IN THE MAGISTRATES' COURT OF LAGOS STATE
IN THE BADAGRY MAGISTERIAL DISTRICT
HOLDEN AT COURT NO. 1, BADAGRY
WEDNESDAY THE 17TH DAY OF JUNE 2015
BEFORE HIS HONOUR: MAGISTRATE M.A. ETTI

SUIT NO: MISC/MCB/418/2014

BETWEEN:-

ATTORNEY – GENERAL OF LAGOS STATE……APPLICANT/ RESPONDENT

AND

1. PERSONS UNKNOWN
(owners/occupiers of No.14, Benster Crescent, Off Alahun-Osunba Maza-Maza, Lagos State) ……RESPONDENTS/ APPLICANTS

2. CHIEF T. NZETE

R U L I N G

This is a ruling on the Respondent's Notice of Preliminary Objection brought pursuant to Rule 4 of the Senior Advocates of Nigeria (Privileges and Functions) Rules 2004 and under the inherent jurisdiction of this Honourable Court for an order striking out this suit for being an abuse of court process on ground that this suit was presented by a Senior Advocate of Nigeria (S.A.N.) who is not entitled to present a matter in his name before a Magistrates' court for adjudication.

The submission on behalf of the preliminary objector is that based on the ground of his preliminary objection this suit is incompetent or a misnomer and should be struck out. In addition to Rule 4 of the Senior Advocates of Nigeria (Privileges and Functions) Rules 2004 the case of Reg. Trustees of E.C.W.A. Church v Ijesha (1999) 13 NWLR (pt. 635) 368 was cited in support. Another argument of the preliminary objector is that Rule 4 of the Senior Advocates of Nigeria (Privileges and Functions) Rules was made pursuant to the Legal Practitioners Act which has its foundation upon the Constitution of the Federal Republic of Nigerian and has the same force as the

Constitution and is therefore superior to section 9 of the Magistrates' Court Law of Lagos State which is a State Law.

I have looked at the said Senior Advocates of Nigeria (Privileges and Functions) Rules (S.A.N. Rules), I did not see anything in it which prohibits a Senior Advocate of Nigeria (S.A.N.) from appearing in a Magistrates' Court. It has seven rules. The relevant rules are reproduced hereunder:

1. **Notwithstanding the provisions of any rules of court but without prejudice to any enactment, all courts of law in Nigeria before which legal practitioners are entitled to appear shall accord to every Senior Advocate of Nigeria the following rights and privileges, that is to say-**

   (a) the exclusive right to sit in the inner bar or where no facilities exist for an inner bar, on the front row of the seats available for legal practitioners;
   (b) the right to mention any motion in which he is appearing or any other cause or matter which is on the list for mention and not otherwise listed for hearing out of its turn on the cause list.

2. **(1) A Senior Advocate of Nigeria shall not appear as counsel in any civil case before any superior court of record except with a junior or with another Senior Advocate of Nigeria.**

   (2) Notwithstanding paragraph (1) of this rule, a Senior Advocate of Nigeria may appear with or without another counsel in any motion or other civil cause or matter in Judges' Chambers or elsewhere not in open court.

3. **A Senior Advocate of Nigeria may appear as counsel in any criminal cause or matter before any court of superior record with or without another counsel.**

4. **A Senior Advocate of Nigeria shall not apply for or issue originating process or any other process from or application before a court in any cause or matter except in relation to for**

process those matters in which he is entitled to appear pursuant to rules 2 and 3 of these Rules.

6. In these Rules, unless the context otherwise require-

"superior court of record" means the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, any State High Court or any other court or tribunal with powers not less than those of a High Court.

My understanding of those provisions is that whenever a Senior Advocate of Nigeria appears as a counsel in a civil matter before a 'superior court of record' he must fulfill two conditions:

a) if the proceeding is in open court, he must not appear alone. He may appear with a junior or another Senior Advocate of Nigeria.
b) if the proceeding is in chambers or not in open court, he may appear alone.
c) wherever or whenever or in any court before which a Senior Advocate is not allowed to appear, he is also not allowed to issue any process or make any application before that court or chambers or presiding officer.

It is apparent that as regards the appearance of a Senior Advocate the emphasis is on the superior court of record. It is trite that the court is to ascertain the intention and purpose of the law maker and give effect to it 'but at the same time the court cannot bring into a statute extraneous matters that do not form part of the intention of the legislature, even when read together with other provisions in the statute in totality. It is a settled principle of interpretation that provisions in Statutes must be given their simple and direct meaning, which construes and gives the Statute its legal meaning…but this will not be to the extent of bringing into the provision a different complexion from what was intended by the legislature. In this wise the court should confine itself to the plain and unambiguous meaning of the words used.' See Att.Gen. of Federation v Att.Gen. of Lagos State (2013) 16 NWLR (pt.1380) 249 @ 317 SC; (2013) LPELR-20974 (SC). I dare say with emphasis that there is nothing in those

provisions that prohibits a Senior Advocate from appearing at all in any court, whether superior or inferior. The appearance of a Senior Advocate is merely regulated with some conditions in a superior court of record. There are no such conditions as regards his appearance in other courts such as this court.

However, the case of Reg. Trustees of E.C.W.A. v Ijesha (supra) relied upon by the learned counsel for the Respondents/Applicants decided that by a combined effect of rules 2, 3 and 4 of the S.A.N. Rules and applying the legal maxim Expressio unius est exclusion alterius (expression of things clearly stated in a statute excludes others not clearly stated) a Senior Advocate does not have the right of audience in an Area Court or any court which is not a 'superior court of record' as defined in Rule 6 and he is also not allowed to issue any process or make any application before that court.

Section 9 Magistrates' Court Law 2009 provides thus:

9. Notwithstanding any custom or practice all Legal Practitioners called to the Bar in Nigeria are entitled, regardless of conferment, title or rank, to appear in any Magistrates' court in the State.

Now, it has been held that the said legal maxim Expressio unius est exclusion alterius is 'a valuable servant, but a dangerous master to follow in the construction of statutes or documents'. See P.D.P. v I.N.E.C. (1999) 11 NWLR (pt.626) 200 @ 244 where the Supreme Court refused to apply the maxim. It has also been held that 'the method of construction summarised in the maxim "expressio unius exclusio alterius" is one that certainly requires to be watched. Perhaps few so-called rules of interpretation have been more frequently misapplied and stretched beyond their due limits'. Underline supplied. See Rabiu v. State (1980) 12 NSCC 291. As held by the Supreme Court, 'This principle of construction is applied where a statutory proposition might have covered a number of matters but in fact mentions only some of them. Unless those mentioned are mentioned only as examples, "or ex abundanti cautela" or for some other sufficient reason, the rest are taken to be excluded from the proposition'.

See Attorney-General of Abia State v. Attorney-General of The Federation (2005) 12 NWLR (Pt.940) 452 @ 505 SC; (2005) LPELR-3151(SC).

In my humble view, the law maker (of the S.A.N. Rules) used the phrase "superior court of record" deliberately and specifically to exclude other courts from the conditions regulating the appearance of a Senior Advocate. Thus, the legal maxim will apply to mean that the express mention of superior court of record excludes other courts not mentioned from the conditions stated: Ehuwa v. Ondo State Independent Electoral Commission (2006) LPELR-1056(SC); (2006) 10 NWLR (Pt.1012) 544 SC. This view is supported by the phrase all courts of law in Nigeria in Rule 1 of the S.A.N. Rules which deliberately states that senior advocates must be given the exclusive privilege of sitting in the inner bar (or the front row) and mentioning their cases (for mention) out of turn in 'all courts of law in Nigeria before which legal practitioners are entitled to appear'. The Magistrates' Court is a court of law in Nigeria before which legal practitioners are entitled to appear or are we to apply the said legal maxim to exclude the Magistrates' Court from the provisions of Rule 1 of the S.A.N. Rules so that all courts means superior court of record?

The law maker deliberately and specifically used two different phrases – general and specific, namely 'all courts of law' and 'superior court of record' – in different Rules of the S.A.N. Rules and defined the specific phrase (superior court of record) to make both the intention of the law maker and the meaning of the phrase clear. The law maker intentionally and specifically used the phrase 'all courts of law' in Rule 1 and used the phrase 'superior court of record' in Rule 2. This is because the courts have held that the law maker does not use a word or phrase in vain: Bronik Motors Ltd. v Wema Bank Ltd.(1983) All N.L.R 272; U.T.C. (Nig.) Ltd. v. Pamotei (1989) 2 NWLR (pt. 103) 244 at 303; Tukur v. Government of Gongola State (1989) 4 NWLR (pt. 177) 507 at 579.

As held by the Supreme Court, 'This issue…is beyond mere expression of sentiments. It is a matter of interpretation and application of the law… All that the Judges are required to do as

operators of the courts is to interprete/apply the law as it is, based on the judge's understanding. In that process, of course, judges are not infallible. They can make human errors. Infallibility belongs only to God'. See Akintokun v Legal Practitioners Disciplinary Committee (2014) LPELR-22941(SC); (2014) 13 NWLR (pt.1423) 1 SC.

Now, if the Court of Appeal in Reg. Trustees of E.C.W.A. v Ijesha considered a provision similar to the provisions of section 9 Magistrates' Court Law 2009 there would be three major possibilities: (a) both the decision and the reasoning would be the same or (b) both the decision and the reasoning would be different or (c) the decision would be the same but the reasoning different. The fourth possibility is unthinkable; it is that the decision would be different but the reasoning would be the same.

That takes me to the argument of the learned counsel for Respondents/Applicants which relates to conflict of laws between a Federal Law (that is, the S.A.N. Rules made under section 5(7) of the Legal Practitioners Act) and a State Law (that is, section 9 Magistrates' Court Law 2009). It should be noted that the S.A.N. Rules though a subsidiary legislation has the same force and effect as the principal or enabling law unless it is proved that it was not validly made: Trade Bank Plc v L.I.L.G.C. (2003) 3 NWLR (pt.806) 11 @ 27 CA. In other words, a subsidiary legislation (such as the S.A.N. Rules) cannot expand the legislative scope of the principal or enabling law (such as the Legal Practitioners Act).

It is trite that if the subject matter is on the Exclusive List the Federal Law prevails but if it is residual then the State Law prevails. However, if it is on the Concurrent List both laws coexist except where the Federal Law has covered the field in which case the Federal Law prevails on the doctrine of covering-the-field: Att.Gen. of Federation v Att.Gen. of Lagos State (2013) LPELR-20974(SC); (2013) 16 NWLR (pt.1380) 249 @ 306 SC. Even then the State Law is not invalidated merely because the Federal Law has covered the field. The State Law is merely put in abeyance till the Federal Law no longer covers the field such as when it is repealed.

Looking at the second schedule of the 1999 Constitution of the Federal Republic of Nigeria the legislative power to regulate professional occupations is in item 49 on the Exclusive List. There is no equivalent provision in the Concurrent List. However, regulation of professional occupations does not in my view extend to practice and procedure in the courts and as held by the Supreme Court 'when the Constitution is clear as to its intendment on any subject, the courts in giving construction thereto, are not at liberty to search its meaning beyond it. Any power given by the Constitution cannot therefore be taken away by any Act of National Assembly or Law of a state or a subsidiary legislation. Nkwocha v. Governor of Anambra State (1984) 1 SCNLR 634; Lemboye v. Ogunsiji (1990) 6 NWLR (Pt.155) 210; Adisa v. Oyinwola (2000) 10 NWLR (Pt.674) 116, 215. … the Constitution is not to be construed with any ambiguity or mistake by its framers, it must not be subordinated to any other law and in construction, must not be subjected to indignity of deletion of any section or part thereof.' See F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361@ 406.

There are sufficient provisions in the constitution as to the authorities vested with the powers to make rules on practice and procedure in the courts. Where it concerns a State Court, the power lies with the State Authority concerned subject to an Act of the National Assembly. See, for example, sections 259, 264, 269, 274, 279, 284 of the 1999 Constitution. And no Act of the National Assembly has been enacted in that regard. As regards practice and procedure relating to appearance in this court, section 9 Magistrates' Court Law 2009 is most applicable.

Even if professional occupations in item 49 is taken to include practice and procedure in the courts, the result will be as held by the Supreme Court that 'when the Constitution is clear as to its intendment on any subject, the courts in giving construction thereto, are not at liberty to search its meaning beyond it'. The intendment of the constitution is to give right of audience in any Nigerian court to all legal practitioners called to the Bar in Nigeria 'regardless of conferment, title or rank' and regardless of the institution such person belongs to such as the Police Force. That is the rule in F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361. And even if it is taken that the S.A.N. Rules though a subsidiary legislation has the same force

and effect as the principal or enabling law (Legal Practitioners Act), the pronouncement of the apex court that 'any power given by the Constitution, cannot therefore be taken away by any Act of National Assembly or Law of a state or a subsidiary legislation' (underline supplied) (see F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361 @ 406) is sufficient to dispose of the issue of whether the S.A.N. Rules has prohibited the appearance of a Senior Advocate in a Magistrates' Court. In other words, a subsidiary legislation (such as the S.A.N. Rules) cannot promulgate outside the principal legislation or in conflict with the constitution or contrary to the Supreme Court interpretation.

Indeed, the constitution has made it the bulwark of its provision of fair hearing to allow every litigant to be represented by a legal practitioner of his own choice. It has never been in our jurisprudence that a litigant is denied legal representation by the court merely because he has engaged the services of a Senior Advocate. It is not the law of this country to dictate to a litigant which advocate should represent him otherwise only Senior Advocates will be allowed to appear in the Supreme Court. On the contrary, courts appreciate the advocacy and legal research of any legal practitioner which will be of assistance to resolving issues and attaining justice. It is even more appreciated when seasoned legal practitioners such as Senior Advocates appear before the courts. In that regard, courts find it necessary to invite them as amicus curiae in certain cases.

The view that Senior Advocates should appear only in superior courts of record can be desirable out of tradition only and not of law such as the view that only legally qualified persons should prosecute criminal cases in superior courts: F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361 @ 405. As a newly enrolled legal practitioner can appear in the apex court, a senior advocate can appear in the lowest court. To agree with the Respondents/Applicants means that an Attorney-General who is a Senior Advocate cannot even defend a suit in a Magistrates' Court where the government is a defendant. Or a Senior Advocate who is a party cannot appear for himself.

The law is that the right of any legal practitioner to appear in any case (civil or criminal) in or at any level of court (superior or inferior)

cannot be curtailed by any law except as allowed by the constitution: F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361. Pats-Acholonu, JSC put it aptly thus:

'whenever any person is called to the bar and is enrolled to practice then he has the right of audience and unless the Constitution eloquently forbids such a person or provides a qualification for appearance in court, any Act prescribing provisions contrary to the spirit of the Constitution should be regarded as otiose'. See F.R.N. v. Osahon (2006) 5 NWLR (Pt. 973) 361 @ 419. I prefer and indeed I am bound to follow the Supreme Court on this issue. I hold therefore that Lawal Pedro, S.A.N. has right of audience in this court and is allowed to issue any process or make any application before this court.
From the foregoing, I hold that this notice of preliminary objection lacks merit and same is dismissed.

M.A.ETTI