

SUPREME COURT OF NIGERIA
FRIDAY 26TH FEBRUARY, 2016. SC. 120/2006
CORAM:- S. GALADIMA, M. U. PETER-ODILI, K. M. O.
KEKERE-EKUN, J. I. OKORO, A. SANUSI, JJSC

SHELL PETROLEUM DEVELOPMENT
COMPANY OF NIGERIA LIMITED APPELLANT
AND
SAM ROYAL NIGERIA LIMITED RESPONDENT

APPEALS - Notice of - It is the foundation upon which appeal is based - And where it is defective there shall be no proper valid and lawful appeal (H1)

APPEALS - Notice of - Legal practitioner - Signature - Appellants' notice of appeal is fundamentally defective - As the same was signed by person - Not recognized to practice law in Nigeria (H2)

STATUTES - Interpretation - Purposive approach - Court is to embark upon positive interpretation - Thus a negative interpretation of the law should be avoided - As such is against the canon of interpretation of law (H3)

FACTS

Before the High Court of Rivers State Holden at Ahoda, plaintiff/respondent brought this action under the undefended list procedure against defendant/appellant, claiming the payment of the liquidated sum of N7,021,938.00. The motion was fixed for hearing. Though appellant was duly served with respondent's action, it did not file any notice of intention to defend the action together with an affidavit disclosing a defence on the merit. Appellant later brought an application for extension of time within which to file and serve its notice of intention to defend the suit together with a supporting affidavit.

When the matter was called up for hearing, the trial Court took argument from both parties on the propriety or otherwise of appellants' application for extension of time and adjourned for ruling. In its considered ruling, the Court came to the conclusion that

the fact contained in appellants' affidavit did not raise any bona fide defence on the merit. Consequently, the learned trial Judge entered judgment in favour of respondent under the undefended list. Dissatisfied, appellant appealed to the Court of Appeal, Port Harcourt Division which in its unanimous decision, affirmed the decision of the trial Court and dismissed appellant's appeal for lacking in merit. Not yet satisfied, appellant appealed to the Supreme Court. Respondent brought a notice of preliminary objection on the ground that appellant's notice of appeal was signed by a person not entitled to practice law in Nigeria.

HELD (Unanimously striking out the appeal per

GALADIMA JSC)

APPEALS - Notice of

1. A Notice of Appeal is the spinal cord of an appeal. It is the foundation upon which an appeal is based. It is the originating process which sets the ball rolling for the proper, valid, and lawful commencement of an Appeal.

A valid Notice of Appeal is a condition sine qua non in an appeal. Where it is defective, there shall be no proper, valid and lawful appeal. It cannot stand, it will certainly collapse.
(p. 1501 E)

APPEALS - Notice of - Legal practitioner - Signature

2. Appellants' Notice of Appeal filed on 15/4/2005 in this Court as contained at pages 96 - 97 of the records is fundamentally defective. It is not valid and therefore cannot stand, in that it was issued and signed thus:

SIGNED:

"Appellants Solicitors

Plot D. Golf Course Layout

Old G.R.A. Port Harcourt."

"N. Nwanodi & Co" is not a legal practitioner recognized by law to practice in Nigeria.

Learned counsel for the appellant submitted that the signature of the legal practitioner inscribed on top of the name of the firm is sufficient. The tone of argument is a mere mis-

conception and mis-interpretation of the clear provision of Sections 2(1) and 24 of the Legal Practitioner Act (supra). The law does not say that what should be in the roll is just the signature of the legal practitioner. This is not sufficient. The habit or practice of legal practitioners' merely signing Court processes in their partnership or firm's name without indicating their actual name has been deprecated by this Court in so many cases.

Time cannot be more auspicious than now to see to it that the standard of practice in the legal practice is well maintained. It must not be allowed to ebb to an abysmal and embarrassing level. We must ensure that in preparing and filing Court processes due diligence and regards must be had to Sections 2(1) and 24 of the Legal Practitioners Act (supra). I do not agree with the learned counsel for the Appellant when he submitted that it was an over adherence to technicality to annul the process improperly filed. It is not. With due respect, the learned counsel must not overlook the sense in ensuring that the laws guiding the legal practice are properly observed. This enforcement must begin from here, the Apex Court. It has been doing so. (pp. 1501 G/1502 H)

STATUTES - Interpretation - Purposive approach

3. I must say that it is not possible to embark on "activism" in interpreting the clear provisions of Section 2(1) and 24 of the Act, so as to nail down the decision in OKAFOR v. NWEKE (supra) as similarly urged by the learned counsel for the Appellant in MAIWADA'S case. In interpreting the law, the Court is to embark upon positive interpretation. A negative interpretation of the law should be avoided as such is against the canon of interpretation of law.

The purpose of Sections 2(1) and 24 of the Act is to ensure sanity and responsibility and accountability on the part of a legal practitioner who signs Court processes. How else do you separate chaff from the grain - the indolent fake legal practitioners from the genuine, diligent and serious minded legal practitioners?

In employing purposive interpretation of Sections 2(1)

and 24 of the Act will lead to the obvious conclusion that the notice of Appeal filed on the 15th day of June, 2005 is fundamentally defective and incompetent. This Court lacks the required jurisdiction to hear this appeal which was not initiated with due process of the law. (p. 1504 A)

B

REPRESENTATION

Ejike Ezenwa, Esq. with him, Fidelis Mbadugha, Esq., for the Appellant

C V. N. Thua-Maduenyi, Esq. with him, C. V. Ihua-Maduenyi, Esq., for the Respondent

CASES REFERRED TO

N.N.B Plc v. Denclag Ltd. (2005) 4 NWLR (pt. 916) 549

D Okafor v. Nweke (2007) All FWLR (pt. 368) 1016

Agu v. Odojin (1992) 3 SCNJ 161

Aderibigbe v. Abidoye (2009) 4 SC (pt. III) 123

FBN Plc. v. Maiwada (2013) 5 NWLR (pt. 1348) 444

Madukolu v. Nkemdilin (1962) 2 SC NLR 341

E Uwazurike v. A. G. Federation (2007) 8 NWLR (pt. 1035) 1

A.G. Fed. v. Guardian Newspapers Ltd (1999) 9 NWLR (pt. 618) 187

Cole v. Martins (1968) All NLR 161

Nwani v. Bakari (2005) All FWLR (pt. 281) 1803

F Adekanye v. FRN (2005) 15 NWLR (pt. 949) 433

Clev Josh Ltd. v. Tokini (2008) 13 NWLR (pt. 1104) 422

SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (pt. 1252) 317

Alawiye v. Ogunsaya (2012) 12SC (pt. 11) 1

G

STATUTES & RULES REFERRED TO

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

Evidence Act, s. 74(1)

Court of Appeal Rules, O. 4 r. 4(1)

H Supreme Court Rules, O. 9 r. 3(1)

LEAD JUDGMENT BY GALADIMA JSC

This appeal by the Appellant herein is against the judgment of the Court of Appeal Port Harcourt Division delivered on the 14th

day of April, 2005 affirming the decision of the Rivers State High Court, Ahoda delivered on the 20th day of June, 2000, entering judgment for the Respondent herein under the undefended list procedure.

Appellants' Notice of Appeal in this Appeal contains only a sole ground of Appeal. The ground reads thus: B

"The Learned Trial Justices of the Court of Appeal misdirected themselves in law and thereby came to a wrong conclusion when they held that the Rule of the High Court of Rivers State on enlargement on time does not apply to matters brought under the undefended list." C

Detailed background facts of this case are not all that relevant or material to the determination of this appeal, save as set out to expose the indolence and lack of diligence and further ensuing incompetence of the Notice of Appeal raised in the Respondents' Preliminary of Objection filed by it on 5/6/2009. D

In his writ filed on the 10th day of April, 2000 which was subsequently placed under undefended list, the Respondent herein as plaintiff claimed, inter-alia from the Appellant, as defendant, payment of the liquidated sum of N7,021,938.00 (Seven Million twenty-one thousand, nine hundred and thirty eight naira). The motion was fixed for hearing on the 18th day of May, 2000. Though the Appellant was duly served with the Respondent's action, it did not file any notice of intention to defend the action together with an affidavit disclosing a defence on the merit; until the 18th day of May, 2000, E
when it filed a motion for extension of time within which to file and serve its notice of intention to defend the suit together with a supporting affidavit. F

When the matter was called up for hearing, the trial Court G took argument from both parties on the propriety or otherwise of the Appellants' application for extension of time and adjourned for ruling. In its considered ruling of 20th day of June, 2000, the Court came to the conclusion that the fact contained in the Appellants' Affidavit did not raise any bona fide defence on the merit. Consequently, the learned trial judge entered judgment in favour of the Respondent under undefended list. H

The Appellant was not satisfied with this decision, he then appealed to the Court of Appeal, Port Harcourt Division which in its

unanimous decision given on the 14th day of April, 2005, affirmed the decision of the trial High Court and dismissed the Appellant's appeal for lacking in merit.

It is against the concurrent findings of facts of two Courts below that the Appellant is challenging in this appeal filed on the 15th day of April, 2005 vide Notice of Appeal containing a single ground of appeal (reproduced above) with an indication that further grounds will be filed upon receipt of the judgment of the Court below.

It is pertinent to further note that the conditions of appeal imposed by the Court below, giving the appellant 14 days within which to comply was not complied with. Hence the appellant brought an application before the Court below on the 15th day of June, 2006 for an extension of time within which to comply with the conditions of appeal and to set aside the certificate of non compliance issued by the Court.

Since the granting of the appellant's application to file additional grounds of appeal on the 5th June, 2007, no such additional grounds of appeal have been filed. Therefore, as stated earlier, this appeal relates only to the sole ground of appeal out of which two issues were raised in the following manner:

1. Was the lower Court right in holding that extension of time to file the notice of intention to defend is in the discretion of the trial judge, which may be exercised only when the defendant has filed not less than 5 days before the day fixed for hearing an affidavit disclosing a defence on the merit?

2. Did the Court below not err in law in upholding that the trial Judge exercised his discretion in respect of the application for extension of time to file notice of intention to defend?

It is to be noted that on the 5th day of June, 2009 the Respondent filed the following Notice of Preliminary Objection to the Appellants' appeal:

"1. That the Appellants' appeal is incompetent and liable to be struck out in that the notice of appeal filed on the 15th day of June, 2005 is fundamentally defective and void as it was issued and signed by N. Nwanodi & Co., which is not a legal practitioner recognized by law to practice law in Nigeria.

2. That the sole ground of appeal contained in the notice of appeal of 15th June, 2005 is incompetent and ought to be struck

out in that it does not arise from the decision appealed against or does not in any way represent the finding of the lower Court and/or it otherwise tells a lie against itself.”

It is the submission of the learned counsel for the Respondent that the Appellants' Notice of Appeal of 15/4/2005 contained at Pp.96-97 of the Records is fundamentally defective and incompetent in that it was issued, signed by N. Nwanodi & Co. which is not a legal practitioner recognized by law to practice law in Nigeria. B

It is urged on this Court to invoke its power under Section 74(1) of the Evidence Act and take judicial notice of all legal practitioners authorised by law to appear before Courts and practice and that it must be such legal practitioner whose name is on the Roll of Legal Practitioners in Nigeria as required by Sections 2(1) and 24 of the Legal Practitioners Act Cap L, II, Laws of the Federation of Nigeria 2004. That law firm such as “N. Nwanodi & Co.” not being a person whose name is on the roll of Legal Practitioners in Nigeria, therefore lacks the competence to issue such and file a Notice of appeal in respect of an appeal such as the instant one. Reliance was placed on N.N.B Plc v. DENCLAG LTD (2005) 4 NWLR (pt. 916) 549 at 555, OKAFOR V. NWEKE (2007) ALL FWLR (PT. 368) 1016 at 1018 - 1021. C D E

A Notice of Appeal is the spinal cord of an appeal. It is the foundation upon which an appeal is based. It is the originating process which sets the ball rolling for the proper, valid, and lawful commencement of an Appeal. See AGU v. ODOFIN (1992) 3 SCNJ 161, J.A. ADERIBIGBE & ANOR v. TIAMIYU ABIDOYE (2009) 4 SC (pt.III) 123. F

A valid Notice of Appeal is a condition sine qua non in an appeal. Where it is defective, there shall be no proper, valid and lawful appeal. It cannot stand, it will certainly collapse. G

Appellants' Notice of Appeal filed on 15/4/2005 in this Court as contained at pages 96 - 97 of the records is fundamentally defective. It is not valid and therefore cannot stand, in that it was issued and signed thus: H

SIGNED:

***“Appellants Solicitors
Plot D. Golf Course Layout
Old G.R.A. Port Harcourt.”***

“N. Nwanodi & Co” is not a legal practitioner recognized by law to practice in Nigeria.

Learned counsel for the appellant submitted that the signature of the legal practitioner inscribed on top of the name of the firm is sufficient. The tone of argument is a mere misconception and mis-interpretation of the clear provision of Sections 2(1) and 24 of the Legal Practitioner Act (supra). The law does not say that what should be in the roll is just the signature of the legal practitioner. This is not sufficient. The habit or practice of legal practitioners’ merely signing Court processes in their partnership or firm’s name without indicating their actual name has been deprecated by this Court in so many cases notably, NNB PLC v. DECLAG (supra) OKAFOR v. NWEKE (supra) etc. This Court did not only approve the decision in NNB PLC case in OKAFOR’S but inter alia made some far-reaching pronouncements as follows:

“The combined effect of the above provisions is that for a person to be qualified to practice as a legal practitioner he must have his name in the roll otherwise he cannot engage in any form of legal practice in Nigeria. From the submission of both counsel, it is very clear the answer to that question is in the negative. In other words both senior counsel agree that J.H.C, OKOLO SAN & CO is not a legal practitioner and therefore cannot practice as such by, say, filing processes in the Court of this country.”

It was my learned brother OGUNTADE JSC, who in his concurring judgment put the issue quite succinctly. At page 525 of the Report he stated thus:

“Legal Practitioners have formed the habit of signing Court processes in their partnership or firm’s name. Such documents are incompetent and are liable to be struck out. In the instant case, the processes filed in the application, particularly the motion on notice filed on 19/5/05, the proposed notice of cross-appeal in the applicant’s brief of argument in support of the motion were incompetent in that they were not issued by a legal practitioner known to law.”

Time cannot be more auspicious than now to see to it that the standard of practice in the legal practice is well maintained. It must not be allowed to ebb to an abysmal and embarrassing level. We must ensure that in preparing and filing

Court processes due diligence and regards must be had to Sections 2(1) and 24 of the Legal Practitioners Act (supra). I do not agree with the learned counsel for the Appellant when he submitted that it was an over adherence to technicality to annul the process improperly filed. It is not. With due respect, the learned counsel must not overlook the sense in ensuring that the laws guiding the legal practice are properly observed. This enforcement must begin from here, the Apex Court. It has been doing so. Wary about this embarrassing practice in 2012, in the case of FBN PLC v. MAIWADA (2013) 5 NWLR (pt. 1348) 444, this Court, in determining the appeals Nos. 204/2002 and SC.269/2005, considered the provisions of Sections 2(1) and 24 of the Legal Practitioners Act 1962 (as amended) and some enactments and empanelled a full Court.

The Court also invited a host of amici curiae to address it on the issue of competence of the notice of appeal SC. No. 444/2002 appeals signed by the appellants' counsel as "David M. Mando & Co." The Respondent raised a preliminary objection challenging the competence of the appeal. In another appeal in SC.269/2005 the notice of appeal was signed in the name of "O.E. Abang & Co." the objection was raised when the appeal was heard. This Court ordered that the outcome of the decision in the Appeal No. SC.204/2012 should bind the parties in Appeal No. SC.269/2005 as the issues for resolution in both appeals were the same. To put the issue to rest the Court held, inter alia at pp.488 - 489 as follows:

"A Court process signed in the name of a law firm without indicating the name of the particular legal practitioner who issued and signed the process is incompetent and is liable to be struck out. The effect of such a ruling is not to shut out the litigant but to put the house of the legal profession in order by sending the necessary and right message to members that the urge to do substantial justice does not include illegality or encouragement of the attitude of "anything goes". Therefore, no injustice is done to the litigant since the result of the irregularity is an order striking out the suit or process which leaves the real legal practitioner with an opportunity to come back to Court to lift his veil and file a proper process as the legal practitioner whose name is on the roll of the Supreme Court. The Court should consider such an application on its merits. Such will enhance good prac-

tice culture amongst legal practitioners.”

I am done. However, ***I must say that it is not possible to embark on “activism” in interpreting the clear provisions of Section 2(1) and 24 of the Act, so as to nail down the decision in OKAFOR v. NWEKE (supra) as similarly urged by the learned counsel for the Appellant in MAIWADA’S case. In interpreting the law, the Court is to embark upon positive interpretation. A negative interpretation of the law should be avoided as such is against the canon of interpretation of law.***

The purpose of Sections 2(1) and 24 of the Act is to ensure sanity and responsibility and accountability on the part of a legal practitioner who signs Court processes. How else do you separate chaff from the grain - the indolent fake legal practitioners from the genuine, diligent and serious minded legal practitioners?

In employing purposive interpretation of Sections 2(1) and 24 of the Act will lead to the obvious conclusion that the notice of Appeal filed on the 15th day of June, 2005 is fundamentally defective and incompetent. This Court lacks the required jurisdiction to hear this appeal which was not initiated with due process of the law. See MADUKOLU V. NKEMDILIM (1962) 2 SC NLR 341. The Appeal is hereby struck out. I make no order as to costs.

F _____

PETER-ODILI JSC

I am in agreement with the judgment just delivered by my learned brother, Suleiman Galadima JSC and in support of the reasoning therefrom I shall make some remarks.

This is an appeal against the Judgment of the Port Harcourt Division of the Court of Appeal delivered on the 14th day of April, 2005 which affirmed the Judgment of the Ahoada High Court, Rivers State which decision was in favour of the plaintiff/respondent under the Undefended List Procedure.

The background facts are well laid out in the lead judgment and it will serve no useful purpose repeating them.

On the 30th day of November, 2015 learned counsel for the appellant, Mr. Ejike Ezenwa adopted the Brief of Argument settled

by A. N. Anyamene SAN, filed on the 30th October, 2008 and deemed filed on the 6/5/09. Two issues were identified for the determination of the appellant which are, viz:

1. Was the lower Court right in holding that extension of time to file notice of intention to defend is in the discretion of the trial judge which may be exercised only when the defendant has filed not less than 5 days before the day fixed for hearing an affidavit disclosing a defence on the merit. B

2. Did the Court below not err in law in upholding that the trial judge exercised his discretion judicially and judiciously in respect of the application for extension of time to file notice of intention to defend. C

Mr. V. N. Ihua-Maduenyi of counsel for the respondent adopted its Brief of Argument filed on 5/6/09 and crafted a sole issue for determination which is as follows: D

Whether the decision of the Court below to uphold the judgment of the learned trial judge which entered judgment under the Undefended List in favour of the respondent against the appellant is proper and justifiable from the facts and circumstances of this matter.

The respondent had on the same 5th June, 2009 filed a Notice of Preliminary Objection and the arguments thereof were made firstly in the Brief of Arguments. E

PRELIMINARY OBJECTION

The learned counsel for the respondent/objector argued on five grounds which are thus: F

(a) That the appellant's appeal is incompetent and liable to be struck out in that the notice of appeal filed on the 15th day of June, 2005 is fundamentally defective and void as it was issued and signed by N. Nwanodi & Co. which is not a legal practitioner recognized by law to practice law in Nigeria. G

(b) That the sole ground of appeal contained in the notice of appeal of 15th June, 2005 is incompetent and ought to be struck out in that it does not arise from the decision appealed against or does not in any way represent the finding of the lower Court and/or if otherwise tells a lie against itself. H

(c) That by failing to formulate any issue from the sole ground of appeal contained in the notice of appeal, the appellant is in law deemed to have abandoned the said ground and the same ought to

be struck out.

(d) That the two issues formulated for determination by the appellant are totally incompetent and liable to be struck out in that they do not arise from or relate to the sole ground of appeal contained in the notice of appeal.

B (e) That distilling two issues for determination from a lone ground of appeal constitutes an unnecessary proliferation of issues and automatically renders them incompetent.

C Canvassing the position of the objector, learned counsel said the appellant's notice of appeal of 15/3/05 is fundamentally defective and incompetent as it was issued and signed by N. Nwanodi & Co. which is not a legal practitioner and recognized by law to practice law in Nigeria. He cited Section 74(1) of the Evidence Act, Section 2(1) and 24 of the Legal Practitioners Act, Cap. L. 11, Laws of the D Federation of Nigeria 2004.

Mr. Ihua-Maduenyi of counsel for the respondent/objector further referred to the cases of: N. N. B. Plc. V. Denclag Ltd (2005) 4 NWLR (Pt. 916) 549 at 555: Okafor v. Nweke (2207) ALL FWLR (Pt.368) 1016 at 1018-1021.

E That because the notice of appeal is the foundation and substratum of every appeal, and material defect therein renders the whole appeal incompetent and deprives the appellate Court of the requisite jurisdiction to entertain such an appeal. He cited Uwazurike v. A. G. Federation (2007) 8 NWLR (Pt. 1035) 1 at 4, A.G. Federation v. F Guardian Newspapers Ltd (1999) 9 NWLR (Pt.618) 187.

G Learned counsel for the appellant Ejike Ezenwa Esq. contended that the objector made heavy weather on the absence of the signature of a legal practitioner being on the Notice of Appeal rendering the notice defective. That the name of the law firm being stated thereon was not tantamount to an invalid notice of appeal as the Supreme Court had not overruled that practice as shown in the cases of Registered Trustees of the Apostolic Church v. Akindele (1967) ALL NLR 118; Cole v. Martins (1968) ALL NLR 161. That the case of Okafor v. H Nweke (2007) 10 NWLR (Pt. 1043) 521 should not be regarded as a rule of general practice. That the new rules enunciated in that case of 2007 being Okafor v. Nweke (supra) should be prospective and not retrospective and should not affect the present appeal filed on 15/4/2005 since the Courts have in the past approved the long stand-

ing practice. Also that the application of the new rule to this appeal would have the effect of shutting out the appellant which this Court has specifically stated is not the intention and purport of *Okafor v. Nweke* which purpose is specifically to shake up legal practitioners to the need of strict compliance with the law in the performance of their duty. He said the Courts should jettison all technicalities and go for the substance of the appeal otherwise grave injustice would be done to the appellant who for no fault of its own would be denied fair hearing of its case on the merit. B

In this preliminary objection which the appellant urges the Court to ignore in the interest of substantial justice as against a technical Justice which would be counter productive. The opposing view as put across in support of the objection by the respondent is that what is on stage is an originating process, the Notice of Appeal, too fundamental either to excuse the defect or have it rectified. C D

There is no dispute that the Notice of Appeal was made in the name of N. Nwanodi & Co, a legal firm which is not a legal practitioner. The Supreme Court had in the case of *Okafor v. Nweke* (2007) 10 NWLR (Pt. 1043) 521 or 523 - 525 per Onnoghen JSC to state the position of the law that is, the right interpretation to the Legal Practitioners Act and that it is as follows: E

The combined effect of the above provisions is that for a person to be qualified to practice as a legal practitioner he must have his name in the roll otherwise he cannot engage in any form of legal practice in Nigeria. The question that follows is whether J. H. C. Okolo SAN & Co is a legal practitioner recognized by the law? F

From the submissions of both counsels, it is very clear that the answer to that question is in the negative. In other words both senior counsels are that J. H. C. Okolo SAN & Co is not a legal practitioner and therefore cannot practice as such by say, filing processes in the Courts of this country. It is in recognition of this fact that accounts for the argument of learned senior advocate for the applicants that to determine the actual person who signed the processes evidence would have to be adduced which would necessary establish the fact that the signature on top of the inscription J. H. C. Okolo SAN & Co actually belongs to J. H. C. Okolo SAN & Co who is a legal practitioner in the roll. I had earlier stated that the law does not say that what should be in the roll should be the signature of the legal practitioner but his G H

name. That point apart, it is very clear that by looking at the documents, the signature which learned senior advocate claims to be his really belongs to J. H. C. Okolo SAN & Co or was appended on its behalf since it was signed on top of that name. Since both counsel agree that J. H. C. Okolo SAN & Co is not a legal practitioner recognized by the law, it follows that the said J. H. C. Okolo SAN & Co cannot legally sign and/or file any process in the Courts and as such the motion on notice filed on 19th December, 2005, notice of cross appeal and applicants' brief of argument in support of the said motion all signed and issued by the firm known and called J. H. C. Okolo SAN & Co are incompetent in law particularly as the said firm of J. H. C. Okolo SAN & Co is not a registered legal practitioner". See pp. 531, paras B - E and 534 Paras D - E of NWLR and Pp. 1025-1027 Paras G - B of ALL FWLR."

D Oguntade JSC had lent his support to the lead judgment at page 525 of the report thus:

"Legal practitioners have formed the habit of signing Court processes in their partnership or firm's name without indicating either none of the practitioner signing the process. Such documents are incompetent and are liable to be struck out. In the instant case, the processes filed in the application, particularly the motion on notice filed on 19/5/05, the proposed notice of cross appeal and the applicant's brief of argument in support of the motion were incompetent in that they were not issued by a legal practitioner known to law."

To put paid to the matter between technical and substantial one the Supreme Court per Onnoghen, JSC stated as follows:

"In the said Okafor v. Nweke (supra) in arriving at the above decision, which is very obvious having regard to the law. I have taken into consideration the issue of substantial justice which is balanced on the other side of the scale of justice with the need to arrest the current embarrassing trend in legal practice where authentication or franking of legal documents, particularly processes for filing in the Courts have not been receiving the serious attention they deserve from some legal practitioners. Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both the legally trained minds and those not so trained always learn from our examples. We therefore owe the legal profession the duty to main-

tain the very high standards required in the practice of the profession in this country. The law exists as a guide or actions needed for the practice of the law, not to be twisted and turned to serve whatever purpose, legitimate or otherwise which can only but result in embarrassing the profession if encouraged...

The effect of the ruling is not to shut out the applicants but put the house of the legal profession in order by sending the necessary and right message to members that the urge to do substantial justice does not include illegality or encouragement of the attitude of anything goes.” See also Nwani v. Bakari (2005) ALL FWLR (pt. 281) 1803. B
C

This Court has very recently restated *Okafor v. Nweke* (supra) as the law and guide in these matters of a competent originating process such as Writ of Summons, Statement of Claim and in as appeal, the Notice of Appeal stating firmly leaving no room either for conjecture or speculation or any open space for waiver where such a process has been defectively signed since that signing by the wrong person renders the process incompetent and the effect being the collapse of the suit or the appeal as the case may be. D

In the case at hand the Notice of Appeal being the foundation and substratum of the appeal, having not been signed either by the appellant or a human legal practitioner whose name is in the Roll of Legal Practitioners has deprived the Court of Appeal or the Supreme Court of the required jurisdiction to entertain the appeal. This is in line with Order 4 Rule 4(1) of the Court of Appeal Rules and Order 9 Rule 3(1) of the Supreme Court Rules. See *Uwazurike v. A. G. Federation* (2007) 8 NWLR (pt. 1035) 1 at 4; *A. G. Federation v. Guardian Newspapers Ltd* (1999) 9 NWLR (pt. 618) 187; *Adekanye v. Federal Republic of Nigeria* (2005) 15 NWLR (pt. 949) 433; *Clev Josh Ltd. V. Tokini* (2008) 13 NWLR (pt. 1104) 422 at 430 - 432. E
F
G

What I am trying to say in effect is that this matter is settled firmly and the door closed to the discussion whether a Notice of Appeal made in the name of a legal firm can be entertained or not. This is because the defect is fundamental, irredeemable and renders the appeal incompetent. In that light and the better and fuller reasoning in the lead Judgment of my learned brother, Suleiman Galadima JSC, the appeal being incompetent is hereby struck out as I uphold the preliminary objection of the respondent. H

KEKERE-EKUN JSC

I have had a preview of the Judgment of my learned brother, GALADIMA, JSC, just delivered. I agree entirely that this appeal, not having been initiated by due process of law is incompetent and must
B be struck out.

There is now a veritable body of authorities of this Court on the effect of signing a process in the name of a law firm, not being a person whose name appears on the roll of legal practitioners and authorised to practice law in Nigeria by virtue of Sections 2 (1) and
C 24 of the Legal Practitioners Act Cap. L11 Laws of the Federation of Nigeria (LFN) 2004. Some of the authorities are as follows: N.N.B. PLC V. Denclag Ltd. (2005) 4 NWLR (pt.915) 549 @ 582; Okafor v. Nweke (2007) 10 NWLR (pt. 1043) 521; Oketade V. Adewunmi
D (2010) 2 - 3 SC (pt. 1) 140; FBN Plc v. Maiwada (2013) 5 NWLR (Pt. 1348) 444 @ 488 A - D; SLB Consortium Ltd. V. NNPC (2011) 9 NWLR (pt.1252) 317.

It therefore behoves any legal practitioner practicing before the Courts in Nigeria to fully acquaint himself with the law and the
E precedents set by this Apex Court.

It has been said time and again that in upholding the sanctity of Sections 2 (1) and 24 of the Legal Practitioners Act, this Court being a policy Court, has a responsibility to ensure that standards of legal practice are maintained. Hear His Lordship, Fabiyi, JSC in FBN
F Plc V. Maiwada (supra) at 488 A-D:

I wish to repeat that we are Interpreting in law which seeks to make legal practitioners responsible and accountable more especially in modern times that we are presently operating. I see noting techni-
G cal in insisting that a legal practitioner should abide by the dictates of the law in signing Court processes... The decision in Okafor v. Nweke is not in any respect wrong in law and I cannot surmise a real likelihood of injustice perpetrated. I cannot trace the issue to the domain of public policy ... The law as enacted should be followed. I do not
H for one moment see any valid reason why the decision of this Court in Okafor v. Nweke should be revisited. It has come to stay and legal practitioners should reframe their minds to live by it for due accountability and responsibility on their part and for the due protection of our profession.

Learned counsel should be well guided. For these and the more detailed reasons contained in the lead judgment, I also strike out this appeal for being incompetent.

OKORO JSC

B

I was privileged to have read in advance the judgment of my learned brother, Suleiman Galadima, JSC just delivered. The Law Lord has meticulously marshaled reasons which irresistibly lead to the conclusion that this appeal is incompetent and ought to be struck out. I adopt those reasons and the conclusion as mine. I shall however chip in a few words in support of the judgment.

C

The learned counsel for the respondent filed on 5th June, 2009 a notice of preliminary objection to the hearing of this appeal. In the said notice, the respondent states that the appellant's appeal is incompetent and liable to be struck out in that the notice of appeal filed on the 15th day of June, 2005 is fundamentally defective and void as it was issued and signed by N. Nwanodi & Co, which is not a legal practitioner recognized by law to practice law in Nigeria.

D

Without much ado, I reached out to the said notice of appeal contained on pages 96-97 of the record of appeal. It is signed by "N. Nwanodi & Co." Very sad indeed. The reason I say so is that by Section 2(1) of the Legal Practitioners Act, a person is authorized to practice as a Barrister and Solicitor in Nigeria if and only if his name is contained on the Roll of Legal Practitioners. And by Section 24 of the Act, a legal Practitioner means "*a person entitled to practice as a Barrister or as a Solicitor either generally or for the purpose of any particular office proceedings.*"

E

F

By a community reading of Sections 2(1) and 24 of the Legal Practitioners Act, (supra) it is very clear that only a person whose name appears on the Roll of Legal Practitioners that can practice law in this country. This, of course, includes the signing of legal documents. Any legal document which is to be signed by a legal practitioner, but is signed by any other person, is incompetent and must be discountenanced and struck out. See N. N. B. PLC V. DENCLAG LTD (2005) 4 NWLR (PT. 916) 549 AT 583, OKAFOR V. NWEKE (2007) ALL FWLR (PT. 368) 1016 AT 1018 - 1018, (2007) 10 NWLR (PT. 1043) 521 AT 523.

H

A notice of appeal being the foundation or substratum of every appeal must be competent before an appeal itself can be competent. Any fundamental defect in a notice of appeal also affects the competence of the appeal. The notice of appeal signed by N. Nwanodi & Co., is incurably bad, the said N. Nwanodi & Co., not being a
B person on the roll of legal practitioners in this country.

In view of the above comments of mine and the elaborate reasons given in the lead judgment, I agree that the notice of appeal is defective and is accordingly struck out.

C _____

SANUSI JSC

I was opportune to read earlier than now, the draft judgment of my learned brother Suleiman Galadima, JSC just delivered. The
D salient issues raised and canvassed by learned counsel to the parties especially in the preliminary objection filed and argued by the respondent were ably and painstaking treated in the lead judgment. The reasons and conclusions arrived at leading to the striking out of
E appeal filed by the appellant which is the originating process are agreeable to me.

There is nothing gained in saying that the notice of appeal filed by the appellant was signed by the law firm of N Nwanodi Co. No
F name of any legal practitioner put on top of the name of the Law firm before it was signed on the top of the said law firm. By so doing, the impression shown is that it was the law firm that filed it and NOT that it was filed on behalf of any named legal practitioner.

By the provisions of Section 2 (1) of the Legal Practitioners
G Act, Cap II, Law of the Federation of Nigeria 2004, a person is authorised to practice as a barrister and Solicitor in Nigeria IF and only IF his name is contained on the Roll of Legal Practitioners in other words, it is only when the person is registered in the Roll Legal Practitioner that he can practice Law in Nigeria. The phrase "*Legal*
H *Practitioner*" has been defined by Section 24 on that same Act to mean - a person entitled to practice as a barrister or as a solicitor either generally or for the purpose of any particular office proceeding. Needless to say, that the word "practice" besides other usual rule of a Lawyer also entails signing and filing of legal processes in Court

preparing and signing of instruments or agreement, which have legal connotations or applications as the case may be.

It is not in dispute that the Notice of Appeal dated 15/4/2005 which is the core issue to this appeal, was signed by “N. Nwanodi and Co.” simpliciter, which is a name of a legal firm and certainly NOT of a legal practitioner as contemplated and defined by the provisions of Sections 2(1) and 24 of the Legal Practitioners Act. It is similarly not a name of a barrister or solicitor whose name is contained in the Roll of Legal Practitioners and thereby recognised and authorised by law to practice as solicitor and advocate in the Supreme Court of Nigeria.

My lords, permit me to state that even if it merely serve the purpose of emphasis and clarity that the position of the law is that a process prepared and filed in a Court of Law must be signed by a named registered legal practitioner or solicitor. It is sufficient if the legal practitioner simply writes his name on top of or above the name of his Law firm in which he carries out his practice. Any process filed in the name of a firm simpliciter, as is the position in this instant case, is a nullity. It therefore must be regarded as defective and must be struck out. See the case of *Okafor v. Nweke* (2007) 3 SC (pt 11) 55. *SLB construction Ltd v. NNPC* 4 SC (pt) 86. *Braithuwaite v. Skye Bank Plc* (2012) 12 SC (pt. 1), *Alawiye v. Ogunsaya* (2012) 12SC (pt. 11) 1, *First Bank of Nigeria Plc 3 ors v. Maiwada & 2 ors* (2012) 5 SC (pt. 111) 1, *NNB Plc v. Denclag Ltd.* (2005) 4 NWLR (pt. 916) 549 at 570.

Thus, with these few comments, I am in entire agreement with the detailed reasons and the conclusion reached in the lead Judgment of my learned brother Suleiman Galadima JSC in striking out the Notice of appeal for being defective. I too accordingly strike out the notice of appeal.