



Tendering False Evidence

"So let us regard this as settled: what is morally wrong can never be advantageous, even when it enables you to make some gain that you believe to be to your advantage. The mere act of believing that some wrongful course of action constitutes an advantage is pernicious." Marcus Tullius Cicero (106-43 B.C.)

Introduction

The quote above reminds us that as lawyers we should ensure that we act according to the highest standards of our profession at all times and avoid actions that will put our integrity into question. One of such acts clearly prohibited by our profession is giving false evidence in court. My understanding of false evidence is evidence that has been knowingly fabricated by counsel and tendered in court during the conduct of a case, not only is this an offence against the state for obstructing the course of justice but breaches a lawyer's duty of fairness and candour to the court. Candour is defined by the Oxford Dictionary as "the quality of being open and honest". By virtue of their designation as ministers in the temple of justice lawyers are expected to uphold this duty. To elucidate this point Rule 4c states specifically that "It is unprofessional and dishonourable to deal other than candidly with the facts in taking statements of witnesses, in drawing affidavits and other documents, and in presentation of causes." In addition Rule 4e provides that "A member of the Bar must not promote a case which to his knowledge is false, nor should he file a pleading or other document which, he knows to be false in whole or in part, or which is intended to delay the trial." Rule 4f concludes that such acts are unprofessional and unworthy of an officer charged with the administration of justice. In comparing these rules to the American Bar Association Model Rules of Professional Conduct it can be observed that the American Model Rules of Professional Conduct confers an extra obligation on lawyers to take remedial steps to correct any false evidence presented to a court or tribunal, it states as follows "If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter that the lawyer reasonably believes is false." The rule further states that "a lawyer who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent activities in relation to adjudicative proceedings has a duty to take remedial steps and if necessary disclose this fact to the tribunal."

The Court's position on giving false evidence

Cases abound where lawyers found to have made false statements or given false evidence in court have been reprimanded. In **SEISMOGRAPH SERVICES NIGERIA LTD v MARK** (1993) 7 NWLR (pt.304) 203 CA the court



discovered that there was a discrepancy in the plaintiff's solicitor's letter and the writ of summons filed in the lower court. In the plaintiff's solicitor's letter two conflicting sums were claimed i.e N60,500 and N 67,700 respectively. In the writ of summons a total of N117,000.00 was claimed from the defendants which was at variance with what the plaintiff claimed from the defendant initially. During cross examination the plaintiff explained that the difference in price in the various receipts was due to an increase in price of the goods and that the receipts for the goods damaged by the plaintiff were found after the case was filed in court. In reaching its decision the court observed that "It is obviously untrue that the plaintiff found the receipts after the action had been filed because if that had been so, the amount claimed in court when the writ of summons was taken out would have been N60,500.00. But what was claimed from the very outset in particulars of claim that accompanied the writ of summons was N117,000.00. "It is that amount for which the receipts were faked for use to support this claim. It has certainly proved to be a spurious claim." In admonishing the plaintiff's lawyer the court opined that "A legal practitioner is a minister of justice. He is sometimes referred to in a rather expressive manner as a minister in the temple of justice. His first duty therefore is to act in the interest and promotion of justice. That is what sustains his profession and makes it honourable.

That is how he earns and maintains his esteem. That does not mean he should compromise his duty to his client. That will lose him not only his respect but his reward. But he must not knowingly mislead the court or perform such disreputable act against the course of justice. It is unethical to do so. Such behaviour is liable to be punished in an appropriate disciplinary action. In very serious cases it could amount to the perversion of the course of justice. That is punishable by judicial process as a crime. The facts of the present case concerning the evidence as to the value of the nets etc seem to put the honour of the plaintiffs counsel on the line. I guess he will for long have to remember the untidiness of the evidence he and his client relied on in this case."

Similarly in **OKOMU OIL PALM LTD v OKPAME** 2007 the plaintiff's death was concealed by the plaintiff's counsel who decided to file an application to substitute the plaintiff. Due to these circumstances it was argued that since the plaintiff was not alive the judgment of the trial court was erroneous in law and therefore null and void. The lawyer's action was condemned.

In my view the Nigerian courts should have gone further after discovering these instances of deceit by the lawyers in question to institute disciplinary proceedings against them to deter other lawyers from such behaviour in the Australian case below that action was

taken.

In the matter of **COE-V-NEW SOUTH WALES BAR ASSOCIATION BC 2000 00540**; [2000] NSWCA 13 a barrister who was a party in Family Court proceedings swore an affidavit verifying a Statement of Financial Circumstances which to his knowledge was untrue. The Legal Services Tribunal ordered that his name be removed from the Roll of Legal Practitioners following a finding of professional misconduct.

The act of tendering false evidence is also punishable as a crime:

Section 120 of the criminal code states Any person who, with intent to mislead any tribunal in any judicial proceeding-

(1) fabricates evidence by any means other than perjury or counselling or procuring the commission of perjury; or
(2) knowingly makes use of such fabricated evidence;

is guilty of a felony, and is liable to imprisonment for seven years.

The offender cannot be arrested without warrant.

Conclusion

The Nigerian Rules of Professional Conduct can borrow a leaf from the American Bar Association Model Rules of Professional Conduct by making it compulsory for lawyers to inform a court or tribunal of any false evidence given during proceedings and disciplinary proceeding should be instituted against lawyers found guilty of this act. This will definitely deter lawyers from making untrue statements in court.