

FATE OF A LEGAL PRACTITIONER IN NIGERIA ADJUDGED GUILTY OF PROFESSIONAL MISCONDUCT*

Abstract

This paper seeks to resort to a way forward in the face of the current deadlock arising from the Supreme Court decision in two cases emanating from the Legal Practitioners Disciplinary Committee. Since the Supreme Court, being the highest court in Nigeria, has given its decision on the two cases, there is no further appeal on the matter except the Supreme Court revisits its decision and chooses to deviate from it. Thus the decision of the Supreme Court stands out whether it is criticised or not, except the court reviews its decision. But the court cannot make an Order in futility. The Order of the court must be obeyed. Where there is no avenue for an Order of the court to be obeyed, what happens? In the face of a deadlock, what route can be resorted to in obeying the Court's Order? This is the focus of this paper.

Keywords: *Legal Practitioner, Professional Misconduct, Guilty of, Fate of, Nigeria*

1. Introduction

The legal profession is a noble one. It is a conservative profession with rules or codes jealously guarding its ethics and standards. In order to preserve the ethics of the profession, there are several regulatory bodies in the profession including the body responsible for disciplining erring legal practitioners. A legal practitioner is a person whose name is on the Roll of Legal Practitioners kept by the Registrar of the Supreme Court. He is a person entitled in accordance with the provisions of the Legal Practitioners Act to practice as a barrister or a barrister and solicitor, either generally or for the purpose of any practitioner office or proceedings.¹ Where a legal practitioner has been adjudged guilty of the rules guiding the behavioural or attitudinal patterns of persons admitted into the profession in the course of their practice, he does have a right of appeal against the decision of the disciplinary body, except he chooses to waive such right. The right of appeal relieves such legal practitioner of any grievances he may have against the decision of the disciplinary body.

There are different disciplinary bodies or authorities in the legal profession. While some are meant to discipline erring legal practitioners, others discipline persons who have been elevated to the Bench. The Legal Practitioners Disciplinary Committee, the Supreme Court of Nigeria and the Chief Justice of Nigeria discipline legal practitioners.² The National Judicial Council (NJC) exercises disciplinary jurisdiction such as warning and compulsory retirement over members of the Bench. The NJC may act on the advice or recommendation of the Federal Judicial Service Commission,³ the Judicial Service Committee of the Federal Capital Territory Abuja,⁴ or State Judicial Service Commission where applicable.⁵ However, when it relates to the removal of a Judicial Officer, the President of the Federal Republic of Nigeria or the Governor of a State, as the case may be, becomes involved. A third body, the National Assembly or the State House of Assembly, is also involved when it pertains to the removal of the Head of a Court either at the Federal or the

* **I. L. I. IKIMI, LL.B, B.L, LL.M, ACI Arb.** Lecturer, Nigerian Law School, Yenagoa Campus. E-mail: inisspecial@yahoo.com. 08037800187.

¹ *Okafor v Nweke* (2007) 10 NWLR (pt. 1043) 521. Legal Practitioners Act (Cap. L11) Laws of the Federation of Nigeria (LFN) 2004 s. 24.

² Legal Practitioners Act (Cap. L11) LFN 2004 s. 11(1), 13(1) and 13(2) respectively.

³ Constitution of the Federal Republic of Nigeria 1999 para. 13(b) part I of the 3rd Schedule to the Constitution of the Federal Republic of Nigeria 1999.

⁴ Constitution of the Federal Republic of Nigeria 1999 para. 2(b) part III of the 3rd Schedule to the Constitution of the Federal Republic of Nigeria 1999.

⁵ Constitution of the Federal Republic of Nigeria 1999 para. 6(b) part II of the 3rd Schedule to the Constitution of the Federal Republic of Nigeria 1999.

State level respectively.⁶ Although one of the disciplinary bodies meant to discipline erring legal practitioners; the Legal Practitioners Disciplinary Committee (LPDC), consists of very highly esteemed persons in the legal profession, and usually considers every case brought before it thoroughly, yet there is still room for an appeal by any party to it, who is aggrieved with its decision. Appeals from the Legal Practitioners Disciplinary Committee (LPDC) lie to the Supreme Court on the authority of the provisions of section 12 Legal Practitioners Act (as amended).⁷ However, the decisions of the Supreme Court in the cases of *Aladejobi*⁸ and *Akintokun*⁹ hold that appeals from the LPDC lie to the Appeal Committee of the Body of Benchers (ACBB). This body no longer exists. In the face of this deadlock where lies the appeal of an aggrieved party to the decision of the LPDC? This is what this paper seeks to consider.

2. Regulatory Bodies in the Legal Profession

There are several regulatory bodies in the legal profession that serve as a check on the professional conduct of persons admitted into the profession both at the Bar and at the Bench. A member of the Bar in the legal profession is one admitted to practice as a barrister and solicitor of the Supreme Court and who is entitled to sit at the Bar of the Court as well as enjoy other privileges of the Bar such as representing clients and being robed while appearing before superior Courts of record in the representation of his client.¹⁰ A member of the Bench refers to a person who is part of the judiciary and who sits in adjudicatory position in a Court of law to hear and determine matters. All Judicial officers are members of the Bench. Magistrates are also members of the Bench.¹¹

The regulatory bodies are:

- (a) General Council of the Bar; also known as the Bar Council,¹²
- (b) Nigerian Bar Association,¹³
- (c) Council of Legal Education.¹⁴ This body is *inter alia* responsible for the legal education of aspirants to the legal profession.¹⁵
- (d) Body of Benchers;¹⁶ a body of persons of the highest distinct in the legal profession in Nigeria. It exercises disciplinary jurisdiction over erring members of the legal profession through its committee known as the LPDC.¹⁷
- (e) Legal Practitioners Privileges Committee.¹⁸ This body confers the rank of Senior Advocate of Nigeria on deserving legal practitioners in Nigeria¹⁹ and makes rules as to the privileges to be accorded to such persons. It also has the power to withdraw the rank of Senior Advocate from a holder of such rank.²⁰

⁶ Constitution of the Federal Republic of Nigeria 1999 s. 292(1) para. 21(b) & (d) part I of the 3rd Schedule to the Constitution. See the case of *Hon. Justice Raliat Elelu-Habeeb & Anor. v. Attorney General of the Federation & Ors.* (2012) 13 NWLR (pt. 1318) 423.

⁷ Section 10(e) Legal Practitioners Amendment Decree No 21; 1994 (now act) amended the previous section 11(7) of the Legal Practitioners Act.

⁸ *Jide Aladejobi v. Nigeria Bar Association* (2013) 15 NWLR (pt. 1376) 66.

⁹ *Rotimi Akintokun v. LPDC* [2014] LPELR 22941 (SC).

¹⁰ *Fawehinmi v. NBA (No. 1)* (1989) 2 NSCC 1.

¹¹ *C.I.C. Armed Forces v. Public Service Commission of Mid-Western State.* (1974) NSCC 509.

¹² This is established by section 1 Legal Practitioners Act.

¹³ NBA a professional association of all persons admitted to the legal profession in Nigeria, upon being enrolled in the Supreme Court.

¹⁴ This was established in 1962 by the Legal Education Act of 1962 [now Legal Education (Consolidation, etc.) Act 1976 (Cap. L10) LFN 2004].

¹⁵ Legal Education (Consolidation, etc) Act (Cap. L10) LFN 2004 s. 5.

¹⁶ It was established in 1962 by the Legal Practitioners Act. Legal Practitioners Act (Cap. L11) LFN 2004 s. 3.

¹⁷ Legal Practitioners Act (Cap. L11) LFN 2004 s. 10(1) (b).

¹⁸ Legal Practitioners Privileges Committee is established by section 5(3) LPA.

¹⁹ Legal Practitioners Act (Cap. L11) LFN 2004 s. 5(1) (7).

²⁰ Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria and All Matters Pertaining to the Rank 2018 para. 26.

- (f) Legal Practitioners Remuneration Committee.²¹ This body regulates the charging of fees by legal practitioners in different specified transactions provided in Section 15(3) LPA as well as the Scales in the Legal Practitioners (Remuneration for Legal Documentation and Other Land Matters) Order 1991.
- (g) Legal Practitioners Disciplinary Committee.²² It is a committee of the Body of Benchers which considers and determines any case where it is alleged that a legal practitioner has breached the Rules of Professional Conduct or is involved in any infamous conduct in the legal profession. It gives direction to the Registrar of the Supreme Court as to what punishment should be meted out to a legal practitioner adjudged guilty of any professional offence.²³
- (h) National Judicial Council.²⁴

The first regulatory body; General Council of the Bar, is laden with the function of making Rules of Professional Conduct for Legal Practitioners as well as Rules of Account to be kept by Legal Practitioners.²⁵ The regulatory body also inspects the books of account and bank accounts expected of legal practitioners to keep, in order to ensure compliance with the Rules.²⁶ For persons in the profession who are members of the Bench, the National Judicial Council serves as the main regulatory body and such persons are bound by a Code of Conduct for Judicial Officers of the Federal Republic of Nigeria in the performance of their functions. Thus, there are more bodies regulating members of the Bar than of the Bench in the legal profession. This is so because members of the Bench are co-opted from the Bar and as such should imbibe the ethos of the profession because, it goes without mention that, an ethical member of the Bar would eventually turn out to be an ethical member of the Bench. Although members of the Bench are co-opted from the Bar, however, there are some members of the Bench who may not be co-opted from the Bar (or who may not be legal practitioners). A combined reading of sections 261(3)(b), 276(3)(b), 266(3)(b), and 281(3)(b) CFRN 1999, make one to understand that a person who is not a legal practitioner may be appointed to the office of a Kadi or Judge of the Sharia Court of Appeal or Customary Court of Appeal respectively. Persons occupying these offices are Judicial Officers, and all Judicial Officers are members of the Bench. Section 318 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 defines a Judicial Officer to include any person who is a holder of the office of a Grand Kadi or Kadi of the Sharia Court of Appeal of the Federal Capital Territory (FCT), Abuja, or Sharia Court of Appeal of a State, and a holder of the office of the President or Judge of the Customary Court of Appeal of the FCT, Abuja, or Customary Court of Appeal of a State.

Furthermore, the reason for having more bodies regulating members of the Bar is because members of the Bar usually have personal or direct dealings with the public. So there is a need for more regulatory bodies for legal practitioners than for Judicial Officers in order to ensure that the dignity of the profession is maintained. As opined by the Supreme Court in the case of *Abuah v. Legal Practitioners Committee*²⁷ per Ademola CJF, ‘Legal practitioners are officers of the Court. It is our bounden duty to see that officers of the Court are men of integrity who should be trusted not only by the Court but also by the public for whom they act.’

²¹ It is established by section 15(1) Legal Practitioners Act (Cap. L11) LFN 2004.

²² It is established by section 11 Legal Practitioners Act (Cap. L11) LFN 2004.

²³ Legal Practitioners Act (Cap. L11) LFN 2004 s. 12(1) (c).

²⁴ This body is established by section 153 Constitution of the Federal Republic of Nigeria 1999. Its composition and powers are provided in paras. 20 and 21 part I of the 3rd Schedule to the Constitution.

²⁵ Legal Practitioners Act (Cap. L11) LFN 2004 ss. 12(4) and 20.

²⁶ Legal Practitioners Account Rules 1964 rr. 21 and 22.

²⁷ (1962) NSCC 175.

3. Maintaining Decorum in the Legal Profession

All the regulatory bodies in the legal profession help to maintain the dignity of the profession. However, the Legal Practitioners Disciplinary Committee serves as watchdog in the legal profession and guards against undesirable practices among legal practitioners due to its disciplinary functions. The Legal Practitioners Disciplinary Committee, the Supreme Court and the Chief Justice of Nigeria exercise disciplinary control over legal practitioners. Legal practitioners can be disciplined for committing any of the professional offences provided in the Legal Practitioners Act (LPA). The professional offences are infamous conduct in a professional respect, conviction by any court in Nigeria having power to award imprisonment, of an offence (whether or not it is an offence punishable with imprisonment) which in the opinion of the LPDC is incompatible with the status of a legal practitioner, obtaining enrolment by fraud, and conduct incompatible with the status of a legal practitioner.²⁸ While the LPDC does have wide powers to hear and determine any allegation brought before it against any legal practitioner with respect to any of the professional offences, the disciplinary jurisdiction of the Supreme Court in particular, seem to be restricted to one professional offence. The jurisdiction of the Supreme Court from the provisions of the Legal Practitioners Act is restricted to the offence of infamous conduct and such legal practitioner would have been adjudged guilty of infamous conduct in any professional respect with regard to any matter of which the Supreme Court or any other court of record in Nigeria is or has been seized.²⁹ The Supreme Court held in the case of *Abuah v. Legal Practitioners Committee*³⁰ that legal practitioners should be men of integrity. The Court went further to hold that not all cases of misconduct by a legal practitioner do find their ways to the disciplinary body for legal practitioners to be dealt with for misconduct, but where such cases are brought to the notice of the court, the Supreme Court would exercise its disciplinary authority. Thus, the Supreme Court in this case seems to expand its disciplinary control beyond the offence of infamous conduct in any professional respect.

The Legal Practitioners Act does not define the word ‘Infamous conduct’. Thus, courts resort to the definition given in the English case which relates to medical and dental practitioners, that is the case of *Thomas Richard Allinson v. General Council of Medical Education and Registration*³¹. The English Court of Appeal held in that case that, the infamous conduct mentioned in section 29 Medical Act must be conduct infamous *per se*; but every kind of infamous conduct would not be sufficient. It must be infamous conduct connected with the practice of the profession. Therefore, infamous conduct can be regarded as a very serious infraction of acceptable standard of behaviour or ethics of a profession. In a latter English case of *Re A Solicitor. Ex parte The Law Society*³² the court held that the definition of “Infamous conduct in a professional respect” on the part of a medical man in *Allinson’s* case, also applied to professional misconduct on the part of a solicitor. In the Nigerian case of *Re Idowu*,³³ the Supreme Court held that it is not enough that the legal practitioner be guilty of infamous conduct only, but it must be such conduct arising out of or pertaining to his profession.

The disciplinary authority of the Chief Justice of Nigeria as provided in the Legal Practitioners Act³⁴ does not seem to be restricted to any particular professional offence. However, the mode of discipline or punishment to be meted out to the erring legal practitioner appears to be restricted to just suspension, but the legal practitioner would be granted fair hearing.³⁵ There are three major disciplinary measures or punishments against an erring legal practitioner which are striking off the name of a legal practitioner from the Roll of legal practitioners kept by the Registrar of the Supreme Court, suspension of the legal practitioner from practice for any specified period of time as may be directed by the Legal Practitioners Disciplinary

²⁸ Legal Practitioners Act (Cap. L11) LFN 2004 ss. 12(1)(a)(b)(c) and 12(2) respectively.

²⁹ Legal Practitioners Act (Cap. L11) LFN 2004 s. 13(1).

³⁰ (1962) NSCC 175.

³¹ (1894) 1 Q.B. 750.

³² [1912] 1 K.B. 303.

³³ (1971) All NLR 128.

³⁴ Legal Practitioners Act (Cap. L11) LFN 2004 s. 13(2).

³⁵ *Supra*.

Committee, and admonition of such legal practitioner. The other measures which can be regarded as minor disciplinary measures are refunding of any money paid to that legal practitioner and returning of documents or any other thing which actually belongs to the client, but still in the possession of the legal practitioner.³⁶ The Chief Justice of Nigeria can exercise the disciplinary measure of suspension even when an action has not been, but there is a view to an action being instituted in the Legal Practitioners Disciplinary Committee against an erring legal practitioner.

4. Procedure for Hearing by the Legal Practitioners Disciplinary Committee

This is governed by a set of Rules known as the Legal Practitioners Disciplinary Committee Rules 2006. The procedure is commenced where a person aggrieved by the conduct of an erring legal practitioner forwards a written complaint to any of the following persons:

- (a) Chief Justice of Nigeria,
- (b) Attorney General of the Federation,
- (c) President of the Court of Appeal or Presiding Justice of a Court of Appeal Division,
- (d) Chief Judge of a State or Chief Judge of the Federal High Court or Chief Judge of the FCT, Abuja,
- (e) Attorney General of a State,
- (f) Chairman, Body of Benchers,
- (g) President of the Nigerian Bar Association or Chairman of a branch of the Nigerian Bar Association.³⁷

In accordance with the Legal Practitioners Disciplinary Committee Rules, the written complaint should not be anonymous. It must contain the name and address of the complainant, the name and address of the legal practitioner sought to be charged, a brief but clear substance of the allegation against the legal practitioner. Any of the enumerated persons above who receives the complaint shall forward same to the Nigerian Bar Association (NBA) which shall investigate whether or not a *prima facie* case is made out against the legal practitioner.³⁸ Where a *prima facie* case is found, the NBA shall forward a report of such case, the documents considered and a copy of the complaint to the LPDC Secretary,³⁹ who shall on the direction of the Chairman of the LPDC fix a date for hearing of the case and serve notice of hearing to all the parties.⁴⁰ The parties to the proceeding are the NBA as the complainant, the legal practitioner whose conduct is complained of as respondent, and any other person required by the LPDC or by its leave to join. Every party to the proceedings is entitled to be heard either personally or through a counsel of his choice.⁴¹ The LPDC may hear witnesses and receive documents following the rules of evidence as it obtains in civil proceedings.⁴² Where a party who is not represented by counsel fails to appear or fails to subsequently appear at the hearing of the proceedings until the case is determined, he may apply to the Disciplinary Committee for re-hearing of the case within 30 days from the date when pronouncement of Findings and Direction are given. He must give notice to every party and to the Secretary of the LPDC.⁴³ Proceedings and the Directions of the LPDC shall be held in public, and published in the Federal Gazette.⁴⁴ If after the hearing, the LPDC finds that an allegation of infamous conduct in a professional respect has been proved, it may give any of the Directions stated in Rule 17 LPDC Rules which are the punishments to be meted out to an erring legal practitioner as provided in the Legal Practitioners Act. If the LPDC finds proved a misconduct which does not amount to infamous conduct in a professional respect, it may give a Direction as the circumstance may require. Such Direction will not be inconsistent with the provision of the Legal Practitioners Act.⁴⁵ Thus, where in the

³⁶ Legal Practitioners Act (Cap. L11) LFN 2004 s. 12(1) (c).

³⁷ Legal Practitioners Disciplinary Committee Rules 2006 r. 3(1).

³⁸ Legal Practitioners Disciplinary Committee Rules 2006 r. 3(2).

³⁹ Legal Practitioners Disciplinary Committee Rules 2006 r. 4.

⁴⁰ Legal Practitioners Disciplinary Committee Rules 2006 r. 7.

⁴¹ Legal Practitioners Disciplinary Committee Rules 2006 r. 5.

⁴² Legal Practitioners Disciplinary Committee Rules 2006 r. 10.

⁴³ Legal Practitioners Disciplinary Committee Rules 2006 r. 9.

⁴⁴ Legal Practitioners Disciplinary Committee Rules 2006 rr. 13 & 20.

⁴⁵ Legal Practitioners Disciplinary Committee Rules 2006 r. 18.

opinion of the Disciplinary Committee, the misconduct does not amount to infamous conduct in any professional respect, but amounts to a conduct incompatible with the status of a legal practitioner, the LPDC may give a Direction that the erring legal practitioner be suspended or admonished. It may also include refund of money, handing over of documents or any other thing.⁴⁶ Where a Direction is given, the LPDC shall cause such Direction to be served on the party to whom it relates and submit to the Body of Benchers a report of its Findings.⁴⁷ Where the LPDC has given a Direction; whether striking off the Roll, suspension or admonition, it shall take effect where there is no appeal against the Direction and the time for the appeal has lapsed or an appeal is brought but such has been withdrawn or struck out for want of prosecution or an appeal is brought but has been dismissed.⁴⁸ Despite this structured procedure regulated by Rules, a legal practitioner adjudged guilty by the LPDC may appeal because he has a right of appeal against the Direction of the LPDC. He may also appeal on the ground that he was not given fair hearing.

5. Appeal against the Direction of the LPDC

Prior to the already decided cases of the Supreme Court,⁴⁹ appeals from the Legal Practitioners Disciplinary Committee were filed directly at the Supreme Court as provided in section 12(7) LPA.⁵⁰ Formerly, there was a body known as the Appeal Committee of the Body of Benchers (ACBB) which was responsible for hearing and determining appeals from the Legal Practitioners Disciplinary Committee. However, this was before the amendment of the Legal Practitioners Act where the Body of Benchers was separate and distinct from the Legal Practitioners Disciplinary Committee.⁵¹ But the amendment made to the Legal Practitioners Act⁵² subsumed the Legal Practitioners Disciplinary Committee into the Body of Benchers, thus making the Legal Practitioners Disciplinary Committee to become a committee of the Body of Benchers.⁵³ With this subsuming, the body responsible for hearing and determining appeals from the Legal Practitioners Disciplinary Committee; that is the Appeal Committee of the Body of Benchers, was scraped and replaced or substituted with the Supreme Court.⁵⁴ This was actually an impressive step because if the Appeal Committee of the Body of Benchers was still retained, it would have meant that the Body of Benchers hears and determines cases against erring legal practitioners both at the first instance⁵⁵ and on appeal.⁵⁶

On the authority of the already decided cases of the Supreme Court, appeals from the Legal Practitioners Disciplinary Committee were referred back to the Appeal Committee of the Body of Benchers. This body, with respect to the Supreme Court, does not exist anymore. Furthermore, the Supreme Court, with respect, did not avert its mind to the amendment of the Legal Practitioners Act which substituted that body with the Supreme Court. The question then is, can the decision of a court revive the repealed provision or section of a law? The arm of government responsible for enacting laws is the legislature.⁵⁷ For a law to be made, it has to pass through the process or stages of law-making. Although there is judge-made law, this is done in the course of construction of a statute where the canons of interpretation such as the golden rule or mischief rule of statutory interpretation, comes to fore. When interpreting statutes the court often makes it clear that they

⁴⁶ Legal Practitioners Act (Cap. L11) LFN 2004 s. 12.

⁴⁷ Legal Practitioners Act (Cap. L11) LFN 2004 s. 12(6) [as amended by section 10(e) Legal Practitioners Amendment Decree No. 21 1994].

⁴⁸ Legal Practitioners Act (Cap. L11) LFN 2004 s. 12(8).

⁴⁹ *Aladejobi v. NBA and Akintokun v. LPDC*, decided in 2013 and 2014 respectively.

⁵⁰ See the case of *Charles C. Ikechi Okike v. Legal Practitioners Disciplinary Committee* (2005) 15 NWLR (pt. 949).

⁵¹ Before the amendment of the Legal Practitioners Act, the two distinct bodies; LPDC and ACBB, were established by sections 10 and 12 of the Legal Practitioners Act respectively.

⁵² The Legal Practitioners Act was amended pursuant to the Legal Practitioners Amendment Decree No. 21 1994, made on the 9th of November 1994 and deemed to have come into force on 31st of July 1992.

⁵³ Section 11(1) Legal Practitioners Act as was amended by section 9 Legal Practitioners Amendment Decree No. 21 1994.

⁵⁴ Legal Practitioners Act (Cap. L11) LFN 2004 s. 12(7) [As amended by section 10(e) Legal Practitioners Amendment Decree No. 21 1994].

⁵⁵ That is, before the Legal Practitioners Disciplinary Committee.

⁵⁶ That is, before the Appeal Committee of the Body of Benchers.

⁵⁷ There are three arms of government; the Legislature which is responsible for making the law, the Executive which implements the law and the Judiciary which interprets the law.

are trying to discover ‘the intention of the legislature’.⁵⁸ Thus the duty of the courts in interpreting provisions of a statute is to ascribe the meaning that will give effect to the intention of the makers.⁵⁹ Even in situations where there is a gap in a statute, the courts are not entitled to fill gaps in statutes. Where there is a gap in a statute, it is only the legislature that can fill it; by a subsequent enactment.⁶⁰ The courts are not to guess the intention of the legislature; they have to discover that intention.⁶¹ Thus, with certain narrow and clearly defined limits, a new law can then be said to be created by the Judiciary. This is realised whenever a court applies an established rule or principle to a new situation or set of facts (or withholds it from these new facts).⁶² Where the court is called upon to interpret a statute and there is a need for a judge-made law, the court would not by judicial pronouncement revive the repealed provisions of a statute. In order for it to be revived, the process of law making would take its course, and it is the legislature that is responsible for making laws.

The issue for determination in the cases of *Aladejobi* and *Akintokun* was not for the interpretation of the amended section 12(7) Legal Practitioners Act. The wording of that section of the statute is clear and unambiguous, so it cannot be said that the intention of the legislature was being discovered in those cases. In this situation where the court has held that appeals from the LPDC lie to the Appeal Committee of the Body of Benchers, which is non-existence, what is the import or efficacy of such decision and what is the fate of an affected legal practitioner? The court does not give judgment or make an Order in futility. Court Orders must be obeyed. Decisions of a court must be complied with. Failure to comply with a Court’s decision or Order amounts to contempt of court. It is a civil contempt, and the person who has committed the contempt is liable on conviction to six months’ imprisonment or a fine or both. This is because contempt of court is an offence and attracts a penalty.⁶³ There can be no doubt that it is a civil contempt of court to disobey a judgment or Order requiring a person to abstain from doing a specified act or to act in breach of an undertaking given to the court by a person, on the faith of which the court sanctions a particular course of action or inaction. It is also contempt of court to refuse or neglect to do an act required by a judgment or Order of the court within the time specified in the judgment or Order. Where, therefore, any person refuses or neglects to comply with an Order made against him by a court of competent jurisdiction other than for payment of money, the court has ample jurisdiction pursuant to the provisions of section 72 of the Sheriffs and Civil Process Act to order that he be committed to prison and detained in custody until he has purged his contempt.⁶⁴ However, the power to order committal for civil contempt is one which must be exercised with great care. The court may only punish as a contempt, a breach of or disobedience to an Order of court, or noncompliance with an undertaking, if it is satisfied that the terms of the Order are clear and unambiguous. The court must also be satisfied that the defendant has proper notice of the terms of the judgment or Order, and that breach of it has been proved beyond reasonable doubt.⁶⁵

In the instance of the cases of *Aladejobi* and *Akintokun*, the body that the Supreme Court refers appeal from the LPDC does not exist. Does it amount to contempt of court where parties do not comply with the decision of the court? My answer is in the negative. The court does not close its eyes to the truth unless there is a reason to do so. More so, the law does not compel the impossible and the law will not force any one to do a thing which is vain and fruitless as expressed in the Latin maxims - *lex non cogit ad impossibilia* and *lex neminem cogit ad vana seu inutilia*. Is the decision of the court intended to revive the Appeal Committee of the Body of Benchers? If yes, what statutory authority becomes the platform upon which the appeal committee stands? Furthermore, would it not amount to a breach of the principle of fair hearing for a party to appeal to the same body that heard the matter previously or a conflict of interest for a body to hear on appeal, a matter it had earlier adjudicated upon? The LPDC is a committee of the Body of Benchers. The appeal committee, if revived would also be a committee of the Body of Benchers. It therefore means that a

⁵⁸ G. Williams, *Learning the Law* (11th edn, London: Sweet & Maxwell Limited, 1982) p. 99. See also *Onasile v. Sami* [1962] 1 All N.L.R. 272.

⁵⁹ See *INEC v. Nyako* (2011) 12 NWLR (pt. 1262) 439 (a) p. 551.

⁶⁰ *Okumagba v. Egbe* [1965] 1 All N.L.R. 62.

⁶¹ A. O. Obilade, *The Nigerian Legal System* (Ibadan: Spectrum Law Publishing, 1999) p. 56.

⁶² M. D. A. Freeman, *Lloyd’s Introduction to Jurisprudence* (7th edn, London: Sweet & Maxwell Limited, 2001) p. 1403.

⁶³ See *Awobokun v. Adeyemi* (1968) NMLR 289; *Agbachom v. The State* (1970) 1 All NLR 69; *Re Boyo* (1970) 1 All NLR 116.

⁶⁴ *Abbas v. Olatunji Solomon* (2001) 15 NWLR (pt. 735) 144.

⁶⁵ *Supra*.

legal practitioner adjudged to be of unprofessional conduct would be in a precarious position because two committees of the Body of Benchers would be responsible for determining his fate. The right to fair hearing is a constitutional right enshrined in section 36 of the Constitution of the Federal Republic of Nigeria 1999, and it is very essential right for a person to secure justice.⁶⁶ The basic attributes of fair hearing include that, having regard to all the circumstances in every material decision in a case, justice must not only be done, but must manifestly and undoubtedly be seen to have been done.⁶⁷

Although it can be affirmed that the Body of Benchers comprises persons of highest distinction in the legal profession which ensures that the traditional values of the profession are maintained, it is submitted that it would amount to conflict of interest and a breach of the principle of fair hearing for appeals to lie from the LPDC to the Appeal Committee of the Body of Benchers, if revived. Since there is no such currently existing body as the Appeal Committee of the Body of Benchers, and the intention of the Supreme Court would not have been to revive the defunct body, where can appeals from the LPDC be said to lie in the face of this deadlock? Could the appeal be said to lie to the Court of Appeal? Decisions of the High Court, Federal High Court and other courts of co-ordinate jurisdiction, when appealed against, are filed at the Court of Appeal. If this is so, how is it that decisions of the LPDC; which a lay man may view as a mere tribunal, lie straight to the highest or ultimate court in the country?

6. Features of a Tribunal

A tribunal is a body established to settle certain types of dispute. Tribunal may be considered in two dimensions and they are -

- (1) a body established to settle certain types of dispute; or
- (2) a court of justice.⁶⁸

One characteristic of a tribunal is independence.⁶⁹ Other characteristics include impartiality,⁷⁰ public hearing,⁷¹ hearing witnesses on oath,⁷² two or more contending parties appear before it between whom it has to decide,⁷³ it gives decisions which affect the rights of subjects,⁷⁴ there is an appeal against its decision to a court,⁷⁵ it is a body to which a matter is referred by another body,⁷⁶ its findings are put in writing,⁷⁷ its proceedings are usually guided by the principle of fair hearing and parties to it are given a reasonable time to defend themselves. The principle of fair hearing is very vital else it could render the entire proceedings of a tribunal, and even a regular court of law, of non-effect.⁷⁸ Although public hearing is one of the characteristics of a tribunal, there may be instances where hearing may be done in private. Even in the regular courts, it is not all cases that are heard in public. To this general rule of public hearing in courts, there are exceptions. The exceptions include where such private hearing is in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the

⁶⁶ *S & D Construction Co. Ltd v. Ayoku* (2011) 13 NWLR (pt. 1265) 487 @ P. 516.

⁶⁷ *Ovunwo v. Woko* (2011) 17 NWLR (pt. 1277) 522 @ p. 555.

⁶⁸ The Merriam-Webster Dictionary defines tribunal as a kind of court that has authority in a specific area. Synonymous to the word tribunal are arbitration board, panel, committee. www.merriamwebster.com/dictionary visited 2/22/2016 at 11am. The Cambridge English Dictionary defines tribunal as a special court or group of people who are officially chosen, especially by the government, to examine (legal) problems. www.dictionary.cambridge.org/dictionary/tribunal visited 2/22/2016 at 11:05am. In the case of *Attorney General of Ondo State v. Attorney General of the Federation* (1983) 2 SCNLR 269, the Supreme Court held that it is the highest tribunal in the land and is chosen by the makers of the Constitution because of its independence of both the Federal Government and the State Governments.

⁶⁹ Constitution of the Federal Republic of Nigeria 1999 s. 36(1).

⁷⁰ *Supra*.

⁷¹ Constitution of the Federal Republic of Nigeria 1999 s. 36(4). However, in special circumstances, some cases can be heard in private.

⁷² Some witnesses may wish to affirm instead of being sworn on oath. Section 8 Oaths Act (Cap O1) LFN 2004.

⁷³ *Addis v Crocker* (1960) 2 All ER 629.

⁷⁴ *Addis v Crocker (op. cit)*.

⁷⁵ *Supra*.

⁷⁶ *Supra*.

⁷⁷ *Supra*.

⁷⁸ Where a person alleging breach of fair hearing establishes it, it follows that the breach will vitiate such proceedings rendering it null and void. *Ovunwo v. Woko* (2011) 17 NWLR (pt 1277) 522 @ p. 556.

protection of the private lives of the parties or special circumstances in which public hearing would be contrary to the interests of justice or where the court is satisfied that public hearing would not be in the public interest.⁷⁹ These exceptions to public hearing in court are also available to tribunals.

In considering the characteristics of a tribunal, it can be said that these are also the features of the LPDC. It is independent, impartial, holds its hearing in public.⁸⁰ It gives a Direction at the end of its hearing and the Direction is published in the Federal Gazette.⁸¹ The LPDC may hear witnesses and receive documents following the rules of evidence as it obtains in civil proceedings.⁸² Parties could be heard personally or through a counsel of their choice⁸³ and the proceedings of the LPDC complies with the constitutional rules of natural justice.⁸⁴ Furthermore, since the LPDC is a committee of the Body of Benchers; which is composed of persons of the highest distinction in the legal profession, it thus means that the LPDC is composed of persons of the highest distinction in the legal profession (venerable persons in the profession). The LPDC is composed of the Chief Justice of Nigeria or a Justice of the Supreme Court as the Chairman of the body, the President of the Court of Appeal and one Justice of the Court of Appeal, two Chief Judges of States, two Attorneys-General and four members of the Nigerian Bar Association not connected with either the investigation of a complaint or the decision by the NBA to present the compliant.⁸⁵

Considering all these features, and status of persons whom the body is composed of, there is the likelihood to think that the LPDC is a tribunal set up by an Act of the National Assembly; Legal Practitioners Act, and thus one could appeal against its Direction to the Court of Appeal⁸⁶ as a result of the deadlock due to the current decisions of the Supreme Court. But the Supreme Court has held in the case of *Okike v. LPDC*⁸⁷ that the Legal Practitioners Disciplinary Committee is not a tribunal but a fact finding and housecleaning body to maintain the discipline and decorum of the legal profession, that is why instead of appeal from Direction of Legal Practitioners Disciplinary Committee being taken to the High Court, or if it is regarded as superior tribunal to the Court of Appeal, the appeal is directly to the Supreme Court.

Consequently, in the light of the Supreme Court's decisions in *Aladejobi* and *Akintokun's* cases, a legal practitioner who intends to appeal against the Direction of the LPDC or who alleges that he was not given fair hearing in the course of the proceedings would have to file his appeal in no other court than the Supreme Court which referred appeals to Appeal Committee of the Body of Benchers. The decisions in *Aladejobi* and *Akintokun's* case were not, in my imagination, intended to revive the defunct Appeal Committee of the Body of Benchers. The decision in *Aladejobi's* case has been criticised as being held *per incuriam*.⁸⁸ A case is decided *per incuriam* where a statute or rule having statutory effect or other binding authority which would have affected the decision had not been brought to the attention of the court.⁸⁹ This implies that the decision of the Court in those cases were decided (with respect) based on the mistaken omission of not referring to the amendment made to the Legal Practitioners Act.⁹⁰

The Supreme Court is the last hope of the common man. As the last hope of the common man, where the Supreme Court has mistakenly given a decision it should not have given, it can retreat from such decision. In the case of *Adisa v. Oyinwola*,⁹¹ the Supreme Court held thus: *'The Supreme Court is entitled to depart from or overrule its previous decision in an appropriate situation when invited to do so. In other words, the*

⁷⁹ Constitution of the Federal Republic of Nigeria 1999 s. 36(4) (a) (b).

⁸⁰ Legal Practitioners Disciplinary Committee Rules 2006 r. 13.

⁸¹ Legal Practitioners Disciplinary Committee Rules 2006 r. 20.

⁸² Legal Practitioners Disciplinary Committee Rules 2006 r. 10.

⁸³ Legal Practitioners Disciplinary Committee Rules 2006 r. 5(2).

⁸⁴ *LPDC v Gani Fawehinmi* (1985) 2 NWLR (pt. 7) 300.

⁸⁵ Legal Practitioners Act (Cap. L11) LFN 2004 s. 11(2).

⁸⁶ Based on or relying on the authority of section 240 Constitution of the Federal Republic of Nigeria 1999.

⁸⁷ (2005) 15 NWLR (pt. 949) 471.

⁸⁸ D.K. Oye, 'Documenting Client's Instructions and Transactions' (2012) 11 *Nigerian Law and Practice Journal* (N.L.P.J.) 1 @ p. 39.

⁸⁹ *Adisa v. Oyinwola* (2000) 10 NWLR (pt 674) 116 @ p. 182 para. B.

⁹⁰ Amendment to section 12(7) Legal Practitioners Act.

⁹¹ (2000) 10 NWLR (pt 674) 116.

Supreme Court as the final court in Nigeria has the power and jurisdiction to depart from and overrule its previous decision whether or not by a full court'.⁹²The court went further to hold that:

The Supreme Court will depart from or overrule its previous decisions in the interest of justice where the decisions are shown to be

- (a) vehicle of injustice; or
- (b) given *per incuriam*; or
- (c) clearly erroneous in law; or
- (d) impeding the proper development of the law; or
- (e) having result which are unjust, undesirable or contrary to public policy; or
- (f) inconsistent with the provisions of the constitution; or
- (g) capable of fettering the exercise of judicial discretion by a court.⁹³

The Supreme Court can review its decisions on the authority of *Adisa's* case. It is submitted (with the deepest respect to the Supreme Court), to exercise its power of overruling its previous decisions and depart from its decisions in *Aladejobi* and *Akintokun's* case because other than being *per incuriam*, it does have an unjust or undesirable result. The body known as Appeal Committee of the Body of Benchers is defunct, and judgment of the court or its Order must be complied with. The court does not give a judgment or make an Order in futility. Even if aggrieved parties are willing to appeal to the Appeal Committee of the Body of Benchers in compliance with the Supreme Court's decision, the body is not in operation and there is no statutory provision establishing the body. Furthermore, it would amount to conflict of interest for both the LPDC and ACBB to hear and determine a matter both at the first instance and on appeal. Justice would not be seen by a reasonable man or common man to have been done in such a situation. More so, parties aggrieved by the Direction of the LPDC would be shut-out from exercising their rights of appeal since the body to appeal to, does not exist. Thus, it is submitted that parties may still appeal to the Supreme Court. This can give the court an opportunity to revisit the decision in those cases and review them.

7. Conclusion

The legal profession is a noble one and persons admitted into the profession are not only officers in the court⁹⁴ but are expected to uphold the ethos of the profession in their dealings with the public. Due to the nobility of the profession, there are several regulatory bodies that guard against unprofessional conduct among legal practitioners in particular. Where any of the etiquettes of the profession is contravened, disciplinary measures would be meted out against such erring legal practitioner by any of the disciplinary authorities. While there is no room for appeal against the decisions of two of the disciplinary authorities, there is such opportunity in one of them. Not too long ago, the only court where appeal can be brought has declined jurisdiction. This makes it a worrisome situation for any aggrieved party to the decision of the only disciplinary authority that a party could appeal against. In the face of this deadlock this paper has proffered the only way forward, however, it does not seek to encourage breach of the traditional values of the legal profession.

⁹² *Supra* @ pp. 170 paras F-G, 181 paras E-G.

⁹³ *Supra* @ pp. 181 – 182 paras H-A.

⁹⁴ Rules of Professional Conduct 2007 r. 30.