

SUPREME COURT OF NIGERIA
FRIDAY 9TH DECEMBER, 2016. SC.309/2006
CORAM:- I. T. MUHAMMAD, N. S. NGWUTA, O.
ARIWOOLA, K. B. AKA'AH, J. I. OKORO, JJSC

OLU ODE OKPE APPELLANT
AND
1. FAN MILK PLC
2. UNION BANK OF NIGERIA, PLCRESPONDENTS

APPEALS - Notice of appeal - Importance of - It is document giving notice of intention to appeal - Filed with appellate Court and served on opposing party - And in absence of which no valid appeal is filed (H1)

LEGAL PRACTITIONERS - Notice of appeal - Signing of - Notice shall be signed by appellant or legal practitioner of his choice - And it shall be signed by appellant in criminal appeals (H2)

COURTS - Competence of - Conditions - To assume jurisdiction in a matter - Action must be commenced by due process of law - No feature depriving Court of jurisdiction - And Court must be properly constituted (H3)

LEGAL PRACTITIONERS - Court processes - Signing - Validity of - Processes are signed by qualified legal practitioners and not law firms - As any process otherwise initiated - Would amount to a void process (H4)

JUSTICE - Administration of - Sentiments - Although counsel may show concern in sympathy to his client - But in the realm of law - Sentiments has no place - As only the law should take its course (H5)

COURT PROCESSES - Validity - Void process cannot be allowed merely because there was no complaint against it - As where invalid process is discovered - The same must be declared null and void (H6)

LEGAL PRACTITIONERS - Mistake of - Effect on client - Although Court does not visit sin of counsel on client - But where counsel filed incompetent process - Court will not allow the process (H7)

JUSTICE - Administration of - Concept - Justice is fair administration of laws - And anything done in the interest of justice - Is done in pursuance of fairness to all parties in a case (H8)

FACTS

Before the High Court of Plateau State Jos, plaintiff/appellant commenced this action by a writ of summons and statement of claim against defendants/respondents. Appellant's claims are for declaration nullifying sale of a property, order setting aside the purported sale, order to redeem the property and injunction restraining respondents from interfering with the right of appellant in the property. Each of the respondents filed statement of defence. 2nd respondent counter-claimed against appellant. The matter proceeded to full trial at the end of which the learned trial judge delivered his judgment in favour of appellant and against respondents. 2nd respondent's counter-claim was dismissed.

Dissatisfied with the decision of the trial court, respondents brought an appeal before the Court of Appeal Jos Division. The court allowed the appeal and set aside the judgment of the trial court. It also held that 2nd respondent's counter-claim succeeded. Aggrieved, appellant appealed to the Supreme Court and in his issue No. 1, he sought for a resolution of whether or not the judgment of the Court of Appeal allowing respondents' appeals is a nullity and should be set aside having regard to the fact that the Notices of Appeal which initiated the proceedings at the said court were not filed/signed by legal practitioners known to the law.

ISSUE FOR DETERMINATION

"Whether or not the judgment of the lower court allowing the respondents' appeals is a nullity and should be set aside having regard to the fact that the Notices of Appeal which initiated the proceedings at the lower 'court' were not filed/signed by legal practitioners known to law."

HELD (Unanimously allowing the appeal per MUHAMMAD JSC)

APPEALS - Notice of appeal - Importance of

1. Thus, in legal proceedings, a Notice of Appeal is a document giving notice of an intention to appeal filed with the appellate court and served on the opposing party. It is an originating document. In *Oketie v. Olughor* (1995) 5 SCNJ, 217, this court held that Notice of Appeal is the foundation of a proper appeal and where the notice of appeal is null and void there can be no valid appeal pending before the appellate court. An appeal is deemed to have been brought upon filing of the Notice of Appeal in the registry of the court below or the court from which the appeal emanated. (p. 4743 G)

APPEALS - Notice of appeal - Signing of

2. A valid Notice of Appeal shall contain all the necessary requirements provided by Rules of Court regulating that appeal. Such requirements include but not limited to the signing of the Notice of Appeal by the appellant himself or by a lawyer of his own choice.

Where the appellant is a body corporate, the usual practice is for an officer or a legal representative of that body to sign the Notice of Appeal. In criminal appeals, the appellant shall sign the Notice of Appeal. Where the person signing the Notice of Appeal is a qualified legal practitioner, he should append his signature along his name with which he has been registered as a legal practitioner licensed to practice law in the Federal Republic of Nigeria. (p. 4744 B)

COURTS - Competence of - Conditions

3. It is elementary my lords, but worthy of constant repetition, the principles of the law stated by the this court and encapsulated in the case of *Madukolu v. Nkemdilim* (supra) that for a court of law to properly assume jurisdiction to entertain a matter or affirm any decision made thereon on appeal, three

(3) conditions must be fulfilled and that is to say:

a) the matter/suit/case/appeal must be commenced by due process of law;

b) that there must be no feature which deprives the court of its jurisdiction in respect of the subject matter of the suit/case;

c) that the court must be properly constituted

These were the conditions spelt out in Madukolu's case (supra).

This court even went further to point out the serious effect of non-compliance thereof:

"Any defect in competence is fatal for the proceedings are a nullity however well conducted and decided, the defect is extrinsic to the adjudication." (p. 4748 A)

COURT PROCESSES - Signing - Validity of

4. It was highlighted at the early stage of this judgment that for a court to assume jurisdiction, the originating process(es) laid before it must be commenced by due process of law. The originating process under which the appeal was brought to the court below is/are the "NOTICE(S) OF APPEAL" filed by the then appellants. Rules of court and practice mandate that for a Notice of Appeal to be valid, it has to be signed by the appellant himself or his counsel/legal practitioner. Thus, the requirement of such Court Rules, and in fact, the Legal Practitioners' Act is that, generally, it is a legal practitioner called to the Nigerian Bar and whose name appears in the Roll of Legal Practitioners, who may issue court processes including originating processes such as a notice of appeal. The word "may" is cautiously preferred as no rule of court or law that prohibits an appellant, for instance, from seeking redress from an appeal court (or any other court of law, on some subject matters) from having access to such a court. It is even more absolute in criminal matters/appeals. This, in my belief, is anchored on the Constitutional provision (Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which guarantees to a citizen of Nigeria unhindered

access to a court of law. However, where a particular mode of commencing an action or appeal is made by some subsidiary laws or Rules of Practice in furtherance of the Constitutional provision which makes access to court within the reach of every citizen, that mode has to be complied with.

The circumstance presented by the appeal on hand is that the originating processes listed earlier in this judgment, especially the Notices of Appeal (including any amendment thereto) were signed either by “J. B, MAJIYAGBE & CO.” or “OMOLADE MAKANJUOLA & CO. Both J.B. Majiyagbe & Co. and Omolade Makanjuola & Co. are law firms belonging to some individual legal practitioners. The principle regulating legal appearance for a party/parties before a court of law is often recited that a law firm is not a legal practitioner in the contemplation of the Legal Practitioners Act. It lacks capacity to sign, file or issue out court processes, solely, in that name. Thus, any court process initiated by a person who is not enrolled in the Register of Roll in the Supreme Court of Nigeria, licensed to practice as a legal practitioner in the Federal Republic of Nigeria would amount to a void process and any proceeding conducted therein would be declared a nullity. (p. 4748 E/4751 D)

JUSTICE - Administration of - Sentiments

5. Permit me to say, my lords that Mr. Onietan for the 1st respondent yielded to sentiments. But it is only natural as a counsel, he should show concern in sympathy to his client. However, Mr. Onietan should know that in the realm of law, sentiments or sympathy has no place. It is only law and law only that should take its course. (p. 4754 G)

COURT PROCESSES - Validity

6. Thirdly, law, they say, is an ass not minding who will ride upon its back and to which direction he will drive it. All that is known is that it is not a respecter of persons. The position of the law will not change. Where it is valid it remains to be so irrespective of whether it misleads anybody or not. The fact

that no one complained that the appellant or, and the lower court was mislead by the filing of a void originating process cannot be a valid reason for allowing the void process to be acted upon. Once that validity or invalidity of the process is discovered by a person concerned or the court itself, that process must be declared null and void, affecting, consequently, anything that comes out of it by way of order, ruling or judgment. (p. 4755 D)

LEGAL PRACTITIONERS - Mistake of - Effect on client
7. Fourthly, visiting the sin of counsel on his client is not permitted by the law courts. What is not however, tolerated is where a counsel committed an unforgivable blunder which must affect his case, such as filing a wrong or an incompetent process (such as originating processes), there is no way the court can blind its eyes to allow the process have its way, as such. (p. 4755 G)

JUSTICE - Administration of - Concept
8. Furthermore, interest of justice connotes such interests, aspirations and or attempts to achieve justice in a given case or situation. The whole goal is the achievement of justice. Justice is fair and proper administration of laws, whereas anything done in the interest of justice is done in pursuance of fairness to all the parties in a case without compromising the principles of the law and evidence under consideration which, as of right, entitle the successful party to judgment. That perhaps, is why they now say, that justice is a three-way-traffic. Justice to the plaintiff/appellant. Justice to the defendant/respondent and justice to the court itself. The last one of course, requires that parties to a legal tussle or their legal representatives should always come to court with open mind, sincerity of purpose, diligent and coherent with unwavering confidence that the court will at the end, deliver justice according to law. The justice of the appeal before the court below demanded a pronouncement that the originating processes (Notices of Appeal) as signed by several firms of legal practitioners which

are not legal practitioners as such recognized by law, were incompetent and ought to have been struck out. (p. 4756 A)

NOTABLE POINT OF INTEREST

MUHAMMAD JSC

1. Notice – Meaning of

The English word “notice”, my lords, originates from the Latin word “Notitia” which connotes “knowledge”, “information”, intelligence” and or, “notice” (see: Black’s Law Dictionary fifth ed; St. Paul. Minn. West Publishing Co; 1979, p. 959). In its general day to day usage, therefore, the word “notice” represents knowledge of the existence of a fact or state of affairs. It is the means of knowledge. It presupposes intelligence by whatever means communicated. Notice is thus, knowledge of facts which would naturally lead an honest and prudent person to make inquiry. And, a person “notifies” or “gives” another a notice or notification by taking such steps as may be reasonably laid down by law or practice and required of him to inform the other in ordinary course whether or not that other actually comes to know of it. (p. 4743 E)

REPRESENTATION

Kehinde Ogunwumiju, with him Queeneth Agbe (Mrs.) and Tunde Adejumo, Esq., for the Appellant
D. D. Orietan for 1st Respondent
O. O. Ajose-Adeogun for 2nd Respondent

CASES REFERRED TO

Oketie v. Olughor (1995) 5 SCNJ 217
IBWA v. Pavex International (2000) 4 SCNJ 200
Okafor v. Nweke (2007) 10 NWLR (pt. 1043) 521
Alawiye v. Ogunsanya (2013) 5 NWLR (pt. 1348) 570
Nigerian Army v. Samuel (2013) 14 NWLR (pt. 1375) 466
SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (pt. 1252) 317
Madukolu v. Nkemdilim (1962) 1 All NLR (pt. 4) 587
Braithwaite v. Skye Bank 2012) 1 SCNJ 106
Nwani v. Bakari (2005) All FWLR (pt. 281) 803
FBN Plc. v. Maiwada (2003) All FWLR (pt. 151) 2001

Oketade v. Adewunmi (2010) 2-3 SC (pt.1) 1160

Ogundele v. Agiri (2009) 12 SC 135

Macfoy v. UAC Ltd (1962) AC 152

Akinpeju v. Daegbore (2008) 4 SCNJ 220

B STATUTE & RULES REFERRED TO

Legal Practitioners Act Cap L11 LFN 2004, s. 24

High Court of Lagos State (Appeal Rules), O. 3 r. 12

LEAD JUDGMENT BY MUHAMMAD JSC

C

The appellant herein, as plaintiff at the Plateau State High Court of Justice, holden at Jos, (trial court) instituted an action by a writ of summons and Statement of Claim against the respondents herein, who were the 1st and 2nd defendants at the said trial court.

D

Paragraph 29 of the appellant's Amended Statement of Claim reads as follows;

“WHEREOF the plaintiff's claim against the defendants jointly and severally in this suit (is) as follows:

E

1. A declaration that the sale of the property situate at No.86 Yakubu Gowon Way, Jos Certificate of Occupancy No. BP 1373 is null and void and without any legal effect as the purported covered by sale was done without obtaining the prior consent of the Governor of Plateau State and the consent of the Commissioner for Lands pursuant to the mandatory provision of the land use Act 1978 and terms of the Certificate of Occupancy, and the sales by Auction Law.

F

2. No (sic: An) order setting aside the purported sale and purchase of No. 86 Yakubu Gowon Way, Jos as it is tainted with secrecy and bad faith and therefore unlawful, unenforceable and of no legal effect.

G

3. An Order that the plaintiff is still at liberty to redeem the property comprised in the legal mortgage dated the 8th day of September, 1979 between the plaintiff and first defendant.

H

4. An injunction restraining 'the defendants jointly and severally by themselves, their servants, functionaries, agents privies and other persons whosoever or whatsoever from selling, alienating or otherwise interfering with plaintiff's legal right over No. 86 Yakubu Gowon Way, Jos or doing any further act inconsistent with the right

and interest of the plaintiff at law or in equity over the aforesaid property.”

The 1st and 2nd respondents, each, filed its Statement of Defence. The 2nd defendant set-up in its Statement of Defence a counter-claim against the plaintiff.

The matter proceeded to full trial at the end of which the learned trial judge delivered his judgment in favour of the plaintiff and against the defendants. The 2nd defendant's counter-claim was dismissed.

Dissatisfied with the decision of the trial court, the defendants filed their Notices of Appeal to the Jos Division of the Court of Appeal (court below). The court below, on the 4th of May, 2006, allowed the appeal; set aside the judgment of the trial court. It also held that the 2nd defendant's counter claim, particularly the declarations sought in paragraph 12 thereof, except 12(c) succeeded and were granted.

Dissatisfied with the decision of the court below, the appellants appealed to this court. They filed an Amended Notice of Appeal on 11/07/2014.

In this court, briefs were filed and exchanged. On the hearing date, 4/10/16; learned counsel for the appellant Mr. Ogunwumiju, adopted appellant's amended brief, urged the court to allow the appeal and restore the judgment of the trial court. Learned counsel for Onietan, adopted his amended brief and urged the court to dismiss the appeal. Learned counsel for the 2nd respondent Mr. Ajose-Adeogun, adopted his brief and urged the court to dismiss the Appeal. Issues set out for the determination of the appeal by learned counsel for the respective parties are as follows:-

Appellants' Issues;

i. *Whether or not the judgment of the lower court allowing the respondents' appeals is a nullity and should be set aside having regard to the fact that the Notices of Appeal which initiated the proceedings at the lower court were not filed/signed by legal practitioners known to law. (Ground 5)*

ii. *Whether the court below was not in error when it held that the doctrine of estoppel per rem judicatam could avail the 1st and 2nd respondents. (Ground 2)*

iii. Whether having regard to the entire pleadings and evidence adduced, the Court of Appeal was not in error when it held that the evidence before the learned trial judge was at variance with the pleadings on the issue of fraud thereby disentitling it to give judgment in favour of the appellant. (Grounds 1 & 3)

B *iv. Whether the Court of Appeal was not in error when it set aside the order of the trial court that the 1st respondent should pay rent into an interest yielding account pending the final outcome of the appeal(s). (Ground 4)*

1st Respondent's issues:

C *i. Whether the court below wrongly assumed jurisdiction on the appeal that gave rise to this appeal having regard to the manner in which the Notice of Appeal filed by the 1st respondent before it was signed (Ground 5).*

D *ii. Whether the learned justices of the court below (the Court of Appeal) were in error in holding as they did that the doctrine of estoppel per rem judicatam availed the respondents herein. (Ground 2).*

E *iii. Whether the court below was in error in setting aside the order of the trial court directing that the 1st respondent should pay rent into an interest-yielding account pending the final outcome of the appeal (Ground 4).*

2nd Respondent's issues:

F *i. Whether or not the judgment of the lower court allowing the respondents' appeals is, a nullity and should be set aside having regard to the fact that the Notices of Appeal which Initiated the proceedings at the lower court were not filed/signed by legal practitioners known to law. (Ground 5)*

G *ii. Whether the court below was not in error when it held that the doctrine of estoppel per rem judicatam could avail the 1st and 2nd respondents. (Ground 2)*

H *iii. Whether having regard to the entire pleadings and evidence adduced, the Court of Appeal was in error when It held that the evidence before the learned trial judge was at variance with the pleadings on the issue of fraud thereby disentitling it to give judgment in favour of the appellants. (Grounds 1 and 3)*

In the brief of argument for each party, learned counsel for

the respective party made copious submissions in support of the; issues he formulated. Further oral submissions were also made by each of the learned counsel on the hearing date.

My noble lordships, I think in view of the potency of the 1st issue raised by each learned counsel for the respective parties, which tally with one another, and which is capable of determining the appeal, at once, I should firstly, determine that issue. For the sake of more clarity and certainty, permit me to set out below appellant's 1st issue:

"Whether or not the judgment of the lower court allowing the respondents' appeals is a nullity and should be set aside having regard to the fact that the Notices of Appeal which initiated the proceedings at the lower 'court' were not filed/signed by legal practitioners known to law."

The above issue, in essence, is what both the 1st and 2nd respondents put across, though in different words, as 1st issue for each of them. It is my understanding that the most important points raised in the said issue are two: (a) Notice of Appeal and (b) who is competent to sign a Notice of Appeal?

The English word "notice", my lords, originates from the Latin word "Notitia" which connotes "knowledge", "information" "intelligence" and or, "notice" (see: Black's Law Dictionary fifth ed; St. Paul. Minn. West Publishing Co; 1979, p. 959). In its general day to day usage, therefore, the word "notice" represents knowledge of the existence of a fact or state of affairs. It is the means of knowledge. It presupposes intelligence by whatever means communicated. Notice is thus, knowledge of facts which would naturally lead an honest and prudent person to make inquiry. And, a person "notifies" or "gives" another a notice or notification by taking such steps as may be reasonably laid down by law or practice and required of him to inform the other in ordinary course whether or not that other actually comes to know of it.

Thus, in legal proceedings, a Notice of Appeal is a document giving notice of an intention to appeal filed with the appellate court and served on the opposing party. It is an originating document. In Oketie v. Olughor (1995) 5 SCNJ, 217, this court held that Notice of Appeal is the foundation of a

proper appeal and where the notice of appeal is null and void there can be no valid appeal pending before the appellate court. An appeal is deemed to have been brought upon filing of the Notice of Appeal in the registry of the court below or the court from which the appeal emanated. See: *IBWA v. Pavex*

^B *International (2000) 4 SCNJ 200 AT P227. **A valid Notice of Appeal shall contain all the necessary requirements provided by Rules of Court regulating that appeal. Such requirements include but not limited to the signing of the Notice of Appeal by the appellant himself or by a lawyer of his own choice.***

^C ***Where the appellant is a body corporate, the usual practice is for an officer or a legal representative of that body to sign the Notice of Appeal. In criminal appeals, the appellant shall sign the Notice of Appeal. Where the person signing the Notice of Appeal is a qualified legal practitioner, he should append his signature along his name with which he has been registered as a legal practitioner licensed to practice law in the Federal Republic of Nigeria.*** See: *Okafor v. Nweke (2007) 10 NWLR (Pt.1043) 521; Alawiye v. Ogunsanya (2013) 5 NWLR (Pt.1348) 570; Nigerian Army v. Samuel & Ors (2013) 14 NWLR (Pt.1375) 466; SLB Consortium Ltd. v. NNPC (2011) 9 NWLR (Pt.1252) 317.*

^F In his submissions, the learned counsel for the appellant stated that the originating processes by which the respondents' appeals to the court below were initiated i.e. the notices of appeal, were incompetent having not been signed by a legal practitioner known to law. He itemised these processes as follows (i) 1st respondent's Notice of Appeal dated 9th May, 1996 filed/signed by J. B. Majiyagbe & Co. (pp 73 - 75 of the record of appeal); (ii) 2nd respondent's undated Notice of Appeal filed/signed by Omolade Makanjuola & Co. (pp 76 - 78 of the record of appeal) (iii) 1st respondent's Notice of Appeal dated 11th October, 1997 filed/signed by J. B. Majiyagbe & Co. (pp 86 - 87 of the record of appeal) and (iv) 1st respondent's Amended Notice of Appeal dated 2nd November, 2000 filed/signed by J. B. Majiyagbe & Co. (pp 97-100 of the record of appeal).

^H The learned counsel for the appellant contended that the respondents' appeals were not commenced by due process of law

and therefore utterly failed to satisfy one of the conditions set down by the court in the case of *Madukolu v. Nkemdilim* (1962) 1 All NLR (Pt.4) 587, as their Notices of Appeal were not signed by “*legal practitioners*” known to law, and were therefore, incompetent and invalid. Learned counsel urged this court to allow the appeal by striking out the respondents’ appeals for want of competence and to restore the decision of the trial court. He cited and relied on several authorities including *Nigerian Army v. Samuel & Ors* (2013) 14 NWLR (Pt.1375) 466 at 485; *SLB Consortium Ltd. v. NNPC* (2011) 9 NWLR (Pt.1252) 317 at (337 -338).

Learned counsel for the 1st respondent, in his submission on this issue, first and foremost, cited the case of *Okafor v. Nweke* (supra) to contend that the decision in that case opened the flood-gate for a review and filing of appeals against decisions that were predicated on processes so signed or raising objections on processes so signed. It is; not unimaginable, he contended further, that, some people may have taken benefits under such decisions predicated on such wrong signing of processes and such parties may have even died when another decision of a court striking out that other decision is given. Learned counsel argued further that the decision in *Okafor’s* case was not meant to or supposed to apply universally to render null and void cases that were heard on the merit and concluded 10 to 15 years ago as same would not promote justice on the merit. He urged his court to distinguish its decision in *Okafor’s* case from this appeal and consider this appeal against the background of the reason given in *Okafor’s* case with a view to arresting the current embarrassing trend in the legal practice and in order not to shut out the appellant. Learned counsel contended that the appellant was not misled by the fact that the Notice of Appeal was signed by J. B. Majiyagbe & Co. instead of J. B. Majiyagbe or any other cognizable person in that office. The Court of Appeal was also not misled, He argues that misconception of the law by counsel, his mistake, and inadvertence or negligence should not be visited on his client. Learned counsel for the 1st respondent urged this court not to embark on a gratuitous voyage of discovery and to hold that the court below was not wrong in assuming jurisdiction on the appeal before it. He finally urged that the appeal be dismissed.

Learned counsel for the 2nd respondent after having reviewed several decisions of this court on the subject matter under Okafor v. Nweke (supra); SLB Consortium v. NNPC, consideration, such as (supra); Braithwaite v. Skye Bank 2012) 1 SCNJ 106; Alawiye v. Ogunsanya (supra); Nwani v. Bakari (2005) All FWLR (Pt.281) 803
 B at 1825; FBN Plc & Anor v. Maiwada (2003) All FWLR (Pt.151) 2001 at 2014, asked two important questions:

(i) Was the Notice of Appeal filed by the 2nd respondent in the lower court properly signed by the legal practitioner who filed the
 C ‘said Notice of Appeal?

(ii) What is the effect of signing the Notice of Appeal as OMOLADE MAKANJUOLA & CO. alone? Learned counsel attempted to suggest answers to the two questions he posed. The first question was: answered by its author as follows:

D “The answer to this question should be found on pages 76 to 78 of the Record which show the Notice: of Appeal in question. The document shows that the name OMOLADE MAKANJUOLA & CO. was typed on the document. See page 78 of the Record of Appeal. Looking at the record of appeal alone which is the document before,
 E the court on page 78 it appears that we do not have the name of counsel indicated at all on the Notice of Appeal..... It will be necessary to see the original Notice of Appeal filed by the 2nd respondent in the lower court to determine if the said Notice of Appeal was properly signed or not.” (See page 11 of the 2nd respondent’s brief of
 F argument).

The second question was answered by the same author as follows:

G “The answer to this is found in the decision of this court in ALAWIYE V. OGUNSANYA (2013) 5 NWLR (Pt.1348) at 581 - 584 where this court held:

‘Once these processes have been voided as being nullities it must follow logically that the decisions of the two lower courts must necessarily be void as also being nullities.’

H In other words if the Notice of Appeal filed by the 2nd respondent in the lower court was wrongly signed in violation of section 2(i) and Section 24 of the Legal Practitioners Act, Cap 207 of the

Laws of the Federation of Nigeria, 1990, then this court would declare the said Notice of Appeal filed in the lower court by the 2nd respondent to be null and void and allow 'the appeal on this jurisdictional point.'"

Continuing his submission, learned counsel for the 2nd respondent argued that this (i.e. the fact of wrong signing of the Notice of Appeal by OMOLADE MAKANJUOLA & CO. alone) can only be done where the Supreme Court after a proper examination of the original copies of the Notice of the Appeal as transmitted in the Record of Appeal discovers that indeed the name of the Legal Practitioner Omolade Makanjuola was not written above the typed name of the law firm on the document. Without proper proof of this fact, it would be wrong to declare the Notice of Appeal filed in the lower court to be a nullity and therefore allow this appeal and the appellant has not presented to this court based on the record of appeal filed in court incontrovertible evidence that the Notice of Appeal was improperly signed. Learned counsel urged this court to resolve the issue in favour of the 2nd respondent.

My Lords, it is not in dispute that the respondents herein, who were the appellants at the court below, filed a total number of four (4) separate Notices of Appeal. These notices of appeal are as follows:-

i. 1st respondent's Notice of Appeal dated 9th May, 1996, filed/signed by J. B. Majiyagbe & Co. (pp 73 - 75 of the record of appeal),

ii. 2nd respondent's (undated) Notice of Appeal, filed/signed by Omolade Makanjuola & Co. (pp 76 - 78 of the record of appeal),

iii. 1st respondent's Notice of Appeal dated 11th October, 1997, filed/signed by J. B. Majiyagbe & Co. (pp. 86 - 87 of the record of appeal)

iv. 1st respondent's Amended Notice of Appeal dated 2nd November, 2000, filed/signed by J. B. Majiyagbe & Co. (pp 97-100 of the record of appeal).

(underlining for emphasis)

It is to be noted that all the (4) four Notices of Appeal were filed and signed by: "OMOLADE MAKANJUOLA & CO." and J. B. MAJIYAGBE & CO.

It is elementary my lords, but worthy of constant repetition, the principles of the law stated by the this court and encapsulated in the case of Madukolu v. Nkemdilim (supra) that for a court of law to properly assume jurisdiction to entertain a matter or affirm any decision made thereon on appeal, three (3) conditions must be fulfilled and that is to say:

a) the matter/suit/case/appeal must be commenced by due process of law;

b) that there must be no feature which deprives the court of its jurisdiction in respect of the subject matter of the suit/case;

c) that the court must be properly constituted
These were the conditions spelt out in Madukolu's case (supra).

This court even went further to point out the serious effect of non-compliance thereof:

"Any defect in competence is fatal for the proceedings are a nullity however well conducted and decided, the defect is extrinsic to the adjudication."

It was highlighted at the early stage of this judgment that for a court to assume jurisdiction, the originating process(es) laid before it must be commenced by due process of law. The originating process under which the appeal was brought to the court below is/are the "NOTICE(S) OF APPEAL"

filed by the then appellants. Rules of court and practice mandate that for a Notice of Appeal to be valid, it has to be signed by the appellant himself or his counsel/legal practitioner. Thus, the requirement of such Court Rules, and in fact, the Legal

Practitioners' Act is that, generally, it is a legal practitioner called to the Nigerian Bar and whose name appears in the Roll of Legal Practitioners, who may issue court processes including originating processes such as a notice of appeal. The word "may" is cautiously preferred as no rule of court or

law that prohibits an appellant, for instance, from seeking redress from an appeal court (or any other court of law, on some subject matters) from having access to such a court. It is even more absolute in criminal matters/appeals. This, in my belief,

is anchored on the Constitutional provision (Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which guarantees to a citizen of Nigeria unhindered access to a court of law. However, where a particular mode of commencing an action or appeal is made by some subsidiary laws or Rules of Practice in furtherance of the Constitutional provision which makes access to court within the reach of every citizen, that mode has to be complied with.

In respect of appeals, the initiating or originating process, as defined earlier, is a NOTICE OF APPEAL. For a Notice of Appeal filed by a legal practitioner to be valid, this court interpreted the provisions of some laws and other Rules of court in several of its decisions, for instance, Okafor v. Nweke (supra); SLB Consortium Ltd. v. NNPC (supra); Alawiye v. Ogunsanya (supra); Nigerian Army v. Samuel & Ors (supra); FBN Plc v. Maiwada (supra); Registered Trustees of Apostolic Church Lagos Area v. Rahmam Akinde (1967) NMLR 263; Cole v. Martins (1968) All NLR 161.

Bear with me my lords, to cite in chronological order what happened in some of these cases:

Firstly: In the Registered Trustees of Apostolic Church Lagos Area v. Rahman Akinde (supra) in which following the success of an objection to the application of the appellants for registration as owners of some and, the firm of solicitors of J. A. Cole & Co. filed a notice of appeal at the High court, Lagos, against the ruling, in signing the notice of appeal, learned counsel used his name in which he was called to Bar and enrolled at the Supreme Court i.e. J. A. Cole. After the hearing of the appeal the learned trial judge drew attention to the fact that Order 3 Rule 2 of the High Court of Lagos (Appeals) Rules had not been complied with because the firm of J. A. Cole & Co. is not a legal practitioner under the Legal Practitioners Act, 1962 and consequently dismissed the appeal. Upon appeal to the Supreme Court, the court allowed the appeal and held, inter alia:

The notice filed in this case was given in the prescribed form. It stated the name and address of the legal practitioner representing the appellants as "Messrs J. A. Cole & Co."

Mr. J. A. Cole is admittedly a duly registered legal practitioner, and entitled to practice as such under the Legal Practitioners Act, 1962.

He has no partner in his practice.... in signing the notice of appeal, Mr. Cole used his own name, that is to say, the name in which he registered as a legal practitioner. We hold that on any Interpretation of the rules that was a sufficient compliance with them and we do not accept the submission that the addition of the words "for A. J. Cole & Co." would invalidate¹ the signature if a signature in a business name was not permitted."

Secondly, in *Augusta Cole v. Sergius Olatunji Martins & Anor* (supra) the notice and grounds of appeal were purported to be signed by a firm of solicitors known as Lardner and Company. By virtue of the Legal Practitioners Act of 1962, Lardner and Company is not a legal practitioner and therefore there had been no compliance with Order 3 Rule 2 of the High Court of Lagos (Appeal Rules) and under Order 3 Rule 12 of the High Court of Lagos (Appeal Rules).

Thirdly, in *Okafor v. Nweke* (supra) this court held, inter alia: *Since both counsel agree that J. H. C. OKOLO SAN & CO. is not a legal practitioner recognized by the law, It follows that the said J. H. C. OKOLO & CO. cannot legally sign and/or file any process in the courts and as such the motion on notice filed on 19th December, 2005; notice of cross-appeal and applicants brief of argument in support of the said motion all signed and issued by the firm known and called J. H. C. OKOLO SAN & CO. are incompetent in law particularly as the said firm of J. H. C. OKOLO SAN & CO. is not a registered legal practitioner."* (underlining for emphasis)

Fourthly, the holding by this court in the case of *SLB Consortium v. NNPC* (supra), is to the effect that:

"A process prepared and filed in a Court of law by a legal practitioner must be signed by the legal practitioner and it is sufficient signature if the legal practitioner simply writes his own name over and above the name of His firm in which he carries out his practice."

Fifthly, the cases of *FBN Plc v. Maiwada* (supra); *Alawiye v. Ogunsanya* (supra) and *Nigerian Army v. Samuel* (supra) were, one after the other, decided by this court in 2013 and widely reported in the same year.

The decisions in these cases did not differ in any material

particular with earlier decisions of the court as sampled above, in all the primary point worth reiterating is that a law firm cannot sign an originating process as it is not a legal practitioner recognized by the law. Any originating process signed and issued under the name of a law firm only, such as *“J. H.C. OKOLO SAN & CO. (as in Okafor v. Nweke(supra) or, “Chief Afe Babalola SAN & Co.”* (as in Alawiye v. Ogunsanya)(supra) and *“Lardner and Co.”* (as in Cole v. Martins) supra, purporting to be legal documents, are, in fact, incurably defective and any decision predicated thereon, is indeed, a nullity.

Section 2(1) of the Legal Practitioners Act, Cap 207, Laws of Federation of Nigeria, 1990 (and now in Section 24 of the Legal Practitioners Act, Cap L.11, Laws of the Federation, 2004 provides:

“Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if his name is on the roll.”

The circumstance presented by the appeal on hand is that the originating processes listed earlier in this judgment, especially the Notices of Appeal (including any amendment thereto) were signed either by “J. B, MAJIYAGBE & CO.” or “OMOLADE MAKANJUOLA & CO. Both J.B. Majiyagbe & Co. and Omolade Makanjuola & Co. are law firms belonging to some individual legal practitioners. The principle regulating legal appearance for a party/parties before a court of law is often recited that a law firm is not a legal practitioner in the contemplation of the Legal Practitioners Act. It lacks capacity to sign, file or issue out court processes, solely, in that name. Thus, any court process initiated by a person who is not enrolled in the Register of Roll in the Supreme Court of Nigeria, licensed to practice as a legal practitioner in the Federal Republic of Nigeria would amount to a void process and any proceeding conducted therein would be declared a nullity. See: Okafor v. Nweke (supra); Oketade v. Adewunmi (2010) 2-3 SC (Pt.1) 1160; Ogundele v. Agiri (2009) 12 SC 135.

In justification of submissions made earlier in his brief of argument, that the decision in Okafor’s case (supra) was not meant to and was not supposed to apply universally to render null and void cases that were heard on the merit and concluded 10 or 15 years

ago on the ground that the processes were not properly signed as same would not promote justice on the merit, the learned counsel for the 1st respondent, Mr. Enietan, put forward the following arguments:

It is therefore clear from the above that the Supreme Court wouldn't have made that ruling if it meant shutting out the applicants. This is because that will not be in the interest of justice. It thus means that whenever this decision is to be cited or considered in deciding other matters, it must be looked at from the perspective in which it was given, i.e. to correct an embarrassing trend in legal practice and not among the innocent members of the general: public.

Secondly, if this court is set to correct an embarrassing trend in the legal profession, one would have thought that the innocent litigant who cannot be said to be in pari delicto with the legal practitioners should not pay so clearly for what he knows nothing about and have no control over. The point we are trying to make is this... the 1st respondent, as it was constitutionally entitled to, secured the services of a lawyer of its own choice in 1992 and in 1996 when the case and the appeal to the High Court and the Court of Appeal were respectively filed. No doubt the judicial system or process was 'introduced for the benefit of the general public all over the world. From the time the Appeal to the Court below was filed and now is about 19 years. One may now want to examine the phrase "interest of justice". The Appeal to the Court of Appeal was heard on the merit and judgment delivered on 4th May, 2006, i.e. about 9 years ago. The Notice of appeal is alleged to have been signed by non-cognizable person in law but the facts and the law that ought to be considered before giving judgment were adequately considered by the court below. The appellant was not misled by the fact that the Notice of Appeal bringing him to the Court of Appeal may have been signed by J. B. Majiyagbe & Co. instead of J. B. Majiyagbe or any other cognizable person in that office. The Court of Appeal was also not misled. If the Notice of Appeal had been signed by J. B. Majiyagbe or any other natural person in that office qualified to so sign what value has it added to justice or the interest of justice if the decision of the court below is held by this court to be perverse and totally wrong in law upon hearing the appeal on the merit, one may ask? Or what

value has the alleged signing of the same process by J. B. Majiyagbe & Co. really taken away from justice or interest of justice if in respect of the subject matter of the appeal the facts and the law were appropriately examined and the decision thereon impeccable, one may ask again?

This court has consistently held that the misconception of the law by counsel, his mistake, inadvertence or negligence should not be visited on his client, in an attempt to correct an embarrassing trend in the legal practice, one would have thought that the correction should be done without any harm to the litigant who will become more embarrassed to hear that a process that commenced about 19 years ago has to be recommenced just because his counsel did not perhaps sign the process well as provided for in the legal practitioners' Act.

It is rather unfortunate that the 1st respondent will, by the alleged mistake of its counsel, be visited with this fait accompli that it has to go back to 1992 or 1996 to re-start the action again and perhaps have to call witnesses that may have died. The chaotic scenario this development may create is better imagined. To the ordinary unlearned mind, this will appear unjust and unfair that it has to pay so dearly to enable the judiciary put its house in order for no apparent fault of hers. Would this not amount to visiting the sin of its counsel on her? What the court is saying if this appeal is struck out is that "you have to restate the whole process all over because the lawyer that represented you made a mistake in his signature and must arrest the current embarrassing trend in the legal practice." We submit that the current embarrassing trend in the legal practice can be arrested without making an innocent litigant pay so dearly remembering that the court was created for the same litigant."

Equally, in an attempt to throw more fight on the two posers (questions) put earlier, learned counsel for the 2nd respondent Mr. Ajose-Adeogun submitted:

"It is our submission that if the original Notice of Appeal filed in the lower court by the 2nd respondent herein has the name of late Mr. Omolade Makanjuola written above the typed Omolade Makajuola & Co., then the said Notice of Appeal filed in the lower court would have satisfied the requirement of the Legal Practitioners

Act and the law as interpreted in the SLB Consortium case as what this court has said is clear. For emphasis this Supreme Court has stated that “it would have been sufficient if M. Adewale Adesokan had simply written or stamped his name on top of Adewale Adesokan & Co., because Mr. Adewale Adesokan is a legal practitioner registered to practice law in the Roll at the Supreme Court; not Adewale Adesokan & Co.”

In other words, if the Notice of Appeal filed by the 2nd respondent in the lower court was wrongly signed in violation of section 2(1) and Section 24 of the Legal Practitioners Act, Cap 207 of the Laws of the Federation of Nigeria 1990, then this court would declare the said Notice of Appeal filed in the lower court by the 2nd respondent to be null and void and allow the appeal on this jurisdictional point. It is our submission that this can only be done where this Supreme Court after a proper examination of the original copies of the Notice of Appeal as transmitted in the Record of Appeal discovers that indeed the name of the legal practitioner Omolade Makanjuola was not written above the typed name of the law firm on the document. We submit that without proper proof of this fact, it would be wrong to declare the Notice of Appeal filed in the lower court to be a nullity and therefore allow this appeal. We submit that the appellant has not presented to this court based on the Record of Appeal filed in court in controvertible evidence that the Notice of Appeal was improperly signed.”

My lords, in the first place, Mr. Onietan for the 1st respondent, put forward sympathetic and thought - provoking arguments in respect of his clients that:

- i. Neither the appellant nor the court below that was misled by the filing of the Notice(s) of Appeal as it was/they were;
- ii. the sin committed by a counsel should not be visited on his client and
- iii. interest of justice must be taken into consideration

Permit me to say, my lords that Mr. Onietan for the 1st respondent yielded to sentiments. But it is only natural as a counsel, he should show concern in sympathy to his client. However, Mr. Onietan should know that in the realm of law, sentiments or sympathy has no place. It is only law and law

only that should take its course. See Ezeugo v. Ohanyere (1978) 6-7 SC 171 at 184.

Where Obaseki, JSC admonished thus:

“Sentiment commands no place in judicial deliberation for if it did, our task would be infinitely more difficult and less beneficial to the society.” B

Secondly, Mr. Onietan should also know that, however well conducted a proceeding may be, if it has no basis or legs upon which to stand, it will certainly collapse. The maxim coined by Lord Denning MR. that one cannot put something on nothing and expect it to stand. No! It will certainly collapse! See: Macfoy v. UAC Ltd (1962) A. C 152. The proceedings conducted by the court below were predicated on a Notice of Appeals (or Notices of Appeal) which were incurably defective. The proceedings however well conducted, could not yield any valid result as they were based *ab initio*, on wrong/ D invalid originating process(es).

Thirdly, law, they say, is an ass not minding who will ride upon its back and to which direction he will drive it. All that is known is that it is not a respecter of persons. The position of the law will not change. Where it is valid it remains to be so irrespective of whether it misleads anybody or not. The fact that no one complained that the appellant or, and the lower court was mislead by the filing of a void originating process cannot be a valid reason for allowing the void process to be acted upon. Once that validity or invalidity of the process is discovered by a person concerned or the court itself, that process must be declared null and void, affecting, consequently, anything that comes out of it by way of order, ruling or judgment. See: First Bank v. Maiwada (supra); Oketade v. Adewunmi G (supra); Ogundele v. Agiri (supra); Okafor v. Nweke (supra).

Fourthly, visiting the sin of counsel on his client is not permitted by the law courts. See: Akinpelu v. Daegbore & Ors (2008) 4 SCNJ 220. ***What is not however, tolerated is where a counsel committed an unforgivable blunder which must affect his case, such as filing a wrong or an incompetent process (such as originating processes), there is no way the court can blind its eyes to allow the process have its way, as such.*** H

Furthermore, interest of justice connotes such interests, aspirations and or attempts to achieve justice in a given case or situation. The whole goal is the achievement of justice. Justice is fair and proper administration of laws, whereas anything done in the interest of justice is done in pursuance of fairness to all the parties in a case without compromising the principles of the law and evidence under consideration which, as of right, entitle the successful party to judgment. That perhaps, is why they now say, that justice is a three-way-traffic. Justice to the plaintiff/appellant. Justice to the defendant/respondent and justice to the court itself. The last one of course, requires that parties to a legal tussle or their legal representatives should always come to court with open mind, sincerity of purpose, diligent and coherent with unwavering confidence that the court will at the end, deliver justice according to law. The justice of the appeal before the court below demanded a pronouncement that the originating processes (Notices of Appeal) as signed by several firms of legal practitioners which are not legal practitioners as such recognized by law, were incompetent and ought to have been struck out.

Considering the argument of Mr. Ajose-Adeogun for the 2nd respondent, I am bold to state that two of the Notices of Appeal were exhibits which accompanied the motion on Notice filed before the lower court by the 1st respondent for leave to amend its Notices and Grounds of Appeal. The Notices of Appeal sought to be amended were reflected in paragraph 4(a) & (b) of the affidavit in support of the said motion that both were filed on the 9th day of May, 1996 and (another) on the 14th of May, 1997. Both were attached to the affidavit as exhibits PO1 and PO2, respectively. Sub-paragraph (c) of the said affidavit in support of the motion on Notice stated that there were two appeals pending before the lower court and the applicant wanted the appeal consolidated as they arose from same suit at the trial court. They asked for leave of that court. The (proposed) amended Notice of Appeal was attached to the affidavit in support as exhibit PO3 (paragraph 4(g) of the said affidavit). The court below, in a Ruling delivered on 7th of November, granted the appellant/applicant/respondent leave to consolidate the two Notices of Appeal

and to also amend the Notices and grounds of appeal as per exhibit PO3. (pp. 101 - 101a of the record of appeal). This court observes that the Notice of Appeal PO1 was issued by the firm of "J. B. MAJIYAGBE & CO." simplicity with prefix "pp" before the name of the legal practitioner's firm. The Notice of Appeal attached as PO2, was dated 14th May, 1997. There is a contraption over the name of the firm "J. B. MAJIYAGBE & CO," with a prefix pp: preceding the contraption and the legal practitioner's firm name. PO3 ("Amended Notice of Appeal") was dated 2nd November, 2000. It bears the name of the firm of the same Majiyagbe. It has a contraption over the name of the firm.

It is to be noted my lords, that even where there appears a contraption of a name or signatures, it is not clear to me, and I could not lay my hands anywhere (from the record of appeal which contains the original Notice of Appeal) to attach names to the contraptions in the two Notices of Appeal (one being an 'amended' Notice of Appeal). It is clear that PO1 is not a legal document to initiate an appeal. PO2 and PO3 pose same confusion as to who signed any of them or both?

The law is very clear that as there is no name written to legitimize the contraption, it then goes to nothing and it must be discounted. In SLB Consortium v. NNPC (supra) this court made it clear;

"All processes filed in court are to be signed as follows:

a) First the signature of counsel which may be any contraption,

b) Secondly, the name of the counsel clearly written;

c) Thirdly, who counsel represents,

d) Fourthly, name and address of legal firm.

In the amended Notice of Appeal "Exh. PO3", it is not clear who signed on top of the legal practitioner's firm. Further, no name of a legal practitioner is clearly written to own up the contraption. I agree with and reiterate the position taken by this court in SLB Consortium v. NNPC (supra) that:

"Once it cannot be said who signed the process, it is incurably bad, and rules of court that seem to provide a remedy are (of) no use as a rule cannot override the Legal Practitioners Act. There must be a strict compliance with the law."

Accordingly, the two Notices of Appeal (as shown in Exhs. PO2 and PO3) which were placed before the court below, are incompetent and cannot enure to the benefit of the appellants before that court. It was observed earlier what this court quoted in the case of SLB Consortium’s case (supra) that:

B *“A process prepared and filed in a court of law by a legal practitioner must be signed by the legal practitioner and that it is sufficient signature if the legal practitioner simply writes his own name over and above the name of his or firm in which he carries out his practice. In the instant case, it would have been sufficient if Mr. C Adewale Adesokan had simply written or stamped his name on top of Adewale Adesokan & Co. because v. Mr Adewale Adesokan is a legal practitioner registered to practice law in the Roll at the Supreme Court; not Adewale Adesokan & Co.”*

D My lords, the appeal on hand to my understanding is of same extraction with the ones in Registered Trustees of Apostolic Church Lagos Area (supra) and that of Cole v. Martins (supra). None of the originating processes (i.e. the Notices of Appeal) at the court below was competently filed, it is unfortunate that this matter of incompetence of the originating processes at the court below was never brought to the attention of the court below and that court, by itself, did not observe that serious flaw in the originating processes. An originating process is the foundation stone of any proceedings in any court. It thus, affects the jurisdiction of that court. No court of law can assume F jurisdiction through a defective originating process. it does, the proceeding however well conducted will amount to a nullity. As a nullity, nothing more can competently be considered in this appeal. All other issues formulated by the respective parties collapse and are, accordingly struck out. G

The appeal has merit and it is hereby allowed. Judgment of the court below is hereby set aside. I find it difficult to accede to the request of the learned counsel for the appellant that judgment of the learned trial judge be restored. This is because that judgment was not H put to test on merit before the court of Appeal due to the defective nature of the originating processes which consequently affected the decision of that court.

I make no order as to costs.

NGWUTA JSC

I read in draft the lead judgment just delivered by my learned brother, Tanko Muhammad, JSC, and I entirely agree with His Lordship's lucid analysis leading to the conclusion that the appeal is meritorious and should be allowed. B

Accordingly, I also allow the appeal and set aside the judgment of the Court below of 4th May, 2006.

I also abide by all the consequential orders in the lead judgment. C

ARIWOOLA JSC

I was privileged to have read in draft the lead judgment of my learned brother, I. T. Muhammad, JSC. I agree entirely with the reasoning therein and the conclusion arrived thereat. D

The appellant herein was the plaintiff at the trial High court of Plateau State, Holden at Jos. Both respondents were the defendants.

Each defendant filed its respective statement of defence to the appellant's amended Statement of Claim. The 2nd defendant however raised a counter claim in its defence. Upon the closure of pleadings, the case proceeded to trial. The trial court gave its considered judgment in favour of the plaintiff against the defendants and dismissed the 2nd defendant's counter claim. E F

Upon an appeal to the court below, Jos division of the Court of Appeal, the appeal was allowed. The judgment of the trial court was set aside while the counter claim succeeded and was granted.

The appellant was dissatisfied with the decision of the court below, hence the instant appeal to this court, via a Notice of Appeal filed on 11th July, 2014. G

Briefs of argument were filed and duly exchanged. Both parties distilled three issues each from the appellant's grounds of appeal.

The first issue for determination of the appeal as formulated H by the appellant is the same with those formulated by each of the two respondents though couched in slightly different wordings. I shall therefore utilize the first issue as couched by the appellant, and it

goes thus:-

“Whether or not the judgment of the lower court allowing the respondents’ appeal is a nullity and should be set aside having regard to the fact that the Notices of Appeal which initiated the proceedings at the lower court were not filed/signed by legal practitioners known to law.”

In arguing this appeal, learned counsel for the appellant submitted that the issue ought to be resolved in favour of the appellant by allowing the appeal, set aside the respondents’ appeal before the lower court and restore the judgment of the trial court which was set aside by the lower court.

Mr. Kehinde Ogunwumiju, predicated his submission mainly on the fact that the originating process by which the respondents’ appeals were initiated at the lower court were incompetent not having been signed by a legal practitioner known to law. He referred to the different Notices of Appeal filed at various times including the 1st respondent’s Amended Notice of appeal filed by Omolade Makanjuola & Co and J. B. Majiyagbe & Co respectively.

Learned counsel contended that where a court wrongly assumes jurisdiction to entertain a matter only to discover at a later stage or on appeal; that it did so in error, every step taken in such proceedings would amount to a waste of precious judicial time, as well as funds spent by litigants on the process. He submitted that all steps and proceedings taken out in that regard will be null and void *ab initio* and would be set aside.

Learned counsel referred to the three fundamental conditions that this court has over the years reiterated must be fulfilled, as follows;

- (i) That the suit must be commenced by due process of law.
- (ii) There must be no feature depriving the court of its jurisdiction in respect of the subject matter of the suit.
- (iii) The court must be properly constituted.

He relied on *Madukolu Vs. Nkemdilim* (1962) 1 All NLR (Pt.4) 587; (1962)2 SCNLR 341

Learned counsel submitted that the respondents’ appeals were not commenced by due process of law and therefore utterly failed to satisfy one of the conditions set down by this court, for the

reason that their Notices of Appeal were not signed by Legal Practitioner known to law, rendering same to be incompetent and invalid.

He referred to Section 2(1) of the Legal Practitioners Act and submitted that it is only a legal practitioner called to the Bar and whose name appears on the Supreme Court Roll as licensed to practice in Nigeria who is competent to issue court processes. He submitted that any court process initiated by any person whose name is not on the roll and has not been licensed to practice as a Legal Practitioner in Nigeria is null and void. B

Learned counsel referred to the notices of appeal filed at the court below on pages 73-100 and who signed them. He contended that the said processes were signed in business names not known as Legal practitioners rendering each of the processes liable to being declared a nullity and set aside.. He relied on the following cases - Okafor Vs. Nweke (2007) 10 NWLR (Pt.1043) 521 at 531-532; SLB Consortium Ltd Vs. MNPC (2011) 9 NWLR (Pt.1252) 317 at 337-338; FBN Plc Vs. Maiwada (2013) 5 NWLR (Pt.1348) 444. C D

Learned counsel submitted that the appeals of both respondents at the court below being incompetent are liable to be struck out. He urged the court to allow the appeal, strike out the respondents' appeals before the court below and restore the decision of the trial court. E

On this issue, the two counsels to the 1st and 2nd respondents were opposed to the arguments of the appellant on the competence of their respective Notices of Appeal. Learned counsel to the 1st respondent referred to the decisions of this court on the issue, in particular; Okafor Vs Nweke (supra) and contended that the decision was not meant and not supposed to have a universal application to render null and void, cases that were heard on the merit and concluded ten to fifteen years ago as same would not promote justice on the merit. He contended further that neither the parties nor the court is misled by the name that signed the said Notices of Appeal, being Majiyagbe & Co rather than Majiyagbe, Esq. He contended further that, if any, the mistake or inadvertence or negligence of counsel should not be visited on the client. He urged the court to hold that the court below was not wrong in assuming jurisdiction on the appeal hence he finally urged the court to dismiss the appeal. F G H

Learned counsel for the 2nd respondent also argued in the same tone in opposing the submissions of the appellant's counsel. He also referred to the various previous decisions of this court on this issue and contended that this court should take a careful look at the Notices of Appeal filed at the court below and to find out whether or not the individual name of counsel whose business name appear on the said processes was not supplied. He submitted that this court will require the appellant herein to specifically prove that the said Notices of Appeal were improperly signed at the point of filing. He urged the court to discountenance the argument of the appellant's counsel and resolve the issue in favour of the 2ⁿ respondent.

There is no doubt and the law is clear, that appeal shall lie from the decision of the Court of Appeal to the Supreme Court and this shall be commenced by a notice of appeal or respondent Notice, as the case may be in other words, the originating process of an appeal to this court shall ordinarily be by Notice of Appeal which shall be filed in this court. In the same vein, the originating process of an appeal to the court below shall be a notice of appeal filed in the court below which must be valid to enable the court assume jurisdiction to entertain the appeal.

In this case, upon being dissatisfied with the decision of the trial court, the aggrieved respondents filed their respective Notices of Appeal. The said Notices of appeal are as follows:-

1. 1st respondent's Notice of Appeal dated 9th May, 1996 filed by J. B. Majiyagbe & Co.
2. 2nd respondent's Notice of Appeal filed by Omolade Makanjuola & Co.
3. 1st respondent's Notice of Appeal dated 11th October, 1997 filed by J. B. Majiyagbe & Co.
4. 1st respondent's Amended Notice of Appeal dated 2nd November, 2000 filed by J.B. Majiyagbe & Co.

It is clear on the record that the Notices of Appeal were filed by business names of Majiyagbe & Co. and Makanjuola & Co. respectively.

There is no doubt that both the Rules and Practice of Court require that as an originating process, for a Notice of Appeal to be valid it must be signed either by the appellant himself or by his coun-

sel or legal practitioner.

Section 24 of the Legal Practitioners Act, defines a “*legal practitioner*” as follows:-

“a person entitled in accordance with the provisions of this Act to practice as a Barrister or as a Barrister and Solicitor, either generally or for the purpose of any particular office proceedings.” B

However, Section 2(1) of the same Legal Practitioners Act provides thus:-

“Subject to the provisions of this Act, a person shall be entitled to practice as a Barrister and Solicitor if, and only if, his name is on the roll” C

From the above, it is clear without any ambiguity that the person who is entitled to practice as a legal practitioner must have had his name on the roll of the Supreme Court of Nigeria.

Can it therefore be said that the names J.M. Majiyagbe & Co. and Omolade Makanjuola & Co. are names recognized by law and on the roll of legal practitioners? D

In Emmanuel Okafor & Ors Vs. Augustine Nweke & Ors (2007) 5 SCM 180; (2007) 10 NWLR (Ft. 1043) 521 this court, when considering some court processes which were filed in a business name, had this to say: E

“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.” F G

Perhaps, I must state clearly that there is no dispute and no controversy on whether or not J. M. Majiyagbe, Esq. and Omolade Makanjuola, Esq., are names that have been licenced and enrolled in the Supreme Court to practice in Nigeria as legal practitioners. But the same cannot be said of J. M. Majiyagbe & Co and Omolade Makanjuola & Co. These names are not known to law as legal practitioners, licenced to so practice. As a result, neither of them is quali- H

fied in that business name to file court processes, much more an originating processes of court such as in the instant, the Notice of Appeal.

In the circumstance and without any further ado on the appeal, I hold that the Notices of Appeal including the Amended Notice of Appeal filed by Messrs J. M. Majiyagbe & Co. and Omolade Makanjuola & Co. respectively are incompetent.

A Notice of Appeal is said to be the spinal cord of an appeal, it is the foundation upon which an appeal is based. It is the originating process which guarantees the proper and valid commencement of an appeal. Therefore, it follows that where the originating process is defective or invalid, it cannot sustain an appeal, it will collapse, and must be struck out. See; 1 A. Aderibigbe & Anor Vs. Tiamiyu Abidoye (2009) 5 SCM 1; (2009) 4-5 SC (Pt.111) 123.

In other words, the Notice of Appeal being the foundation of a proper appeal, where it is shown to be incompetent or null and void; there can be no valid appeal pending before the court. Egbolgbin Oketie & 2 Ors Vs Ambrose Olughor & 6 Ors, In Re; Osibakoro D. Otuedon Vs. Peter Egueye (1995) 5 SCNJ 217.

For the above brief comments and the full detailed reasoning of my learned brother, Tanko Muhammad, JSC, I agree that this appeal is meritorious and should be allowed. Accordingly, I also allow the appeal and set aside the judgment of the court below delivered on 4th May, 2006.

I abide by all consequential orders in the said lead judgment including the order on costs.

AKA'AHS JSC

I read in draft the illuminating judgment of my learned brother, Ibrahim Tanko Muhammad JSC and I agree entirely with his reasoning and conclusion that the Originating processes i.e. the Notices of Appeal taken out on behalf of 1st and 2nd respondents (then appellants in the Court of Appeal) were incurably defective as they were signed by J. B. Majiyagbe & Co and Omolade Makanjuola & Co. Consequently the judgment delivered by the Court of Appeal on 4th May, 2006 in CA/J/115/99 was a nullity. A law firm cannot sign an

originating process since it is not a legal practitioner as envisaged by the Legal Practitioners Act 1962 which was the fulcrum of this Court's decision in Okafor v. Nweke (2007) 10 NWLR (Pt. 10431) 521 where it was held –

“Since both counsel agree that J. H. C. OKOLO SAN & Co. is not a legal practitioner recognized by law, it follows that the said J. H. C. OKOLO & Co cannot legally sign and/or file any process in the courts and as such the motion on notice filed on 19th December 2005; notice of cross-appeal and applicant’s brief of argument in support of the said motion all signed and issued by the firm known and called J. H. C. OKOLO & Co. are incompetent on law particularly as the said firm of J. H. C. OKOLO SAN & Co. is not a registered legal practitioner”.

This appeal has merit and it is hereby allowed. The judgment of the court below delivered on 4th May, 2006 is declared a nullity D and is accordingly set aside. I abide by the order as to costs contained in the lead judgment of my learned brother I.T. Muhammad JSC.

OKORO JSC

I read in draft the lead judgment of my learned brother Ibrahim Tanko Muhammad, JSC, just delivered.

I am in agreement with the reasons advanced and the conclusion reached therein that this appeal has merit and deserves to be allowed. I also allow the appeal. I abide by the consequential orders made therein. I also make no order as to costs.

E

G

H