decision in *Okafor v. Nweke*. He observed that foreign cases referred to by him are only of persuasive authority.

M. G. A. Oyewole, as *amicus curiae*, also adopted the brief of argument filed by him. He urged the court not to depart from the decision in *Okafor v. Nweke*. He felt that there has never been a departure from previous cases as in the Registered Trustee's case, *J. A. Cole*, a legal practitioner preceded *J.A. Cole and Co* in the writ of summons. He observed that there is the point of accountability and responsibility which must be preserved; more especially as at now.

Mr. Wale Taiwo as *amicus curiae* also adopted the brief of argument filed by him. He urged that the decision in *Okafor v. Nweke* should be retained. He urged the court to be firm as he associated with the submissions of Mr. J. B. Daudu, SAN.

Mr. A. Adesokan equally appeared as *amicus curiae*. He urged the court to depart from the decision in *Okafor v. Nweke* and if otherwise an opportunity should be given to counsel to regularize the process.

Mr. Paul C. Ananaba, as *amicus curiae* adopted the brief of argument filed by him and urged the court to depart from the decision in *Okafor's* case. He urged the court to embark upon activism and do purposive interpretation of the applicable section of the Legal Practitioners Act.

Dr. O. O. Olatawura with full force also appeared as *amicus curiae*. He adopted the brief of argument filed by him. At the on-set, he submitted that the court should depart from the decision in *Okafor v. Nweke*. According to him, the rules of court are more central to the issue than the Legal practitioners Act. He submitted that the court should do substantial justice according to law and without undue regard for technicality. He opined that the court should not punish a litigant because of the mistake of counsel. Learned counsel felt that on the other hand the court may not depart from its decision in *Okafor v. Nweke*.

While one should appreciate the stand point of each senior counsel/counsel and the effort and dexterity with which each of them marshalled his points, it should be noted that this salient issue shall be determined based on the determination of the applicable law. This is a matter of great concern to legal practitioners which cannot be determined by casting of votes. The decision in Okafor v. Nweke was basically determined based on the provisions of sections 2(1) and 24 of the Legal practitioners Act, Laws of the Federation of Nigeria 2004. It is apt to reproduce here below the stated sections of the law for ease of reference and undiluted appreciation.

Section 2(1) of the law provides as follows:-

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

Section 24 of the Legal practitioners Act provides thus:-

“In this Act, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say - “Legal Practitioner” means a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings”

In interpreting the law, the court was invited to embark upon purposive interpretation. It was contended that a negative interpretation of the law should be avoided as such is against the canon of interpretation of laws. It is not in doubt that in deserving situations, purposive interpretation should be employed by the court. The purpose of a legislation is of paramount factor. The purpose of sections 2(1) and 24 of the Act is to ensure that only a legal practitioner whose name is on the roll of this court should sign court processes. It is to ensure responsibility and accountability on the part of a legal practitioner who signs a court process. It is to ensure that fake lawyers do not invade the profession. This, in my considered opinion, accords with the sacred canon of interpretation of law. See: Ibrahim v. Barde (1996) 9 NWLR (Pt. 474) 513; U.A. Ventures v. FCNB (1998) 4 NWLR (Pt.547) 546; IBWA v. IMANO (Nig.) Ltd. & Anor (1988) 2 NSCC 245. Generally, where the words of a statute are clear and unambiguous, the court should

give same its ordinary literal interpretation. This is often referred to as the literal rule. It is the most elementary rule of construction. Literal construction has been defined as the interpretation of a document or statute according to the words alone. A literal construction adheres closely to the words employed without making differences for extrinsic circumstances. See: Black's Law Dictionary sixth Edition, Page 993.

In my considered opinion, the words employed in drafting sections 2(1) and 24 of the Act are simple and straight forward. The literal construction of the law is that legal practitioners who are animate personalities should sign court processes and not a firm of legal practitioners which is inanimate and cannot be found in the roll of this court.

It has been urged upon this court that it should embark upon activism in interpreting the law to nail the decision in Okafor v. Nweke. Mr. Paul Ananaba cited the cases of Transbridge Co. Ltd. v. Survey International Limited (1986) 4 NWLR (Pt. 37) 578 and Okotie-Eboh v. Manager (2005) 2 MJSC 125. In Transbridge Co. Ltd. v. Survey International Ltd this court per Eso, JSC pronounced as follows:-

"I believe it is the function of judges to keep the law alive, in motion and to make it progressive for the purposes of arriving at the end of justice, without being inhibited by technicalities, to find every conceivable but accepted way of avoiding narrowness that would spell injustice, short of a judge being a legislator, a judge to my mind, must a possess an aggressive stance in interpreting the law."

And in Okotie Eboh v. Manager (supra) Pats-Acholonu, JSC (of blessed memory) pronounced as follows:-

"An interpretation that seeks to emasculate should be avoided as it would do disservice to the citizenry and confine everyone into a legal container or labyrinth from which this court may not easily extricate itself... I believe that though justice is blind, it is nevertheless rooted in the nature of society and therefore the court should avoid constructions that could cause chaos and disenchantment. Justice must be applied in a way that it embraces and optimizes social engineering that is for the welfare of society. Enlightened society should expect a highly refined and civilized justice that reflects the tune of the time."

I am at one with the pungent views expressed above. I agree that a judge should be firm and pungent in the interpre-

tation of the law but such should be ‘short of a judge being a legislator.’ This is because it is the duty of the legislature to make the law and it is the assigned duty of the judge to interpret the law as it is; not as it ought to be. That will be flouting the rule of division of labour as set out by the Constitution of the Federal Republic of Nigeria, 1999. The provisions of sections 2(1) and 24 of the Act as reproduced above remain the law and shall continue to be so until when same is repealed or amended. For now, I see nothing amiss about the law. B

The decision in Okafor v. Nweke was based on a substantive law - an Act of the National Assembly i.e. the Legal Practitioners Act. It is not based on Rules of court. According to Oguntade JSC at page 534 of the judgment in Okafor v. Nweke. C

“It would have been quite another matter if what is in issue is a mere compliance with court rules.” D

Let me say it bluntly that where the provisions of an Act like the Legal Practitioners Act is at play, as herein, provisions of Rules of court which are subject to the law must take the side line.

As pointed out by S. E. Elema, Esq. in his brief of argument, it has been argued in some quarters that a law firm registered as a business name under section 573(1) of the Companies and Allied Matters Act, Laws of the Federation of Nigeria 2004 (CAMA) is entitled to practice and sign processes in its registered name. In my considered view, such is a misconception of the law. The said section 573(1) of Companies and Allied Matters Act Provides as follows:- E F

“Every individual firm or corporation having a place of business in Nigeria and carrying on business under a business name shall be registered in the manner provided in this part of this Act if...” G

The above is not an authority that can be relied upon to uphold the view that a process signed and filed by a firm of legal practitioners which has no live is valid in law. The general provision of the law as in section 573(1) of Companies and Allied Matters Act is subject to the specific provisions of section 2(1) and 24 of the Legal Practitioners Act. See: FMBN v. Oloho (2002) 4 SC (Pt. 11) 177 at 122-123; Kraus Thompson H

Org. v. NIPSS (2004) 5 SC (Pt.1) 16 at 20-21.

There is also the view of some counsel that the decision in Okafor v. Nweke had to do with technical justice. I agree that the age of technical justice is gone. The current vogue is substantial justice. See: Dada v. Dosunmu (2006) 12 NJSC 115.

But substantial justice can only be attained not by bending the law but by applying it as it is; not as it ought to be. There is nothing technical in applying the provisions of sections 2(1) and 24 of the Legal Practitioners Act as it is drafted by the Legislature. The law should not be bent to suit the whims and caprices of the parties/counsel. One should not talk of technicality when a substantive provision of the law is rightly invoked.

It was seriously contended that the court did not consider the Registered Trustees' case and Cole v. Martins' case while considering Okafor v. Nweke. The inference being drawn is that the decision in Okafor v. Nweke was rendered per incuriam. I wish to discuss what happened in the previous two cases determined by this court. In the Registered Trustees case, under rule 4 of the Registration of Titles (Appeal) Rules, which, applied to the Trustees' appeal to the High Court, the notice of appeal must be signed by the appellant or the legal practitioner representing him and must contain the name of the legal practitioner. The notice of appeal gave the legal practitioners' name - J.A. Cole & Co. and was signed J. A. Cole for J.A. Cole & Co. After hearing argument on the merits, the appellate judge, of his own motion and without having invited argument from counsel, dismissed the appeal as not being properly before the court on the ground that the notice of appeal was given by the firm - J. A. Cole & Co. which was not a legal practitioner under the Legal Practitioners Act 1962. Mr. Cole, a duly registered legal practitioner entitled to practice as such under the Act, practised alone but in the duly registered business name - J. A. Cole & Co; which no professional objection was suggested. This court held

"that the notice filed in the 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 & Co. 14/16 Abibu Oki Street Lagos and was signed - 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, but he has registered the name of J. A. Cole & Co. under the Registration of Business Name Act, 1961 and uses the name in his practice. It is not suggested that there is any professional objection to his doing this and it is frequently done by solicitors in England, as the law list shows. In our view the business name was correctly given as that of the legal practitioners representing the appellants. In signing the notice of appeal, Mr. Cole used his, own name, that is to say, the name which he is 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 J. A. Cole & Co. would invalidate the signature if a signature in a business name was not permitted.'

The above decision, to say the least, was followed by this court in Okafor v. Nweke. I cannot see the difference in the thought process leading to the two decisions. The only point of divergence is that in Okafor v. Nweke, J.H.C. Okolo, SAN who is a legal practitioner whose name is in the roll did not sign as J.H.C Okolo, SAN for J.H.C. Okolo, SAN & Co. The case of Cole v. Martins (1968) All NLR 16 was determined in 1968 by this court. This court held that the effect of registering a business name under the registration of Business Names Act, 1961 is that where only one person constitutes that business it is correct to describe that person as in the terms of the registered business name. In other words, Lardner & Co. here referred solely to Mr. H.A. Lardner. That having regard to the context of rule 4 of the registration of titles (appears) rule, purpose of which on this rule, is to ensure that the name of the legal practitioners 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 sign and give his name, under which he is registered as a business name, as this can only refer and apply to the legal practitioner who so hold himself out as practising under the business name. No possible doubt or confusion can therefore arise in these circumstances.

This court in Cole v. Martins did not refer to the earlier decision in the Registered Trustees' case which, in my opinion, clearly determined the core issue. In Okafor v. Nweke, the court rightly followed the decision in the Registered Trustees' case. That is the position of the court. Chief Wole Olanipekun, SAN felt that there is need to revisit the case of Okafor v. Nweke and subsequent ones. He submit-

ted that in *Okulate v. Awosanya* (2000) 2 NWLR (Pt.246) 530 at 543; *Rossek v. ACB Ltd.* (1993) 8 NWLR (Pt. 312) 382 at 447, *Ewete v. Gyang* (2003) 6 NWLR (Pt. 816) 345 at 374; *Adegoke Motors Ltd. v. Adesanya* (1989) 3 NWLR (Pt. 109) 250 at 275, this court laid down the criteria where it would revisit or reverse or depart
 B from any of its previous decisions. These include where the decision was reached per incuriam or where the decision is clearly wrong and there is real likelihood of injustice perpetrated, where the decision is clearly erroneous in law or where the issue of public policy was involved. He felt that the decision in *Okafor v. Nweke* apart from being
 C technical would continue to create hardship and injustice to litigants involved at large as mistake of counsel should not be visited on litigant. He referred to *Long John v. Black* (1998) 6 NWLR (Pt. 555) 524, Similar arguments were proffered by Dr. O. Ikpeazu, SAN and
 D Mr. Paul Ananaba.

I wish to repeat that we are interpreting a law which seeks to make legal practitioners responsible and accountable more especially in modern times that we are presently operating. I see nothing technical in insisting that a legal practitioner should abide by the dictates
 E of the law in signing court processes. It is my view that if the decision in *Okafor v. Nweke* is revisited as urged, more confusion will be created. The decision in *Okafor v. Nweke* is not in any respect wrong in law and I cannot surmise a real likelihood of injustice perpetrated. I cannot trace the issue to the domain of public policy. The convenience of counsel should have no pre-eminence over the dictate of
 F the law. The law as enacted should be followed. I do not for one moment see any valid reason why the decision of this court in *Okafor v. Nweke* should be revisited. It has come to stay and legal practitioners should re-frame their minds to live by it for due accountability
 G and responsibility on their part and for the due protection of our profession.

The last point relates to balance of justice which most of the learned senior counsel/counsel touched upon. The question arises as
 H to whether it does not lead to injustice against the litigant to declare processes filed by his counsel incompetent on the ground that such a process was signed and filed in the name of a law firm without indicating the name of the particular legal practitioner who issued and signed the process. Most counsel felt that there should be a saving

grace. In Okafor v Nweke (supra) this court per Onnoghen, JSC stated as follows at pages 532-533 -

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

It follows that no injustice is done to the litigant since the result of the irregularity is an order striking out the suit or process which leaves the real legal practitioner with an opportunity to come back to court to lift his veil and file a proper process as the legal practitioner whose name is on the roll of this court. The court should consider such an application on its merits. Such will enhance good practice culture amongst legal practitioners generally. I earnestly feel that I have made a point.

With all the above, I feel I am done. I come to the conclusion that the appeal which was not initiated with due process of the law is incompetent. See: Madukolu v. Nkemdilim (1962) 2 SCNLR 341. It is hereby struck out. I make no order as to costs. SC.269/2005

On 27th February, 2012 when the appeal was heard, the court ordered that the outcome of the decision in SC.204/2002 shall bind the parties in this appeal as the issue for resolution is the same. It is the propriety or otherwise of a firm of Legal Practitioners signing court process. The appeal is incompetent and it is accordingly struck out as well. No order as to costs.

MUSDAPHER CJN

SC.204/2002

I have read before now the Judgment of my Lord Fabiyi JSC just delivered in this matter. In the aforesaid Judgment, his Lordship

had adequately set out the relevant facts and had exhaustively considered and dealt with the all issues submitted for the determination of the appeal, I entirely agree with his views on all the relevant issues.

I do not think it is worthwhile for me to discuss the issues submitted again, to do so, will only mean, repeating what my Lord has adequately stated. Suffice it for me to thank the amici curiae who have assisted the court in no small measure in arriving at this decision.

SC.269/2005

I agree that both appeals SC.204/2002 and SC.269/2005 which were heard together lack merit and are dismissed. The purported appeals filed before the Court of Appeal were incompetent and were properly struck out by the Court of Appeal. The appeals are devoid of and merits are accordingly both dismissed. In both appeals, I make no order as to costs.

MOHAMMED JSC

I have had the advantage before today of reading in draft the judgment just delivered by my learned brother Fabiyi, JSC. I am completely with him in the manner he tackled the issues raised for determination of the appeals and the ultimate conclusion he arrived at in refusing to revisit the decision of this Court in *Okafor v. Nweke* (2007) 10 N.W.L.R (Pt.1043) 521 and in dismissing the appeals. I entirely agree with the reasons given in the leading judgment of my learned brother as the reasons also accord with my own opinions on all the arguments advanced by the learned Counsel on both sides and learned senior and other Counsel invited by the Court to put forward their own views on the legal issues called for determination. I hereby adopt those reasons as my own in dismissing the appeals.

Additionally, I would add that the decision in *Okafor v. Nweke* (supra), had since 2007 been consistently followed and applied by this Court in several other cases that came before this Court after that decision. Such cases include *Ogundele v. Agiri* (2009) 18 N.W.L.R. (Pt. 1173); *Oketade v. Adewumi* (2010) 8 N.W.L.R. (Pt.1195) 63 and *S.L.B. Consortium Ltd. v. N.N.P.C.* (2011) 4 S.C.N.J. 211, just to mention a few. All these decisions, as far as I am concerned, were arrived at on the correct interpretations given to the provisions of

various statutes particularly Sections 1, 2 and 24 of the Legal Practitioners Act and the Interpretation Act. Would it not result in re-writing the law leading to our creeping into the domain of the National Assembly, if we are to depart from our decision in Okafor v. Nweke (supra)? The answer is obviously in the negative.

The Appellants in these appeals are no doubt asking this Court to depart from its decision in Okafor v. Nweke (supra) by virtue of the provisions of Order 6 Rule 5(4) of the rules of this court relating to filing of briefs of argument which state -

“4. If the parties intend to invite the Court to depart from its own decisions, this shall be clearly stated in a separate paragraph of the brief, to which special attention shall be drawn and the intention shall also be restated as one of the reasons.”

The cases in which the request to depart from its previous decision were considered by this Court include Mucknor-Maclean v. Inlaks Ltd. (1980) 8 -10 S.C.1 and Adesokan v. Adetunji (1994) 5 N.W.L.R. (Pt. 346) 540 at 562. It is clear from these decisions that this Court will not depart or over rule its earlier decision, unless the party calling for doing so is demonstrably able to show that the earlier decision is manifestly wrong and there is a real likelihood of it constituting a vehicle for perpetuating injustice by a rigid adherence to it; or that the decision was given per incuriam; or that it hinders the proper development of the law in which a broad issue of public policy was involved. Unless these requirements are satisfied, this court will certainly not depart from its previous decisions and such application or request to depart, shall be refused. See Abdulkarim v. Incar (Nigeria) Ltd (1992) 7 N.W.L.R. (Pt. 251) 1. In the present appeals therefore, these requirements not having been satisfied by the Appellants, the request must be refused and their respective appeals dismissed. This is because the relevant Notices of Appeal being the court processes involved in the cases, were not duly signed by a Legal Practitioner as required by Section 2(1) and 24 of the Legal Practitioners Act and the Interpretation Act respectively. It must be emphasized that the act or duty required to be performed by the provisions of the law is that of signing the relevant court processes which, in my view, can only be performed by a human being who is a Legal Practitioner duly registered under the Legal Practitioners Act and not by a non juristic person registered under section 573(1) of the com-

panies and Allied Matters Act as a firm of Legal practitioners to practice law under the Act which does not possess the blessing of having human hands to hold a pen or any writing instrument to sign the Court Processes.

B It is for the above reasons and fuller reasons contained in the leading judgments of my learned brother Fabiyi, JSC, that I also refuse the request of the Appellants to revisit the decision of this Court in Okafor v. Nweke (supra) and also dismiss the Appellants' appeals numbers SC.204/2002 and SC.269/2005 respectively, with no order on costs.

C

ADEKEYE JSC

SC.204/2002

D I had a preview of the judgment just delivered by my learned brother J.A. Fabiyi, JSC. My learned brother had aptly narrated the facts of this appeal in the lead judgment; I consider it unnecessary to repeat same.

E The respondent in the appeal before the Court of Appeal Jos Division, in his brief of argument raised and argued a preliminary objection as to the competence of the appeal on the ground that

a. The Notice of Appeal was not duly signed by the appellants or a legal practitioner on their behalf.

F b. That the Notice contained no competent grounds of appeal.

The lower court took argument from counsel to the parties in the appeal on the objection. In the judgment delivered on 27/3/2002, the lower court found the appeal to be incompetent on the two grounds and struck it out. The appellants are before this court having been dissatisfied with the decision of the lower court. In the substantive appeal, the respondent argued and submitted that the appellants' notice of appeal must be struck out for its incompetence. The appellants' notice of appeal was not signed by the appellants but by H David M. Mando & Co. as appellants' Solicitors. The respondent further submitted that for a notice of appeal to be valid, it must be signed by the appellants who gave the notice of appeal or by a legal practitioner on their behalf. The respondent relied on Section 31 of the Court of Appeal Act and Order 1 Rule 2 of the Court of Appeal

Rules 1981. Order 1 Rule 2 defines an appellant to include “*any person who desires to appeal and a legal practitioner representing such a person in that behalf.*” It is either the appellant or his legal practitioner that can validly sign a notice of appeal. The learned counsel for the appellants replied that there is nowhere in the said Order 1 Rule 2 where it is stated that the legal practitioner signing the Notice of Appeal must insert his personal name. The firm name of David M. Mando & Co. provided in the Notice of Appeal shows the solicitors representing the appellants in this appeal and by the name David M. Mando & Co. it shows that the notice of appeal was signed by David Mando Esq, a duly registered Legal Practitioner under Section 24 of the Legal Practitioners Act. The learned counsel emphasized that under the professional conduct; all that a lawyer is required to do is to use his true names as in this appeal. David M. Mando & Co. are the true names of David M. Mando Esq. of which he was enrolled at the Supreme Court. The learned counsel concluded that the business name of David M. Mando & Co. was correctly given as that of the legal practitioner representing the appellants in this appeal. The learned counsel Mr. David Mando urged this court to invoke Order 6 Rule 5(4) of the Rules of the Supreme Court as amended, to overrule or depart from its previous decision in *Okafor v. Nweke* (2007) 10 NWLR (Pt.1043) pg.521 in favour of the two earlier decisions of this court in *Registered Trustees of the Apostolic Church Lagos Area v. Rahman A. Akindele* (1967) 1 All NLR 110. *Cole v. Martins* (1968) All NLR pg.161.

This appeal poses thought simple but substantial question of the proper and legally acceptable format for the signature of legal practitioners on court processes prepared by their chambers. The vital question is, whether as in this case a notice of appeal shall be signed by the appellant or a legal practitioner acting on his behalf such legal practitioner is expected to sign in the true names of which he was enrolled as a solicitor and advocate of the Supreme Court of Nigeria or his business name.

As a simple illustration is the learned counsel appearing for the appellants expected to sign the Notice of Appeal as David M. Mando - the names as appeared on the call to Bar list at the Supreme Court or David M. Mando & Co. his business name in accordance with Section 671 (PART B Business Names) of the Companies and Allied

Matters Act 1990.

The issue raised in this appeal is not a novelty as this court had considered similar point of law in cases before its decision in Okafor and Nweke (*supra*). The decision of this court in the case of Okafor v. Nweke had however raised so much dust that this court decided that
B there is dire need for a joint opinion of the bench and bar on this legal issue in the interest of the legal profession and the clients that the learned counsel represent. At the hearing of the Appeals SC.204/2002 and SC.269/2005, the opinion of highly respected Senior Ad-
C vocates and a few other members of the bar invited as *amicus curiae* were heard by adopting and relying on the briefs filed by them. The overall opinion of the *amicus curiae* created a divided camp. To those in favour of upholding the decision in Okafor v. Nweke while others urged this court to reverse or depart from the decision.

D J.B. Daudu SAN and President of the Bar Association who argued in support of upholding Okafor v. Nweke supported the contention with points as follows -

1. Section 2(1) of the Legal Practitioners Act requires that a person wishing to engage in legal practice must have his name on the
E Roll of Legal Practitioners. The only way to identify such a legal practitioner is to have his name reflected on the court process in issue. The name can usually be cross-checked in the said Roll so as to confirm whether or not the signatory in issue is a genuine legal practitioner. If it cannot be confirmed that the signatory is a legal practi-
F tioner, then the process in issue is incompetent and therefore null and void.

2. Companies and Allied Matters Act does not construe a law firm as being synonymous to a legal practitioner. On the other hand,
G the mischief sought to be suppressed by the Legal Practitioners Act is to ensure that only persons identified and known as legal practitioners carry on the business of legal practice. It is difficult to identify a legal practitioner on a court process from his signature superimposed on his firm's name.

H 3. The requirement that a document must be signed by an identifiable legal practitioner is to promote responsibility and accountability within the profession.

4. The provisions of Companies and Allied Matters Act cannot be employed to supplant the legal requirement imposed by the Le-

gal practitioners Act on the strength of the legal principle of *Generalia Specialibus non derogant* which means that “where a special provision is made to govern a particular subject matter, it is excluded from the operation of any general provision. The provisions of the Legal Practitioners Act are special provisions on what is required of a legal practitioner, while those of CAMA are general. It is trite that where there is a special and a general provision on the same subject matter, the special shall supersede the general.”

The learned senior counsel concluded that since *Okafor v. Nweke*, line of cases have not been shown to have been delivered *per incuriam*; the principle therein ought to be given their full efficacy and force.

S.E. Elema Esq; Gboyega Oyewole Esq; Chief Wale Taiwo; Chief Wole Olanipekun, SAN urged this court to revisit and reverse the latest decisions of this court on this issue including *Okafor v. Nweke* while the decisions in *Registered Trustees of Apostolic Church v. Akindele* and *Cole v. Martins* still present good and sound law. These latest decisions are to be reversed for reasons that

(1) They are technical in nature.

(2) They would continue to create hardship and injustice to the litigants involved at large being mistakes of counsel which should not be visited on the clients.

Adewale Adesokan Esq. urged this court to depart from the two recent decisions of *Okafor v. Nweke* and *SLB Consortium Ltd. v. NNPC* in favour of the recognition of the processes signed by a law firm in Nigeria as CAMA draws no distinction between an individual and a business name that is registered for the purpose of business. The learned counsel is of the opinion that the decision in the two cases border on strict adherence to technicalities which all courts are being encouraged to move away from. He classified the issue raised as a matter of procedural irregularity which can be waived or made amenable to regularization by way of amendment.

Paul C. Ananaba submitted that *Okafor v. Nweke* be overruled for being technical.

Dr. O. Ikpeazu, SAN categorized the decisions in *Okafor v. Nweke* and *SLB Consortium Ltd. v. NNPC* as being highly technical. He submitted that in the two cases, the Supreme Court was resolute that the existence of a signature on a business name nullifies the proc-

esses.

These two decisions though not rendered per incuriam substantially overruled Registered Trustees of the Apostolic Church v. Akindele and Cole v. Martins.

B In what circumstance then can the Supreme Court reverse or depart from its previous decisions? In the case of Odi v. Osafire (1985) 1 NSCC 14 and also quoted in Adisa v. Oyinwola (2000) 6 SCNJ 290, the Supreme Court held that -

C *“The attitude of this court on the issue may be stated thus that the court will not adhere to the rule of stare decisis but will depart from its previous decisions if such decision is inconsistent with the provisions of the Constitution or if it is erroneously reached per incuriam and will if followed perpetuate hardship and considerable injustice or it will cause temporary disturbance of rights acquired under it or will continue to fetter the exercise of judicial discretion of a court.”*

The Supreme Court will overrule itself and depart from its previous decisions upon an application to that effect in the court pursuant to Order 6 Rule 5 (4) Supreme Court Rules 2002 as amended if any of or combination of any of the following circumstances arise -

- E 1. The decisions must be clearly shown to be
 - a. Vehicles of injustice or real likelihood of injustice perpetrated.
 - b. Given per incuriam.
 - c. Clearly erroneous in law.
- F d. If such decision is inconsistent with the Constitution.
- G e. Where there have been developments which rendered the previous decision no longer good law or which would render the decision or pronouncement in the judgment oppressive. Long-John v. Blakk (1998) SCNJ 68, Bucknor-Maclean v. Inlaks Ltd, (1980) 8-11 SC 1, Bamgboye v. Olusogo (1996) 4 SCNJ 154, Okulate v. Awosanya (2000) 2 NWLR (Pt.246) pg.530, Rossek v. ACB Ltd. (1993) 8 NWLR (pt.312) pg.382, Ewete v. Gyang (2003) 6 NWLR (pt.816) pg.345, Adegoke Motors Ltd. v. Adesanya (1989) 3 NWLR (pt.109) pg.250.

H Order 6 Rule 5(4) of the Supreme Court Rules as amended in 2002 stipulates that -

“If the parties intend to invite the court to depart from one of its own decisions this shall be clearly stated in a separate paragraph of the brief to which special attention shall be drawn and the intention

shall also be restated as one of the reason.”

Parties consider the earlier and latest cases of this court to hold that the decision in *The Registered Trustees of Apostolic Church Lagos Area v. Akindele* (1967) All NLR 118 and *Cole and Martins* still represent good law.

In *The Registered Trustees of Apostolic Church Lagos Area v. Rahman Akindele*, the Supreme Court held that -

“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 as such under but has registered the name J.A. Cole and Co under the Registration of Business Name Act 1961 and uses that name in his practice. It is not suggested that there is any professional objection to his doing this and it is frequently done by Solicitors in England as the law list shows. In our view that the business name was correctly given as that of legal practitioner representing the appellants. In signing the notice of appeal - Mr. Cole used his own name that is to say - the name in which he is registered as a legal practitioner. We hold that on the interpretation of the Rules that was sufficient compliance with them and we do not accept the submission that the addition of the words (per J.A. Cole and Co.) would invalidate the signature, if a signature in a business name was not Permitted.”

Rule 50(c) of the Rules of Professional Conduct provides that

“A lawyer practising on his own account should not hold himself out as a partner in a firm of lawyers by using a firm’s name for example A, B & Co which suggest that he is in partnership with others.”

The Supreme Court in this case spotted that -

“In signing the notice of appeal Mr. Cole used his own name - that is to say the name in which he is registered as a legal practitioner.”

In the case of *Cole v. Martins*, the question raised is that of competence or otherwise of the appeal process signed by the law firm of Lardner & Co. in an appeal filed pursuant to Rule 4 of the Registration of Titles (Appeals) Rules. Rule 4 of the Registration of Titles (Appeal) Rules reads -

“A notice of appeal which must be in the form prescribed in Appendix 1 to these rules shall be signed by the Appellant or by the

Legal Practitioner representing him. The Court held that under the Legal Practitioners Act of 1962 Lardner & Company is not a legal practitioner.”

I cannot draw a line of distinction between the principle pronounced in these two cases and in the latest cases of this court Okafor v. Nweke and SLB Consortium v. NNPC. The court held in the case of Okafor v. Nweke that -

“JHC Okolo SAN & Co cannot legally and/or file any process in the court as the said firm of JHC Okolo SAN & Co is not a registered Legal Practitioner.”

The court noted that JHC Okolo SAN & Co is not a person entitled to practice as a barrister and solicitor as only Human beings called to the Nigerian Bar could practice or practice by signing documents such as a motion paper and relied on Sections 2(1) and 24 of the Legal Practitioners Act.

The court in the case of Okafor v. Nweke observed that -

“Legal practitioners have formed the habit of arguing court processes in their partnership or firm’s name without indicating the name of the practitioner signing the process. Such documents are incompetent and are liable to be struck out.

In the instant, case, the processes filed in the application particularly by the motion on notice on 19th May 2005, the proposed notice of cross-appeal and the applicant’s brief of argument in support of the motion were incompetent in that they were not issued by a legal practitioner known to law.”

Order 1 Rule 2 of the Supreme Court Rules states that -

“Appellant means a party appealing from a decision applying for on behalf thereof and includes the legal practitioner retained or assigned to represent him in the proceedings before the court.”

A person shall be entitled to practice as barrister and solicitor in Nigeria if and only if his name is on the roll. Section 2(1) of the Legal Practitioners Act Cap L11 Laws of the Federation 2004. The foregoing provision reads -

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

Section 24 of the Legal Practitioners Act provides that -

“In this Act, unless the context otherwise requires, the follow-

ing expressions have the meanings hereby assigned to them respectively -

In effect by virtue of Section 24 of Legal Practitioners Act, a legal practitioner in Nigeria is a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor either generally or for the purposes of any particular office or proceedings.” B

It is noteworthy that by this definition a law firm is not a legal practitioner and therefore cannot practice as such by filing processes in the Nigerian courts. Only legal practitioners; human beings called to the bar can practice by signing documents. Section 573 of the Companies and Allied Matters Act Cap C 20 Laws of the Federation 2004 Provides that - C

“Every individual, firm or corporation having a place of business in Nigeria and carrying on business under a business name shall be registered in the manner provided in this part of this Act.” D

b. In the case of an individual the name does not consist of true surname without any addition to other than his true fore-names or the initial thereof.”

In accordance with Part B - Business Names of the Companies and Allied Matters Act 1990 - E

“Business includes any trade, industry and profession and any occupation carried on for Profit.”

“Business name means the name or style under which any business is carried on whether in partnership or otherwise.” F

The above sections require an individual, including a legal practitioner to register the name under which he carries on his profession under the Companies Act; it has nothing to do with legal practice or professional conduct in the legal profession. The subject for consideration here is about legal practice and professional conduct of individual members of the legal profession. The legal profession in Nigeria is covered by the provisions of the Legal Practitioners Act with the Rules, Orders and Notices - which are G

- a) Legal Practitioners Disciplinary Committee Rules 2006 H
- b) Rules of Professional Conduct in the legal profession
- c) Senior Advocate of Nigeria (privileges or functions) Rules

1979

- d) Entitlement to practice as Barristers and Solicitors Order

1992

e) Legal Practitioners (Remuneration for Legal Documentation) and other Land Matters Order

f) Legal Practitioners (Bar Practising Fees) Notice 2002

The foregoing are the laws guiding the practice of the Legal Profession - they are specific in nature and not of general application like Company and Allied Matters Act.

I find the reasons put forward in support of upholding *Okafor v. Nweke* by Mr. J.D. Daudu SAN and President of the Nigerian Bar Association impeccable. The Nigeria Bar is old and matured enough to embrace discipline, credibility and responsibility. We cannot copy what obtains in other countries blindly if they do not fit into or conform with our local legal Practitioners Act and Rules of Professional Conduct. The learned counsel for the appellant, Mr. David Mando submitted that by allowing the decision in *Okafor v. Nweke* to stand, suffering and injustice will be inflicted on the entire society because of vital documents already executed by various governments and companies in the business names of a law firm. The decision must be varied for reason of certainty in the law and public interest. Some learned counsel argued that the issues raised border on strict adherence to technicalities, while others are of the opinion that they are procedural irregularities which can be waived. Also that the injustice raised by the latest decisions of this court is that of visiting the sin of counsel on his client. I do not share the foregoing opinion - on the contrary, it is my reasoning that revisiting *Okafor v. Nweke* or all other cases already decided like *SLB Consortium Ltd. v. NNPC* (2011) 9 NWLR (Pt.1252) pg. 317, *Ogundele v. Agiri* (2009) 18 NWLR (pt.1173), *Oketade v. Adewunmi* (2010) 8 NWLR (pt.1195) pg.63.

The Supreme Court shall usurp the role of the legislature by not interpreting the law as it is but by interpreting it as it ought to be. In these appeals, the points raised are not issues of procedural irregularities or instant technicalities but that of tardiness of the legal practitioners in their duties towards their clients. It is all about putting the court in that awkward position of having to strike out cases and by so doing visiting the clients with the sins of their counsel. It is the impression of the courts now that the principle that a party should not be punished for the mistakes of his counsel need to be qualified. This is because, if courts are to allow litigant to plead every wrong step counsel

took in the prosecution of their clients case, and uphold such plea, such liberal access to this laudable legal principle will engender a retrogressive effect which cannot be imagined. The court will only uphold it where the peculiar circumstances justify resort to it. It is heart-warming that Mr. Ananaba posed certain questions in his brief as follows-

1. Should counsel be careless in signing and filing court processes?
2. Should counsel be negligent in signing and filing court processes?
3. Should counsel be tardy in filing court processes?

He answered all these questions in the negative and I agree with him.

The latest cases of the Supreme Court from Okafor v. Nweke are meant to guide erring counsel in the proper way and manner to sign all court processes so as to encourage quick dispensation of such cases and justice. This court in the case Okafor v. Nweke acknowledged also that there are issues of substantial justice that needed to be balanced by holding that-

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

The Notice of Appeal is the foundation and substratum of every appeal. Any defect will render the whole appeal incompetent and the appellate court will lack the required jurisdiction to entertain it.

Once a Notice of Appeal is defective and therefore incompetent, there would be nothing left for the court to consider. It is the Notice of Appeal which gives the court jurisdiction to hear an appeal. Any defect in the Notice of Appeal goes to the root of the appeal and robs the court the jurisdiction to hear the appeal. *Uwazurike v. A-G Federation* (2007) 8 NWLR (pt.1035) pg. 11, *A G Federation v. Guardian Newspapers Ltd.* (1999) 9 NWLR (pt.618) p. 187

With fuller reasons given by my learned brother J.A. Fabiyi JSC in the lead judgment, I have also come to the conclusion that this appeal was not filed according to dictates of the law; it is therefore incompetent and accordingly struck out. No order as to costs. SC.269/2005

The crucial issue for consideration in this appeal is on all fours with that in the appeal SC.204/2002.

It is my conclusion therefore that this appeal is also incompetent and it is accordingly struck out. I make no order as to costs.

PETER-ODILI JSC

SC.204/2002

The two appeals SC.204/2002 and SC.269/2005 being of the same kind in the reliefs sought it was agreed that the decision in SC.204/2002 will bind the parties in SC.269/2005. That issue at stake being crucial it was thought needful that some amici curiae be invited and they were invited to address the Court on the point whether the decision of this court in *Okafor v Nweke* (2007) 10 NWLR (Pt. 1043) 521 should be set aside or not.

In SC.204/2002, the Court has been called upon by the Respondent in the appeal to strike out the appeal for incompetence on the ground that the failure of the Appellants' counsel to properly sign the Notice of Appeal filed on 30th May, 2000 rendered the Notice of Appeal incompetent and should be struck out. The Respondent posits that the Notice of Appeal is incompetent as it was not signed by the Appellants; but by David M. Mando & Co as Appellants' solicitors instead of the Appellants themselves or by a legal practitioner on their behalf. Respondent relied on Section 31 of the Court of Appeal Act Cap 75 Laws of the Federation 1990 and Order 1 Rule 2 of the Court of Appeal Rules Cap 62, Laws of the Federation. The Interpre-

tation Act Cap 192, Laws of the Federation, 1990.

In SC.269/2005, the issue was raised that the appeal should be struck out, since the Brief of Argument filed by the appellant in this proceedings not having been signed by a legal practitioner known to the Legal Practitioners Act is incompetent.

BACKGROUND FACTS: SC.204/2002

The suit was originated at the High court of Plateau State, in the Jos Judicial Division where the plaintiffs who are now the respondents prayed as follows:-

(1) Declaration that the plots of land covered by Plateau State Government statutory Right of Occupancy No. PL. 9686 are substantially different from the plot covered by Jos North Local Government Certificate of Occupancy No. 02506.

(2) A declaration that the purported sale of the property covered by Jos North Local Government C of O No. 02506 by the 1st Defendant to the 2nd Defendant has no effect on the Plaintiff's right of occupancy over the property covered by Plateau State Government C of O No. PL 9686.

(3) An order setting aside the warrant of possession issued in suit No. PLC/JS1/94 against the Plaintiff's property.

(4) An order of damages in the sum of 1 Million Naira against the Defendants jointly and severally for trespass.

(5) Further of order or other reliefs as the honourable court shall deem fit.

Upon service of the writ, the Defendants who are now the Appellants by a Motion on Notice dated 21st October, 1998 and signed above the inscription 'DAVID M. MANDO & CO' prayed the High Court as follows:-

"(a) An Order dismissing plaintiff's Suit No. PLD/J/103/98, as same being RES JUDICATA as per the judgment of Honourable Justice M. Oyetunde, dated 6th May, 1996."

In a Ruling delivered by the Chief Judge of Plateau State on 26th May, 2000 his Lordship dismissed the application on the basis that the decision relied upon in the plea was on appeal. Dissatisfied with the decision, the Appellants appealed by Notice and Grounds of appeal dated 30th May, 2000 and signed above the inscription "DAVID M. MANDO & CO." The parties exchanged briefs of argument and the Respondents raised a preliminary objection to the ap-

peal contending, inter alia, that -

(a) The appeal of the appellant is incompetent in that the Notice of Appeal was neither signed by the Appellant nor by a “legal practitioner acting on their behalf.”

B The Court of Appeal on hearing the appeal and with respect to the preliminary objection held thus:-

C “David M. Mando & Co is a Firm of legal practitioners although as David M. Mando Esq. himself conceded, in that firm which he formed it is only himself that pursues legal practice as he has no partner contrary to the impression that business name conveys, Without doubt, David M. Mando is a legal practitioner and the Respondent recognizes that fact. But the signature on the Notice of Appeal is that of David M. Mando & Co and not that of David M. Mando Esq. The difference must be brought so clearly. If it were David M. Mando D who signed for David M. Mando & Co there would have been a saving ground since David M. Nwando is a known person who has been called to the bar and dully enrolled to practice as a solicitor and advocate in the Supreme Court of Nigeria. But in all the processes filed in this appeal, the signatory to them is David M. Mando & Co. E who then is this David M. & Co and whether he is duly enrolled in the bar to practice as a solicitor and advocate? It may do well to point out that the issue at hand is whether David M. Mando & Co is registered as a firm of Legal Practitioners.”

F “Far from it, the issue is whether David M. Mando & Co can validly sign a Notice of Appeal without any particular Legal Practitioner appending his signature as a duly enrolled person on behalf of the firm. Even in the Registered Trustees of Apostolic Church v Rahman Akindele’s case cited supra, what saved the Notice of Ap- G peal is the signature of Mr. Cole who signed the Notice in addition to the firm name “J.A. Cole & Co.” As the name of Mr. Cole clearly appeared as a signatory to the document and knowing too well that he was registered as a legal Practitioner, the process was adjudged valid. The Supreme Court in that case stressed as follows:

H Mr. J. A. Cole is admittedly a duly registered legal Practitioner and entitled to practice as such under the Legal Practitioners Act 1962. He had no partner in his practice, but he has registered the name J.A. Cole & Co under the registration of business name Act 1961 and used that name in his practice. It is not suggested that there is

frequently done by solicitors in England as the law list shows. In our view, the business name was correctly given as that of the legal practitioner representing the Applicants. In signing the notice of appeal, Mr. Cole used his own name, that is to say the name in which he is registered as a legal practitioner. We hold that on any interpretation of the rules that was sufficient compliance with them and we do not accept the submission that the addition of the words. "For J.A. Cole & Co" could invalidate the signature if a signature in business name was not permitted." ^B

Having said that let me return to the point under discussion. I am not told that David M. Mando & Co whose signature appeared in the Notice of Appeal is a duly registered Legal Practitioner. Even if that fact is proved, I would have to be further convinced that in Nigeria, juristic persons are eligible to be registered as Legal Practitioners. The conclusion I have reached is that David M. Mando & Co is a distinct entity from David M. Mando Esq. I am satisfied that David Mando Esq. is duly registered to pursue the profession of legal practice. But he was not the person who signed the notice of appeal filed in the appeal filed in the suit. The signatory is David M. Mando & Co. The Court of Appeal decided that the Notice of Appeal was incompetent and therefore the appeal itself equally incompetent and it was struck out. Appellants filed an appeal of four grounds, the first of which challenged the decision of the Court of Appeal striking out the appeal on the ground that the Notice and Grounds of Appeal were not signed by a juristic person or person duly enrolled to practice law in Nigeria as a legal practitioner. ^C ^D ^E ^F

SC.269/2005

FACTS

This is the Brief of argument for the 1st Respondent (who was Plaintiff at the trial court and 1st Respondent at the Court below) against the appeal entered by the Appellants herein in respect of the judgment of the Court below dated 25th May 2005. The 1st & 2nd Appellants were 1st & 2nd Appellants at the Court below and 1st & 2nd Defendants at the trial Court, while the 2nd Respondent was 2nd Respondent at the Court below and 3rd Defendant at the trial Court. ^G ^H

The 1st Respondent as Plaintiff at the trial court claimed against the appellants and the 2nd Respondent as follows:

(1) A declaration that the execution carried out by the 3rd Defendant on the 14th November 2001 at the behest of the 1st & 2nd Defendants is wrongful, irregular, illegal and of no effect.

(2) An order setting aside the said execution for being wrongful, irregular and illegal.

B (3) An order of injunction restraining the 3rd Defendant, its servants, agents and/or privies from further processing and/or release to the 1st and 2nd Defendants the sum of N1,949,685 paid into Court by the Plaintiff on account of the said irregular and wrongful execution of judgment.

C (4) Payment of a sum of N2,592,518 being special and general damages suffered by the Plaintiff as a result of the wrongful execution levied on the Plaintiffs property on 14.11.2001 of which was personally instigated and supervised by the 2nd Defendant.

D PARTICULARS OF SPECIAL DAMAGES

(i) Amount levied in excess of adjudged sum N483,518.00

(ii) Cost of replacement of vandalized vehicle/Goods of the Plaintiff's items viz:

11 stolen tyres at N5,000 each	55,000	
E 11 stolen tyre reams at 4,000 each	44,000	
1 Air conditioner cover	3,000	
4 Nos Car Batteries at N6,500 each	26,500	N129,000.00
(iii) General Damages	N2,000,000.00	
F N2, 592, 518.00		

The 1st Respondent also filed an application dated the 8/2/2002 and made ex-parte alongside the originating processes seeking, inter alia:-

G *"An order of interim injunction restraining the 3rd Defendant, his servants, agents, privies or howsoever from further processing and/or release to the 1st and 2nd Defendants the sum of N1, 949, 685.00 paid into court by the Plaintiff's banker on account of the execution levied by the Defendants on the Plaintiff on 14th November 2001 of which is the subject matter of this suit pending the hearing and determination of the motion on notice."*

H Against the substantive suit, the Appellants filed a Preliminary Objection dated the 5th of March, 2002 challenging the jurisdiction of court to hear and entertain the suit. When the matter came up before Idowu, J. of the Lagos State High Court on 11th March 2002,

the learned trial judge made an order that the status-quo be maintained pending when the parties would be heard on their respective applications. On 14th March 2002, the appellants lodged an appeal against the order of Hon. Justice Idowu that the status - quo be maintained and thereafter petitioned the Hon. Chief Judge of Lagos State to transfer the suit to another Judge. The Notice of Appeal, Appellants' Petition and the Order of the Chief Judge transferring the case to Oshodi, J. is at pages 38 - 42 of the record. The 1st Appellant who is the principal party to the suit leading to this appeal on 22/3/02 briefed the Chambers of Messrs. O. Donald & Co. of 44 Olowu Street, Ikeja, Lagos to take over the matter in Suit No. LD/1260/2000 from O. E. Abang (Praise Chamber), filed application for change of counsel on same date and by consent Order given by Rhodes-Vivour, J (as he then was) on 30/4/2002, the previous Order made by him was vacated and the matter amicably settled between the parties. D

The Terms of Settlement and the Motion for Change of Counsel are on pages 72 and 74 of the record. Consequent upon the terms of settlement by the parties, the 1st Respondent on 6th May 2002 filed a Notice of discontinuance of the suit at the High Court against the 1st Appellant and the 2nd Respondent. The Notice of Discontinuance is at page 76 of the record. The 1st Respondent consequently sought to amend the claim before the trial court to reflect the effect of Notice of Discontinuance filed by the 1st Respondent. E

When the matter came up before Oshodi, J on 11th November 2002, the 2nd Appellant informed the court of his pending Preliminary Objection while the 1st Respondent informed the learned trial Judge of its pending application for amendment, as a result of which the learned trial Judge adjourned all pending applications till 7/1/2003. It was against this Order adjourning all pending applications, that the 2nd appellant purportedly lodged an appeal on behalf of the Appellants. F G

The 1st Respondent filed two Notices of Preliminary Objection dated 22/3/03 and 3/6/04 respectively against the two appeals filed by the Appellants but sought the leave of the Court below to withdraw the one dated 22/1/03 and moved that of 3/6/04. When the matter came before the Court below on 24th November 2004, the learned Justices of the Court below directed by consent of parties that the Preliminary Objection dated 3rd June 2004 be argued in the H

brief with the substantive appeal. The Preliminary Objection is at pages 127 - 131 of the record.

When the appeal came up for hearing before the Court below on 25/5/2005, the 2nd Appellant submitted to the court below that the Record of Appeal was incompetent after the court rightly found B that some extraneous records which were never produced before the trial Judge were included in the record. Based on the incompetence of the record and the totality of 2nd appellant's submissions that the record was incompetent, and that he could not go or, the C Court below struck out the record. The 2nd Appellant subsequently informed the Court below that he could not go on with the appeal in view of the fact that the record was struck out. Since there was no record on which the appeal can be heard, the Court below ruled that the only option open to the Court was to dismiss same for want of D prosecution. The appeal was therefore dismissed. The proceedings and ruling are at pages 154-55 of the record.

On the matter coming up on the 27/2/12 for hearing, Mr. Mando learned counsel for the Appellant adopted their Brief filed on 8/10/02 and a Reply Brief on 7/6/04. He urged the court to set aside E its decision in *Okafor v Nweke* (2007) 10 NWLR (Pt.1043) 521. He referred to his written address filed on 27/4/11. That the Court should restore its earlier decisions in *Registered Trustees of the Apostolic Church Lagos Area v Rahman Akindele* (1967) 1 All NLR 100; F *Augusta Cole v Seigus Olatunji Martins & Anor* (1969) All NLR 116.

In the Appellant's Brief were couched four issues for determination as follows:-

1. Whether David M. Mando & Co is a juristic person, a distinct entity from David M. Mando Esq. a duly registered Legal Practitioner. G

2. Whether it was proper for the learned Justices of the Court of Appeal to have struck out Appellants' appeal, instead of dismissing Respondent's suit No. PLD/J/03/98 for Res Judicata.

3. Whether leave of the trial Court or that of the Court of H Appeal, was necessary to file Appellants appeal, having regards to the nature of the appeal (Res judicata)?

4. Whether ground 3 of the Appellants' grounds of appeal raised fresh facts not canvassed at the trial Court.

Mr. Obla, learned counsel for the respondent adopted their

Brief filed on 24/6/03. In it were formulated two issues for determination, viz:-

(i) Was the appeal of the Appellants to the court of Appeal competent.

(ii) If the answer to question (i) is in the affirmative then;

(a) Can this Honourable Court, giving the entire circumstances of this case and in particular, bearing in mind the fact that neither the High Court nor the Court below made any pronouncement on the issue of res-judicata, determine the issue of res-judicata in this appeal; and if so,

(b) Are the appellants entitled to a successful plea of res-judicata in the entire circumstance of this case?

Mr. J. B. Daudu SAN, amicus curiae adopted their Brief filed in SC/204/02 on 17/1/12 and a Brief in SC.269/2005 filed on 27/2/12. In the Brief of the Amicus Curiae in SC/204/02 was crafted a sole issue for determination as follows:-

“Where legislation (main or subsidiary) requires that a court process be signed by a legal practitioner, is it valid if an entity other than a duly enrolled legal practitioner signs such a court process and if answered in the negative what is the fate of such invalidly signed process”.

Learned Senior Advocate J. B. Daudu contended that the case of Okafor v Nweke (supra) and S.L.B. Consortium Ltd v NNPC (2011) 4 SCNJ 211 at 221 & 223 should not be overruled as those decisions are in keeping with the law. He cited Atake v President (1982) 11 SC 63.

Chief Wole Olanipekun SAN, amicus curiae adopted the Brief he filed on 27/2/12 and in it was formulated a single issue, viz -

“Whether, considering the state of the law, as well as legal developments and practice, this Honourable Court would not overrule, depart from or vary its recent decisions, including but not limited to Okafor v Nweke (2007) 10 NWLR (Pt.1042) 521; Oketade v Adewunmi (2010) 8 NWLR (Pt. 1195) 63 where it was held that a court process not personally signed by an identifiable legal practitioner (signed by a firm of legal practitioners) is incompetent.”

Amicus Curiae, Dr. Ikpeazu SAN adopted the Briefs in SC.204/2002 and SC.269 /2005 filed on 27/2/12. He framed a sole issue, viz:-

Is Court process signed over the inscription “David M. Mando & Co” incompetent and therefore rendered nugatory.

Mr. S.E. Elema, Amicus Curiae adopted his Brief for SC.204/2002 filed on 10/11/11 and the Brief on SC.269/2005 filed on 2/12/11/ He did not formulate any issue for determination and went straight
B to the argument.

Mr. Onoja, Amicus Curiae adopted his Brief filed on 17/1/12 and he too did not frame an issue but went into the argument.

Amicus Curiae, A.A. Adediji Esq. adopted his Brief of argument filed on 17/1/12 and argued straight. Amicus Curiae, Mr.
C Oyewole adopted his Brief filed on 19/1/12 and formulated a single issue, viz:-

What should be the attitude of the Court to a Court process signed by a law firm?

D Chief Wale Taiwo, Amicus Curiae adopted his brief filed on 31/1/12 and had in it framed a sole issue, viz:

Whether the decision in Okafor v Nweke ought to be retained as good law.

Chief Wale Taiwo had also adopted their Brief in SC.269/2005
E for the 1st Respondent therein.

Mr. Adesokan learned counsel for 1st Appellant in SC. 269/2005 and Amicus Curiae in SC.204/2002. He adopted these Briefs and in that for SC.204/02 raised a sole issue as follows:-

F What should be the attitude of the Court to a court process signed by a law firm.

Mr. Paul Ananaba, Amicus Curiae adopted his Briefs in SC.204/2002 on 29/12/11 and in SC.269/2005 on 30/12/11. He did not couch any issues but went into the argument of his position on the
G matter.

Dr. Olatawura, Amicus Curiae adopted his Brief filed on 28/4/11 and went into his arguments in support of his position on the issue on ground.

Learned counsel for the Appellant submitted that the Court of
H Appeal was wrong to have held that David M. Mando & Co. is a juristic person, a distinct entity from David M. Mando Esq a duly registered legal practitioner under the Legal Practitioner’s Act. That it is trite law that to ascribe juristic personality to an organization or a body, such organization or body must have been created by law and

David M. Mando & Co is not a creation of statute known in law but a mere business name. That no law prescribed that in signing the Notice of Appeal the legal practitioner must personally insert his name. He said it is the duty of the Court of appeal to do substantial justice and not rely on technicalities. That David M, Mando & Co. is the same as David M. Mando Esq and so the Court of Appeal should hear and consider the appeals on the merit rather than striking them out. He cited *Fawehinmi v NBA* (N0.2) (1989) 2 NWLR (Pt.105) 558 at 600; *Akpan Ekpewi v The State* (1982) 6 SC. 41; *Okon v The State* (1982) 9 SC 98 at 100; *Bucknor Maclean & Anor v INLAKS Ltd* (1980) 8 - 11 SC 1 at 20, Order 1 Rule 2 of the Court of Appeal Rules, 1981. B C

Mr. Mando further stated that the Court of Appeal wrongly applied the decision of the Registered Trustees of Apostolic Church, Lagos Area v Rahman Akindele (1967) NMLR 263 at 265. D

Learned counsel for the Appellants contended that the decision of the trial court appealed against is a decision within the meaning of Section 241(1)(b) of the 1999 Constitution and appealable as of right and without leave, on points of law only under Section 242 of the 1999 Constitution. On what constitutes question of law for purposes of appealing as of right or with leave, he cited *Metal Construction W.A. Ltd v Migliore* (1990) 1 NWLR (Pt. 126) 299 AT 308 - 309. He went on to submit that all the three grounds of appeal as contained in pages 112-114 of the record are valid, competent and arguable on point of law. That appellants did not need leave either of the trial Court or the Court of Appeal to appeal. That the principles of the doctrine of *Res-judicata* border on the issues of law as contained in Section 54 of the Evidence Act 1990 (as amended). E F

Mr. Mando of counsel said it is not in every interlocutory decision that leave of either the trial Court or of the appellate Court is required before the filing of an appeal. That *res - judicata* applies as the respondents want to relitigate a matter heard and determined by another competent court. He cited *Achakpa & Anor v Nduka & Ors* (2001) SCMLR 16 at 27; *Alao v Akano* (1988) 19 NSCC 329 at 335. G H

For the appellants was again submitted that ground 3 of the appellants' ground of appeal did not raise a fresh issue of fact which was not canvassed at the Lower Court without leave of the trial or

Court of Appeal.

Mr. Obla learned counsel for the Respondent arguing along the line of the Brief of argument settled by Harrison N. Ugwuala Esq. stated that to be valid a Notice of appeal must be signed by the appellant, who gives the notice or a legal practitioner on his behalf. He
 B cited Section 31 of the Court of Appeal Act Cap 75 Laws of the Federation of Nigeria 1990; Order 1 Rule 2 of the court of Appeal Rules pursuant to Cap 62 Laws of the Federation 1990. That the question is whether DAVID M. MANDO & CO. THE SIGNATORY
 C OF THE Notice of Appeal in question is a legal practitioner within the meaning of the Legal Practitioner's Act 1990. He referred to Sections 24, 2 and 23(1) thereof. That David M. Mando & Co. is not a person entitled in accordance with the Legal Practitioners Act, 1990 to practice as a Barrister or Barrister and solicitor for any purpose at all hav-
 D ing not been called to the Bar and enrolled accordingly. That even if the Notice of Appeal to the Court of Appeal is declared valid, the appeal would still be incompetent having been commenced without leave of the Court of Appeal or the High Court.

Learned counsel for the Respondent went on to state that for
 E this Court to decide whether the grounds of appeal to the Court of Appeal raised issues of fact or mixed law and fact in which leave of court is a necessity this court should apply the test it laid down in *Ogbechie v Onochie* (No.1) (1986) 2 NWLR (Pt. 23) 484 at 491 and explained in *Maigoro v Garba* (1999) 10 NWLR (Pt. 624) 555 at
 F 573.

Mr. Obla for the Respondent said ground 3 of the Ground of Appeal at the Lower Court was incompetent because it did not arise from the decision of the High Court appealed against. He referred to
 G *Igbinovia v U.B.T.H* (2002) 8 NWLR (Pt.667) 53 at 65 - 66; *Afribank (Nig.) Plc v Osisanya* (2000) 1 NWLR (Pt.642) 598 at 611; *Madueke v Madueke* (2000) 5 NWLR (Pt. 655) 130 at 135. Also that the grounds raised issues of fact which were not resolved by the Lower court and so the ground was incompetent. He cited Commissioner
 H of Finance & Anor v *Ukpong & Anor* (2000) 4 NWLR (Pt. 653) 363 at 380; *Dambam v Lele* (2000) 11 NWLR (Pt. 678) P413.

The president of the Nigerian Bar Association, Mr. J. B. Daudu as *amicus curiae* in keeping with his Brief submitted that the aggregate i.e. firm of legal practitioners is not a legal practitioner within the

context of the Legal Practitioners' Act. That it is indisputable that the person called to the Bar and enrolled in the appropriate Register in the Supreme Court of Nigeria is David M. Mando and not David M. Mando and Co and that the latter append a signature as it is inanimate. That the nature of Mr. Mando's error appears rampant and its effect in law settled by the Supreme Court in many cases. He cited *S.L.B. Consortium, Limited v NNPC* (2011) 4 SCNJ 211 at 221 - 223 per Onnoghen JSC; *Okafor v Nweke* (2007) 3 SCNJ 185. B

Mr. Daudu SAN further submitted that appellants counsel, Mr. Mando has not raised any new argument that would warrant a revision or review of the ratio decidendi of the cases above cited. That the name reflected on the said process is that a law firm which is different from the name of the person that was duly called to the Nigeria Bar and to that extent the process in issue is incompetent and a nullity. C

Chief Wole Olanipekun SAN, as amicus curiae stated that he would use the two celebrated cases of *Registered Trustees of the Apostolic Church, Lagos Area v Rahman A. Akindele* (1967) All NLR 118 or (1967) NMLR 213; *Cole v Martins* (1968) All NLR 161 as point of his arguments. That this Court should note that nowadays, it is common in all professions, particularly in the legal profession to have limited liability partnerships have to be registered under Part B of the Companies and Allied Matters Act 2004 (CAMA). Under the new regime of legislation, the limited liability partnerships and all other companies, although non-limited liability companies are registered by individuals, whose identities must be disclosed upon registration and the particulars of trade they engage in must also be disclosed. He cited Section 19(2) (b) (i) of CAMA which allows or empowers, permits or directs law firms to be specifically registered as business names. The learned senior advocate stated on that this provision is a shade more elaborate than the Registration of Business Names Act referred to in the case of *Cole v Martins* (supra). That the point being made is that there is no significant difference between Mr. A.B. who registers his law partnership or company as A.B & Co and as held by this court in the earlier two cases, he is the mover and sole proprietor of A B & Co. D E F G H

Chief Olanipekun SAN called for a departure from *Okafor v. Nweke* (supra) and give effect to the substance of the case and not

on technicalities. That objection to irregularity or incompetence of court processes are to be taken timeously before the person complaining takes any further step in the proceedings after becoming aware of the irregularity or incompetence That where objections to the incompetence of originating process signed by solicitors in their companies' names are not taken timeously, they are deemed waived forever. He referred to *Saude v Abdullahi* (1989) 4 NWLR (Pt 116) 387; *Ibianu v Ogbende* (1994) 7 NWLR (Pt.350) 697 at 716; *Adegoke Motors v Adesanya* (1989) 3 NWLR (Pt. 109) 250; *Noibi v Fitolati* (1987) 1 NWLR (Pt. 52) 619.

That the issue is not jurisdictional and should not rob the court of competence. He cited *Madukolu v Nkemdilim* (1962) 2 SCNLR 341; Section 122(2)(J) of the Evidence Act. He concluded by saying that further adherence to the latest decisions of this court on this issue apart from being technical in nature, would continue to create hardship and injustice to the litigant involved at large, simply because of what is perceived as mistake of counsel which should not be visited on the clients. He referred to *Long John v Black* (1998) 5 NWLR (Pt. 555) 524.

Dr. Onyechi Ikpeazu SAN, amicus curiae along the line of his Brief said the Court should tow a path that would save the litigant from hardship and injustice and it is necessary that this court leans more for the litigant who ought not to have his interest jeopardized on account of the mistake of his counsel. He urged a visitation on the case of *Okafor v Nweke* (supra) to strike a balance between doing the right presentation and the interest of the hopeless litigant.

S.E. Elema Esq, amicus curiae said the balance of justice is in favour of a legal practitioner signing the process by name and where that is not the case a striking out of the process for incompetence and that no injustice is visited to the litigant who can always come back. He cited Section 2(1) and 24 of the Legal Practitioners Act, Laws of the Federation of Nigeria 2004.

Chief O.J. Onoja said that in the overall interest of justice where this Court is minded to uphold the decision in *Okafor v Nweke* (supra) it should make some exceptions to the applicability of its rule. That the examples of such exceptions would be:

(1) Where the suit or application was filed before the decision in *Okafor's* case.

(2) Where it is impossible to re-file an application or a suit such as by reason of the limitation law.

(3) Where the document in question was not issued for the purpose of being filed in court, though it may be used in court as an exhibit or to prove its existence.

(4) Where the objection to the document (or the only problem with it) is the addition of the phrase “& Co”, in such a case an oral application to delete it should be granted. B

Amicus Curiae, A.A. Adedeji Esq. said that to nullify a process on the sole ground that same is not signed by or in the name of a law firm or not signed by a legal practitioner is to determine disputes based on technicalities instead of deciding matters on their merits. C That it would have been different and understandable if the processes were not signed at all. That the time of technicalities being over substantial justice should be the guide in resolving issues between D litigants. That the decision in *Okafor v. Nweke* (supra) should be jettisoned. He cited *Associated Discount House Ltd v Amalgamated Trustees* (2006) 5 SC (Pt. 1) 32 at 37 - 37.

Mr. Gboyega Oyewole, amicus Curiae said *Okafor v Nweke* (supra) should be followed since the striking out of a court process signed invalidly is a dismissal without prejudice which can be re-filed E and the litigant can always claim damages against his counsel. That the main ground of this position is the fact that the Legal Practitioner's Act being a substantive law must be adhered to as its provision touches on the sanctity and integrity of legal practice. He cited F *Okonkwo v UBA Plc* (2011) 16 NWLR (Pt.1247) 614.

Chief Wale Taiwo, amicus curiae in SC.204/2002 and 1 at Respondent in SC/269/2005 contended that the decision in *Okafor v Nweke* (supra) should be followed and retained in view of the need G to preserve the practice of law and not give room for a non-lawyer signing a process which he ought not to thereby leading to gross abuses. He cited Rule 3(1)(a) of the Rules of Professional Conduct for Legal Practitioners 2007.

Mr. Adewale Adesokan, amicus curiae saying the court should H depart from the two recent decisions of *Okafor v Nweke* (supra) and *SLB Consortium Ltd v NNPC* (supra) in favour of the recognition of the processes signed by a Law Firm in Nigeria for the reasons, viz:-

(1) Because a business name (which is what a Law Firm is)

does not confer legal personality nor does it make the entity a body corporate.

(2) Because the CAMA draws no distinction between an individual and a business name that he registers for the purpose of his business.

B (3) Because the recent decisions of this court i.e. Okafor v Nweke (supra) and SLB v NNPC (supra) on the issue border on strict adherence to technicalities which all courts are being encouraged to move away from.

C (4) Because the issues arising are only a matter of procedures regularity, which can be waived, and in any case which ought to be amendable to regularization by way of amendment.

Dr. Olatawura, amicus curiae gave the court options of either overruling Okafor v Nweke or upholding it with certain conditions.

D That is a summary of the submissions and I will venture to see which way to go. In brief, the point of view of the Appellant's counsel is encapsulated in the following:

(a) That it was wrong for the Court of Appeal to hold that David M. Mando & Co is a juristic person different and distinct entity from David M. Mando Esq, a duly registered Legal Practitioner in accordance with the provisions of Sections 2, 4, 7 and 24 of the Legal Practitioners' Act 1975.

F (b) Because David M. Mando Esq. is the same as David M. Mando & Co being the true names of David M. Mando Esq as required by the Rules of Professional Conduct.

(c) Because it was wrong for the Court of Appeal to hold that judgment of Hon. Justice M. Oyetunde dated 6th May, 1995 calls for evaluation to determine the doctrine of res judicata.

G (d) Because leave of either the trial Court or that of the Court of Appeal was not necessary to file Appellants' appeal as the appeal is on points of law.

H (e) Because it was wrong for the Court of Appeal to hold that Appellants' ground 3 of their grounds of appeal raised fresh facts on jurisdiction which were not raised at the trial court.

(f) Because the question of jurisdiction can be raised anytime either at the trial court or at the appellate court without leave of the Court.

(g) Because the subject matter, parties and issues in Suit No.

PLD/J.103/98 are the same with the parties subject matter and issues in Suit NO. PLD/J/51/94, heard and determined by Hon. Justice M. Oyetunde on 6th May, 1996.

(h) The Appellants want the court to note that the Respondents' appeal to the Supreme Court vide pages 46 - 89 of the Record of Appeal was heard and determined in favour of the Appellants on 5th February, 2002 in Appeal SC.95/97 wherein the Supreme Court dismissed Respondents' said appeal. B

Amicus Curiae in respect of the matter of the signature on the process, viz Chief Wole Olanipekun SAN, Dr. Onyechi Ikpeazu SAN, Chief O. J. Onoja, A.A. Adediji, Adewale Adesokan, Paul Ananaba were of the same line of thinking with the Appellant's counsel. That position being that the interest of justice would be served where a process signed under the legal firm without the name of the legal practitioner in person should be declared valid in the interest of justice, since the interest of the litigant ought not to be jeopardized on account of the mistake of counsel. C D

The respondent's counsel contrary position is captured in summary thus:-

The appellants' appeal to the Court of Appeal was incompetent for not containing any valid ground of appeal and the notice of appeal was not signed either by the appellants or a legal practitioner on their behalf as required by the law. E

(2) The appellants are not entitled to a successful plea of res-judicata in the entire circumstances of this case. F

The first leg (1) on the competence or otherwise of a notice and grounds of appeal not signed by the appellants or a legal Practitioner, Amicus Curiae J.B. Daudu SAN, S.E. Elema, Wale Taiwo, Gboyega Oyewole towed the path of learned counsel for the respondent which is that such a process is invalid and should be struck out for incompetence. G

Dr. Olatawura was cautious and gave the court options of either overruling *Okafor v Nweke* or upholding it with certain conditions. H

This appeal is in the main based on two distinct positions, one of which is held by the appellants' learned counsel and the other view or stand point held by the respondent's counsel with the various amicus curiae queuing with one of the contesting parties or the

other. The first position as taken by the appellant and his supporting amicus curiae, viz: That the appeal should be allowed for the following reasons:

(a) Because it was wrong for the Court of Appeal to hold that David M. Mando & Co is a juristic person different and distinct entity from David M. Mando Esq, a duly registered legal practitioner in accordance with the provisions of sections 2, 4, 7 and 24 of the Legal Practitioners' Act 1975.

(b) Because David M. Mando Esq is the same as David M. Mando & Co, being the true names of David M. Mando Esq as required by the Rules of Professional Conduct.

(c) Because it was wrong for the Court of Appeal to hold that judgment of Hon. Justice M. Oyetunde dated 6th May, 1996 calls for evaluation to determine the doctrine of res judicata.

(d) Because leave of either the trial court or that of the Court of Appeal was not necessary to file appellants' appeal as the appeal is on points of law.

(e) Because it was wrong for the Court of Appeal to hold that appellants' ground 3 of their grounds of appeal raised fresh facts on jurisdiction, which were not raised at the trial court.

(f) Because question of jurisdiction can be raised anytime either at the trial court or at the appellate court without leave of court.

(g) Because the subject matter, parties and issues in Suit No. PLD/J/103/93 are the same with the parties, subject matter and issues in Suit No. PLD/J/51/94 heard and determined by Hon. Justice M. Oyetunde on 6th May, 1996.

The contrary view of the respondent alongside the amicus curiae of the same line of thinking on the fundamental issue of this matter of who should validly sign an originating process or originating appeal is as follows:-

That this court should strike out the entire appeal as incompetent or dismiss it in its entirety as it is lacking in merits for the following reasons:

(a) The appellants' appeal to the Court of Appeal was incompetent for not containing any valid ground of appeal and the Notice of appeal was not signed by either the appellants or a legal practitioner on their behalf as required by the law.

(b) The appellants are not entitled to a successful plea of res-

judicata in the entire circumstances of this case.

From what I can see, the contending parties are basically on either side of the fence which in brief is whether or not the case of *Okafor v Nweke* (2007) 3 SCNJ 185 should be overruled or reviewed. I shall therefore recapture the gravamen of that decision with its principle which is at the base of this contestation. This court had at page 191 stated as follows:

“However Section 2(1) of the Legal Practitioners Act, Cap 207 of the Laws of the Federation of Nigeria 1990 provides thus: “subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll.”

From the above provision, it is clear that the person who is entitled to practice as a legal practitioner must have had his name on the roll. It does not say that his signature must be on the roll but his name. Section 24 of the Legal Practitioners Act defines a “Legal Practitioner” to be: “a person entitled in accordance with the provisions of this Act to practice as a barrister or as a barrister and solicitor, either generally or for the purpose of any particular office proceeding.” The combined effect of the above provisions is that for a person to be qualified to practice as a legal practitioner he must have his name in the roll otherwise he cannot engage in any form of legal practice in Nigeria. The question that follows is whether J.H.C. Okolo SAN & Co is a legal practitioner recognized by the law? From the submissions of both counsels, it is very clear that the answer to that question is in the negative. In other words both senior counsels agree that J.H.C. Okolo SAN & CO is not a legal practitioner and therefore cannot practice as such by say, filing processes in the courts of this country. It is recognition of this fact that accounts for the argument of learned Senior Advocate for the applicants that to determine the actual person who signed the processes evidence would have to be adduced which would necessarily establish the fact that the signature on top of the inscription J.H.C. Okolo SAN & CO. actually belongs to J.H.C. Okolo SAN who is legal practitioner in the roll. I had earlier stated that the law does not say that what should be in the roll should be the signature of the legal practitioner but his name. That apart it is very clear that by looking at the documents, the signature which learned senior advocate claims to be his really belongs to J.H.C. Okolo SAN & CO. or was appended on its behalf since it was signed on top that

name. Since both counsel agree that J.H.C. Okolo SAN & CO. is not a legal practitioner recognized by the law, it follows that the said J.H.C. Okolo SAN & CO cannot legally sign and/or file any process in the courts and as such the motion on notice filed on 19th December, 2005, notice of cross appeal and applicants brief of argument in support of the said motion all signed and issued by the firm known and called J.H.C, Okolo SAN & CO. are incompetent in law particularly as the said firm of J.H.C. Okolo SAN & CO. is not a registered legal practitioner. In arriving at the above conclusion, which is very obvious having regard to the law, I have taken into consideration the issue of substantial justice which is balanced on the other side of the scale of justice with the need to arrest the current embarrassing trend in legal practice where authentication or franking of legal documents, particularly processes for filing in the courts have not been receiving the serious attention they deserve from some legal practitioners. Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both the legally trained minds and those not so trained always learn from our examples. We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country.

Following Okafor v. Nweke (supra) this court had in the case of S.L.B. Consortium Limited v NNPC (2011) 4 SCNJ 211 at 221 - 223 per Onnoghena JSC:

"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 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 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 v 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 practising 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 v 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 v Martins* (supra) this court had decided the case of the Registered Trustees of Apostolic Church Lagos Area v 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.

Those in favour of going along with the principle embedded in *Okafor v Nweke* (supra) and others on the same page are of the firm view that once the process is not signed by the individual legal practitioner with his name under that process is invalid and incompetent and that is the end of it. The other contrary view held by the appellants and the amicus curiae of that thinking is that the issue is one of those technical errors which ought not to vitiate the process especially taken in the light of the general principle that a litigant should not be made to suffer from the mistake of counsel. Also that a liberal interpretation should be given to the relevant statutory provisions as adopted by this court in *Registered Trustees of Apostolic Church, Lagos Area v Rahman Akindele* (1967) NWLR (PT. 263) and *Cole v*

Martins (1968) ALL NLR 161. For support of the above view for a liberal interpretation is Order 51 Rule 1 of the Federal High Court (Civil Procedure) Rules, 2009. For effect that provision reads:

B “(1) where in beginning of purporting to begin any proceeding or at any stage in the course of or in connection with any proceeding, there has by reason of anything done or left undone, been failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure may be treated as an irregularity and if so treated, will not nullify the proceedings, or any document, judgment or order therein.

C (2) The court may on the ground that there has been such a failure as mentioned in sub-rule (1) of this rule and on such terms as to costs or otherwise as it thinks just, set aside either wholly or in part D the proceedings in which the failure occurred, any step in those proceedings or any document, judgment or order therein, or it may exercise its powers under these Rules to allow such amendments (if any) to be made and to make such order (if any) dealing with the proceedings generally as it thinks fit.”

E The above is the Rule applicable to the Federal High Court basic forum of the matter before us. The next thing to follow is the Legal Practitioners Act Cap 207, Laws of the Federation of Nigeria, 2004, Section 2(1) thereof provides as follows:

F “2(1) 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.”

Section 24 of the same Act provides, thus:

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

H It is indeed clear in my humble opinion that the interpretation of the above provisions is that it is the human person legally trained or termed a legal practitioner that is meant under those legislation above and only such persons and not a firm or group in the firm of legal practitioner come within the ambit of those two sections of the law. Therefore for the purpose of the authorizing signature, it is either the litigant himself or the human person who is the legal practitioner

that can sign. The Rule of Court, order 51 Rule 1 of the Federal High Court (Civil procedure) Rules would take a second position in the scheme of things and is not the redeeming feature that can save the process wrongly signed by a legal firm or not signed at all.

It is sad though when the situation of the wrongly initiated process is taken in context of the interest of a litigant who is not in a position to know that his process had not and cannot take off having not been signed either by himself or his counsel. I do sympathize but the pride of place of the law remains standing and cannot be shaken but obeyed. Therefore the call to whittle down the effect of the strict compliance of the law in relation to who should sign and if not what the effect would be cannot be countenanced. By the same token, the principles enunciated in *Okafor v Nweke* (supra) remain and the issue of a review is still born and there is no overruling of itself for the Supreme Court on what *Okafor v Nweke* (supra) portend.

From the foregoing and the better articulated reasons in the lead judgment of my learned brother, John Afolabi Fabiyi JSC, I strike out the appeal which is incompetent having been signed by the firm of Mando & CO. instead of a human person legally trained and empowered or the appellant himself. I abide by the consequential orders in the lead judgment.

SC.269/2005

On the day of hearing alongside SC.204/2002 it was agreed by all the parties and approved by this court that the decision in the SC.204/2002 would be taken as the decision in this appeal, the appeal SC/269/2005 herein having the same fundamental point of an initiating appeal process or as in this instance the appellants' brief not properly signed by the appropriate signatories as required by law. It is in the light of that, that this court having decided through the lead judgment as anchored by John Afolabi Fabiyi JSC to which I agree and adopt as mine having come to the conclusion that the process not signed by a legal practitioner or the litigant himself is invalid and renders the appeal incompetent. Therefore this appeal is dead on arrival and is hereby struck out.