

Legal Practitioners Act and the Disciplining of Lawyers

Very now and again one reads about a lawyer being struck off the roll and the issue of the rules of professional conduct in our profession becomes a hot topic of discussion. Over the years we have had various Acts such as the Legal Practitioners Act 1962 which established two bodies for the discipline of legal professionals i) – the legal practitioners investigative panel ii) – the legal practitioners disciplinary Tribunal. The Investigative Panel had the duty of conducting preliminary investigations into allegations of professional misconduct against a legal practitioner while the Disciplinary Tribunal had powers of trial and punishment of legal practitioners.

Another was the Legal Practitioners Act 1975 which established the Legal Practitioners Disciplinary Committee (LPDC). It had the duty of considering and determining any case of misconduct against a legal practitioner and was conferred with powers over their trial and punishment. In the process abolishing the Legal Practitioners Investigative Panel. Currently the main legislation regulating the conduct of the legal profession is the Legal Practitioners Act 2004. Section 11(1) of the Act deals with the establishment of the Disciplinary Committee which states that 'where (a) a person whose name is on the roll is judged by the Disciplinary Committee to be guilty of infamous conduct in any professional respect; or (b) a person whose name is on the roll is convicted, by any court in Nigeria having power to award imprisonment, of an offence (whether or not an offence punishable with imprisonment) which in the opinion of the disciplinary committee is incompatible with the status of a legal practitioner; or (c) the Disciplinary Committee is satisfied that the name of any person has been fraudulently enrolled, the Disciplinary Committee may, if it thinks fit, give a direction (i) ordering the registrar to strike that person's name off the roll, or (ii) suspending that person from practice by ordering him not to engage in practice as a legal practitioner for such period as may be specified in the direction, or (iii) admonishing that person and any such direction may, where appropriate, include provision requiring the refund of moneys paid or the handing over of documents or any other things as the circumstances of the case may require'

One of the earliest documented cases of the disciplining of a Legal Professional in Nigeria is *R v Abuah* (1962) where an order of the Federal Supreme Court was made that his name be struck off the Roll of Legal Practitioners in Nigeria. Another case is the *Legal Practitioners Disciplinary Committee (LPDC) v. Chief Gani Fawehinmi* (1985). The LPDC had brought professional misconduct charges against Chief Fawehinmi alleging that he engaged himself in 'advertising, touting and publicity' by reason of a publication in a weekly newspaper, the 'West Africa', March 1981. The Attorney-General appealed against the Court of Appeal's decision rendering the LPDC's proceedings against Chief Fawehinmi ineffective and nugatory on the basis that the constitution of the LPDC with the Attorney-General as Chairman made him 'accuser, prosecutor and judge' at the same time which breached the principles of natural justice 'nemo iudex in causa sua' ('no one shall be a judge in his own cause') and therefore Chief Fawehinmi's right to fair hearing. The

Supreme Court upheld the decision and recommended that amendments be made to the Legal Practitioners' Act 1975 by (1) returning to the position in the Legal Practitioners' Act 1962 where the investigative and disciplinary responsibilities were carried out by two separate bodies or (2) by employing an independent prosecutor to lay charges and prosecute them against members of the legal profession. Under the Legal Practitioners Act of 1975 appeals from the LPDC were to the Appeal Committee of the Body of Benchers. With the Supreme Court's position in the *LPDC v. Fawehinmi* case the 1975 Act was amended with the recommendations of the Supreme Court accommodated into the Legal Practitioners Act 1990. Among other changes in the 1990 Act the Attorney-General ceased to be the Chairman of the LPDC and appeals from the LPDC's decisions would now be heard by the Supreme Court.

What is quite remarkable however, is that in drafting the Legal Practitioners Act 2004 the draftsmen omitted the integral amendments to the Legal Practitioners Act 1990 that came from the Supreme Court's recommendation in *LPDC v. Fawehinmi*. Consequently section 10(2)(a) includes the Attorney-General of the Federation as the Chairman of the LPDC, putting the LPDC's decisions back in the sights of the Supreme Court and in breach of section 36(1) of the 1999 Constitution (right to fair hearing). The LPA 2004 also returned appeals from the LPDC to the Appeal Committee of the Body of Benchers instead of directly to the Supreme Court. The immediate position taken by the LPDC was to appoint a Chairman who is not the Attorney-General of the Federation and therefore by advertence avoid the legal implications of the breach to fair hearing.

In a disciplinary case just concluded at the Court of Appeal, Chief Andrew Oru V Nigerian Bar Association and 2 ORS (delivered 5th June, 2015) in which I participated, the Legal Practitioners Disciplinary Committee (LPDC) replaced the Attorney-General with Justice Umaru Eri as Chairman during the proceedings in an effort to avoid the consequences of the Supreme Court's ruling in *LPDC v Fawehinmi*.

The Appellant in this appeal to the Court of Appeal, Lagos Judicial Division had filed an application for the enforcement of his fundamental rights against the Respondents at the Federal High Court after his sanction by the LPDC. By a preliminary objection at the Federal High Court, the issue arose as to whether the Court did indeed have jurisdiction to hear the application, being a fall out of the LPDC's Direction against the Appellant.

In its ruling, the Federal High Court declined jurisdiction to hear the matter on the ground that the subject matter, which was the legal practice and discipline of legal practitioners, did not fall within the exclusive jurisdiction of the Federal High Court as provided for in S.251 of the 1999 Constitution. The Court expressed the view that the only option open to the Applicant was to appeal to the Supreme Court. The Appellant was dissatisfied with the decision of the Federal High Court and hence the Appellant's appeal to the Court of Appeal. One of the key issues the Court had to resolve was whether the LPDC based on the constitution of its panel predicated on the Legal Practitioners Act, 1990 as amended by Decree 21 of 1994, was properly constituted in law when it tried the

Appellant, in view of the omission to incorporate the above amendments by the Legal Practitioners Act (Decree 21, 1994) in the Revised edition of the Laws of the Federation of Nigeria, 2004.

Thus the Court of Appeal was faced with the issue of what was the extant law on the discipline of legal practitioners, a scenario that exposed a seeming conflict of statutes. The question that came to the fore was: which one of the conflicting statutes was applicable to determine the composition and jurisdiction of the LPDC, as well as the appropriate appellate tribunal to approach in appeals emanating from the LPDC Directions (judgments)? Was it the Legal Practitioners Act, 2004 as incorporated in the Revised Edition of the Laws of the Federation of Nigeria, 2004, without the amendments by Decree 21 of 1994? Or should it be assumed that the exclusion of the Legal Practitioners (Amendment) Act (Decree 21, 1994) from the Revised Edition of the Laws of the Federation of Nigeria, 2004 did not imply that the said law had been repealed?

In Andrew Oru's case the Court of Appeal in its decision on the above issue held as follows, in the lead judgement by Honourable Justice Uzor I. Ndukwe-Anyanwu:

"The Appellant, Mr. Andrew Oru was tried by the Legal Practitioners Committee in 2008 after the coming into the effect of the 2007 Act. This in effect means that the Appellant was tried by a panel wrongly headed by someone who is not the Attorney-General of the Federation as envisaged by Section 10 (2) (a) of the Legal Practitioners Act L11 LFN 2004 which provides: "The Attorney General of the Federation shall be the chairman of the Disciplinary Committee" The Appellant was therefore tried by a panel that was wrongly headed, thereby, had no jurisdiction whatsoever to try the Appellant."

The foregoing holding of the Court of Appeal resolved the conflict of statutes in favour of the Legal Practitioners Act, 2004, as the extant and applicable law on the discipline of lawyers in Nigeria to the exclusion of the Legal Practitioners (Amendment) Act (Decree 21, 1994) which the Court found repealed by the Revised Edition (LFN) Act 2004 at its commencement date of 25th May, 2007.

The dictum of the Court in this case relied heavily on the recent Supreme Court case of *Rotimi Williams Akintokun v Legal Practitioners Disciplinary Committee*, delivered on 16th May, 2014. In this case the Supreme Court was also faced with the issue of the co-existence of these very same two conflicting statutes. After hearing arguments from Counsel in the appeal, the submissions of the Attorney-General of the Federation and the President of the Nigerian Bar Association (both invited as amicus curiae- friends of the court), the Supreme Court held that the 2004 Legal Practitioners Act (being the later law) which came into effect in 2007 implicitly repealed the amendments to the Legal Practitioners Act (Decree 21 of 1994).

The Supreme Court further held that the Revised Edition (Laws of the Federation of Nigeria) Act, 2007 is an Act to give effect to the Revised Edition of the Laws of the Federation, 2004 with the commencement date at 25th May, 2007. This invariably means that all the decisions/directions of the LPDC, prior to the commencement of the 2004 edition of the Laws of the Federation of Nigeria up to 24th May 2007, remains valid. Akintokun's case in turn toes the line of the Supreme Court



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in the case of *Aladejobi v Nigerian Bar Association* (2013) where the Supreme Court also followed the provisions of the Legal Practitioners Act, 2004 in arriving at its decision.

In view of the fact that the LPDC has continued to be constituted along the lines of the provisions of the Legal Practitioners (Amendment) Act (Decree 21, 1994) until present, even after the repeal of the said law in 2007, the decisions of the Courts in Chief Andrew Oru v Nigerian Bar Association and 2 ORS, *Rotimi Williams Akintokun v Legal Practitioners Disciplinary Committee* and *Aladejobi v Nigerian Bar Association* have far reaching implications on recent and current proceedings of the LPDC since the coming into force of the 2007 Act.

These effects were examined in an article by Dele Oye in *THISDAY LAWYER* of 16th December, 2014 wherein he pertinently stated that since the LPDC (as presently constituted) is based on Decree 21 of 1994, which has been held to be deemed repealed by the 2007 Act, the LPDC as presently constituted under Decree 21 of 1994, is at 25th May 2007 non-existent and unknown to law and the effect of this is that all the legal practitioners and directions given by the LPDC as previously/presently constituted based on Decree 21 of 1994, from the 25th day of May, 2007 (when the Laws of the Federation of Nigeria 2004 came into force), are decisions that may have been reached by a Tribunal unknown to law, and are (with respect) therefore null and void for breach of the constitutional right to fair hearing of the legal practitioners affected. 'It must though be noted here that after the decision of the Supreme Court in *Rotimi Akintokun's* case, the former Attorney General of the Federation and Minister of Justice, Mohammed Bello Adoke (SAN) published a gazette purportedly to harmonise the provisions of the Legal Practitioners Act, Cap L11, Laws of the Federation of Nigeria, 2004 with Legal Practitioners (Amendment) Act (Decree 21, 1994). The gazette which is both undated and without a serial number may not suffice to bring back to life a law which the Supreme Court has pronounced repealed, without due recourse to the National Assembly.

This current position can still be remedied if all key stakeholders within the legal profession rise up to this challenge and amend the Legal Practitioners Act to reflect the critical amendments of Decree 21 of 1994, or, enact an altogether new Legal Practitioners Act, as by this current paradox created by the LPA 2004, especially section 10(2)(a), any decision taken by the LPDC with the Attorney-General as Chairman is a breach of fair hearing and any decision taken by the LPDC without the Attorney-General as Chairman is void because it is improperly constituted.