

SUPREME COURT OF NIGERIA
FRIDAY 16TH MAY, 2014. SC. 111/2006
CORAM:- M. MOHAMMED, I. T. MUHAMMAD,
J. A. FABIYI, S. GALADIMA, M. U. PETER ODILI,
M. D. MUHAMMAD, K. O. KEKERE-EKUN, JJSC

ROTIMI WILLIAMS AKINTOKUN APPELLANT
AND
LEGAL PRACTITIONERS
DISCIPLINARY COMMITTEE (LPDC) RESPONDENT

COURTS - Legislations - Interpretation - Courts interpret and apply the law as it is - They do not make law - As that is the function of the legislature (H1)

LEGISLATIONS - Validity of - LFN 2004 - Where National Assembly approves a law - The same must take the form of a law passed by the legislature - Save where the contrary is shown (H2)

LEGISLATIONS - Validity of - LFN 2004 edition - All laws in the edition are authentic laws of the federation - Hence they must be respected and applied - And SC is bound to give effect to any of such laws (H3)

ACTIONS - Judgment per incuriam - Meaning of - When a case is decided per incuriam - It denotes that it is reached through inadvertence - And or in ignorance of the relevant law (H4)

CONFLICT OF LAWS - Legislations - Amendment - Where later enactment does not expressly amend an earlier one - But provisions of the later are inconsistent with the earlier - The later by implication amends the earlier (H5)

LEGAL PRACTITIONERS - Appeals - Jurisdiction - Provisions relating to discipline in LP Act LFN 2004 - Regulate appeals from directions of LPDC - SC therefore lacks jurisdiction to entertain appeals direct from LPDC (H6)

FACTS

This action was brought against appellant (a practicing legal practitioner) before the Legal Practitioners Disciplinary Committee (LPDC) of the Body of Benchers via a petition filed by the Ogunesu family. The family had alleged that appellant committed acts of professional misconduct in that while acting as their solicitor, he (appellant) deliberately misled them regarding an alleged acquisition of their land by the Lagos State Government. The family further stated that appellant failed to carry out their instructions to promptly move against adversaries in respect of the land.

They claimed that appellant also caused the land to be under-surveyed with intent to cheat the family. They went on to complain that appellant went further to sell the land without their authorization and contrary to their instructions. That he employed extra-judicial methods while pretending to be carrying out their instructions. At the completion of hearing in the matter, the LPDC delivered its direction in which it directed the Chief Registrar of the Supreme Court to strike off the name of appellant from the roll as a legal practitioner in Nigeria. Being dissatisfied, appellant filed appeal against the direction to Supreme Court.

ISSUE FOR DETERMINATION

“Whether in view of its recent decision in JIDE ALADEJOBI V. NIGERIAN BAR ASSOCIATION, the Supreme Court has jurisdiction to entertain the instant appeal against the direction of the Legal Practitioners Disciplinary Committee.”

HELD (Unanimously striking out the appeal per **I.T.**

MUHAMMAD JSC)

COURTS - Legislations - Interpretation

1. Primarily, and this is elementary, the duty or responsibility of the courts is to interpret and apply laws by whatever name called, including Acts/laws of the National/State Assemblies. Courts do not make laws Courts, do not amend or repeal laws/ Acts of National or State Assemblies. These certainly, are functions of the Legislature. Courts have no power to add or reduce any provision made by the Legislature. All that the Judges

are required to do as operators of the courts is to interpret/ apply the law as it is, based on the judge's understanding. In that process, of course, judges are not infallible. They can make human errors. Infallibility belongs only to God.

Thus, it is not the Supreme Court that lifted the two subsections as above, out of the blues and inserted them in the Act. It must have been done by a person/persons having authority so to do. It is immaterial to me by whichever means the two subsections found their way into the Act whether through the process of fresh enactment, re-enactment, amendment or repeal, howsoever, once the legislature validates same. This, of course, is part of law making which is not the business of this court. It is neither also the business of this court to dig into, or fish out who did it and whether it was rightly or wrongly done. The business of this court, and of course, of any other court, is to interpret and, or, apply the law as it is. This is what we did in Aladejobi's case. (pp. 1859 F/1872 F)

LEGISLATIONS - LFN 2004 - Validity of

2. Although the word "approval" or "approved" is not ordinarily used in legal drafting and especially in legislative drafting to convey assent, it however connotes as it is used in section 1 quoted above, from the purport of the section that the National Assembly has given its assent to the collection of all the laws in the 2004 edition of the Laws of the Federation. Even in the Ordinary day to day use of the English Language, the word "approve" means to accede to, accept' acquiesce in, adopt, affirm, agree to, allow, assent to, authenticate, authorize, be in favour of, be satisfied with, endorse, confirm, consent to, make valid, sustain, uphold, support etc. Thus, by "approving" the 2004 Revised Edition of the LFN, the National Assembly had certainly given its assent to it. And, I think, where the National Assembly approves it in its position as a Legislative House(s), it must take the form of a Law passed by the National Assembly except of course, where the contrary is shown. (p. 1861A)

LEGISLATIONS - LFN 2004 edition - Validity of

3. So, as far as this court is concerned, all laws contained in the edition of the Laws of the Federation of Nigeria, 2004 are authentic Laws of the Federation, having the force of law/legislation. They are not meant for cosmetic show. They must be respected and applied. This court is duty bound to give effect to any of such laws including the Legal Practitioners Act Cap. L11, LFN, 2004. (p. 1861 H)

Judgment per incuriam - Meaning of

4. The Latin word “incuria/incuriae,” means “carelessness” or “neglect” see: Pocket Oxford Latin Dictionary, 2005 revised edition, edited by James Morwood (Oxford University Press), page 92. The legal connotation is that when a case is decided per incuriam, it denotes the idea that it is decided through inadvertence and or in ignorance of the relevant law. As a general rule, the only cases in which decisions should be held to have been given per incuriam are those decisions given in ignorance or forgetfulness of some authority binding on the court. (p. 1866 C)

CONFLICT OF LAWS - Legislations - Amendment

5. I think, the law is that where a later enactment does not expressly amend [whether textually or indirectly] an earlier enactment, but the provisions of the later enactment are inconsistent with those of the earlier, the later by implication, amends the earlier so far as is necessary to remove the inconsistency between them. This is because, if a later Act cannot stand with an earlier one, parliament, generally, is taken to intend an amendment of the earlier. This is a logical necessity, since two inconsistent texts cannot both be valid. If the entirety of the earlier enactment is inconsistent, the effect amounts to an implied repeal of it. Similarly, a part of the earlier enactment may be regarded as impliedly repealed where it cannot stand with the later. An intention to repeal an Act or enactment may be inferred from the nature of the provision made by the later enactment. The Latin maxim puts it that LEGES POSTERIORES PRIORES CONTRARIAS

ABROGANT [later laws abrogate prior contrary laws.

In Law, therefore, there are circumstances in which a repeal of an enactment can be implied or inferred and that is where two acts of the legislature are plainly repugnant to each other that effect cannot be given to both at the same time. Thus, repeal by implication cannot be prohibited where circumstances warrant. (pp. 1869 F/1871 C) B

LEGAL PRACTITIONERS - Appeals - Jurisdiction

6. In this matter, the law changed and its effect on its recipients must also change. It would have completely been a different thing if the National Assembly did not bless that change in the law and its effect. C

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. D

My lords, in view of what I have so far said, I find it very difficult to depart from or overrule my earlier stand on Aladejobi's case. It is my belief that no two laws or provisions of an enactment or enactments on same subject which are in conflict that shall be allowed to co-exist. I still hold the view that the provisions in the 2004 Laws of the Federation relating to the disciplining of erring Legal Practitioners as contained in Cap L11, LFN, 2004 are the ones that will regulate appeals from the directions of the Legal Practitioners, Disciplinary Committee of the Body of Benchers. If the Appeal Committee is not in existence as argued by some of the counsel involved in the appeal, it is for the concerned Body, i.e. the Body of Benchers to respect and implement the provision(s) of the 2004 LFN, relating to appeals emanating from the LPDC. I still hold that this court lacks jurisdiction to entertain appeals direct from the directions of the LPDC. (pp. 1873 F/1875 C) E
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NOTABLE POINTS OF INTEREST H

I. T. MUHAMMAD JSC

1. Powers of court

Such courts as are listed in subsection 5(a) to (i) of section 6 are

termed “*Superior Courts of Record*” and the powers of each is given under the Section which establishes it, in addition to other laws. For instance, section 230(1) establishes the Supreme Court of Nigeria which shall have power/jurisdiction to exercise on appeals emanating from the Court of Appeal: Original Jurisdiction on some matters and such other cases as may be prescribed by an Act of the National Assembly. This court entertains also questions on interpretation of the Constitution which have arisen from the Court of Appeal (S. 233(2) and 295(3) of the Constitution). (p. 1859 D)

C ***2. Changes in law – Effects***

The similitude here, my lords, is that of Law of cause and effect. Where the cause changes, the effect must also change. So where the law changes, its effect must also change. For instance, prior to the coming into effect in 1976 of the Court of Appeal Act, appeals from High Courts were directly channeled to the Supreme Court. That practice stopped with the coming into force of the Court of Appeal Act. (p. 1873 E)

E ***REPRESENTATION***

Adenrele Adegborioye, with Chijioke Uwandu, for the Appellant E.C. Aguma Esq., with him Toyin Bashorun and Williams A. Ataguba, Mohammed Bello Adoke (SAN), [Hon. Attorney-General of the Federation - Amicus], with Taiwo Abidogun [ADCL], P.C. Okorie [PA to Hon Attorney-General of the Federation and Minister of Justice]. Okey Wali [SAN], [as amicus curiae] with him; J.S. Okutepa [SAN], Solomon Umoh [SAN], Dr. Garba Tetengi [SAN], Usman Sule, Emeka Obegbolu, Mustapha A. Mariam, John Demide, Dikibujiri G Fynface [Miss], Ejura P. Ochimana [Miss], for the Respondent

CASES REFERRED TO

- Aladejobi v. NBA (2013) 15 NWLR (pt. 1376) 66)
- Okike v. LPDC (No.1) (2005) 3-4 SC 49
- H Ibidapo v. Lufthansa Airlines (1997) 4 NWLR (pt. 498) 124
- Nnubia v. A-G Rivers State (2009) 40 NSCQR 90
- Raleigh Ind. Nig. Ltd. v. Nwaiwu (1994) 4 NWLR (pt. 341) 760
- Taleglobe America. Inc. v. 21st Century Technologies Ltd. (2008) 9 CLRN 32

Uwaifo v. A-G Bendel State (1982) 7 SC 124

Olu of Warri v. Kperegbeyi (1994) 4 NWLR (pt. 339) 416

Governor of Kaduna State v. Kagoma (1982) 6 SC 45

Eweta v. Gyang (2003) 28 NWLR (pt. 816) 345

Dalhatu v. Turaki (2003) 15 NWLR (pt. 843) 310

Ajayi v. Military Administrator Ondo State (1997) 5 NWLR (pt. 504) B
237

Udo Trading Co. Ltd v. Abere (2001) 11 NWLR (pt. 723) 114

Madukolu v. Nkemdilim (1962) 1 All NLR 587

Ibori v. Agbi (2004) 6 NWLR (pt. 868) 78

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STATUTES REFERRED TO

Legal Practitioners Act Cap. L11 LFN 2004

Legal Practitioners (Amendment) Decree No. 21 of 1994

Legal Practitioners Act Cap. 101 LFN & Lagos 1958, ss. 20, 31-37 D

Legal Practitioners Act 1962 (No. 33), ss. 6[3], 7[1][6]

Legal Practitioners Act Cap 207 LFN 1990, ss. 11[7], 12[5][6][7]

Constitution of the Federal Republic of Nigeria 1999, s. 233, 315[1],
[4][b]

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BOOKS REFERRED TO

Pocket Oxford Latin Dictionary 2005 revised edition

Garner's Dictionary of Modern Legal Usage 2nd ed. 1995 Oxford
University Press, pp. 435 and 651

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LEAD JUDGMENT BY I.T. MUHAMMAD JSC

This interlocutory ruling stemmed from the appeal filed by Mr. Rotimi Williams Akintokun, the appellant, which he filed sometime in April, 2006. From the record of appeal before this court. Mr. Akintokun, a legal practitioner, was practicing under the name and style of "*ROTIMI WILLIAMS AKINTOKUN AND COMPANY*" of 75B, Coker Road, Ilupeju, Lagos. The complaint levied against Mr. Akintokun emanated from a petition written against him to the Nigerian Bar Association [NBA] by his clients, the Ogunesu Family of Ule Ogunesu, 4 Olubi Street, Itundegun, Ikorodu, Lagos State. The clients alleged in their petition that Mr. Akintokun committed acts of professional misconduct in that while acting as their solicitor, he deliberately misled them regarding an alleged acquisition of their land

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by the Lagos State Government. That he failed to carry out his clients' instructions to promptly move against adversaries in respect of the land. He also caused the land to be under-surveyed with intent to cheat his clients. That he went further to sell the land without any authorization and contrary to the instructions of his clients. That he
 B employed extra-judicial methods while pretending to be carrying out the instructions of his clients.

On the 4th day of April, 2006, after completion of hearing, the Legal Practitioners Disciplinary Committee [LPDC] of the Body
 C of Benchers, delivered its Direction in which it directed the Chief Registrar of the Supreme Court to strike off the name of Mr. Akintokun from the Roll, as a legal practitioner in Nigeria.

Mr. Akintokun was dissatisfied with the direction of the LPDC and he lodged his appeal to this court.

D Parties to the appeal filed and exchanged briefs of argument. The appeal was slated for hearing on the 22nd day of October, 2013.

On the hearing date, the panel, headed by my learned brother, Onnoghen, JSC; raised the issue, suo motu; whether the Honourable court has the jurisdiction to hear an appeal direct from the LPDC, in
 E view of the court's recent decision in *ALADEJOBI V NIGERIAN BAR ASSOCIATION*. Appeal No.SC.121/2011, delivered on the 12th day of July, 2013 (now reported in (2013) 15 NWLR (PT.1376) 66).

Some arguments were proffered before the panel by each of the counsel for the respective parties, both asking the court to depart
 F from its decision given earlier in Aladejobi's case. The panel exercised its discretion and fixed the 13th of January 2014, for the issue raised to be heard by a full court, consisting of a seven member panel. That is how the present panel which took arguments from the parties,
 G came about. It is to be noted that the Hon. Attorney General of the Federation and the President of the Nigerian Bar Association were invited by the court to serve as *Amicus Curiae* with a view to enriching the arguments on the issue at hand.

In all the four briefs of argument filed by [1] Chief Bolaji
 H Ayorinde, SAN who is for the appellant in the appeal; [2] Mr. Emmanuel C. Aguma for the respondent in the appeal; [3] Mr. Mohammed Bello Adoke, SAN, as *Amicus Curiae* and [4] Mr. Okey Wali, SAN, *Amicus Curiae*, the single issue raised for determination is similar and that is:

“Whether in view of its recent decision in JIDE ALADEJOBI V. NIGERIAN BAR ASSOCIATION, the Supreme Court has jurisdiction to entertain the instant appeal against the direction of the Legal Practitioners Disciplinary Committee.”

In his submissions, the learned senior counsel for the appellant in the main appeal, Chief Bolaji Ayorinde (whom I shall be referring to hereinbelow as “Chief Ayorinde”, for short), argued that the decision of this court in the case of *Aladejobi v Nigerian Bar Association* now reported in (2013) 15 NWLR (Pt.1376) 66, to the effect that the Supreme Court does not have jurisdiction to entertain appeal against the direction of the Legal Practitioners Disciplinary Committee was given per incuriam and he insisted this court to depart from its decision in *Aladejobi’s* case. He referred to the case of *Charles Okike v The Legal Practitioners Disciplinary Committee (No.1) 2005 3-4 SC 49* at 67, where this court held that it had jurisdiction to entertain an appeal from the Directions of the LPDC. Chief Ayorinde submitted that the decision in *Okike (supra)* was never overruled in *Aladejobi’s* case. It was *Okike v. LPDC (No.2) (2005) 15 NWLR (Pt. 409) 471* which was considered and is clearly different and distinct from *Okike No.1*. He submitted that the principle of law decided in *Okike No.1* is still valid and subsisting and it is the law to be followed as regards jurisdiction of the Supreme Court to entertain appeal from the Directions of the Legal Practitioners Disciplinary Committee.

It is Chief Ayorinde’s further submission that assuming, without conceding, that the case of *Okike No.1* was considered by this court in *Aladejobi’s* case, this court is yet invited to set aside its decision in *Aladejobi’s* case. That it is undisputed that the Appeal Committee of the Body of Benchers is yet to be created up till now and an appellant cannot appeal to a non-existing body. In relation to the discipline of Legal Practitioners, generally, chief Ayorinde made copious references to some statutes and case law such as the Legal Practitioners (Amendment) Decree No. 21 of 1994. He argued that the Legal Practitioners Act Cap. L11, Laws of the Federation, 2004, did not take into cognizance the substantial amendments made by the Legal Practitioners Act (Amendment) Decree No.21 of 1994 and it does not represent the law. Statutes are not repealed by reference or implication but by direct provision of the law *Ibidapo v Lufthansa Airlines (1997) 4 NWLR (Pt.498) 124* referred to. That as a matter of

history, it has been the practice that the Federal Supreme Court and the present Supreme Court have always exercised jurisdiction in matters pertaining to the conduct of legal practitioners. He cited sections 20, 31 to 37 of the Legal Practitioners Act Cap 101 of the Laws of the Federation and Lagos 1958 and sections 6[3] and 7[1] and B [6] of Legal Practitioners Act, 1962, No. 33 which replaced the 1958 Laws; section 12[6] and [7] of the Legal Practitioners Act, Cap 207 of the LFN, 1990 as amended by Decree No 21 of 1994 which clearly provides that appeal against directions of the LPDC goes to the Supreme Court. Chief Ayorinde urged us to depart by overruling our C decision in Aladejobi's case in Appeal No SC.21/2011 delivered on 12/07/2013

Learned counsel for the respondent in the appeal, Emmanuel C. Aguma, Esq., ("Mr. Aguma") for short, herein), made his submission in the brief of argument filed by him in respect of this matter that D the judgment of this court in Aladejobi's case (supra), did not take into consideration the court's earlier decision in Okike's case (supra) that had completely resolved the matter. This court, in that case, he added, reviewed Decree No.21 of 1994 and agreed that it had E through a process of amendment created a new section 12[7] of the Legal Practitioners Act that allows appeal from directions of the LPDC to lie direct to this court. Mr. Aguma quoted extensively from the lead judgment of Uwais, CJN (as he then was), with which the six other Justices of the court concurred. This court, he argued, is vested F with jurisdiction to hear appeals directly from the LPDC of the Body of Benchers.

Mr. Aguma, however, conceded to the fact that none of the senior counsel in Aladejobi's case (supra) brought Okike's case (supra) to the attention of this court. He conceded further that there is G some difficulty that is created by the Law Reviewers because the amendments legislated in the procedure for the discipline of erring legal practitioners by the Legal Practitioners Act (Amendment) Decree No.21 of 1994 are omitted in the published statute. This omission, H learned counsel submitted further, is capable of misleading the most diligent of courts and counsel. He referred to the comments made by the editors of the Nigerian Weekly Law Report (NWLR) in their report of (2006) 14 NWLR (Pt. 1000) 816 at pages 825 - 826. Mr. Aguma cited and quoted extensively Dr. Orojo's seminal work

titled "Professional Conduct of Legal Practitioners in Nigeria, 2008 by Mafix Books Limited, where the author considered the omission as wrongful. The comments by the Nigerian Weekly Law Report editors and by Dr. Orojo, learned counsel submitted, though not binding on this court but they accord with the earlier decision of the court in Okike's case (supra). He then reviewed the status of the amendments contained in the Legal Practitioners Act (Amendment) Decree No. 21 of 1994 as omitted by the Legal Practitioners Act, Cap. L.11 LFN, 2004 (revised edition) He referred to section 2 of the Act which makes any inadvertent omission, alteration or amendment of existing statute as inconsequential to the validity and applicability of the statute. Learned counsel concluded his submission by stating that the inadvertent omission of Decree No.21 as an existing law from the Legal Practitioners Act Cap L11 2004, does not affect its validity and applicability; Decree No.43 of 1998, did not repeal the Legal Practitioners Act (Amendment) Decree No.21 of 1994. He finally drew attention that the current foundation for the discipline of erring legal practitioners is the Legal Practitioners Act (Amendment) Decree No 21 of 1994. The composition of the Legal Practitioners Disciplinary Committee is as provided in the 1994 (Amendment) Decree No 21 and not the one contained in Cap. L11, LFN, 2004. This court is urged to hold that it has jurisdiction to hear appeals directly from the LPDC of the Body of Benchers.

In his brief of argument and further oral adumbration thereof, the Hon. Attorney General of the Federation, Mr. Mohammed Bello Adoke, SAN, as an Amicus Curiae made submission that the Supreme Court has jurisdiction to hear any appeal including the instant appeal filed directly against the direction of the LPDC despite the recent decision of this court in Jide Aladejobi v. Nigerian Bar Association. He conceded that under section 12 of the Legal Practitioners Act 1975 (Decree No.15 of 1975 (Principal Act)), an appeal against the direction of the LPDC could only lie to the Appeal Committee of the Body of Benchers. That was the law also under the 1990 LFN. The position, he stated, changed when the Legal Practitioners (Amendment) Decree No.21 of 1994 was promulgated. He cited the effect of the amendment introduced by sections 10 and 11 of the said Decree which now conferred jurisdiction on the Supreme Court to entertain appeals directly from the directions of the LPDC, with

effect from the 31st of July, 1992. The amendment, he said, had the effect of abolishing the Appeal Committee of the Body of Benchers. The Hon. Attorney General argued that the Legal Practitioners (Amendment) Decree No. 21 of 1994 has never been amended or repealed by any subsequent Decree or Act and therefore remains the applicable law on the subject matter. The learned Hon. Attorney General regretted the inadvertent omission made in the Legal Practitioners Act contained in Cap. L11 LFN, 2004 which did not reflect the substantial amendments made by the Legal Practitioners (Amendment) Decree No.21 of 1994. Despite the omission however, the Hon. Attorney General submitted that the 1994 amendment still represents the law which is that an appeal against the Direction of the LPDC shall lie directly to the Supreme Court and that this legal effect is achieved by virtue of the provisions of the Revised Edition (Laws of the Federation) Act 2007 which is the law that gives legal force to the Revised Edition of the laws of the Federation of Nigeria, 2004. He quoted and relied on Section 2 of the said Act. That Decree No. 21 of 1994 is still an existing law within the meaning of the provisions of section 315[1][a] and 4[b] of the 1999 Constitution having not been expressly repealed by any Act of the National Assembly and despite its inadvertent omission in Cap L11 of the LFN, 2004. The case of *Ibidapo v Lufthansa Airline* (1997) 4 NWLR (Pt.498) was referred to at page 124 where it was laid down that statutes are repealed not by reference or implication, but only by direct provisions in a written law. The learned Hon. Attorney General referred to the analysis made by Dr. Orojo, SAN at page 381 of his book on Professional Conduct of Legal Practitioners in Nigeria and the decision of this court in the case of *Okike* (supra) where this court recognized Decree No.21 of 1994 as the extant law in determining the jurisdiction of the Supreme Court to entertain appeals directly from LPDC and relied on same to entertain the appeal in that case. In his final submission, the amicus curiae (Hon. Attorney General) stated that in arriving at its decision in *Aladejobi's case* (supra) this court neither considered the Legal Practitioners' (Amendment) Decree No. 21 of 1994 nor the earlier decision of the court in *Okike's case* (supra). The *Okike's case* considered in *Aladejobi's case* was a different one, entirely which had nothing to do with the jurisdiction of the court to entertain appeals from the LPDC. This court, he argued, has the power to depart from

or overrule its previous decision where such decision was reached per incuriam. He mentioned other circumstances when this court may depart from or overrule its previous decision. He cited and relied on the case of *Nnubia v. Attorney General of Rivers State & 2 Ors* (2009) 40 NSCQR 90, 155 - 156. This court, he argued, arrived at its decision in *Aladejobi's* case without the benefit of consideration of the operative law (sections 10[e] and 11) of the Legal Practitioners (Amendment) Decree No. 21 of 1994. Equally, the attention of this court was not drawn to *Okike's* case (supra) not only as having been reached per incuriam but also as erroneous in law and in conflict with *Okike* (No.1) all of which are possible grounds for the court to overrule itself.

In its presentation both written and oral, before this court, the Nigerian Bar Association (NBA) represented by its Chairman, Mr. Okey Wali, SAN (herein below referred to as "Mr. Wali"), as an amicus curiae, made a comprehensive submission which I reproduce herein, in a summarized form. The question raised in the issue under consideration must be answered in the affirmative, that this court has jurisdiction to hear and determine appeals from the Legal Practitioners Disciplinary Committee (LPDC) as the law stands presently and going by the decision of this court in *Okike's* case (supra) which was predicated on the provisions of Section 12 subsections [6] and [7] of the Legal Practitioners Act, Cap 207 of the Laws of the Federation of Nigeria, 1990 as amended by the Legal Practitioners (Amendment) Decree No 21 of 1994. The said provisions and those of section 315[1] and [4][b] of the Constitution of the Federal Republic of Nigeria, 1999, were set out in his written brief of argument. It is argued that from the above provisions, it is clear that the Legal Practitioners Act, Cap 207 LFN, 1990 as amended by Decree No.21 of 1994 is an existing and valid law under the 1999 Constitution. Mr. Wali took an overview of relevant statutory provisions such as section 2 of the Revised Edition (Laws of the Federation of Nigeria) Act, 2007; the Revised Edition, LFN, 1990 section 3[1] and [2] thereof which take care of inadvertent omissions, alterations or amendments of any existing statutes, not to affect the validity and applicability of the statute and that the Attorney General of the Federation has the power to specify a schedule of enactments which may not be included in the computation of statutes. He also analyzed some judicial decisions such

as the case of *Ibidapo v Lufthansa Airlines* (supra) in which this court considered the effect of omission of a statute from a compilation of statutes in relation to LFN 1990. Other cases cited are: *Raleigh Industries (Nig.) Ltd v. Nwaiwu* (1994) 4 NWLR (Pt.341) 760 and *Taleglobe America. Inc. v. 21st Century Technologies Ltd.* (2008) 9 B CLRN 32, among others.

On the effect of repealed statutes, Mr. Wali, SAN, argued that, as the courts have held in several decisions, such as in *Ibidapo's* case (supra), courts will not ordinarily imply the repeal of a statute and where it is intended to repeal a legislation, this should be expressly stated and an omission may not necessarily amount to a repeal of legislation unless 'there exists clear proof to the contrary. The court will not imply a repeat unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time. The cases of *Uwaifo v. Attorney General of Bendel State* (1982) 7 SC 124 at 191 and *Olu of Warri v. Kperegbeyi* (1994) 4 NWLR (Pt.339) 416, were cited in support of the stated principle of law above that unless there is a specific statutory provision replacing an earlier statute, the courts are unlikely to hold that a statute has been repealed, except in a situation where two statutes are so repugnant to each other that effect cannot be given to both at the same time. Mr. Wali, SAN, argued further that unless a law is repealed by the legislature which is the body vested with the power to make laws under the 1999 Constitution, its omission from an authorized compilation of laws will not amount to a repeal. He referred to section 315 of the Constitution 1999 (as amended) and the case of *Governor of Kaduna State v. Kagoma* (1982) 6 SC 45 at 54 lines 32 - 41 (reprint edition).

In relation to Decree 21 of 1994, Mr. Wali, SAN; submitted that the purpose of Decree No. 21 of 1994 is to amend the Legal Practitioners Act, 1975. Furthermore, the Decree has, strictu sensu also repealed section 12 of the Principal Act, i.e. as it is contained in the 2004 LFN compilation (Cap. L11). He stated that the compilation of the provisions of section 12 of the Principal Act can at best be described as erroneous and as such, it is of no moment since there is yet no law that has clearly repealed the 1994 Decree No. 21. Further, although the Legal Practitioners (Amendment) (Repeal) Decree No. 43, 1998 which is omitted from the LFN 2004 on its face appears to repeal Decree No.21 in actuality the law is very much alive and sub-

sisting. Mr. Wali, SAN, set out the wordings of Decree No. 43 of 1998 and argued that by subsection [2] of that Decree, the legal effect of that subsection is that the 1994 Decree No. 21 is still good law and existing and any reliance placed on that law is valid. The Legal Practitioners (Disciplinary Committee) (Amendment) Rules S.1.17, 1994, made pursuant to Decree No.21 of 1994 is still subsisting. Mr. Wali, SAN, set out the chronology of all the amendments made to the Principal Act.

In respect of Aladejobi's case (supra) Mr. Wali, SAN, made the following submissions: that in arriving at its decision in the case, this court was informed of the obsolete provision of section II subsection 7 of the Legal Practitioners Act as published in the LFN, 2004 which entitles a person aggrieved by the Direction of the LPDC to appeal within 28 days to the Appeal Committee of the Body of Benchers established under section 12 of the Act. Mr. Wali, SAN, however made an important observation in paragraph 9.03 of his brief of argument as follows:

"This is understandable in view of the omission in the current revised laws of the federation and our failure to ensure the correction of the error as expected."

Mr. Wali, SAN, conceded that the decisions in Okike's case No.1 (supra) was not brought to the attention of the court in Aladejobi's case and that the necessary machinery being the laid down criteria for this court to overrule itself was not in place to warrant the conclusion that what happened in Aladejobi's case was an occasion where this court overruled its decision in the Okike's case, or itself as it looks. He conceded further that it is trite law that this court can only overrule itself upon fulfillment of certain conditions as stated in this court's Rules, Order 6 Rules 5[4]. This procedure, he submitted, was not followed by any of the parties in Aladejobi's case and this court was never called upon to depart from its previous decision in Okike's case. Thus, the decision in Okike's case is valid and subsisting. Mr. Wali, SAN, argued further that what now exist are two parallel judgments of this court which appear to have now created a conflict. He argued that in such a situation, decision of the court as a full panel is the position in the present circumstance and same ought to be preferred. He referred to several authorities: *Eweta v. Gyang* (2003) 28 NWLR (Pt.816) 345 at 374 C - F; *Dalhatu v. Turaki* (2003) 15 NWLR

(Pt.843) 310 at p.341 - D-F. He enjoined this court to give effect to the provision of Decree No. 21 of 1994 as it is the extant law on the issue of the procedure for discipline in the legal profession. He cited and relied on the case of *Ajayi v. Military Administrator Ondo State* (1997) 5 NWLR (Pt.504) 237 at p.271 - E.

B Further submissions made by Mr. Wali, SAN, are that there is no Appeal Committee in existence, same having been abrogated with the amendment of the old law; the present suit (appeal) is an apt situation for this court to overrule itself as the conditions laid down in the rules of this court referred to have been met in this case, quite C unlike in *Aladejobi's* case; *Okike's* case was predicated on the provisions of Legal Practitioners Act Amendment Decree No. 21 of 1994 which is the extant law incorporated into Laws of the Federation by section 315 of the 1999 Constitution while *Aladejobi's* case was de- D cided on the provision of the Legal Practitioners Act (Amendment) by Decree No. 46 of 1988 as contained in the Revised LFN 2004, which said Act had been further amended by Decree No. 21 of 1994 this court cannot by the decision in *Aladejobi's* case repeal the provi- E sion of the Legal Practitioners Act as amended by Decree No. 21 of 1994 as decision of a court does not repeal a statute. The case of *Udo Trading Co. Ltd V Abere* (2001) 11 NWLR (Pt.723) 114 at 144 - 145 H - A, referred to; the decision in *Aladejobi's* case was given in error as the provisions of section 11[7] of the Legal Practitioners Act F 1962 upon which that decision was based had been amended by the provision of Legal Practitioners Act (Amendment Decree) No. 21 of 1994 which removed the word "*Appeal Committee of the Body of Benchers*" and replaced it with the word "*Supreme Court*", thus vest- G ing the court with jurisdiction to hear appeals from the Directions of the Legal Practitioners Disciplinary Committee. The learned SAN, Mr. Wali, invited this court to overrule itself and depart from its decision in *Aladejobi's* case.

My lords, now that this issue has reared its head again, it is important, vital and inescapably necessary to make an in-depth analy- H sis of the nagging issue: to which court or Body lies an appeal from the Direction of the Legal Practitioners' Disciplinary Committee of the Body of Benchers?

Historical Perspective

I adopt the introductory part of this ruling in respect of the

issue on hand. On an equal footing, it is pertinent, for the sake of comparison to state in summary, the initial facts which gave rise to the cases of *Okike v. The Legal Practitioners Disciplinary Committee (No.1) (2005) 3 - 4 SC (2005) All FWLR (Pt.266) 1176*; and *Aladejobi v Nigerian Bar Association (2013) 15 NWLR (Pt.1376) 66 (2013) LPELR, 20940*). The facts in *Okike's* case (referred to as *Okike No.1*)^B are that Charles Okike as an appellant in this court and as a legal practitioner, filed a notice of appeal on the 25th of February, 2004, challenging the directions issued against him by the LPDC (respondent in the appeal) on the 3rd of April, 2003, in which it was directed^C that his name be struck off the Legal Practitioners' Roll in addition to the refund of the sum of \$123,000 00 by Mr. Okike to the complainant.

When the appeal came up for hearing on 12th October, 2004, the court (Kutigi, Uwaifo, Musdapher, Pats-Acholonu and Akintan JJSC (as they then were), suo out, raised the Constitutional point: whether in the light of the provisions of section 233 of the Constitution of the Federal Republic of Nigeria, 1999, the Supreme Court had the jurisdiction to entertain the appeal, given the fact that the said section 233 restricts the appellate jurisdiction of the court to hearing^E appeals from the Court of Appeal only. In other words, whether this court could hear appeal from any other court or tribunal than the Court of Appeal.

As the court was not properly Constituted to hear the Constitutional point raised, the case was adjourned for a full court to be empaneled.^F The parties were directed to file briefs of argument in support of the position they would take on the adjourned date. This was done and one Mr. Ubong Etop Akpan was given permission to appear as an amicus. He too filed a brief of argument. The interesting thing common to this case and the matter under consideration is that learned counsel for the parties and Mr. Akpan had all presented a common stand that this court had the competence to hear appeal from the decisions (directions) of the LPDC as provided by section 12[7] of the Legal Practitioners Act, Cap. 207 (as amended in 1994).^H

At the end of hearing, this court sitting as a full court Uwais, CJN, Belgore, Kutigi, Ejiwunmi, Musdapher, Pats-Acholonu and Akintan, JJSC (as they then were) held unanimously that this court amply had jurisdiction to hear the appeal from the LPDC's direction.

The appeal was then fixed for hearing on the 28th of April, 2005. On that date a full panel of the court (as shown above) heard the appeal and judgment was delivered by that panel on 15th July, 2005. The judgment in this case is what culminated into *Okike v. The LPDC* reported in (2005) 15 NWLR (Pt.949) 471, which is simply referred to as “*Okike No.2.*”

In *Jide Aladejobi v Nigerian Bar Association* delivered on 12th July, 2013 in Appeal No. SC. 121/2011, now reported in (2013) LPELR 20940, (simply referred to as “*Aladejobi’s case*”), the facts are as follows: On the 16th day of March, 2005, the Nigerian Bar Association (NBA) addressed a complaint to the LPDC against Mr. Jide Aladejobi, a member of the Legal Profession. The complaint was based on a petition by one Mrs. Victoria Akinyele Aliu through her solicitors - Mike Umunnan & Co. which alleged that Mr. Aladejobi (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, 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.

After considering the evidence placed before it, the LPDC found the appellant liable 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.

Dissatisfied with the Direction, the appellant filed his appeal to this court. Briefs of arguments were settled by the parties.

On the hearing date of the appeal, learned counsel for the respective parties adopted and relied on their various briefs. The learned counsel for the respondent however drew the court’s attention that he raised in his brief a notice of Preliminary Objection (pp. 5 - 6 of the brief) which he moved accordingly. In the said Preliminary Objection, the learned counsel prayed this court to strike out the appellant’s Notice of Appeal dated 20th day of July, 2010 and afortiori, dismiss the issues for determination distilled in the appellant’s brief of argument from the incompetent grounds of appeal. The following are the grounds upon which the Preliminary Objection was premised:

i. By virtue of section 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 22nd 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 22nd day of February, 2011 without first appealing to the Appeal Committee of the Body of Benchers. B

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. C

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. D

vi. This appeal is incompetent.

The panel that heard the appeal: (I. T. Muhammad; J. A. Fabiyi; S. Galadima; M. D. Muhammad; and S. S. Alagoa, JJSC, [with the latter now retired]), adjourned the appeal for judgment on the 12th day of July, 2013. On that date, and as it is the usual practice, we considered the Preliminary Objection first and we found it meritorious. We sustained it and unanimously held that the appeal was incompetent and struck same out on the basis of lack of jurisdiction by this court to consider the appeal from the direction of the LPDC in line with the provision of section 12[1] and [21] of the Legal Practitioners Act, Cap L11, LFN 2004. E F

Similarities and Dissimilarities between Okike No. 1, Aladejobi's and Akintokun's cases: G

My Lords, the appellant in each of the three (3) cases: Mr. Okike, Mr. Aladejobi and Mr. Akintokun; was/is a member of the Legal Profession with license to practice Law in Nigeria.

1. The Committee set-up by the Body of Benchers to checkmate conduct of legal practitioners who are alleged to have acted contrary to the provisions of the legal practitioners Act tried and found each of the 3 appellants in the respective cases, liable of some misconduct against the legal profession. H

2. Each of the 3 appellants was punished according to law.

3. In Okike's case, issue of jurisdiction of this court to entertain any appeal from any other Body/Tribunal apart from the Court of Appeal as recognized by section 233 of the 1999 Constitution, was raised suo motu, by the panel members of this court as constituted then.

B 4. The issue raised suo motu, by this court in Okike's case was constitutional in nature and it required the full complement of the court.

5. Equally, issue of jurisdiction was suo motu, raised by this court in Akintokun's appeal but now in relation to Aladejobi's case.
C This gave rise to the present full panel to consider this issue of jurisdiction.

6. In Aladejobi's case, on the other hand, a Preliminary Objection was raised by the respondent to the appeal in conformity with
D what the current law provides in relation to appeal by aggrieved parties from the direction of the LPDC of the Body of Benchers.

An overview of Legislations pertaining to the conduct of Legal Practitioners.

E Legal Practitioner Act, Cap 101 of the Laws of the Federation of Nigeria and Lagos, 1958 (in vol. iv) provided:

1. "20. *The Attorney-General may require any person who makes allegations of misconduct against any legal practitioner to support such allegations by an affidavit setting out the facts on which he relies as proof of the misconduct.*

F 21.[1] *The committee on the termination of the inquiry shall embody their findings in the form of a report to the Federal Supreme Court and the report shall be signed by the chairman and filed in the office of the Chief Registrar, and shall be open to inspection by the*
G *party charged and any legal practitioner assisting him, but shall not be open to public inspection.*

[2] *if the committee are of the opinion that no prima facie case of misconduct has been made out they need not proceed further, but if they are of the contrary opinion it shall be their duty to bring*
H *the report before the Federal Supreme Court together with the evidence taken and the documents put in evidence at the inquiry.*

32.[1] *The powers conferred in the following sections of this Ordinance upon the Federal Supreme Court shall be exercised by any three of the judges of such court.*

[2] The decision of the majority of the three judges, in case they shall not agree in their opinion, shall be taken to be the decision of the Federal Supreme Court.

33. The Federal Supreme Court may refer the report back to the committee with directions for their finding on any specified point.

34. The Federal Supreme Court may set the report down for consideration for a date fourteen days' notice of which shall be given to the committee and to the legal practitioner concerned by the Chief Registrar who shall forward with the notice copy of the report. The notice aforesaid shall be as in Form B in the Schedule.

35. The Committee and the legal practitioner may appear by counsel or a solicitor before the Federal Supreme Court at the consideration of the report.

36. The Federal Supreme Court after considering the evidence taken by the committee and the report, and any evidence taken by a judge under the next section, and after taking any further evidence, if it thinks fit to do so, may admonish the legal practitioner or suspend him from practicing in the Federal Supreme Court during any specified period, or may order the Chief Registrar to strike his name off the roll of the court.

37.[1] Any judge of the Federal Supreme Court shall have power, after considering the evidence taken by the committee and the report and after taking any further evidence if he thinks fit to do so, suspend the legal practitioner from practicing in the Federal Supreme Court, temporarily, pending the consideration of the case and the confirmation or disallowance of such suspension by the Federal Supreme Court.

[2] The provisions of sections 33, 34 and 35 shall, mutatis mutandis, apply to any proceedings under this section."

2. Section 6 subsection [3] and section 7 subsection [1] and [6] of the Legal Practitioners Act, 1962 No.33 which replaced the 1958 Cap. 101, provided as follows:

6.[3] There shall be a body, to be known as the Legal Practitioners Investigating Panel (and hereafter in this Act referred to as "the panel"), which shall be charged with the duty of conducting a preliminary investigation into any case where it is alleged that a person whose name is on the roll has misbehaved in his capacity as a legal practitioner or should for any other reason by the subject of

proceedings before the tribunal, and of deciding whether the case should be referred to the tribunal.

7. [1] where –

- a. a person whose name is on the roll is judged by the tribunal to be guilty of infamous conduct in any professional respect; or
- B b. a person whose name is on the roll is convicted, by any court in Nigeria having power to award imprisonment, of an offence (whether or not an offence punishable with imprisonment which in the opinion of the tribunal is incompatible with the status of a legal practitioner; or

C c. the tribunal is satisfied that the name of any person has been fraudulently enrolled, the tribunal may, if it thinks fit, give a direction

-
- i. ordering the registrar to strike that person's name off the roll;
- D ii. suspending that person from practice by ordering him not to engage in practice as a legal practitioner for such period as may be specified in the direction; or

E iii. admonishing that person and any such direction may include provision requiring a refund of money paid, or the handing over of documents as the circumstances of the case may require.

[6] 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 Federal Supreme Court; and the tribunal may appear as 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 tribunal, shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.

G 3. In addition, Section 12 subsections [6] and [7] of the Legal Practitioners Act, Cap. 207 of the Laws of the Federation of Nigeria, 1990, as amended by the Legal Practitioners (Amendment) Decree, 1994, No.21 of 1994, provides:

H 12.[6] when the disciplinary committee gives a direction under subsection [1] or subsection [2] of this section, the disciplinary committee shall cause notice of the direction to be served on the person to whom it relates and submit to the Body of Benchers a report on its findings which resulted in the issuance of the notice.

[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 notice of the direction, appeal against the direction to the Supreme Court established under section 12 of this Act; and the disciplinary committee may appear as respondent to the appeal, for the purpose of enabling directions to be given as 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.”

4. There were (4) three Decrees in 1993: No. 21, No. 38 and No. 120 which made further amendments to the existing legislations. C

5. Decree No.120 of 1993 repealed the legal practitioners [amendment] Decrees Nos. 21 and 38 of 1993.

6. Decree No.21 of 1994, provided as follows:

“9. Immediately after the amended section 10 of the principal Act, there shall be inserted a new section 11 as follows, that is - D

11. [1] There shall be a committee of the Body of Benchers to be known as the Legal Practitioners Disciplinary Committee (in this Act referred to as “the disciplinary committee”) which shall be charged with the duty of considering and determining any case where it is alleged that a person who is a member of the legal profession has misbehaved in his capacity as such or should for any other reason be the subject of proceedings under this Act. E

[2] The disciplinary committee shall consist of:-

a. a chairman who shall not be either the Chief Justice of Nigeria or a Justice of the Supreme Court; F

b. two Justices of the Court of Appeal one of whom shall be the President of the Court of Appeal;

c. Two Chief Judges;

d. two Attorneys-General, who shall be either the Attorney-General of the Federation and the Attorney-General of a state or two state Attorneys-General; and G

e. four members of the association who are not connected with either the investigation of a complaint or the decision by the association to present a complaint against a legal practitioner as determination by the disciplinary committee H

10. The existing section 11 of the principal Act is amended by

-

a. renumbering the section as section 12

b. substituting for the words 'is on the roll' appearing in paragraphs [a] and [b] of subsection [1], the words 'is a member of the legal profession'.

c. Substituting for the existing subsection [4] a new subsection [4] as follows, that is:-

B *(4) it shall be the duty of the ...to make rules from time to time...*

d. inserting immediately after the word 'relates' appearing in subsection [6] thereof the following words 'and submit to the Body of Benchers a report on its findings which resulted in the issuance of the notice; and

e. substituting for the words "Appeal Committee of the Body of Benchers appearing in subsection [7] of this section the words "Supreme Court."

D 11. Section 12 of the principal Act is hereby repealed."

7. Decree No. 43 of 1998...

6 Decree No.43 of 1998 - The title of this Decree is as follows:

"Legal Practitioners (Amendment) (Repealed) Decree 1999."

E The commencement date of that Decree was 26th December, 1998. It provided as follows:

"The FEDERAL MILITARY GOVERNMENT hereby decrees as follows:

1. (1) The Legal Practitioners (Amendment) Decree 1993, as amended is hereby repealed.

F *2. The repeal of the enactment specified in subsection (1) of this section shall not affect anything done or purported to be done under the repealed enactment.*

G *3. This Decree may be cited as the Legal Practitioners (Amendment) Decree 1998."*

It is to be noted that the marginal notes indicated the repeal of 1993 No.21; 1993 No.38; 1994 No.21. Further, the end notes or explanatory note stated that:

H *"The Decree repeals the Legal Practitioners (Amendment) Decree 1993 as amended."*

A fortiori, this Decree did not amend the 1994 Decree, Thus, up to 1998, Decree No.21 of 1994 was not affected by any amendment. It appears also that there was no further amendment by any Decree/Act which altered the position of Legal Practice as contained

in Decree No.21 of 1994 until the emergence of the 2004 Act as contained in Cap L11 of the LFN, 2004.

[8] Cap L11 Legal Practitioners Act, 2004

Section 25 of this Act provides as follows:

“This Act may be cited as the Legal Practitioners Act.”

An “Act”, as reflected above and in our own dispensation, refers to Act of the National Assembly which is the only body that makes laws for the federation of Nigeria. B

In our Constitution of the Federal Republic of Nigeria 1999 (as amended), the interpretation section thereof, gives the following interpretation to the word/phrase “Act” or “Act of the National Assembly”: C

“‘Act’ or ‘Act of the National Assembly’ means any law made by the National Assembly and includes any law which takes effect under the provisions of this Constitution as an Act of the National Assembly.” D

Each learned counsel representing the parties and the amicus curiae in this matter, stated his understanding of Cap L11, Legal Practitioners Act 2004, cited above. Learned Senior counsel, Chief Ayorinde, submitted in his brief in support of the issue under consideration as follows: E

“5.7. Furthermore, section 11 of the Legal Practitioners’ Act and Decree No.15 of the 1975 Cap 207, Laws of the Federation of Nigeria, 1990 which deals with penalties for unprofessional conduct by Legal Practitioners was amended and renumbered as section 12 by section 10 of the Legal Practitioners Amendment Decree No.21 of 1994. However, this important re-numbering of section 11 of the Legal Practitioners Act Cap 207, Laws of the Federation, 1990 was not reflected in the revised Laws of the Federation of Nigeria Cap L11 2004.” F

5.9. It is therefore submitted that the Legal Practitioners Act, Cap L11 in the Laws of the Federation of Nigeria 2004 did not take cognizance the substantial amendments made by the Legal Practitioners Act (Amendment) Decree No.21 of 1994. To that extent it does not represent state of the law. H

5.10. It is the cardinal principle of the law that statutes are not repealed by reference or implication but by direct provision of the law. See Ibidapo v. Lufthansa Airlines (1997) 4 NWLR (Pt 498) 124

The Legal Practitioners Act, Cap L11 Laws of Federation of Nigeria, 2004 having not specifically recognized the substantial amendments made by 1994 Decree, the state of the law is still as stated in the provisions of Legal Practitioners Act (Amendment) Decree No.21 1994 which state (sic) that an appeal against the Direction of the Legal Practitioners Disciplinary Committee lies to the Supreme Court.

In his submission, learned counsel Mr. Aguma, stated as follows:

“There is no provision of the Revised Edition (Laws of the Federation of Nigeria) Act that enacted the Revised Laws of the Federation 2004 that empowers the reviewers of the Law or the Honourable Attorney General to either repeal or amends the Legal Practitioners Act (Amendment) Decree No 21 of 1994. Moreover, this Honourable court had held, in Okike v. The Legal Practitioners Disciplinary Committee (No.1) (supra) that the Legal Practitioners Act (Amendment) Decree No.21 of 1994 is an existing law

(4). The omission of the 1994 amendments to the Legal Practitioners Act in the Legal Practitioners Act Cap L11, LFN, 2004 did not invalidate them as they had not been expressly repealed and are saved by section 2 of the Revised Edition (Laws of the Federation of Nigeria) Act.”

The Honourable Attorney General of the Federation, as an amicus curiae made his submissions on the issue as follows:

“3.5. My Lords, the Legal Practitioners (Amendment) Decree No.21 of 1994 has never been amended or repealed by any subsequent Decree or Act and therefore remains the applicable law on the subject matter. Regrettably however, the Legal Practitioners Act as published in Cap. L11 Laws of the Federation of Nigeria (LFN), 2004 had inadvertently omitted to reflect the substantial amendments made by the Legal Practitioners Amendment) Decree No.21 of 1994.

3.6. It is the respectful submission of Amicus Curiae that despite the omission to include the 1994 amendment into the Legal Practitioners Act, Cap L11 LFN, 2004, the 1994 amendment still represents the law which is that an appeal against the Direction of the Legal Practitioners Disciplinary Committee shall lie directly to the Supreme Court. This legal effect is achieved by virtue of the provisions of the Revised Edition (Laws of the Federation of Nigeria) Act 2007 which is the Law that gives legal force to the Revised Edition of

the Laws of the Federation of Nigeria LFN) 2004.

3.7. It is also submitted that the Legal Practitioners Amendment Decree No.21 of 1994 is still an existing law within the meaning of the provisions of section 315(i)(a) and 4(b) of the 1999 Constitution having not been expressly repealed by any Act of the National Assembly and despite its inadvertent omission in Cap. L11 of the LFN, 2004... B

3.10 In the light of the foregoing, it is submitted that the Legal Practitioners (Amendment) Decree No.21 of 1994 which provides that appeal shall lie from the direction of the LPDC to the Supreme Court is and remains part of the extant laws of the Federal Republic of Nigeria irrespective of its inadvertent omission in Cap. L11 LFN 2004. C

The Nigerian Bar Association as an Amicus Curiae, made its submission on 2004 LFN, Cap. L11 as follows: D

“9.12. In the instant case, the provisions of the Legal Practitioners Act (LPA) Amendment Decree No.21 of 1994, modified the provisions of the original Act i.e. Legal Practitioners Act (L.P.A.) Cap 207 of the Laws of the Federation of Nigeria, 1990, and it is thus, the extant law on the issue of the procedure for discipline in the legal profession. The omission of the 1994 Amendment in the Revised Edition of the LFN 2004 cannot and does not render the LPA Amendment No.21 decree of 1994 invalid. It is thus the valid and extant law. We urge your Lordships to so hold.” E

Mr. Wali, for the NBA, concluded his submission, generally, by stating as follows: F

“It is our view that what is worth doing is worth doing well. The state of the applicable laws for the Legal Practitioners before the 2004 compilations was to say the list (sic) confusing. Unfortunately, the 2004 compilation compounded the situation. There is now a great need to take advantage of the on-going review of the LPA at the National Assembly to set things right and to procure the right LPA for today's legal practitioner. This done, the courts will no longer find themselves in a position where they have to rely on erroneous compilations to declare null, void, repealed or dead, law which are otherwise fully in existence.” H

9. Revised Edition (Laws of the Federation of Nigeria) Act, 2007.

The explanatory Memorandum to this Act provides as follows:

“This Act gives effect to the revised laws of the Federation of Nigeria, 2004 made under the authority of the Attorney General of the Federation and Minister of Justice.”

B Thus, it is an Act to enable effect to be given to the Revised Edition of the Laws of the Federation of Nigeria, 2004. It is referred to as No.30 of 2007. Its commencement date was the 25th day of May, 2007.

C It is to be noted that not much was said by the stakeholders in this matter including the amicus curiae, more particularly, the Hon. Attorney General of the Federation. (I shall revisit this Act which for short, I shall be referring to as “2007 Act”). It is to be noted further that none of them, either in their respective briefs of argument or in oral adumbration thereof, commented on the status of the 2004 Act; whether it was an Act of the National Assembly or not; whether the courts established by the Constitution of the Federal Republic of Nigeria, 1999 (as amended), including this court, should not rely upon and apply the enactments contained therein in particular, the Legal Practitioners Act, Cap L11, Laws of the Federation of Nigeria, 2004,

E Let it be noted again, my Lords, that at no point in time, in our earlier judgment in Aladejobi’s case (supra), did this court ever say:

i. that it repealed or purported to repeal Decree No.21 of 1994, or declared the Law contained therein as non-existent.

F ii. that the panel that sat on Aladejobi’s case (supra) overruled the earlier decision of the court in the case of Okike No.1 (supra)

iii. if there is any omission or oversight in any law as passed by the legislature or as compiled by an authority authorized to do so, it may not be known to this court except where the court’s attention is drawn to such an omission, alteration, oversight etc. All learned counsel in this matter are agreed with us that nobody drew the attention of this court to any such omission or oversight in relation to the 2004 Act in Aladejobi’s case. It is not the duty of this court to go out of its way to fish out facts. See: Bhojson Plc v. Kako (2006) 141 LRCN 2355 at pp 2407 - 2408; Abubakar v. Yar’Adua (2009) 166 LRCN 1. Even if there is any omission, it is not the duty of this court to fill in the gap or correct that omission.

Role of Courts of Law

Williams J. Hughes, in his *“Federal Practice, Jurisdiction & Procedure”* (1931) described a court of law as: -

“a permanently organized body, with independent Judicial powers defined by law, meeting at a time and place fixed by law for the judicial public administration of justice.”

The judicial powers defined by law, in our case, the Constitution of the Federal Republic of Nigeria, and of course other enabling laws, are as set out in these laws for instance, the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides as follows:

“6(1) The Judicial powers of the Federation shall be vested in the courts to which this section relates, being courts established for the Federation.

(2) The Judicial Powers of a State shall be vested in the courts to which this Section relates, being courts established subject as provided by this Constitution, for a state.”

Such courts as are listed in subsection 5(a) to (i) of section 6 are termed *“Superior Courts of Record”* and the powers of each is given under the Section which establishes it, in addition to other laws. For instance, section 230(1) establishes the Supreme Court of Nigeria which shall have power/jurisdiction to exercise on appeals emanating from the Court of Appeal: Original Jurisdiction on some matters and such other cases as may be prescribed by an Act of the National Assembly. This court entertains also questions on interpretation of the Constitution which have arisen from the Court of Appeal (S. 233(2) and 295(3) of the Constitution).

Primarily, and this is elementary, the duty or responsibility of the courts is to interpret and apply laws by whatever name called, including Acts/laws of the National/State Assemblies. Courts do not make laws Courts, do not amend or repeal laws/Acts of National or State Assemblies. These certainly, are functions of the Legislature. Courts have no power to add or reduce any provision made by the Legislature. All that the Judges are required to do as operators of the courts is to interpret/apply the law as it is, based on the judge’s understanding. In that process, of course, judges are not infallible. They can make human errors. Infallibility belongs only to God. Oputa, JSC, once said it in the case of *Adegoke Motors Ltd. v. Adesanya* (1989) 13 NWLR (Pt.109) 250 at p. 275A.

“We are final not because we are infallible, rather we are infallible because we are final. Justices of this court are human beings, capable of erring. It will certainly be shortsighted arrogance not to accept this obvious truth. It is also true that this court can do inestimable good through its wise decisions similarly the court can do incalculable harm through its mistakes. When therefore it appears to learned counsel that any decision of this court has been given per incuriam, such counsel should have the baldness and courage to ask that such a decision be overruled. This court has the power to overrule itself (and has done so in the past) for it gladly accepts that it is for better to admit an error than to persevere in error.”

The laws contained in the 2004 edition of the Laws of the Federation were described as:

“a body of Laws of the Federal Republic of Nigeria that is accurate, authentic and accessible to all.”

(Per Ayoola, JSC, Chairman, Law Revision Committee in his preface to the 2004, LFN). Chief Olujinmi, SAN, the then Hon Attorney-General of the Federation and Minister of Justice, under whose tenure the 2004 LFN, saw the light of day, concluded in his foreword to the 2004 LFN, that the edition contained the laws of our country and they are:

“a true and authentic record of the Laws of Nigeria for the period covered.”

The challenge against the 2004, LFN that there is no law backing it has been countered by the present Attorney General of the Federation and Minister of Justice Mr. Adoke, SAN in his submission on this matter, as an amicus curiae when he stated, inter alia:-

The Revised Edition (Laws of the Federation of Nigeria) Act 2004 (which) is the law that gives legal force to the Revised Edition of the Laws of the Federation of Nigeria (LFN) 2004.

Now, the Revised Edition (Laws of the Federation of Nigeria) Act, No. 30 of 2007 referred to by the Attorney General of the Federation (immediately quoted above) is enacted by the National Assembly to enable effect to be given to the Revised Edition to the Laws of the Federation of Nigeria, 2004. It is pertinent to set out below some sections of that Act:

“1. Approval of the Revised Edition of the LFN 2004. The Laws of the Federation of Nigeria compiled and published in 2004

under the authority of the Attorney General of the Federation and Minister of Justice are hereby approved by the National Assembly."

Although the word "approval" or "approved" is not ordinarily used in legal drafting and especially in legislative drafting to convey assent, it however connotes as it is used in section 1 quoted above, from the purport of the section that the National Assembly has given its assent to the collection of all the laws in the 2004 edition of the Laws of the Federation. Even in the Ordinary day to day use of the English Language, the word "approve" means to accede to, accept' acquiesce in, adopt, affirm, agree to, allow, assent to, authenticate, authorize, be in favour of, be satisfied with, endorse, confirm, consent to, make valid, sustain, uphold, support etc. Thus, by "approving" the 2004 Revised Edition of the LFN, the National Assembly had certainly given its assent to it. And, I think, where the National Assembly approves it in its position as a Legislative House(s), it must take the form of a Law passed by the National Assembly except of course, where the contrary is shown.

Further, in his preface to the 2007 LFN edition, the Hon Attorney General of the Federation confirmed to all and sundry that all the Acts assented to by Mr. President (2007 - 2010) were contained therein including the one that gave legal effect to the 2004 LFN edition. There is, therefore, every reason for a person to place total reliance on any provision of the Laws contained in the 2004 LFN as authentic and having the force of law. Not only courts of law alone, but practicing lawyers, legal authors and researchers cite and place reliance on the 2004 edition of the revised LFN. For instance, in its book titled *"The Supreme court of Nigeria 1990 - 2012"*, edited by Prof. Epiphany Azinge et al, the Nigerian Institute of Advanced Legal Studies, in one of the articles published: *"The Relationship Between Bar and Bench in Nigeria"*, the authors, Anyebe, et al, made several references to the Legal Practitioners Act, 2004. (pp.666 - 682); a recent publication: *"Evidence Law: Theory and Practice in Nigeria"* by J.O. Amupitan (Ph.d) also made several references to the Laws of the Federation 2004 (see pages 439, 314, 315, 329, 493, 570 etc).

So, as far as this court is concerned, all laws contained in the edition of the Laws of the Federation of Nigeria, 2004

are authentic Laws of the Federation, having the force of law/legislation. They are not meant for cosmetic show. They must be respected and applied. This court is duty bound to give effect to any of such laws including the Legal Practitioners Act Cap. L11, LFN, 2004. This is what we did in the case of

B Aladejobi (supra). We considered the legal effect of sections 11(7) and 12(1) of the Legal Practitioners Act, Cap L11, LFN 2004. My learned brother, Fabiyi, JSC, in his leading decision, held, among others, as follows:

C *“The word shall as employed in the law denotes obligation or a command and gives no room for discretion. If imposes a duty. A peremptory mandate is enjoined... 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*
D *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 22nd February, 2011 by the Disciplinary Committee without first appealing to the Appeal Committee of the Body of Benchers. It hardly*
E *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.*

F *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. . The law provides that the appellant should appeal to the Appeal Committee of the Body of Benchers. He must exhaust all the remedies by filing his appeal at the*
G *Appeal Committee from where he may have a lee-way, to imbue this court with jurisdiction.”*

The other four justices on the panel agreed with the leading judgment.

My lords, I have set out the antecedents of the appeals in Okike
H No.1; Aladejobi and Akintokun. I have also reviewed all the enactments in respect of disciplining of erring Legal Practitioners from both the extinct and the extant laws. If I may, with respect, ask: where have we gone wrong? At the risk of repetition, Chief Ayorinde, SAN, submitted:

“that the decision of the Supreme Court in the Aladejobi case was decided per incuriam and under an error of law and of facts.. It must be noted that the decision of the Supreme Court in the case of Charles Okike v. The Legal Practitioners Disciplinary Committee (No 1 reported in 2005 3-4 SC 49 was never considered at all and never overruled in the Aladejobi case. What was considered in the Aladejobi case is the case of Okike v. LPDC (No.2) reported in (2005) 15 NWLR (Pt 949) at 471 which is clearly different and distinct from the case of Okike v. LPDC (No.1) reported in (2005) 3 - 4 SC 49... In view of the fact that the above quoted decision of the Supreme Court was not considered in the Aladejobi’s case was decided in error. We submit that the principle of law decided in the case of Okike v. LPDC (No.1) is still valid and subsisting and it is the law to be followed as regards the jurisdiction of the Supreme Court with regards to entertaining appeals from the directions of the Legal Practitioners Disciplinary Committee. This is so especially when the Supreme Court never even considered or overruled its decision in the Aladejobi case... Assuming that the case of Okike v. LPDC No.1 was even considered by this court in the Aladejobi case this Honourable Court is hereby invited to depart from its decision in the Aladejobi’s case...

The Legal Practitioners Act, Cap. L11 in the Laws of the Federation of Nigeria, 2004 did not take into recognizance the substantial amendments made by the Legal Practitioners Act (Amendment) Decree No 21 of 1994. To that extent it does not represent state of the law.”

Mr. Aguma submitted that Aladejobi v. Nigerian Bar Association (supra) was decided per incuriam in that Okike v. The Legal Practitioners Disciplinary Committee (No.1) (supra) was never considered and that the omission of the 1994 amendments to the Legal Practitioners Act in the Legal Practitioners Act Cap. L11 LFN 2004 did not invalidate them as they had not been expressly repealed and are saved by Section 2 of the Revised Edition (Laws of the Federation of Nigeria) Act.

Mr. Adoke, SAN, the Hon. Attorney General of the Federation and Minister of Justice an amicus curiae, submitted as follows:

“Amicus Curiae most humbly submits that this Honourable Court in arriving at its decision in ALADEJOBI V. NBA in which it declined jurisdiction to entertain an appeal from LPDC, neither con-

sidered the *Legal Practitioners (Amendment) Decree No.21 of 1994* nor the earlier decision of the Court in *OKIKE V. LPDC (No.1)*, it is pertinent to note that what the court referred to and distinguished in *ALADEJOBI* was *OKIKE V. LPDC (NO.2) (2005) All FWLR (Pt 274) 337* which was a different case that did not deal with the jurisdiction of the Supreme Court to entertain appeals from LPDC unlike *OKE V. LPDC (NO 1)* been brought to the attention of this Honourable Court in *ALADEJOBI*, it most probably would have taken a different view and confirmed its jurisdiction to hear appeals of this nature.

My Lords, it is settled law that this Honourable Court has the power to depart from or overrule its previous decision where such decision was reached *per incunam*. Apart from *per incuriam* decisions, there are also other circumstances when this court may overrule itself or depart from its previous decision.

It is submitted that this Honourable Court arrived at its decision in *ALADEJOBI*'s case without the benefit of consideration of the operative law (sections 10(e) and 11 of the *Legal Practitioners (Amendment) Decree No.21 of 1994*). The attention of this court was not drawn to the existence of this law which confers jurisdiction on the court to hear an appeal of this nature. In addition, the previous binding decision of this Honourable Court in *CHARLES OKIKE V. LPDC (NO 1)* was also not considered. It is therefore respectfully submitted that Your Lordships should under the circumstance consider their decision in *ALADEJOBI* (*supra*) not only as having been reached *per incuriam* but also as erroneous in law and in conflict with *OKIKE NO.1*) all of which are possible grounds for the court to overrule itself."

Mr. Okey Wali, SAN, as an *amicus curiae* from the Nigerian Bar Association, made the following submission after setting out the provision of Section 11(7) of the *Legal Practitioners Act (LPA)* as published in the *Laws of the Federation of Nigeria (LFN) 2004*.

"This obsolete quotation with respect informed this Honourable Court's decision in the case of *JIDE ALADEJOBI V. NIGERIAN BAR ASSOCIATION* delivered on the 12th day of July, 2013 that:

'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.

This is understandable in view of the omission in the current

revised laws of the Federation and our failure to ensure the correction of the error as expected. Therefore, in determining the present issue now before this Honourable Court, it is pertinent to point out that the decision in the Okike's case was not brought to the attention of the court in the Aladejobi's case and thus, the necessary machinery being the laid down criteria for this Honourable Court to overrule itself was not in place to warrant the conclusion that what happened in Aladejobi's case was an occasion where this court overruled its decision in the Okike's case or itself as it looks."

From the totality of the summarized submissions of all the learned senior and other counsel in this matter on the issue of where this court went wrong, it is gratifying to note that almost all of them agreed with me in my earlier findings that:

i. At no point in time was the case of Okike No.1 drawn to our attention by the contending parties and this court never said that it overruled the decision in Okike's case (No 1).

ii. This court's attention in Aladejobi's case was never drawn to any omission made in the Legal Practitioners Act, Cap L11, LFN, 2004.

iii. At no point in time did this court say in Aladejobi's case that Decree No.21 of 1994 was repealed.

My Lords, I think the only vital and relevant issue remaining, which was skillfully obliterated, omitted or glossed over by almost all the senior and other counsel, is the issue of co-existence of two conflicting laws by same law maker on same subject matter and or two conflicting decisions by same court on same subject matter. Mr. Wali, SAN, drew the court's attention as follows:

"The court will not imply a repeal unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time. See Uwaifo v Attorney General of Bendel State (1982) 7 SC 124 at 191: Olu of Warri v. Kperegbeyi (1994) 4 NWLR (Pt.339) 416... The only circumstance in which the court will imply repeal is where two statutes are so repugnant to each other that effect cannot be given to both at the same time... Thus, it is our further submission that the decision in Okike's case is valid and subsisting. Therefore since this provision was satisfied however, we submit that what now exist are two parcel(sic) judgments of this court which appeals(sic) to have now created a conflict. Hence it is our humble submission that

the decision of this Honourable court as a full panel is the present position and same ought to be preferred in the present circumstances.”

The learned Hon. Attorney General of the Federation touched the issue peripherally where he said:

“In addition the previous binding decision of this Honourable Court in *Charles Okike v. LPDC (No 1)* was also not considered. It is therefore respectfully submitted that Your Lordships should under the circumstance consider their decision in *Aladejobi (supra)* not only as having been reached *per incuriam* but also as erroneous in law and in conflict with *Okike (No 1)*.”

The Latin word “*incuria/incuriae*,” means “carelessness” or “neglect” see: Pocket Oxford Latin Dictionary, 2005 revised edition, edited by James Morwood (Oxford University Press), page 92. The legal connotation is that when a case is decided *per incuriam*, it denotes the idea that it is decided through inadvertence and or in ignorance of the relevant law. As a general rule, the only cases in which decisions should be held to have been given *per incuriam* are those decisions given in ignorance or forgetfulness of some authority binding on the court. (See: Garner’s Dictionary of Modern Legal Usage 2nd ed. 1995, Oxford University Press, page 435 and 651).

I already stated earlier that the antecedents of *Okike’s (No.1)* and that of *Aladejobi* are quite distinct, clear and distinguishable. *Okike’s case (No.1)* was purely a Constitutional issue under which this court wanted to ascertain whether, pursuant to the provision of section 233 of the 1999 Constitution which conferred appellate jurisdiction on this court to entertain appeals from decisions of the Court of Appeal only, could hear appeals from the decisions (directions) of the Legal Practitioners Disciplinary Committee as provided by section 12 subsection 7 of the Legal Practitioners Act, Cap. 207 (as amended in 1994) or from other tribunals. When the appeal was placed for hearing on 12/10/2004, the issue of competence of the court was raised *suo motu*, on which briefs of argument were filed. Ruling in respect thereof was delivered on the 1st day of April, 2005. It is to be noted that throughout the length and breadth of counsel’s submissions, the leading Ruling and all the contributions by the Honourable Justices, the attention of the court was never drawn and nor did the court advert its mind to the provision of the Legal Practi-

tioners Act as contained in Cap L11 of the 2004 LFN.

In contradistinction to Aladejobi's case, the main issue raised in the Preliminary Objection of the respondent in the appeal was whether the appellant had a right of appeal straight to the Supreme Court pursuant to the provision of the Legal Practitioners Act, Cap L11, 2004 LFN, section 12 thereof. B

Now, my humble understanding, my lords, is that even if we had considered the Okike's case (No 1) and Decree No.21 of 1994, this Court as constituted in Aladejobi's case, would not have given a different decision as the law and antecedents under which Okike's case (No.1) was decided were not the same under which Aladejobi's case was decided. C

But, even if for the sake of argument, one would observe, as done by others that the coexistence of the two enactments, i.e. the 1994 Decree No.21 and the Legal Practitioners Act contained in Cap L11 of the Laws of the Federation, 2004. D

"Creates a major dilemma as it is yet to be ascertained which of the two laws is rightly in force; i.e. the full provisions of the Legal Practitioners Act Cap L11 Laws of the Federal Republic of Nigeria 2004 or the provisions of the Legal Practitioners (Amendment) Decree No.21 1994 (to the extent that it amends the principal Act)." E

See an article *"The unresolved conflict of the Regulatory Law of the Legal Profession"* by: Badejogbin of the Nigerian Law School in the Nigerian Bar Journal Vol.5 No.1, February, 2007 (Publication of the NBA). See also Orojo's Seminal Work Professional Conduct of Legal Practitioners in Nigeria, [2008 edition by Mafix Books Limited] in which he described the legislations in the amendments of 1992-1998 on the subject of professional conduct of legal practitioners in Nigeria as *"rather confusing"*. It is the contention of all learned counsel involved in this matter including the amicus curiae that Decree No.21 of 1994, was neither amended nor repealed. On the other hand, it is also true that the Legal Practitioners Act as contained in Cap. L11 2004 LFN is an existing law *"approved"* by the National Assembly. The provisions made by the two laws on the subject of appeal relating to directions from the Legal Practitioners Disciplinary Committee on Legal Practitioners [found liable for misconduct] are certainly conflicting Decree No 21 of 1994 made certain amendments to the Legal Practitioners Act as contained in Cap 207 LFN F G H

1990. That Act reenacted the 1962 Legal Practitioners Act [The principal Act] with all the successive amendments up till 1990 Section 12 of Cap 207 of the 1990 LFN, provided inter alia:

B “12[1] There shall be a committee to be known as the Appeal Committee of the Body of Benchers [hereafter 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.”

C The duties of the appeal committee as contained in subsection [3] of Section 12 are as follows:

D “[3] On any appeal against a direction of the disciplinary committee, the appeal committee may allow or dismiss the appeal in whole or in part, and if it is of opinion that any direction given by the disciplinary committee should not have been given or that a different direction should have been given by the disciplinary committee [whether more or less severe], the appeal committee shall revoke the direction of the disciplinary committee or, as the case may be, substitute therefore such direction as it thinks ought to have been given, being a direction which, under section 11 of this Act, could lawfully have been given by the disciplinary committee”.

Subsection (5) of the same section provided a right of appeal to the Supreme Court from the appeal Committee’s direction. It states as follows:

F “[5] 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 Supreme Court: and the appeal committee may appear as respondent to the appeal and, for the purpose of enabling directions to be given by the Supreme Court as to costs of the appeal before that court and of proceedings before the disciplinary committee, the appeal committee shall be deemed to be a party to the appeal before the Supreme Court whether or not it appears on the hearing of that appeal.’

H Decree No. 21 of 1994, amended some sections of the principal Act relating to the Disciplinary Committee and appeals emanating from the Committee’s directions. Section 10 of the Act was replaced by a new section 10. A new section 11 was inserted which provided for the establishment of the LPDC and its membership. The existing section 11 of the principal Act was amended as follows:

“[a] renumbering the section as section 12;

[c] Substituting for the existing subsection [4] a new subsection [4] as follows, that is... [4]...

[e] substituting for the words “Appeal Committee of the Body of Benchers” appearing in subsection [7] of the section the Words “Supreme Court”

Thus, section 12 of the principal Act was repealed. As I observed in my judgment in ALADEJOBI’s case, Decree No 21 of 1994 was signed into Law on the 29th day of November, 1994 Section 16 thereof, provided that the Decree *“shall be deemed to have come into force on 31st July, 1992”*. Thus, from 31st of July, 1992 to 2004, any right of appeal from the direction of the Legal Practitioners Disciplinary Committee 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 which provides, once again, as follows:

“12[d] 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 collection of the 2004 LFN was released by the Federal Ministry of Justice in 2004 [see Foreword by OLUJINMI SAN, Honourable Attorney General; AYOOLA JSC, [Rtd.], Chairman Law Review Committee’s preface to the 2004 LFN] Thus, the 2004 LFN, are the current Laws in circulation and are later in time.

I think, the law is that where a later enactment does not expressly amend [whether textually or indirectly] an earlier enactment, but the provisions of the later enactment are inconsistent with those of the earlier, the later by implication, amends the earlier so far as is necessary to remove the inconsistency between them. This is because, if a later Act cannot stand with an earlier one, parliament, generally, is taken to intend an amendment of the earlier. This is a logical necessity, since two inconsistent texts cannot both be valid. If the entirety of the earlier enactment is inconsistent, the effect amounts to an implied repeal of it. Similarly, a part of the ear-

lier enactment may be regarded as impliedly repealed where it cannot stand with the later. An intention to repeal an Act or enactment may be inferred from the nature of the provision made by the later enactment. The Latin maxim puts it that LEGES POSTERIORES PRIORES CONTRARIAS

B ABROGANT [later laws abrogate prior contrary laws. See: ELLEN STREET ESTATES LIMITED VS. MINISTER OF HEALTH [1934] 1 K.B. 590 at pages 595 - 596; RE-WILLIAMS JONES VS. WILLIAMS [1887] 16 CHD 573 at page 578.

C In this respect, I think, I need to say a word or two on what most of the learned counsel, including the SANS as amicus Curiae in this matter, quoted or rather referred to, in the case of IBIDAPO VS LUFTHANSA AIR LINES [1997] 4 NWLR [Part 498] 124, that it is the cardinal principle of the Law that statutes are not repealed by **D** reference or implication but by direct provision of the law. This was a quotation from what Honourable Justice IGUH, JSC [as he then was] said in his judgment [pages 162-164, particularly at page 163 paragraphs E - F]. It is to be noted that it was only a small portion of what the Honourable Justice said in his contribution that was quoted **E** and referred to by the learned counsel. My lords, the main contention before this Court in Ibidapo's case was that of the carriage by Air [Colonies, Protectorates and Trust Territories] Order, 1953 making the Warsaw Convention applicable in Nigeria has ceased to be an existing Law in Nigeria based namely, on the fact that same was omitted in the Laws of the Federation of Nigeria, 1990 as being irrelevant. All the Justices agreed that the 1953 Order making the Warsaw Convention as part of the existing laws of Nigeria still subsists **F** since it has neither been repealed nor declared invalid. In expatiating, IGUH, JSC, [as he then was] stated, inter alia:

*"With the greatest respect, although the 1953 Order was omitted from the Revised Edition of the Laws, I am in agreement with Mr. Soetan's submission that by virtue of section 3[2] of the Revised Edition [Laws of the Federation] Act 1990, the enactment continued to **H** have effect and retained its validity notwithstanding its omission from the Edition. This is because, the omission in question did not amount to a repeal of the legislation.*

Where it is intended to repeal a legislation, this should be expressly so stated as the Court's generally lean against implying the

repeal of an existing legislation unless there exists clear proof to the contrary. See: the GOVERNOR OF KADUNA STATE & ORS. VS. LAWAL KAGOMA [1982] 6 SC 7 at page 106. It is a cardinal principle of the law that statutes are not repealed by inference or implication but by direct provision of the law. See: RALEIGH INDUSTRIES LIMITED VS. NWAIZU [1994] 4 NWLR [Part 341] 260 at page 771. B The Court will not imply a repeal unless two Acts are so plainly repugnant to each other that effect cannot be given to both at the same time. See: UWAIFO VS. ATTORNEY-GENERAL OF BENDEL STATE [1982] 7 SC. 124 at page 191; OLU OF WARRI VS. KPEREGBEYI [1994] 4 NWLR [Part 339] 416. C

In Law, therefore, there are circumstances in which a repeal of an enactment can be implied or inferred and that is where two acts of the legislature are plainly repugnant to each other that effect cannot be given to both at the same time. D Thus, repeal by implication cannot be prohibited where circumstances warrant. See: ELLAN STREET ESTATES LIMITED VS. MINISTER OF HEALTH [Supra]. All the Courts are reluctant to hold is that Constitutional enactments have been impliedly repealed. See: the dictum of LORD WILBERFORCE in the case of PETITION OF THE EARL OF ANTRIM VS. ELEVEN OTHER IRISH PEERS [1967] 1 AC 691 at page 724. E

In the matter on hand, it is my belief, as I stated earlier, that the 2004 Acts and in particular Cap L11 2004 LFN [Legal Practitioners Act] are valid and existing laws of the Federal Republic of Nigeria F Equally, the 1994 Decree No 21, may not have been textually repealed. It is to be noted, however, that in all the instances cited or referred to in comparison with ALADEJOBI's case, there was never cited to the courts a situation where two conflicting laws, co-existed. G This makes the clear distinction, that is, the co-existence of Decree No 21 of 1994 and the provisions of Cap L11 2004 LFN on the disciplining of erring legal practitioners which was endorsed, if I may use the word, by the National Assembly. This principle is well settled by this court in the case of Uwaifo v. Attorney General. Bendel State H & Ors (1982) 7 SC 55 at 90, per Idigbe, JSC (as he then was):

"It is indeed, a settled principle of law that where two Acts are inconsistent or repugnant, the latter will be read as having impliedly repealed the earlier (see: Paine v. Slater (1883) 11 QBD 120) and

the courts lean heavily against implying a repeal except where the two Acts are so plainly inconsistent or repugnant to each other that effect cannot be given to both at the same time, in which case it will imply a repeal (see also: Dr. Lushington in The India (1865) 12 LT (new series at 316)."

B On matters of initiating appeal from the direction of the LPDC, Decree No. 21 of 1994 conferred right of appeal on any person to whom such a direction relates, direct to the Supreme Court. Section 12 of Cap L11 2004 LFN establishes or re-enacts an Appeal Committee of the Body of Benchers. It provides:

C *"(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."*

D Subsection (5) thereof provides as follows:

"(5) 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 Supreme Court, and the Appeal Committee may appear as respondent to the appeal and, for the purpose of enabling directions to be given by the Supreme Court as to cost of the appeal before that court and of proceedings before the Disciplinary Committee, the Appeal Committee shall be deemed to be party to the appeal before the Supreme Court whether or not it appears on the hearing of that appeal."

F **Thus, it is not the Supreme Court that lifted the two subsections as above, out of the blues and inserted them in the Act. It must have been done by a person/persons having authority so to do. It is immaterial to me by whichever means the two subsections found their way into the Act whether through the process of fresh enactment, re-enactment, amendment or repeal, howsoever, once the legislature validates same. This, of course, is part of law making which is not the business of this court. It is neither also the business of this court to dig into, or fish out who did it and whether it was rightly or wrongly done. The business of this court, and of course, of any other court, is to interpret and, or, apply the law as it is. This is what we did in Aladejobi's case.**

My lords, nobody is denying the existence of Decree No 21 of

1994 as it has not been repealed. But, in view of the provisions contained in the 2004 edition of the Laws of the Federation 2004, can this court close its eyes on the Laws contained in that edition? The Honourable Attorney General himself did not deny the Laws (especially Cap L11, Legal Practitioners Act) as contained in the 2004 edition of the LFN but lamented the omission done in reproducing the Laws relating to the Legal Practitioners Act as amended by Decree No 21 of 1994. Other learned counsel are all at one with the Hon Attorney General. But, who can correct such omission? Is it the legislature or the court? The more fundamental issue is that now that the 2007 edition of the LFN validated the 2004 edition and that such omissions (by section 2 of the 2007 LFN), shall not affect the validity and applicability of the statute, there is certainly a confusion created by the co-existence of the two enactments on appeal process from the direction of the LPDC. This court, my lords, is a court of law and a policy court. We cannot afford to allow conflict of laws (as appears in the two enactments under consideration) to mar the progress and dynamism of the legal profession. This issue, as it is, my lords, is beyond mere expression of sentiments. It is a matter of interpretation and application of the law.

The similitude here, my lords, is that of Law of cause and effect. Where the cause changes, the effect must also change. So where the law changes, its effect must also change. For instance, prior to the coming into effect in 1976 of the Court of Appeal Act, appeals from High Courts were directly channeled to the Supreme Court. That practice stopped with the coming into force of the Court of Appeal Act.

In this matter, the law changed and its effect on its recipients must also change. It would have completely been a different thing if the National Assembly did not bless that change in the law and its effect.

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 All NLR 587 at 594. The situation in this appeal is akin to the one presented in the case of Ibori v Agbi (2004) 6 NWLR (Pt 868) 78 where this court reprimanded litigants and their counsel for 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, 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 S.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.”

The well settled principle of the law is as pronounced by Belgore, JSC (as he then was) in the case of *Egwumwense v Amaghizemwen* (1993) 9 NWLR (Pt.315) 1 at p. 25.

“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. 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. 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 remedies in the statute on every subject must be exhausted before embarking on actual litigation in court.”

My lords, ‘what is worth doing is worth doing well.’ This is what Mr. Wali, SAN (*Amicus Curiae*) said in his concluding part of his brief. He went ahead to submit:

“The state of the applicable laws for the Legal Practitioners before 2007 compilations was to say the list (least) confusing. Unfortunately, the 2004 compilation compounded the situation. There is now a great need to take advantage of the ongoing, review of the LPA at the National Assembly to set things right and to produce the

right LPA for today's legal practitioner. This done, the courts will no longer find themselves in a position where they have to rely on erroneous compilations to declare null, void, repealed or dead, laws which are otherwise fully in existence."

I agree with Mr. Wali, SAN, that the battle ground must shift from the court rooms to the Legislature. It is the duty of the legislature to make and produce laws for public consumption and guidance. I think there is dare need for legal practitioners to be of great assistance not only to the courts but to the Legislature in making our laws certain and clear.

My lords, in view of what I have so far said, I find it very difficult to depart from or overrule my earlier stand on Aladejobi's case. It is my belief that no two laws or provisions of an enactment or enactments on same subject which are in conflict that shall be allowed to co-exist. I still hold the view that the provisions in the 2004 Laws of the Federation relating to the disciplining of erring Legal Practitioners as contained in Cap L11, LFN, 2004 are the ones that will regulate appeals from the directions of the Legal Practitioners, Disciplinary Committee of the Body of Benchers. If the Appeal Committee is not in existence as argued by some of the counsel involved in the appeal, it is for the concerned Body, i.e. the Body of Benchers to respect and implement the provision(s) of the 2004 LFN, relating to appeals emanating from the LPDC. I still hold that this court lacks jurisdiction to entertain appeals direct from the directions of the LPDC.

The issue raised suo motu by this court on 22nd October, 2013, and now fully addressed by learned counsel for the respective parties and the amicus curiae, in relation to whether it has jurisdiction to entertain appeals direct from the directions of the LPDC in view of its earlier decision in the case of Jide Aladejobi v Nigerian Bar Association, decided on 12th July, 2013, now reported in (2013) 15 NWLR [part 1376] 66, and in some other Law Reports, is resolved, in line with the decision taken in ALADEJOBI's case, i.e. this court lacks jurisdiction to entertain appeals direct from the Directions of the Legal Practitioners' Disciplinary Committee (LPDC), pursuant to the provisions of the Legal Practitioners' Act, Cap. L11, Laws of the Federation of Nigeria, (LFN), 2004.

Consequently, I regard the pending appeal in this court, filed by Mr. Akintokun as a dead horse. There is no need beating a dead horse as it can hardly be revived. The appeal is incompetent and it is hereby stuck out.

We thank all the learned counsel involved for their resourcefulness, particularly the Hon. Attorney General of the Federation, Mr. Adoke, SAN, and Mr. Oke Wali, SAN, (NBA) for accepting to serve as AMICUS CURIAE, in the matter. I make no order as to costs.

C

MOHAMMED JSC

Following the Direction of the Legal Practitioners Disciplinary Committee made on 4th April, 2006 directing that the name of the Appellant in this appeal be struck out from the Role of Legal Practitioners qualified to practice in Nigeria, the Appellant appear led to this Court by a notice and grounds of appeal filed on 27th April, 2006 challenging the Decision/Direction of the Legal Practitioners Disciplinary Committee against him. When this appeal came up for hearing on 22nd October, 2013, this Court raised the issue of whether this Court has jurisdiction to hear the appeal having regard to the decision of this Court in the case of *Aladejobi v. Nigerian Bar Association* delivered on 12th July, 2013 now reported in (2013) 15 N.W.L.R. (Pt.1376) 66, which declared that having regard to the existing provisions of Section 12 of the Legal Practitioners Act CAP L.11 of 2004, which established “Appeal Committee of the Body of Benchers” and conferred on it jurisdiction to hear appeals from any Direction given by the Legal Practitioners Disciplinary Committee, this Court has no jurisdiction to hear appeals from the Directions of the Legal Practitioners Disciplinary Committee.

At the hearing of the matter on the issue of jurisdiction, the Appellant and the Respondent both filed their respective briefs of argument in addition to the briefs of argument filed by the Hon. Attorney General of the Federation and the Nigerian Bar Association by Hon. Attorney General of the Federation himself and the President of the Nigerian Bar Association invited to the hearing as Amicus Curiae. It is significant to observe that the contents of all the briefs of argument filed on the issue of jurisdiction are unanimous that the current law on the issue of jurisdiction to hear appeals from the Di-

rections of Legal Practitioners Disciplinary Committee, is the Legal Practitioners Act 1975 as Amended by the Legal Practitioners (Amendment) Decree No. 21 of 1994, which repealed Section 12 of the Legal Practitioners Act CAP 207 LFN 1990, establishing the Appeal Committee and transferred its jurisdiction to the Supreme Court to hear appeals directly from the Directions of the Legal Practitioners Disciplinary Committee. B

Reasons for the stand of the Appellant and the Respondent together with the Amicus Curiae include that -

1. The Legal Practitioners Act contained in the 2004 Edition of the Revised Laws of the Federation is not the current law. C

2. That there was omission on the part of the Law Revision Committee that worked on the Revision Exercise to produce the laws of the Federation 2004 to take into consideration the Amendments made to the Legal Practitioners Act 1975 in 1994 by Decree No. 21 of 1994. D

3. That the mistake made in the Revised Laws of the Federation 2004, did not have the effect of repealing the existing provisions of the 1994 Decree conferring jurisdiction on the Supreme Court to hear appeals from the Directions of Legal Practitioners Disciplinary Committee. E

4. That by the provisions of Section 2 of the Revised Edition (Laws of the Federation of Nigeria) Act No. 30 of 2007, which approved the Revised Edition of the Laws of the Federation 2004, the inadvertent omission of the 1994 Amendment to the Legal Practitioners Act in Decree No. 21 of 1994, does not affect the validity of the statute which remained in full force. F

It is obvious on the face of the Legal Practitioners Act CAP L. 11 of the Revised Edition of the Laws of the Federation of Nigeria 2004 that the previous statutes of the Act taken into consideration in the Revision of the Legal Practitioners Act are No. 33 of 1962, No.15 of 1975, No. 29 of 1976, No. 40 of 1977, No.67 of 1977, No. 9 of 1979, No. 75 of 1979 and No. 46 of 1988. The legal Practitioners (Amendment) Decree No. 21 of 1994 was not specifically considered or taken into consideration in revising the Legal Practitioners Act in the 2004 Law Revision Exercise. What is not very clear however, was the circumstances surrounding the said omission of that relevant statute from the Revision exercise, particularly in the absence of the Re- H

vised Edition (Laws of the Federation of Nigeria) Act, 2004 statute containing provisions empowering the Attorney General of the Federation to authorize the omission of certain enactments from the Revision Exercise. What further compounded the omission of the 1994 Legal Practitioners (Amendment) Decree No. 21 from the 2004 Revision Exercise, is the apparent intention of the then Federal Military Government to repeal the said Amendment Decree No. 21 of the face of the Legal Practitioners (Amendment) Decree No.43 of 1998 which listed Decrees No. 21 of 1993, No. 38 of 1993 and No. 21 of 1994 as having been repealed, no doubt as part of the preparations being made to return the Country to democratic administration. Although the enacting Section 1 of the Decree merely stated as follows

Repeal of 1993 No. 21 1993 No. 38 1994 No. 21

D “1.(1) *The Legal Practitioners (Amendment) Decree 1993 as Amended, is hereby repealed*

(2) *The repeal of the enactment specified in subsection (1) of this section shall not affect anything done or purported to be done under the repealed enactment.”*

E The side notes of the enacting Section 1 of the Decree listed Decrees numbers 21 of 1993, 38 of 1993 and 21 of 1994 as having been repealed. Although under the law, a statute cannot be repealed in the side notes of a Section of the repealing statute, the enactment of Section 1 of the Legal Practitioners (Amendment) Decree No. 43 of 1998 which described the statutes being repealed by that Decree as being “*The Legal Practitioners (Amendment) Decree 1993 as Amended,*” clearly shows the intention of the then Federal Military Government law makers to repeal more than one statute which subsequently amended the Legal Practitioners (Amendment) Decree 1993 as listed in the side notes of the Section. If the order of the omission of the 1994 Legal Practitioners (Amendment) Decree No. 21 by the 2004 Law Revision Committee came from the office of the Attorney-General of Federation, there is no statute or written instrument to that effect which I can put my hand upon to save the statute as was done by this Court in the case of *Joseph Ibidapo v. Lufthansa Airlines* (1997) 4 N.W.L.R. (Pt.498) 124 at 149, where this Court saved the Carriage by Air (Colonies Protectorates and Trust Territories) Order, 1953, from being irrelevant or obsolete as contained in

the statutes etc Omission Order of the Attorney General of the Federation to the Law Review Committee of the 1990 Revised Laws of the Federation of Nigeria in exercise of his powers under Section 3 of the Revised Edition (Laws of the Federation of Nigeria) Decree No. 21 of 1990 which provides -

“3(1) The Attorney of the Federation may by order specify a schedule of enactments which it shall not be necessary for the Committee to include in the revised edition upon the grounds that such enactments are -

(a) obsolescent, or

(b) of a temporary nature; or

(c) under revision with a view to replacement; or

(d) of restricted or personal application

(2) Enactments omitted in accordance with subsection(1) of this Section, shall have the same force and validity as if they had not been omitted in the revised edition.”

In the case of *Ibidapo v. Lufthansa Airlines* (supra), this Court found the Carriage by Air (Colonies, Protectorates and Trust Territories) Order, 1953, as still an existing statute making the Warsaw Convention applicable in Nigeria by virtue of clear provisions of Section 3(2) of the Revised Edition (Laws of the Federation of Nigeria) Act (Decree) 1990, in spite of the fact that the 1953 Order was listed for omission the 1990 revision exercise by the Attorney General of the Federation in exercise of his powers to authorize the omission under subsection (1) of Section 3 of the Act or Decree. Therefore in the *Ibidapo v. Lufthansa* case (supra) the validation of the omitted statute by this Court that case is rooted in the provision of the Revised Edition (Laws of the Federation of Nigeria) Act or Decree 1990. In the absence of such statute as the 1990 Act or Decree on the 2004 Law Revision Exercise specifying the powers of the Law Revision Committee in the revision exercise and the powers of the Attorney General of the Federation to order the omission of certain statutes in the revision exercise, it is not possible in the present case to link the omission of the 1994 Legal Practitioners (Amendment) Decree No. 21, to the order of the Attorney General of the Federation or to the action of the Revision Committee having regard to the apparent intention exhibited by the Federal Military Government of Nigeria to repeal the affected statute as exhibited the Legal Practitioners (Amend-

ment) Decree No. 43 of 1998.

With this background, on the uncertainty surrounding the omission of the Legal Practitioners Act (Amendment) Decree No. 21 of 1994 from the 2004 Revised Edition of the Laws of the Federation of Nigeria, I am not prepared to accept the arguments of the parties and the amicus curiae on the issue of jurisdiction raised by this Court the substantive appeal, that the 1994 Legal Practitioner (Amendment) Decree No. 21, is a current statute having been inadvertently omitted in the revision exercise of the 2004 (Revised Editions) of the Laws of the Federation of Nigeria. This is because although in Volume one of the Volumes of the Laws of the Federation 2004, it was shown that the volumes of the laws were prepared under the authority of the Revised Edition (Laws of the Federation of Nigeria) Act, 2004, that Act is not contained in Volume one or any other volume of the Revised Laws of the Federation 2004. It is therefore my own view that the provisions of Section 12 of the Legal Practitioners Act CAP L.11 of 2004 conferring powers or jurisdiction on the Appeal Committee of the Body of Benchers to hear appeals from any Direction given by Legal Practitioners Disciplinary Committee is the current law on the ground, which deprived the Supreme Court of its jurisdiction given under the Legal Practitioners (Amendment) Decree No. 21 of 1994 to entertain appeals directly from the decisions or Directions of the Legal Practitioners Disciplinary Committee.

As for the unanimous arguments of the parties and the amicus curiae that by the provision of Section 2 of the Revised Edition (Laws of the Federation of Nigeria) Act No. 30 of 2007, which approved the Revised Edition of the Laws of the Federation 2004, the inadvertent omissions of the 1994 Amendment to the Legal Practitioners Act in Decree No. 21 of 1994 had been taken care of and therefore remained valid and in full force, the provision of Section 1 of the same Act No. 30 of 2007 has in no uncertain terms stated that the laws of the Federation of Nigeria compiled and published in 2004 under the authority of the Attorney-General of the Federation, are laws or statute approved by the National Assembly. In other words the statutes contained in the current Revised Edition of the Laws of the Federation of Nigeria 2004, including the provision of Section 12 of the Legal Practitioners Act, 2004, are the current statutes applicable in Nigeria. Without a very clear amending statute passed by the

National Assembly incorporating all the relevant provisions of the Legal Practitioners (Amendment) Act/Decree No. 21 of 1994 into the present provisions of the 2004 Legal Practitioners Act CAP L.11 Laws of the Federation of Nigeria 2004, the stand of this Court in its decision in the case of *Aladejobi v. Nigerian Bar Association* (2013) 15 N.W.L.R. (Pt.1376) 66, remains the law. Departing from this decision to say that the Legal Practitioners Act (Amendment) Decree No. 21 of 1994 is the current law regulating the legal profession in Nigeria on the face of the same statute that came into force in the Revised Edition of the Laws of the Federation of Nigeria, 2004, is to plunge into the work of law making which is reserved for the National Assembly under Section 4 of the Constitution of the Federal Republic of Nigeria 1999. B C

With regard to the stand of the parties and the Amicus Curiae on this issue of jurisdiction that the decision of this Court in *Aladejobi v. Nigerian Bar Association* (supra) had impliedly over-ruled the decision of this Court in *Charles Okike v. Legal Practitioners Disciplinary Committee* (No. 1) 2005 3 - 4 S.C. 49, this stand taken, is far from being correct. The sole issue that was raised and determined by this Court in *Charles Okike v. Legal Practitioners Disciplinary Committee* (Supra) was whether it is the Supreme Court that has the jurisdiction to entertain appeals directly from the Directions of the Legal Practitioners Disciplinary Committee (L.P.D.C.) having regard to the provisions of Section 12(7) of the Legal Practitioners Act as amended by the Legal Practitioners (Amendment) Decree No.21 of 1994, on the face of the Appellate jurisdiction of the Supreme Court prescribed under Section 233(1) of the 1999 Constitution of the Federal Republic of Nigeria. This issue on the jurisdiction of this Court in *Charles Okike's* case (supra), has nothing to do and was not mentioned even in passing in the decision of this Court on the issue of jurisdiction to hear appeals from Directions of the Legal Practitioners Disciplinary Committee in the later decision of this Court in *Aladejobi v. Nigerian Bar Association* (supra), where the sole issue determined was whether this Court has jurisdiction to hear appeals from the Directions of the Legal Practitioners Disciplinary Committee under Section 12 of the Legal Practitioners Act CAP L.11 of the Revised Laws of the Federation of Nigeria 2004, where under subsection (1) of Section 12 of the Act, the law gave that responsibility or duty to the Appeal Com- E F G H

mittee of the Body of Benchers otherwise referred to as ‘the appeal Committee’ for short under that section of the 2004 statute, which did not come up for consideration at all in Okike’s case (supra). Therefore, while Okike’s case (supra), decided that the Supreme Court has jurisdiction under Section 12(7) of the Legal Practitioners Act as amended in 1994 and under Section 233(1) of the 1999 Constitution to hear appeals directly from the Directions of the Legal Practitioners Disciplinary Committee, the decision of this Court in Aladejobi’s case (supra), was that this Court has no jurisdiction to entertain appeal directly from the Directions of the Legal Practitioners Disciplinary Committee by virtue of the provisions of Section 12(1) of the Legal Practitioners Act CAP L.11 of the Revised Editions of the Laws of the Federation of Nigeria 2004, which conferred jurisdiction to hear such appeals on the Appeal Committee of the Body of Benchers. The appellate jurisdiction of this Court as conferred under Section 12(7) of the Legal Practitioners Act as Amended in 1994 and under Section 233(1) of the 1999 Constitution, did not form part of the decision of this Court in that case at all. It is for the above reasons that I am of the firm view that since the two cases are poles apart on the issue of jurisdiction arising from three different statutes which, with all respect, correctly interpreted the affected three statutes, namely - Section 233(1) of the 1,999 Constitution, Section 12 of the Legal Practitioners (Amendment) Decree, No. 21 of 1994 and Section 12 of the Legal Practitioners Act CAP 1.11 of 2004, on the issue of the jurisdiction of this Court, the question of Aladejobi’s case (supra) overruling the decision of Full Panel of this Court in Okike’s case (supra), does not arise to the extent of requiring this Court to depart from its decision in that case to assume jurisdiction in the present appeal.

I am not unaware that in the absence of express and clear provisions in the Constitution or statute which ousts the jurisdiction of the Court, the Court should be very reluctant to hold that its jurisdiction has been ousted. See *African Newspapers of Nigeria & Ors. v. The Federal Republic of Nigeria* (1985) 2 N.W.L.R. (Pt.6) 137, *Anakwenze v. Aneke & Ors.* (1988) 2 N.S.C.C. 798 at 803 and *Attorney-General of Lagos State v. Attorney-General of the Federation* (2004) 18 N.W.L.R. (Pt.904) 1 at 89.

I am also fully aware that this Court does not readily oust its jurisdiction. In fact in principle, this Court jealously guards and pro-

fects its jurisdiction. However, where the provisions of a statute are quite clear and very plain that the jurisdiction of this Court has been ousted as in the case of the current statute contained in Section 12 of the Legal Practitioners Act in the Revised Edition of the Laws of the Federation of Nigeria 2004, affirmed in the validating Act of the National Assembly No. 30 of 2007, the Revised Edition (Laws of the Federation of Nigeria) Act, this Court has no option but to graciously accept the ouster of its jurisdiction. B

In the final result, it is for the above reasons and more comprehensive reasons contained in the Ruling of my learned brother Ibrahim Tanko Muhammad JSC which I have had the privilege of reading before today and with which I entirely agree that the case of Jide Oladejobi v. Nigerian Bar Association (2013) 15 N.W.L.R. (Pt.1376) 66, was not decided by this Court in per incuriam to warrant any departure from it by this Court as sought by the parties in the present appeal and the Amicus Curiae to assume jurisdiction to hear and determine the present appeal. In otherwords the decision of this Court in Aladejobi's case remains valid and in full force in depriving this Court of jurisdiction to entertain appeals directly from the Directions-of the Legal Practitioners Disciplinary Committee. This position of the law will remain until the National Assembly exercises its constitutional duty of amending the provisions of the Legal Practitioners Act CAP L.11 of the Laws of the Federation of Nigeria 2004, to restore the jurisdiction of the Supreme Court to entertain appeals directly from the Directions of the Legal Practitioners Disciplinary Committee as was the position under Section 12(7) of the Legal Practitioners Act as Amended by the Legal Practitioners (Amendment) Decree No. 21 of 1994. Meanwhile in the absence of jurisdiction to hear this pending appeal No. SC.111/2006 by this Court, the appeal is accordingly hereby struck out with no order on costs. C
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FABIYI JSC

I have had a preview of the Ruling just handed out by my learned brother - I.T. Muhammad, JSC. I completely agree with the lucid reasons therein adumbrated to arrive at the final conclusion that in line with the decision taken in Aladejobi v. Nigerian Bar Association (2013) 15 NWLR (Pt. 1376) 66 this court lacks jurisdiction to H

entertain appeals direct from the Directions of the Legal Practitioners' Disciplinary Committee (LPDC), pursuant to the provisions of the Legal Practitioners Act, Cap. L.11, Laws of the Federation of Nigeria, (LFN), 2004. I hereby adopt same. The appeal is hereby struck out.

B Sequel to my role and stance in Aladejobi's case (supra), I wish to keep my peace for reason of utmost decorum and sobriety.

GALADIMA JSC

C I have read in advance the Ruling of my learned brother I.T. MUHAMMAD, JSC, just delivered. He has painstakingly dealt with the facts of the matter and the sole issue, canvassed in this appeal. I am in complete agreement with his reasoning and conclusion leading
D to the striking out of the appeal as this court lacks jurisdiction to entertain appeals direct from the Directions of the Legal Practitioners' Disciplinary Committee (LPDC) pursuant to the provisions of the Legal Practitioners Act. Cap. L11 Laws of Federation of Nigeria. The view
E expressed by this court in ALADEJOBI v. NIGERIAN BAR ASSOCIATION (2013) 15 NWLR (Pt.1376) 66 remains the law. To depart from that decision is to say that the Legal Practitioners Act (Amendment) Decree No. 21 of 1994 is the current law regulating the Legal Profession in this country on the face of the same statute that came
F into force in the REVISED Edition of the Laws of the Federation 2004 (supra). What that would mean is an invitation to this court to assume the function of law making which is exclusive preserve of the National Assembly provided under section 4(2) of the Constitution of the Federal Republic of Nigeria (as amended).

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PETER-ODILI JSC

I agree with the Ruling just delivered by Ibrahim Tanko Muhammad, JSC and to underscore my support I shall make some
H comments.

This is an appeal against the direction of the Legal Practitioners Disciplinary Committee made on the 4th day of April, 2006 striking off the name of the appellant from the roll as a legal practitioner in Nigeria. The appellant being dissatisfied with the said direction filed a

Notice of Appeal on the 27th day of April, 2006 against the Direction.

FACTS OF BRIEFLY STATED:

The Appeal came up for hearing on the 22nd October, 2013 when this court suo motu raised the issue of jurisdiction of the Supreme Court to entertain an appeal directly from the decision of Legal Practitioners Disciplinary Committee. The court directed the parties to address it on the issue of whether or not the Supreme Court has jurisdiction to entertain appeal from the Legal Practitioners Disciplinary Committee in view of the recent decision of this court in *Aladejobi v Nigerian Bar Association* Suit No: SC.121/2011 delivered on the 12th of July, 2013 and reported in (2013) LPELR - 20940 SC. The Supreme Court had held in the *Aladejobi* case that it is the Appeal Committee of the Body of Benchers that has jurisdiction to entertain appeal from the decision of the Legal Practitioners Disciplinary Committee. Of note is the fact that there is no Appeal Committee of the Body of Benchers in existence.

On the 13th January, 2014 when the appeal came up for hearing on the issue of jurisdiction ordered that it was necessary to get the opinion of the Attorney General of the Federation and the President of the Nigerian Bar Association and so an invitation was issued to the two Law Officers as *Amicus Curiae* with a view to enriching the arguments on the issue at hand.

On the 25th February, 2014 date of hearing, Mr. Adeniele Adegboriye adopted the Brief of Argument of the appellant filed on 7/1/2014. He raised a sole issue for determination which is as follows:

Whether the Supreme Court has jurisdiction to entertain appeal against the directions of the Legal Practitioners Disciplinary Committee.

Mr. Emmanuel Aguma, learned counsel for the respondent adopted his brief of argument filed on 30/12/13 and deemed properly filed on 25/2/14 in which he utilized the single issue posed.

The learned Attorney-General of the Federation, Mohammed Bello Adoke SAN adopted the Brief of Argument he filed on 19/2/14 and in which he formulated a single issue as follows:

Whether in view of its recent decision in *JIDE ALADEJOBI V. NIGERIAN BAR ASSOCIATION*, the Supreme Court has jurisdiction

to entertain the instant appeal against the direction of the Legal Practitioners Disciplinary Committee.

Mr. Okey Wali SAN, President of the Nigerian Bar Association adopted his Brief of Argument filed on 14/2/14 and in the Brief he distilled a sole issue simply put thus:

B Whether the Supreme Court has the jurisdiction to hear and determine appeals from the Legal Practitioners Disciplinary Committee (LPDC)

C The issue as set out by the different counsel are in effect asking the same question and that is if the Supreme Court is the port of call on appeal from a decision of the Legal Practitioners Disciplinary Committee.

ARGUMENT ON SOLE ISSUE

D Learned counsel for the appellant, Mr. Adegborioye canvassed the position that the Supreme Court has jurisdiction to entertain an appeal directly against the directions of the Legal Practitioners Disciplinary Committee and the contrary view put across in *Aladejobi v Nigeria Bar Association* was made *per incuriam*. That this court should not depart from that decision in *Charles Okike v The Legal Practitioners Disciplinary Committee No 1 (2005) 3 - 4 SC 49* which earlier decision was not considered at all and never overruled in the *Aladejobi* case.

F That what was considered in the *ALADEJOBI* case is that of *Okike v LDPC (No2) (2005) 15 NWLR (Pt. 040) 471* which different from the case of *Okike v LDPC (No.1) (supra)*.

G For the appellant was submitted that the *Aladejobi's* case was decided in error since the principle of law as decided in *Okike v LPDC (No. 1)* is still valid and subsisting and the law to be followed as regards the jurisdiction of the Supreme Court with regards to entertaining appeal from the directions of the Legal Practitioners Disciplinary Committee. He referred to Order 6 Rule 5(4) of the Supreme Court Rules 1999 (as amended); *Adesokan & Ors v Adetunji (1994) 5 NWLR (Pt. 346) 540 at 562*; *Veepee Ind. Ltd. v. Cocoa Ind. Ltd. (2008) 13 NWLR (Pt.1105) 486 at 523*.

H Learned counsel stated on that, assuming without conceding that the Supreme Court considered the case of *Okike v. LPDC (No. 1)* reported in (2005) 3 - 4 SC 49 in the *Adedejobi's* case, this court is yet being called upon to set aside its decision in *Aladejobi v NBA N*.

SC.21/2011 delivered on 12th July, 2013, this court is still invited to depart from the decision in Aladejobi's case. He said it is not disputed that the Appeal Committee of the Body of Benchers is yet to be created and so the question arises as to who the appellant would appeal to in the absence of the appeal body.

For the appellant was contended that Legal Practitioners Act (Decree No. 15) 1975 provided for appeal to the Appeal Committee of the Benchers established under Section 12 of the Act but that the Legal Practitioners (Amendment) Decree No. 21 of 1994 made substantial changes including doing away with the Appeal Committee and provides the appeals to be sent directly to the Supreme Court. He referred to Sections 10, 11 and 12 of the 1994 Act thereof. Mr. Adegborioye of counsel submitted that the re-numbering of Section 11 of the Legal Practitioners Act Cap 207, Laws of the Federation, 1990 was not reflected in the revised Laws of the Federation of Nigeria Cap L.11, 2004. That the Act of 1975 Laws of Federation 1990 was further amended in 1999, the amendment only made the payment of practicing fees a condition precedent for the right of audience of a Legal Practitioner in any court in Nigeria. That the Legal Practitioners Act, Cap L.11 in the Laws of the Federation of Nigeria 2004 did not take into cognizance the substantial amendments made by the Legal Practitioners Act (Amendment) Decree No. 21 of 1994 which to that extent does not represent the state of the law.

Learned counsel for the appellant went on to submit that it is a cardinal principle of the law that statutes are not repealed by reference or implication but by direct provision of the law. That the Legal Practitioners Act, Cap L.11, Laws of Federation of Nigeria, 2004 having not specifically recognized the substantial amendments made by the 1994 Decree, the state of the law is still as stated in the provisions of Legal practitioners Act (Amendment) Decree No. 21, 1994 which state that an appeal against the Direction of the Legal practitioners Disciplinary Committee lies to the Supreme Court. That the position as backed by history in view of Sections 20, 31 to 37 of the Legal Practitioners Act 101 of the Laws of the Federation of Nigeria and Lagos 1958. Also Sections 6(3), 7(1) & (6) of the 1962 Act which replaced that of 1958.

For the appellant was contended that this court is entitled to depart from its previous decisions where there is a real likelihood of

injustice as the present instance. He referred to *Tewogbade v Obadina* (1994) 4 NWLR (Pt.338) 326 at 351; *Oshoboia v Amida & Ors* (2009) 12 SC (Pt.1) 107 at 134 - 135; *Okulate & Ors v Awosayan* (2000) 2 NWLR (Pt.646) 530 at 543. He stated that this is a proper case for the departure from the *Aladejobi's* case in this case where
 B there is no existence of an appeal committee and so the appellant who has his name struck off the roll has no court or panel to appeal to which will create injustice.

The Attorney- General of the Federation, Mohammed Adoke
 C SAN as amicus curiae submitted that under Section 12 of the Legal Practitioners Act 1975 (Decree No. 15 of 1975) an appeal against the direction of the Legal Practitioners Disciplinary Committee could only lie to the Appeal Committee of Body of Benchers otherwise known as "*The Appeal Committee*", a situation even under the Laws
 D of the Federation, 1990. He stated on that an Amendment Decree of 1994 amended that provision on the appeal to the Appeal Committee and provided for such appeals to the Supreme Court. He stated that provision in the 1994 Act was not amended into the Legal Practitioners Act, Cap L.11 LFN, 2004. That legal effect was given to the
 E 2004 Act in the Revised Edition (Laws of the Federation of Nigeria) Act 2007 which gave legal effect to the Revised Edition of the Laws of the Federation of Nigeria, LFN, 2004.

Mr. Adoke SAN, submitted that the 1994 Act is still an existing
 F law within the meaning of the provisions of Section 315(1)(a) & (4) (b) of the 1999 Constitution having not been expressly repealed by any act of the National Assembly and despite its inadvertent omission in Cap L.11 of the LFN 2004. He cited *Ibidapo v. Lufthansa Airlines* (1997) 4 NWLR (Pt.498) 124: Dr. Olakunle Orojo's at page 381 of
 G his book "*Professional Conduct of Legal Practitioners in Nigeria*"; *Charles Okike v Legal Practitioners Disciplinary Committee* (No.1) (2005) ALL FWLR (Pt.266) 1176 at 1203.

The learned Attorney General contended that this court in arriving at it decision of *Aladejobi v NBA* in which it declined jurisdiction to entertain an appeal from LPDC did not consider the 1994 Act or the *Okike v LPDC* (No. 1). He said this court has the power to depart from or overrule its previous decision where such decision was reached per incuriam. He referred to *Nnubia v Attorney-General of Rivers State & Ors* (2009) 40 NSCQR 90 at 155 - 156.
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The learned President of the Bar Association, Okey Wali Esq submitted that where it is intended to repeal a legislation, it should be expressly stated as the courts lean against implying the repeal of an existing legislation unless there exists clear proof to the contrary. That the court will not imply a repeal unless two Acts are plainly repugnant to each other that effect cannot be given to both at the same time. B That unless there is a specific statutory provision repealing an earlier statute, the courts are unlikely to hold that a statute has been repealed. He cited *Uwaifo v Attorney-General of Bendel State* (1982) 7 SC 124 at 191; *Olu of Warri v Kperegbeyi* (1994) 4 NWLR (Pt.339) C 416; *Governor of Kaduna State v Kagoma* (1982) 6 SC 45 at 54.

The learned Senior Advocate, Mr. Wali stated that Decree No. 21 of 1994 contains the Legal Practitioners (Amendment) Decree 1994, Section 1 of which provides as follows:

“The Legal Practitioners Act (in this Decree referred to as “the D principal Act) is hereby amended as set out in this Decree”.

Also Section 11 providing thus:

“Section 12 of the principal Act is hereby repealed”.

He said from the above provisions, it is apparent that the purpose of Decree No. 21 of 1994 is to amend the Legal Practitioners E Act of 1975. Also that the Decree repealed Section 12 of the Principal Act as is contained in the 2004 LFN compilation (Cap L.11) That the implication is that the compilation of the provisions of Section 12 of the principal Act can be described as erroneous and as such no law F has clearly repealed the 1994 Decree No.21, Mr. Wali further contended that it is noteworthy that although the Legal practitioners (Amendment) (Repeal) Decree No.43, 1998 which is omitted from the LFN 2004 on its face appears to repeal Decree No. 21, in actuality the law is very much alive and subsisting. G

Mr. Wali SAN, submitted that this court should overrule its decision in *Aladejobi v Nigeria Bar Association* as the *Okike* case was not brought to the court’s attention when it considered the issue in *Aladejobi*’s case. That the conditions upon which such a departure would apply are available. He relied on *Eweta v. Gyang* (2003) 28 H NWLR (Pt.816) 345 at 374; *Dalhatu v Turaki* (2003) 15 NWLR (Pt.843) 310 at 341.

He reiterated that the extant applicable law is the 1994 Act as it cannot be repealed by the decision in *Aladejobi*’s (supra). He re-

ferred to P.N. Udoh Trading Co. Ltd v Abere (2001) 11 NWLR (Pt.723) 114 at 144 - 145; Adegoke Motors Ltd v Adesanya (1989) 13 NWLR (Pt.109) 250 at 275.

Mr. Emmanuel Aguma, learned counsel for the respondent interestingly went along the line of thinking of the learned counsel for the appellant, the Attorney-General and President of the Bar Association contending that the Aladejobi's case decision was reached without consideration of Okike (supra). He said the Supreme Court has the jurisdiction to hear appeal from the Disciplinary Committee decision as the 1994 Act is the applicable law.

This is a matter with an interesting feature being one where the applicant and the respondent as well as the amicus curiae are for the departure from Jide Aladejobi v Nigerian Bar Association, a decision of this court in which this court was invited to handle an appeal directly from the Legal Practitioners Disciplinary Committee and in which this court declined that jurisdiction on the ground that the Appeal Committee of the Body of Benchers Disciplinary Committee ought to have first heard the appeal before an approach can be made to the Supreme Court. The position being taken is that the 1994, Legal Practitioners Act (LPA) Amendment Decree No.21 is the extant law. That the Supreme Court in Aladejobi (supra) had ruled the way it did because the court did not consider the case of Charles Okike v. Legal Practitioners Disciplinary Committee (No.1) (2005) 3 - 4 SC 49, rather the court considered Okike v LPDC (No.2) (2005) 15 NWLR (Pt.949) at 471 which is opposite the case of Okike v LPDC (No.1).

Appellant had posited that the sole issue for determination in the case of Okike v LPDC (No.1) is whether the Supreme Court has jurisdiction to entertain appeals directly from the decisions of the Legal Practitioners Disciplinary Committee (LPDC), a situation different from Okike v LPDC (No.2) which had a different question to be answered.

Some snippets of the judgment in Okike v. LPDC (No.1) (2005) 3-4 SC 49 would be helpful. In that case Supreme Court at page 61 per Uwais CJN stated thus:

"Therefore by virtue of the provisions of Section 316 subsection (1) of the 1999 Constitution the Supreme Court is deemed to have been charged with the function of hearing appeals from the

Disciplinary Committee under the 1999 Constitution

At page 67 of the same judgment the Supreme Court held thus: “*In my opinion, the provisions of Section 233 section (1) of the 1999 Constitution have not in any way ousted the jurisdiction either expressly or impliedly of the Supreme Court to hear appeal from the Disciplinary Committee. Therefore in the absence of any express provision in the constitution which ousts the jurisdiction of the Court, we should be very reluctant to hold that the jurisdiction has been ousted see African Newspapers of Nigeria & Ors v The Federal Republic of Nigeria (1985) 2 NWLR (Pt.6) 137, Anakwenze v Aneke & Ors (1988) 2 NSCC 798 at P.803 and A.G. of Lagos State v A.G. of the Federation (2004) 11 - 12 SC. 85 at page 112; (2004) 18 NWLR (Pt.904) 1 at page 89. This court does not readily oust its jurisdiction. In principle, it jealously protects the jurisdiction. It follows from all the foregoing that this court amply has the jurisdiction to hear the present appeal from the Disciplinary Committee*”.

At page 76 to 77 of the same judgment Ejiwunmi JSC held thus: “*It is also my respectful view that any other decision would be contrary to the well known recognized practice that it is the Supreme Court that has always been the body responsible for the registration, admittance and discipline of legal practitioners from the very beginning of the institution of legal practice in this country. Hence such cases as Abua v Legal Practitioners Committee (1962) 2 NSCC 175 went before the Supreme Court. I will therefore for all above reasons and further reasons given in the leading ruling hold that appeal lies to this court in respect of this matter*”

In the same case of (No.1) of Okike v. LPDC, Pats-Acholonu JSC held thus at pages 89 and 90.

“*Also in Legal Practitioners Committee v. Edewor (1988) NSCC 178, the appellant was a committee set up under Legal Practitioners Ordinance (Cap 101) 1958. The committee acting in accordance with Section 31 of the Legal Practitioners Ordinance having found Mr. Edewor guilty submitted its report straight to the Federal Supreme Court charged with the duty of final decision to met disciplinary measure against any practitioner for gross professional misconduct. The Federal Supreme Court assumed jurisdiction. I believe that the word appeal in Section 12 of the Legal Practitioners Act as amended ought to be construed as meaning or denoting a final re-*

consideration with a view to either quashing or agreeing to the punishment suggested or advised to be imposed it does not appear to be an appeal in the strictest sense. In other words the direction which is the word used in Section 12 is not supposed to be a final verdict. The final verdict is that of the Supreme Court. It therefore can be said that when the Supreme Court sits to review the direction of the committee it is to give a final endorsement or otherwise. The direction of the committee is not meant to be final that would nail the position of the offenders. In the circumstances I hold that the Supreme Court has jurisdiction to rehear or reconsider and carefully review the direction of the committee made at the instance of the appellant aggrieved by the decision of the committee”

However, *Okike v LPDC (No 2)* came about when the Supreme Court assumed jurisdiction under *Okike v LPDC (No 1)* and the court proceeded to hear the substantive appeal which came directly from the LPDC and the appeal was reported as *Okike v The Legal Practitioners Disciplinary Committee (No 2) (2005) 15 NWLR (Pt.949) 471*.

For the respondent was contended that since *Okike v The Legal Practitioners Disciplinary Committee (No 1)* was decided by this court upholding the Legal Practitioners Act (Amendment) Decree No.21 of 1994 as the extant law not repealed as the inadvertence in having its repeal stated in the Legal Practitioners Act Cap. L.11 2004, therefore its validity and applicability were not affected.

The provisions of the Legal Practitioners (Amendment) Decree No. 21 of 1994 stipulates as follows:

“10. The existing Section 11 of the principal Act is amended by-

(a) Renumbering the Section as Section 12.
(b) Substituting for the words “is on the roll” appearing in paragraphs (a) and (b) of subsection (1) the words “is a member of the Legal profession”.

(c) Substituting for the existing subsection (4) a new subsection (4) as follows that is -

“(4) It shall be the duty of the Bar Council to make rules from time to time on professional conduct in the Legal Profession and cause such rules to be published in the Gazette and distributed to all the branches of the association”

(d) *Inserting immediately after the words “relates” appearing in subsection (6) thereof the following words” and submit to the Body of Benchers a report on its findings which resulted in the issuance of the notice” and*

(e) *Substituting for the words “Appeal Committee of the Body of Benchers” appearing in subsection (7) of this section the words “Supreme Court.”* B

11. Section 12 of the Principal Act is hereby repealed,

12. Honourable Justice I.T. Mohammad in his concurring judgment at page 89 - 92 stated thus in *Aladejobi v Nigerian Bar Association* (supra): C

“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:

“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 subsection (7) of this section the words “Supreme Court.” E

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

It is to be noted again that although the Decree was signed into law on the 29th day of November, 1994, section 16 thereof provided that the decree *“Shall be deemed to have come into force on 31st July, 1992”*. Thus, from 31st 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. L.11, 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 appealed, 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. 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. L.11 of the 2004 LFN. The 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.

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 ALL NLR 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 P143, 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, 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 (A.213 of the 1979 Constitution, now S.233(1) of the 1999 Constitution), S.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.”

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 objection against the hearing of the appeal by the Supreme Court in spite of the fact that the Legal Practitioners Act, Cap. L.11, LFN, 2004 was the prevailing law which restored the Appeal Committee of the Body of Benchers. Thus, the Supreme Court 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 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, Cap.L.11, 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 loop-holes now apparent.

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

The judgment of this court in *Okike v The Legal Practitioners Disciplinary Committee* (No.1) supra has to be extensively quoted as follows:

In *Okike v LPDC* (No.1) supra, Uwais CJN on the 1994 Act stated thus:

“Now, Section 12 subsection 7 of the Legal Practitioners Act, Cap. 207 of the Laws of the Federation of Nigeria, 1990, as amended, provides:

“12(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 notice of direction, appeal against the direction to the Supreme Court 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 words underlined by me in the section depict the carelessness by the legal draftsman mentioned in the amicus argument. The statement thereunder is not correct and therefore should be disregarded. When this is done the rest of the section is very clear. It is that a legal practitioner affected by the direction given against him or her by the Disciplinary Committee can appeal against the direction to the Supreme Court. The question is: in the light of the provisions of Section 232 subsection (2) and 233 subsection (1) of the 1999 Constitution, does such right of appeal exist or is it constitutional? I think Section 232 subsection (2) and Section 233 subsection (1) of the constitution when read together will appear that each one stands independently on its own and applies to a different circumstance. Section 232 subsection (2) provides:

“(2) In addition to the jurisdiction conferred upon it by subsection (1) of this section, the Supreme Court shall have such original jurisdiction as may be conferred upon it by any Act of the National Assembly.”

While Section 233 subsection (1) states:

“(1) The Supreme Court shall have jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Court of Appeal.”

It seems to me the power mentioned under Section 232 subsection (2), enabling the National Assembly to increase the original jurisdiction of the Supreme Court, is not similarly mentioned under Section 233 subsection (1) of the National Assembly to extend or increase the jurisdiction of the Supreme Court to hear appeals from the Court of Appeal. The reason is clear. The subsection has already given the Supreme Court the exclusive jurisdiction to hear appeals from the Court of Appeal. This provision is exhaustive. There is nothing more left by way of appeal from the Court of Appeal that the

National Assembly can increase or add to the jurisdiction of the Supreme Court. That is why the provision which appear under Section 232 subsection (2) cannot be found under section 233 subsection (1) Therefore, to read into the latter the provisions of section 232 subsection (1) is, in my opinion, to do violence to section 233 subsection (1). B

This notwithstanding, the question remains: Are the provisions of Section 12 subsection (7) of the Legal Practitioners Act, Cap. 207 as amended, constitutional and therefore valid or are they otherwise? I think they are constitutional and valid for the following reasons: C

First, Section 4 subsection (2) of the 1999 Constitution provides:

“4(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to this Constitution.”

In part 1 of the Second Schedule to the Constitution, item 49 of the Exclusive Legislative List provide that the National Assembly can legislate in respect of “Professional Occupations as may be designated by the National Assembly.” Items 67 and 68 of the Exclusive List are that the National Assembly can legislate on - “67. Any other matter with respect to which the National Assembly has power to make laws in accordance with the provisions of this Constitution. E F

“68 Any matter incidental or supplementary to any matter mentioned elsewhere in this List.”

In addition, it is provided in paragraph 2(a)(b) of Part III to the Second Schedule to the Constitution- G

“2. In this Schedule, reference to incidental and supplementary matters include, without prejudice to their generality, references to-

(a) Offences

(b) The jurisdiction, powers, practice and procedure of Courts of Law; H

By the combined effect of all the foregoing provisions, it is clear to me that the National Assembly has the power to legislate in respect of the legal profession. Within such power, the National As-

sembly can establish for the legal profession a disciplinary committee such as the Disciplinary Committee. It is also within its power for it to give appellate jurisdiction to the Supreme Court to hear appeals from the Disciplinary Committee.

B *Secondly, Section 315 subsection (1) of the 1999 Constitution Provides:*

“315-(1) Subject to the provisions of this Constitution, an existing law shall have effect with such modifications as may be necessary to bring it into conformity with the provisions of this Constitution and shall be deemed to be-

C *(a) An Act of the National Assembly to the extent that it is a law with respect to any matter on which the National Assembly is empowered by this Constitution to make laws;”*

D *The word “existing law” have been defined under Section 315 subsection (4) of the Constitution to mean-*

“(4)(b) ...any law and includes any rule of law or any enactment or instrument whatsoever which is in force immediately before the date when this section comes into force or having been passed or made before that date comes into force after that date;”

E *The section came into force on the 29th day of May, 1999.*

It can be seen from the foregoing that the Legal Practitioner Act, Cap.207, as amended, qualifies to be “an existing law” and therefore the provisions of section 12 subsection (7) therefore are constitutional and valid.

F *Thirdly, by the provisions of Section 316 subsection 91 of the 1999 Constitution-*

“Any office, court of law or authority which immediately before the date when this section comes into force was established and charged with any function by virtue of any other constitution or law shall be deemed to have been duly established and shall continue to be charged with such function until other provisions are made, as if the office, court of law or authority was established and charged with the function by virtue of this constitution or in accordance with the provisions of a law made there under.”

H *The Legal Practitioners Act, Cap. 207 was validly enacted in 1975 under the Constitution of the Federation, 1963 as suspended and modified many times by various constitution (suspension and*

modification) Decrees. It was validly amended by the Legal Practitioners (Amendment) Decree, 1994, No. 21 of 1994. Since the 1994 amendment the Supreme Court had exercised appellate jurisdiction in respect of appeals from the Legal Practitioners' Disciplinary Committee. To confirm this, Section 7 subsection (6) of the Legal Practitioners Act, 1962, No. 33 of 1962 provided: B

"7(6) The person to whom such 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 Federal Supreme Court..."

Therefore, by virtue of the provisions of Section 316 subsection (1) of the 1999 Constitution, the Supreme Court is deemed to have been charged with the function of hearing appeals from the Disciplinary Committee under the 1999 Constitution. Consequently, Section 12 subsection (7) is constitutional and valid. C D

Fourthly, historically the Federal Supreme Court and the present court have exercised jurisdiction in matters pertaining to the conduct of legal practitioners. For Sections 20, 31 to 37 of the Legal Practitioners Act, Cap. 101 of the Laws of the Federation of Nigeria, and Lagos, 1990 (See Vol. IV) provided: E

"20 The Attorney-General may require any person who makes allegations of misconduct against any legal practitioner to support such allegations by an affidavit setting out the facts on which he relies as proof of the misconduct.

"21(1) The Committee on the termination of the inquiry shall embody their findings in the form of a report to the Federal Supreme Court and the report shall be signed by the chairman and filed in the office of the Chief Registrar, and shall be open to inspection by the party charged and any legal practitioner assisting him, but shall not be open to public inspection. F G

(2) If the committee are of the opinion that no prima facie case of misconduct has been made out they need not proceed further; but if they are of the contrary opinion it shall be their duty to bring the report before the Federal Supreme Court together with the evidence taken and the documents put in evidence at the inquiry. H

"32 (1) The powers conferred in the following sections of this Ordinance upon the Federal Supreme Court shall be exercised by any three of the judges of such court.

(2) *The decision of the majority of the three judges, in case they shall not agree in their opinion, shall be taken to be the decision of the Federal Supreme Court.*

“33 The Federal Supreme Court may refer the report back to the committee with directions for their finding on any specified point.

B *“34 The Federal Supreme Court may set the report down for consideration for a date fourteen days’ notice of which shall be given to the committee and to the legal practitioner concerned by the Chief Registrar who shall forward with the notice copy of the report. The notice aforesaid shall be as in Form B in the Schedule.*

C *“35 The Committee and the legal practitioner may appear by counsel or a solicitor before the Federal Supreme Court at the consideration of the report.*

“36 The Federal Supreme Court after considering the evidence taken by the committee and the report, and any evidence taken by a judge under the next section, and after taking any further evidence, if it thinks fit to do so, may admonish the legal practitioner or suspend him from practicing in the Federal Supreme Court during any specified period, or may order the Chief Registrar to strike his name off the roll of the Court.

“37.(1) Any judge of the Federal Supreme Court shall have power, after considering the evidence taken by the committee and the report and after taking any further evidence if he thinks fit to do so, suspend the legal practitioner from practicing in the Federal Supreme Court, temporarily, pending the consideration of the case and the confirmation or disallowance of such suspension by the Federal Supreme Court.

F *(2) The provisions of Sections 33, 34 and 35 shall, mutatis mutandis, apply to any proceedings under this section.”*

G *Section 6 subsection (3) and Section 7 subsections (1) and (6) of the Legal Practitioners Act, 1962 No. 33 which replaced the 1958 Cap. 101, provided as follows:*

“6.(6) There shall be a body, to be known as the Legal Practitioners Investigating Panel (and hereafter in this Act referred to as the “Panel”), which shall be charged with the duty of conducting a preliminary investigation into any case where it is alleged that a person whose name is on the roll has misbehaved in his capacity as a legal practitioner or should for any other reason by the subject of pro-

H

ceeding before the tribunal, and or deciding whether the case should be referred to the tribunal.”

“7- (1) Where:

(a) A person whose name is on the roll is judged by the tribunal to be guilty of infamous conduct in any professional respect; or

(b) A person whose name is on the roll is convicted, by any court in Nigeria having power to award imprisonment, of an offence (whether or not an offence punishable with imprisonment) which in the opinion of the tribunal is incompatible with the status of a legal practitioner; or

(c) The tribunal is satisfied that the name of any person has been fraudulent enrolled, the tribunal may, if it thinks fit, give a direction-

(i) Ordering the registrar to strike that person’s name off the roll:

(ii) Suspending that the person from practice by ordering him not to engage in practice as a legal practitioner for such period as may be specified in the direction: or

(iii) Admonishing that person and any such direction may include provision requiring a refund of money paid, or the handing over of documents as the circumstances of the case may require.”

(6) 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 Federal Supreme Court; and the tribunal may appear as 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 tribunal, shall be deemed to be a party thereto whether or not it appears on the hearing of the appeal.”

In addition, section 12 subsections (6) and (7) of the Legal Practitioners Act, Cap 207 of the Laws of the Federation of Nigeria, 1990, as amended by the Legal Practitioners (Amendment) Decree, 1994, No. 21 of 1994, provides:

“12.(6) When the disciplinary committee gives a direction under subsection (1) or subsection (2) of this section, the disciplinary committee shall cause notice of the direction to be served on the person to whom it relates and submit to the Body of Benchers a report on its findings which resulted in the issuance of the notice.

(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 notice of the direction, appeal against the direction to the Supreme Court established under Section 12 of this Act; and the disciplinary committee may appear as respondent to the appeal, for the purpose of enabling directions to be given as 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.*"

As can be seen from all the foregoing the Supreme Court has all along exercised jurisdiction in disciplinary matters pertaining to the conduct of legal practitioners long before and after the promulgation of the 1979 Constitution. There was no express provision in that Constitution which ousted the jurisdiction of the Supreme Court. Similarly, there are no specific provisions in the 1999 Constitution which ousted the jurisdiction of the court.

In my opinion, the provisions of Section 233 subsection (1) of the 1999 Constitution have not in any way ousted the jurisdiction either expressly or impliedly of the Supreme Court to hear appeal from the Disciplinary Committee. Therefore in the absence of any express provision in the Constitution which ousts the jurisdiction of the court, we should be very reluctant to hold that the jurisdiction has been ousted - See *African Newspapers of Nigeria & Ors. v. The Federal Republic of Nigeria* (1985) 2 NWLR (Pt.6) 137 *Anakwanze v Aneke & Ors.* (1988) 2 NSCC 798 at P.803 and *A-G of Lagos State v A-G of the Federation*, (2004) 11 - 12 S.C. 85 at page 112; (2004) 18 NWLR (Pt. 904) 1 at page 89 H. This court does not readily oust its jurisdiction. In principle, it jealously protects the jurisdiction.

It follows from all the foregoing that this court amply has the jurisdiction to hear the present appeal from the Disciplinary Committee. I therefore so hold.

Accordingly, the appeal in this case is fixed for hearing on 28th April, 2005".

I have quoted copious and at length, the dictum of Uwais CJN (as he then was) in *Okike No 1* for a fuller understanding and a partaking of the historical journey with prevailing factors including the various legislations at play. This for the reason to appreciate what was and what is now obtainable including the mind of this court with

what was within its grasp at the time of the decision.

The learned president of the Nigerian Bar Association, Okey Wali Esq. took the view that there were two conflicting decisions of this in *Okike v Legal Practitioners Disciplinary Committee (No.1)* and the case of *Aladejobi v Nigerian Bar Association* in that while *Okike No.1*, this court held it had jurisdiction to hear appeals from direction of the Legal practitioners Disciplinary Committee while in the later case of *Aladejobi v Nigerian Bar Association* delivered on the 13th July, 2013 this same court held it had no jurisdiction to hear such appeals, a situation which connotes that the *Aladejobi's* case has repealed the provisions of LPA as amended by Decree No.21 of 1994 which the court cannot do.

The learned Attorney General on his part urges this court to overrule its decision in *Aladejobi's v NBA (supra)* as it was reached per incuriam and without the benefit of the consideration of the operative law sections 10(e) and 11 of the Legal Practitioners (Amendment) Decree No.21 of 1994.

On this matter of overruling itself, the case of *Nnubia v Attorney-General of Rivers State & 2 Ors. (2009) 40 NSCQR 90 at 155 - 156* is instructive and I shall refer to it and thus I quote:

"It is trite that this court as an Apex will be wary to overrule itself or depart from its previous decisions on the persuasive and eloquent submission of counsel but will not hesitate to do so when there is urgent need to revisit the law. The need to depart from any previous decision of this court must be strong and substantial and must be done in the interest of justice. They include the under mentioned instances:

(1) Where it is shown that the previous decision is inconsistent with the Constitution or erroneous in law.

(2) Where the previous decision was given per in curiam.

(3) Where two decisions are in conflict.

(4) Where it is shown that the precious decision is occasioning a miscarriage of justice or perpetrating injustice or contrary to public policy.

(5) When there has been new development in the socio-economic or political stance of the country especially when the matter under consideration is a matter provided for by the Constitution.

(6) Where the decision is capable of fettering the exercise of

judicial discretion by court.

There is no hard and fast rule exhausting the area within which to warrant a departure from a previous decision. Each case must be decided on its special facts and circumstances with a view to avoid perpetrating injustice which is the determining factor in this respect". Per O. O. Adekeye, JSC at pages 155 - 156.

Okey Wali SAN, president of the Bar Association had called attention to the dictum of Belgore JSC (as he then was) in Okike v Nigerian Bar Association in support of this court assuming jurisdiction here and now. I shall quote the salient part of it, thus:

"The Legal practitioners Disciplinary Committee, it must be pointed out is not a tribunal but a fact finding and house cleaning body to maintain discipline and decorum of the legal profession. The existence of Nigeria as a nation is a product of law, the Constitution, and this makes the legal profession a unique body whose internal discipline must not be taken for granted. That is why ample provisions have been made in corpus juris for the training and controlling of the members of the members of the profession. Law and order go hand in hand and any breakdown of law and order can throw the country into a state of anarchy. This is why, instead of appeal from "direction" of Legal Practitioners Disciplinary Committee being to the High Court or if it is regarded as a "superior tribunal" to the Court of Appeal, the appeal is directly to the Supreme Court." Per Belgore JSC (as he then was) in Okike v LPDC supra.

All counsel in this application, the counsel for applicant, respondent and the two amicus curiae have set out very impressive submissions which are anchored on the unified position of all the counsel that the applicable law is the 1994 Act for which the judicial authority to follow is Okike (No. 1) supra and the inapplicability of the 2004 Act which they hold had nothing to do with the application and appeal which would have created a different conclusion and a consequent departure and overruling of Aladejobi (supra).

The point has to be brought out the matter of the Revised Edition (Laws of the Federation of Nigeria) Act. No.30 of 2007 which was enacted by the National Assembly to give effect to the Revised Edition to the Laws of Federation of Nigeria, 2004. It provides thus:

"1. Approval of the Revised Edition of the LFN 2004. The Laws of the Federation of Nigeria compiled and published in 2004

under the authority of the Attorney General of the Federation and Minister of Justice are hereby approved by the National Assembly”.

Though the use of the language “*approved*” is not the usual language deployed in legislation, it may be termed inelegant, untidy or non-legislative but it remains with the force for operation and does not detract from the validity of what is intended by the legislature. B The courts including this one lack the competence to invalidate the legislation merely because of the use of language which is not the usual in drafting of laws.

Section 12 of Cap L.11, Laws of the Federation 2004 prescribes an Appeal Committee of the Body of Benchers. That is, it re-enacts the Appeal Body which the 1994 LPDC Decree 21 had removed and itself provided for appeal from the LPDC to the Supreme Court directly. C

For effect I shall quote Section 12 of Cap L.11, 2004 LFN D thus:

“(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. E

(5) 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 Supreme Court, and the Appeal Committee may appear as respondent to the appeal and for the purpose of enabling directions to be given by the Supreme Court as to cost of the appeal before that court and of proceedings before the Disciplinary Committee, the Appeal Committee shall be deemed to be party to the appeal before the Supreme Court whether or not it appears on the hearing of that appeal”. F G

Having considered all the materials available including the submissions of counsel and all that comes out is that, it is the counsel that came from an erroneous premise which is the validity and life of the 1994 Act. This is because contrary to the position of the counsel, the 1994 Act is now inoperable with the 2004 Act very much alive, H current and given effect to by the 2007 Act which ratified or approved the 2004 Act and its provisions.

Section 12(5) Cap.11 Laws of Federation 2004 vol.1 has provided for Appeal Committee of Body of Benchers, to which appeal

from the direction of the LPDC shall be place after which any appeal therefrom would come before the Supreme Court. Therefore instead of departure from Aladejobi v NBA (supra) as was being urged, the situation is that the Adedejobi (supra) is to be followed as it represents the extant law. The dictum of I. T. Muhammad JSC is apt and
B covers the field and it is thus:

*“Now, the correct position of the law and practice as I understand them is that once a decision (including a Direction from the LPDC) is delivered and it is appealed, it is the prevailing law and
C practice governing appeals that must guide the filing of the appeals, When appeals ceased to be channeled directly from High Court to Supreme Court, 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 law in operation,
D 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 L.11 of the 2004 LFN. 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
E not been complied with, then any attempt to lodge an appeal direct to this court would be futile.”*

That quotation above setting the stage, it has to be said that Aladejobi (supra) did not depart from Okike v LPDC (supra) rather it appreciated that the Legal Practitioners Act, Cap L11, LFN, 2004
F which was already in existence was not to the knowledge of this court and the counsel therein were not seised of the new and prevailing law, the 2004 Act and so the Supreme Court was not properly guided when it ruled upon the law which they thought was extant being the
G 1994 Act. That the Appeal Committee has not been set up would not make valid an appeal directly to the Supreme Court when that provision has been effectively removed and the position of the Appeal Committee restored.

The point has to be made that the fact that legislation is not
H made public as the 2004 Act and the ratifying 2007 Act would not change the fact that those are the prevailing laws and the 1994 Act out of the way.

From the foregoing and the well articulated lead Ruling of my learned brother, Ibrahim Tanko Muhammad JSC, there is no gain

saying that there is no basis for the invitation to depart from Aladejobi (supra) or to overrule it and also the fact that the *Okike v NBA* (supra) is not being departed from since the judgment came from the thinking that the last law standing was the 1994, Legal Practitioners Act while the situation on ground was that 1994 law has ceased to exist with the 2004 Act taking its place with the restoration of the 1990 Act provision for appeal from the direction of LPDC to get to the Appeal Committee from which an appeal would lie to the Supreme Court. The first part of the appeal to the Appeal Committee is a condition precedent which cannot be by-passed for the competence of the appeal at the Supreme Court. In the light of the foregoing, I too strike out the appeal for incompetence.

I abide by the consequential orders made.

M.D. MUHAMMAD JSC

I had a preview of the lead ruling of my learned brother I.T. Muhammad, JSC, just delivered and do hereby adopt same in refusing the invitation to depart from this court's decision in appeal No.SC.121/2011 *Aladejobi v. Nigeria Bar Association* reported in (2013) 15 NWLR (Pt.1376) 66 and in applying the principles adumbrated in that very case, I also decline jurisdiction in the appeal to which the lead ruling relates.

KEKERE-EKUN JSC

I have had the privilege of reading in draft the well-considered ruling of my learned brother, IBRAHIM TANKO MUHAMMAD, JSC, just delivered. His Lordship has meticulously considered and comprehensively resolved the issue before us. I am in full agreement with the reasoning and conclusion that the circumstances of this case do not warrant a departure by this court from its decision in *Jide Aladejobi Vs NBA* reported in (2013) 15 NWLR (Pt.1376) 66. (hereinafter referred to as "*Aladejobi*" simpliciter).

My learned brother has fully set out in the lead ruling, the facts and circumstances that necessitated the determination by this court of whether to depart from its previous decision in *Aladejobi*. I shall not repeat those facts here. Suffice it to say that this court has been

invited to depart from Aladejobi in view of the subsisting decision of a full panel of this court in Charles Okeke vs. LPDC (No.1) (2005) 3 - 4 SC 49 @ 67 (hereinafter referred to as Okike No. 1), wherein the court after considering Section 12(7) of the Legal Practitioners Act (LPA), Cap. 207 Laws of the Federation (LFN) 1990 as amended and Sections 233(1) and 316(1) of the 1999 Constitution, held that it has jurisdiction to entertain appeals from the directions of the Legal Practitioners Disciplinary Committee (LPDC). It is contended that since this court was not invited to overrule itself in Aladejobi, the decision in Okike No.1 is extant. It is further contended that since Okike No. 1 was not considered in Aladejobi's case, Aladejobi's case was decided in error.

As observed in the lead ruling, apart from the parties to the appeal, the Hon. Attorney General of the Federation and the President of the Nigerian Bar Association were invited as amicus curiae to offer their informed opinions on this matter, which has far-reaching consequences in the discipline of legal practitioners. It is pertinent to note that all the parties including the amicus curiae urged the court to depart from its decision in Aladejobi's case (supra) and to hold that it has jurisdiction to entertain an appeal directly from the direction of the LPDC.

The grounds upon which this court is being invited to depart from Aladejobi are

- (i) that the decision was given per incuriam and is in conflict with Okike No. 1;
- (ii) that it is erroneous on point of law as the existing law is Decree No. 21 of 1994;
- (iii) that following the decision may negate public policy; and
- (iv) that there is no Appeal Committee of the Body of Benchers in existence presently.

In a nutshell it is contended by all the parties that in Aladejobi the court relied on sections 11(7) and 12(1) of the LPA Cap. 207 LFN 1990 as amended, as contained in Cap.111 LFN 2004 to hold that an appeal against the direction of the LPDC lies to the Appeal Committee of the Body of Benchers, whereas the extant law is Decree 21 of 1994, which has not been repealed. It is argued that the LPA Cap 111 LFN 2004 did not take into cognizance the substantial amendments made to the existing law by Decree 21 of 1994. The

submissions of learned counsel for the parties as well as the amicus curiae have been reproduced extensively in the lead ruling. Learned counsel have strenuously argued that the decision of a full panel of this court in Okike No. 1 remains good law as this court was not invited to overrule it in Aladejobi.

What the court must consider in this regard is whether the decision in Aladejobi is indeed in conflict with Okike No.1. In Okike No.1 (supra), the appellant had filed an appeal directly to the Supreme Court from the direction of the LPDC striking his name off the roll of legal practitioners. The constitutional issue raised suo motu by the court was whether, having regard to the provisions of Section 233 of the Constitution of the Federal Republic of Nigeria, 1999, the Supreme Court had jurisdiction to entertain appeals from any other court or tribunal apart from the Court of Appeal. A full court was empaneled to determine the issue. The court considered Section 12(7) of the Legal Practitioner's Act (LPA) Cap.207 Laws of the Federation of Nigeria (LFN) 1990 as amended and Sections 233 and 316(1) of the 1999 Constitution. His Lordship, Uwais, CJN (as he then was) who wrote the leading ruling, after exhaustively considering the historical jurisdiction of the court in matters pertaining to the conduct of legal practitioners and the various amendments to the Legal Practitioners Act over the years, concluded thus at pages 61 and 68 - 69 of the report:

"The Legal Practitioners Act, Cap. 207 was validly enacted in 1975 under the Constitution of the Federation, 1963 as suspended and modified many times by various Constitution (Suspension and Modification) Decrees. It was validly amended by the legal Practitioners (Amendment) Decree, 1994, No. 21 of 1994. Since the 1994 amendment the Supreme Court had exercised appellate jurisdiction in respect of appeals from the Legal Practitioners Disciplinary Committee. ...Therefore by virtue of the provisions of Section 316 subsection (1) of the 1999 Constitution, the Supreme Court is deemed to have been charged with the function of hearing appeals from the Disciplinary Committee under the 1999 Constitution. Consequently, Section 12 subsection (7) is constitutional and valid.

In my opinion, the provisions of Section 233 subsection (1) of the 1999 Constitution have not in any way ousted the jurisdiction either expressly or impliedly of the Supreme Court to hear appeal

(sic) from the Disciplinary Committee. Therefore, in the absence of any express provision in the Constitution, which ousts the jurisdiction of the court, we should be very reluctant to hold that the jurisdiction has been ousted. ...It follows from all the foregoing that this court amply has the jurisdiction to hear the present appeal from the Disciplinary Committee.”

To re-emphasize, the issue in Okike No.1 was whether the phrase “to the exclusion of any other court of law in Nigeria” in Section 233 of the 1999 Constitution means that the Supreme Court can only hear appeals from the Court of Appeal. It was held that Section 12(7) of the Legal Practitioners Act, Cap.207 LFN 1990 as amended by Decree No. 21 of 1994, being a law enacted by the National Assembly in the exercise of its powers under Section 4(2) of the Constitution validly conferred appellate powers on the Supreme Court to hear appeals from directions of the LPDC.

In Aladejobi on the other hand, the issue in contention was whether having regard to the provisions of Sections 11(7) and 12(1) of the Legal Practitioners Act 1990 as amended, contained in Cap. 111 of the Laws of the Federation (LFN) 2004, this court has jurisdiction to entertain appeals directly from the LPDC. To put it another way, whether by virtue of those provisions the appellant being dissatisfied with the direction of the LPDC given on 22nd February 2011 could only appeal to the Appeal Committee of the Body of Benchers and not directly to this court.

Sections 11(7) and 12(1) of the LPA 1990 as amended provide as follows:

“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 this Act; and the Disciplinary Committee may appear as the respondent to the appeal and, for the purpose of the 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.

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 is patently evident in my humble view that the issues this court was called upon to decide in the two cases are quite different. In Okike No.1 the issue was whether this court has jurisdiction to hear appeals from any other court or tribunal other than the Court of Appeal. In Aladejobi, the issue was whether in view of the provisions of Sections 11(7) and 12(1) of the LPA 1990 as amended, a person aggrieved by a direction of the LPDC could by-pass the Appeal Committee of the Body of Benchers provided for therein and appeal directly to the Supreme Court. B

In his concurring judgment, I.T. MUHAMMAD, JSC noted that although the LPA Cap.207 LFN 1990 was amended by Decree No. 21 of 1994 by (a) renumbering Section 11 as Section 12; (b) substituting the words “*Appeal Committee of the Body of Benchers*” appearing in subsection (7) with the words “*Supreme Court*”; and (c) repealing Section 12 of the principal Act, with the resultant effect that any right of appeal from the direction of the LPDC was to be channelled directly to the Supreme Court, Section 12 of the LPA Cap.111 LFN 2004 re-enacted the provision providing for appeals to the Appeal Committee of the Body of Benchers. His Lordship noted that although signed into law on 29/11/1994, Decree No. 21 of 1994 came into force on 31/7/1992 and therefore with effect from 31/7/1992 up till 2004, any right of appeal from the direction of the LPDC was exercisable directly to the Supreme Court. His Lordship noted further that in view of the re-enactment of Section 12 in Cap.111 LFN 2004, the prevailing law as of 22/2/2011 when the direction was given and 30/3/2011 when the notice of appeal was filed was Cap, 111 LFN 2004 and the appellant was bound to comply with the provisions of Section 12 thereof and first make his complaint to the Appeal Committee of the Body of Benchers. C
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This brings us to the crux of the issue in the matter now before us. First of all, the decision in Okike No. 1 was not considered at all in Aladejobi. Even if it had been considered, the facts and circumstances of the two cases, as already observed are not the same. It would therefore be erroneous to contend that the decision in Aladejobi overruled the decision of a full panel of this Court in Okike No. 1 remains extant and is good law for what it decided. H

It is correct, as observed by this court in Okike No. 1, that historically the Federal Supreme Court and later the Supreme Court

have always exercised jurisdiction in matters pertaining to the conduct of legal practitioners. There have been several amendments to the LPA, particularly from 1992 to 1998. The various legislations have been comprehensively set out in the lead ruling. Although there was a clear intention to repeal Decree No. 21 of 1994 by Decree No. 43 of 1998, it was never repealed. The marginal notes to Decree No. 43 indicate that the Decrees to be repealed are Decree Nos. 21 of 1993, No. 38 of 1993 and No. 21 of 1994. However in the body of the Decree the only Decree specifically repealed by Section 1 (1) thereof is the Legal Practitioners (Amendment) Decree of 1993. The law is well settled that marginal notes do not form part of an enactment and are for convenience or reference only.

It is also settled that statutes are not repealed by implication but by direct provisions of law. See: *Ibidapo vs. Lufthansa Airlines* (1997) 4 NWLR (Pt.498) 124.

It is the contention of the parties, including the amicus curiae that having not been repealed, Decree No. 21 of 1994 is an existing law inadvertently omitted from the compilation of the Laws of the Federation 2004. I am of the view that an omission would be said to have occurred when a law has been completely left out of the compilation or where inadvertently no provision is made for a particular circumstance. In the case at hand the Legal Practitioners Act is contained in Cap. 111 of the 2004 Revised Laws of the Federation 2004. Section 12 thereof makes specific provision for the establishment of the Appeal Committee of the Body of Benchers. Section 12(1) thereof provides:

“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.”

Subsections (4) and (5) Provide:

12(4) The Appeal Committee shall cause notice of any direction given by it under this section to be served on the person to whom it relates.

(5) 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 Supreme Court and the Appeal Committee may appear as respondent to the

appeal and, for the purpose of enabling directions to be given by the Supreme Court as to costs of the appeal before that court and of proceedings before the Disciplinary Committee, the Appeal Committee shall be deemed to be a party to the appeal before the Supreme Court, whether or not it appears on the hearing of that appeal.” B

Failure to take cognizance of certain amendments to the law is, in my humble view, quite different from omission of the law altogether or omission of relevant provisions thereof. As rightly observed by my learned brother in the lead ruling, the situation the court is faced with is the existence of two conflicting laws on the same subject matter. One of the laws is as contained in the much earlier Decree No, 21 of 1994 while the other is embodied in the more recent compilation of the Laws of the Federation, 2004 i.e. Cap. 111 thereof, which the court is entitled to take judicial notice of as the current and authentic compilation of the laws of the Federation. This position is further buttressed by the Revised Edition (Laws of the Federation of Nigeria) Act No. 30 of 2007, described as “*An act to enable effect to be given to the Revised Edition to the Laws of the Federation of Nigeria*”, Sections 1 and 2 of which provide thus: C D E

“1. *Approval of the Revised Edition of the L.F.N. 2004*

The Laws of the Federation of Nigeria compiled and published in 2004 under the authority of the Attorney-General of the Federation and Minister of Justice are hereby approved by the National Assembly. F

2. *An inadvertent omission, alteration or amendment of any existing statute shall not affect the validity or applicability of the statute.*”

Interestingly, Section 12 of the LPA Cap. L11 of 2004 is repeated in Cap. 111 of the Revised Edition (Laws of the Federation Act) 2007. I agree with my learned brother in the lead ruling that the duty of resolving the anomaly cannot rest with this Court. It falls within the legislative functions of the National Assembly. For there to be certainty in the law, this court and indeed all courts in the land must be able to place reliance on and apply the laws as contained in the compilation of laws known as the Laws of the Federation of Nigeria 2004, as authenticated by the Revised Edition (Laws of the Federation of Nigeria) Act 2007. G H

I am therefore of the view and I do hold that the decision of this court in Aladejobi was not given per incuriam but properly determined on the basis of the extant provisions of Section 12 of the LPA Cap. 111 LFN 2004. As the law stands today, this court has no jurisdiction to entertain an appeal directly from the direction of the LPDC.

B The appellant must first appeal to the Appeal Committee of the Body of Benchers. In this regard it is imperative for the Body of Benchers to forthwith constitute the Appeal Committee as provided for under the law pending appropriate amendments to the LPA by the National Assembly.

C In light of the foregoing, I join my learned brother, I.T. MUHAMMAD, JSC in declining the invitation to depart from the decision of this court in Jide Aladejobi Vs NBA reported in (2013) 15 NWLR (Pt.1376) 66. In the circumstances this appeal No. SC.111/D 2006 is hereby struck out as this court lacks jurisdiction to entertain it. I make no order for costs.

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