

SUPREME COURT OF NIGERIA
FRIDAY 12TH JULY, 2013. SC. 75/2008
**CORAM:- W. S. N. ONNOGHEN, C. M. CHUKWUMA-
ENEH, B. RHODES-VIVOUR, C. B. OGUNBIYI,
K. B. AKA'AH, JJSC**

THE NIGERIAN ARMY APPELLANT
V.
1. SGT. ASANU SAMUEL
2. CPL. ADIGUN GANIYU RESPONDENTS
3. CPL. OPAKUNBI JAMES
4. GNR. EKONG EDET

APPEALS - Notice of appeal - Signing - CA Rules O. 4 r. 4(1) - Notice of appeal or notice of application for leave to appeal - Shall be signed by appellant himself (H1)

APPEALS - Court martial - CA Rules O. 4 r. 1 - Applicability - The provisions of the Order is not applicable - In appeals to CA in criminal cases from General Court Martial (H2)

APPEALS - Notice of appeal - Signing - Legal personality - N.O.O. Oke & Co. being a business name - Cannot sue nor defend action in court - For not being recognized as a legal person (H3)

LEGAL PRACTITIONERS - Court processes - Signing - By LPA ss. 2(1) & 24 - Only a person registered in Supreme Court - Whose name is on the roll - Is recognized as legal practitioner - Entitled to sign or file processes in courts (H4)

APPEALS - Notice of appeal - Defect in - Effect - Lack of legal personality in the signing of the notice - Is fundamental defect which cannot be cured by amendment - As it renders the proceedings void ab initio (H5)

FACTS

Accused/respondents were arraigned before the General Court Martial convened by Brig. Gen. Patrick Aziza who acted as the Gen-

eral Officer Commanding 2 Mechanized Division, for the offence of conduct prejudicial to military discipline contrary to section 103(1) of the Armed Forces Decree, 1993. Respondents were alleged to have had knowledge of a plan by one L/Cpl. Macaulay (FNA/6005) to kill late Lt. E. S. Ibelegbu (N/0599) over a jerry can of kerosene seized from the former. Respondents were soldiers serving with the 322 Field Artillery Regiment, Benin City and were deployed to NNPC Depot, Benin City for security service. It is the case of prosecution/appellant that although respondents were aware of the plot to kill the late Ibelegbu, yet they did nothing to avert the commission of the crime.

At the end of the trial, the General Court Martial found respondents guilty and thus following the verdict, 1st, 2nd and 3rd respondents were dismissed from the Nigeria Army, while 4th respondent was sentenced to two years imprisonment. Dissatisfied, respondents appealed to the Court of Appeal. The court allowed the appeal, entered a verdict of not guilty, discharged and acquitted respondents. Aggrieved, appellant filed appeal in Supreme Court, contending inter alia that the Court of Appeal lacked jurisdiction to entertain the appeal in view of the defect in the notice of appeal filed before it.

ISSUE FOR DETERMINATION

“1. Whether the Court of Appeal had jurisdiction to proceed with the appeal when the notice of appeal was manifestly defective.

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

Notice of appeal - Signing

1. Also not in dispute is the fact that Order 4 Rule 4(1) of the Court of Appeal Rules, 2002 provides thus:-

“Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, shall be signed by the appellant himself...”

In considering the above provisions in the case of Uwazurike vs A-G Federation (2007) ALL FWLR 514 at 539,

this court held that the said provisions do not permit the filing of a joint notice of appeal nor signing of such notice by counsel for the appellants. The above position remains the law on the point as my attention has not been drawn to any contrary proposition neither has my research revealed one.

(p. 3393 F)

Court martial - CA Rules O. 4 r. 1 - Applicability

2. However, the above notwithstanding, learned counsel for the respondents have argued that the said provisions of Order 4 Rule 4(1) supra do not apply to the facts of this appeal being an appeal arising from the decision of the General Court Martial to which the provision is expressly excluded. They sought reliance on Order 4 Rule 1 of the said Court of Appeal Rules, 2002 which enacts thus:-

“This Order shall apply to appeals to the court from any court or Tribunal acting either in its original or its appellate jurisdiction in criminal cases, other than a court martial, and to matters related thereto”.

It is my considered view that the above provision is very clear and unambiguous. It is settled law that where the words in a statute are clear and unambiguous the court must give them their plain meanings. In my view, the expression “other than a court - martial” used in Order 4 Rule 1 supra, is clearly an expression employed to exclude the application of Order 4 from appeals to the Court of Appeal in criminal cases from General Court Martial. I therefore hold that appeals from General Court Martial in criminal cases are excluded from the operation of the provisions of Order 4 of the Court of Appeal Rules 2002, and as such the said Order and Rule do not apply to the instant appeal. (p. 3393 H)

Notice of appeal - Signing - Legal personality

3. It is not disputed that the said notice of appeal was purportedly signed/filed by N.O.O. Oke & Co., a firm of legal practitioners. This aspect of the argument deals with the legal or corporate personality of the “person” who signed/filed the notice of appeal. The question is whether N.O.O. Oke & Co. is

a legal person so as to be capable of instituting or defending an action in a court of law or in any way take any action recognizable by the law as a legal person. The issue is in other words, the corporate personality of N.O.O. Oke & Co. It is settled law that the entity described and known as N.O.O. Oke & Co. is, in the eyes of the law, a business name. Also settled is the principle that a business name cannot sue nor defend an action in a court of law, not being recognized as a legal person.

It follows therefore that though there is no provision of the Court of Appeal Rules 2002 regulating the filing of a notice of appeal from a decision of the General Court Martial, by an appellant or appellants, it is my view that whoever signs such notice of appeal must be either a natural person or a legal person with the requisite corporate personality. A purported notice of appeal "signed" by a non-legal person cannot initiate the processes of an appeal known to law.

What I have been trying to say is that apart from the fact that N.O.O. Oke & Co. is not a legal practitioner registered in Nigeria to practice law and thereby clothed with the powers to sign/frank legal documents and file same in the court of law, it is also not a legal person known to law which makes its position worse. Either way, it is my considered view that N.O.O. Oke & Co. has no legal capability to sign/file any notice of appeal in any court of law in this country including the notice of appeal filed to initiate the appeal in the lower court.

(pp. 3394 F/3396 A)

Court processes - Signing

4. In our jurisprudence, processes filed in the court are either to be signed by the party(s), legal practitioner representing the party(s) or their agent. There is a world of difference between a legal practitioner and a firm of legal practitioners or solicitors. By the provisions of Section 2(1) and 24 of the Legal Practitioners Act, only a person registered in the Supreme Court of Nigeria whose name is on the Roll is recognized as a legal practitioner entitled to sign/file processes in the courts. A Law Firm such as N.O.O. Oke & Co. has no corporate per-

sonality known to law and as such is not a legal person.

(p. 3395 C)

Notice of appeal - Defect in - Effect

5. The lack of legal personality is a fundamental defect which cannot be cured even by an amendment. It is a defect that goes to the root of the proceedings and renders same void ab initio. In the eyes of the law the notice of appeal in this case did not exist and can therefore not be accorded validity by an amendment. What is void is void.

It is for the above reasons that I find merit in the issue under consideration and consequently resolve same in favour of the appellant. (p. 3396 B)

REPRESENTATION

A. T. Kehinde Esq. for the appellant with Messrs. Kelvin A. Mejulu; Nwaivu, Nnamdi; Aranidla, Cecilia (Miss) and A. O. Asheru (Mrs.), for Appellant

Bola Aidi Esq. with Kehinde Aidi (Miss) for the 1st - 3rd respondents
M. N. O. Olopade Esq. for the 4th respondent

CASES REFERRED TO

Adekaye vs FRN (2005) ALL FWLR (pt. 252) 514

Uwazurike vs A-G Federation (2007) All FWLR 514

Nwani vs Bakari (2005) ALL FWLR (pt. 281) 1803

New Nig. Bank Plc vs Declac Ltd (2004) ALL FWLR (pt. 288) 606

Thomas vs Maude (2007) All FWLR (pt. 361) 1749

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

Ojokolobo vs Alamu (1987) 3 NWLR (pt. 61) 377

Iroegbu vs Okwordu (1990) 6 NWLR (pt. 159) 643

S.C.C. Nig. Ltd. vs Ekenna (2009) ALL FWLR (pt. 497) 53

Oketade vs Adewunmi (2010) ALL FWLR (pt. 526) 511

Okafor vs Nweke (2007) 10 NWLR (pt. 1043) 521

Madukolu vs. Nkemdilim (1962) 2 NSCC 374

STATUTES & RULES REFERRED TO

Court of Appeal Act Cap. 75 LFN 1990, s. 3

Court of Appeal Rules 2002, O. r. 19(4), O. 4 rr. 1, 3(1), 4(1)

LEAD JUDGMENT BY ONNOGHEN JSC

This is an appeal against the judgment of the Court of Appeal, Holden at Ibadan in appeal No. CA/I/134/2002 delivered on the 13th day of December, 2006 in which the court allowed the appeal of the present respondents against the judgment of the General Court Martial which found the respondents guilty and sentenced them to various terms of imprisonment. The lower court set aside the decision of the General Court Martial and entered a verdict of not guilty, discharged and acquitted the respondents, resulting in the instant appeal.

The respondents were soldiers serving with the 322 Field Artillery Regiment, Benin City and were deployed to NNPC Depot, Benin City for security service. Sometime in 1995, the respondents were arraigned before a General Court Martial convened by Brigadier General Patrick Newton Aziza who acted as the General Officer commanding 2 Mechanized Division, charged with the offence of conduct prejudicial to military discipline contrary to Section 103(1) of the Armed Forces Decree, 1993. The respondents were alleged to have had knowledge of a plan by L/Cpl. Macaulay (FNA/6005) to kill late Lt. E. S. Ibelegbu (N/0599) over a jerry can of kerosene seized from the L/Cpl. Macaulay. It is the case of the prosecution that although the respondents were aware of the plan, they did not do anything to avert the commission of the crime. Following the verdict of the General Court Martial, the 1st, 2nd and 3rd respondents were dismissed from the Nigeria Army while the 4th respondent was sentenced to two years imprisonment.

The issues for determination of the appeal identified by learned counsel for appellant, PROF. YEMI AKINSEYE GEORGE in the appellant's brief of argument filed on 11th October, 2011 are as follows:-

"1. Whether the Court of Appeal had jurisdiction to proceed with the appeal when the notice of appeal was manifestly defective. (Grounds 7 and 8).

2. Whether it is not proper to convict on the evidence of a tainted witness where there is no corroborative evidence. (Grounds 4 and 6).

3. Whether by virtue of Section 152(1)(a) of the Armed Forces Decree, 1993, it is not proper for a convening officer in a court martial proceedings to act as a confirming officer. (Ground 5)

4. Whether the lower court was right in not affirming the conviction and sentence of the respondent when the prosecution had proved their case beyond reasonable doubt.] (Grounds 1, 2 and 3)” B

The above issues have also been identified, though couched differently by learned counsel for 1st - 3rd respondents, BOLA AIDI ESQ in the brief of argument filed on 5th December, 2011 while M.N.O OLOPADE ESQ of counsel for 4th respondent adopted the four issues formulated by counsel for appellant in his brief of argument filed on 29th November, 2011. C

It is the submission of counsel for appellant, in respect of Issue No. 1, that the notice of appeal filed by the respondents in the lower court was fundamentally defective which divested the court of the requisite jurisdiction to hear and determine the appeal in that the notice of appeal which was dated the 14th day of February, 2005 and filed on the 16th day of February, 2005 was not signed by the appellants therein but by N.O.O. OKE & CO. and that the amended notice of appeal filed on 21st June, 2005 was not signed by appellants but by N.O.O. OKE ESQ. E

It is the further submission of counsel that the notice of appeal was a joint notice of appeal rather than individual notices of appeal and that a firm of solicitors cannot sign any court process under the laws and relevant rules, let alone a notice of appeal as in the instant case. F

Learned counsel then referred the court to the provisions of Order 4, Rule 4(1) of the Court of Appeal Rules 2002 being the relevant/applicable Rules to buttress his contention that only an individual appellant is envisaged and cited and relied on the case of Adekaye vs FRN (2005) ALL FWLR (Pt. 252) 514 at 539: Uwazurike vs A-G Federation (2007) All FWLR 514 at 539. G

It is also the contention of counsel that by the provisions of Section 3 of the Court of Appeal Act, Cap 75 LFN 1990, the person to sign a notice of appeal is an individual, not a corporate entity, such as N.O. O. Oke & Co. relying also on the case of Nwani vs Bakari (2005) ALL FWLR (Pt. 281) 1803 at 1822: that only a legal practitioner registered in the Roll can sign, file a notice of appeal, in an H

appropriate case, not a firm of solicitors, relying on *New Nigeria Bank Plc vs Declac Ltd* (2004) ALL FWLR (Pt. 288) 606; *Thomas vs Maude* (2007) All FWLR (Pt. 361) 1749 at 1762; *First Bank Plc vs Maiwada* (2003) FWLR (Pt. 151) 2001.

B Learned counsel further contended that the subsequent amend-
ment of the notice of appeal is of no moment as it could not have
cured the defect, and urged the court to resolve the issue in favour of
appellant and set aside the judgment of the lower court.

C On his part, learned counsel for 1st - 3rd respondents submitted that
the provisions of Order 4 Rules 3(1) and 4(1) relied upon by counsel
for appellant do not apply to the respondents by virtue of the provi-
sions of Order 4 Rule 1 of the said Court of Appeal Rules, 2002,
which provision excludes appeals from court martial and matters re-
lated thereto; that the words of the order are clear and should be
D given their plain meanings; relying on *Ojokolobo vs Alamu* (1987) 3
NWLR (Pt. 61) 377 at 402: that the Rules of the Court of Appeal not
having made provisions to govern filing of appeals from Court Mar-
tial, the dictates of justice becomes the determining factor.

E Referring to the provisions of Order 1 Rule 19(4) of the Court
of Appeal Rules 2002, learned counsel further submits that the lower
court is even empowered to consider any appeal *“notwithstanding
that no notice of appeal or respondent notice has been given in re-
spect of any particular part.”*

F Learned counsel also contends that the Court of Appeal can
entertain appeals in the interest of justice in criminal matters notwith-
standing the signing of the notice of appeal by a firm which was later
amended by leave of the court; that the mistake of counsel should
not be visited on the litigant, relying on *Iroegbu vs Okwordu* (1990)
G 6 NWLR (Pt. 159) 643 at 667 and urged the court to resolve the
issue against the appellant.

Learned counsel for 4th respondent is in agreement with the
submission of counsel for 1st - 3rd respondents that Order 4 of the
Court of Appeal Rules 2002 does not apply to appeals in criminal
H cases from the Court Martial and as such a notice of appeal by mul-
tiple appellants against a decision of a court martial in a criminal mat-
ter cannot be said to be invalid under the said Order 4.

It is the further submission of counsel that since the Court of
Appeal Rules do not apply to the instant case, particularly Order 4,

the signing of the notice of appeal in issue by a firm of solicitors is very much in order; that since the notice of appeal filed was not defective it follows that the subsequent amendment of same is proper and as such the submission of counsel for appellant to the contrary is misconceived, and urged the court to resolve the issue against appellant and dismiss the appeal. B

In a reply brief deemed filed on 20th September, 2012, learned counsel for appellant submitted that only a legal practitioner registered in the Roll and authorized to practice law as an advocate in the Supreme Court of Nigeria can file and/or sign a notice of appeal for and on behalf of his client and not a firm of legal practitioners, such as N.O.O. Oke & Co; that a firm of legal practitioners is not a legal practitioner within the ambit of Section 2 and 24 of the Legal Practitioners Act, relying on S.C.C. (Nig) Ltd vs Ekenna (2009) ALL FWLR (Pt.497) 53 at 77: Oketade vs Adewunmi (2010) ALL FWLR (Pt. D 526) 511 at 516. C

I have carefully gone through the arguments of counsel for both parties as contained in their respective brief of argument and the authorities cited in support of their contending positions. It is not in dispute that the four respondents jointly filed a notice of appeal at the lower court against the decision of the General Court Martial which convicted and sentenced them on a charge before that court and that the notice of appeal so filed was not signed by the then appellants themselves but by a firm of solicitors - N.O.O. Oke & Co. E

Also not in dispute is the fact that Order 4 Rule 4(1) of the Court of Appeal Rules, 2002 provides thus:- F

“Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, shall be signed by the appellant himself...” G

In considering the above provisions in the case of Uwazurike vs A-G Federation (2007) ALL FWLR 514 at 539, this court held that the said provisions do not permit the filing of a joint notice of appeal nor signing of such notice by counsel for the appellants. The above position remains the law on the point as my attention has not been drawn to any contrary proposition neither has my research revealed one. H

However, the above notwithstanding, learned counsel

for the respondents have argued that the said provisions of Order 4 Rule 4(1) supra do not apply to the facts of this appeal being an appeal arising from the decision of the General Court Martial to which the provision is expressly excluded. They sought reliance on Order 4 Rule 1 of the said Court of Appeal Rules, 2002 which enacts thus:-

“This Order shall apply to appeals to the court from any court or Tribunal acting either in its original or its appellate jurisdiction in criminal cases, other than a court martial, and to matters related thereto”.

It is my considered view that the above provision is very clear and unambiguous. It is settled law that where the words in a statute are clear and unambiguous the court must give them their plain meanings. In my view, the expression “other than a court - martial” used in Order 4 Rule 1 supra, is clearly an expression employed to exclude the application of Order 4 from appeals to the Court of Appeal in criminal cases from General Court Martial. I therefore hold that appeals from General Court Martial in criminal cases are excluded from the operation of the provisions of Order 4 of the Court of Appeal Rules 2002, and as such the said Order and Rule do not apply to the instant appeal.

There is, however a second arm of the argument of counsel for appellant on the competence/validity of the notice of appeal before the lower court. This has to do with the competence of the “person” who signed/filed the said notice of appeal.

It is not disputed that the said notice of appeal was purportedly signed/filed by N.O.O. Oke & Co., a firm of legal practitioners. This aspect of the argument deals with the legal or corporate personality of the “person” who signed/filed the notice of appeal. The question is whether N.O.O. Oke & Co. is a legal person so as to be capable of instituting or defending an action in a court of law or in any way take any action recognizable by the law as a legal person. The issue is in other words, the corporate personality of N.O.O. Oke & Co. It is settled law that the entity described and known as N.O.O. Oke & Co. is, in the eyes of the law, a business name. Also settled is the principle that a business name cannot sue nor defend an

action in a court of law, not being recognized as a legal person.

It follows therefore that though there is no provision of the Court of Appeal Rules 2002 regulating the filing of a notice of appeal from a decision of the General Court Martial, by an appellant or appellants, it is my view that whoever signs such notice of appeal must be either a natural person or a legal person with the requisite corporate personality. A purported notice of appeal “signed” by a non-legal person cannot initiate the processes of an appeal known to law.

In our jurisprudence, processes filed in the court are either to be signed by the party(s), legal practitioner representing the party(s) or their agent. There is a world of difference between a legal practitioner and a firm of legal practitioners or solicitors. By the provisions of Section 2(1) and 24 of the Legal Practitioners Act, only a person registered in the Supreme Court of Nigeria whose name is on the Roll is recognized as a legal practitioner entitled to sign/file processes in the courts. A Law Firm such as N.O.O. Oke & Co. has no corporate personality known to law and as such is not a legal person.

Sections 2(1) and 24 of the Legal Practitioners Act provide as follows:-

“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. “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 the case of Oketade vs Adewunmi (2010) 8 NWLR (Pt. 1195) 63 this court dealt with a situation similar to the instant case and made it very clear that where a process is issued in the name of a firm and not in the name of a Legal Practitioner, it is not a mere irregularity, that can be brushed aside but a fundamental vice affecting the judicial process in question, and that such a process is incompetent, invalid, null and void. See also the case of Okafor vs Nweke (2007) 10 NWLR (Pt. 1043) 521.

What I have been trying to say is that apart from the fact that N.O.O. Oke & Co. is not a legal practitioner registered in Nigeria to practice law and thereby clothed with the powers to sign/frank legal documents and file same in the court of law, it is also not a legal person known to law which makes its position worse. Either way, it is my considered view that N.O.O. Oke & Co. has no legal capability to sign/file any notice of appeal in any court of law in this country including the notice of appeal filed to initiate the appeal in the lower court.

The lack of legal personality is a fundamental defect which cannot be cured even by an amendment. It is a defect that goes to the root of the proceedings and renders same void ab initio. In the eyes of the law the notice of appeal in this case did not exist and can therefore not be accorded validity by an amendment. What is void is void.

It is for the above reasons that I find merit in the issue under consideration and consequently resolve same in favour of the appellant.

Having resolved the above issue in favour of appellant, it is obvious that there is no need for me to proceed any further to consider the remaining issues formulated for the determination of the appeal as they have thereby been rendered hypothetical and/or academic.

The appeal before the lower court not having been initiated by due process the hearing and determination of same amounts in law to a nullity and is consequently set aside. In its place I restore the decision of the General Court Martial delivered on the 7th day of September, 1995. Appeal allowed.

CHUKWUMA-ENEH JSC

I have read the lead judgment of my learned brother Onnoghen JSC in this matter. I agree with his reasoning and conclusion that the instant appeal not having been initiated by due process is a nullity and consequently the judgment of General Court Martial delivered on 7/9/1995 stands restored.

I endorse all the orders contained in the lead judgment.

RHODES-VIVOUR JSC

I have had the privilege of reading in draft the leading judgment of my learned brother, Onnoghen, JSC. I am in full agreement with the judgment. I shall add a few paragraphs of my own.

The very live issue in this appeal before the merits of the appeal can be considered is:

Whether the Notice of Appeal filed in the Court of Appeal is competent.

A Notice of Appeal is the process that initiates an appeal, so if it is defective, any proceedings taken on a defective Notice of Appeal becomes null and void as the court would have no jurisdiction to hear an appeal commenced on such a defective process. The reasoning is simple. You cannot put something (appeal proceedings) on nothing (defective Notice of Appeal) and expect it to stand. It would crumble.

It was held in *Madukolu & Ors v. Nkemdilim* 1962 2 NSCC p.374 that a court is competent 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 due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction.

The question is whether the Notice of Appeal signed by the Legal Firm N.O.O. Oke & Co is correct. This issue falls within a bit of (2) and (3) above, and if it is found that the Notice of Appeal was not signed by a juristic person it follows that the Court of Appeal had no jurisdiction to hear the appeal.

In *SLB Consortium v. NNPC* 2011 4 SCJ p.211, I explained how processes filed in court are to be signed. I said:

"First: the signature of counsel, which may be any contrap-tion.

Secondly: the name of counsel clearly written

Thirdly: who counsel represents.

Fourthly: name and address of Legal Firm."

The effect of sections 2(1) and 24 of the Legal Practitioners Act is that only lawyers using their professional name can practice Law in Nigeria. N.O.O. Oke & Co is not the name of counsel. It is a firm with corporate existence. The name of legal practitioner has no corporate implication.

B My lords the originating process in the Court of Appeal, (the Notice of Appeal) was signed by N.O.O. Oke & Co., a firm of legal practitioners. It was not signed by a person registered to practice law as a Solicitor and Advocate in Nigeria.

C Consequently the Notice of Appeal is fundamentally defective and the proceedings in the Court of Appeal which ended with the judgment of that court are all null and void. Put in simple language the judgment of the Court of Appeal no longer exists because it flows from a fundamentally defective originating process.

D For this, and the detailed reasoning in the leading judgment, the judgment of the trial General Court Martial delivered on the 7th of September, 1995 is restored since the judgment of the Court of Appeal is a nullity. Appeal is allowed.

E

OGUNBIYI JSC

I read in draft the lead judgment just delivered by my learned brother Onnoghen, JSC and I agree that the appeal has merit and should be allowed.

F Order 4 Rule 4(1) of the Court of Appeal Rules 2002 is very explicit and provides as follows:-

G *“Every notice of appeal or notice of application for leave to appeal or notice of application for extension of time within which such notice shall be given, shall be signed by the appellant himself...”*

However, and by the very nature of the case at hand this subsection should be read along with order 4 Rule 1 of the said Rules wherein it states:-

H *“This order shall apply to appeals to the court from any court or Tribunal acting either in its original or its appellate jurisdiction in criminal cases, other than a court-martial and to matters related thereto.”*

Without having to belabour the issue, it is plain, precise and unambiguous that appeals emanating from court martial proceed-

ings are exempted from and not covered by order 4 Rule 4(1) of the Rules. The learned appellant's counsel appears to have gotten the interpretation of the section all wrong and the submission will not be endorsed.

On the competence of the notice of appeal at the lower court having been signed/filed by a non juristic person, but by a firm of legal practitioners, the provisions of sections 2(1) and 24 of the legal practitioners Act are solidly behind the appellant where such process is to be signed by a legal practitioner. The signatory to the purported notice of appeal in question was N.O.O. Oke & Co. a firm of legal practitioners, which is not known to law as it has no recognition. See the locus classicus case of Okafor V. Nweke cited in the lead judgment. The original notice of appeal as the initiating process must be competent for any subsequent amendment to sustain. To hold otherwise and as contended by the respondent's counsel is to put something on nothing and which would surely crumble. The amendment has no foundation to stand thereon.

With the purported notice of appeal being incompetent, the entire proceeding before the lower court was a non starter but an exercise in futility since the court was bereft of any jurisdiction to entertain same. The court ought to have struck out the incompetent process. The extant subsisting judgment is that by the trial court martial.

My learned brother Onnoghen, JSC has adequately dealt with the appeal and with the few words of mine and more particularly on the comprehensive reasoning and conclusions arrived thereat in the lead judgment, I also endorse same as mine and allow the appeal in like terms.

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AKA'AH S JSC

I have had the privilege of reading in draft the judgment of my learned brother, ONNOGHEN JSC and I agree with him that the originating process i.e. the Notice of Appeal (which was purportedly amended) upon which the lower court allowed the appeal from the General Court Martial was fundamentally defective which could not be cured by an amendment.

Consequently the judgment of the lower court predicated on

an invalid Notice of Appeal is a nullity. I therefore allow the appeal and restore the verdict of the General Court Martial since there has been no valid appeal against that judgment.

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