

**IN THE FEDERAL HIGH COURT OF NIGERIA**  
**IN THE ABUJA JUDICIAL DIVISION**  
**HOLDEN AT ABUJA**  
**ON WEDNESDAY THE 10<sup>TH</sup> DAY OF AUGUST, 2022**  
**BEFORE HIS LORDSHIP, HON. JUSTICE D. U. OKOROWO**  
**JUDGE**

**SUIT NO. FHC/ABJ/CS/77/2022**

**BETWEEN:**

**INCORPORATED TRUSTEES OF THE NIGERIAN  
BAR ASSOCIATION**

**..... PLAINTIFF**

**VS.**

**ATTORNEY-GENERAL OF THE FEDERATION,**

**..... DEFENDANT**

**RULING/JUDGMENT**

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**ABUJA**  
Signature... PRISCILLA NIA  
Date 22/8/22 SAA

The Plaintiff, the Incorporated Trustees of the Nigerian Bar Association (NBA), commenced this action by an Originating Summons dated the 17<sup>th</sup> day of January, 2022 and filed on the 24<sup>th</sup> day of January, 2022. In the Summons the Plaintiff seeks the determination of the following questions, to wit:-

1. Whether upon proper interpretation of Sections 1, 11 (4), 12 (4) and 20 of the Legal Practitioners' Act Cap 1.11 LFN 2004 (as amended), the Defendant, who is just one member of the General Council of the Bar, can act alone in the discharge of

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the functions of the Council without the input or contribution of other members of the Council or in consultation with them.

2. Whether having regard to the provisions of Sections 1, 11 (4), 12 (4) and 20 of the Legal Practitioners Act, Cap 1.11 LFN 2004 (as amended), the Defendant can validly and without any recourse to the General Council of the Bar or consultations with its other members amend, purport to amend or to have amended the Rules of Professional Conduct for Legal Practitioners vide or through the instrumentality of the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020) on September 3, 2020, contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020, or howsoever wherein he claimed to have amended The Rules of Professional Conduct for Legal Practitioners, 2007 by deleting the following rules, namely: 9(2), 10, 11, 12 and 13.
3. Whether in the absence of any input from or consultation with members of the General Council of the Bar or absence of prior deliberations by the Council at plenary, the amendment or purported amendment by the Defendant of the Rules of Professional Conduct for Legal Practitioners 2007 vide or through the instrumentality of the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I.

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No.15 of 2020) on September 3, 2020 or howsoever is not altogether unlawful, null and void and of no effect whatsoever.

Upon the determination of these questions the Plaintiff claims against the Defendant as follows:-

1. **A DECLARATION** that upon proper interpretation of Sections 1, 11 (4), 12 (4) and 20 of the Legal Practitioners' Act, Cap L.11 LFN 2004 (as amended), the Defendant who is just one member of the General Council of the Bar and cannot act alone in the discharge of the functions of the Council without the input or contribution of other members of the Council or in consultation with them.
2. **A DECLARATION** that having regard to the provisions of Sections 1, 11 (4), 12 (4) and 20 of the Legal Practitioners Act, Cap L 11 LFN 2004 (as amended), the Defendant cannot validly and without recourse to the General Council of the Bar or consultations with its other members amend, purport to amend or to have amended the Rules of Professional Conduct for Legal Practitioners 2007 vide or through the instrumentality of the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020) on September 3, contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020, or howsoever wherein he claimed to have amended The Rules of Professional Conduct for Legal Practitioners, 2007 by deleting the following

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rules, namely: 9(2), 10, 11, 12 and 13 or any other provisions thereof.

3. **A DECLARATION** that in the absence of any input from or consultation with members of the General Council of the Bar or absence of prior deliberations by the Council at plenary, the amendment or purported amendment by the Defendant of the Rules of Professional Conduct for Legal Practitioners 2007 vide or through the instrumentality of the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020) on September 3, 2020 contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020, or howsoever, is unlawful, null and void and of no effect whatsoever.
4. **AN ORDER** setting aside and/or nullifying the purported Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020) made or purportedly made by the Defendant unilaterally or howsoever on September 3, 2020 and contained in Official Gazette of the Federal Republic of Nigeria No. 140, vol. 107 of 7<sup>th</sup> September 2020.
5. **AN ORDER OF PERPETUAL INJUNCTION** restraining the Defendant, his agents, privies, servants and assigns or any person howsoever from giving effect or further giving effect to the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020) made or purportedly made by the Defendant on September 3, 2020 and



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contained in Official Gazette of the Federal Republic of Nigeria No. 140, vol. 107 of 7<sup>th</sup> September 2020.

6. **AND FOR SUCH ORDERS** or further orders as this Honourable Court may deem fit to make in the circumstances of this case.

In support of the Originating Summons is an Affidavit of thirteen paragraphs deposed to by Zacchaeus Akubo, Esq., a Counsel in the law firm of S.I. Ameh (SAN) & Co., lead Counsel to the Plaintiff. Attached to the said Affidavit are Two (2) exhibits marked as Exhibits A and B respectively. The Plaintiff also filed 12 paragraphs Further Affidavit deposed to by RAZAK OSAYIANDE ISEYALUMIHE ESQ., a member of the Nigerian Bar Association, filed 22/03/22. In reaction, the Defendants filed 5 paragraphs Counter Affidavit and a Written Address. The Plaintiff also filed 14 paragraphs Further-Affidavit of Zacchaeus Akubo, Esq., on the 11<sup>th</sup> May, 2022 in opposing the new facts stated in the Defendant's Counter- Affidavit with Reply on points of law.

Argument in the Suit was taken on 14<sup>th</sup> day of July, 2022. S. I. Ameh SAN who was in Court, adopted the Plaintiff processes. He drew the attention of the Court to the absence of the Defence Counsel, A. A. Nuhu Esq. In line with the provisions of Order 22 Rule 8 of the Federal High Court Rules 2019, adopted the Defendant's address. And the case was adjourned for Judgment.

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The case of the Plaintiff is contained in 13 paragraphs Affidavit deposed on its behalf by Zacchaeus Akubo, a Legal Practitioner in the Chambers of S.I. Ameh (SAN) & Co., one of the consortium of law firms representing the Plaintiff in this suit particularly paragraphs 6 to 12 which are here reproduced and state as follows, that:-

6. On 17<sup>th</sup> January 2022, Chief Ferdinand Orbih, SAN the Chairman Section on Legal Practice of the Plaintiff informed me of the following facts in the course of my duty in Chambers at about 1:00pm at our office at No. 21 Onitsha Crescent, Off Gimbiya Street, Area 11, Garki, Abuja and I verily believe him to be true and correct as follows:
  - a. That the Plaintiff is a non-profit, umbrella professional association of all lawyers admitted to the bar in Nigeria. It is engaged in the promotion and protection of human rights, the rule of law and good governance in Nigeria and has an observer status with the African Commission on Human and People's Rights, and a working partnership with many national and international non-governmental organizations concerned with similar goals in Nigeria and in Africa.
  - b. That the Plaintiff is made up of 125 branches, three professional sections, two specialized institutes, six practice-cadre fora, and high-level leverage in the political

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society in Nigeria and has its head-office in Abuja, within the jurisdiction of this Honourable Court.

- c. That the Defendant is a creation of the Constitution of Nigeria and is the Chief Law Officer of the Federation of Nigeria and a Minister of the Government of the Federation and has his office in Abuja, within the jurisdiction of this Honourable Court.
- d. That the Legal Profession in Nigeria is regulated statutorily by the Legal Practitioners Act Cap L.11 Laws of the Federation of Nigeria (LFN) 2004 and other Rules, Regulations and Guidelines made pursuant to the said Act.
- e. That one of the organs created by the Legal Practitioners Act is the General Council of the Bar (otherwise known as the Bar Council).
- f. That the General Council of the Bar is charged with the general management of the affairs of the Nigerian Bar Association (subject to any limitations for the time being provided by the constitution of the association) and with any functions conferred on the council by the Act or that constitution.



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- g. That the General Council of the Bar under Section 1 (2) of the Act comprises of the following members:
- (i) The Attorney-General of the Federation, who shall be the President of the council;
  - (ii) The Attorneys-General of the States; and
  - (iii) Twenty members of the Association, (the Plaintiff herein).
- h. That by Section 1 (4) of the Legal Practitioners' Act the quorum of the Bar Council shall be eight (8) members being present and voting at its proceedings, and the council may make standing orders regulating the procedure of the council and, subject to the provisions of any such orders, may regulate its own proceedings; and no proceedings of the council shall be invalidated by any vacancy in the membership of the council, or by the fact that any person took part in the proceedings who was not entitled to do so.
- i. That one of the functions of the General Council of the Bar is to make from time to time Rules of Professional Conduct for the regulation of the conduct of all members of the Legal Profession in Nigeria.
- j. That on or about the 12<sup>th</sup> September, 2020, the Defendant, Mr. Abubakar Malami, SAN, claimed to have



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amended certain provisions of the Rules of Professional Conduct for legal practitioners (RPC) vide the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020.

- k. That prior to that time, the extant Rules of Professional Conduct (RPC) is the 2007 Rules as issued by the General Council of the Bar under the leadership of Chief Bayo Ojo, SAN, the then Attorney-General of the Federation. A copy of the said Rules of Professional Conduct for Legal Practitioners, 2007 is attached herewith and marked as Exhibit A.
- l. That under the 2007 Rules, while rule 9(2) prohibits a legal practitioner from claiming that he has paid his Bar Practicing Fees (BPF) when he is actually in default, Rule 10 deals with stamp and seal, Rule 11 thereof provides for mandatory continuing legal education while Rule 12 provides for annual practicing certificate, and Rule 13 thereof provides for notice of legal practice upon setting up a private legal practice.
- m. That however, the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020) purportedly carried out or effected by the

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Defendant as can be seen in the official Gazette containing the said amendment dated September 3, 2020 declares thus:

*"The Rules of Professional Conduct for Legal Practitioners, 2007 is amended by deleting the following rules, namely: 9(2), 10, 11, 12 and 13."*

A copy of the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 has been shown to me and same is annexed hereto and marked as Exhibit B.

n. That further explanatory note to the purported amendment states that the Rules were amended;

*"...to bring them in conformity with the Legal Practitioners Act, the Law Officers Act and the Constitution of the Federal Republic of Nigeria, 1999."*

o. That the Defendant in effecting the purported amendment to the RPC claimed he acted in exercise of the powers conferred on him by section 12(4) of the Legal Practitioners Act as the Attorney-General of the Federation and Minister of Justice; and President of the General Council of the Bar.

p. That upon getting wind of the purported amendment to the Rules, the Plaintiff interfaced with and held consultations with members of the General Council of the Bar in the course of its

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duties in September 2020 and even as recent as this January 2022 and found that:

- (i) At no time did the Defendant consult with any of them before making the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No. 15 of 2020).
  - (ii) The General Council of the Bar did not hold any meeting or proceedings in respect of the amendment of any part thereof.
  - (iii) At no time did the Defendant present to the Council any recommendation regarding the alterations or amendment he purportedly passed by or under the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020.
- q. That in making or purporting to make the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), the Defendant acted outside the colour or purview of his powers.
- r. That the Defendant cannot unilaterally and or without consultation with and input and or approval of the members of the General Council of the Bar, make any amendment or alteration to the Rules of Professional Conduct.

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- s. That where the Rules relate to safeguarding moneys and accounts being kept by a legal practitioner for and on behalf of his clients under Section 20 of the Legal Practitioners Act:
- (i) The Rules are to be made by the General Council and shall come into force only upon approval by order of the Defendant, either without modification or with such modifications as he thinks fit;
  - (ii) The law requires that before approving any such rules with modifications, the Defendant shall afford the Bar Council an opportunity of making representations with respect to the proposed modifications and shall consider any representations made in pursuance of that provision;
  - (iii) Where it appears to the Defendant that any rules should be made, revoked, amended or altered in exercise of the powers conferred on the Bar Council by that section, he is required to make a recommendation in that behalf to the General Council of the Bar; and
  - (iv) it is only if within the period of six months beginning with the date of the recommendation the council has not acted or has failed to act in accordance with the recommendation that the Legal Practitioners Act enables the Defendant, within the period of twelve months

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beginning with that date, to make rules giving effect to the recommendation.

- t. That by purporting in the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020 to have deleted Rules 9(2), 10, 11, 12 and 13 of the Rules of Professional Conduct (RPC), the Defendant has not brought the RPC to be in conformity with the Legal Practitioners Act, the Law Officers Act and the Constitution of the Federal Republic of Nigeria, 1999 but to be in conflict therewith or breach thereof.
- u. That by the Defendant purporting to have deleted Rules 9(2), 10, 11, 12 and 13 of the Rules of Professional Conduct (RPC), the safeguards in those Rules which were there to enhance professionalism and prevent quackery, have been eroded.
- v. That the purported deletion of Rules 9(2), 10, 11, 12 and 13 of the Rules of Professional Conduct (RPC) 2007 by the Defendant is inimical to the interest, well-being and financial sustenance of the Plaintiff and would only enhance or enthrone quackery and displace professionalism.

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- w. That all efforts and representations so far made since September 2020 to date by the Plaintiff and its members to persuade the Defendant to revisit the purported amendments and reverse same have so far proved abortive.
7. That I know as a fact that there is a dire, present and compelling need for this Honourable Court to reverse the unilateral action of the Defendant and to restrain him from the path of illegality he has chosen to take.
8. That in an interview on the Channels Television Station programme (Politics Today) held sometimes in 2021 and televised on air nationwide, the defendant voluntarily and unequivocally admitted that exhibit B was issued by his office, but without his input or knowledge.
9. That the Defendant further stated that he has commenced disciplinary hearings against erring officers of his office and ministry who fabricated and gazetted exhibit B contrary to the Legal Practitioners; Act.
10. That rather than voluntarily setting aside exhibit B as a usurpation and illegally procured instrument, the defendant has not done anything to set aside the said gazette he has identified as illegal.

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11. That it is desirable that the court makes a final order setting aside the purported Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No. 15 of 2020), contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020.
12. That it is in the interest of justice to enter Judgment in favour of the Plaintiff in terms of the reliefs in the Originating Summons.

The Plaintiff also filed 12 paragraphs Further Affidavit on 22/03/22, deposed on his behalf by **RAZAK OSAYIANDE ISEYALUMHE ESQ.** a Legal Practitioner, a member of the Nigerian Bar Association as well as a member of the General Council of the Bar and stated in paragraphs 3 to 11 as follows:

3. That I am a member of the General Council of the Bar.
4. That I was elected into the General Council of the Bar on the 27<sup>th</sup> of August, 2015 along with other members of the Nigerian Bar Association.
5. That since 27<sup>th</sup> August, 2015 till date, no notice of meeting of the General Council of the Bar has been extended to me by the Defendant.
6. That I know as a fact that notice of the meeting of the General Council of the Bar are usually in writing addressed and sent to members.

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7. That I know as a fact that minute of meeting of the General Council of the Bar are usually in writing and same contain the name of all members who attended such meeting.
8. That I know as a fact that once a meeting of the General Council of the Bar is held the minute of meeting recorded in writing at that meeting are read and approved at a subsequent meeting of the Council.
9. That I have never been invited to any meeting of the General Council of the Bar by the Defendant neither have I attended any.
10. That I was not invited neither did I attend any meeting of the General Council of the Bar at the instance of the Defendant where the Rule of Professional Conduct was amended.
11. That I know as a fact that no meeting of the General Council of the Bar has been called since 27<sup>th</sup> August, 2015 by the Defendant.

The case of the Defendant is contained in 8 paragraphs Counter Affidavit deposed on its behalf by Oni Michael, a litigation clerk of the Civil Litigation and Public Law Department in the Chambers of the Honourable Attorney-General of the Federation and Minister of Justice, particularly paragraphs 4 to 7 which states as follows:

4. That I was informed by Maimuna Lami Shiru Esq Lead counsel assigned to work on this case in her office 5D 31 during the official working hours, by 3:00 P.M. on the 15<sup>th</sup> of February, 2022 and I verily believe her as follows:



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- a. That she had carefully perused the Plaintiffs processes served on the Defendant in this case.
  - b. That the Plaintiff filed his Application against the Defendant.
  - c. That the Defendant denies all the averments in the Plaintiff's Affidavit.
  - d. That members of the General Council of the Bar were invited for the meeting which was held.
  - e. That the Defendant did that which he is statutorily empowered to do strictly within the confines of the Law as the Chief Law Officer of the Federation and the President of the General Council of the Bar.
  - f. That a meeting was called and members of the Council were duly notified and present in same.
5. That the Defendant, the Attorney General of the Federation is statutorily empowered to improve the professionalism of legal practice in Nigeria.
  6. The Plaintiff is bringing this action based on mere speculation and hearsay as he is not a member of the General Council of the Bar.
  7. That the 1<sup>st</sup> Respondent denies Plaintiffs statement in paragraphs 6 (a-w).

In reaction to the Defendant's Counter Affidavit, the Plaintiff also filed 14 paragraphs further Affidavit deposed to by Zacchaeus Akubo Esq., a Legal Practitioner in the Chambers of S.I. Ameh (SAN) & Co., one of the law

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firms representing the Plaintiff in this Suit and stated particularly in paragraphs 4 to 13 as follows:

4. That I have carefully read the Counter Affidavit of Oni Michael, Sworn on the 2<sup>nd</sup> day of March, 2022, in opposing the Plaintiff's Originating Summons dated the 17<sup>th</sup> day of January, 2022, but filed on the 24<sup>th</sup> day of January, 2022.
5. That I deposed to this Further Affidavit, in addition to my Affidavit of 24<sup>th</sup> day of January, 2022, in opposition to the new facts stated in the Counter Affidavit of Oni Michael filed by the Defendant in reaction to the Plaintiff's Originating Summons.
6. I am aware as a matter of fact, as a legal practitioner, that the Plaintiff is a registered Association of Legal Practitioners in Nigeria and has a President of the Association and some other Officers. The Plaintiff is duly represented on the General Council of the Bar through its Members.
7. That I know as a fact by virtue of my position as a Legal Practitioner, that twenty (20) members of the Plaintiff's Association are elected at an election (in which all members of the Plaintiff's Association are entitled to vote), to act as members of the General Council of the Bar, the Body saddled with the responsibility of making Rules of Practice to regulate the Legal Profession in Nigeria from time to time.

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8. That contrary to the averments of Oni Michael at paragraphs 4(d), (e) and 6 of his Counter Affidavit, I was informed by Razak Osayiande Isenalumhe, Esq, a member of the Council, at our office, at No 21, Onitsha Crescent, Off Gimbiya Street, Area 11, Garki, FCT, Abuja on the 18<sup>th</sup> of March 2022 at 8:20am, and I verily believe him, that, no invitation was extended to Members of the General Council of the Bar including himself to attend the Council Meeting since 2015 when he was elected to the Council till date.
9. The said Razak Osayiande Isenalumhe, Esq further informed me under the circumstances stated above, that as a matter of fact, no meeting of the Council was held to discuss any amendment to the Rules of Professional Conduct for Legal Practitioners, 2007 before the Defendant proceeded to unilaterally amend the said Rules of Professional Conduct for Legal Practitioners, 2007 recently.
10. That Razak Osayiande Isenalumhe, Esq further informed me that, he is aware as a matter of fact that, invitation to members is a precursor to the holding of any valid meeting of the Council; and that at the end of any such meeting(s) minutes will be generated and duly signed by the President of the Council and Secretary of the Council. That he is not aware of the existence of any such invite and or minutes of the meeting

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where the issue of amending the Rules of Professional Conduct for Legal Practitioners, 2007 was deliberated or agreed upon.

11. That I know as a matter of fact, that the Defendant stepped outside the colours of his office and capacity as the President of the General Council of the Bar to unilaterally amend the Rules of Professional Conduct for Legal Practitioners, 2007.
12. That the Plaintiff's action is based on facts which are substantiated and are not hearsay. The Plaintiff in his capacity is always aware of the meeting(s) of the Council whenever any of such meeting holds vide a briefing from its duly elected Members of the Council.
13. That it is in the interest of justice to enter Judgment in favour of the Plaintiff in terms of the reliefs sought in the Originating Summons.

The foregoing is the case of the parties in this case. The issues raised by the parties and their arguments are contained in the records. For purpose of brevity I shall proceed with the decision of the Court on the case as presented by the parties.

From the arguments of the Parties and issues raised by the them, there are two streams. The first arm of the Defendant's submission is the Defendant's Preliminary Issues on the Competency of the Applicant's Affidavit in Support of his Application and for which the Defendant seek

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interpretation whether there is a valid process before this Honourable Court. The second arm is the consideration of the merit or otherwise of the Plaintiff's case. The former is akin to challenge on jurisdiction of this Court to hear the Plaintiff's case. The Defendant having challenged the competency of the Plaintiff's process, which is akin to a challenge on the jurisdiction of the Court to entertain this action, it shall be considered first. The Defendant argued that the Affidavit in support of the Originating Summons is incompetent. That jurisdiction of Court of Law cannot be invoked on an incompetent Originating Process. And this court lacks the jurisdiction to hear and determine this suit.

That the Affidavit used in Originating Summons proceedings having regards to the form, substance, nature and content did not comply with the provisions of the Evidence Act. See the case of CHIMA v. FBN & ANOR (2017) LPELR-43652(CA). That the depositions of the Plaintiff in his affidavit compared alongside Section 83 of the Evidence Act 2011 Cap E.14 it is obvious that these depositions are not within the personal knowledge of the deponent and are therefore hearsay.

That the provision of section 83 clearly does not envisage a deposition by persons not having personal knowledge of facts deposed to. That in the instant case, the Plaintiff decided to bring an application with depositions as to hearsay. That there ought to have been a statement from persons saddled with the responsibility of attending the meeting of the General Council of the Bar. See the case of SUBRAMANIAM V. PUBLIC PROSECUTOR (1956) I WLR AT 969.

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The main plank of the Defendant's argument on this is alleged infraction of section 83 of the Evidence Act. What is in issue here is Affidavit evidence. As correctly observed by the Plaintiff Section 83 of the Evidence Act does not deal with Affidavits but with the admissibility of documentary evidence. Affidavit Evidence is generally governed by Sections 107 - 120 of the Evidence Act, 2011. The Plaintiff's further response on this is anchored in argument on the alleged infraction of section 115 of the Evidence Act by the Affidavit.

The second issue raised on the affidavit, relating to the first, is that it is defective for noncompliance with Sections 115 (1) & (4) of the Evidence Act, 2011. That a perusal of paragraphs 4 - 6 of the Applicant's affidavit upon which all other averments in the entire paragraphs of the affidavit have their root, will show that the paragraphs did not state the source of the information, time place and circumstance of the information. That Chief Ferdinand Orbih who is the supplier of the information failed or neglected to state whether he is a member of the General Council of the Bar or not, to enable him have the information in relation to the General Council of the Bar, that the deponent only stated that he knows Mr. Olumide Akpata and that's all. The Court was referred to paragraphs 4-6 of the Plaintiff's Affidavit.

The Plaintiff in response to this issue stated that Section 115 of the Evidence Act, specifically, creates the exception and it provides thus:

*115(1) "Every affidavit used in the Court shall contain only a statement of facts and circumstances to which the witness*

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*deposes, either of his own personal knowledge or from information which he believes to be true.*

- (3) *When a person depose to his belief in any matter of fact and his belief is derived from any source other than his own personal knowledge, he shall set forth explicitly the facts and circumstances forming the ground of his belief.*
- (4) *When such belief is derived from information received from another person, the name of his informant shall be stated, and reasonable particulars shall be given respecting the informant, and the time, place and circumstance of the information. "*

From these provisions of the Evidence Act, it is clear that a person can depose to facts either of his own personal knowledge or from information which he believes to be true upon fulfilling the condition prescribed in Section 115 (3) & (4) of the Evidence Act. I observe that in this case the affidavit of Zacchaeus Akubo, Esq., deposed to in support of the Originating Summons and which the Defendant has his grouse with, complied with the provisions of Section 115 (1), (3) & (4) of the Evidence Act. The deponent Zacchaeus Akubo, Esq., clarified the source, date, time and place of his information which in the Further Affidavit in support of the Originating Summons wherein it was stated in paragraphs 7 to 10 as follows:

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7. That I know as a fact by virtue of my position as a Legal Practitioner, that twenty (20) members of the Plaintiff's Association are elected at an election (in which all members of the Plaintiff's Association are entitled to vote), to act as members of the General Council of the Bar, the Body saddled with the responsibility of making Rules of Practice to regulate the Legal Profession in Nigeria from time to time.
8. That contrary to the averments of Oni Michael at paragraphs 4(d), (e) and 6 of his Counter Affidavit, I was informed by Razak Osayiande Isenalumhe, Esq, a member of the Council, at our office, at No 21, Onitsha Crescent, Off Gimbiya Street, Area 11, Garki, FCT, Abuja on the 18<sup>th</sup> of March 2022 at 8:20am, and I verily believe him, that, no invitation was extended to Members of the General Council of the Bar including himself to attend the Council Meeting since 2015 when he was elected to the Council till date.
9. The said Razak Osayiande Isenalumhe, Esq further informed me under the circumstances stated above, that as a matter of fact, no meeting of the Council was held to discuss any amendment to the Rules of Professional Conduct for Legal Practitioners, 2007 before the Defendant proceeded to unilaterally amend the said Rules of Professional Conduct for Legal Practitioners, 2007 recently.



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10. That Razak Osayiande Isenalumhe, Esq further informed me that, he is aware as a matter of fact that, invitation to members is a precursor to the holding of any valid meeting of the Council; and that at the end of any such meeting(s) minutes will be generated and duly signed by the President of the Council and Secretary of the Council. That he is not aware of the existence of any such invite and or minutes of the meeting where the issue of amending the Rules of Professional Conduct for Legal Practitioners, 2007 was deliberated or agreed upon.

The facts deposed in the Plaintiff's Affidavit is very competent and the facts therein are not hearsay.

The third issue raised is that the Incorporated Trustees of the Nigerian Bar Association (NBA) is the Applicant in the suit and not Mr Olumide Akpata or Chief Ferdinand Orbih. The Court was urged to take note that the issue is on whether there was a meeting of the General Council of the Bar or not, which only a member of the Council can attest to that fact and no more, and whether there is quorum in the said meeting or not. Therefore, Chief Ferdinand Orbih who is not a member of the General Council of the Bar cannot avail facts deposed to the affidavit in support of the Application to which he did not state the source of his information which is contrary to Section 115 (1) & (4) of the Evidence Act.

It was further submitted that for any person to have the information or even to have the legal capacity to institute action on whether there is meeting of the General Council of the Bar or not, he must be a member of

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the council who is entitled to notice and attendance of the meeting but not any other person and this can rob the Court of the jurisdiction to entertain same. He must have *locus standi*.

Premised on these facts it was submitted that, the Plaintiff in this suit lacks *Locus Standi* to institute the question raised for determination as that can only be instituted and maintained by the members of the General Council of the Bar if need be. That member of the Council may challenge the action of the Hon. Attorney General of the Federation if he was not consulted or invited for deliberation on the amendment but not any other NBA member who is not a member of the General Council of the Bar.

That for a person to invoke section 6(6) b of the constitution to apply in his favour the Plaintiffs must prove that his civil right and obligation will be affected or are being affected in the matter to be determined by the court, in the instant case a member of the General Bar Council. see *UWAZURUNYE V GOV. IMO STATE (2013) 8 NWLR (PT. 1355) @ 28 specifically 53 paras A-C) and Dr TISIN AJAYI V PRINCE MRS OLAJUMOKE ADEBIYE (2012) LPELR 7811 (SC) A.G LAGOS V ECO HOTELS LTD (2006) 18 NWLR (PTIOII) ALSO WAZIRI V. TAHIR GUMEL & ANR (2012) LPELR-7816(SC), MR IFEANYI CHUKWU OKONKWU V NATIONAL UNIVERSITY COMMISSION (LPELR) SUIT NO CA/E/244/2009, RE-ADETONA (1994)3 NWLR (PT. 333) 481 @ 488-489 AND NIKHENA &OTRS V EGBA & ORTS (1987)*. The Defendant submitted that by applying the principle of law as decided by the Supreme Court to this case, the plaintiffs lack *locus standi* to initiate the issue raised in the proceeding.

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That it is not enough that the plaintiff is NBA or a member of the NBA. That to enable him institute this action he must show that, he was affected personally by the conduct of the defendant for not inviting him to the meeting. That the only people who can rightly approach this court and seek the relief sought by the plaintiff is the person that is a member of the General Council of the Bar.

That where a party before the court has no *locus standi* to initiate a suit then he cannot invoke the jurisdiction of the court as such, and where there is no jurisdiction, the court has to dismiss the suit, see *UTI V ONOYIKE* (1991) 1 SCNJ 25@49 Per. CJN BELLO.

That a court of law is only competent to adjudicate over a matter, when all the conditions precedent for its having jurisdiction have been satisfied. Thus, an action that was begun by an incompetent process will divest the Court of jurisdiction to entertain the matter. In other words, where an originating process or any other process is found to be incompetent, it cannot be used for any purpose whatsoever in the adjudication process. It is a worthless document and is only good for nothing, being nothing itself, nothing can be built upon it. The Court was referred to the case of *Kida v. Ogunmola* (2006) 13 NWLR Pt. 997 Pg. 327.

*Locus standi* denotes the legal capacity to institute proceeding in a court of law and where a plaintiff lacks such capacity or locus, his case must be struck out as being incompetent and rob the court with jurisdiction to entertain same. SEE *OWODUNWI V REG. TRUSTEES OF CCC* (2000) 6 SC

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(PT111)6 PER UWA J.CA @P.21 PARAS A-B, OGUNDIPE V ODUWAIYE & ANOR (200) LPELR, A.G ANAMBRA V A.G FEDERATION (2007)12 NWLR.

On the issue of *locus standi*, the Plaintiff submitted that the Defendant's contention that the Plaintiff lacks the *locus standi* is unfounded. The Plaintiff argued that it is a Registered Body of all Legal Practitioners in Nigeria, which by virtue of Section 830 (1) of the Companies and Allied Matters Act, 2020 has the capacity to sue and be sued in its corporate name. That by Section 1 (2) of the Legal Practitioners Act, the Plaintiff is represented in the Council by 20 of its Members elected to so act, at the Plaintiff's election where all its members are entitled to vote. And the Plaintiff's members in the Council are entitled by Law to Notice of the Council's Meeting and attendance at such Meetings.

The Plaintiff is a body Corporate and acts through its members. The General Council of the Bar under Section 1 (2) of the Act comprises of the following members:

- (i) The Attorney-General of the Federation, who shall be the President of the council;
- (ii) The Attorneys-General of the States; and
- (iii) Twenty members of the Association, (the Plaintiff herein).

Section 1 (2) of the Legal Practitioners Act which constituted membership of the Council, the Plaintiff is entitled to 20 of its members in the Council.

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By Section 1 (4) of the Legal Practitioners' Act the quorum of the Bar Council shall be eight (8) members being present and voting at its proceedings.

At paragraphs 3 to 11 of the 12 paragraphs Further Affidavit deposed on his behalf by **RAZAK OSAYIANDE ISEYALUMHE ESQ.** a Legal Practitioner, a member of the Nigerian Bar Association as well as a member of the General Council of the Bar; it was stated on behalf of the Plaintiff as follows:

3. That I am a member of the General Council of the Bar.
4. That I was elected into the General Council of the Bar on the 27<sup>th</sup> of August, 2015 along with other members of the Nigerian Bar Association.
5. That since 27<sup>th</sup> August, 2015 till date, no notice of meeting of the General Council of the Bar has been extended to me by the Defendant.
6. That I know as a fact that notice of the meeting of the General Council of the Bar are usually in writing addressed and sent to members.
7. That I know as a fact that minute of meeting of the General Council of the Bar are usually in writing and same contain the name of all members who attended such meeting.
8. That I know as a fact that once a meeting of the General Council of the Bar is held the minute of meeting recorded in writing at that

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meeting are read and approved at a subsequent meeting of the Council.

9. That I have never been invited to any meeting of the General Council of the Bar by the Defendant neither have I attended any.
10. That I was not invited neither did I attend any meeting of the General Council of the Bar at the instance of the Defendant where the Rule of Professional Conduct was amended.
11. That I know as a fact that no meeting of the General Council of the Bar has been called since 27<sup>th</sup> August, 2015 by the Defendant.

The Further Affidavit of Razak Osayiande Isenalumhe, Esq. categorically stated that the meeting never happened. The depositions were never controverted by the Defendant. The presumption is that the facts are admitted. And the Plaintiff being an artificial person can only act through its members as agents. And as submitted by the Defendant that only member of the General Council of the Bar can depose to the Affidavit, the deposition of this member is sufficient proof of locus standi of the Plaintiff. The Affidavit of Razak Osayiande Isenalumhe, Esq. a member of the Bar Council, has rebutted the claim of the Defendant of absence of *locus standi*.

On the whole the Defendant preliminary issues fail and are dismissed. I shall now proceed with the substantive issues raised by the Originating Summons

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On the questions for determination, the sole issue for determination formulated by the Plaintiff to resolve the 3 questions for determination in the Originating Summons was adopted and addressed by the Defendant in his address in considering the case on merit. By way of recapitulation the sole issue for determination by the Defendant in this case is:

Whether having regard to the combined effect of the laws and the Plaintiff's Suit and the declarations contained in his Affidavit the Plaintiff is entitled to the reliefs sought from this Honourable Court?

While the Plaintiff's issue is:

Whether having regard to the facts and circumstances of this case, the Rules of Professional Conduct for legal Practitioners (Amendment) Rules, 2020 (S.I. No. 15 of 2020) purportedly made by the Defendant is not unlawful, null and void and liable to be set aside.

The issues are the same but couched in different languages. However, for purpose this judgment I shall adopt the later (i.e. Plaintiff's issue) in the resolution of this case. In Originating Summons Procedure, the issues for determination formulated in the Plaintiff's case constitute the main issues for resolution of the case of the parties. The summary of issues of the Plaintiff encapsulated in the lone issue are:

- i. whether only the Defendant acting alone, can validly perform the functions of the Bar Council.

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- ii. whether the Defendant can amend the Rules of Professional Conduct without consultation of the General Bar Council or its members through the Legal Practitioners (Amendment) Rules 2020, (S.I. No.15 of 2020) of September 3, 2020, Gazette No. 140 Vol. 107 of September 7, 2020.
- iii. whether in the absence of input by General Bar Council the amendment is not invalid, unlawful, null and void.

All these questions are embedded in the lone issue adopted by this Court

We shall consider the relevant provisions which constitute the fulcrum of the Plaintiff's agitation. Section 1 (1), (2), (3) and (4) of the Legal Practitioners Act Cap L11 LFN 2004 (as amended) established the General Council of the Bar and provides for its Composition, functions and quorum respectively. The provision is reproduced and states as follows:

*"1. (1) There shall be a body to be known as the General Council of the Bar (hereinafter in this Act referred to as "the Bar Council") which shall be charged with the general management of the affairs of the Nigerian Bar Association (subject to any limitations for the time being provided by the constitution of the*



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*association) and with any functions conferred on the council by this Act or that constitution.*

*(2) The Bar Council shall consist of-*

- (a) the Attorney-General of the Federation, who shall be the president of the council;*
- (b) the Attorneys-General of the States; and*
- (c) twenty members of the association.*

*(3) The persons mentioned in paragraph (c) of subsection (2) of this section shall--*

- (a) be elected to serve on the Bar Council at elections in which all members of the association are entitled to vote in such manner as may be provided by the constitution of the association; and*
- (b) hold office for such period as may be determined by or under that constitution, and not less than seven of those person shall be legal practitioners of not less than ten years standing.*

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- (4) *The quorum of the Bar Council shall be eight, and the council may make standing orders regulating the procedure of the council and, subject to the provisions of any such orders, may regulate its own proceedings; and no proceedings of the council shall be invalidated by any vacancy in the membership of the council, or by the fact that any person took part in the proceedings who was not entitled to do so."*

The Plaintiff submitted that as part of its general management of the affairs of the Plaintiff and of the legal profession in Nigeria, the Bar Council is also saddled with the exclusive task of making rules to regulate the conduct of members of the Legal Profession in Nigeria. This exclusive power is bestowed on the Bar Council by virtue of the combined effect of Sections 11 (4) and 12 (4) of the Act. The provisions are as follows:

Section 11 (4) of the Act provides thus:

*"It shall be the duty of the bar council to prepare, and from time to time revise, a statement as to the kind of conduct which the council considers to be infamous conduct in a professional respect, and the registrar shall send to each person whose name is on the roll and whose address is shown in the records of the Supreme Court relating to legal practitioners, by post to that address, a copy of the statement as for the time being revised; but the fact that any matters are*

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*not mentioned in such a statement shall not preclude the Supreme Court or the disciplinary committee from adjudging a person to be guilty of infamous conduct in a professional respect by reference to such matters."*

Section 12 (4) of the Act provides as follows:

*"It shall be the duty of the Bar Council to make rules from time to time on professional conduct in the legal profession and cause such rules to be published in the gazette and distributed to all the branches of the association,"*

Section 20 of the Act provides as follows:

*"(1) Subject to subsection (4) of this section, the Bar Council may from time to time as the council considers expedient, make rules-*

*(a) as to the opening and keeping by legal practitioners of accounts at banks for clients moneys; and*

*(b) as to the keeping by legal practitioners of records containing particulars and information as to moneys received, held or paid by them for or on account of their clients; and*

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- (c) *as to the opening and keeping by a legal practitioner who is the sole trustee, or who is a co-trustee only with one or more of his partners, clerks or servants, of an account at a bank for moneys of any trust of which he is the sole trustee or such a co-trustee as aforesaid; and*
  - (d) *as to the keeping by such a practitioner as is mentioned in paragraph (c) of this subsection, of records containing particulars and information as to moneys received, held or paid by him for or on account of any such trust as is so mentioned; and*
  - (e) *empowering the Bar Council to take such action as it thinks necessary to enable it to ascertain whether the rules are being complied with.*
- (2) *Rules made under subsection (1) of this section shall not come into force until they are approved by order of the Attorney-General, either without modification or with such modifications as he thinks fit; but before approving any such rules with modifications the Attorney-General shall afford the*

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*Bar Council an opportunity of making representations with respect to the proposed modifications and shall consider any representations made in pursuance of this subsection.*

- (3) *If it appears to the Attorney-General that any rules should be made, revoked or altered in exercise of the powers conferred on the Bar Council by this section, he shall make a recommendation in, that behalf to the Bar Council; and if within the period of six months beginning with the date of the recommendation the council has not acted in accordance with the recommendation, the Attorney-General may, within the period of twelve months beginning with that date, make rules giving effect to the recommendation.*
- (4) *Rules under this section shall not require the keeping of accounts or records-*
- (a) *by a legal practitioner in respect of moneys received, held or paid by him as a member of the public service of the Federation or a State;*
  - (b) *in such other circumstances as may be specified by the rules.*

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*(5) For the purposes of this section, "trustee" includes personal representative, and in relation to a personal representative any reference to a trust shall be construed as a reference to the deceased's estate."*

The case of the plaintiff here is that the purported Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020, is for all intent and purposes illegal, null and void because it is done in violation of the Law.

The Plaintiffs further stated in paragraphs 8, 9 and 10 of the Affidavit in support of the Originating Summons that the Defendant denied knowledge or the making of the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020 and even went on to say that the matter is under investigation with possible disciplinary action to follow whomsoever the culprit is from the Defendant's office. A cursory view into Defendants Counter Affidavit shows that apart from the general traverse in paragraph 4 (c), there is no specific denial of these allegations.

It is the Plaintiff's submission that given this revelation, the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), contained in Official Gazette of the Federal Republic of

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Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020 was not validly and competently made and same should be invalidated and set aside by the Honourable Court. That the procedure for making these Rules and those procedures were not followed.

What then is the procedure for making the Rules that was violated? Section 1(1) of the Legal Practitioners Act, established the General Bar Council charged with the management of the affairs of the Nigerian Bar Association and functions given to the Council by the Act and the Constitution. Section 1(2) & (3) included 20 elected members of the Bar Association in the composition of the Council. And by Section 1(4) of the Act the quorum for any business of the Council is constituted when eight members are present. By combined effect of the provisions of sections 1(2), (3) & (4) of the Act for deliberations of the Council to be valid, 8 members of the Council, which includes representatives of the Plaintiff, must be present. In which case any decision to amend the Rules as in the instant case must show the requirement of the law is met.

In further elucidation of the implications of the provisions, I agree as reasoned by the Plaintiff in their submissions, that an examination of the provisions of Sections 11 (4), 12 (4) and 20 (1) — (5) of the Act, especially when read along with Section 1 (1) — (4) of the Act, shows that:

- (a) The General Council of the Bar and not its individual member or members is the organ vested with the power to make the aforesaid Rules for the

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regulation of the conduct of members of the Legal Profession;

- (b) In order to arrive at a decision as to what Rules to make or which amendments or alterations are to be made to the Rules, such must be deliberated upon by the Council members at its plenary and a position taken by the Council;
- (c) Neither the Defendant as president of the Council nor any of its members can unilaterally take decision on the Rules to be made of amendments to be made thereto;
- (d) Even where the Rules relate to safeguarding moneys and accounts being kept by a legal practitioner for and on behalf of his clients under Section 20 of the Legal Practitioners Act:
  - (i) the Rules are to be made by the General Council and shall come into force only upon approval by order of the Defendant, either without modification or with such modifications as he thinks fit;
  - (ii) the law requires that before approving any such rules with modifications, the



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Defendant shall afford the Bar Council an opportunity of making representations with respect to the proposed modifications and shall consider any representations made in pursuance of that provision;

(iii) where it appears to the Defendant that any rules should be made, revoked, amended or altered in exercise of the powers conferred on the Bar Council by that section, he is required to make a recommendation in that behalf to the General Council of the Bar; and

(iv) it is only if within the period of six months beginning with the date of the recommendation the council has not acted or has failed to act in accordance with the recommendation that the Legal Practitioners Act enables the Defendant, within the period of twelve months beginning with that date, to make rules giving effect to the recommendation.

(e) On no account and for no reason can the President of the Council take a decision as to Rules of

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Professional Conduct or 1 any amendment thereof without the input of other members and without the Council members deliberating on the matter?

The grounds of the Plaintiffs justification of invalidation of the Defendants act as deposed in paragraphs 6 (j) — (r) of the Affidavit in Support of the Originating Summons are as follows:

*"(j) That on or about the 12<sup>th</sup> September, 2020, the Defendant, Mr. Abubakar Malami, SAN, claimed to have amended certain provisions of the Rules of Professional Conduct for legal practitioners (RPC) vide the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S, I. No.15 of 2020),*

*(k) That prior to that time, the extant Rules of Professional Conduct (RPC) is the 2007 Rules as issued by the General/ Council of the Bar under the leadership of Chief Bayo, SAN, the then Attorney — General of the Federation. A copy of the said Rules of Professional Conduct for Legal Practitioners, 2007 is attached herewith and marked as Exhibit A.*

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- (l) *That under the 2007 Rules, while rule 9(2) prohibits a legal practitioner from claiming that he has paid his Bar Practicing Fees (BPF) when he is actually in default, Rule 10 deals with stamp and seal, Rule 11 thereof provides for mandatory continuing legal education while Rule 12 provides for annual practicing certificate and Rule 13 thereof provides for notice of legal practice upon setting up a private legal practice.*
- (m) *That however, the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020) purportedly carried out or effected by the Defendant (as can be seen in the official Gazette containing the said amendment dated September 3, 2020 declares thus:*

*"The Rules of Professional Conduct for Legal Practitioners, 2007 is amended by deleting the following rules, namely: 9(2), 10, 11, 12 and 13."*

*A copy of the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 has been shown to me and same is annexed hereto and marked as Exhibit B.*

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(n) *That further explanatory note to the purported amendment states that the Rules were amended:*

*"... to bring them in conformity with the Legal Practitioners Act, the Law Officers Act and the Constitution of the Federal Republic of Nigeria, 1999".*

(o) That the Defendant in effecting the purported amendment to the RPC claimed he acted in exercise of the powers conferred on him by section 12(4) of the Legal Practitioners Act as Attorney-General of the Federation and Minister of Justice and President of the General Council of the Bar.

(p) That upon getting wind of the purported amendment to the Rules, the Plaintiff interfaced with and held consultations with members of the General Council of the Bar in the course of its duties in September 2020 and even as recent as this January 2022 and found that:

(i) At no time did the Defendant consult with any of them before making the Rules of Professional Conduct for

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Rules, 2020 (S.I. No.15 of 2020).

- (ii) The General/ Council of the Bar did not hold any meeting or proceedings in respect of the amendment or any part thereof.
- (iii) At no time did the Defendant present to their Council any recommendation regarding of the alterations or amendment he purportedly passed by or under the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020).
- (q) That in making or purporting to make the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), the Defendant acted outside the colour or purview of his powers.
- (r) That the Defendant cannot unilaterally and or without consultation with and input and or approval of the members of the General/ Council of the Bar, make any amendment or

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alteration to the Rules of Professional Conduct."

As can be distilled from paragraphs 6 (j) — (r) of the Affidavit in Support of the Originating Summons in making the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), i.e. Exhibit B, the Defendant acted alone and never held consultations with other members of the Bar Council.

The Defendant did not challenge the Plaintiff's averments in paragraphs 6 j - r but in argument in their address reproduced the provisions of Sections section 1, 11(4), 12 (4) and 20 of the Legal Practitioners Act, Cap L 11 LFN 2004 as amended, (as amended) being the subject of interpretation in this suit and submitted that by the above provision, the Attorney General of the Federation is the President of the Bar Council. See *UCHIV & ANOR V. SABO & ORS (2015) LPELR-40635 (CA)*. That contrary to the contention of the Plaintiffs from the position of law, the Attorney General is the President of The General Council of the Bar subject to the limitation imposed by the Constitution of the Association as mentioned by the same Act which made reference to the NBA Constitution.

That the special powers of the Attorney General of the Federation as the President of the General Council of the Bar are explicitly enumerated in the S.12 (4) Legal Practitioners Act Cap L11 Laws of the Federation of Nigeria, 2004 showing that the Attorney General of the Federation as President of the General Council of the Bar has to take decisions on matters relating to

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the Bar for the benefit of all legal practitioners and the advancement of Legal practice in Nigeria.

That the onus lies on the Applicant who alleges that the Defendant altered the Rules of Professional Conduct unilaterally and set the law in motion against him and that it was the Defendants' that alter the RPC. The Plaintiff must also show that the alteration is unlawful. See *FAJEMIROKUN V. C.B (C.I) NIG. LTD (2002) 10 NWLR (PT. 774), 95 @ 112.*

The Defendant has not shown in his Counter Affidavit, that the Bar Council at any time held proceedings for the purpose of amending the Rules of Professional Conduct for Legal Practitioners 2007 (Exhibit A) or arrived at any decision to cause or effect the amendment purportedly made by the Defendant. The position of the Defendant as the President of the Council did not grant the Defendant special powers to carry on the business of the Council in a manner inconsistent with the Act as argument of the defence seem to suggest.

Where an Act provides for how a thing is to be done, only that procedure and no less or more must be strictly adhered to. See *AKAER JOY V. KUTUKU DOM (1999) 9 NWLR (PT. 620) 538 AT P. 547; ADEJOBI V. THE STATE (2011) LPELR - SC-26/2008.* See also, *ODOGWU V. ILOMBO (2007) 8 NWLR (PT. 1037) 488 AT PP. 515—516.*

The provisions of Sections 11 (4), 12 (4) and 20 (1) — (5) of the Act, are very clear and unambiguous and the words used therein ought to be given

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their natural and ordinary meaning. See *MARWA & ORS V. WAKO & ORS (2012) LPELR-7837(SC)*; *SARAKI V. F.R.N. (2016) LPELR 40013 SC*. See also, *MRS. GANIYATAMOPE DILLY V. I.G.P. & ORS. [2016] NGCA 21*. In *C.C.C.T.C.S LTD & ORS. V. EKPO (2008) 6 NWLR (PT. 1083) 362 (SC)*, the Supreme court, per ONNOGHEN, JSC (as he then was), held as follows:

*"It is settled law that where the words of a statute or Constitution are clear and unambiguous, they call for no interpretation, the duty of the court in such a circumstance being to apply the words as used by the legislature."*

A corollary to this principle is that the language of the statute would not be stretched to defeat the aim of the statute or the Constitution, see *A.T. LTD V. A.D.H. LTD (2007) 15 NWLR 118 SC*.

That it is more so as such natural and ordinary meanings of words in a statute which are clear and unambiguous best convey the intention of the law maker as to what they are meant to achieve which intention the court has a duty to declare or give effect to. In *UGWU V. ARARUME (2007) ALL FWLR (PT. 377) 909 - 910, PARAS E G*, the Supreme Court held as follows:

*"...A statute is the will of the legislature and any document which is presented to it as a statute is an authentic expression of the legislative will. The function of the court is to interpret that document according to the intent of those who made it. Thus, the court declares the intention of the legislature. The court can*



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*elicit the intention from the actual words of the statute. Thus, where the language of a statute is clear and explicit, the court must give effect to it, for in that case, the words of the statute speaks the intention of the legislature. The court must bear in mind that its function in that respect is ius dicere not jus dare, and the words of a statute must be left in the hands of the legislature."*

It is the law that where a statute has, just as in this case, provided the procedure for doing a thing, only that procedure and none other, is allowed or permissible. See also AKAER JOY V. KUTUKU DOM (1999) 9 NWLR (PT. 620) 538 AT P. 547; ADEJOBI V. THE STATE (2011) LPELR - sc-26/2008. See also, ODOGWU V. ILOMBO (2007) 8 NWLR (PT. 1037) 488 AT PP.515-516.

To this extent therefore, the action of the Defendant in purportedly making Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), contained in Official Gazette of the Federal Republic of Nigeria No. 140, Vol. 107 of 7<sup>th</sup> September 2020, unilaterally and without consultation with members of the Bar Council or prior deliberation on the purported amendment by the Council, is not only ultra vires the Defendant but was an action carried out in clear breach of and noncompliance with provisions of Section 1, 11 (4), 12 (4) and 20 (1) — (5) of the Act.

On the strength of the above, I therefore hold that the action of the Defendant palpably constitute flagrant violation of the mandatory

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provisions of Sections 1, 11 (4), 12 (4) and 20 (1) — (5) of the Act and is therefore unlawful, illegal, null and void and of no effect whatsoever and is hereby set aside.

The Plaintiff submitted that if the Lawmaker had wanted the Defendant to be able to act alone or unilaterally and without recourse to or prior deliberation by members of the Bar Council, he would have said so clearly in the Act or he would not have even created the General Council of the Bar in the first place. And the Lawmaker having not said so, it is not within the province of this Honourable Court, or any Court, to read such into the interpretation or wordings of provisions of the Act as that would amount to making or amending the law. See *BUHARI V. INEC (2008) 18 NWLR (PT. 1120) 246 ATP. 344, PARAS F. G; TUKUR V. GOVERNMENT OF GONGOLA (1988) 1 NWLR (PT.68) 39ATPP. 51-52, PARAS G-B.*

This Court is apprised that the function of the Court is to interpret the law and not to make it. See again, *UGWU V. ARARUME (SUPRA)*. Thus, in the English case of *STORK V, FRANK JONES (TRIPTON) (1978) 1 WLR 231*, the English court, per VISCOUNT DILHORNE held as follows:

*"If it were the case that it appeared that an Act might have been better drafted, or that amendment to it might be less productive to its amoralities it is not open to the Court to remedy the defect. That must be left to the legislature. It is a strong thing to read into an Act of parliament words which are not*

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*there, and in the absence of clear necessity it is a wrong thing to do... "*

In likewise in OKUMAGBA V, EGBE (1965) 1 ALL NLR 62 ATP.65, the Supreme Court of Nigeria per BAIRAMIAN, JSC, held as follows:

*"But amendment is the function of the legislature, and the Court cannot fill a gap which comes to light by altering the words of a regulation to make it read in the way they think it should have been enacted.....the office of a judge is jus dicere not jus dare".*

In the same vein, the apex Court in AWOLOVO V. SHAGARI (1979) NSCC 87 P. 135, LINE 5, relying on the afore-stated English case of STORK V. FRANK JONES (TRIPTON) (SUPRA), held per, ESO, JSC (of blessed memory), as follows:

*"If it is the intention of the legislature to provide only one hurdle, that is, issue of votes simpliciter, it would have done so. But rather than limit the prerequisite to only a score of the highest votes, it, as has already been shown, made the issue of territorial spread measurable only by a quantum of states so prominent that it is compulsory whether the candidate has a rival or not, at the election. What the learned Tribunal has done in my respectful opinion amounts to an amendment of the legislation. "*

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It was submitted on this issue, that having regard to the depositions in paragraph 6 (u) (v) of the Affidavit in Support, that the rationale for the Rules of Professional Conduct was essentially to entrench professionalism and good conduct by members of the Plaintiff and do away with quacks or make the profession difficult for quacks to engage in. That it was in realisation of these lofty objectives that Rules 9(2), 10, 11, 12 and 13 of the Rules of Professional Conduct (RPC) 2007 were put in place.

The summary of the provisions of the extant Rules of Professional Conduct (RPC) of the 2007 Rules issued by the General Council of the Bar under affected by the Amendment are as follows:

- (a) Rule 9(2) prohibits a legal practitioner from claiming that he has paid his Bar Practicing Fees (BPF) when he is actually in default;
- (b) Rule 10 deals with stamp and seal and makes it mandatory for all lawyers in Nigeria to procure and affix the said stamp and seal to processes and documents emanating from them;
- (c) Rule 11 provides for mandatory continuing legal education;
- (d) Rule 12 provides for annual practicing certificate; and

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- (e) Rule 13 provides for notice of legal practice upon setting up a private legal practice.

The Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020) purportedly carried out or effected by the Defendant (as can be seen in the official Gazette containing the said amendment dated September 3, 2020, contained in Official Gazette of the Federal Republic of Nigeria No.140, Vol. 107 of 7<sup>th</sup> September 2020, declares thus:

*"The Rules of Professional Conduct for Legal Practitioners, 2007 is amended by deleting the following rules, namely: 9(2), 10, 11, 12 and 13. "*

The grouse of the plaintiff is that the purported amendment made by the Defendant was unilaterally made and was not made or issued by the General Council of the Bar or after due consultation with its members.

I observe that Rules 10, 11 and 12 of the RPC which the Defendant inter-alia purportedly deleted, deal with stamp and seal, mandatory continuing legal education and annual practicing certificate respectively. I reason with the Plaintiff's submission that that there is no way the amendment purportedly effected by the Defendant unilaterally could bring the Rules "in conformity with the Legal Practitioners Act, the Law Officers Act and the Constitution of the Federal Republic of Nigeria, 1999" as claimed by the Defendant.

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Having regard to this rationale and on a proper reflection on the nature of alteration or amendment purportedly effected by the Defendant via the Rules of Professional Conduct for Legal Practitioners (Amendment) Rules, 2020 (S.I. No.15 of 2020), the said amendment ought not to be allowed to stand, as beside violating Sections 1, 11 (4), 12 (4) and 20 (1) — (5) of the Act, it would also erode or destroy the very reason for the existence of the Rules of Professional Conduct (RPC) in the first place.

Before I close the curtain there are two issues that were raised by the Defendant that need to be addressed. First, the Defendants submitted that flowing from the facts deposed in the Counter Affidavit and statutory and decided authorities, the Defendant acted within the scope of their statutory powers in the instant Suit. The Court was referred to the pre-conditions on the grant of declaratory reliefs set by Onnoghen JSC in the case of Central Bank of Nigeria V. Jacob Oladele Amao & 2 Ors. (2011) Vol. 201 LRCN. The Defendant submitted that as far as the instant suit is concerned, the Plaintiff has failed to pass the test laid down to entitle him to the grant of the declaratory reliefs he is seeking.

This Court upon a careful consideration of the Applicants claim and the averments contained in the three Affidavits (including Further Affidavits filed) in support, it is revealed that in line with the conditions set down by Onnoghen, JSC, in Central Bank of Nigeria (supra) the Plaintiff discharged the burden of proof in claims for declaration sought in this case. The Plaintiff case has merit.

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Secondly, the Defendant submitted that an invitation has been sent to all members of the General Council of the Bar and some have attended the meeting. Subsequently any decision arrived at the meeting where a member is voluntarily absent is binding on all members as the quorum was provided in subsection 4 of section 1 of the LPA. The Court was urged to so hold. The Plaintiff rebutted the claim that invitation was sent to the members of the Bar Council in Further Affidavit of Razaq shifting the burden to the Defendant. The Defendant did not discharge this burden by furnishing copy of the proof of Notice of Meeting or the Minutes of the meeting.

On the whole, the sole issue distilled from the Written Addresses of the parties and adopted by this Court is resolved in favour of the Plaintiff and against the Defendant. Accordingly the three issues formulated in the Originating Summons are resolved in favour of the Plaintiff. And Judgment is entered in favour of the Plaintiff as per the reliefs sought in this suit as follows:

1. **IT IS HEREBY DECLARED** that upon proper interpretation of Sections 1, 11 (4), 12 (4) and 20 of the Legal Practitioners' Act, Cap L.11 LFN 2004 (as amended), the Defendant who is just one member of the General Council of the Bar and cannot act alone in the discharge of the functions of the Council without the input or contribution of other members of the Council or in consultation with them.

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(SPO)

**Appearances:**

**Olurimle Echia SAN with Grace Igyo Esq., Mercy Ijato-Agada Esq, Raphael Anagor Esq., Uchenna Nwadiakor Esq., Halimat Yusuf Esq., Rafat Mohammed Esq., Shedrack Bendor-Ighamor Esq., N.T. Nienga Esq., Mumrat Adama Esq., F.U. Usman Esq., A. A. Attah Esq. and Favour Ugonma Nwala Esq. for the Plaintiff MBA.**

**A. A. Nuhu Esq. for the Defence.**

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P. I. S. U. L. L. A. N. I. A  
(SPO)

*[Signature]*

**Hon. Justice D. U. Okorowo**

*Judge*

10/08/2022