

APPRAISAL OF ISSUES INVOLVED IN SIGNING OF COURT PROCESSES IN NIGERIA*

Abstract

From the commencement of a suit to its conclusion, there are some fine details which, if not properly dealt with, could prove fatal in the course of trial. One of these is the issue of signing of court processes. The various Rules of court always make provisions that court processes shall be signed by a Legal Practitioner. The officials of the courts are also required to sign certain processes for these processes to be deemed sealed. Issues often arise as a result of non-signing, improper signing or signing by a wrong person. Our courts have in most cases declared their positions on some of these issues. Yet it seems that the issues are still coming in droves. In this article, the writer shall x-ray the issues involved in signing of court processes with the aim of guiding legal practitioners in avoiding such pitfall that might affect their cases.

Keywords: Signing, Court Processes, Nigeria, Appraisal

1. Definition of Terms

To ‘sign’ according to the Blacks’ Law Dictionary,¹ means to identify by means of a signature, mark, or other symbol with the intent to authenticate it as an act or agreement of the person identifying it. Court, on the other hand, court means a governmental body consisting of one or more judges who sit to adjudicate disputes and administer justice.² It is a permanently organized body, with independent judicial powers defined by law, meeting at a time and place fixed by law for the judicial public administration of justice. Process means the proceedings in any action or prosecution. The term process is not limited to summons. In its broadest sense, it is equivalent to, or synonymous with, procedure or proceeding. Sometimes the term is also broadly defined as the means whereby a court compels a compliance with its demands.³

2. The Supreme Court Position on the Issue of Signing of Court Processes

In 2007, the apex court decided in *Emmanuel Okafor v. Augustine Nweke*,⁴ on the nullity of a process of the court signed by a person whose name is not on the roll of the Supreme Court which we often refer to as ‘signing in firm’s name.’ The facts of this case are that the applicants filed three processes to wit: the notice of motion filed on 19/12/2005, the proposed notice of (cross) appeal exhibited to the supporting affidavit to the above-mentioned motion and marked exhibit ‘A’ and the brief of argument filed on 19/12/2005. These processes were respectively signed by J.H.C. Okolo, SAN & Co. These processes were purported to have been signed and also authenticated by a Legal Practitioner on his own right. However, it has been conceded that J.H.C. Okolo, SAN & Co. is not in any sense of the term a registered legal practitioner *vis –a vis* the provision of Sections 2 and 24 of the Legal Practitioners Act 1990. These were declared to be incompetent. The matter was not settled as there were demands by the stakeholders that the above decision in *Nweke’s case*⁵ should be set aside. The Supreme Court yielded to these demands and constituted a full court in *First Bank of Nigeria Plc v. Alhaji Salami Maiwada*,⁶ wherein the court invited *amicus curiae* to address the court on the appropriateness of the decision of the court in *Okafor v. Nweke*.⁷ The Supreme Court, after considering the erudite submissions of counsel for the parties and the *amicus curiae* reaffirmed its decision in *Okafor v.*

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¹ B.A. Garner, *Blacks Law Dictionary*, 8th ed, Thompson Group, USA, 2004, page 1415.

²*Ibid*; at p.378.

³*Ibid*; at p.1242.

⁴(2007) 19 WRN 1.

⁵*Supra*.

⁶(2013) 32 WRN 31.

⁷*Supra*.

Nweke.⁸ The facts of *First Bank of Nigeria Plc v. Alhaji Salami Maiwada*⁹ are that the plaintiff at the trial court sought declaratory reliefs in respect of landed property in Jos, setting aside of warrant of possession and damages in the sum of ₦1,000,000.00 against the defendants for trespass. By way of preliminary objection, the appellants urged the court to dismiss the plaintiff's claim on the ground that issues between them had been determined to finality in suit No PLD/J/51/1994 when the plaintiff's suit was dismissed in its entirety. The court refused the application. Dissatisfied with the decision of the trial court, the defendants/appellants appealed to the Court of Appeal. The respondents raised a preliminary objection to the Notice of Appeal filed by the appellants on the ground that the Notice of Appeal was signed by David M. Mando & Co. The Court of Appeal upheld the preliminary objection and struck out the Notice of Appeal. Dissatisfied with the ruling of the lower court, the appellants appealed to the Supreme Court. The Chief Justice of Nigeria empanelled a full court and also invited amici curiae to address the court on the issue. The Supreme Court, per Fabiyi, JSC at page 66, lines 25- 40 held that:

The purpose of section 2 (1) and 24 of the Act is to ensure that only a legal practitioner whose name is on the roll of this court should sign court processes. It is to ensure responsibility and accountability on the part of a legal practitioner who signs a court process. It is to ensure that fake lawyers do not invade the profession....

The Supreme Court equally considered whether the requirement of signature of a Legal Practitioner on a court process can be waived. The court per Chukwuma-Eneh, JSC at page 78, line 5 held as follows: 'The provisions of sections 2(1) and 24 of the Act affect the jurisdiction of the court as a matter of substantive law and not as a matter of procedural law (and so as in certain cases they cannot be waived)'.

3. Effect of a Court Process not Signed by a Legal Practitioner

Section 2(1) of the Legal Practitioner Act¹⁰ requires that a person wishing to engage in legal practice must have his name on roll of Legal Practitioners. The only way to identify such Legal Practitioner is to have his name reflected on the court process in issue. The name can usually be cross-checked in the said roll so as to confirm whether or not the signatory in issue is a genuine Legal Practitioner. If it cannot be confirmed that the signatory is a Legal Practitioner, then the process in issue is incompetent and therefore *null* and *void*.¹¹ The court went further to state that 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 maintain the very high standard required in the practice of the profession in this country.¹² The question that has become worrisome is why is it that notwithstanding the affirmation of the Supreme Court in *Maiwada's case*,¹³ the courts are still flooded with cases of where Legal Practitioners signed in firms' name. The consequence of signing in firms' name by the Legal Practitioner is debilitating, lethal and has led to striking out of cases which could also lead to loss of the cases because of statute of limitation. I stumbled on a case where the issue of non- signing of the originating process was raised for the first time at the Supreme Court.¹⁴ At the Supreme Court, the issue of jurisdiction was raised for the first time to the effect that the writ of summons, the statement of claim, and the notice of cross-appeal have been signed and issued by a non-cognizable Legal Practitioner of the firm of 'Chief Afe Babalola SAN & Co' otherwise, incapable under the Legal Practitioners Act to sign the initiating processes. The Supreme Court reiterated its position in *Okafor v. Nweke*.¹⁵ It is in consideration of the importance of the above principles and other related principle of law in signing court processes that I decided

⁸*Ibid.*

⁹*Supra.*

¹⁰Cap 297 of the Laws of the Federation of Nigeria 1990.

¹¹*First Bank of Nigeria Plc v. Alhaji Salami Maiwada (Supra)*, per Chukwuma- Eneh, JSC at p.80, lines 25-35.

¹²*Ibid*; per Peter –Odili, JSC at p.118, lines 15-20.

¹³*Supra.*

¹⁴ See *Ayodele Alawiye v. Ogunsanya* (2013)2 WRN 29.

¹⁵ *Supra.*

to examine these principles. To educate Legal Practitioners on the dangers of improper signing, non-signing or signing by a wrong person.

4. How are Documents Signed?

A document is signed when one places his mark or thumb impression on the document. The mere typing of a person's names or initials on a document without more is not sufficient to constitute that person's signature. To constitute one's signature, the person must have affixed what he affirms to be his signature which may either be his mark, signs or simply writing his initials thereon. It requires the person doing something overt on the document which is recognizable by the person doing it.¹⁶ How then do we sign and issue court processes? 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 counsel clearly written; c) Thirdly, who counsel represents; d) Fourthly, name and address of legal firm.¹⁷

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 strict compliance with the law. In the present case,¹⁸ there was a signature of counsel but no name of counsel known to law. A signature without the name of counsel is incurably bad.

5. Effect of Unsigned Process

In our Jurisprudence, it is not enough that a document should be duly certified which goes to admissibility, but in order to be acted upon there must be evidence of date and authorship. Even a judgment or ruling of a court will be worthless if it was merely certified by a Registrar but without the name and signature of the Judge or Justice who delivered it, and the date of delivery.¹⁹ The Supreme Court in *Omega Bank Nigeria Plc v. O.B. C. Limited*,²⁰ made a landmark pronouncement to the effect that a document which is not signed does not have any efficacy in law since it is a worthless document. The apex court also referred with approval the case of *Ojo v. Adejobi*²¹ where the Supreme Court stated that where a document is not signed, it may not be admitted in evidence. Even if it is admitted, the court should not attach any probative value to it. This is because a document which is not signed has no origin in terms of its maker. In view of the fact that the two makers or writers of exhibit P6 did not sign the exhibit, it was not available to the two courts to attach probative value to it. The court cannot in any event *ex debito justitiae* ignore a situation in which the foundation of a claim to a preparatory legal interest is based on a worthless, unsigned and inadmissible document.²² Also in *A. G. Abia State v. Agbaranya*²³ it was held that an unsigned document is worthless and void. The Court of Appeal in *Ganiyu Ibiyemi Alawode v. Madam Monilola Adediran*,²⁴ in a leading judgment by Ikyegh (J.C.A.) held that it is trite that an unsigned document deserves no evidential weight or value and to that extent, Exhibit C possesses no weight.²⁵

¹⁶See *A.C.B Plc v. Haston (Nig.) Ltd* (1997) 8 NWLR (Pt. 515) 110.

¹⁷*Alawiye v. Ogunsanya* (3013) 28 WRN 29.

¹⁸*Ibid.*

¹⁹ *Omosonya v. Arifowose* (1959) 4 FSC 94; (1959) SCNLR 217, See also *M. A. Okupe v. B. O. Ifemebi* (1974) 3 SC 79; (1974) NSCC 164; (1974) 1 All NLR 375, *Ajaokuta Steel Co Ltd v. Role* (2011) 27 WRN 124, *Egunjobi v. Oluwo* (2016) 52 WRN 123

²⁰(2006) 4 WRN 1.

²¹(1978) NSCC Vol.11 161 at 165.

²² *Ojo v. Adejobi* (1978) NSSC Vol. 11 161, *A.G. Abia State v. Agbaranya* (1999) 6 NWLR (Pt. 607) 362.

²³(1990) 6 NWLR (Pt. 607) 362 at 371.

²⁴(2013) 15 WRN 105.

²⁵ See *Mobile Oil (Nig) Plc v. Rabi* (2003) FWLR (Pt 149) 1546, *Ambrosini v. Ali* 7 WACA 148, *Omega Bank (Nig) Plc v. OBC Ltd* (2006) 4 WRN 1; (2005) 1 S.C. (Pt 1049); (2005) All FWLR (Pt. 249) 1964; (2005) 1 SCNJ 150; (2005) 8 NWLR (Pt. 928) 547, *Kwara Investment Co. Ltd v. Garuba* (2000) FWLR (Pt 2) 198, (2000) 10 NWLR (Pt 674) 25. See also *Octs Educational Services Ltd v. Padson Industries Ltd* (2012) 47 WRN 102.

6. Signing of Court Process by Legal Practitioners

There are certain provisions in the Rules of Court or statutory provisions that hold that certain court processes must be signed by a Legal Practitioner. Order 3 Rules 12²⁶ provides as follows:

- 12 (1) The Registrar shall seal every originating process whereupon it shall be deemed to be issued.
- (2) A Plaintiff or the Plaintiff's Legal Practitioner shall on presenting any originating processes for sealing leave with the Registrar as many copies of the process as there are defendants to be served and one copy for endorsement of service on each defendant.
- (3) Each copy shall be signed by the Legal Practitioner or by a plaintiff where the plaintiff sues in person and shall be certified after verification by the Registrar as being a true copy of the original process filed.²⁷

Order 13 Rules 4 (3)²⁸also requires that pleadings shall be signed by a Legal Practitioner.

When a counsel is required to sign a document, it is a person whose identity is ascertainable from the roll of Legal Practitioners that must append his signature. In *N.D.I.C v. Lagos State Govt*²⁹it was obvious that the notice of appeal filed by the cross-appellant was not signed by a Legal Practitioner recognized by law, because M. J. Onigbogu & Co. is not a name that can be ascertained from the roll of Legal Practitioners.³⁰On status of a legal document not signed by a Legal Practitioner, it is settled law that 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.³¹

7. Who is a Legal Practitioner?

By the provision of Section 2(1),³² a person shall be entitled to practice as a Barrister and Solicitor if and only if his name is on the roll of Legal Practitioners in Nigeria.³³The holistic reading of the statutory provisions reveal that for a person to practice as barrister and solicitor, it is only that person whose name is on the roll subject to other exceptions stated in the statute like the person who occupies the office of the Attorney-General, Solicitor-General, Director of Public Prosecution of the Federation or State etc.

8. Signing in Firms' Name

Notwithstanding the provisions of the Legal Practitioners Act, some Legal Practitioners embark on signing their signatures in a name that is not on the roll of the Supreme Court like signing in their firms name like thus:

Signed	Signed
SYZ & CO	PYZ & Associate

What is the attitude of the court to such signature signed in firm's name? In *Registered Trustees of the Apostolic Church v. Rahman Akindele*,³⁴ a Notice of Appeal³⁵ was signed in the name of J.A. COLE for J.A. COLE & CO. The Notice of Appeal was dismissed as not being proper before the court on the ground that

²⁶Federal High Court Civil (Procedure Rules) 2009.

²⁷ See Order 6 Rule 2 (1) (2) and (3) High Court of Lagos State (Civil Procedure) Rules 2012 and the High Court Civil Procedure Rule of Anambra State 2006. See also Order 15 Rule 2 High court of Lagos State (Civil procedure Rules) 2012.

²⁸Federal High Court (Civil Procedure Rules) 2009.

²⁹(2011)1 NWLR (Pt. 1229) 629.

³⁰ See *Okafor V. Nweke* (Supra), *New Nigerian Bank Plc v. Denclag Ltd* (2009) NWLR (Pt. 916) 549.

³¹See *N.N.B Plc v. Denclag Ltd* (Supra), *Okafor V. Nweke* (Supra).

³²Legal Practitioners Act.

³³*N.D.I. C.V. Lagos State Govt.* (Supra).

³⁴(1967) NMLR 263; (1967) ALL NLR 110.

³⁵ Which must be signed by the appellant or the Legal Practitioner representing him.

the Notice of Appeal was given by the firm of J.A.Cole & Co which was not a Legal Practitioner under the Legal Practitioners Act 1962. Mr. Cole was a duly registered Legal Practitioner entitled to practice as such under the Act. He practiced alone but in the duly registered name of J.A.Cole & Co which no professional objection was suggested. The above was the position until 2007 when the Supreme Court in *Emmanuel Okafor v. Augustine Nweke*³⁶ held that the processes issued by J.H.C. Okolo SAN & Co were incompetent in law particularly as the said firm of J.H.C. Okolo SAN & Co is not a registered Legal Practitioner whose name is on the roll. Relying on Sections 2 and 24 of the Legal Practitioners Act, the apex court in response to the submission of the Appellants advocate that to determine the actual person who owned the signature, that evidence needs to be adduced which would have shown that the signature belonged to J.H.C. Okolo SAN, the apex court held thus:

The law does not say that what should be in the roll should be the signature of the Legal Practitioner but his name. That 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.

In *Mrs Olayinka Adewunmi v. Mr Amos Oketade*,³⁷ the learned counsel for the respondent raised a preliminary objection that the entire appeal is incompetent because the Notice of Appeal and appellant's brief of argument were not issued by a Legal Practitioner known to law. The said processes in contention were signed by Olujimi and Akeredolu. This, the respondent counsel submitted, offended Sections 2 (1) and 24 of the Legal Practitioners Act. The Supreme Court held as follows:

It does not appear that counsel for the appellant has answer for the objection. There is a big legal difference between the name of a firm of Legal Practitioners and the name of a Legal Practitioner simpliciter. While the name of Olujimi and Akeredolu is a firm with some corporate existence, the name of Legal Practitioner is a name qua solicitor and advocate of the Supreme Court of Nigeria which has no corporate connotation. As both carry different legal entities in our jurisprudence of parties, one cannot be a substitute for the other because they are not synonyms. It is clear that Olujimi and Akeredolu is not a name of a Legal Practitioner in Nigeria. I say this because there is no such name in the roll of Legal Practitioners and that violates section 24 of the Legal practitioners Act. By Section 2(1) of the Act, the only person in the profession wearing his professional name to practice law in Nigeria is a Legal Practitioner and the definition of a Legal Practitioner in Section 24 of the Act does not include Olujimi and Akeredolu. This one is not a mere technicality that can be wished aside. It is fundamental to the judicial process as it directly affects the legal process that brought this case on appeal.³⁸

The Supreme Court in *Alhaji Fatai Ayodele Alawiye v. Mrs. Elizabeth Adetokunbi Ogunsanya*,³⁹ noted that the writ of summons, the statement of claim and the notice of cross appeal, initiating processes as filed in the above matter were issued and signed by 'Chief AfeBabalola (SAN) & Co.' The apex court voided the decisions of the two lower courts.⁴⁰

What I am saying, in other words, is to the effect that all the critical material to enable this court determine this matter are before this court. Indeed these initiating processes as I have outlined above, purportedly initiating processes in this matter

³⁶*Supra.*

³⁷(2010) 23 WRN 25.

³⁸*SLB Construction Ltd v. NNPC* (2011) 9 NWLR (Pt.1252) 317 at 336 Paras A-G

³⁹(2013) 28 WRN 29.

⁴⁰*Business Media Nigeria Limited v. Radix Capital Partners Ltd* (2014) 36 WRN 173. See also *Katol Investment Limited v. UACN Property Development Company Plc* (2014) 30 WRN 75.

meaning in effect that the proceedings before the two lower courts including their respective decisions have been predicated on the said fatally defective initiating processes. And once these processes have been voided as nullities, it must follow logically that the said must necessarily be voided as also being nullities.

In *Mr. Mufutai Ayinla Oyeyemi v. Mobile Oil Nigeria Plc*⁴¹, the undated writ of summons and statement of claim dated 19/8/1999 were signed by ‘Oluwole Aluko & Co.’ The Court of Appeal held that the above processes were incompetent as they were not signed by a Legal Practitioner. The Court of Appeal also in *Alhaji Isiyaku Yakubu v. Yola Electricity Distribution Company Ltd*⁴² *suo motu* drew the attention of learned counsel to the joint statement of claim filed by the plaintiff to the fact that it was signed by a firm of legal practitioners ‘Messrs L. D. Nzadon & Co.’ The Court invited both learned counsel to address it on the legal implication(s) to the suit. The Court considered their arguments and relied on *Okafor v. Nweke*⁴³ to hold that the processes were incompetent. In *Veepee Industries Ltd v. Oluwagbemica Oloyede Fadina*,⁴⁴ the court *suo motu* discovered that the Notice of Appeal, an originating process was signed by Seun Akinbuyi & Co, a law firm instead of a qualified Legal Practitioner under sections 2(1) and 24 of the Legal Practitioners Act Cap 207 of the Laws of the Federation of Nigeria 1990. The court held the notice of appeal incompetent.

9. Signing in Abbreviations

There are instances when Legal Practitioners sign in abbreviations of their forenames like C. J. Ubanyionwu, F.O. Adeleke, Z.C. Adamu. This is differentiated from signing in the firm’s name, the latter we have seen has been adjudged incompetent. What is the validity of the legal process signed in abbreviations? My limited research has not revealed any judicial decision in respect of the above. However, from holistic reading of Section 2 (1) and 24,⁴⁵ it is deducible that it is name of barrister and solicitor as it is in the roll that is required. The roll does not accept abbreviation of names. Again, a process that is in abbreviation does not disclose the name of or identity of the Legal Practitioner as abbreviation is subject to numerous ascriptions. My humble view is that such processes that are required to be signed by the Legal Practitioner but signed in abbreviation are incompetent and fundamentally defective. The same principle is applicable to those who sign in pet names like a solicitor whose full name is Babatunde Adesina but prefers to sign as ‘Tunde Adesina’ or Clement Okafor signing as ‘Clems Okafor.’ These are defective ways of signing and should be avoided.

10. Signing in Several Names

There is another stylish method of signing common among some law firms whereby they sign in several names without indicating the Legal Practitioner that signed. An example will suffice.

Signed

Chima Ubanyionwu Esq

Francis Okeke Esq

John Adeleke Esq

Adamu Abdulahi Esq

This mode of signing is also incompetent as it does not indicate who among the above is the owner of the signature. It is also not a defence that all the people named above are Legal Practitioners. Legal Practitioners should therefore avoid such pitfalls that may render their processes incompetent or subject to contention.

⁴¹(2014) 7 WRN 155.

⁴²(2014) 33 WRN 97.

⁴³(*Supra*).

⁴⁴(2013) 36 WRN.

⁴⁵ Legal Practitioners Act Cap 111 Laws of the Federation 2004.

11. Purpose of Sections 2(1) And 24 Legal Practitioners Act

The Supreme Court held in **First Bank of Nigeria Plc v. Alhaji Salmanu Maiwada**⁴⁶ that the purpose of Sections 2 (1) and 24 of the Legal Practitioners Act Cap L5 Laws of Federation 2004 is to ensure that only a Legal Practitioner whose name is on the roll of this court should sign court processes. The apex court further held that it would ensure that fake lawyers do not invade the profession. Onnoghen JSC in *Okafor v. Nweke*⁴⁷ had this to say:

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 maintain the very high standards required in the practice of profession in this country.

In *Dr. Tunji Braithwaite v. Skye Bank Plc*⁴⁸ Muhammed, JSC while referring to the decision of the apex court in *First Bank of Nigeria Plc .v. Maiwada*⁴⁹ held that the purpose of Sections 2 (1) and 24 of the Act is to ensure that only Legal Practitioners whose name is on the roll of this court should sign court process. The words employed in drafting Sections 2 (1) and 24 of the Act are simple and straight forward. The literal construction of the law is that Legal Practitioners who are animate personalities should sign court processes and not a firm of Legal Practitioner which is inanimate and cannot be found in the roll of this court.

12. Signing of Court Processes in Criminal Cases

In criminal cases, every summons issued by a court under the Administration of Criminal Justice Law⁵⁰ shall be in writing, in duplicate, signed by the presiding officer of such court or such other officers as the Chief Judge may from time to time prescribe.⁵¹ Where a trial is to take place in the High Court after the preparation of proofs of evidence in respect of the charge, such trial shall be on information.⁵² Every information shall bear the date when it is signed.⁵³ An information shall be signed by a law Officer or any person authorized by the Attorney General in that regard.⁵⁴ When it comes to appeal in criminal cases, every notice of appeal or notice of application for extension of time within which such notice shall be given, shall be signed by the applicant himself. ⁵⁵ Failure to properly sign the Notice of Appeal shall render the notice of appeal filed fundamentally defective and incompetent and therefore is liable to be struck out.⁵⁶ The facts of *Uwazurike v. AG; Federation*⁵⁷ are that the appellants were arraigned on a four- count charge before the Federal High Court. They applied for bail and also brought an application wherein they prayed for an order of court dismissing the charges against them and an order of court restraining the respondent from prosecuting or purporting to prosecute them on the same facts as contained in the application for remand dated 1st November, 2005, filed in the proceedings. The trial Judge heard arguments on the application and in a ruling delivered on 27th January, 2006 refused the prayers. She ordered that the appellants be remanded in prison custody. Dissatisfied with the ruling, the appellants appealed to the Court of Appeal, Abuja. The appeal was brought *vide* a joint Notice of Appeal which was not signed by each of the appellants but by their Counsel. Against this background, the respondent filed a notice of preliminary objection contending that the notice of

⁴⁶*Supra.*

⁴⁷*Supra.*

⁴⁸*Supra.*

⁴⁹*Supra.*

⁵⁰Law of Anambra State 2010.

⁵¹ Section 105 of the Administration of Criminal Justice Law of Anambra State 2010.

⁵²*Ibid*; Section 218.

⁵³*Ibid*; Section 219.

⁵⁴*Ibid*; Section 222 (2).

⁵⁵See Order 4 rule 4 (1) of the Court of Appeal Rules 1981. See also *Uwazurike v. AG; Federation* (2007) 40 WRN 79.

⁵⁶*Ibid.*

⁵⁷*Supra.*

appeal filed by the appellants was ineffectual and not in compliance with Order 4 rules 4(1) of the Court of Appeal Rules. The Court of Appeal heard arguments on the preliminary objection and struck out the appeal. Further dissatisfied with the decision of the Court of Appeal, the appellant appealed to the Supreme Court. The Supreme Court held that a Notice of Appeal filed without compliance with the terms of the rule ought not to be accepted by the Court of Appeal. Such notice is ineffectual to activate a right of appeal. Ogbuagu, JSC, at p.97, lines 30 – 40 has this to say:

It is settled that a notice of appeal is the foundation and substratum of every appeal. Any defect thereto or therein, will render the whole appeal incompetent and the appellate court will lack the required Jurisdiction, to entertain it or any interlocutory application based on the said appeal. See the cases of *Aviagents Ltd v. BalstrauInvestment* (1966) 1 ALL E.R 450, *Olowokere v. African Newspapers* (1993) 5 NWLR (Pt. 295) 583 and *Olarewaju v. BON Ltd* (1994) 8 NWLR (Pt 364) 662 just to mention but a few.

In *State v. Jammal*⁵⁸ it was held that the Court of Appeal ought to take judicial notice of the fact and in law, that a notice of appeal in a criminal appeal filed in the lower or trial court which was signed by a counsel for the appellant instead of the appellant himself, is defective by virtue of Order 4 rule 4(1) of the Court of Appeal Rules 1981. It was also held that ‘the provisions are clear, unambiguous and mandatory’ and ‘that the notice must be signed by the appellant himself and not by his Counsel’.

13. Procedural Irregularity

The Supreme Court, in a plethora of cases, held that non - signing of court processes by a Legal Practitioner whose name is on the roll as required by Sections 2 (1) and 24 of the Legal Practitioners Act is not a procedural irregularity but a fundamental defect that renders the court process a nullity.⁵⁹ Iyizoba, JCA who delivered the leading judgment in *Katol Investment Ltd v. UACN Property Development Company Plc*⁶⁰ held thus:

I quite appreciate the reasoning in the argument of learned counsel for the respondent that the appellant waived its right to complain of the irregularity in the accompanying processes having taken part in the proceeding for ten years without complaining of the said noncompliance. There may have been merit in that line of argument if the writ of summons as the originating process was properly signed by a Legal Practitioner. Unfortunately this is not the case. On the authority of *Okafor v. Nweke* (supra) therefore, *Wuyi Ogunyinka & Co* is not a Legal Practitioner capable of signing originating processes. The writ of summons, further amended statement of claim and further amended reply and defence to counter claim signed by the firm of *Wuyi Ogunyika & Co* are incompetent.

14. Mistake of Counsel

The Supreme Court in *FBN v. Maiwada*⁶¹ considered whether it would not lead to injustice against the litigant to declare processes filed by his counsel incompetent on the ground that such a process was signed and filed in the name of a law firm without indicating the name of the particular Legal Practitioner who issued and signed the process. Fabiyi, JSC in well considered decision held thus:

In *Okafor V. Nweke* (supra) this court per Onnoghen JSC stated as follows at pages 532-533:

⁵⁸ (1996) NWLR (Pt 473) 384.

⁵⁹ See *Braithwaite v. Skye Bank* (Supra).

⁶⁰(2014) 30 WRN 75.

⁶¹Supra.

On the other side of the judicial scale in the balancing act is the issue of substantial justice which I said had been adequately taken into consideration in this ruling. The conclusion that must bereached in this matter is that the documents are incompetent and are struck out leaving the appellant with the opportunity to present proper application for consideration by this court. The effect of ruling is not to shut out the applicants 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. It follows that 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 this court.

15. Technical Justice

The apex court also considered the contention of some counsel that the decision in *Okafor v. Nweke*⁶² had to do with technical justice. In *FBN v. Maiwada*⁶³ the Supreme Court held that the age of technical justice is gone. The current vogue is substantial justice. But substantial justice can only be attained (not) by bending the law but by applying it as it is, not as it ought to be. There is nothing technical in applying the provisions of Section 2 (1) and 24 of the Legal Practitioners Act as it is drafted by the Legislature. The law should not be bent to suit the whims and caprices of the parties/counsel. One should not talk of technicality when substantive provision of the law is rightly invoked.⁶⁴

16. Whether in Breach of Constitution and Right of Appeal

The Notice of Appeal in *Adewunmi v. Oketade*⁶⁵ had signature and the name of the firm clearly inserted beneath the signature. The respondent raised a preliminary objection to the jurisdiction of the court to entertain it on the ground that the appeal is defective fundamentally. The appellants responded to the preliminary objection that Section 2 (1) and 24 of the Legal Practitioners Act⁶⁶ constitute a fetter on and an inhibition of the constitutional right of action, the right to appeal of prospective appellants thereby violated sections 1 (1) and 1 (3), 6 (6) (b) and 241 (1) of the 1999 Constitution of the Federal Republic of Nigeria as amended. The Court of Appeal held that the Supremacy of the Constitution over all other legislature is certain. Contrary to the submission of the learned counsel, I find no feature of the violation of sections 1 (1), 1(3), 6(6) (b) and 241 (1) of the Constitution in the said sections of the Legal Practitioners Act (supra). Rather the said provisions seek to enhance litigant's constitutional rights by demanding high standard in the performance of the duty of Legal Practitioners.

17. Whether Amendable or Incurable

The Supreme Court in *The Nigeria Army v. Sgt. Asanu Samuel & Others*,⁶⁷ held that N.O.OOke & Co has no legal capacity to sign/file any Notice of Appeal in any court of law in the country including the Notice of Appeal filed to initiate the appeal in the lower court. The court further held that the lack of legal personality is a fundamental defect which could not be cured by an amendment. The Court of Appeal per Uwa, J.C.A. in *Rafiu Ogbe v. Jimo Adun Adegbe*,⁶⁸ also adopted the Supreme Court's decision in *Nigerian Army v. Samuel*⁶⁹ to the effect that the incompetent Notice of Appeal in respect of absence of signature of a legal

⁶²Supra.

⁶³Supra.

⁶⁴ See *Mrs. Olayinka Adewunmi v. Mr. Amos Oketade* (2010) 23 W.R.N 25 at 31 para 45.

⁶⁵Supra.

⁶⁶Cap 207 of the Laws of the Federation of Nigeria 1990.

⁶⁷(2013) 39 WRN 39.

⁶⁸(2014) 12 WRN 148.

⁶⁹Supra.

practitioner is not amendable. This court in *Emmanuel Okafor & Ors v. Augustine Nweke & Ors*⁷⁰ per Onnoghen, J. S. C stated what the position should be thus:

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? From the submissions of both counsel, it is very clear that the answer to the 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 filing processes in the courts of this country. It is in recognition of this fact that accounts for argument of learned Senior Advocate for the applicants that to determine the actual person who signed processes, evidence would have to be adduced which would necessarily 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) who is a legal practitioner in the roll....

Going by the decision in *Okafor v. Nweke*,⁷¹ learned counsel for the respondents submits that the implication is that there was no appeal. That sweeping assertion and solution cannot be in keeping with the tenets of substantial justice and the age long principle that a litigant should not be made to suffer for the inadvertence or mistake of counsel. Bearing that in mind therefore and the attempts made to rectify the anomaly and the order of amendment made by the Court of Appeal itself, even though the right process as a full amended notice of appeal not having been filed but learned counsel merely filed the amended offending last page properly signed, this in keeping with the oral application and order of court. In that amendment sought from the Court of Appeal per I. T. Muhammed J.C.A (as he then was) it had been granted in following terms, viz:

The application now seeks to amend this notice of appeal by substituting the page with another page. I think in order to meet the ends of justice I shall allow the oral application.

Accordingly, leave is granted to Chief Akande to replace the last page of the notice of appeal filed at the lower court with one now to be signed by Chief Akande himself. Time extended for that purpose by 7 days from today within which to file the last page of the notice of appeal. This comes into one of those exceptions that could alleviate the hardship that otherwise would have resulted. Therefore, the process was redeemed and consequently valid’.

The apex court allowed the amendments.

18. Recommendation

In conclusion, Legal Practitioners are enjoined to frank their processes properly since legal practice is a very serious business to be undertaken by serious minded practitioners. Legal practitioners owe the legal profession the duty to maintain the very high standards required in the practice of legal profession in Nigeria. By signing our court processes properly in accordance with the Legal Practitioners Act, it will go a long way to safeguard the practice of law in order to eliminate touts from evading the law practice.

⁷⁰*Supra*, at p.531- 532, para H-A.

⁷¹*Supra*.