

ETHICS

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The Rules of Professional Conduct Revisited

“Ethics” generally is a vague and subjective concept which is affected by the individual’s perceptions, tastes and standards of morality. To cure this subjectivity, the rules of professional conduct contain the minimum standards of conduct

expected from a legal practitioner regardless of his background, beliefs and tastes. The preamble to the Rules of Professional Conduct state that “the General Council of the Bar formulated the Rules of Professional Conduct for the maintenance of the highest standards of professional conduct, etiquette and discipline...” To buttress this point the Court of Appeal in the case of **GEBI v DAHIRU** [2012] 1 NWLR pg 560 reiterated that “A lawyer, as an officer in the hallowed temple of justice, owes a duty to uphold and observe the rule of law, promote and foster to the cause of justice, maintain a high standard of professional conduct and etiquette.” Notwithstanding this fact ensuring compliance with the rules of professional conduct among members of the legal profession has been fraught with challenges because more often than not the rules are flagrantly disregarded or kept on the sidelines by those who should know better.

One of the Rules lawyers frequently disregard is Rule 22 which precludes a lawyer from engaging in “unjustifiable litigation”. It states that “A lawyer must decline to conduct a civil cause or to make a defence when convinced that it is intended merely to harass or injure the opposite party or to work oppression or wrong. Otherwise it is his right, and, having accepted a retainer, it then becomes his duty to insist upon the judgment of the Court as to the legal merits of his client’s claim. His appearance in Court should be deemed equivalent to an assertion on his honour that in his opinion his client’s case is one proper for judicial determination.”

On this subject, a notable jurist commented that lawyers hardly allow high profile criminal cases to proceed. In criminal trials the trend is for the counsel to appear for the accused on the day of arraignment, when the accused is granted bail. The counsel; swiftly brings preliminary objections based on jurisdiction and other technicalities. There are also instances



of counsel arguing interlocutory matters all the way to the Supreme Court.

Another cause for concern is the practice of zealous advocacy on the part of lawyers in contravention of Rule 14 (a) which stipulates that “Nothing operates more certainly to create or to foster popular prejudice against lawyers as a class, and to deprive the profession of that full measure of public esteem and confidence which belongs to the proper discharge of its duties than does the false claim, often set up by the unscrupulous in defence of questionable transactions, that it is the duty of the lawyer to do whatever may enable him to succeed in winning his client’s cause.” The Rules of Professional Conduct however in Rule 14 (c) encourages “warm zeal in the maintenance and defence of the client’s rights and the exertion of his utmost learning and ability to the end that nothing be taken or be withheld from him, save by the rules of law, legally applied. No fear of judicial disfavour or public unpopularity should restrain him from the full discharge of his duty. In the judicial forum the client is entitled to the benefit of every remedy and

defence that is authorized by the law of the land, and he is also entitled to expect his lawyer to assert every such remedy or defence. It must however be borne in mind that the great trust of the lawyer is to be performed within and not without the bounds of the law. The office of a lawyer does not permit, much less does it demand of him for any client, violation of law or any manner of fraud or chicanery. He must obey his own conscience and not that of his client. Instructively, Markovits J in his article “Legal Ethics from a Lawyer’s Point of View” states that “Lawyers in an adversary legal system inhabit an extraordinarily subtle and complex ethical position. They represent particular clients rather than justice at large, and they represent these clients by means of “zealous advocacy,” that is, with “warm zeal.” Unlike legislators, adversary lawyers are not charged fairly to balance the interests and claims of all persons. Instead, they care disproportionately and at times almost exclusively about their clients’ interests. And unlike juries and judges, adversary lawyers are not charged to discern a true account of the facts of a case and to apply the law dispassionately to these

facts. Instead, they try aggressively to manipulate both the facts and the law into a shape that benefits their clients. In each of these ways, adversary lawyers commonly do, and indeed are often required to do, things in their professional capacities, which, if done by ordinary people in ordinary circumstances, would be straightforwardly immoral.”

On the duty not to be overzealous in advocating a client’s cause Francine Griesing in a paper titled “Taking the High Road: How to Deal Ethically with Bullies Who Don’t Play by the Rules” observes that advocating zealously “may mean readiness, eagerness, forwardness, or fervor. When attorneys are belligerent, aggressive or offensive, they misunderstand the true meaning of zeal and how to act with it.” Aggressiveness or Offensive behaviour is not new to the legal scene as there are many cases of lawyers fighting in court during cases. For example there was the case of two lawyers fighting in a Magistrate court over who should handle a case. It took the intervention of the Court Registrar, Clerk and other prosecutors to stop the fight. There was also the case of a female lawyer who slapped her colleague because of a client, her defence was that she wanted to prevent her colleague for snatching her client. There have also been several reports of lawyers fighting during election petition proceedings which bring the legal profession into disrepute. This led the President of the Nigerian Bar Association Mr. Augustine Alegeh SAN to state that “lawyers must understand that there is no duty on them to win election petitions at all costs.” We do not want a repeat of the unfortunate incidence of Senior Advocate of Nigeria (SAN) not just losing his silk but also being de-robed for work done at the Election Petition Tribunal. Modern interpretative terms on what amounts to professional misconduct are more liberal now and the liberal interpretation is that any act by a lawyer in any capacity may lead to disciplinary measures from the NBA.”

Conclusion

There has been a reawakening of interest in the rules of professional conduct. One can only hope that these rules are taken more seriously as the drive to rid the society of corruption will only be successful if lawyers play their part by respecting and observing these rules.

Compliance Challenges of Lagos State Consumption Tax

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The World Travel and Tourism Council, WTTC, has projected that the travel and tourism industry in Nigeria would contribute 1.6 per cent directly to the Gross Domestic Product of the country by 2024, which represents \$1.366 billion. The Council also projected that the travel and tourism industry would support direct employment to the tune of 1,194,000 employees in the next decade, which represents 1.4 per cent of total employment in the country.

In the wake of the fall of oil prices which is seriously hitting the country’s financial muscle, the need to diversify the country’s income cannot be understated. The enforcement and strict compliance of existing tax laws to generate larger revenue also cannot be undermined; for example the Iranian government is earning more from tax than oil as a result of its policy to shift its traditional reliance on oil money to taxes in the face of plummeting oil prices, thus the possibility of earning from taxes in Nigeria is important.

The consumption tax law is an existing law which needs to be explored, especially for a commercial state like Lagos which has an average of 3,000 hotels, one can safely assume that such a number is a marginal field, unfortunately this has not been thoroughly explored by the government.

Lagos State Hotel Licensing Law

Given the enormous size and even bigger potential of the hospitality and tourism industry, it is clear why the desire to regulate the industry can be seen as a big deal. For a long time the industry has been regulated solely by the Nigerian Tourism Development Corporation (“NTDC”). Lagos State challenged the status quo by introducing laws to regulate the industry in the State leading to the debate on the constitutionality of the Lagos State Hotel Licensing Law 2003 (and its amendment) and the Hotel Occupancy and Restaurant Consumption Law 2009.

The Hotel Licensing Law and the 2010 amendment established the Lagos State Hotel Licensing Authority (“LSHLA”) and made other provisions for the licensing of hotels. It further empowered Lagos State to make laws to regulate, make standards and grade tourism operations which was previously under the exclusive preserve of the NTDC.

In the exercise of its powers to license and regulate hotels, the Lagos State House of Assembly enacted the Hotel Occupancy and Restaurant Consumption Law. The law imposes a 5% tax on consumption of goods and services in hotels, hotel facilities, events centres and restaurants.

What does the Court think ?

The Federal Government (before the Supreme Court) challenged the right of Lagos State to make laws on tourism specifically where the National Assembly had already legislated on the same issue through the NTDC Act.

The apex court dismissed the federal government’s suit and delivered its judgment in favour of Lagos state. It was the view of the court that the NTDC Act went beyond its powers as stated in the Exclusive Legislative List of the Constitution which is to regulate “tourist traffic”. This effectively challenged the constitutionality of the NTDC’s powers to unilaterally regulate and control of hotels and tourism in Nigeria. The court therefore validated the respective laws of Lagos State.

However, the judgment did not address the issue of the imposition of tax and whether or not Lagos State has the constitutional right to impose consumption tax on hotels, restaurants and event centres.

Who is Liable to Consumption Tax?

Section 1 a-b of the Hotel Occupancy and Restaurant Consumption Law 2009 provides that the tax is imposed on any consumer who pays for the use or possession of any hotel, hotel facility or event centre or purchases goods or services in any restaurant whether or not located within a hotel in Lagos state.

The operators are therefore mere agents of the government for the purpose of tax remittance. The Act further provides for penalties and distraining powers on defaulting agents.

Compliance Issues

According to the former Commissioner for Tourism and Inter-governmental Relations, Mr.

Disun Holloway in early 2015 no fewer than 1000 hotels operate in Lagos without obtaining a license from the Lagos State Licensing Authority.

He further stated that 1,328 hotels, event centres, bars and restaurants are yet to comply with the law as opposed to the 1,162 that have complied. This figure which is rising daily represents more than 60 percent of tourism establishments domiciled within Lagos.

It is pertinent to note however, that most hotel operators have complained about multiple taxes and charges imposed on them such as consumption tax, value added tax, company income tax, withholding tax, health certificate, and waste operation permit.

The Way Forward

- The government needs an aggressive approach towards registration of members with the Hotel and Personal Services Employers Association of Nigeria (HOPESEA) to capture more operators into the tax net.

- Adequate and sufficient sensitisation to show that operators are mere government agents.

- Tax credits and awards for compliant operators.
- Innovation of technology/software that would automatically deduct tax due from the restaurant money machines accounts, which will aid the tax authorities in assessment.

- A presumptive income tax system should be introduced for operators that do not comply with the systems in place.

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