

**SUPREME COURT OF NIGERIA**  
FRIDAY 12TH JULY, 2013. SC. 121/2011  
**CORAM:- I. T. MUHAMMAD, J. A. FABIYI,**  
**S. GALADIMA, M. D. MUHAMMAD,**  
**S. S. ALAGOA, JJSC**

JIDE ALADEJOBI ..... APPELLANT  
V.  
NIGERIAN BAR ASSOCIATION ..... RESPONDENT

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**JURISDICTION** - Fundamentality of - It should be determined at earliest opportunity - Because if court has no jurisdiction in a case - The proceedings remain a nullity ab initio - No matter how well conducted (H1)

**JURISDICTION** - Meaning of - It is authority which court has to decide matters before it - And such power is controlled by statute creating the court - Or by condition precedent which must be fulfilled - Before court can entertain the suit (H2)

**WORDS & PHRASES** - “Shall” - Meaning - LP Act s. 12(1) - The word as employed in the law denotes obligation - Or command and gives no room for discretion (H3)

**LEGAL PRACTITIONERS** - Appeals - Supreme Court - Jurisdiction - By LP Act s. 12(1) - Appellant cannot appeal to SC against decision of LPDC - Without first appealing to Appeal Committee of Body of Benchers (H4)

**STATUTES** - Provisions - Adherence to - Where statute prescribes a legal line of action for initiating court process - All remedies in the statute should be followed to the letter (H5)

***FACTS***

Complainant/respondent brought this action against defendant/appellant before the Legal Practitioners Disciplinary Committee. Following a petition brought by one Mrs. Victoria Akinyele Aliu (petitioner), it was alleged that appellant had conspired with a tenant

of the petitioner and forged the latter's signature on lease agreement in respect of a property situate in Surulere, Lagos State with intent to deprive the petitioner's ownership of the property. Respondent stated that appellant by his action has contravened the provisions of Rules 24, 28 and 49(a)(b) of the Rules of Professional Conduct in the Legal Profession and section 12 of Legal Practitioners Act Cap 207 LFN 1990 (as amended).

At the hearing, appellant and respondent separately testified before the committee. The committee thereafter considered evidence adduced in the matter. At the end of the trial, appellant was found guilty of infamous conduct. A direction was therefore made by the committee to the Chief Registrar of Supreme Court to strike off the names of appellant from the roll of legal practitioners in Nigeria. This did not go down well with appellant. Hence, he lodged appeal in Supreme Court. Respondent filed preliminary objection challenging the jurisdiction of the court to entertain the appeal.

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

*JURISDICTION - Fundamentalality of*

**1. Jurisdiction is very fundamental in the process of adjudication. It should be determined at the earliest opportunity. This is because if a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic but extrinsic to the entire process of adjudication.** (p. 3629 F)

*JURISDICTION - Meaning of*

**2. It is apt for me to pose the vital question - what then is jurisdiction? It is said to be the authority which a court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision. Such authority of the court is controlled or circumscribed by the statute creating the court itself or it may be circumscribed by a condition precedent created by a legislation which must**

**be fulfilled before the court can entertain the suit. It is the power and authority of a court to hear and determine a judicial proceedings and power to render particular judgment in a cause of action.** (p. 3629 H)

*WORDS & PHRASES - "Shall" - Meaning - LP Acts. 12(1)*

**3. It should be noted here that the word shall is employed in section 12(1) of the Legal Practitioners Act, 1990 as amended. The purport of same is not farfetched. The word shall as employed in the law denotes obligation or a command and gives no room for discretion. It imposes a duty. A peremptory mandate is enjoined.** (p. 3632 B)

*Appeals - Supreme Court - Jurisdiction*

**4. From a clear reading of the above reproduced section 12(1) of the Act, it is basic that there must be in place the Appeal Committee of the Body of Benchers which is charged with the duty of hearing appeals from any direction given by the Disciplinary Committee. It is clear to me that the appellant herein cannot appeal direct to this court against the direction handed out on 22<sup>nd</sup> February, 2011 by the Disciplinary Committee without first appealing to the Appeal Committee of the Body of Benchers. It hardly needs any gainsaying that the appeal of the appellant direct in this court without going through the Appeal Committee of the Body of Benchers is incompetent. This court has no jurisdiction to entertain same.**

**The law provides that the appellant should appeal to the Appeal Committee of the Body of Benchers. He must exhaust all the remedies by filling his appeal at the Appeal Committee from where he may have a lee-way to imbue this court with jurisdiction. Perhaps, it should be further stated that the failure of the appellant to file his appeal before the Appeal Committee of the Body of Benchers against the direction of the Legal Practitioners Disciplinary Committee before filing appeal in this court engenders incompetence which cannot be cured. This is because the condition precedent to confer jurisdiction on this court has not been fulfilled.** (p. 3632 C/G)

*STATUTES - Provisions - Adherence to*

**5. Furthermore, it is the law that where a statute prescribes a legal line of action for initiating court process, all remedies in the statute should be duly followed to the letter.** (p. 3632 F)

## <sup>B</sup> NOTABLE POINT OF INTEREST

### **FABIYI JSC**

#### ***1. Urgent set up of Appeal Committee of Body of Benchers***

There is no doubt about it that the Body of Benchers is mandated to  
<sup>C</sup> establish an Appeal Committee of the Body of Benchers to hear appeals from the directions of the Legal Practitioners Disciplinary Committee of the Body of Benchers. This is as dictated by the provisions of section 12(1) and (2) of the Act as amended. If it is a fact that there is presently no Appeal Committee of the august body on ground,  
<sup>D</sup> such a lacuna should be remedied without any undue delay so as to enable the appellant take necessary action deemed fit as dictated by the law before the Appeal Committee of the Body of Benchers. If I may suggest, it should be a standing Committee like the Legal Practitioners Disciplinary Committee. I dare say it that the time for same is  
<sup>E</sup> now in my humble view. (p. 3633 H)

### **REPRESENTATION**

Kanu G. Agabi, SAN with O. A. Adegoke (Mrs.); A. Akam, John  
<sup>F</sup> Ochogwu; Joy Obasi (Mrs.); B. Nwaogwugwu; P. K. Obi (Mrs.); L. Akwaji; P. Evivwode; Florence Avhioboh (Miss); E. Usungurua; O. Oberen; B. Oluohu; A. E. Afolarin; U. Ogwueze (Miss); Justina Omokri (Miss) and Mark Peters, for the Appellant  
 Godwin Obla with Uche Ugonabo (Miss); Segun Fiki; Joy Imogu and  
<sup>G</sup> Sarah Ifie (Miss), for the Respondent

### **CASES REFERRED TO**

Madukolu v. Nkemdilim (1962) 2 SCNLR 341  
<sup>H</sup> Oloba v. Akereja (1988) 3 NWLR (pt. 84) 508  
 Dinyadi v. INEC (2011) 10 NWLR (pt. 1255) 347  
 Eguamwense v. Amaghizemwen (1993) 9 NWLR (pt. 315) 1  
 Unilorin v. Oluwadare (2006) 14 NWLR (pt. 1000) 751  
 Ibori v. Agbi (2004) 6 NWLR (pt. 868) 78

Okike v. L.P.D.C. (2005) 15 NWLR (pt. 949) 471

L.P.D.C. v. Fawehinmi (1985) 2 NWLR (pt. 7) 300

Bamaiyi v. A-G Federation (2001) 12 NWLR (pt. 727) 468

Unilorin v. Oluwadare (2006) 14 NWLR (pt. 1000) 751

Kotoye v. Saraki (1989) 1 NWLR (pt. 98) 419

Ude v. Nwara (1993) 2 NWLR (pt. 278) 638

C.C.B. Nig. Plc v. A-G Anambra State (1992) 8 NWLR (pt. 261) 528

Ndaeyo v. Ogunnaya (1977) 1 SC 11

Nwankwo v. Yar'adua (2010) 12 NWLR (pt. 1209) 518

### **STATUTES & REFERRED TO**

Legal Practitioners Act Cap 207 LFN 1990 (as amended), ss. 11(7) and 12(1)(2)(5)

Constitution of the Federal Republic of Nigeria 1999, s. 36

### **BOOK REFERRED TO**

Halsbury's Laws of England vol. 10 4<sup>th</sup> Ed. para. 715, p. 323

### **LEAD JUDGMENT BY FABIYI JSC**

This is an appeal against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers ('the Committee' for short), which was delivered on 22<sup>nd</sup> February, 2011. Therein, the Committee directed the Chief Registrar of the Supreme Court to strike off the name of the appellant from the roll of Legal Practitioners in Nigeria.

It is pertinent to state the facts of the matter, briefly. On the 16<sup>th</sup> of March, 2005 the respondent addressed a complaint to the Committee against the appellant, a member of legal profession. The complaint was based on a petition by one Mrs. Victoria Akinyele Aliu through her solicitors - Mike Umonnan & Co. which alleged that the appellant -

*"...conspired with a tenant of the complainant, one Alhaji Saliu Gbolagade and forged the complainant's signature on a lease agreement in respect of the complainant's property situate at No. 52, Western Avenue, Surulere, Lagos with intent to deprive the complainant of the ownership of the property."*

The complaint against the appellant before the Committee reads as follows:

*That you Jide Aladejobi of counsel to Alhaji Saliu Gbolagade, on or about the year 2001, conspired with the said Alhaji Saliu Gbolagade to draft and execute a 10 years Lease Agreement purportedly on behalf of Mrs. Victoria Akinyele Aliu (the petitioner) in respect of the petitioner's property situate at No. 52, Western Avenue, Surulere, Lagos with the intent to interfere with the petitioner's ownership rights over the property, all contrary to Rules 24, 28 and 49(a) and (b) of the Rules of Professional Conduct in the Legal Profession and section 12 of the Legal Practitioners Act, 1990 as amended."*

Before the Committee, two witnesses testified for the respondent. Abubakar Ibrahim Maude, the Secretary of the Committee tendered the complaint received by the Committee while Mike Umonnan identified the petition as the one written by him on the instructions of the petitioner. As PW2, he maintained that he had been instructed to withdraw the complaint.

At the close of the respondent's case, the appellant testified and was cross-examined. Pursuant to the order of the Committee, the appellant filed his written address to which there was no reaction by the respondent. The appellant's written address was adopted before the Committee delivered its direction.

The Committee considered the evidence placed before it and thereafter found the appellant culpable of infamous conduct and directed the Chief Registrar of the Supreme Court to strike off the name of the appellant from the roll of Legal Practitioners in Nigeria. The appellant felt unhappy with the decision of the Committee and has decided to appeal direct to this court. Briefs of arguments were filed and exchanged by the parties.

On 25<sup>th</sup> of April, 2013 when the appeal was heard, learned senior counsel to the appellant adopted and relied on the appellant's brief of argument filed on 23<sup>rd</sup> May, 2011 as well as the appellant's reply brief of argument filed on 29<sup>th</sup> June, 2011. He urged that the appeal be allowed.

Learned counsel to the respondent adopted and relied on the respondent's brief of argument filed on 8<sup>th</sup> June, 2011. He referred to the notice of preliminary objection raised by him on pages 5-6 of the brief which he moved accordingly. The notice of preliminary objection reads as follows:

*“6.1 TAKE NOTICE that at or before the hearing of this appeal, the respondent shall pray the Supreme Court to strike out the appellant’s notice of appeal dated the 20<sup>th</sup> day of July, 2010 and a’ fortiori dismiss the issues for determination distilled in the appellant’s brief of argument from the incompetent grounds of appeal.*

*6.2 TAKE FURTHER NOTICE that the grounds of the said* <sup>B</sup>  
*objections are -*

*(i) By virtue of sections 11 and 12(1) of the Legal Practitioners Act, 1990 as amended, the appellant can only appeal to the Appeal Committee of the Body of Benchers against the direction of the Legal Practitioners’ Disciplinary Committee of the Body of Benchers* <sup>C</sup>  
*dated 22<sup>nd</sup> day of February, 2011.*

*(ii) The appellant cannot appeal direct to the Supreme Court against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers dated 22<sup>nd</sup> day of February, 2011 without first appealing to the Appeal Committee of the Body of Benchers.* <sup>D</sup>

*(iii) The respondent is not the proper party in this appeal by virtue of sections 11(7) and 12(1) of the Legal Practitioners Act, 1990 as amended.*

*(iv) By virtue of sections 11(7) and 12(5) of the Legal Practitioners Act, 1990 as amended, the appellant’s appeal was filed out of time.* <sup>E</sup>

*(v) The Supreme Court lacks the jurisdiction to entertain this appeal.*

*(vi) This appeal is incompetent.”* <sup>F</sup>

The crux of the preliminary objection relates to the jurisdiction of this court to entertain the appeal which the respondent feels is incompetent. **Jurisdiction is very fundamental in the process of adjudication. It should be determined at the earliest opportunity. This is because if a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity ab initio no matter how well conducted and decided. A defect in competence is not only intrinsic but extrinsic to the entire process of adjudication.** See *Madukolu v. Nkemdilim* (1962) 2 SCNLR 341; *Oloba v. Akereja* (1988) 3 NWLR (Pt.84) 508. <sup>G</sup>

**It is apt for me to pose the vital question - what then is jurisdiction? It is said to be the authority which a court has to decide matters that are litigated before it or to take cogni-** <sup>H</sup>

***zance of matters presented in a formal way for its decision. Such authority of the court is controlled or circumscribed by the statute creating the court itself or it may be circumscribed by a condition precedent created by a legislation which must be fulfilled before the court can entertain the suit. It is the power and authority of a court to hear and determine a judicial proceedings and power to render particular judgment in a cause of action.*** See *Dingyadi v. INEC & Ors.* (2011) 10 NWLR (Pt. 1255) 347 at 390.

In support of the preliminary objection, learned counsel for the respondent submitted that this court does not have the jurisdiction to hear the appeal from the direction of the Committee dated 22<sup>nd</sup> February, 2011. He maintained that by virtue of sections 11(7) and 12 of the Legal Practitioners Act, 1990 as amended, the jurisdiction to hear appeal from the direction of the Committee is expressly conferred on the Appeal Committee of the Body of Benchers. He opined that the appellant's right of appeal to the Supreme Court can only be against the direction of the Appeal Committee of the Body of Benchers after hearing the appellant's appeal from the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers.

Learned counsel submitted that the present appeal filed before this court without first appealing against the direction of the Committee dated 22<sup>nd</sup> February, 2011 to the Appeal Committee of the Body of Benchers is incompetent and this court has no jurisdiction to entertain this appeal. He felt that the appellant was obliged to first file an appeal at the Appeal Committee of the Body of Benchers before filing an appeal in this court. He referred to the case of *Eguamwense v. Amaghizemwen* (1993) 9 NWLR (Pt. 315) 1 at 25; *Unilorin v. Oluwadare* (2006) 14 NWLR (Pt. 1000) 751 at 774-775.

Learned counsel further submitted that the failure of the appellant to first file his appeal before the Appeal Committee of the Body of Benchers against the direction of the Committee before filing this appeal in this court, renders same defective incompetence. He opined that the condition precedent to confer jurisdiction on this court has not been fulfilled. He referred to the case of *Madukolu v. Nkemdilig* (1962) 1 All NLR 587 at 594, (1962) 2 SCNLR 341. He tried to compare the situation herein with what transpired in the case of *Ibori v. Agbi* (2004) 6 NWLR (Pt. 868) 78 at 142 where this court



reprimanded litigants and their counsel for appealing from the decision of the High Court direct to this court.

On behalf of the appellant, senior counsel maintained that by the decision of this court in *Okike v. L.P.D.C.* (2005) 15 NWLR (Pt. 949) 471 appeal from the direction of the Legal Practitioners Disciplinary Committee lies directly to this court. B

Senior counsel further asserted that the composition of the Appeal Committee as enjoined by subsection 2 of section 12 of the Legal Practitioners Act, whereby two members of the Association are part, renders the provision unconstitutional or null and void. He contended that such offends the principles of natural justice that no man shall be a Judge in his own cause. He referred to section 36(1) of the 1999 Constitution of the Federal Republic of Nigeria. He cited *City of London v. Wood*, 701 12 MOD 669 at 687 and *Legal Practitioners Disciplinary Committee v. Fawehinmi* (1985) 2 NWLR (Pt. 7) 300 at 374. C D

Senior counsel opined that section 11(7) and 12 (1-2) of the Legal Practitioners Act, upon which the respondent's notice of preliminary objection are predicated, are for all intents and purposes unconstitutional, null and void. He strongly felt that the appeal is competent and in accordance with the Constitution. E

Further, senior counsel observed that although the Legal Practitioners Act provides for an Appeal Committee to be established under section 12(1) and (2) of the Act, there is presently no Appeal Committee of the Body of Benchers constituted to determine appeals from the Legal Practitioners Disciplinary Committee. He submitted that the appellant could not therefore have appealed to a non-existent Appeal Committee. F

For a proper appreciation of the points canvassed by the parties, it is apt to reproduce the provisions of sections 11(7) and 12(1) of the Legal Practitioners Act, 1990 as amended, thus:

*"11(7) The person to whom such a direction relates may, at any time within twenty eight days from the date of service on him of the notice of the direction, appeal against the direction to the Appeal Committee of the Body of Benchers established under section 12 of the Act and the Disciplinary Committee may appear as the respondent to the appeal and, for the purpose of enabling directions to be given as to the costs of the appeal and of proceedings before the*

G H

*Disciplinary Committee, shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal."*

*"12(1) There shall be a committee to be known as the Appeal Committee of the Body of Benchers (in this Act referred to as the 'Appeal Committee') which shall be charged with the duty of hearing appeals from any direction given by the Disciplinary Committee."*

***It should be noted here that the word shall is employed in section 12(1) of the Legal Practitioners Act, 1990 as amended. The purport of same is not farfetched. The word shall as employed in the law denotes obligation or a command and gives no room for discretion. It imposes a duty. A peremptory mandate is enjoined.*** See *Bamaiyi v. Attorney-General Federation & Ors.* (2001) 12 NWLR (Pt. 727) 468 at 497.

***From a clear reading of the above reproduced section 12(1) of the Act, it is basic that there must be in place the Appeal Committee of the Body of Benchers which is charged with the duty of hearing appeals from any direction given by the Disciplinary Committee. It is clear to me that the appellant herein cannot appeal direct to this court against the direction handed out on 22<sup>nd</sup> February, 2011 by the Disciplinary Committee without first appealing to the Appeal Committee of the Body of Benchers. It hardly needs any gainsaying that the appeal of the appellant direct in this court without going through the Appeal Committee of the Body of Benchers is incompetent. This court has no jurisdiction to entertain same.***

***Furthermore, it is the law that where a statute prescribes a legal line of action for initiating court process, all remedies in the statute should be duly followed to the letter.*** Refer to the case of *Eguamwense v. Amaghizemwen* (supra) at page 25. ***The law provides that the appellant should appeal to the Appeal Committee of the Body of Benchers. He must exhaust all the remedies by filling his appeal at the Appeal Committee from where he may have a lee-way to imbue this court with jurisdiction. Perhaps, it should be further stated that the failure of the appellant to file his appeal before the Appeal Committee of the Body of Benchers against the direction of the Legal Practitioners Disciplinary Committee before filing appeal in this court***

***engenders incompetence which cannot be cured. This is because the condition precedent to confer jurisdiction on this court has not been fulfilled.*** See *Madukolu v. Nkemdilim* (supra) at page 594.

In a similar scenario in the case of *Ibori v. Agbi* (supra) at page 142, this court frowned at parties who tried to frog-jump the Court of Appeal by appealing direct to this court from the decision of the High Court. This court will not usurp the function of the Court of Appeal as to do so will amount to a violation of the Constitution and will be null and void.

On behalf of the appellant, it was submitted that from the decision of this court in *Okike v. LPDC* (supra) appeal from the direction of the Legal Practitioners Disciplinary Committee lies directly to this court. I dare say it that issue of jurisdiction of this court was not remotely raised therein. The applicable sections of the law were not considered and pronounced upon in the lead judgment therein. With due diffidence, the opinion was given per incuriam and cannot stand the test of time in the face of the applicable law earlier on discussed in this judgment.

Senior counsel to the appellant had axe to grind with his surmised composition of the Appeal Committee as enjoined by subsection 2 of section 12 of the Legal Practitioners Act, whereby two members of the Association are part, renders the provision unconstitutional or null and void. He contended that such offends the principles of natural justice that no man shall be a Judge in his own cause.

To my mind, this line of tactics employed by the appellant appears precipitate in the main. The law provides for the establishment of an Appeal Committee of the Body of Benchers. The appellant will have his day to challenge the composition of the Appeal Committee when he gets there as dictated by the law. For now, he should keep his gun powder dry.

Senior counsel to the appellant observed that there is presently no Appeal Committee of the Body of Benchers constituted to determine appeals from the Legal Practitioners Disciplinary Committee. He felt that the appellant could not have appealed to a non-existent Appeal Committee.

There is no doubt about it that the Body of Benchers is mandated to establish an Appeal Committee of the Body of Benchers to

hear appeals from the directions of the Legal Practitioners Disciplinary Committee of the Body of Benchers. This is as dictated by the provisions of section 12(1) and (2) of the Act as amended. If it is a fact that there is presently no Appeal Committee of the august body on ground, such a lacuna should be remedied without any undue delay so as to enable the appellant take necessary action deemed fit as dictated by the law before the Appeal Committee of the Body of Benchers. If I may suggest, it should be a standing Committee like the Legal Practitioners Disciplinary Committee. I dare say it that the time for same is now in my humble view.

The preliminary objection is clearly meritorious. It is hereby sustained. The appeal before this court is incompetent. This court is not imbued with jurisdiction.

The appeal is hereby struck out.

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### **I. T. MUHAMMAD JSC**

My learned brother, Fabiyi, JSC, permitted me to read in draft, the judgment just delivered. I agree with my noble lord that the appeal should terminate at its preliminary stage.

The facts have satisfactorily been stated by my learned brother, Fabiyi, JSC. It can be seen that the allegation against the appellant is weighty. The Nigerian Bar Association as the complainant, informed the Legal Practitioners Committee of the professional misconduct against the appellant as contained in the petition of Mrs. Victoria Akinyele Aliu, through her solicitors. The complaint reads as follows:

*"In or about year 2001, the legal practitioner conspired with a tenant of the complainant, one Alhaji Saliu Gbolagade and forged the complainant's signature on a lease agreement in respect of the complainant's property situate at No. 52 Western Avenue, Surulere, Lagos with intent to deprive the complainant of the ownership of the property."*

The appellant and one other person were charged for forgery before a Lagos Magistrate Court. The NBA swung into action having been satisfied that a prima facie case of misconduct or infamous conduct was shown against the appellant for forgery of the complainant's signature on lease agreement in respect of the complainant's property at No. 52 Western Avenue, Surulere, Lagos, in breach of Rules

24 and 28 of the Rules of Professional Conduct of the Legal Profession.

The Legal Practitioners Disciplinary Committee (LPDC), a committee of the Body of Benchers, heard the parties at trial. The appellant pleaded “not liable” when the allegation was read to him. At the end of the trial, the LPDC made its findings and gave the following directions:

*“1. The Committee hereby directs that the Chief Registrar of the Supreme Court strike off the name of the respondent from the rolls.*

*2. That the direction be brought to the notice of all Chief Judges of the Federation, the Federal High Court and the Federal Capital Territory.*

*3. That this direction be brought to the notice and enforcement of the President of the Nigerian Bar Association, and all the chairmen of all the branches of the Nigerian Bar Association.”*

The appellant was aggrieved and came to this court for intervention.

In his brief of argument, the learned counsel for the respondent Mr. Obla, raised a preliminary objection against the competence of the appeal. The notice of the preliminary objection reads as follows:

*“Take notice that at or before the hearing of this appeal, the respondent shall pray the Supreme Court to strike out the appellant’s notice of appeal dated the 20<sup>th</sup> day of July, 2010 and a fortiori dismiss the issues for determination distilled in the appellant’s brief of argument from the incompetent grounds of appeal.*

*Take Further Notice that the grounds of the said objections are:*

*(i) By virtue of sections 11 and 12(1) of the Legal Practitioners Act, 1990 as amended the appellant can only appeal to the Appeal Committee of the Body of Benchers against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers dated 22<sup>nd</sup> day of February, 2011.*

*(ii) The appellant cannot appeal direct to the Supreme Court against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers dated 22<sup>nd</sup> day of February, 2011 without first appealing to the Appeal Committee of the Body of Benchers.*

(iii) *The respondent is not the proper party in this appeal by virtue of sections 11(7) and 12(1) of the Legal Practitioners Act, 1990 as amended.*

(iv) *By virtue of Sections 11(7) and 12(5) of the Legal Practitioners Act, 1990 as amended, the appellant's appeal was filed out of time.*

(v) *The Supreme Court lacks the jurisdiction to entertain this appeal.*

(vi) *This appeal is incompetent."*

Now, section 12 of the Legal Practitioners Act, Cap. 207, LFN provides as follows:

*"12. There shall be a Committee to be known as the Appeal Committee of the Body of Benchers (in this Act referred to as "the Appeal Committee") which shall be charged with the duty of hearing appeals from any direction given by the Disciplinary Committee."*

This Section of the Act establishes a Committee (Appeal Committee) which shall entertain appeals from any legal practitioner who is aggrieved with the direction of the Disciplinary Committee (LPDC).

The period within which to file such appeals is provided by Section 11(7) of the Act and it provides thus:

*"The person to whom such a direction relates may, at any time within twenty-eight days from the date of service on him of notice of the direction, appeal against the direction to the Appeal Committee of the Body of Benchers, established under section 12 of this Act; and the Disciplinary Committee may appear as respondent to the appeal and, for the purposes of enabling directions to be given as to the costs of the appeal and of proceedings before the Disciplinary Committee, shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal."*

The respondent conceded the fact that appellant has a right of appeal to the Supreme Court. But, it was argued further, such right of appeal to the Supreme Court can only be against the direction of the Appeal Committee of the Body of Benchers after it has heard and determined the appellant's appeal from the direction of the LPDC.

Learned counsel for the respondent relied on the provision of section 12(5) of the 1990 Act (as amended). He contended that by the combined effect of the provisions of Sections 11(7), 12(1) and 12(5) of the Legal Practitioners Act, 1990 (as amended), it will be

safe to submit that the appellant cannot appeal direct to the Supreme Court against the direction of the LPDC of 22<sup>nd</sup> February, 2011, without first appealing to the Appeal Committee. The present appeal, it is argued, is thus incompetent and this court has no jurisdiction to entertain it.

In his reply brief, the learned counsel for the appellant, Mr. Efut (on the brief) submitted that the issue as to which court or tribunal an appeal against the direction of the LPDC lies has since been settled by this court in the case of *Okike v. LPDC* (2005) 15 NWLR (Pt.949) 471, that instead of appeal from “Direction” of Legal Practitioners Disciplinary Committee being to the High Court or if it is regarded as “Superior tribunal” to Court of Appeal, the appeal is directly to Supreme Court. Learned counsel submitted further, that since the decision in *Okike v. LPDC* (supra) this court has not departed from the position that an appeal from the LPDC lies directly to the Supreme Court. Other submissions by the learned counsel are on the unconstitutionality and inapplicability of sections 11(7), 12(1), (2) and (5) of the Legal Practitioners Act, 1990, (I may revisit this segment of the appellant’s argument, anon, if need be).

On the non-existence of the Appeal Committee, the learned counsel for the appellant argued that there is presently no Appeal Committee of the Body of Benchers constituted to determine appeals from the LPDC and the appellant could not have appealed to a non-existent Appeal Committee.

My lords, permit me kindly to take us into a rather, long legal excursion. The petition against the appellant by his then client (the petitioner) was made to the NBA on the 1<sup>st</sup> of December 2003, that the appellant conspired with another person, in the year 2001 and forged her (petitioner’s) signature on a lease agreement in respect of her property situate in Lagos, with the intent to deprive her of the ownership of the property. The NBA’s complaint placed before the LPDC was dated 16<sup>th</sup> March, 2005. The LPDC gave its Direction on 22<sup>nd</sup> of February, 2001. Three pertinent questions are to be asked as follows:

1. When did the cause of action accrue?
2. What was the applicable law then?
3. What is the current position of the law on the subject matter under consideration?

From the facts in the record of appeal, the cause of action accrued in the year 2001. Secondly, the law applicable to Legal Practitioners was the Legal Practitioners Act contained in Cap. 207 LFN 1990 wherein the provisions of sections 11(7); 12(1) and (5) were made. (Note sections 11 (7) and 12(5) are of same essence).

B By Decree No.21 of 1994 (Legal Practitioners (Amendment) Decree 1994) the then Federal Military Government made far-reaching amendments to the Principal Act, (Legal Practitioners Act) Cap. 207, LFN, 1990, for instance, section 10 of that Decree amended section 11 of the Legal Practitioners Act of 1990 to read as follows: .

C *"10. The existing section 11 of the Principal Act is amended by:*

*(a) Renumbering the section as section 12;*

*(e) Substituting for the words "Appeal Committee of the Body of Benchers)) appearing in section A (7) of the section the words "Supreme Court."*

Section 11 of the Decree repealed section 12 of the principal Act. Thus, the whole of section 12 was deleted.

E It is to be noted again that although the Decree was signed into law on the 29<sup>th</sup> day of November, 1994, Section 16 thereof provided that the Decree *"shall be deemed to have come into force on 31<sup>st</sup> July, 1992."* Thus, from 31<sup>st</sup> of July, 1992 to 2004, any right of appeal from the direction of the LPDC was to be exercised or channeled directly to the Supreme Court without the necessity of going through the Appeal Committee. However, in 2004, when the federal enactments were further reviewed, Section 12 of the Legal Practitioners Act, Cap. L11, LFN, 2004, re-enacted the Appeal Committee of the Body of Benchers:

G *"12(1) There shall be a Committee to be known as the Appeal Committee of the Body of Benchers (in this Act referred to as "the Appeal Committee") which shall be charged with the duty of hearing appeals from any direction given by the Disciplinary Committee."*

H The direction from the LPDC was given on 22/2/2011. Appellant appealed to this court on 30/3/2011.

Now, the correct position of the law and practice, my lords, as I understand them, is that once a decision (including a Direction from the LPDC) is delivered and it is appealable, it is the prevailing law and practice governing appeals that must guide the filing of the appeals.



When appeals ceased to be channeled directly from High Court to Supreme Court, it was the new law, practice and policy on appeals that were in vogue. It cannot have retrospective effect. It is thus, my view that the appellant's appeal is caught up by this law and practice. The appellant, certainly, could not have appealed to this court within the period 1992 - 2004 as there was no direction to appeal against. B The direction came in 2011. Appellants' appeal was filed in 2011. The law in operation controlling all appeals from the direction of the LPDC is the Constitution 1999 (as amended) and the re-enacted Legal Practitioners Act as contained in Cap. L11 of the 2004 LFN. C This Act mandates an aspiring appellant to go through the Appeal Committee of the Body of Benchers first before approaching the Supreme Court. If that has not been complied with, then any attempt to lodge an appeal direct to this court would be futile. The well settled principle of the law is as pronounced by Belgore, JSC (as he then was) in the case of Eguamwense v. Amaghizemwen (1993) 9 D NWLR (Pt.315) 1 at p.25, para. D-F.

*"Where a statute prescribes a legal line of action for determination of an issue be that issue an administrative matter, chieftaincy matter or a matter of taxation, the aggrieved party must exhaust all the remedies in that law before going to court. The provision of sections 21 and S.22(1-6) of Traditional Rulers and Chiefs Edict (No. 16) 1979 (Bendel State) are clear as to steps to take. The plaintiff seemed to have jumped the stile as he avoided all avenues that availed him and went to the High Court. I am of the view that he did a wrong thing indeed. This court is not asked nor were the lower courts fully adverted to S.22(4)(a) and (b) (supra) and I shall not pronounce per incuriam on that subsection; but suffice to say here that provisions of S. 22(5) and (6) have amply provided for redress which the plaintiff failed to seize advantage of."* F G

*The provisions of S.236 of the 1979 Constitution is not an open gate for all High Courts to assume jurisdiction in all subjects. All the local remedies in the statute on every subject must be exhausted before embarking on actual litigation in court."* (Italics mine). H

Thus, failure by the appellant to first channel his appeal through the Appeal Committee as established by the Act is defective and affects the competence of the court. See: Madukolu v. Nkemdilim (1962) 1 ANLR 587 at 594, (1962) 2 SCNLR 341. The situation in this

appeal is akin to the one presented in the case of *Ibori v. Agbi* (2004) 6 NWLR (Pt.868) 78 at p. 143, paras. B-C where this court reprimanded litigants and their counsel from appealing to the Supreme Court from decisions of High Courts because the Supreme Court has no jurisdiction or power to hear appeals direct from High Court,

B Uwaifo, JSC (Rtd.) had this to say:

*“It has thus been held that under the appellate jurisdiction of the Supreme Court as conferred by Constitution (S.213 of the 1979 Constitution, now 5.233(1) of the 1999 Constitution), the Supreme Court has no jurisdiction to usurp the function of the Court of Appeal either by hearing an appeal directly from the High Court or by hearing an appeal which though lying before the Court of Appeal is yet to be decided by that court because to do so will amount to a violation of the Constitution and will be null and void”*

D The case of *Okike v. LPDC (supra)* cited and relied upon by the learned counsel for the appellant where it was held that an appeal from the LPDC lies directly to the Supreme Court is quite distinguishable from the present appeal. This is because *Okike’s case* was decided by this court in 2005. None of the parties thereto raised an  
E objection against the hearing of the appeal by the Supreme Court in spite of the fact that the Legal Practitioners Act, Cap. L11, LFN 2004 was the prevailing law which restored the Appeal Committee of the Body of Benchers. Thus, the Supreme Court could not have done  
F otherwise. The Supreme Court, it should be noted, is not like a revolver machine gun which operates itself automatically. There has to be someone to ignite it into action. The preliminary objection raised by the respondent in this appeal, touching the jurisdiction of the Supreme Court, turns out to be the central issue upon which to decide  
G the competence of the appeal and it has now been found that the appeal is not competent having failed to exhaust the statutory remedies laid by the Act before filing the appeal before this court. The appeal, certainly, is incompetent as it stands now. This court, by virtue of sections 11(7), 12(1) and (5) of the Legal Practitioners Act,  
H Cap. L11, LFN 2004 lacks jurisdiction to entertain the appeal. The non-existence of the Appeal Committee as submitted by the appellant may be an oversight from the body responsible for setting-up such a committee. (Body of Benchers) This omission cannot entitle the Supreme Court to assume jurisdiction. That Committee (Appeal

Committee) must be brought into existence in order to fill up the loopholes now apparent.

I too, like my learned brother, Fabiyi, JSC hereby strike out the appeal for being incompetent. I abide by other consequential orders made in the leading judgment including one on costs.

B

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### **GALADIMA JSC**

This is an appeal against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers (to be referred to as “the Committee”), delivered on 22/2/2011, which directed the Chief Registrar of the Supreme Court to strike off the name of the appellant from the roll of Legal Practitioners in Nigeria. C

The complaint of one Mrs. Victoria Akinyele Aliu before the Committee on page 84 of the records of appeal reads thus: D

*“Jide Aladejobi as counsel to Alhaji Saliu Gbolagade, on or about the year 2001, conspired with the said Alhaji Saliu Gbolagade to drift and execute a 10 years lease agreement purportedly on behalf of Mrs. Victoria Akinyele Aliu (the petitioner) in respect of the petitioner’s property situate at No. 52, Western Avenue, Surulere, Lagos with the intent to interfere with the petitioner’s ownership rights over the property, all contrary to Rules 24, 28 and 49(a) and (b) of the Rules of Professional Conduct in the Legal Profession and section 12 of the Legal Practitioners Act, 1990 as ) amended.”* E

When the Committee sat, two witnesses namely; Abubakar Ibrahim Maude, the Secretary of the Disciplinary Committee of the Body of Benchers and Mike Omonnan, the petitioner’s counsel (both) testified. At the close of the respondent’s case, the appellant testified for himself and was cross-examined. Upon consideration of the submissions by all the parties and the evidence before it, the Committee found the conduct of the appellant as an infamous conduct and directed the Chief Registrar of the Supreme Court to strike off the name of the appellant from the roll of Legal Practitioners in Nigeria. F

Dissatisfied with this direction, the appellant has now appealed direct to this court. Briefs of argument were filed and exchanged by the parties. At the hearing of the appeal on 25/4/2013. Learned senior counsel for the appellant adopted and relied on the appellant’s brief of argument as well as the appellant’s reply brief of argument G H

filed on 23<sup>rd</sup> May, 2011 and 29<sup>th</sup> June, 2011 respectively. He urged on us to allow the appeal.

On his part, learned counsel for the respondent adopted and relied on the respondent's brief of argument filed on 8/6/2011. He however referred to his notice of preliminary objection, which was accordingly moved by him. The notice of preliminary objection are set out as follows:

*"6.1 TAKE NOTICE that at or before the hearing of this appeal, the respondent shall pray the Supreme Court to strike out the appellant's notice of appeal dated the 20<sup>th</sup> day of July, 2010 and a fortiori dismiss the issues for determination distilled in the appellant's brief of argument from the incompetent grounds of appeal.*

*6.2 TAKE FURTHER NOTICE that the grounds of the said objections are -*

*(i) By virtue of sections 11 and 12(1) of the Legal Practitioners Act, 1990 as amended, the appellant can only appeal to the Appeal Committee of the Body of Benchers against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers dated 22<sup>nd</sup> day of February, 2011.*

*(ii) The appellant cannot appeal direct to the Supreme Court against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers dated 22<sup>nd</sup> day of February, 2011 without first appealing to the Appeal Committee of the Body of Benchers.*

*(iii) The respondent is not the proper party in this appeal by virtue of sections 11(7) and 12(1) of the Legal Practitioners Act, 1990 as amended.*

*(iv) By virtue of sections 11(7) and 12(5) of the Legal Practitioners Act, 1990 as amended, the appellant's appeal was filed out of time.*

*(v) The Supreme Court lacks the jurisdiction to entertain this appeal.*

*(vi) This appeal is incompetent."*

The main argument put forward by the respondent is that the Supreme Court does not have the jurisdiction to hear the appeal of the appellant herein from the decision of the Legal Disciplinary Committee of the Body of Benchers dated 29/2/2011. This is because by virtue of sections 11(7) and 12 of the Legal Practitioners Act, 1990 as

amended, the jurisdiction to hear appeal from the direction dated 22/2/2011 of the Committee of the Body of Benchers is expressly conferred only on the appeal Committee of the Body of Benchers and it is to the Appeal Committee that this appeal ought to be brought. For this reason, learned counsel has submitted that this appeal before this court without first appealing against the direction of the Committee to the appeal Committee is incompetent and this court lacks jurisdiction to entertain the appeal. Reliance was placed on the cases *Eguamwense v. Amaghizemwen* (1993) 9 NWLR (Pt. 315) 1 at 25; *Unilorin v. Oluwadare* (2006) 14 NWLR (Pt. 1000) 751 at 774-776.

Relying further on the case of *Madukolu v. Nkemdilim* (1962) 1 All NLR 587 at 594, (1962) 2 SCNLR 341, learned counsel opined that the conditions precedent to confer jurisdiction on this court has not been satisfied.

On the part of the appellant, his counsel contended that by the decision of this court in *Okike v. L.P.D.C.* (2005) 15 NWLR (Pt. 949) 471, appeal lies directly to this court. Senior counsel further asserted that the composition of the Appeal Committee as provided by subsection 2 of section 12 of the Legal Practitioner Act, whereby two members of the Association are part, renders the provision unconstitutional, null and void. Referring to section 36 of the 1999 Constitution, he contended that such composition, of the membership of the Appeal Committee offends the principle of natural justice, that no man shall be a Judge in his own cause.

Senior counsel has further contended that sections 11(7) and 12(1-2) of the Legal Practitioners Act, upon which the respondent predicated his notice of preliminary objection, are unconstitutional null and void. He therefore urged on us to hold that the appeal is competent and in accordance with the 1999 Constitution. It is further observed that there is presently no Appeal Committee of the Body of Benchers duly constituted to determine appeals from the Legal Practitioners Disciplinary Committee as provided by section 12(1) and (2) of the Legal Practitioners Act. For this reason, the learned senior counsel, submitted that the appellant could not have appealed to an Appeal Committee that does not exist.

There is no doubt that sections 11(7) and 12 (1) of the Legal Practitioner Act, 1990 as amended provide that:

*“11(7) The person to whom such a direction relates, may at*

*any time within 28 days from the date of service on him of the notice of the direction, appeal against the direction to the Appeal Committee of the Body of Benchers established under section 12 of the Act and the Disciplinary Committee may appear as the respondent to the appeal and, for the purpose of enabling directions to be given as*  
 B *to costs of the appeal and of proceedings before the Disciplinary Committee, shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.”*

*“12(1) There shall be a committee to be known as the Appeal*  
 C *Committee of the Body of Benchers (in this Act referred to as “the Appeal Committee”) which shall be charged with the duty of hearing appeals from any direction given by the Disciplinary Committee.”*  
 (Word “shall” italicized for emphasis).

I am of the view that the word “shall” used in section 12(1) of  
 D the Act (supra) denotes obligation or command. It is intended to be mandatory, and leaves no room for discretion. See: *Kotoye v. Saraki* (1989) 1 NWLR (Pt.98) 419 at 465; *Ude v. Nwara* (1993) 2 NWLR (Pt.278) 638.

By a combined reading of the provisions of section 11(7) and  
 E 12(1) it is clear that the appellant cannot appeal against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers dated 22/2/2011, without first appealing to the Appeal Committee of the Body of Benchers. The present appeal filed by the  
 F appellant at the Supreme Court, for this reason is incompetent and this court has no jurisdiction to entertain this appeal. The appellant has not exhausted all the remedy opened to him. The law is that where a statute prescribes a legal line of action for determination of  
 G an issue, all remedies in the statute should be duly observed and followed. See *Madukolu v. Nkemdilim* (1962) 1 All NLR 587 at 594, (1962) 2 SCNLR 341; *Eguamwense v. Amaghizemwen* (supra); *Unilorin v. Oluwadare* (2006) 14 NWLR (Pt. 1000) 751 at 774-776. The condition precedent to confer jurisdiction on this court has not  
 H been fulfilled. In *Ibori v. Agbi* (2004) 6 NWLR (Pt.868) 78 at 142; a similar situation arose where this court has cautioned and reprimanded parties from appealing to the Supreme Court from decision of a High Court because the Court does not have jurisdiction to hear appeals direct from High Court. The Supreme Court which has no power to usurp the function of the Court of Appeal because to do so will amount

to a violation of the Constitution and will be null and void.

The decision of this court in the case of *Okike v. Legal Practitioners Disciplinary Committee (LPDC)* supra, after my careful reading reveals that the issue of competence of this court to entertain that appeal was not raised therein.

There ought to be Appeal Committee of the Body of Benchers in place, otherwise it is suggested that the earlier it is brought into being the better.

For the above reasons I have given above and fuller ones stated in the lead judgment of my learned brother, Fabiyi, JSC, which I have read before now and which I also adopt as mine, I also sustain the preliminary objection as meritorious. The appeal is accordingly incompetent, it is accordingly struck out.

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**M. D. MUHAMMAD JSC**

Having had a preview of the lead judgment of my learned brother, Fabiyi, JSC, just delivered, I entirely agree that this appeal is incompetent and that same be struck out, I rely on the facts that brought about the purported appeal as graphically summarized in the lead judgment in emphasizing some of the reasons advanced in the lead judgment why the appeal has to suffer the misfortunes the law ascribes it must.

On adopting and relying on the respondent's brief of argument filed on 8<sup>th</sup> June, 2011, learned counsel moved the preliminary objection raised at pages 5-6 of their brief challenging the competence of the appeal. He argued that appellant's notice of appeal dated and filed on the 20<sup>th</sup> July, 2010 and the issues distilled from the grounds contained in the very notice being incompetent should be struck out. The appellant's right of appeal, it is contended, is prescribed under sections 11 and 12 of the Legal Practitioners Act, 1990 as amended, hereinafter referred to as the Act. The sections, learned counsel submitted, specify that the appellant can only appeal against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers dated 22<sup>nd</sup> February, 2011 to the Appeal Committee of the Body of Benchers. The appellant, learned respondent counsel insisted, and rightly too, does not have the right of appeal directly to this court against the decision he purports to be appealing from. It

is further argued that by virtue of sections 11(7) and 12(1) of the Act, the respondent is not the proper party in the appeal. On the whole, learned counsel contended that this court lacks the jurisdiction to entertain the appeal which had not arisen from the decision of the Appeal Committee of the Body of Benchers to which the  
 B appellant's appeal from the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers lies. Relying inter-alia on *Eguamwense v. Amaghizemwen* (1993) 9 NWLR (Pt. 315) 1 at 25; *Ibori v. Agbi* (2004) 6 NWLR (Pt. 868) 78 at 12; *Madukolu v. Nkemdilim* (1962) 1 All 587 at 594, (1962) 2 SCNLR 341 and  
 C *Unilorin v. Oluwadare* (2006) 14 NWLR (Pt. 1000) 751 at 774-775, learned respondent's counsel urged that the incompetent appeal be struck out.

Responding, learned senior counsel to the appellant made a  
 D three pronged submission. He contended that the Appeal Committee which subsection 2 of section 12 of the Legal Practitioners Act provides for is yet to be established that the Appeal Committee as provided for with two of its members drawn from the Bar Association negates the principles of natural justice as provided for under subsection  
 E 1 of section 36 of the 1999 Constitution of the Federal Republic of Nigeria, thereby making the provision of section 11 and 12(1) on which respondent's preliminary objection is founded unconstitutional. Finally, on the authority of *Okike v. L.P.D.C.* (2005) 15 NWLR (Pt. 949) 471, learned senior counsel submitted that appeals from the  
 F direction of the Legal Practitioners Disciplinary Committee have always been to the Supreme Court. Further relying on *City of London v. Wood*, 701 (12 MOD) 669 at 687 and *L.P.D.C. v. Fawehinmi* (1985) 2 NWLR (Pt. 7) 300 at 374, learned senior counsel urged that  
 G respondent's misconceived preliminary objection be overruled.

Now, the right of appeal is statutorily conferred. In the case at hand, that right is as provided for by virtue of section 12(1) of the Legal Practitioners Act, 1990 as amended. The Section provides:

H *"There shall be a committee to be known as the Appeal Committee of the Body of Benchers (in this Act referred to as 'the Appeal Committee') which shall be charged with the duty of hearing appeals from any direction given by the Disciplinary Committee"*

The foregoing clear and unambiguous provision makes it mandatory for the Body of Benchers to constitute the Appeal Committee



which alone has the mandate and duty to hear appeals arising from the direction of the Legal Practitioners Disciplinary Committee the appellant herein purports to appeal against. Learned appellant's counsel has argued that the Appeal Committee has not been Constituted and since the appellant is aggrieved he is necessarily entitled to the reliefs he seeks by coming to this Court. B

I am unable to agree with learned counsel for courts being creatures of statutes do only that which the statutes empower them to do.

In *C.C.B. (Nig.) Plc v. A-G Anambra State* (1992) 8 NWLR C (Pt. 261) 528 at 556 para. this court restated the principle on the basis of which respondent's preliminary objection is determined thus:

*"Now, it is the law that where a statute provides for a particular method of performing a duty regulated by the statute, that method, and no other, must have to be adopted. As it is so, was it open to one of the shareholders of the appellant bank... acting for three others, to have tried to carry out the directive of the Central Bank of Nigeria with respect to the increase of share capital by paying a deposit rather than by complying with the requirement of section 573 of the Decree? ...this point cannot be swept..."* D E

The same principle disentitles any court, including the Supreme Court, from entertaining appeals from the direction of Legal Practitioners Disciplinary Committee when the power of doing so is manifestly vested in the Appeal Committee of the Body of Benchers by virtue of section 12(1) of the Legal Practitioners Act, 1990 as amended. F

It is unfortunate that the appropriate appellate body is yet to be put in place. That we have come this far as a profession without the Appeal Committee having been put in place is indeed worrisome. We serve others in retrieving and securing what is theirs without being able to enjoy similar facility to the fullest in addressing our own grief! G

For the foregoing and more so the fuller reasons adumbrated by my learned brother, Fabiyi. JSC in the lead judgment, I find merit in respondent's preliminary objection which I hereby sustain and strike H out the incompetent appeal.

**ALAGOA JSC**

This is an appeal against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers which was delivered on the 22<sup>nd</sup> February 2011 directing the Chief Registrar of the Supreme Court of Nigeria strike off the name of the appellant from the roll of Legal Practitioners in Nigeria. So much of the facts attendant to this appeal have already been amply stated in the lead judgment of my learned brother Hon. Justice John Afolabi Fabiyi, JSC, which I had the privilege to read before now in draft and which I completely agree with. I need not therefore go into further facts leading up to this appeal. The respondent filed a notice of preliminary objection to the competence of this appeal on the ground inter alia that by virtue of sections 11 and 12 (1) of the Legal Practitioners Act, 1990 as amended, the appellant can only appeal to the Appeal Committee of the Body of Benchers against the direction of the Legal Practitioners Disciplinary Committee of the Body of Benchers dated 22<sup>nd</sup> February 2011 and not direct to the Supreme Court and is such the Supreme Court lacks jurisdiction to entertain this Appeal. The point being strenuously canvassed by the respondent is that the condition precedent to confer jurisdiction to this Court (the Supreme Court) has not been fulfilled. What does the term "Jurisdiction" mean? In *Jacob Ndaeyo v. Godwin Ogunnaya* (1977) 1 SC 11, this Court per *Idigbe JSC* defined jurisdiction this way, "*By 'jurisdiction' is meant the authority which a court has to decide matters that are litigated before it or to take cognisance of matters presented in a formal way for its decision.*" This court followed the definition given to the term 'jurisdiction' in Volume 10, Halsbury's Laws of England 4<sup>th</sup> Edition, para. 715 page 323. The competence of a court to exercise jurisdiction in relation to an action before it depends on whether the condition precedent to confer jurisdiction has been met. See *Madukolu v. Nkemdilim* (1962) 1 All NLR 587 and 594, (1962) 2 SCNLR 341; *Abubakar Umaru Abba Tukur v. The Governor of Taraba State & Ors* (1997) 6 NWLR (Pt. 510) 549; *Attorney General of the Federation v. Guardian Newspapers Ltd* (1999) 9 NWLR (Pt. 618) 187; *Dr. Arthur Agwuncha Nwankwo & Ors v. Alhaji Umaru Yar'adua & Ors.* (2010) 12 NWLR (Pt. 1209) 518. The wordings of section 12(1) of the Legal Practitioners Act, 1990 are clear and unambiguous.

*"There SHALL be a committee to be known as the Appeal*

*Committee of the Body of Benchers (in this Act referred to as ‘the appeal committee’) which SHALL be charged with the duty of hearing appeals from any direction given by the Disciplinary Committee.”* (Capital Letter is for emphasis).

The use of the word “Shall” in the context in which it is used in the Legal Practitioners Act, 1990 can only connote a command or a mandatory order and nothing else. A direct appeal from the direction of the Disciplinary Committee to the Supreme Court without such an appeal going through the Appeal Committee would therefore be outside the purview or contemplation of section 12(1) of the Legal Practitioners Act, 1990. Learned senior counsel has submitted that there is not yet in existence an Appeal Committee to which appeals from the direction of the Committee would normally lie. That in itself cannot vest jurisdiction in the Supreme Court from the direction of the Committee. Reference by learned Senior Counsel to *Okike v. LPDC* (2005) 15 NWLR (Pt. 949) 471 loses sight of the fact that in that case, jurisdiction was never in issue and was never raised. The quick setting up of an Appeal Committee of the Body of Benchers to hear appeals from the directions of the Legal Practitioners Disciplinary Committee of the Body of Benchers cannot be over emphasized. For now this court lacks the jurisdiction to hear such appeals from the directions of the Legal Practitioners Disciplinary Committee of the Body of Benchers. It is for these reasons and the fuller reasons given by my brother in his lead judgment which I earlier referred to that I too hold that the preliminary objection of the respondent has merit and should be sustained. I too hereby sustain it and strike out the appeal. Appeal struck out.

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