

SUPREME COURT OF NIGERIA

FRIDAY 8th FEBRUARY, 2013. SC. 251/2005

**CORAM:- I. T. MUHAMMAD, M. U. PETER-ODILI,
O. ARIWOOLA, C. B. OGUNBIYI, K. B. AKA'AH, JJSC**

1. AARON OKARIKA

2. SUNDAY NWOB

3. SAMUEL NWOB

..... APPELLANTS

4. ISAIAH NWOB

5. CLEMENT NWOB

(For themselves and as
representing Umuele family,
Oboburu Town)

AND

1. ISAIAH SAMUEL

2. CHIEF OKITI

NWOKOMA

..... RESPONDENTS

(For themselves and as
representing Umuele family,
Oboburu Town)

APPEALS - Issue - Objection to - Based on any valid law can be raised - Though the Constitution & S.C. Rules - Have not made provisions relating to the point or issue (H1)

COURT PROCESSES - Appeals - Jurisdiction - An initiating process must be valid - To confer jurisdiction on court - In order to adjudicate between parties on a subject matter in dispute (H2)

APPEALS - Notice of appeal - Natural person - Signature - Notice of appeal proceeding from such person - Must be signed by appellant - Or his counsel as the circumstances demand (H3)

APPEALS - Notice of appeal - Artificial person - Signature -Where appeal proceeds from company or law firm - The notice must be signed by the legal representative (H4)

APPEALS - Notice of appeal - Signature - Validity - The notice signed

by H.E. Wabara & Co is invalid - Since it does not qualify as a legal practitioner - As statutorily defined (H5)

FACTS

Plaintiffs/respondents and defendants/appellants instituted suits nos: AHC/12/82 and AHC/17/82 respectively against each other at the High Court of Rivers State, Ahoada. The parties sought for similar reliefs at the court, to wit: declaration of customary rights of occupancy of the disputed land, general damages for trespass and injunction restraining further trespass on the land. The suits were consolidated. At the end of the proceedings, the learned trial Judge preferred the traditional evidence of the root of title of respondents over that of appellants.

Hence, the court allowed the claims in Suit No.AHC/12/82 and dismissed the claim in Suit No.AHC/17/82. Not satisfied, appellants filed appeal in the Court of Appeal Port Harcourt division. The court dismissed the appeal and affirmed the judgment of the trial court. Aggrieved further, appellants appealed to Supreme Court. Respondents raised preliminary objection to the effect that the court lacked jurisdiction to entertain the appeal on the ground that the originating process was signed by a person not known to the law.

HELD (Unanimously striking out the appeal per **MUHAMMAD JSC**)

APPEALS - Issue - Objection to

1. Let me first and foremost disabuse the mind of the learned Counsel for the Appellants on the views he expressed in his submission on the non-existence of a provision in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Supreme Court Act and Rules (as amended). It is not correct to say that an objection cannot be raised against an issue/a point simply because the Constitution, the Supreme Court Act and/or Rules (as amended) or any other law or rule for that matter has not made provision relating to that matter or issue. The Constitution, although being the Supreme law of the country; the Supreme Court (enabling law) and the Su-

preme Court Rules (Procedural Laws) are not the only valid, existing and applicable laws on all matters. There are other laws which are equally valid and applicable to certain matters and until they are either repealed or declared null and void, they shall continue to apply to those matters to which they relate. One of such laws is the Legal Practitioners Act, which came into existence since 1962. (p. 815 E)

Appeals - Jurisdiction

2. It is thus, the law that an initiating process whether Writ of Summons, Originating Summons or a Notice of Appeal must be valid to confer jurisdiction on a court to adjudicate between parties on a subject matter in dispute between them. (p. 818 B)

Notice of appeal - Natural person - Signature

3. Thus, a Notice of Appeal not signed by an Appellant or his Counsel is invalid as there is no stamp of authority or authentication. Although nowhere in Order 8 of the Supreme Court Rules is it provided that an Appellant or his legal practitioner must sign the Notice of Appeal as Order 6 Rule 2[4] of the Rules of the Court below has provided, it would be wild and callous to suggest, as the learned Counsel for the Appellants did, that "any signature appended on a Notice of Appeal" (although a mere surplusage) will suffice.

In Order 9 Rule 3[1], though relating to criminal appeals, the requirement there is that the Notice of Appeal shall be in the form prescribed in the First Schedule to the Rules and shall be signed by the appellant. Form 24 forms part of First Schedule referred to in the rule. It provides in paragraph 5 for date and then a provision for the complainant/defendant (as the case may be) on appeal (or his legal practitioner) to sign and supply address. My Lords, initiating a process in a Court of first instance or an Appeal which lies to an Appeal Court has to be sponsored by a person natural or artificial. In case the Appeal proceeds from a natural person, it has to be filed and prosecuted by that natural person who has the capacity to see, hear, talk, feel or perceive or, where circumstances de-

mand, by his Counsel who has the same qualities/capacity.
(p. 818 D)

Notice of appeal - Artificial person - Signature

4. Where the process or Appeal proceeds from an artificial person such as a corporation or a law firm, that corporation or law firm has to be represented by a natural person such as Director, Manager, Company Secretary (natural person) etc who should now pursue the matter on its behalf or by mandating a legal practitioner(s) who should pursue the matter/appeal to its logical conclusion. This is because the Corporation, law firm or Company lacks these human qualities which will qualify it to pursue the matter/appeal to its logical conclusion. That is why it is improper where a law firm is consulted by an individual for legal services to indicate on the initiating process(es) that such a process is signed by the law firm. The law firm is incapable of signing the process. It is incapable of pursuing the matter/appeal to its logical conclusion as it lacks these human qualities. It has to act through natural persons or human beings. All the decided authorities cited by the learned Counsel for the Appellants in his Reply Brief are irrelevant and inapplicable to the present Appeal.
(p. 819 E)

Notice of appeal - Signature - Validity

5. Finally, H. E. WABARA & CO. is not a Legal Practitioner within the meaning of who a Legal Practitioner is as the various statutory definitions provide. The Notice of Appeal shown to have been signed by that law firm is invalid and incapable to initiate an Appeal to this Court. (p. 819 H)

NOTABLE POINT OF INTEREST

OGUNBIYI JSC

H 1. Jurisdiction of court – Basis for determination

The authority of the case of Madukolu v. Nkemdilim under reference supra, is very well positioned on the jurisdiction of a Court to adjudicate on a matter before it. The threefold conditions which must be

fulfilled are hereunder listed as apparent. In other words, the jurisdiction of a court can only be exercised when:-

(1) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another;

(2) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction and B

(3) The case comes before the court initiated by the due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction. (p. 827 B) C

REPRESENTATION

E. C. Aguma, for the Appellants with Frank Otioto, for the Appellants

R. W. Nwoka with A. W. Ariyem, for the Respondents D

CASES REFERRED TO

Madukolu v. Nkemdilim (1962) 1 All NLR 587

Sken Consult (Nig.) Ltd. v. Ukey (1981) 1 SC 6 E

Ogbunyiya v. Okudo (1979) 6 - 9 SC (Reprint Edition) 24

Awuse v. Odili (2004) 8 NWLR (pt. 876) 481

Mkpa v. Mkpa (2010) 14 NWLR (pt. 1214) 612

Okafor v. Nweke (2007) 3 SC (pt. 2) 55

First Bank Plc v. Maiwada (2003) FWLR (pt. 151) 2001 F

Regd. Trustees Apostolic Church Lagos Area v. Akindele (1967) 1 ALL NLR 110

Macfoy v. UAC (1961) 3 ALL E. R. 1169

S.L.B. Consortium Ltd v. NNPC (2011) 4 SCNJ 211 G

STATUTES & RULES REFERRED TO

Legal Practitioners Act Cap L11 LFN 2004, ss. 2(1), 24

Supreme Court Rules 1999 (as amended), O. 8 r. 2, O. 9 r. 3(1)

Court of Appeal Rules 2011, O. 6 r. 2(4) H

LEAD JUDGMENT BY MUHAMMAD JSC

The Suits between the parties before the High Court sitting in the Ahoada Judicial Division of the High Court of Rivers State

(trial court) were between the same parties. The Suits were numbered AHC/12/82 and AHC/17/82. They were later consolidated. In AHC/12/82, the Plaintiffs therein, who are the Respondents herein, commenced their action against the Defendants, who are now Appellants herein. The Plaintiffs asked for the following reliefs:

B 1. *"A declaration to the customary rights of occupancy of a piece or parcel of land situate at OBOBURU town in AHOADA Local Government Area known as and called "MBIDE LAND."*

C 2. *N5,000.00, being general damages for trespass in that the Defendants wrongfully and unlawfully broke into and entered into the said "MBIDE LAND" which is and has been in the actual and lawful possession of the Plaintiffs, destroying trees and planting building pegs.*

D 3. *A perpetual injunction restraining the Defendants, their agents or servants from further acts of trespass, entering or interfering with same."*

In Suit No.AHC/17/82 the Defendants/Appellants sued the Plaintiffs'/Respondents, claiming the following reliefs:

E 1. *"A declaration that the Appellants are entitled to the customary right of occupancy over the piece or parcel of land situate at OBOBURU town in the AHOADA Local Government Area known as IBEWA - UZOR LAND.*

F 2. *N7,000.00 (Seven Thousand Naira) as general damages for trespass in that the Respondents wrongfully and unlawfully broke and entered into the said Ibewa-Uzor land in the lawful possession of the Appellants.*

G 3. *A perpetual injunction restraining the Respondents, their servants and agents from further acts of trespass upon the said land."*

H At the end of the proceedings, the learned trial Judge made findings of facts that the Plaintiffs had adduced cogent evidence of traditional history pointing to the root of their title and entitlement to the right of occupancy to MBIDE land. The Defendants, on the other hand, according to the learned trial Judge, had failed woefully to show with certainty the area of UBEWUZOR land within the wider OBE land to which their claims related. The learned trial Judge held that the claim in Suit No.AHC/12/82 succeeded and he granted the Plaintiffs all the reliefs sought. The claim in Suit No.AHC/17/82 in which the Defendants were Plaintiffs failed and was dismissed. The

trial Court's Judgment was affirmed.

Further appeal was filed to this Court by the Appellants'. Briefs of argument were settled by the parties to the appeal. The learned Counsel for the Appellants formulated the following issues for determination by this Court:

"ISSUE 1

B

Whether upon a calm and reflective consideration of the traditional history pleaded by the Respondents and the evidence led thereon, the Court of Appeal was right in affirming the Judgment of the trial Court granting them title to the disputed land (Gd. 3).

C

ISSUE 2

Whether the Court of Appeal was right in affirming the Judgment of the trial Court dismissing the Appellants' claim for a declaration of title to the disputed land. (Gds. 1, 2, 4 and 5)."

Learned Counsel for the Respondents set out in their brief of argument the following issues for determination. Viz:

ISSUE 1

Whether having regards to the Notice of Appeal, the Supreme Court has jurisdiction to hear this Appeal.

ISSUE 2

E

Whether having regards to the pleadings and evidence proffered by the parties as to their traditional history, the Court of Appeal was right in affirming the Judgment of the trial Court.

ISSUE 3

F

The Respondents adopt Appellants' issue 2."

It is to be noted that a Notice of Intention to rely upon Preliminary Objection was filed on the date Respondents' brief was filed. My Lords, I shall consider the Preliminary Objection firstly. The Notice reads as follows:

G

"TAKE NOTICE that the Respondents' will at the hearing of the Appeal rely upon preliminary objection AND FURTHER TAKE NOTICE that the Grounds of the objection are:

a) Jurisdiction

b) Appeal, incompetent Notice of Appeal-invalid not originated by due process, not being given by a person known to law. See: Okafor & 2 Ors v. Nweke & 4 Ors (2007) 3 SC (Pt 2) 55 at 63-64, First Bank Plc v. Maiwada (2003) F.W.L.R. (Pt. 151) 2001, Registered Trustees Apostolic Church Lagos Area v. Akindele (1967) 1 All NLR

H

110, Form 12 Cap. C 23 LFN, 2004 page 23 - 250 - 251."

The learned Counsel for the Respondents argued the above Preliminary Objection in his No.1 issue of his brief of argument. He submits that the initiating process, whether Writ of Summons, Originating Summons or Notice of Appeal must be valid to confer jurisdiction to adjudicate in all cases. That the instant appeal can only be originated in this Court if the Notice of Appeal which is the initiating process is proper, regular and valid. Where the Notice of Appeal is faulty, irregular or invalid it cannot confer jurisdiction in the appellate court as there is no authentication. Learned Counsel referred to Form 12 Cap. C. 23 LFN, 2004 Vol.3, pp C23 -250 -251; *Madukolu v. Nkemdilim* (1962) 1 All NLR 587 at 594; *Sken Consult (Nig.) Ltd. v. Ukey* (1981) 1 SC 6.

The learned Counsel submitted further that H. E. WABARA & Co. is not a legal practitioner within the meaning of who a legal practitioner qualified to originate or sign Notice of Appeal on behalf of an appellant. He referred to the Legal Practitioners Act Cap L11, LFN, 2004, Section 2[1]. He submits finally that if there is no Notice of Appeal, there is no appellant and jurisdiction of this Court can only be invoked through a valid Notice of Appeal. He cited *Macfoy v. U. A. C.* (supra). He urged this Court to strike out the Appeal for want of jurisdiction.

Learned Counsel for the appellants' filed a reply brief in response to the Notice of Preliminary Objection and other issues raised by the Respondents in their brief of argument. He submitted on the Preliminary Objection that the Notice of Appeal is competent since there is no provision in either the Constitution of the Federal Republic of Nigeria, 1999 (as amended); the Supreme Court Act or the Supreme Court Rules (as amended) requiring any signature to be endorsed on a Notice of Appeal filed in this Court. Learned Counsel for the Appellants conceded that the judicial authorities cited by the learned Counsel for the Respondents' represented good law but are, he argued, inapplicable in the circumstances of this case. Learned Counsel cited Order 8 Rule 2 of the Supreme Court Rules 1999 (as amended) which makes provision for filing of the Notice of Appeal and specified the contents of the Notice of Appeal and that nowhere is it provided that an Appellant or his Legal Practitioner must sign the Notice of Appeal as Order 6 Rule 2[4] of the Court of Appeal Rules,

2011 explicitly and unequivocally provides. Learned Counsel submitted that any signature appended on a Notice of Appeal filed in the Supreme Court is mere surplusage as it is not one of the contents of a Notice of Appeal explicitly specified in Order 8 Rule 2 of the Supreme Court Rules and no other Rule in Order 8 mandates that the Appellant or his Legal Practitioner must sign the Notice of Appeal. He cited and relied on the cases of Ogbunyiya & Ors v. Okudo & Ors (1979) 6 - 9 SC (Reprint Edition) 24 at 35 lines 15 - 20; Awuse v. Odili (2004) 8 NWLR (Pt.876) 481 at 541 G - H; Mkpa v. Mkpa (2010) 14 NWLR (P1.1214) 612 at 645 F - G. It was argued further for the Appellants that improper appendage of signature ought not to vitiate the Appellants' Notice of Appeal. Technicality, learned Counsel argued, ought not to defeat substantial justice as the mischief which Okafor & Ors v. Nweke & Ors (supra) seeks to prevent, namely anonymity of Counsel does not arise since all Order 8 Rule 2 of the Rules of Supreme Court requires is that the Notice of Appeal contains all the names and addresses of all the parties to the appeal. He urged this Court to discountenance the Preliminary Objection and resolve all issues raised in favour of the Respondents in allowing the Appeal.

Let me first and foremost disabuse the mind of the learned Counsel for the Appellants on the views he expressed in his submission on the non-existence of a provision in the Constitution of the Federal Republic of Nigeria, 1999 (as amended) and the Supreme Court Act and Rules (as amended). It is not correct to say that an objection cannot be raised against an issue/a point simply because the Constitution, the Supreme Court Act and/or Rules (as amended) or any other law or rule for that matter has not made provision relating to that matter or issue. The Constitution, although being the Supreme law of the country; the Supreme Court (enabling law) and the Supreme Court Rules (Procedural Laws) are not the only valid, existing and applicable laws on all matters. There are other laws which are equally valid and applicable to certain matters and until they are either repealed or declared null and void, they shall continue to apply to those matters to which they relate. One of such laws is the Legal Practitioners Act, which came into existence since 1962.

The Locus CLASSICUS, on the issue of whether a corporate

body, or a law firm is competent to sign a signature on an initiating/ originating process such as a Notice of Appeal has, not quite long, been settled in the case of Okafor & 2 Ors v. Nweke & 4 Ors (2007) 3 SC (Pt.2) 55 at 63 - 64. The salient facts of the case are: Augustine Nweke and others as applicants before this court filed a motion asking for extension of time within which to apply for leave; for leave and for extension of time within which to file their Notice and Grounds of Cross-Appeal. They also asked for a deeming order of the said Notice and Grounds of Appeal, among other reliefs.

The motion was signed by: J. H. C. Okolo, SAN & Co., Applicant's Counsel, 162B Zik Avenue, Uwani, Enugu. There was an affidavit of 22 paragraphs in support of the said motion to which had been exhibited a Notice of the proposed Cross-Appeal which the applicants asked for a deeming order. The said Notice of Cross-Appeal was signed by J. H. C. Okolo, SAN & Co. which was Exhibit 'A' attached to the said affidavit in support.

The Applicants also filed a brief of argument in respect of the application as required by the rules of this Court. The brief was also signed by J. H. C. Okolo, SAN & Co. The Respondents on their part, filed a Counter-Affidavit in opposition to the Application and a Respondents' brief of argument in which the following issue was, among others, raised:

"(1) whether the Notice of Motion, Notice of Cross-Appeal and the Applicants' Brief of Argument for extension of time in this application are null and void."

After having considered the Application, this Court agreed with the submission of learned Senior Advocate of Nigeria for the Respondents that the processes filed in the Application particularly the Motion on Notice filed on 19/12/05, the proposed Notice of Cross-Appeal and the Applicants' brief of argument in support of the said Motion on Notice were incompetent in that they were not issued by a legal practitioner known to law and were consequently struck out. My learned brother, Onnoghen, JSC, who delivered the lead Ruling had this to say:

"it is very important to note that the reply brief was signed by J. H. C. Okolo, SAN not J. H. C. Okolo SAN & Co."

There is no doubt whatsoever that the motion paper giving rise to the objection as well as the proposed Notice of Cross-Appeal

and appellants' Brief in support of the said motion were all signed: J. H. C. Okolo, SAN & Co. Learned Senior Counsel for the appellants does not dispute this but stated that since there is a signature on top of J. H. C. Okolo, SAN & Co., it is necessary to call evidence to establish the identity of the person who signed the documents for which counsel relied on *Izuogu v. Emuwa* supra and *Banjo v. Eternal Sacred Orders of Cherubim & Seraphim*, also supra. ^B

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.' ^C

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. ^D

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 or proceeding." ^E

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 on 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? ^F

From the submissions of both Counsel, it is very clear that the answer to that question is in the negative. In other words, both senior counsel 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. ^G

In furtherance of his reasoning process, Onnoghen, JSC, commented:

"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 ^H

since it was signed on top of 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 & 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."

It is thus, the law that an initiating process whether Writ of Summons, Originating Summons or a Notice of Appeal must be valid to confer jurisdiction on a court to adjudicate between parties on a subject matter in dispute between them.

Thus, a Notice of Appeal not signed by an Appellant or his Counsel is invalid as there is no stamp of authority or authentication. Although nowhere in Order 8 of the Supreme Court Rules is it provided that an Appellant or his legal practitioner must sign the Notice of Appeal as Order 6 Rule 2[4] of the Rules of the Court below has provided, it would be wild and callous to suggest, as the learned Counsel for the Appellants did, that "any signature appended on a Notice of Appeal" (although a mere surplusage) will suffice. Further, although the learned Counsel for the Appellants' cited Order 8 of the Supreme Court Rules, 1999 (as amended), to back-up his submission that there are no provisions for the signature of the Appellant or his legal representative/Counsel and the same cannot be imported into Form 12, it appears to me to be that the learned Counsel, either, made a tactful omission or gloss-over or even misunderstood the import of what some of the provisions of the Rules made. An example is Form 12 referred to by the learned Counsel, which must be read as forming an integral part of the Rules. It is provided there after the paragraph for persons directly affected by the Appeal, a paragraph for date - "DATED this...." and then a blank space is left for the Appellant to append his signature and then address. This is in a civil appeal. There is a provision for the Appellant to sign the Notice of Appeal as prescribed by the Rules. In almost all Courts Rules, reference to an "appellant" includes the legal practitioner retained or as-

signed to represent him in the proceedings before the Court. Thus, the Notice of Appeal in a civil matter/appeal shall be valid and competent where the Appellant himself signed it or his legal representative/counsel signs.

In Order 9 Rule 3[1], though relating to criminal appeals, the requirement there is that the Notice of Appeal shall be in the form prescribed in the First Schedule to the Rules and shall be signed by the appellant. Form 24 forms part of First Schedule referred to in the rule. It provides in paragraph 5 for date and then a provision for the complainant/defendant (as the case may be) on appeal (or his legal practitioner) to sign and supply address. My Lords, initiating a process in a Court of first instance or an Appeal which lies to an Appeal Court has to be sponsored by a person natural or artificial. In case the Appeal proceeds from a natural person, it has to be filed and prosecuted by that natural person who has the capacity to see, hear, talk, feel or perceive or, where circumstances demand, by his Counsel who has the same qualities/capacity.

Where the process or Appeal proceeds from an artificial person such as a corporation or a law firm, that corporation or law firm has to be represented by a natural person such as Director, Manager, Company Secretary (natural person) etc who should now pursue the matter on its behalf or by mandating a legal practitioner(s) who should pursue the matter/appeal to its logical conclusion. This is because the Corporation, law firm or Company lacks these human qualities which will qualify it to pursue the matter/appeal to its logical conclusion. That is why it is improper where a law firm is consulted by an individual for legal services to indicate on the initiating process(es) that such a process is signed by the law firm. The law firm is incapable of signing the process. It is incapable of pursuing the matter/appeal to its logical conclusion as it lacks these human qualities. It has to act through natural persons or human beings. All the decided authorities cited by the learned Counsel for the Appellants in his Reply Brief are irrelevant and inapplicable to the present Appeal.

Finally, H. E. WABARA & CO. is not a Legal Practitioner.

ner within the meaning of who a Legal Practitioner is as the various statutory definitions provide. The Notice of Appeal shown to have been signed by that law firm is invalid and incapable to initiate an Appeal to this Court.

Accordingly, the Notice of Appeal filed and signed by H. E. B WABARA & CO. on behalf of the Appellants is incompetent and the Appeal is hereby struck out. I make no order as to costs.

PETER-ODILI JSC

C I agree totally with the Judgment just delivered by my learned brother, I. T. Muhammad JSC. I shall make some comments to place on record my support.

This is an Appeal from the Judgment of the Court of Appeal, D Port Harcourt Division delivered on Thursday, the 28th October, 2004 dismissing the Appellants' appeal and affirming the Judgment of the trial High Court given on the 12th May 1994 per Olukole J. sitting in the Ahoada Judicial Division of the High Court of Rivers State in consolidated Suits Nos. AHC/12/82 and AHC/17/82.

E FACTS

The Plaintiffs/Respondents on the 1st February, 1982 commenced their action against the Defendants/Appellants jointly and severally in Suit No.AHC/12/82 for the following reliefs:

F 1. A declaration to the customary rights of occupancy of a piece or parcel of land situate at Oboburu town in Ahoada Local Government Area known as and called "MBIDE LAND"

G 2. N5,000.00 being general damages for trespass in that the Defendants wrongfully and unlawfully broke into and entered the said "MBIDE LAND" which is and has been in the actual and lawful possession of the Plaintiffs destroying trees and planting building pegs.

3. A perpetual injunction restraining the Defendants, their agents or servants from further acts of trespass entering or interfering with same.

H The Defendants'/Appellants' on the 23rd February 1982 sued the Plaintiffs/Respondents in suit No.AHC/17/82 claiming the reliefs as follows:

1. A declaration that the Appellants' are entitled to the customary right of occupancy over the piece or parcel of land situate at

Oboburu town in the Ahoada Local Government Area, known as IBEWA-UZOR LAND

2. N7,000.00 (seven thousand naira) as general damages for trespass in that the Respondents' wrongfully broke and entered into the said Ibewa-Uzor land in the lawful possession of the Appellants'.

3. A perpetual injunction restraining the Respondents, their servants and agents from further acts of trespass upon the said land.

On the 7th November, 1984 the two suits were consolidated.

The Appellants' case was that the juju oath administered on them would kill all four oath takers on their behalf if the land in dispute was not theirs. The fact that three of the four oath takers survived the one year designated period was an indication that the land in dispute belonged to them. Also that the land in dispute is separate and distinct from the respondents' MBIDE LAND. That the land in dispute is known as Oboebite land / Ibewa-Uzor which belongs to the Appellants. That sometime in 1954, the Oboburu Community requested for and received a grant of part of the Appellants' "Ibewa-Uzor" land for the building of the Oboburu school.

The position of the Appellants further is that the only boundary between them and the Respondents is located on a line of ponds and trees and not the Oboburu Akabuka Road recently built by Elf (Nigeria) limited as claimed by the Respondents.

On the part of the Respondents, the claim is that the condition for declaring title in favour of the Appellants was not that if all four swearers of (sic) died within one year, but that if any one of them died within the period.

Both parties pleaded and led evidence on their traditional history. After reviewing the evidence and addresses of Counsel, the learned trial Judge found for the Plaintiffs in AHC/12/82 and granted the reliefs sought. The case of the Plaintiffs/Defendants in AHC/12/82 in AHC/17/82 was dismissed. The Defendants in AHC/12/82 who were Plaintiffs in AHC/17/82 appealed and the Court of Appeal upheld the decision of the trial High Court, hence this further appeal to this Apex Court.

On the 12th November, 2012 learned Counsel for the Appellants adopted the brief settled by H. E. Wabara Esq, filed on 25/4/06 and deemed filed on 5/3/08. Also adopted was Appellants' Reply Brief filed on 9/11/12 and deemed filed the same day.

In the Appellants' brief were formulated six issues for determination as follows:

1. Whether the learned trial Judge was right in not making specific findings on the issue of arbitration by swearing on oath to Juju in his Judgment.

B 2. Whether the learned trial Judge was right in admitting in evidence the parties survey plans (albeit by consent) and relying on them in his Judgment and if he was wrong, did the Respondents establish with certainty the land claimed by them.

C 3. Whether the learned trial Judge was right in not applying Section 45 (now S.46) of Evidence Act in favour of the Appellants' and whether he properly evaluated Exhibits F, G, H, J, K and L vis-à-vis the evidence of PW1 and PW2.

D 4. Whether the traditional history of the Respondents was positive and cogent enough to entitle them to Judgment.

5. Whether the learned trial Judge was right in holding that there was no land known as Ibewa-Uzor land.

E Learned Counsel for the Respondents, R. W. Nwoka Esq called the court's attention to their Preliminary Objection which they argued as issue 1 in their Respondents' brief filed on 25/8/08 and deemed filed on 14/10/09. The matter of the preliminary objection being critical since the jurisdiction of this Court to adjudicate was called to question needed to be handled first and this Court accorded it the pride of place.

F Arguing Mr. Nwoka of Counsel for the Respondents/Objector submitted that the Notice of Appeal which was the initiating process to this Court was signed in the name of the firm of Counsel, H. E. WABARA & Co is not a legal practitioner and so the process was G invalid. That the initiating process whether Writ of Summons, Originating Summons or Notice of Appeal must be valid to confer jurisdiction to adjudicate in all cases. He said where the Notice of Appeal is faulty, irregular or invalid it cannot confer jurisdiction on the appellate Court. He cited *Madukolu v Nkemdilim* (1962) 1 ALL NLR 587 H at 594; *Sken Consult Nig Ltd v. Secondi Ukey* (1981) 1 SC 6.

Learned Counsel for the objector said the law requires the aggrieved Appellant or his Counsel being a registered Legal Practitioner to sign such Notice of Appeal to originate the appeal. In this wise only a natural person be it Appellant(s) or Legal Practitioner or in the

case of a corporate Appellant, a Director or Legal Practitioner all of whom are natural persons on that company's behalf.

On who a Legal Practitioner is, learned Counsel for the objector cited Legal Practitioners Act Cap L11 Laws of the Federation 2004 in which the definition talks of a human person not a firm. That the Notice of Appeal in this case filed on 1/12/04 not having been signed or authenticated by a natural person as Appellants or Legal Practitioner on their behalf is tantamount to there not being a Notice of Appeal and so on that ground should be struck out. He referred to *First Bank Plc v. Maiwada* (2003) FWLR (Pt.151) 2001 Registered Trustees Apostolic Church Lagos Area v Akindele (1967) 1 ALL NLR 110; Form 12 Cap C23 Laws of the Federation 2004 page 23-250 to 251; Registration of Business Names Act; *Macfoy v UAC* (1961) 3 ALL E. R. 1169 at 1171. B
C

Mr. E. C. Aguma who took over the brief of the Appellants and had even settled the Reply Brief argued that the Notice of Appeal is competent since there is no provision in either the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Supreme Court Rules 1999 (as amended) requiring any signature to be endorsed on a Notice of Appeal filed in the Supreme Court. That Form 12 Cap C 23 Vol. 3 LFN 2004 pp 250-251 and the judicial authorities of *Okafor & Ors v. Nweke* (2007) 3 SC (Pt.2) 55; *First Bank Plc v. Maiwada* (2003) FWLR (Pt.151) 2001 and Registered Trustees Apostolic Church Lagos Area v Akindele (1967) 1 ALL NLR 10 are inapplicable in this instance. D
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Learned Counsel for the Appellants/Respondents said it is the Court of Appeal Rules 2011 that expressly provides that a Notice of Appeal to that Court shall be signed by the appellants or his legal representative which position is different in a Notice of Appeal filed to the Supreme Court. That for the Supreme Court, the governing Rules are Order 8 Rule 2 of the Supreme Court Rules 1999 (as amended) which has not provided for the signature of the appellant or his legal practitioner and what has not been provided for is clearly excluded. He cited the cases of *Ogbunyinya & Ors v. Okudo & Ors.* (1979) 6 - 9 SC (Reprint Edition) page 24 at 35; *Awuse v. Odili* (2004) 8 NWLR (Pt.876) 481 at 541; *Mkpa v Mkpa* (2010) 14 NWLR (pt.1214) 613 at 645. Mr. Aguma urged the Court to dismiss the preliminary objection. G
H

The basis of this preliminary objection has been rested by this Court on the 25th May, 2012 in the consolidated Appeals SC.204/2002; SC.269/2005 between; First Bank of Nigeria Limited & Anor v. Alhaji Salman Maiwada; Franphino Pharmaceutical Ltd & Anor v. Jawa International Ltd & Anor. The full court of the Supreme Court held firmly and following in the footsteps of *Okafor v Nweke* (2007) 3 SCNJ 185 that once the initiating process, be it Writ of Summons or Notice of Appeal is not signed or authenticated either by the litigating party or the legal practitioner on his behalf then that process is invalid and the jurisdiction of the court ousted. The defect is taken as incurable and the process signed in the name of the legal firm would not suffice. In like manner the Notice of Appeal in this instance not having been signed by a human person whether as appellant or legal practitioner is invalid and the implication is that there is no appeal. The only option left for the Court is to declare the process null and void and it being struck out. See *S.L.B. Consortium Limited v. NNPC* (2011) 4 SCNJ 211 at 221 - 223 per Onnoghen JSC; Legal Practitioners Act Cap 207, LFN 2004 Sections 2(1), 24.

From the above and the fuller reasons in the lead Judgment I strike out this Appeal and abide by the consequential orders therein made.

OGUNBIYI JSC

I have read in draft the lead Judgment just delivered by my learned brother I. T. Muhammad, JSC. I entirely agree with the reasoning and the conclusion he finally arrived at in resolving the issues arising for the determination of this Appeal. The incompetent nature of the purported Notice of Appeal is quite obvious. Accordingly, I also strike out the said process in terms of the lead Judgment.

The facts of this case from whence this Appeal originates are succinct and straightforward as clearly spelt out in the lead Judgment of my learned brother. Suffice it to say however that the Appeal is a product of two consolidated suits numbered AHC/12/82 and AHC/17/82 wherein three reliefs are each sought at the trial High Court of Rivers State. At the trial High Court, while the claim in suit NO.AHC/12/82 succeeded, that in AHC/17/82 which was filed by Defendants as Plaintiffs was dismissed. The Defendants who were aggrieved by

the judgment of the trial Court lodged an appeal to the Court of Appeal Port Harcourt Division, which Court again dismissed their appeal and hence a further Appeal now before us. Both parties in their respective briefs raised two issues for determination. It is pertinent to restate that the respondents' 1st issue relates to the question of jurisdiction. In other words, a preliminary objection was vehemently raised against the competence of the Notice of Appeal which the Respondents' Counsel submitted is incompetent. The law is trite and plethora of authorities are well settled that where a court is bereft of jurisdiction, any proceeding conducted without such power is an exercise in futility and therefore a nullity. Jurisdiction is the life wire of adjudication which is constitutionally conferred. No court or any party/parties can by consensus confer jurisdiction. The locus classical authority in the celebrated case of *Madukolu v. Nkemdilim* (1962) 1 All NLR 587 of 594 is very instructive on the indispensable nature of jurisdiction which can be raised at any stage of a proceeding even if for the first time in this Court. On the one hand and on behalf of the Respondents, it was submitted that a Notice of Appeal not signed by the Appellant/Appellants or his/their legal representative is invalid for want of authentication and proper appellant. On the other hand and in response, the Appellants' Counsel submitted at great extent and relied copiously on Order 8 of the Supreme Court Rules 1999 (as amended) which learned Counsel argued should not be equated with Order 6 Rule 2(4) of the Court of Appeal Rules 2011.

It is the Counsel's submission for instance that while the provision governing the Court of Appeal is explicitly and unequivocally provided, the same cannot be said of the Supreme Court Rules which makes provision for filing of the Notice of Appeal and specifies the contents thereof. The learned Counsel further argued therefore that the position with a Notice of Appeal filed in the Supreme Court is radically different.

The determination of the preliminary objection will necessitate that reference be made to the Notice of Appeal, the subject of contention which is contained on pages 270 - 276 of the record of appeal. The process, specifically at page 276 was signed by H. E. Wabara & Co. designated as the Appellants' solicitors. The nature of a Notice of Appeal being an originating process is well settled and should not be a matter of controversy. Being an initiating process

therefore it must be certified as competent in order to give it legality and recognition.

The combined effect of Sections 2(1) and 24 of the Legal Practitioners Act, Laws of the Federation as interpreted in the decision of this Court in *Okafor v. Nweke* (2007) 10 NWLR (pt.1043) 52 has given a very clear and succinct definition of a person entitled to practice as a Barrister and solicitor. By this definition, it is obvious that the category of persons recognized as authentic must be those circumscribed within the provisions of the law. It is not an open cheque or a floodgate for any person outside the profession to usurp the power which is so restrictive.

The reproduction of sections 2(1) and 24 of the Legal Practitioners Act will give a better understanding of the position of the law for ease of reference:

"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.

24. 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."

The position of the law as interpreted in *Okafor v. Nweke* (supra) was again restated affirmatively by this Court in the case of *First Bank of Nigeria Plc & Anor. v. Alhaji Salmanu Maiwada* an unreported decision in Appeal No. SC.204/2002 delivered on 25th May, 2012 wherein Fabiyi JSC said:-

"The purpose of Section 2(1) and 24 of the Act is to ensure that only a legal practitioner whose name is on the roll of this court sign court processes... In my considered opinion, the words employed in drafting Section 2(1) and 24 of the Act are simple and straight forward. The Internal Construction of the law is that Legal Practitioners who are animate personalities and not a firm of legal practitioners which is un-animated and cannot be found in the roll of this court."

The purported Notice of Appeal has not been duly signed by

a legal practitioner known to law. It has not also been shown that H. E. Wabara & Co. is a person entitled to practice either as Barrister and Solicitor or registered in the roll of this Court. The law presupposes and envisages that such personality must be animate to be competent. H. E. Wabara & Co. is in-animated and cannot qualify.

The authority of the case of *Madukolu v. Nkemdilim* under reference supra, is very well positioned on the jurisdiction of a Court to adjudicate on a matter before it. The threefold conditions which must be fulfilled are hereunder listed as apparent. In other words, the jurisdiction of a court can only be exercised when:-

(1) It is properly constituted as regards numbers and qualifications of the members of the bench and no member is disqualified for one reason or another;

(2) The subject matter of the case is within its jurisdiction and there is no feature in the case which prevents the court from exercising its jurisdiction and

(3) The case comes before the court initiated by the due process of law and upon the fulfillment of any condition precedent to the exercise of jurisdiction.

The circumstance of this case has robbed the Court of any jurisdiction to entertain the purported Appeal which has not been initiated by due process of law. I cannot therefore agree with the Respondents' Counsel more. The process initiating the purported Notice of Appeal is incompetent.

For the foregoing reasons and more on the fuller and comprehensive reasons given in the lead Judgment, I also strike out the purported Notice of Appeal in the same terms and abide by the orders made therein in the lead Judgment inclusive of costs.

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