

GABRIEL GBENOBA, ESQ.

V.

- 1. LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE**
- 2. NIGERIAN BAR ASSOCIATION**

SUPREME COURT OF NIGERIA

SC.536/2015

OLABODE RHODES-VIVOUR, J.S.C. (*Presided*)

MUSA DATTIJO MUHAMMAD, J.S.C.

HELEN MORONKEJI OGUNWUMIJU, J.S.C. (*Read the Leading Judgment*)

ABDU ABOKI, J.S.C.

EMMANUEL AKOMAYE AGIM, J.S.C.

FRIDAY, 5 FEBRUARY 2021

ADMINISTRATIVE LAW- Administrative panel - Membership of - Composition of Variation therein during proceedings - Effect of.

ADMINISTRATIVE LAW - Legal Practitioners Disciplinary Committee – Composition of - Intrinsic nature of- Importance of to fulfillment of constitutional right to fair hearing.

ADMINISTRATIVE LAW - Legal Practitioners Disciplinary Committee - Status of -

Whether an administrative body.

*CONSTITUTIONAL LAW - Right to fair hearing - Composition of court or tribunal –
Where affects right to fair hearing – Effect.*

*CONSTITUTIONAL LAW - Right to fair hearing - Constitutional guarantee of -
Composition of court or tribunal – Intrinsic nature of - Importance of to fulfillment
of constitutional right to fair hearing.*

*COURT - Composition of court - Intrinsic nature of - Importance of to fulfillment of
constitutional right to fair hearing.*

*COURT - Constitution of court - Panel of judges - Variation in composition of during
hearing proceedings – Effect.*

*COURT - Jurisdiction of court - Constitution of court - Where court not properly
Constituted-Effect on proceedings.*

COURT - Jurisdiction of court - Irregularity in adjudication - Distinction between.

*COURT - Legal Practitioners Disciplinary Committee - Proceedings of - Application of
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*COURT - Legal Practitioners Disciplinary Committee - Proceedings of - Status of
petitioner - Whether presence thereof required - Evidence tendered on behalf of
absent petitioner - Nature of - How treated*

*COURT - Proceedings of court - Where court differently constituted during hearing of case
- Effect on proceedings.*

EVIDENCE - Legal Practitioners Disciplinary Committee Direction of - Need to be based

on valid and credible evidence.

EVIDENCE - Legal Practitioners Disciplinary Committee Proceedings of - Application of Evidence Act thereto.

EVIDENCE - Legal Practitioners Disciplinary Committee - Proceedings of Where petitioner absent - Effect - Evidence tendered on behalf of absent petitioner – Nature of - How treated.

FAIR HEARING - Bias - Likelihood of bias - Allegation of - Determination of.

FAIR HEARING - Fair hearing - Meaning of.

FAIR HEARING - Legal Practitioners Disciplinary Committee - Need to observe rules of natural justice and fair hearing.

FAIR HEARING - Right to fair hearing Composition of court or tribunal - Where affects right to fair hearing - Effect.

JURISDICTION - Constitution of court - Panel of judges - Variation in composition of during hearing proceedings - Effect.

JURISDICTION - Jurisdiction of court - Irregularity in adjudication - Distinction between.

JURISDICTION - Jurisdiction of court - Constitution of court - Where court not properly constituted - Effect on proceedings.

JURISDICTION - Proceedings of court - Where court differently constituted during hearing of case - Effect on proceedings.

LEGAL PRACTITIONER - Bias - Likelihood of bias - Where alleged against members of

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*LEGAL PRACTITIONER - Discipline at the Bar - Infamous Conduct Complaint of –
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*LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee - Direction of -
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*LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee - Proceedings of
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*LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee – Where
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*LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee - Composition of
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LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee - Composition of

- Intrinsic nature of- Importance of to fulfillment of constitutional right to fair hearing.

*LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE - Legal Practitioners
Disciplinary Committee - Status of - Composition of - Need for certainty and consistency therein.*

*LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE - Legal Practitioners
Disciplinary Committee - Need to observe rules of natural justice and fair hearing.*

*LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE - Legal Practitioners
Disciplinary Committee - Direction of - Need to be based on valid and credible evidence.*

*LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE - Legal Practitioners
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*LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE - Legal Practitioners
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*NATURAL JUSTICE - Legal Practitioners Disciplinary Committee - Need to observe
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*NOTABLE PRONOUNCEMENT - On Need to apply rules of evidence in proceedings of
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*PRACTICE AND PROCEDURE - Composition of court – Intrinsic nature of – Importance
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PRACTICE AND PROCEDURE - Constitution of court - Panel of judges - Variation in

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PRACTICE AND PROCEDURE - Jurisdiction of court - Constitution of court – Where court not properly constituted - Effect on proceedings.

PRACTICE AND PROCEDURE-Jurisdiction of court - Irregularity in adjudication – Distinction between.

PRACTICE AND PROCEDURE - Legal Practitioners Disciplinary Committee – Proceedings of - Application of Evidence Act thereto.

PRACTICE AND PROCEDURE - Legal Practitioners Disciplinary Committee – Proceedings of - Status of petitioner - Whether presence thereof required – Evidence tendered on behalf of absent petitioner - Nature of - How treated.

PRACTICE AND PROCEDURE - Proceedings of court - Where court differently constituted during the hearing of case - Effect on proceedings of court.

WORDS AND PHRASES - Fair hearing - Attributes of.

WORDS AND PHRASES - Jurisdiction of court Irregularity in adjudication – Distinction Between.

Issues:

1. Whether the decisions/directions of the Legal Practitioners Disciplinary Committee could be sustained when the petition against the appellant to the 2nd respondent was not investigated by an investigative panel before being referred to the 1st respondent.
2. Having regard to the constitution/composition of the Legal Practitioners Disciplinary Committee, whether its decisions/directions dated 6th May 2014

were not totally in breach of the appellant's right to fair hearing and all together null and void.

3. Whether the decisions/directions of the Legal Practitioners Disciplinary Committee were supported by credible and admissible evidence.

Facts:

On 23rd of June 2008, the petitioner, Mrs. Olatimbo Ayinde, the Managing Director/Chief Executive Officer of Tubbs Marine & Energy Ltd. retained the legal services of the appellant in respect of the purchase of property at No. 38 Raymond Njoku Street, Ikoyi, Lagos which the company sought to purchase. The appellant advised against the purchase but the petitioner went ahead to purchase the property. Thereafter, the petitioner paid the appellant to perfect the documents relating to the property after it was purchased through another legal practitioner.

On 2nd July 2008, the appellant raised a quote of N7,500,000.00 for obtaining the Governor's consent, registration of the property and professional fees which the petitioner agreed to pay. The money was paid by the petitioner to the appellant and on the 10th July 2008, the appellant acknowledged receipt of the money. In the course of processing the consent, there was a delay beyond the expected time for perfecting the documents. Apart from that, litigation ensued in respect of the property and the petitioner had to join as a party. The petitioner engaged the appellant in conjunction with her company lawyer to represent her in the suit.

The parties - petitioner and appellant - later fell out over the inability of the appellant to obtain the Governor's consent and problems encountered in the course of the litigation. The petitioner asked for return of the money paid to regularize the proper documentation of the property. The appellant insisted he was still owed money and the petitioner refused to pay back. Not satisfied with the claim of the appellant, the petitioner wrote a petition to the 2nd respondent, the Nigerian Bar Association (NBA), alleging professional misconduct. The Nigerian Bar Association sent the petition to the appellant for his reaction. He responded to

the petition. The NBA concluded that a prima facie case had been made against the appellant. The NBA drafted charges and referred the charges to the Legal Practitioners Disciplinary Committee.

The appellant was charged before the Legal Practitioners Disciplinary Committee on a three-count complaint by the Nigerian Bar Association (2nd respondent) for engaging in conduct unbecoming of a legal practitioner contrary to Rules 1, 14, 16, and 21 of the Rules of Professional Conduct for Legal Practitioners (RPC).

At the proceedings of the Legal Practitioners Disciplinary Committee, the 2nd respondent called Zibai Blessed Katung, the Assistant Secretary of the Legal Practitioners Disciplinary Committee (LPDC) of the Body of Benchers who adopted his witness statement on oath and tendered exhibits P1-P83 while the appellant adopted his own witness statement on oath and tendered exhibits R1 R14 in denying liability. The appellant's objection to the tendering of exhibits P1-P83 was overruled. The petitioner never participated in the proceedings of the Legal Practitioners Disciplinary Committee.

At the close of the trial, the Committee rendered its Directions and found the appellant liable in professional misconduct and directed that his name be struck off the Roll of Legal Practitioners in Nigeria, among other directions. The appellant was dissatisfied with the directions of the Legal Practitioners' Disciplinary Committee and he appealed to the Supreme Court.

Held (*Unanimously allowing the appeal*):

1. *On Procedure for treating complaint of infamous conduct against legal practitioner –*

Rule 3 of the Legal Practitioners Disciplinary Committee Rules provides for the procedure for lodging a complaint against a legal practitioner and the trial by the Legal Practitioners Disciplinary Committee. Rules 3 and 4 provide for the modalities for the submission of a complaint. The President of the Nigerian Bar Association and the Chairman of a state branch of the Nigerian Bar Association are among the persons permitted to receive complaints from an aggrieved person against a legal

practitioner. The complaint shall be caused to be investigated by the recipient itemized under rule 3(1) of the Rules. By rule 4, where the Nigerian Bar Association, after investigating the complaint by the aggrieved party against the legal practitioner finds that a *prima facie* case has been established against the said legal practitioner, it shall forward a report of such a case to the Secretary of the LPDC together with all the documents considered by the Nigerian Bar Association and a copy of the charges on which the Nigerian Bar Association is of the opinion that a *prima facie* case is shown to the Committee. There is no provision in the rules that the NBA must inform the legal practitioner how it went about its investigation, so long as he was given an opportunity to defend the accusations made against him, although best practices in this regard would be to have a formal report of the investigation on which the charges recommended to the LPDC were based served on the legal practitioner. [*Okike v. Legal Practitioners Disciplinary Committee (No. 2) (2005) 15 NWLR (Pt. 949) 471* referred to and followed.] (*Pp. 521, paras. E-H: 522, paras. E-H 523, para. D*)

2. *On Need for direction of Legal Practitioners Disciplinary Committee to be based on valid and credible evidence*

The Legal Practitioners Disciplinary Committee (LPDC) which exercises the important function of considering and determining cases of misconduct alleged against legal practitioners must only consider valid and credible evidence adduced before it upon which to base its decision to disbar a legal practitioner. *Nwalutu v. NBA (2019) 8 NWLR (Pt.1673) 174; L.P.D.C v. Fawehinmi (1985) 2 NWLR (Pt.7) 300* referred to.) (*P 534, paras. B-D*)

3. *On Application of Evidence Act to proceedings of Legal Practitioners Disciplinary Committee –*

Rule 10(2) of the Legal Practitioners Disciplinary Committee (LPDC) Rules states clearly that the Evidence Act shall apply as in civil proceedings. It cannot be the purport of Rule 4 of the LPDC Rules that section 11(1) of the Legal Practitioners Act allows bare petitions and answers, without more, to decide whether a prima facie case has been made against a legal practitioner, and to form or ground the basis of the determination of the case against the legal practitioner during his trial by the Legal Practitioner Disciplinary Committee (LPDC). (P 535, paras. E-F: G-H)

4. *On Status of complainant in proceedings before Legal Practitioners Disciplinary Committee and whether needs be present -*

Rule 5 of the Legal Practitioners Disciplinary Committee Rules states that a complainant (petitioner) is a party to the proceedings who can be represented personally or through counsel of his choice. In the instant case, the petitioner abstained from either choice. In the absence of an opportunity for the appellant to cross-examine the petitioner, the Legal Practitioners Disciplinary Committee could not arrive at a conclusion as to who was telling the truth in the instant case, the interest of justice was not served when the documents of an abandoned petition were used to consider the facts and the merits of the case to arrive at the Directions of the LPDC. (P. 536, paras. C-E)

5. *On Effect where petitioner fails to appear before Legal Practitioners Disciplinary Committee to adopt his petition –*

Where the person whose petition initiated proceedings against a legal practitioner not adopt and speak to his petition as a witness to prove the truth of its contents, his petition is documentary hearsay and inadmissible as credible evidence of its contents. In the instant case, the documents tendered by the staff of the 1st respondent had no probative value to prove the truth of their contents. It could only prove that indeed

a petition was written to the Nigerian Bar Association (NBA). Without the petitioner adopting and speaking to the petition to prove the truth of its contents, it was documentary hearsay and inadmissible as credible evidence of its contents. The petition tendered by PW1 and admitted by the 1st respondent had absolutely no probative value in the circumstances of the instant case. (*P. 535, paras. F-G*)

6. *On Effect where petitioner fails to appear before Legal Practitioners Disciplinary Committee to adopt his petition -*

A determination of the credibility of a witness is almost sacred. How do you ascribe probative value to documents in the absence of an opportunity to judge its cogency, consistency with other evidence, or the credibility of an absent witness whose demeanor, and personality had not been subjected to the fire of cross examination? In the instant case, in the absence of an opportunity for the appellant to cross-examine the petitioner, it was difficult or impossible for the Legal Practitioners Disciplinary Committee to arrive at the conclusion of who was telling the truth. In the circumstances, the Directions of the Legal Practitioners Disciplinary Committee made in violation of the rules of fair hearing were a nullity and were accordingly set aside as void. (*P. 536, paras. B-D; E*) 509

7. *On Attributes of fair hearing –*

Fair hearing consists in the proper institution of litigation, and correct and consistent composition of the *judex* at all stages of the proceedings. (*P. 532, para D*)

8. *On Distinction between jurisdiction of court and irregularity in adjudication and effect of variation in composition of panel of Judges -*

There is a distinction between jurisdiction of a panel to hear a matter (in which case a proper quorum is a matter of jurisdiction extrinsic to the

adjudication) and the regularity of the adjudication which is intrinsic to it and goes to the soundness of the judgment and the propriety of a bench which had not heard all the evidence making a determination in respect of the issues in controversy. Irregularity in the variation of the judges on a panel amounts to a denial of fair hearing, a right to which is enshrined in the In the instant case, at all times during the proceedings of the 1st respondent the quorum required by law of the members of the committee pursuant to item No.1, 2nd Schedule of the Supplementary provision to the Disciplinary Committee Rules were met and the Chairman was present throughout the proceedings. However, the directions agreed to by several members who were not present during and/or throughout the proceedings which were written by the Chairman of the LPDC did not meet with the basic requirement of fair hearing as entrenched in the Constitution. [*Adeighe v. Kusimo* (1965) NMLR 284; *Ogiamien v. Ogiamien* (1967) SCNLR 311; *Ndukwe v. L.P.D.C.* (2007) 5 NWLR (Pt. 1026) 1; *Sokoto State Govt. v. Kamdex (Nig.) Ltd* (2007) 7 NWLR (PL1034) 466 referred to.] (Pp. 528-529, paras. F-C)

9. *On Effect on proceedings where court differently constituted during hearing of case –*

Where a court is not properly constituted to ensure its full awareness and impartiality in that the court was differently constituted during the hearing of a case or on various occasions when it sat, or where one member did not hear the whole evidence, or a member had an interest in the matter, the effect on the proceedings would be to render the proceedings null and void. [*Egba N.A. v. Adeyanju* (1936) 13 NLR 77; *Runka v. Katsina N.A.* (1950) 13 WACA 98; *Adeigbe v. Kusimo* (1965) NMLR 284 referred to. (P. 527, paras. F-H)

10. *On Effect on proceedings where court differently constituted during hearing of case –*

Where there is variation of the Judges on a panel, it affects the proper constitution of the panel to sit and so adversely affects the court's jurisdiction and the trial would be a nullity. The procedure adopted during such a sitting is not merely unsatisfactory but unconstitutional. It is not open for any other person or authority who did not hear the whole case to participate in rendering a decision. A person or authority cannot be substituted or appear in addition open to deliver a ruling, direction or judgment if that person or authority did not participate in hearing the facts or arguments that led to the conclusion. This will breed injustice and gross miscarriage of justice is a natural consequence thereof. *Nwalutu v. N.B.A.* (2019) 8 NWLR (PL.1673) 174; *Kalejaiye LPD.C.* (2019) 8 NWLR (PL.1674) 365; *Wike v. Peterside* (2016) 7 NWLR (Pt.1512) 452; *Adeleke v. INEC* (2020) 11 NWLR (P1.1734) 17; *U.B.W.A. v. Tiv Traditional Council* (2004) 11 NWLR (PL884) 427 referred to.] (P. 529, paras. C-D, E-F)

11. *On Status of Legal Practitioners Disciplinary Committee and need for it to observe rules of natural justice and fair hearing -*

The Legal Practitioners Disciplinary Committee is a quasi-judicial body and not merely an administrative body. It must conduct its proceedings in accordance with the rules of natural justice and fair hearing and not in a cavalier and haphazard manner but with due diligence attached to an issue that affects the life and livelihood of a legal practitioner. At every point, every effort should be made to obey the golden rules of fair hearing in the course of any judicial or quasi-judicial proceedings. In the instant case, the charges formulated or drafted by the 2nd respondent for the trial of the appellant by the 1st respondent were quasi criminal in nature. It would be the very antithesis of justice to agree to the suggestion that a quasi-judicial body like the LPDC should not obey the rules of fair hearing. [*Gwarzo v. COP* (2014) LPELR-23470; *Ihekwoaba v. State* (2004)

15 NWLR (P1.896) 296 referred to.] (Pp. 530, paras C-D: 531. paras. A-B)

12. *On Status of Legal Practitioners Disciplinary Committee and need for certainty and consistency in composition of -*

The Legal Practitioners Disciplinary Committee (LPDC) is not a 'Star Chamber' or 'kangaroo court' doing wishy-washy justice. There must be certainty in the composition and consistency of its panel. The moral force of its directions rests on the caliber of the people who took the final decision to deprive a legal practitioner of his means of livelihood. The LPDC is not an appellate body but an adjudicator of first instance, all the members who delivered the directions must have participated in the full trial after utilizing the opportunity of seeing the demeanor of witnesses, etc. In the instant case, the directions agreed to by several members who were not present during and/or throughout the proceedings which were written by the Chairman of the LPDC did not meet with the basic requirement of fair hearing as entrenched in the Constitution. [Nwalutu v. N.B.A. (2019) 8 NWLR (PL1673) 174 referred to.] (Pp. 530, paras. D-E, 531, paras B-D)

13. *On Effect on proceedings where LPDC differently constituted during hearing of case –*

The composition of the Legal Practitioners Disciplinary Committee is intrinsic to the fulfillment of the requirements of section 36 of the Constitution that guarantees fair hearing to the accused. Where the panel is constituted in such a way that it affects a person's right to fair hearing, whatever decision is reached by such a panel will result in a nullity. In the exercise of its disciplinary authority over erring legal practitioners, the Legal Practitioners Disciplinary Committee must observe the rules of natural justice. A person who did not take part when witnesses were called by the complainant and the defence cannot be in a

position to decide who has told the truth from the person who was lying. Thus, where the panel which sat and heard the complaint against the erring legal practitioner is different from the panel that found the appellant guilty of infamous conduct, this will render the proceedings and decision reached a nullity. This is because the rules of natural justice relating to fair hearing have been breached. There had been a breach of the appellant's right to fair hearing in the instant case. [*Nwalutu v. N.B.A.* (2019) 8 NWLR (Pt.1673) 174; *Kalejaiye v. LPDC* (2019) 8 NWLR (Pt.1674) 365; *L.P.D.C. v. Fawehinmi* (1985) 2 NWLR (Pt. 7) 300 referred to.] (P 538, paras D-H)

14. *On When to disqualify President of Nigerian Bar Association as Chairman of Legal Practitioners Disciplinary Committee –*

For an application requesting the President of the Nigerian Bar Association (NBA) to disqualify himself as the Chairman of the Legal Practitioner Disciplinary Committee (LPDC) to succeed, the Chairman must have played a role in the investigation of the complaint. The Legal Practitioners Disciplinary Committee Rules and the Legal Practitioners Act vest the powers to communicate or deal with issues of discipline on the General Secretary. That duty cannot by extension be extended to any other member or official of the NBA. The roles to be played by members of the NBA and the Body of Benchers (from which body members of the LPDC are taken) are quite different. In the circumstances of the instant case, there had not been an invidious usurpation of roles to lead to the unavoidable conclusion that there would be likelihood of bias by the Chairman in the proceedings to warrant his exclusion therefrom. (Pp. 531, paras. E-G: 532, paras. B-C)

15. *On Determination of allegation of likelihood of bias –*

In matters where likelihood of bias is alleged, the disqualifying factors are:

- (a) proven foreknowledge of the facts of the case; and
- (b) pecuniary interest in the matter.

In the instant case, the appellant was not able to prove either, ground. His objection was grossly misconceived, and it was accordingly dismissed. (Pp. 531-532, paras. H-A)

16. NOTABLE PRONOUNCEMENT:

On Need to apply rules of evidence in proceedings of Legal Practitioners Disciplinary Committee –

Per OGUNWUMIJU, J.S.C. at page 536, paras. A-B:

“My Lords, I understand the need to enforce discipline at the Bar and everyone would be on board to ensure that we have a credible Bar that has the confidence of litigants. However, throwing away all basic rules of evidence to achieve this end cannot augur well for the Legal profession. It is tantamount to throwing the baby away with the bath water,”

Nigerian Cases Referred to in the Judgment:

A.C.B. Ltd. v. Apugo (2015) LPELR
Adeigbe v. Kusimo (1965) NMLR 284
Adeleke v. I.N.E.C. (2020) 11 NWLR (Pt.1734) 17
Andrew v. I.N.E.C. (2018) 9 NWLR (Pt. 1625) 507
Ardo v. Nyako (2014) 10 NWLR (Pt. 1416) 591
Atolagbe v. Shorun (1985) 1 NWLR (Pt. 2) 360
Dickson v. Sylva (2017) 8 NWLR (Pt. 1567) 167
Egba N.A. v. Adeyanju (1936) 13 NLR 77
Elabanjo v. Tijani (1986) 5 NWLR (Pt. 46) 952
F.R.N v. Wabara (2013) 5 (Pt. 1347) 321
Gwarzo v. C.O.P. (2014) LPELR-23470
Ihekwoaba v. State (2004) 15 NWLR (Pt.896) 296

Kalejaiye v L.P.D.C. (2019) 8 NWLR (Pt. 1674) 365
Kayili v. Yilbuk (2015) 7 NWLR (Pt. 1457) 26
L.P.D.C. v. Fawehinmi (1985) 2 NWLR (Pt. 7) 300
M.P.P.P. v. I.N.E.C. (2015) 18 NWLR (Pt. 1495) 207
Magaji v. Nigerian Army (2008) 8 NWLR (Pt.1089) 338
Nasir v. C.S.C., Kano State (2010) 6 NWLR (Pt. 1190) 253
Ndukwe v. L.P.D.C. (2007) 5 (Pt. 1026) 1
Nwalutu v. N.B.A. (2019) 8 NWLR (Pt. 1673) 174
Ogiamien v. Ogiamien (1967) SCNLR 311
Ojigho v. N.B.A. (2019) 9 NWLR (Pt. 1678) 399
Okike v. L.P.D.C. (2005) 15 NWLR (Pt. 949) 471
Oleksandr v. Lonestar Drilling Co. (2015) 9 NWLR (Pt. 1464) 337
Orji v. State (2019) 13 NWLR (Pt. 1698) 93
Osuji v. Ogoalaji (2020) 9 NWLR (Pt.1728) 134
Runka v. Kastina N.A. (1950) 13 WACA 98
Saraki v. F.R.N. (2016) 3 NWLR (Pt. 1500) 531
Sokoto State Govt. v. Kamdex (Nig.) Ltd. (2007) 7 NWLR (Pt. 1034) 466
U.B.W.A v. Tiv Traditional Council (2004) 11 NWLR (Pt. 884) 427
Wike v. Peterside (2016) 7 NWLR (PL.1512)

Foreign Cases Referred to in the Judgment:

Damoah v. Taibil (1947) 12 WACA 167
Orwica v. Kwaseko (1937) 3 WACA 230
Tawiah III v. Ewudzi (1936) 3 WACA 52

Nigerian Statutes Referred to in the Judgment:

Constitution of the Federal Republic of Nigeria, S. 36
Evidence Act, Ss. 39, 175(1) & (2)
Interpretation Act, S.28
Legal Practitioners Act, Ss. 10 and 11(1)(2)

Legal Practitioners Disciplinary Committee Rules, 2007, R. 3(1) & (4)
Rules of Professional Conduct for Legal Practitioners 2007, Rr. 1, 5, 10(2), 11(2),
14(1), 16(1), and 21(1)(a)
Supreme Court Act, S. 22

Nigerian Rules of Court Referred to in the Judgment:

Supreme Court Rules, O. 6 r. 5(4)

Appeal:

This was an appeal against the decision of the Legal Practitioners' Disciplinary Committee rendered on 6th May 2014, which found the appellant guilty of infamous conduct in the legal profession and directed the Chief Registrar of the Supreme Court to strike off his name from the Roll of Legal Practitioners. The Supreme Court, in a unanimous decision, allowed the appeal.

Editor's Note:

The decision of the Legal Practitioners Disciplinary Committee herein set aside by the Supreme Court is reported in **(2015) 15 NWLR (Pt. 1483) 585**.

History of the Case:

Supreme Court:

Names of Justices that sat on the appeal: Olabode Rhodes Vivour, J.S.C. (*Presided*); Musa Dattijo Muhammad, J.S.C.; Helen Moronkeji Ogunwumiju, J.S.C. (*Read the Leading Judgment*); Abdu Aboki, J.S.C.; Emmanuel Akomaye Agim, J.S.C.

Appeal No.: SC.536/2015

Date of Judgment: Friday, 5 February 2021

Names of Counsel: Adamson Adebora (*with him*, Teslim Dauda) - *for the Appellant*
Adedayo Adedeji (*with him*, Abdulkareem Audu and M.C Ezeobidi)- *for the 1st Respondent*

Anozie Obi (*with him*. Enwezor Nonye) - *for the 2nd Respondent*

Legal Practitioners Disciplinary Committee:

Names of Members of the Panel: Joseph Bodunrin Daudu, SAN (Chairman) (*Read the Direction of the Committee*); Zainab Adamu Bulkachuwa, Ag. PCA; Paul Adamu Galinje PJCA.; A.S. Dahiru, C.J., Sokoto State: Kulu Aliyu, C.J., Zamfara State; Yusuf O. Ali, SAN; Emmanuel C. Ukala SAN; R.A. Lawal Rabana SAN; Anthony Ani, SAN, Attorney-General Enugu State and Tijjani Inuwa-Dutse, Esq.

Complaint No.: BB/LPDC/117

Date of Direction: Tuesday, 6th May 2014

Names of Counsel: Afam Osigwe (*with him*, W. A Attaghua and J. E. Usman) - *for the Complainant*

Mr. Tunde Nordi (*with him*, Charles Awunor) - *for the Respondent*

Counsel:

Adamson Adeboro (*with him*, Teslim Dauda) - *for the Appellant*

Adedayo Adedeji (*with him*, Abdulkareem Audu and M.C. Ezeobidi)- *for the 1st Respondent*

Anozie Obi (*with him*, Enwezor Nonye)- *for the 2nd Respondent*

OGUNWUMIJU, J.S.C. (Delivering the Leading Judgment): This appeal against the directions of the 1st respondent delivered day of May, 2014 Coram: J.B. Daudu SAN (Chairman), Hon. Ace Z.A. Bulkachuwa Ag. PCA (as she was then was). Hon. Justice PA. Galinje JCA: (as he then was) Hon Justice A.S. Dahiru, Sokoto, Hon. Justice Kulu Aliju, C.J. Zamfara; Yusuf Ali SAN; Emmanuel C. Ukala SAN; R. A. Lawal Rabana SAN; Anthony ASAN, Attorney-General Enugu State and Tijjani Inuwa-Dutse wherein the appellant was found guilty of infamous conduct as a legal practitioner contrary to Rules 1, 14, 16 & 21(1)(a) of the Legal Practitioners Act, as amended. The 1st respondent also directed the appellant to refund the disputed amount of money, publication of the directions in the newspapers was

also ordered. The 1st respondent also ordered that the name of the appellant be ruck out from the Roll of Legal Practitioners. Being dissatisfied with the directions of the 1st respondent, the appellant has appealed this court via an amended notice filed on the 6th of August 2020 wherein he prays for orders allowing this appeal, setting aside the directions of the Committee, acquitting him and restoring his name in the Roll of Legal Practitioners of Nigeria.

The facts leading to this appeal are briefly as follows:

The petitioner, Mrs. Olatimbo Ayinde, the Managing Director/ Chief Executive Officer of Tubbs Marine & Energy Ltd on the 23rd of June 2008 sought the legal services of the appellant in respect of the purchase of property at No. 38 Raymond Njoku Street, Ikoyi, Lagos which the company sought to purchase. The appellant advised against the purchase but the petitioner went ahead to purchase the property. Thereafter, the petitioner paid the appellant to perfect the documents relating to the property after it was purchased through another legal practitioner.

On 2nd July 2008, the appellant brought a quote of N7,500,000.00 for obtaining Governor's consent, registration of the property and professional fees which the petitioner agreed to pay. The money was paid by the petitioner to the appellant and on the 10th July, 2008, the appellant acknowledged receipt of the money. In the course of processing the consent, there was a delay beyond the expected time for perfecting the documents. Apart from that, litigation ensued in respect of the property and the petitioner had to join as a party. The petitioner engaged the appellant in conjunction with her company lawyer to represent her in the suit.

The parties-petitioner and appellant fell out at this point over the inability of the appellant to obtain Governor's consent and problems encountered in the course of the litigation. The petitioner asked for return of the money paid to regularize the proper documentation of the property. The appellant insisted he was still owed money and the petitioner refused to pay. Not satisfied with the claim of the appellant, the petitioner wrote a petition to the 2nd respondent, the Nigerian Bar Association (NBA) alleging professional misconduct. The Nigerian Bar Association sent the petition for appellant's comments, he responded to the petition. The NBA concluded that a prima facie case had been made against the appellant. The NBA drafted charges and referred the charges to the Legal Practitioners

Disciplinary Committee. The appellant was charged before the Legal Practitioners Disciplinary Committee on a three-count complaint by the Nigerian Bar Association (2nd respondent) for engaging in conduct unbecoming of a legal practitioner contrary to Rules 1, 14, 16, and 21 of the Rules of Professional Conduct for Legal Practitioners (RPC).

The three-count complaint against the appellant are as follows:

- i. That you Gabriel Gbenoba Esq, Legal Practitioner engaged as a solicitor by Ayinde Olatimbo, Managing Director/Chief Executive of Tubbs Marine and Energy Ltd, paid you the sum of N7,500,000.00 as fees to obtained (sic) Governor consent and Registration of your client's property on the 10th July, 2008, but you failed to execute the said instruction of obtaining Governor's consent and perfection of the property in your capacity as legal practitioner as agreed, converted the money to your personal use, causing your client financial and good will loss and thereby conducted yourself in an infamous professional manner in breach of Rules 1, 14(1) and 16(1) of the Legal Practitioner Act, Cap. 207 Now legal Practitioners Disciplinary Committee Rules, 2007 (sic).
- ii. That you Gabriel Gbenoba Esq Legal Practitioner engaged as a solicitor by Ayinde Olatimbo, Managing Director, Tubbs Marine and Energy Ltd to obtain Governor's (sic) consent and Registration on behalf of your client sometimes in 2008 but abandoned or withdrew from instruction of your client without good cause having been paid your fees, a conduct which is unbecoming of a Legal Practitioner in breach of Rules 1 and 2(1) of the Legal Practitioner Act now Rules of Professional Conduct for Legal Practitioner 2007. (sic)
- iii. That you Gabriel Gbenoba Esq Legal Practitioner engaged as a solicitor by Ayinde Olatimbo, Managing Director/Chief Executive of Tubbs Marine and Energy Ltd, sometimes in 2008 received the sum of N7, 500,000.00 from your client, failed and neglected to account for the money or refund, thereby conducted yourself in an infamous professional manner in breach of Rules 1,

14 and 16(1) of the Legal Practitioner Act now Rule of Professional Conduct for Legal Practitioner 2007.

The 2nd respondent called Zibai Blessed Katung, the Assistant Secretary of the Legal Practitioners Disciplinary Committee (LPDC), Body of Benchers who adopted his witness statement on oath and tendered exhibits P1-P83 while the appellant adopted his own witness statement on oath and tendered exhibits R1 - R14 in denying liability.

The Committee on the 6th May 2014 rendered its directions and found that the appellant had engaged in acts of professional misconduct and ordered his name to be struck out of the Roll of Legal Practitioners in Nigeria. Hence this appeal.

I have read the record, the briefs and the issues distilled for F determination by all counsel in this appeal. I am of the view that the issues as crystalized by learned appellant's counsel are concise and are sufficient to determine the just resolution of this appeal. They are set out below:

1. Whether the decision/directions of the committee can be sustained when the petition of Mrs. Olatimbo Ayinde against the appellant to the 2nd respondent was without prior investigation by an investigative panel before reference to the 1st respondent (Flowing from ground 1).
2. Having regard to the constitution/composition of the Committee, whether its decisions/directions dated 6th May, 2014 are not totally in breach of the appellant's right to fair hearing, and all together, null and void? (Flowing from grounds 2 and 4)
3. Whether the decisions/directions of the Committee are supported by credible and admissible evidence? (Flowing from ground 3, 5 and 6).

Issue One

Learned appellant's counsel Mr. Adamson Adebora Esq argued that where a statute provides for the manner in doing an act, such act must be done in accordance with the stipulation of the statute. Counsel cited *F.R.N. v. Senator Adolphus N. Wabara & Ors.* (2013) LPELR-20083 (SC) at Pg.17-18, paras. F-A, (2013) 5 (PL. 1347) 321.

Appellant's counsel submitted that the 2nd respondent did not set up any panel to investigate the complaint of professional misconduct against the appellant before forwarding the case to the 1 respondent for trial. This is a clear violation of the procedure laid down.

Counsel contended that whatever was done by the 2nd respondent in contravention or disobedience of the law or rules amount to a nullity and urged this court to so hold. Counsel cited *Mega Progressive Peoples Party v. INEC & Ors.* (2015) LPELR 25706(SC) at Pg.29, para. B, (2015) 18 NWLR (Pt. 1495) 207.

Counsel argued that it is when the NBA had previously investigated the case against a legal practitioner that it will refer the findings by way of a report to the LPDC indicating that a prima facie case has been made out against the legal practitioner and charges are then drafted to support the case and presented to the LPDC. Counsel insisted that this procedure was not followed in this case, as the Nigeria Bar Association did not investigate the petition. Counsel urged my Lords to hold that the 2nd respondent having flouted the Law on the procedure to be adopted, which must be one pursuant to S.10 of the LPA and LPDC Rules in bringing the complaint against the appellant, the proceedings of the Committee G are a nullity and should be set aside.

In reply, learned 2nd respondent's counsel argued that this complaint is baseless as the appellant was served with a copy of the petition by the 2nd respondent and he responded to it. Counsel argued that the NBA Investigation Committee is an internal organ of the NBA. The NBA having considered the petition against the appellant and his response thereof, was satisfied that a prima facie case of professional misconduct was made out against the appellant before referring the matter to the LPDC.

Counsel argued that the facts are clear. By exhibit P1 dated 4th day of December, 2010 contained at pages 1 & 2 of the record, the respondent through its General Secretary informed the LPDC the 1st respondent herein) that:

“By reason of the following, the NBA disciplinary Committee found that the legal practitioner was in breach of the rules 1, 21(4) & 23(2) of the Rules of Professional Conduct for Legal Practitioners, 2007 in the Legal Profession”

Counsel argued that *Charles Okike v. L.P.D.C.* (No.2) (2005) 7SC (Pt.III) Pg.75, (2005) 15 NWLR (Pt. 949) 471 has settled the issue that there is no specific mode of investigating any petition so long as it was investigated, it need not follow a certain format.

I have scoured the 1st respondent's brief and there is no response for this particular line of argument. I suppose because it was not an attack on the 1st respondent.

Opinion

The crux of this issue is whether there was investigation by the NBA to find out if a *prima facie* case was made out before the matter was referred to the committee for trial. My Lords, Rule 3 of the Legal Practitioners Disciplinary Committee Rules provides for the procedure for lodging complaints against a legal practitioner and the trial by the Legal Practitioners Disciplinary Committee. Rules 3 and 4 of the Legal Practitioners (Disciplinary Committee) Rules provides for the modalities for the submission of complaint. The President of the Nigerian Bar Association or the chairman of a state branch of the Nigerian Bar Association are among the persons permitted to receive complaints from an aggrieved person against a legal practitioner. The complaint shall be caused to be investigated by the recipient itemized under rule 3(1) of the Rules.

By rule 4, where the Nigerian Bar Association, after investigating the complaint by the aggrieved party against the legal practitioner finds that a *prima facie* case has been established against the said legal practitioner, the Nigerian Bar Association shall forward a report of such a case to the Secretary of the LPDC together with all the documents considered by the Nigerian Bar Association and a copy of the charges on which the Nigerian Bar Association is of the opinion that a *prima facie* case is shown to the Committee.

My Lords, whether or not the 2nd respondent investigated the petition is a factual issue. It is clear from the record that the 2nd respondent received a petition from the petitioner, one Mrs. Ayinde Olatimbo vide a letter dated 26th September, 2008. The petition is contained on pages 13-14 of the record of appeal. The Secretary General of the Nigerian Bar Association (the 2nd respondent herein) forwarded the complaint of professional misconduct to the appellant. The complaint forwarded to the appellant by the 2nd respondent with the attached document are contained on pages 29-36 of the record of appeal.

The appellant responded to the petition vide his response dated 24th day of October, 2008. The appellant's responses to the petition against him with the bundle of documents attached to it are contained on pages 37-85 of the record of appeal.

The 2nd respondent ostensibly carried out its investigation on the petition and found that a *prima facie* case was made against the appellant.

The 2nd respondent then forwarded a formal complaint with the accompanying documents to the LPDC for the trial of the appellant for professional misconduct exhibit P1

& 2 at pages 1 & 2 of the record. Exhibit P3 & 4 at pages 3 & 4 of the record are the charges filed against the appellant and exhibit P6-P37 are the documents filed in support of the petition, exhibit P37-P105 are the appellant's response to the petition, exhibits P3-105 constituted the documents considered by the 2nd respondent before forwarding the complaints to the 1st respondent.

My Lords, I agree with learned 2nd respondent's counsel that the point in issue here had been settled by this court in the lead judgment of Musdapher JSC in *Charles Okike v. Legal Practitioners Disciplinary Committee* (No.2) (2005) 7 SC (Pt. III) Pg.75, (2005) 15 NWLR (Pt. 949) 471 where his Lordship stated *inter alia* as follows:

“There is no provision in the rules that the NBA must inform the appellant how it went about its investigation. so long as the appellant was given an opportunity to defend the accusations made against him.”

The most important argument by His Lordship on this point is set out below:

“In any event, what is on, appeal before this court is the decision of the respondent and not the decision of the NBA or its Committee. Whatever procedural lapses occurred before the NBA or its Committee is not an issue that this court can competently adjudicate upon.”

In that case, this court also held that the appellant having a complained about the process adopted by the NBA in its investigation during his trial at the LPDC, it was too late on appeal e him to do so. I have no reason to depart from that stand of this court on that point. Even though the appellant's complaint is about a necessary preliminary step, in so far as the rules of natural justice of communicating the complaint to him and allowing him reasonable time to react to the complaint had not been breached, the fact that here was no song and dance as it were about the investigation carried out by the NBA cannot form the basis of a serious complaint that weald warrant a setting aside the ultimate Directions of the 1st respondent. I however concede that best practices in this regard would be to have a formal report of the investigation on which the charges recommended to the LPDC are based served on the legal practitioner. This issue is resolved against the appellant.

Issue Two

Learned appellant's counsel Mr. Adamson Adebora Esq, argued but the composition of the Committee fluctuated throughout the proceedings and rendering of the Directions.

Counsel argued that the plea was taken on 6/5/2013 with only seven panelists present while on 6/5/2014, when the Directions was rendered 10 panelists were present Counsel also drew our attention to the fact that when the two main witnesses that is P.W.1 and the appellant gave evidence; the panelists were not the same. Counsel argued that it is clear from the Record that the membership of the Committee was not similar throughout the proceeding particularly on important dates in the proceeding to wit: the taking of plea, objections, evidence and giving of directions. Counsel submitted that a Court/Tribunal Administrative body is incompetent if the composition of its membership is irregular from the beginning of hearing to judgment. A court or an adjudicatory body will only be competent with the presence of certain fundamentals and where these fundamentals are lacking, the court or adjudicatory body will lack jurisdiction and where it has rendered judgment without the vires its judgment/ Decision Directions will be a nullity.

Counsel cited in *Osuji v. Ogoalaji* (2020) 9 NWLR (PL.1728) 134 p.144, paras. D-G, *Eke Umazi Ndukwe v. L.P.D.C. & Anor* (2007) LPELR -1978 (SC) at p.62, paras. A-B, (2007) 5 NWLR (Pt. 1026) 1.

Counsel submitted that the problem in the variation in the composition of a committee or court or tribunal or Panel will set in where some of the members of the court or committee as in this case who delivered the judgment or Decision or opinion or Directions did not participate fully in the proceedings from the beginning till when judgment or Decision or Directions was delivered. Counsel argued that it was erroneous in law for the members of the Committee who did not participate fully in the proceedings/trial leading to the directions of the committee to have been called upon to determine the fate of the appellant without hearing him and the other witness he proposed to call as witness in the matter.

Counsel argued that many members of the Committee who did not hear any witness or participate at all stages of the proceedings surfaced to deliver the Directions of the committee whereas the Committee is one of first instance charged with evaluating and ascribing probative value to the evidence of witnesses after watching the demeanor of such witnesses before coming to a decision. Counsel also cited *Obiajulu Nwalutu v. N.B.A. & Anor*, (2019) LPELR-46916 SC, (2019) 8 NWLR (Pt. 1673) 174; *Gwarzo v. C.O.P.* (2014)

LPELR-23470 (SC) 22; *Thekwoaba v. The State* (2004) 15 NWLR (PL.896) 296 at 309-2004.

Counsel also submitted that Mr. J. B. Daudu SAN's participation as head of both the 1st & 2nd respondents had led to denial of the appellant his right to fair hearing in the circumstances. Counsel argued that it was wrong for Mr. J.B Daudu SAN to act as the complainant, prosecutor and judge in the same proceedings. Counsel pointed out that it is an undisputed fact that the petition leading to the trial of the appellant was addressed to the chairman (President) of the NBA. At the material time in 2008, Mr. J.B. Daudu SAN was the President of the 2nd respondent. Mr. J.B Daudu also presided as chairman of the 1st respondent throughout the trial of the appellant. Counsel argued that even though a formal objection was raised by the appellant against the participation of Mr. J.B. Daudu on the grounds that his participation would amount to a breach of the rules of natural justice, the formal objection of the appellant was overruled. Counsel submitted that this led to denial of fair hearing. Counsel cited *L.P.D.C. v. Fawehinmi* (1985) 2 NWLR *Ghenoba v. L.P.D.C.* (Pt.7) Pg. 300 at Pg.383-384, *Kalejaiye v. L.P.D.C.* (2019) 8 NWLR 28217&NWER (Pt.1674) Pg.365 at Pg. 382

Counsel to the 1st respondent, Mr. Adedayo Adedeji Esq. and 2nd respondent's counsel Mr. Anozie Obinnaya Obi Esq, both argued that the variation in the members of the Committee at various sittings did not affect the legality of the proceedings of the 1st respondent. Both counsel further submitted that the fundamental question is whether the committee was constituted at the material time in accordance with extant laws. Counsel reminded the court that the quorum of the 1st respondent at any sitting shall be five pursuant to S.11(2) of item 1 of the Supplementary Provision and 5.11(2) of the Legal Practitioners Act. Counsel submitted that a mere variation in the composition of the panel which does not affect the judgment or decision of the panel cannot render the judgment a nullity. Counsel argued that the appellant did not state how the variation of members at the sittings specifically affected his right to fair hearing. Counsel relied on *Ndukwe v. L.P.D.C. & Anor.* (2007) LPELR-1978 (SC), (2007) 5 NWLR (Pt. 1026) 1. Counsel argued that from the record, there was always a full quorum of persons present at each hearing dates which persons belong to the class of persons provided in S. 11(2) of the LPA.

Both counsel further submitted that S.28 of the Interpretation Act makes it only mandatory for the Chairman and one other member to be present throughout the proceedings. Learned counsel argued that from the records of this appeal, the chairman signed and delivered the directions with four other consistent members of the committee. Counsel insisted that from the record of appeal, no miscarriage of justice is apparent on the face of the record, neither has the appellant demonstrated any miscarriage of justice resulting from the variation in the composition of the panel. Counsel Gargued that the following distinguished members Yusuf Ali SAN, Emmanuel E. Ukala SAN, R.A. Rabana SAN, Tijjani Inuwa-Dutse with the chairman were all present at the respective sittings from taking of plea to the date the direction was given. Counsel cited *Magaji v. The Nigerian Army* (2008) 8 NWLR (PL.1089) pg.338. Counsel insisted that the 1st respondent was on firm ground when it dismissed the objection of the appellant for the chairman of the 1st respondent to step down since it was found by the 1st respondent when the matter was raised that Mr. J.B. Daudu SAN was not a member of the 2nd respondent's Disciplinary Committee that considered the matter before reference to the 1st respondent.

Learned 1st respondent's counsel urged this court to revisit and review the decisions of this court in *Kalejaiye v. L.P.D.C. (supra)* and *Nwaldu v. N.B.A. (supra)* with a view to reverse them, pursuant to Or. 61. 5(4) of the Supreme Court Rules. Counsel argued that if this court had considered S. 28 of the Interpretation Act it would, have come to a different decision in both cases. Counsel cited *Saraki v. FRN* (2016) LPELR-40013(13), (2016) 3 NWLR (Pt. 1500) 531. Counsel argued that the chairman and several members were consistently present during the trial until the directions was rendered thus making the appellant's contention of lack of fair hearing unfounded in fact and Law. Council Cited *Dr. Umar Ardo v. Admiral Murtala Nyako & Ors.* (2014) LPELR-22878(SC), (2014) 10 NWLR (Pt. 1416) 591.

Counsel for the 1st respondent argued that the requirements of a fair hearing under S.3 (1) of the Legal Practitioners Disciplinary Committee Rules were complied with as the chairman and at least 3 members were consistently present throughout the proceedings. Counsel urged that in the event that this court is not persuaded by the 1st respondent's argument on this issue, the court still has power to remit the matter back to the 1st respondent to be heard on the merit before a properly constituted panel pursuant to S. 22 of the Supreme

Court Act so that the appellant who had committed professional misconduct would not be allowed to go scot free. Counsel commended to us *A.C.B. Ltd. v. Apugo* (2015) LPELR-24857 (SC). *Thomas Orji v. The State* (2019) LPELR 47612(SC), (2019) 13 NWLR (PL. 1698) 93; *Anthony Ojigho v. N.B.A. & Anor.* (2019) LPELR-46895 (SC), (2019) 9 NWLR (Pt. 1678) 399.

Opinion

My Lords, in my humble view, the points raised in this issue are the ones on which this appeal turns.

My Lords, there is a main issue and a sub issue. There is the issue of variation in the panel of the members of the committee from the taking of the plea to giving directions. There is the sub H issue of the objection of the appellant to the participation of the chairman in the proceedings at the LPDC since he had participated earlier in concluding at the NBA that a *prima facie* case had been established against the appellant. These are matters of substantive law for this court to determine in respect of whether any of the rules of natural justice particularly the one entrenching the rule of fair hearing had not been violated by the LPDC.

There is no doubt that at any point in time during the proceedings of the 1st respondent the quorum required by law of the members of the committee pursuant to item No.1, 2 schedule of the supplementary provision to the Disciplinary Committee Rules were met and the Chairman was present throughout the proceedings. Learned 1st respondent's counsel urged this court to depart from the genre of recent authorities like *Kalejaiye v. N.B.A.* (supra); *Nwalutu v. N.B.A.* (supra) and *Adeleke v. I.N.E.C.* on the basis that these cases did not take into consideration the provisions of S. 28 of the Interpretation Act relating to how many members of a committee may form a quorum for the purpose of doing valid business by the committee.

My Lords, it appears to me that there is a misconception of the complaint and the issue by the respondents' counsel. The issue of proper quorum for business and the implication of a variation in the membership of panels in adjudication has been mixed up by the respondents. I have no doubt that the argument of the learned respondents' counsel on the proper quorum of the committee is unassailable given the facts on that score on record. That argument however does not answer the issue of variation in the membership of the committee who sat and gave the ultimate directions, which is the issue actually raised in this appeal.

The historical stand of the superior courts had always been that where a court is not properly constituted to ensure its full awareness and impartiality in that the court was differently constituted during the hearing of a case or on various occasions when they met, or where one member did not hear the whole evidence, or a member had an interest in the matter, the effect on the proceedings was to render them null and void. See *Egba N.A. v. Adeyanju* (1936) 13 NLR 77; *Tawiah III v. Ewudzi* (1936) 3 WACA 52, *Otwiwa v. Kwaseko* (1937) 3 WACA 230; *Damoah v. Taibil* (1947) 12 WACA 167, *Runka v. Kastina N.A.* (1950) 13 WACA. The previous position of the superior courts can be illuminated by the pronouncement in *Tawiah III* of Kingdom Hon. Chief Justice Nigeria sitting at the West African Court of Appeal with Betrides Hon. C.J. of the then Gold Coast (now Ghana); Webber Hon of Sierra Leone wherein His Lordship stated as follows:

“In the present case, it is clear that at least two of the tribunal members who gave judgment were not present throughout the proceedings, and did not hear all the evidence. This vitiates the whole trial, and in my opinion this court has no option but to declare the whole proceedings before the tribunal and the Provincial Commissioner's Court a nullity, and to direct that the case be heard *de novo* in the tribunal”

In the later case of *Adeigbe & Anor. v. Salami Kusimo & Ors* (1965) LPELR-25226 (SC) this issue was properly explained by Ademola, JSC (as he then was) as follows:

“The complaint against a hearing that was not always before the same bench does not pertain to any matter that goes to the jurisdiction of the court. It is at bottom a complaint that the *judgment cannot be satisfactory* on the ground that as the persons who gave it had not seen and heard all the witnesses, they could not appraise the evidence as a whole and decide the facts properly. Thus, it is a complaint on the soundness of the judgment itself, and not a complaint that is extrinsic to the adjudication, which is the test to apply when considering a submission on jurisdiction. We are therefore of the opinion that variations in the bench do not make the judgment a nullity: they may make it unsatisfactory, and it may have to be set aside for this reason, but whether

they do or not depends on the particular circumstances of the case.” Italics mine.

In *Adeigbe & Anor. v. Kusimo & Ors.* (supra) the point made by Ademola, JSC (as he then was) which appears in need of clarity is that both the Bench and the Bar were in confusion between jurisdiction of a panel to hear a matter (in which case a proper quorum is a matter of jurisdiction extrinsic to the adjudication) and the regularity of the adjudication which is intrinsic to it and goes to the soundness of the judgment and the propriety of a bench which had not heard all the evidence making a determination in respect of the issues in controversy.

My Lords from the ratio propounded by Ademola, JSC (as he then was) in *Adeigbe & Anor. v. Salami Kusimo* where the issue of jurisdiction in adjudication *vis-à-vis* irregularity in adjudication was explained and differentiated, a long line of cases emerged including *Obazee Ogiamien & Anor v. Obahon Ogiamien* (1967) LPELR RSC): (1967) SCNLR 311; *Ndukwe v. L.P.D.C. & Anor.* (2007) that such irregularity would not cause a case to be declared a nullity. While *Ndukwe v. LPDC* (supra) took a position in which I think the to in *Adeigbe v. Kusimo* was misunderstood, (even though this court found as a fact that there was no variation in the panel of Committee members), another appeal decided by this court around the same time *Sokoto State Government v. Kamdex (Nig.) Ltd.* (2007) LPELR-3093(SC), (2007) 7 NWLR (Pt. 1034) 466 took the earlier position of this court in declaring that the irregularity in the variation of the judges on a panel amounts to denial of fair hearing, a right to which is enshrined in the Constitution.

From that point onwards, this court shifted from the position that variation in a panel that determines a cause or matter is not fundamental and is a mere irregularity that would not go to the root of fair hearing to make the decision a nullity. In recent times, this court has whole heartedly flipped on the side of fair hearing on this issue to hold that where there is variation, it affects the proper constitution of a panel to sit and so adversely affects jurisdiction and the trial would be a nullity. This court now considers so a procedure adopted during the sitting not merely unsatisfactory but unconstitutional. It cannot but be so. It is not open for any other person or authority who did not hear the whole case to participate in rendering a decision. A person or authority cannot be substituted or appear in addition to deliver a ruling, directions or judgment if that person or authority did not participate in

hearing the facts or arguments that led to the conclusion. This will breed injustice and gross miscarriage of justice is a natural consequence thereof. How can there be “fair hearing” when there was no hearing at all by all the authorities or persons who delivered or agreed to the directions? This case is almost on all fours with *Nwalutu v. N.B.A.* (supra) where only the Chairman of the Committee, Mr. J.B. Daudu SAN and one other member, Tijjani Inuwa-Dutse were present throughout. This court held that the presence of one Mrs. Amina Dyeris-Sijuade who was present only on the day the directions was given, was sufficient to vitiate the proceedings and render it null and void. From 2007 onwards, a slew of authorities has emerged from this court re-affirming the previous position of the Law which include in recent times *Kalejaiye v. N.B.A.* supra; *Nwalutu v. N.B.A.* (supra), *Nyesom Wike v. Peterside & ors* (2016) LPELR-40036 (SC): (2016) 7 NWLR (Pt.1512) Pg.452 at Pg.504-505; *Adeleke v. INEC.* (2020) 11 NWLR (PL.1734) Pg.17; *UBWA. v. Tiv Traditional Council & Ors* (2004) 11 NWLR (Pt.884) Pg.427.

The main argument of learned 1st respondent's counsel in urging this court to review the position hitherto held in *Kalejaiye v. N.B.A. & Anor* and *Nwalutu v N.B.A. & Anor* etc is that we should espouse the position accepted by this court in *Ndukwe v. LPDC.* (supra) to the effect that the 1st respondent is not a court of law strictly speaking, but merely an administrative tribunal or body and that any irregularity or inconsistency in its composition should not affect its directions. My Lords, the charges formulated or drafted by the 2nd respondent for trial of the appellant by the 1st respondent are quasi criminal in nature. It is the very antithesis of justice to agree to the suggestion that a quasi-judicial body like the LPDC should not obey the rules of fair hearing. See *Gwarzo v. C.O.P* (2014) LPELR-23470 (SC) 22; *Ihekwoaba v. The State* (2004) 15 NWLR (PL.896) pg.296 at 309. The LPDC is not an appellate body but an adjudicator of first instance, all the members who delivered the directions must have participated in the full trial after utilizing the opportunity of seeing the demeanor of witnesses etc My Lord Eko, JSC put the position admirably in *Nwalutu v. N.B.A. & Anor* (2019) 8 NWLR (Pt.1673) Pg.174 at Pg.195, wherein his Lordship stated thus:

“It appears to me, and I so hold, that when an absent panelist relies on the colleague present when a witness (es) testified to render an opinion that such opinion is premised on hearsay evidence and it is perverse. A decision in the circumstance is nothing but travesty of justice. In such circumstance, also, it

cannot be said that the person tried by the LPDC had received fair trial. Fair hearing, as this court has consistently held, involves a fair trial and a fair trial of a case consists of the whole hearing. There is no difference between the two”

There is perhaps nothing more serious apart from deprivation of liberty than the deprivation of means of livelihood, which affects not only the party before the tribunal or court, but affects a whole generation of persons attached to that party. At every point, every effort should be made to obey the golden rules of fair hearing in the any judicial or quasi-judicial proceedings.

The LPDC as I said earlier is a quasi-judicial body and not administrative body. It must conduct its proceedings in accordance with the rules of natural justice and fair hearing and not in a cavalier and haphazard manner but with due diligence attached an issue that affects the life and livelihood of a legal practitioner. The directions agreed to by several members who were not present during and or throughout the proceedings which was written by the chairman of the LPDC did not meet with the basic requirement of fair hearing as entrenched in our constitutional jurisprudence.

The LPDC is not a star chamber or kangaroo court doing wishy washy justice. There must be certainty in the composition and consistency of its panel. The moral force of its directions rests on the caliber of the people who took the final decision to deprive a legal practitioner of his means of livelihood. The main leg of this issue is resolved in favour of the appellant.

The sub issue is the objection by the appellant during the trial so the participation of the chairman of the LPDC. At pg.140 of the record, is the ruling of the LPDC on this issue. It is set out below:

“On our part, the request that the chairman disqualifies himself on the grounds set out here has been raised before us on a number of occasions our position has always been and which we so maintain in this case that for such an application to succeed, the chairman must have played a role in the investigation of the complaint. The Legal Practitioner Disciplinary Committee Rules and the Legal Practitioners Act vests the powers to communicate or deal with issues of discipline on the general secretary. That

duty cannot by extension be extended to any other member or official of the NBA. For were this to be the case, all INEC members and even those in the Body of Benchers will be disqualified on the basis of such a spurious allegation. The case of *NBA v. Kunle Kalejaiye SAN* can be distinguished here because in that instance the equivalent of exhibit P1 here in the letter transmitting the complaint to LPDC was signed by Mr. Daudu personally and not the general secretary. We have therefore stated on several occasions that in matters where likelihood of bias is alleged, the disqualifying factors as (i) proven fore knowledge of the facts of the case and (ii) pecuniary interest in the matter. In this objection the respondent has not been able to prove either ground. The objection is grossly misconceived, and it is accordingly dismissed.”

I agree with the reasoning set out above. Indeed, the roles to be played by members of the NBA and the Body of Benchers (from which body members of the LPDC are taken) are quite different. In the circumstances of this case, there has not been an invidious usurpation of roles here to lead to the unavoidable conclusion that there would be likelihood of bias by the chairman in the proceedings to warrant his exclusion there from. This case is quite different from *Kalejaiye* and *NBA*. This leg of the issue is resolved in favor of the respondents.

My Lords, from the opinion on the main issue, it is clear that there is therefore absolutely no reason to walk back from this court's recent position that fair hearing consists in the proper institution of litigation, correct and consistent composition of the *judex* at all stages of the proceedings. While the main leg of this issue is resolved in favor of the appellant, the sub leg of the issue is resolved in favor of the respondent.

Issue Three

Learned appellant's counsel argued that the two letters consisting of the petition to the 2nd respondent written by Ayinde Olatimbo on 26/9/2008 and letter of petition of one Victoria Folakemi Akinlabi also written same day with its exhibits were tendered by P.W.1, an Assistant Secretary of the 1st respondent. Neither of the petitioners came to speak to the petitions the basis of which the directions of the 1st respondent were pronounced. PW1 Zibia

Blessed Katung admitted that he had no knowledge of the details nor was he a party to the transaction between the parties.

Counsel argued that the relevant persons who made the statements and documents tendered by P.W.1. were alive and their failure to come before the committee to give evidence makes the evidence of PW1 inadmissible and documentary hearsay under Section 39 of the Evidence Act. Thus 1st respondent erroneously utilized the evidence of PW1 to prove the truth of the petition of Mrs. Olatimbo Ayinde and relied on same solely to find the appellant guilty of professional misconduct. Counsel cited *Andrew v. I.N.E.C.* (2018) 9 NWLR (Pt. 1625) 507 at Pgs. 557-558, paras. H-A.

Counsel submitted that no one was called to speak to those documents and they are deemed to have been dumped on the Committee contrary to all known Laws. Counsel cited *Dickson v. Silva* (2017) 8 NWER (Pt 1567) Pg. 167 at 234, paras F-G.

Counsel submitted that the non-appearance of the petitioners to the abandonment of the petition.

Counsel cited *Nwalutu v. N.B.A & Anor* (supra), *Ramonu Atolagbe v. Korede Olayemi Shorun* (1985) LPELR- 592 (SC) Pg. 31. (1985) 1 NWLR (Pt. 2) 360 to support the contention that the Directions of the 1st respondent are perverse and should be set aside there is no valid evidence to prove that the appellant committed professional misconduct in this case.

Learned 1st respondent's counsel argued that the effect of S.175 (1) of the Evidence Act is that every person is qualified to give evidence in a proceedings except where such a witness falls under the exception stipulated by of Section 175(2) of the Evidence Act. He cited *Elebanjo v. Alhaja A. O. Tijani* (1986) LPELR 1107 (SC) (1986) 5 NWLR (Pt. 46) 952 Counsel submitted further that from the printed record, PW1 is obviously not within the exception and that what PW1 has simply done in the circumstance is to give evidence, being the custodian of documents to be relied upon by parties in prosecuting and defending the complaint.

Both learned respondents' counsel argued that the nominal complainants need not give evidence to prove the complaints. Counsel argued that it is too late in the day to contend against the admission of the bulk document admitted by the committee through the P.W.1 and that appellant's failure to object during the trial amounts to a waiver of his opposition to

the document. Counsel 6 cited *Nasir v. C.S.C., Kano State & Ors.* (2010) LPELR-1943(SC), (2010) 6 NWLR (Pt. 1190) 253. Counsel argued that the failure of the appellant to appeal against the findings of the committee in the amended notice of appeal means that the appellant accepted the findings on the merits of the petitions and the ultimate directions in that regard as correct. Counsel cited *Goyang Kayili v. Esly Yilbuk* (2015) LPELR-24323(SC); (2015) 7 NWLR (Pt. 1457) 26; *Oleksandr & Ors. v. Lonestar Drilling Co.* (2015) LPELR-24615 (SC), (2015) 9 NWLR (Pt. 1464) 337.

Learned respondents' counsel urged the court to hold that credible documentary evidence was tendered and admitted by the Committee to determine the directions relating to the case of the appellants.

Opinion

My Lords, the issue of the weight to be attached to the documents tendered by P.W.1, a secretariat staff of the 1st respondent has been settled by this court in *Nwalutu v. N.B.A.* (supra). In that case, Chief A.A. Aribisala SAN had sworn to a written statement which was tendered/adopted by one Zibai Blessed Katung. This court held emphatically following the decision of this court in *L.P.D.C. v. Gani Fawehinmi* (1985) 2 NWLR (Pt.7) Pg.300 at Pg.383-384 that the LPDC which exercises the important function of considering and determining cases of misconduct alleged against legal practitioners must only consider valid and credible evidence adduced before it upon which to base its decision to disbar the legal practitioner. This court in *Nwalutu v. NBA* held emphatically that the two persons who wrote the petitions against the appellant remain “proposed witnesses” since they did not appear to give oral evidence or tender the documents on which their complaints were based. I have read the record thoroughly. This is a case in which the facts are highly contentious. The petitions on one hand and the assertions of the appellant regarding the totality of his work and circumstances justifying his professional fees etc. on the other hand. The facts are not as cut and dried as learned respondents' counsel would have us believe. If the amended notice of appeal had complained against the factual basis of the findings of the Committee, I would have had no hesitation in making a finding of fact in favour of the appellant and allowing this appeal on that ground. The appellant had raised an objection to the admissibility of the documents through P.W. but his objection was overruled on 9/9/2013.

It is incorrect to say he never objected. During the course of the LPDC proceedings, the appellant had raised an objection to the tendering of the petitions and exhibits attached to them through a staff of the 1st respondent.

The LPDC held on this point as follows on Pg. 228 of the record.

“A review of the foregoing shows quite distinctly that a disciplinary proceeding before the LPDC is in a different evidential genre of its own. Firstly, the LPDC accepts a case on the basis that a *prima facie* case has been made against the legal practitioner, secondly, all the documents considered by the NBA in reaching this decision and a copy of the complaint must be forwarded to the Secretary of the LPDC. Now, the said Secretary has tendered these documents and they have been admitted as exhibit P1-P83. It seems to us strange that the respondent will be objecting to documents which have come from a forum i.e. the NBA to which he has submitted responses to the petition and upon which a finding of *prima facie* case has been reached by the same NBA. Before the LPDC, the role of the respondent is principally to rebut the *prima facie* finding against him. To do so, we must be seized of those documents that the investigating panel was privileged to utilize in coming to its conclusion PWI is the only witness that could have conveniently tendered them in evidence being their custodian. The documents are clearly not hearsay evidence so is the evidence of PWI as he has not stated any of the facts contained therein as if he was a participant. All he has done is to produce documents reposed in his custody. The objection is without merit and we overrule it. The evidence of PW1 is therefore relevant and admissible”.

I have never read the Law so clearly misconceived and put on head as indicated above. The LPDC Rules 10(2) states clearly that the Evidence Act shall apply as in civil proceedings. The documents tendered by the staff of the 1st respondent have no probative value prove the truth of their contents. It can only prove that indeed a petition was written to the NBA. Without a witness adopting and speaking to the petition to prove the truth of its contents, it is documentary hearsay and inadmissible as credible evidence of its contents. The petition tendered by PWI and admitted by the 1st respondent had absolutely no probative value in the circumstances of this case. I cannot agree that the purport of Rule 4 of the LPDC

Rules is that S.11(1) of the Legal Practitioners Act allows the bare petitions and answers without more used to decide that a petitions and answers without more used to decide that a prima facie case had been made against the legal practitioner will also be used to form or ground the basis of the determination of the case against the legal practitioner during this trial by the LPDC. That is the height of Star Chamber reasoning.

My Lords, I understand the need to enforce discipline at the Bar and everyone would be on board to ensure that we have a credible Bar that has the confidence of litigants. However, throwing away all basic rules of evidence to achieve this end cannot augur well for the legal profession. It is tantamount to throwing the baby away with the bath water.

In the absence of an opportunity for the appellant to cross examine the petitioner, how did the LPDC arrive at the conclusion of who was telling the truth? A determination of the credibility of a witness is almost sacred as my Lord Eko JSC aptly puts it. How do you ascribe probative value to documents in the absence of an opportunity to judge its cogency, consistency with other evidence, or the credibility of an absent witness whose demeanor, personality had not been subjected under the fire of cross-examination to the court's scrutiny. Rule 5 states that a complainant (petitioner) is a party to the proceedings who can be represented personally or through counsel of his choice. In this case the petitioner abstained from both choices. The interest of justice has not been served in the circumstances of this case wherein the documents of an abandoned petition were used to consider the facts and the merits of the case to arrive at the Directions of the LPDC. This issue is resolved in favor of the appellant.

For the above reasons, My Lords, I find that the Directions of the LPDC in this case made in violation of the rules of fair hearing are a nullity and are hereby set aside as void. This appeal has merit and it is hereby allowed.

I hereby set aside the Directions of the Legal Practitioners Disciplinary Committee which found the appellant guilty of infamous conduct in the performance of his duty as a legal practitioner and all the other Orders made therein in the Directions of the Committee delivered in respect of the appellant on 6/5/2014.

Appeal allowed. No order as to costs.

RHODES-VIVOUR, J.S.C.: I had the advantage of reading in draft a copy of the leading judgment prepared and delivered by my learned brother, Ogunwumiju JSC, I agree with the reasons for allowing the appeal.

Appeal allowed. No order on costs.

M. D. MUHAMMAD, J.S.C.: I was obliged a preview of the lead of my learned brother, Helen Moronkeji Ogunwumiju, SC just delivered. I agree with the conclusion in the said judgment that the appeal is meritorious and on the basis of the reasoning articulated by my lord do hereby allow the appeal.

ABOKI, J.S.C.: I have had the benefit of reading in draft the lead judgment of my learned brother, Helen Moronkeji Ogunwumiju, ISC just delivered, allowing the appeal because the membership of the Committee which found the appellant guilty of infamous conduct and directed that his name be struck out from the roll of legal practitioners in Nigeria; was not consistent, I agree with his reasoning and conclusions.

However, and just for the purpose of emphasis, I will put in one or two words of mine, on the appellant's issue one, which asks the question:

“Having regard to the constitution/composition of the Committee, whether its decisions/directions dated 6th May 2014, are not totally in breach of the appellant's right to fair hearing, and all together null and void?”

This appeal emanated from the decision of the Legal Practitioners' Disciplinary Committee, delivered on the 6th of May 2014, wherein the appellant was found guilty of infamous conduct in the course of his duty as a legal practitioner and the Committee directed the Chief Registrar of the Supreme Court to strike out the name of the appellant from the Roll of Legal Practitioners in Nigeria.

The facts leading to this appeal is that the appellant was the subject matter of a petition written by one Mrs. Ayinde Olatimbo, to the Nigerian Bar Association, stating that she engaged the legal services of the appellant sometime in June 2008, to secure the consent of the Governor of Lagos State for the stamping and registration of the Deed of Assignment in respect of the property situate at No. 38 Raymond Njoku Street, Ikoyi, Lagos, which their company had purchased. The petitioner paid the appellant the sum of N7,500,000.00 (Seven

Million, Five Hundred Thousand Naira) for the purposes of carrying out the assignment and the appellant, after acknowledging the receipt of the money, unilaterally withdrew from executing the petitioner's instruction, alleging that there were litigations in respect of the property. After the NBA carried out a preliminary investigation in respect of the allegations contained in the petition, the Panel of the NBA constituted to investigate the allegations found that a *prima facie* case had been established against the appellant and consequently preferred a three-count complaint against the appellant before the Legal Practitioners' Disciplinary Committee.

In response to the complaint, the appellant's position is that he was never investigated by the NBA Lagos or Ikeja Branches and that he never converted the N7, 500,000.000 to his own use. He stated further that he had not made a refund of the money to the petitioner.

At the close of the trial, the Committee found the appellant liable for professional misconduct and directed that his name be struck out from the Roll of Legal Practitioners in Nigeria. The appellant is dissatisfied with this direction from the Committee hence the appeal to this court.

The composition of the Disciplinary Committee is intrinsic to the fulfilment of the requirements of section 36 of the constitution that guarantees fair hearing to the accused. Where the panel is constituted in such a way that it affects a person's right to fair hearing, whatever decision is reached by such a panel will result in a nullity. See: *Kalejaiye v. L.P.D.C. & Anor.* (2019) LPELR 47035 SC. (2019) 8 NWLR (Pt. 1674) 365; *Nwalutu v. Nigerian Bar Association & Anor.* (2019) 8 NWLR (Pt. 1673) 174.

In *L.P.D.C. v. Fawehinmi* (1985) 2 NWLR (Pt. 7) 300 this court held that in the exercise of its disciplinary authority over erring legal practitioners, the Legal Practitioners Disciplinary Committee must observe the rules of natural justice.

Where the panel which sat and heard the complaint against the erring legal practitioner is different from the panel that found the appellant guilty of infamous conduct, this will render the proceedings and decision reached a nullity. See: *Nwalutu v. Nigerian Bar Association* supra. This is because the rules of natural justice relating to fair hearing has been breached. A person who did not take part when witnesses were called by the complainant and the defence cannot be in a position to decide who has told the truth from the person who was lying.

It is for this, and the more eloquently articulated lead judgment of my learned brother, Helen Moronkeji Ogunwumiju, JSC, that I answer the question raised in the appellant's issue one, in the affirmative, and hold that there has been a breach of the appellant's right to a fair hearing. I accordingly allow the appeal.

I also abide by the consequential orders in the lead judgment.

AGIM, J.S.C.: I had a preview of the draft judgment of my learned brother, Lord Justice H. M. Ogunwumiju, JSC. I must commend the excellent work in this judgment and impressive exposition of the topical questions of law therein.

I completely agree with the reasoning, conclusion, decisions and orders therein.

Appeal allowed.