

**IN THE HIGH COURT OF JUSTICE FEDERAL CAPITAL
TERRITORY**

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT HIGH COURT MAITAMA –ABUJA

BEFORE: HIS LORDSHIP HON. JUSTICE S.U. BATURE

COURT CLERKS: JAMILA OMEKE & ORS

COURT NUMBER: HIGH COURT NO. 24

CASE NUMBER: SUIT NO. FCT/HC/CV/1240/2022

MOTION NUMBER: MOTION NO. FCT/HC/M/172/2022

DATE: 28TH SEPTEMBER, 2023

BETWEEN:

IKE NZEKWE.....CLAIMANT

(Doing business under the name & style of Ike Nzekwe& Associates)

AND

LOUIS OKWONKWO.....DEFENDANT

(Doing business under the name & style of Castle Estate)

APPEARANCE

Gift GanduEsq for the Claimant

Sherriff Mohammed Esq holding brief for A.G ZubairuEsq for the

Defendants/Applicants

RULING

By a notice of Preliminary Objection dated and filed on the 20th day of October 2022. The Objection was brought pursuant to Section 16 (1) & (2) of the Legal Practitioners Act Cap XL11 Vol. 7 Laws of the Federation of Nigeria 2004 and under the Inherent Jurisdiction of this Honourable Court.

The Defendant/Applicant herein contends that this suit is incompetent, this Honourable Court lacks the requisite jurisdiction to Hear and entertain same and that the Defendant shall be urging this Honourable Court to decline jurisdiction to entertain the suit and strike out same.

The grounds upon which the Preliminary Objection is predicated are as follows:

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1. That the Claimant in this suit commenced this action by a Writ of summons for the recovery of the sum of N8, 500, 000. (Eight Million, Five Hundred Thousand Naira) only being the alleged outstanding balance for the various professional services rendered to the defendant.
2. That Section 16 (1) & (2) of the Legal Practitioners Act Cap L111 Vol. 7 Laws of the Federation of Nigeria 2004 stipulates that before an action for a recovery of professional charges/ fee can be instituted in Court of law, a bill of charges duly signed by a legal practitioner containing particulars of the principal items shall first be issued and served on the client personally.
3. That upon default it is after the expiration of one month period that the Legal Practitioner can commence an action against the client for the recovery of his professional Fee
4. That whereas, the claimant in this suit issued what he termed as “Notification of Unpaid Bills for services rendered” which was served on one – Victoria Owoicho as seen clearly on the face of the document instead of serving same personally on the Defendant as required by law.
5. That the said Notification issued by the Claimant did not include a separate Bill of Charges to show the breakdown of the principal items as outlined in section 16 (1) & (2) of the Legal Practitioners Act
6. That also, contrary to section 16 (1) & (2) of the Legal Practitioners Act, the Notice issued by the Claimant did not state the Cause of Action, Name and Place of abode of the intending plaintiff and reliefs he intends to claim against the Defendant

7. What the Claimant issued can be best described as a Demand Letter and not a Bill of Charges
8. That the entire composition of the Notification issued by the Claimant before the commencement of the suit is contrary to the requirement of the law
9. That the service of the Bill of Charges personally on the Defendant in the manner prescribed by law is a pre-condition that must be complied with before the commencement of an action for the recovery of professional fees
10. That any action commenced in breach of this requirement would be incompetent and unless the conditions precedent to the institution of an action are complied with, the party initiating the suit cannot ignite the jurisdiction of the Court
11. That this Court cannot adjudicate on this suit as presently constituted.

Filed in support of the application is a 13 paragraphed Affidavit deposed to by one Hannatu Kwari, a legal practitioner of Plot 1186, Suite B2 1st Floor, SHM Complex Mabushi, Abuja the Counsel to the Defendant in this suit.

In compliance with the Rules of Court the Defendant/ Applicant filed a Written Address dated the 20th day of November, 2022.

In the said Written Address, Counsel to the Applicant formulated a single issue for determination to wit: -

“Whether this suit is not incompetent and liable to be struck out for failure to comply with the mandatory procedure outlined in section 16 (1) & (2) of the Legal Practitioners Act before the Commencement of this suit”

In arguing the sole issue for determination above, Learned Defendant Counsel was of the view that a necessary precondition for the successful assumption of jurisdiction by this Honourable Court is initiation of this suit through its proper channel. The Defendant counsel states that the Document issued by the Claimant Counsel (Marked Exhibit ‘B’), ‘Notification of Unpaid Bills for

services rendered’ and served on one Victoria Owoicho was executed inappropriately.

Defendant Counsel continued by holding that the wordings of section 16 (2) Legal practitioners Act, particularly the use of the word ‘shall’ with reference to the rules of interpretation supposes a compulsory requirement which must be satisfied as contrary to a discretionary one. Therefore a party must comply with same. To this effect Learned Counsel relied on the authority of **INEC v ASUQUO (2018) 9 NWLR Pt 1642 Pg 305 at 330, Para C-F, G-H** Per OKORO JSC.

Learned Counsel further pointed out that a similar issued was addressed in the case of **NBA v GBENOBA (2015) 15 NWLR Pt 1483 Pg 585 at 620 Paras D-H by Daudu, SAN, Chairman of Legal Practitioners Disciplinary Committee (LPDC)** who held as follows: -

“The recovery of a legal practitioner’s charges where it is necessary to rely on a bill of charges is subject to sections 16-19 of the Legal Practitioners Act. By virtue of section 16 of the Act, a Legal Practitioner shall not be entitled to begin an action to recover his charges unless: (a) a bill for the charges containing particulars of the principal items included in the bill and signed by him, or in the case of a firm, by one of the partners in the name of the firm, has been served on the client personally left for him at his last address as known to the practitioner or sent by post addressed to the client at that address, and (b) the period of one month beginning with the date of the delivery of the bill has expired”

Counsel submitted that from the above authorities it is evident that the proper mode of serving a Bill of charges on the client is personally in the manner

prescribed by the law is a condition precedent to the initiation of an action before a Court for recovery of fees.

The Learned Defendant Counsel argued that the failure and inability of the Claimant to serve Exhibit B' personally on the Defendant inadvertently constitutes a violation of the existing law. As such it becomes that Exhibit B is defective and irredeemable. In this respect, reliance was placed on the case of **R.A OLIYIDE & SONS V O.A.U., ILE-IFE (2018) 8 NWLR (Pt 1622) P 564 at 576 Para C.**

He further argued that the law is clear and unambiguous that where a statute provides for a manner in which an action or duty regulated by it is to be carried out no other method must be adopted. To this effect, reliance was placed on the case of **SARKI v. MIN OF CHIEFTAINCY AFFAIRS, KADUNA STATE & ORS (2014) LPELR-23604 (CA**

Submitting further, Counsel stated that the words of the above provisions are clear and unambiguous and going by that they should be accorded their ordinary simple meanings in interpretation as availed by one of the canons of interpretation that allows the use of such when the words of a statute are plain, direct, clear, simple and unambiguous. Counsel relied on several authorities; **AWOLOWO v SHAGARI (1979) 6-9 SC 73; AG BENDEL STATE v AG FEDERATION (1982) 3 NCLR 1; OWENA BANK NIG PLC v N.S.E LTD (1997) 8 NWLR (Pt 515) 1.**

In conclusion, Learned Defendant Counsel submitted that the mode and manner of service of a bill of charges is prescribed by law and must be complied with and failure to do so constitutes a violation of said law and disables the ability of such defaulting party to initiate an action successful.

Finally, Learned Defendant Counsel urged the Court to uphold the Defendant Objection and strike out the suit of the Claimant.

On the other hand, in opposing the Application, the Claimant/ Respondents filed a Reply of twenty (20) Paragraphs dated the 24th day of March 2023.

The Claimant/ Respondent in said Reply formulated a lone issue for determination to wit:

“Whether the Claimant is in Breach of Section 16 (1) & (2) of the Legal Practitioners Act Cap L11 Vol. 7 Laws of the Federation of Nigeria”.

The Learned Claimant Counsel began by humbly pointing out the fact that the actions of the Claimant are not in Breach of the provision of Section 16 (1) & (2) of the Legal Practitioners Act which provide as follows: -

Section 16 (1): - subject to the provision of this Act, a legal practitioner shall be entitled to recover his charges by action in any Court of competent jurisdiction

Section 16 (2): - subject as aforesaid, a legal practitioner shall not be entitled to begin an action to recover his charges unless-

(a) A bill for the charges containing particulars of the principal items included in the bill and signed by him, or in the case of law of a firm, by one of the partners in the name of the firm, has been served on the client personally or left for him at his last address as known to the practitioner or sent by post addressed to the client at that address, and

(b) the period of one month beginning with the date of the delivery of the bill has expired

Learned Claimant Counsel argued that going by the provisions of the Legal Practitioners Act in order for a Legal Practitioner to be able to recover his fees, he must satisfy the above listed requirements and relied on the authority of **NBA v GBENGA 15 (NWLR) (Pt 1483) 585 @ 620 Para H, 621 Para A-B.** Before proceeding with his argument Counsel brought to the attention of the

Honourable Court that the requirements enumerated by the Defendant in Paragraph 4.2 of their written address of their Preliminary Objection, Section 16 (1)&(2) of the Legal Practitioners Act does not require the name and place of abode of the intending Claimant and the relief Claimed to be contained in the Bill of charges and that this was only found in the pre-action notice.

In arguing his issue for determination further, the Learned Claimant Counsel pointed out that going by the law with respect to matters initiated through a writ of summons and statement of Claims, the matter of jurisdiction is determined with reference to the Statement of Claim and not the Statement of Defence. Here Counsel relied on the **CBN v. RAHAMANIYYA G.R LTD (2020) 8 NWLR (Pt 1726) 314 @ 337 Paras C-E**

Counsel continued by addressing the arguments of the defendant as contained in his Objection specifically the issue of service on the Defendant which he stated was done in compliance with the law as contained in Paragraph 22 of the Claimant's Statement of Claim. As the bill titled "unpaid Bills for services rendered to you" was sent through a courier service and received in his office by one Owoicho Victoria. Here Claimant also stated that the Way Bill has been frontloaded to the Court.

Counsel further argued that going by this the Bill can be considered served on the Defendant personally and also at his last known address which is one of the means provided for by the Legal Practitioners Act.

With respect to the time expended before an action can be brought forward for recovery of fees by a legal practitioner for services rendered, the law stipulates that a month must have elapsed between the time of the delivery of the bill on the client and the time that the action is initiated. Learned Claimant Counsel pointed out that going by the time that the said Victoria Owoicho received the bill in the Client's office which was the 20th day January 2022 and the day the

action was initiated as contained on the face of the pleadings which is the 13th day of April 2022, a period of three (3) months has elapsed.

Furthermore, Counsel to the Claimant stipulated that going by the fact that the client was the one to write a letter of instructions directing the legal practitioner to carry out certain actions for a stipulated fee, such a legal practitioner cannot be expected to particularise the such a fee that didn't originate from him, such particulars will be best known by the Client. Learned Claimant Counsel also stated that where parties entered into an agreement on the issue of fees, the requirement of particularisation will not arise. On this premise reliance was placed on the case of **OYO v. MERCANTILE BANK (NIG) LTD (1989) 3 NWLR (Pt 108) 219 Paras E-F** and Section 15 (d) of the Legal Practitioners Act.

Finally, Counsel argued that for various reasons the sums Claimed by the Claimant are of such nature that they cannot be particularized. In conclusion Counsel urged the Court to hold the Preliminary Objection of the Defendant as a delay tactic and humbly urged this Honourable Court to dismiss same for lack of merit.

I have carefully perused the Notice of Preliminary Objection, the grounds upon which the Preliminary Objection was based the reliefs sought, the Supporting Affidavit and the Written Address. I have equally gone through the Respondent's reply to the preliminary Objection. In determining this Application, I shall formulate a single issue for determination to wit: -

“Whether this suit is in Breach of section 16(1)&(2) of the Legal Practitioners Act Cap L11 Laws of the Federation of Nigeria and is liable to be struck out?”

As can be gleaned from the Affidavit, written address and the preliminary Objection challenging the jurisdiction of this Honourable Court in this suit

made by the Defendant/Applicant, the gravamen of this Application is that this Honourable Court lacks the requisite jurisdiction to entertain this suit the reason being on the grounds on the face of the objection paper.

The Law is trite that in determining whether a Court has jurisdiction to hear and entertain a suit, recourse is to be made to the Claimant's originating process (i.e Writ of Summons and/or Statement of Claim and Facts deposed to in Affidavit). This same stand point was reiterated and reaffirmed in the case of **PDP v. TIMIPRIE SYLVA & ORS (2012) 13 NWLR (Pt 1316) 85 at 127** where Per Olabode Rhodes Vivour the Supreme Court held as follows: -

“Jurisdiction of a Court to entertain a suit is resolved by scrupulous examination of the writ of Summons, the statement of Claim and the reliefs claimed. No other document should be examined”

The same was the position in **IHEME v. CHIEF OF DEFENCE STAFF & ORS (2018) LPELR-45354(CA)**

At this juncture, it is important to note that the main contention of the objector is that the document issued to the Defendant (i.e the Bill of Charges) does not confirm with the form as expressed in section 16 (1) & (2) of the Legal Practitioners Act and the said document (bill of charges) was not personally served on the Defendant/Applicant as required by law as a result of which this matter is not properly constituted to give rise to the jurisdiction of this Honourable Court to hear and determine this matter on its merit.

Let me reproduce the provision of **Section 16 (1)&(2) Legal Practitioners Act Cap L11 Vol 7 Laws of the Federation of Nigeria 2004**. Which provide thus:-

“(1) Subject to the Provision of this Act, a legal practitioner shall be entitled to recover his charges by action in any Court of competent jurisdiction.

(2) Subject as aforesaid, a legal practitioner shall not be entitled to begin an action to recover his charges unless.

(a) A bill for the charges containing particulars of the principal items included in the bill and signed by him, or in the case of a firm by one of the partners or in the name of the firm, has been served on the client personally or left for him at his last address as known to the legal practitioner or sent by post addressed to the Client at that address; and

(b) The period of one month beginning with the date of delivery of the bill has expired.” Notice of shall state the cause of action, the name and place of the abode of the intending plaintiff and the relief which he claim.”

See also the cases of where The Supreme Court in **OYEKANMI v. NEPA (2000) NWLR (Pt. 690) Pp 445, Para C-D** was of the opinion that a failure to itemise a Bill of Charges does not automatically render it a nullity, to this effect the Apex Court held thus: -

“Whereas an itemised Bill of costs as required by section 16(1) of the Legal Practitioners Act, 1975 is desirable, failure to itemise the Bill of Costs with particularity would not render it a nullity for non-conformity with the law.”

Similarly, the Supreme Court still reaffirmed the same position in **THOMPSON v. AKINGBEHIN (2021) 16 NWLR (PT 1802) PP 307 – 308 PARAS A – A 322 PARAS D – E 325 PARA E – H** as follows: -

“While an itemised bill of cost, as required by section 16(2)(a) of the Legal Practitioners Act is desirable, the fact that a legal practitioner’s Bill of charges with particulars are not itemised will not amount to non-compliance with the law or render it a nullity for non-compliance with the provisions of the Act. In other words, the Court looks to the substance rather than the form. This is because the requirement of statute is to give information to the client...”

A careful examination of the above quoted Section and the cases cited above will reveal that the Claimant/Respondent did not violate the provisions of Section 16(1) & (2) of the legal Practitioners Act as the said Section required him to either serve personally on the client or at his last known address or served by post, but in the instant case the Claimant served the objector by post through acourier service (Red star express) at his last known address,the currier receipt was frontloaded in his pleadings and failure to itemise the bill of cost particularly will not render it a nullity to warrant it to touch on the jurisdiction of this Honourable Court as the Court looks at the substance rather than the form. I so hold.

Before I conclude it is important to note that the Court has a duty to ensure that substantial justice is not sacrificed on the altar of mere technicality. See the case of **ALOKE v. OYE & ORS (2018) LPELR-45153(SC)** where it was held thus:-

“...Our duty as an apex Court is to do substantial justice, stark justice, based on fairness which to all intent and purposes, seeks to not only ensure fairness in dispensing justice, but which is manifestly seen and duly acknowledged by all and sundry as justice both in content and context. We are not judicial technicians in the workshop of technical justice. The jurisprudence or logic of ours is and as humanly possible, would be devoid of technicalities”

On the whole, I hereby resolve the sole issue for determination against the Defendant/Objector in favour of the Claimant/Respondent.

To that extent and without further ado, I hold very strongly that this Preliminary Objection lacks merit and is hereby dismissed in its entirety. On that note, I equally hold that this Honourable Court has unfettered jurisdiction to hear and determine this suit on its merit. No order as to cost.

Signed

HON. JUSTICE SAMIRAH UMAR BATURE.

28/09/2023