

IN THE HIGH COURT OF JUSTICE (APPELLATE DIVISION)
IN THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION

BEFORE THEIR LORDSHIPS:

HON. JUSTICE M. E. ANENIH (PRESIDING JUDGE)

HON. JUSTICE JUDE O. OKEKE (JUDGE)

ON TUESDAY THE 24TH DAY OF MAY, 2016

APPEAL NO: CVA/11/2015

MOTION NO: M/5459/2016

BETWEEN:

MR. ADEGOKE ADEKUNLE GABRIEL.....APPELLANT/APPLICANT

AND

MR. KUNLE AJIBADE.....RESPONDENT/RESPONDENT

RULING

(DELIVERED BY HON. JUSTICE JUDE O. OKEKE (JUDGE))

By a Motion on Notice filed on 23rd March, 2016 and predicated on Order 46 Rule 1, Order 24 Rule 1 and Order 2 Rule 12 of the Rules of Court 2004, the Appellant/Applicant (“the Applicant”) seeks for the following reliefs: -

- “(1). *AN ORDER granting extension of time within which the Appellant’s new Counsel Mr. Adetola Oluleni, Esq will affix his NBA Stamp on the original copy of the Appellant’s Brief of Argument.*
- “(2). *AN ORDER granting leave to Mr. Adetola Oluleni Esq Counsel to the Appellant to insert his name, sign and stamp the Appellant’s Brief dated 1st day of June, 2015 and filed on 9th June, 2015 by Mr. Emmanuel Oyebode Esq.*

- (3). *AN ORDER deeming the already filed Appellants Brief of Argument dated 9th June, 2015 as properly signed, stamped and served on the Respondent by the Appellant.*
- (4). *AND for such further Order or Orders as the Honourable Court may deem fit to make in the circumstances.”*

The application is supported by a 6-paragraph affidavit deposed to by Juliana Eshiebor and Written Address of the Applicant’s Counsel.

In opposition to a grant of the application, the Respondent/Respondent (“The Respondent”) on 20th April, 2016 filed a 4-paragraph Counter Affidavit deposed to by Taiwo Matthew along with the Written Address of his Counsel.

The Applicant in response on 17th May, 2016 filed a Further and Better Affidavit along with a Reply on points of law.

The application was heard on 17th May, 2016 with Counsel for the parties adopting their Written Addresses as their oral submissions for and against the application.

In the affidavit in support, it was averred inter alia, on behalf of the Applicant that the substantive Appeal came up for hearing on 21st March, 2016 wherein parties adopted their respective Briefs of Argument. In the course of the proceeding, the Respondent’s Counsel raised the issue of the Applicant’s Brief of Argument not having been affixed with an NBA stamp as required by the Rules of Professional Conduct for Legal Practitioners whereupon the Court adjourned the proceeding to enable the parties address it on the issue.

Mr. Emmanuel Oyebode of Counsel in the Law Firm of Deji Akande & Co which filed the Appellant’s Brief of Argument having left the firm the Applicant briefed the Law Firm of Gracious Chambers sometime in 2015 and the Firm filed a Notice of change of Counsel. The Notice is attached as Exhibit AG1. The Firm of Gracious Chambers has filed Court processes per Counter Affidavit in response to the Respondent’s Preliminary Objection on behalf of the Applicant with the NBA stamp of Adetola Oluleni Esq on it.

The interest of justice will be better served if the Application is granted an extension of time to enable his Counsel sign the said Appellant's Brief of Argument dated 9th June, 2015 and affix his NBA stamp thereon and thus make the process valid for all purposes.

The Respondent will not be prejudiced by a grant of this application.

In his Written Address, Mr. Adetola Oluleni of Counsel for the Applicant raised a sole issue for determination thus: -

"Whether in the circumstances this Honourable Court ought to grant this application as contained in the motion paper."

Treating the issue learned Counsel submitted, inter alia, that the Court ought to allow the application in order for the Applicant's Counsel to comply with the provision of the Rules of Professional Conduct for Legal Practitioners. He referred to **ALL PROGRESSIVE CONGRESS V GENERAL BELLO SARKI YAKI**, unreported Supreme Court decision with number SC/722/15 where the Court stated per Nwali Sylvester Ngwuta, JSC that: -

A Court process even though signed and filed is not null and void or incompetent like the case of a Court process so signed in the name of corporation or association (even if lawyers)."

He said the Court held that such a document even though signed and filed is not proper in law for the reason that the condition precedent for its proper signing has not been met, such a document is akin to a process filed at the expiration of time allowed by the rules of Court. That in such cases, the filing of the process can be regularized by extension of time and a deeming Order.

Learned Counsel canvassed that in the instant case, the document being objected to by the Respondent's Counsel was not filed by the new Counsel but the former Counsel to the Applicant. It is trite that the Court will not visit the mistake of Counsel on the litigant. The Applicant's Brief of Argument though does not bear the stamp of NBA, the enforcement of same was not yet properly in place at the time it was filed.

This notwithstanding, the position of the law today requires that time be given for such a document not bearing the stamp to have it affixed thereunto but not for the Court to nullify it. The Applicant's Brief of Argument dated 9th June, 2015 is not incompetent and as such the Court has all the powers to allow the Applicant's Counsel affix his stamp on it.

Replying on Order 2 Rule 1 of Rules of Court 2004, Counsel urged the Court to grant the prayers sought.

In his Counter affidavit, it was averred inter alia on behalf of the Respondent that paragraph 3(a) of the Applicant's affidavit is true only to the extent that the Applicant's Counsel had already adopted and argued his Brief of Argument and the Respondent's Counsel in the process of adopting/arguing the Respondent's Brief of Argument for starters raised the issue of NBA stamp/seal aforesaid and that for that reason the Applicant's Brief was null and void. It is true that after the Respondent's Counsel raised the issue, the Court adjourned the matter for Counsel to address the Court on the consequences of the non compliance.

The Deponent is not in a position to admit or deny paragraphs 3(c) and (d) of the Applicant's affidavit. Paragraphs(e) & (f) are true while paragraphs 4 and 5 are false. It is in the interest of justice to dismiss this application.

In his Written Address, Mr. Ikechukwu Ikogwe of Counsel for the Respondent raised a sole issue for determination in these words: -

Whether the Appellant's/ Applicant's Motion on Notice filed on 23rd March, 2016 is worthy of grant under the peculiar present circumstances of the case."

Arguing the issue, learned Counsel answered the question in the negative. He referred to Rule 10(1)(2) and (3) of Rules of Professional Conduct 2007 which requires that a lawyer acting in his capacity as a legal practitioner shall not sign or file a legal document unless there is affixed on it a seal and stamp approved by the Nigerian Bar Association. He also referred to the consequence of failure in this regard as provided for in Rule 10(3) which is that such a document so signed or filed shall be deemed not to have been properly signed or filed. Counsel further referred to the interpretation of the Section and consequences of non compliance with the rule aforesaid as handed down by the Supreme Court in **SENATOR**

BELLO YAKI (RTD) & 1 OR V SENTOR ATIKU ABUBUKAR BAGUDU (2015) ALL FWLR P. 106. He referred specifically to the views of Ngwuta, JSC, Onnoghen JSC and Peter-Odili JSC in the Judgment and contended that such non compliant document being voidable does not confer on it absolute capacity to be regularized. That the peculiar circumstances under which it is sought to be regularized especially having regard to the definition of the word “voidable” in the Osborne’s Concise Law Dictionary (9th Edition) must be considered. That the circumstances under which the Applicant seeks to regularize his Brief of Argument in this case is not conclusive in that the Motion on Notice under consideration came too late and in that circumstance it cannot be granted.

Learned Counsel further contended that had the new Counsel Mr. Oluleni exercised due diligence he would have discovered the non compliance and filed this motion which would have entailed an amendment of the process in order to reflect his name on it, have his signature appended to it.

Dwelling further, learned counsel wondered if the application is granted how the name of the new Counsel will be reflected on the process which has already been adopted and argued.

He urged the Court to dismiss the application with cost for being unmeritorious.

As aforesaid, the Applicant filed a Further and Better Affidavit along with a Reply Address on points of law. I have also read and digested same. The crucial issue for determination in this matter is whether or not given the current state of the law on the non compliance with Rule 10(1)(2) and (3) of Rules of Professional Conduct for Legal Practitioners in Nigeria 2007, the instant application ought to be granted.

An overview of the submissions of Counsel for both parties shows both Counsel are settled that: (1). the Applicant’s current Counsel is Mr. Adetola Oluleni; (2) the previous Counsel for the Applicant filed a Brief of Argument which does not bear his NBA stamp or seal; and (3) the Applicant through his Counsel has adopted his Brief of Argument during the hearing of the Appeal before the Respondent’s Counsel raised the issue of absence of the Applicant’s Counsel’s NBA seal or stamp on the Brief of Argument as a preliminary issue in his submission.

Both Counsel also referred to and relied on the Supreme Court decision in Suit No: SC 722/2015 delivered on 27th October, 2015 with reason for the judgment given on 13th November, 2015. The lead Judgment was delivered by Ngwuta JSC. I have read the Judgment with submissions of Counsel in the case in contemplation. In the totality of the Judgment and Reason for it as delivered by Rhodes-Vivour JSC, Ogunbiyi JSC, the apex Court was of the view that non compliance with Rule 10(1)(2)(3) of Rules of Professional Conduct for Legal Practitioners 2007 by way of failure to affix the NBA seal or stamp on it only renders the process voidable but not void. It does not nullify the document and the document can be redeemed or regularized, just like in the case of a process filed out of time, by a directive of the Court extending time to have the stamp or seal affixed on the document and same deemed duly filed and served. It does appear this is what the Applicant seeks to achieve by the instant application.

The learned Respondent's Counsel has contended that the Court should consider the peculiar circumstances of this case in which the document sought to be regularized has been adopted and whose Counsel's name should it bear given that if the Applicant's current Counsel had been diligent and painstakingly perused the Applicant's said Brief of Argument he would have detected the defect and applied for an amendment of same so as to reflect his name and seal or stamp.

We have given due consideration to this contention and hold the view that the spirit and intendment of the Supreme Court decision in the said case of ***SENATOR BELLO SARA KIN YAKI (RTD) V SENATOR ATIKU ABUBAKAR BAGUDU & ORS*** supra is the need to do substantial justice in any circumstance in which the non compliance occurs. In line with that, a grant of the Applicant's application will involve leave being granted to the Applicant to have his current Counsel insert his name, NBA stamp and signature in the place of that of the erstwhile Counsel on the process and will be deemed duly filed and served.

It needs be pointed out, that the contentions of the learned Respondent's Counsel that the document is in the current circumstances a nullity would have been tenable if after the issue was raised and the Court in the spirit of the said Supreme Court's decision directed the Applicant to regularize the Brief of Argument by having his current Counsel's signature, stamp or seal affixed thereunto but he failed. The Court having not so directed and the Applicant saw wisdom in bringing the instant application to rectify or

regularize the process while the proceeding of hearing of the Appeal was not yet concluded, the best interest of justice demands that the needed leave be granted to the Applicant. Beyond all these, the learned Respondent's Counsel has not disclosed for the benefit of the Court the prejudice or miscarriage of justice the Respondent would suffer by a grant of the application.

By reasons of all we have said above, the Court resolves the sole issue raised above in favour of the Applicant against the Respondent. The Applicant's application is granted. Leave is granted to the Applicant for his Counsel Mr. Adetola Oluleni to affix his NBA stamp or seal and append his signature and name on the Applicant's Brief of Argument filed on 9th June, 2015 within 7 days from today. Upon fulfillment of the foregoing, the said Brief of Argument which has already been adopted in Court shall be deemed duly filed and served and then be re-adopted.

Given the circumstances of this application, we make no order as to cost.

Registrar of Court is directed to furnish parties in this case with certified true copies of the Ruling within 7 days from today.

SIGNED
HON. PRESIDING JUDGE
24/5/2016

SIGNED
HON. JUDGE
24/5/2016.

LEGAL REPRESENTATIONS:

- (1). Mr. Adetola Oluleni for the Appellant/Applicant.
- (2). Mr. Ikechukwu Ikogwe for the Respondent/Respondent.