

**IN THE NATIONAL INDUSTRIAL COURT OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
BEFORE HIS LORDSHIP: HON. JUSTICE O.O. AROWOSEGBE
DATE: TUESDAY JUNE 27, 2023 SUIT NO: NICN/EN/56/2019**

BETWEEN:

EZE TITUS ONYEDIKACHI.....CLAIMANT

AND

NIGERIAN SECURITY AND CIVIL DEFENCE CORPS.....DEFENDANT

APPEARANCES:

- 1. M.J. EZE – FOR THE CLAIMANT.**
- 2. EVELYN O.O. CHARLES-NYANYA – FOR THE DEFENDANT.**

CONSOLIDATED RULINGS

INTRODUCTION AND PROCEEDINGS

COMPLAINT commenced this suit November 26, 2019 and framed the following reliefs for the Court's consideration in paragraph 34 of the *Statement of Facts* [**SF**]:

- (i) A DECLARATION that the claimant's employment is still valid and subsisting and that any purported termination of the claimant's employment by the 1st defendant [sic] without notice and without payment of arrears of salaries and other employment benefits is unconstitutional, null and void.**
- (ii) AN ORDER of this Honourable court compelling the defendants [sic] to calculate and pay the claimant his outstanding/arrears of salaries and other employment benefits from 2007 till date.**
- (iii) AN ORDER of this court compelling the defendants [sic] to compensate the claimant for the permanent partial disability and injury he sustained in course of his duty and services to the 1st defendant [sic].**
- (iv) GENERAL AND EXEMPLARY DAMAGES of N10,000,000 (Ten Million Naira Only).**
- (v) Cost of this suit.**

(vi) **Pre-judgment interest on the unpaid salaries, monetary compensation on injury sustained and other employment benefit from 2007 till date.**

(vii) **Interest in the Judgment debts at the rate of 50% per annum or as this Honourable Court may deem fit to make in the circumstance calculated from the day of judgment until the debts are fully paid and satisfied.**

Against the above, the defendant responded by filing Memo of Conditional Appearance, *Statement of Defence* on 19th February 2020 and motion for regularization on 14th October 2020. The defendant also has in the file at page 92-97 *Preliminary Objection [PO]* and written address in support. The matter came up on 14th July 2021 and, the *PO* was taken in the absence of the 2nd defendant and counsel. Ruling was delivered 28th September 2021 and the objection on the ground that the *Public Officers Protection Act [POPA]* barred the action was dismissed.

The 2nd defendant filed *Memo of Conditional Appearance* and Motion to regularise his defence processes on 11th February 2020. Thereafter, on 17th November 2021 the 2nd defendant further filed *Notice of Preliminary Objection [NPO]*, on the strength of which the 2nd defendant was struck out of the suit on 5th July 2022 thus, leaving the original 1st defendant, as the sole defendant now. On 29th March 2021, the extant erudite counsel to the claimant filed *Notice of Change of Counsel* by which he came in as the new counsel to the claimant. Thereafter, the erudite **M.J. EZE** raised oral objection against the appearance of counsel from the office of the regnant defendant on the ground that, he was in fulltime salaried employment not as legal officer on 17th November 2022, the ruling of which was delivered on the same 17th November 2022. The fulcrum of the oral objection was that Rule 8(1)-(4) of the *Rules of Professional Conducts for Legal Practitioners [RPC]* and S. 45 of the *National Industrial Court Act [NICA]* forbid lawyers in full time employment, not as legal officers, from appearing in Court to prosecute cases on behalf of the defendant. The objection was upheld and, the learned counsel from the defendant's office, whom the Court found, as not employed as legal officer, barred from appearing in the matter.

Subsequently, the case came up 31st January 2023 and the learned **EZE**, for the claimant, drew attention of the Court to the *NPO* filed 29th November 2022. The grouse of the motion was that, all the processes filed by the defendant, having been franked by lawyers in full-time salaried employment, and not being employed as legal officers, were incompetent. On this date, the learned **EVELYN O.O. CHARLES-IYANYA** appeared for the defendant for the first time and the learned **EZE** raised objection against her appearance on the same ground as in the previous objection upheld in his favour on 17th November 2022. The learned **EZE** drew the Court's attention to its previous ruling and submitted, it was bound by it. The learned **CHARLES-IYANYA** countered that, she was employed as legal officer and was from the office of the *Director of Legal Services* in the defendant and not affected by the authorities cited by her opponent.

To the Court's query that there was no appellation attached to the learned **CHARLES-IYANYA's** name when she announced her appearance to show that, she was a legal officer, she retorted that her designation was as earlier announced. The learned **CHARLES-**

INYANYA thereafter objected that the learned **EZE** ambushed her by the oral objection, claiming that nomenclature, as legal officer in paramilitary setting, is not determinative of employment of legal officer but the letter of appointment and that, the appointment letter is a generic one for all cadres, while the distinction for the professional cadre lies in the mode of employment and designation, and that, this is mapped out by the employment of professionals at higher ranks than the general duty officers and that, in the acceptance letter, they would now indicate clearly that, they were employed as legal officers/medical officers. She argued too that, the appointment letter, is subject to the acceptance letter, since anyone or profession could accept appointment either as general cadre, to start at GL 8, or professional cadre, to start at GL 9 by the acceptance letter and that, the terminal point is determined by the mode of entry.

The erudite counsel argued anew in reaction to the Court's observation that, its own understanding of the arguments was that, all officers were originally employed as general duty officers but might later accept the position of legal officers in the acceptance letter that, her argument was that, she was appointed on GL 9 and accepted the appointment on GL 9 as legal officer and posted to the *Legal Department* on that basis. She maintained that the letter of appointment was blank as to the cadre. The erudite defence counsel argued that, as the issues involved verged on rights to fair hearing, they could not be canvassed orally but by the production of documents in support of the arguments. At this point, the Court bearing in mind the difference in actions in personam and actions in rem and, looking at the issue as raising questions of actions in personam, which had to be determined on each and every person or party, asked the parties to file processes to fully ventilate their positions so that, a more informed decision could be rendered. The case was adjourned thereafter to March 29, 2023 for hearing of the objection.

The matter came up as adjourned. On this date, the erudite counsel to the claimant drew attention to the two processes filed. The *NPO* filed 29/11/2022 and, the one filed 09/02/2023. The claimant's counsel pointed out that, he was just served with *Counter Affidavit [CA]* in respect of the *NPO* filed 29/11/2022 but had not received any process from the defence in respect of the *NPO* filed 09/02/2023. In reaction, the erudite defence counsel said on 09/02/2022 she was served by the erudite claimant's counsel with some processes, one which was notice to admit and produce some documents and the other, which was *NPO*, the third, which was *Reply on Points of Law [RPL]* was filed 07/02/2023.

The learned defence counsel listed the processes she filed as *Notice of Non-Admission* filed 14/02/2023; *CA* to the *NPO* filed by the claimant on 09/02/23; *CA* to the *NPO* filed 29/11/2022; and *NPO* to the claimant's *RPL* filed 21/02/222. At this point the learned claimant's counsel pointed out he had not been served some of the processes in issue and because of counter-arguments on this, which involved possible laxity of the Court's Registry at Abuja, the Court ordered photocopies of the processes to be made in the judge's chambers and served on the claimant's erudite counsel, while the matter was adjourned to the following day. The matter came up as adjourned the following day for adoption of all processes.

All applications were taken together for a consolidated ruling. The learned claimant's counsel started first. He drew attention to the *NPO* filed 29/11/2022 and another *NPO* filed 09/02/2023 and adopted the *Written Addresses [WAs]* in respect of the two. He later drew attention to

the *RPL* filed by the defence against the first *NPO* on 07/02/2023 without *Further Affidavit [FA]*. He orally replied to the *CA* against the second *NPO* and the *NPO* against his *NPO*. I will come to that anon. Meanwhile, I move to the adoption of the learned defence counsel.

She stated that in reply to the *NPO* filed 29/11/2022, the defence filed *CA* on 17/01/2023. She adopted the *WA* in support. She also referred to the *RPL [NPO]* filed against the claimant's *RPL* filed 21/02/2023 and adopted it. She indicated that, with regard to the *Notice to Admit and to Produce* filed by the claimant, she said the defence filed *Notice of Non-admission* on 14/02/2013 and, adopted it. She referred to the *NPO* filed by the claimant on 09/02/2023, and said the defence filed *CA* against it on 21/02/2023 and indicated the need to effect correction of typo in that, the last paragraph that was supposed to read 30, erroneously read 26. And the application was granted without objection. Thereafter, the erudite defence counsel adopted the *WA* in support. I now proceed to the oral reply by the erudite claimant's counsel.

The learned *EZE* argued that, the processes filed by the extant defence counsel are incompetent on the same ground as the *NPO* filed 29/11/2022 and referred to SS. 2(3)-(4) of the *Legal Practitioners Act [LPA]* and Rule 8(2) of the *RPC* on how persons other than legal officers could be allowed to practice law as legal officers. The erudite counsel canvassed issue of *functus officio* against the Court, on the ground that, it had decided the same point on 17/11/2022. The erudite counsel argued that, notice to produce the letters of appointment of the named persons were not produced and submitted that, by this fact, the defendant was impacted by S. 167(d) of the *Evidence Act* for concealing evidence at its disposal. The learned counsel also canvassed the argument that, paragraph 2(ii)-(xvii) of the claimant's 2nd *NPO* was not contradicted and therefore, deemed admitted and referred to paragraph 11 of the defendant's *CA* filed 21/02/2023. The erudite counsel argued that, the order this Court made on 14/07/2021 that, the defendant should pay default fee on their defence processes had not been complied with and for that reason, urged the Court to adversely invoke Order 58, R. 20 and Order 57, R. 5(6) of the *NICN Rules* to strike them out and deny the defendant right of audience until compliance. The erudite counsel ended by urging the Court to grant the two *NPOs*. Thereafter, the erudite defence counsel replied on the new issues she said the claimant raised in his oral reply.

The learned counsel was of the view that, whoever gives notice to produce, must give a vivid description or copy of the documents to produce while they must be in the person's possession too. Learned counsel submitted that, the original appointment letters requested were not in the defendant's possession and that, the persons, whose appointment letters the defence requested were not parties in this suit and that, to demand for their appointment letters, would infringe fair hearing. She also contested that, if the claimant's learned counsel needs the appointment letters, he could either take up a civil suit or subpoenaed them. Thereafter, the erudite counsel referred to paragraph 11 of the *CA*, which she said referred the Court to the *CA* filed 17/01/2023 to the effect that, the evidence required was attached. She maintained that, the problem arose because the lawyer that came in July did not have the receipt. Thereafter, the matter was adjourned for consolidated rulings. Having done with the introduction and proceedings before the Court, I shall now move to summary of the regnant processes.

SUMMARY OF THE PROCESSES

A: Summary of the Claimant's Processes

I will summarise all the claimant's processes together. I start with the first one filed 29/11/2022. The grounds of the *NPO* are that: both C.C. Agomoh and Stella N. Ekoh who franked the *Memo of Appearance*, *Statement of Defence* [*SD*], etc. are lawyers employed full time in the defendant, but not as legal officers and for that reason, cannot not frank court processes, more particularly so, that, there is no statutorily created legal department in the defendant. Additional grounds are that, the processes were filed out of time without regularisation and that; only lawyers in the Ministry of Justice could be employed as legal officers. *Affidavit in Support* [*AS*] was filed along the same line. Erudite **M.J. EZE** franked the *WA*. Erudite counsel cited Order 58, R. 25(1)&(2) of the *NICN Rules* to the effect that, the Court could make enquiry as to the conditions precedent for lawyers to appear in court in Nigeria and that, the Court may take appropriate actions thereto. Erudite counsel also cited Rule 8(1)&(2) of the *RPC*, which forbids lawyers in full-time salaried employments not employed as legal officers from advocating cases in courts and from franking court processes for their employers.

Learned counsel cited **NICN/ABJ/346/2017 – Akazor Gladys & Ors v. Council of Legal Education [Delivered March 20, 2019]** and my ruling of 17th November 2022 in this same matter, **PTI & Ors v. Ugwuoke Juliana (2013) LPELR-20311 (CA)**, **NICN/MKD/96/2020 – Comrade Ngodo Toryem & Anor v. Nigeria Civil Service Union [Delivered December 9, 2021]** and, **NICN/MKD/67/2016 – David Chika & Ors v. NKST Mkar & Anor [Delivered April 12, 2022]**. Learned counsel equally argued that, the defendants breached Order 2, Rs. 2(4)-(8), Order 30, R.2(1) and, Order 57, Rs. 5(1)&6(3) of the *NICN Rules* in filing its defence processes out of time without payment of default fees and without leave of court. Thereafter, the learned counsel urged the Court to strike out all the defence processes. I move to the second *NPO* filed by the claimant on 9th February 2023.

The grounds of the *NPO* are that: the *Memo of Appearance* together with the processes franked by erudite **EVELYN CHARLES-INYANYA** on 13th January 2023 be struck out while the learned counsel be equally denied right of audience for exactly the same reasons as canvassed in the first *NPO* just summarised above. The only additional grounds were that: the learned extant defence counsel did not file *Notice of Change of Counsel* before appearing in the matter and, also did not state the email address in regnant with the rules of this Court. There is *Affidavit in Support* [*AS*] in support filed along with the *NPO*, which repeated the contents on the *AS* of the first *NPO* and the facts that have been stated in the oral addresses. **M.J. EZE** also franked the *WA* in support.

The *WA* is a complete rehearse of the *WA* in support of the first *NPO* already summarised above. There is therefore no need to repeat it except that, the erudite counsel now cited the additional authorities of **Registered Trustees of National Association of Proprietors of Private Schools v. AG Rivers State (2028) LPELR-45952 (CA) 21-22, D-D** to the effect that, the *Attorney-General of the Federation* [*AGF*] is the only statutory person that prosecutes for the *FGN* and its agencies and Order 4, R. 4(4)-(6) and Order 15, R. 2 of the *NICN Rules* on the need to state the

email address of counsel, which erudite counsel submitted the defence counsel did not state. Erudite counsel also cited **Adeyinka & Ors v. Agbakwuru & Ors (2019) LPELR-46824 (CA) 18-20, F-A**. Thus ended the WA in support of the second NPO. That being the end of summary of the NPOs filed by the claimant, I move to the reactions of the defendant to both.

B: Defence Processes in Reaction to the Claimant's NPOs

I start with the CA filed 17/01/23. Deputy Commandant of Corps Ike Clementina A deposed it. Though, the specific AS against which it is filed was not clearly stated, but by the date, I assume, it was filed against the AS in support of the first NPO filed by the claimant. She counter-deposed that, the duo of Stella Nwamaka Ekoh and Chris Chibuzor Agomoh were employed as legal officers, contrary to the depositions in the AS in issue. She also counter-deposed that, there is no rank of legal officers in the civil and public services and that, persons could only be employed as legal officers on GL 09 and thereafter, bore any nomenclature chosen by the agency to address the person; and that, in accordance with the foregoing, both Ekoh and Agomoh were posted to the Legal Department where legal officers employed by the corps were posted and that, the public has no right to choose nomenclature for its officers.

The deponent further counter-deposed that, there is a department of legal services in the defendant headed by a director of legal services both at the federal and state levels. The record of proceedings where leave was sought and obtained to file the defence processes being challenged and the photocopy of payment for default were exhibited. The deponent also counter-deposed that, the contract of employment is personal and that, it would be in the interest of justice to dismiss the NPO with cost. I move to the WA in support.

EVELYN O.O. CHARLES-IYANYA franked it. The erudite counsel adopted the two issues formulated by the objector but added another issue. Erudite counsel argued that, the processes filed in this suit met the stipulations of Rules 8(1)-(4) of the RPC in that, the lawyers were both employed as professional and legal officers on GL 09 and that, because, they are not general duty officers, whose entry point is GL 08, their terminal grade ends at GL 16 and that, they could only work in the legal department deployable from state to state command. Erudite counsel cited **Yaki v. Bagudu (2007) 24 WRN PG 52-54, paras. 25-45**. The erudite counsel argued that the previous ruling of this Court on similar issue on 17th November 2022 was in personam, being based on oral addresses, which decision would have been different, had it been based on documents. Erudite counsel also submitted that, there was no part of the ruling that, the Court held that lawyers employed by the defendant could not advocate its cases in courts. Erudite counsel reproduced part of the ruling to buttress her point.

The erudite counsel argued that, contracts of employment and terms are personal and, vary between staff of the same agency and depends on the individual's qualifications. Thereafter, the erudite counsel moved to the second issue, whereby she countered the issue of irregular defence processes.

The erudite counsel submitted that, the defendant duly regularised its defence processes and that, the record of proceedings had been exhibited and that besides, it was even premature to raise the issue at this stage because, trial had not been opened and moved to issue 3, which is the

additional issue she distilled on whether the claimant had satisfied the burden of prove to have the *NPO* granted. Under this cap, the learned counsel argued that, the objector had not placed anything before the Court to warrant the granting of the application. Erudite counsel argued that, a court of law is established to determine live issues and not speculations and, cited **Plateau State v. AGF (2006) SCNJ 1** and **Ladoja v. Ajimobi (2016) 11 NWLR (Pt. 1519) 88**; S. 131, 133 & 134 of the *Evidence Act* and **Egesimba v. Onwuzulike (2002) 9-10 SC 1 at 13**. Erudite counsel also cited **Alao v. Ademola & Ors (2005) ALL FWLR (Pt. 256) 1239(5) 12664** on when declarative reliefs could be granted. The defence asked to strike out the *NPO* and award it cost of N500,000. Thus the *WA* ended. I move to the *CA* against the second *NPO*.

The *CA* was filed 21/02/2023 and counter-deposed by Adamu Salihu, male and a Commandant of the Corps of the Admin Department against the *AS* of the second *NPO* filed 09/02/2023. Paragraph 11(d) of the *CA* counter-deposed that, the claimant, having raised the issue of lack of right of appearance against the defendant once, couldn't raise it again. The deponent further counter-deposed that, officers in both general and professional cadres are addressed according to their grade levels in the paramilitary settings and that, lawyers were employed as legal officers and addressed in accordance with their GL, as is the practice in paramilitary settings. The deponent counter-deposed that, the *2007 Act* gave the defendant power to prosecute in 2007 and subsequently employed legal officers and that, Evelyn Charles-Nyanya was employed in Category A in the professional cadre in 2010 and that, the appointment letter is attached as Exhibit 3.

The deponent counter-deposed that, only the Ministry of Justice can address their lawyers as legal officers and that, the defendant is free to address their lawyer by any nomenclature and that, all lawyers employed in Category A [Professional Cadre] can appear in courts to represent the defendant. The deponent counter-deposed that, there is the *Directorate of Legal Services* at the headquarters and at the state levels and that, any legal officer so employed, can be asked to represent the defendant in court. The deponent counter-deposed that, a lawyer only needed to file *Notice of Change of Counsel*, if another chamber was coming in.

The deponent also counter-deposed that, decision cannot be in rem against a non-party to a suit and prayed the Court for N1Million cost. Thus ended the *CA*. I move to summary of the *WA* in support. **EVELYN O.O. CHARLES-IYANYA** equally franked this *WA*. Learned counsel formulated several issues but I shall summarise all the arguments together. The erudite counsel argued that, the argument of the objector's counsel that, even if a public department employs a person as legal officer, such person cannot appear in courts by virtue of Rule 8(2) of the *RPC*, whereas, it had earlier argued that, by virtue of Rule 8(1) of the *RPC*, only a person employed as legal officer could appear for a public body, is self-contradictory. Learned counsel argued that, by virtue of Rule 9(3)&10(1) of the *RPC*, once a person employed as legal officer had paid his practising fees, he is good to appear in court for the prosecution of cases for public departments. Learned counsel argued that, Rules 8-10 had been fully complied with and that, any other issue is technicality and cited **Yaki v. Bagudu (2021) 24 WRN PG 52-54, 25-45**.

Learned counsel argued that to subscribe to the arguments of the objector's counsel, is to proscribe officers in the *Attorney-General of the Federation's [AGF]* office from appearing in court to prosecute cases, except for the fiat of the *AGF* and that, this is preposterous. Learned

counsel argued too that, the objector is estopped from raising the same issue it had raised in his *NPO* filed 19/11/2022 to which the defendant responded on 13/01/2023. The learned counsel argued that, her appointment letter is before the Court, which shows that she was employed as legal officer and submitted, by virtue of **Kayode v. Sunday & Ors (2010) 9 WRN 156 171-172** that, when there is no ambiguity the words of an instrument must enjoin literal construction. The erudite counsel submitted that, only with regard to prosecution of state criminal cases would she need the fiat of the *Attorney-General* [AG] of the state but not with regard to the prosecution of federal offences because, by law, all legal officers in public departments are under the auspices of the *AGF* and need no fiat to prosecute crimes and likewise civil causes.

The erudite counsel argued that, having raised the issue of incompetent processes once in another *NPO*, the objector is estopped from raising it again. Thereafter, the erudite counsel lapsed into repetition of her previous arguments against the first *NPO* filed by the claimant, which have been earlier summarised. The erudite counsel cited **Avre v. Nigeria postal Services (2014) 46 NLLR p. 8 at 31, A-B** on the argument that, only the Ministry of Justice uses the term legal officers while other agencies use any nomenclature they like, in accordance with the contract of employment as borne by her appointment letter. Erudite counsel drew attention to Exhibits 1-3 and argued that, they showed clearly that, even though, the defence counsel was not addressed as legal officer, but the terms showed clearly that she applied as legal officer and was so employed and that, no law says lawyers in the paramilitary must be addressed as legal officer, as the enabling statute gives it common seal and power to institute and prosecute cases. Learned counsel submitted that, nomenclature of officers in the defendant is solely the prerogative of the defendant and urged the Court to give vent to the words used in Exhibit 3, which were not ambiguous. The learned counsel cited **George Nicol v. Electricity Corporation of Nigeria (1966) LLR 261 and Calabar Cement Company Ltd v. Daniel (1991) 4 NWLR (Pt. 188) 760**. That ends the two *CAs*.

I should mention that the defence counsel also filed Notice of Non-Admission of Documents and Facts on 14th February 2023 and denied that the claimant's appointment letter is the prototype of the letters of appointment of all staff and that, the defendant need not pay to itself to obtain *CTC* from its custody. The erudite counsel also filed *NPO* on 21/02/2023 against the *RPL* of the claimant filed 17/01/2023 against the defendant's *CA*. The grounds were that it raised fresh points not contained in the original *NPO* and not related to issues arising from the *WA* in support of the *CA* and sought to reargue the *NPO* afresh. Erudite counsel cited authorities in support of this position in the *WA* in support of the objection and urged the Court to strike out the *RPL*. That is about the processes filed by the defence. I move to the *RPL* by the claimant.

C: Replies on Points of Law by the Claimant

The only *RPL* filed was the one filed 7th February 2023 against the *CA* of the defence filed 17th January 2023. All I could find in it is re-argument of the issues already covered by the claimant's oral and *WAs* on the issue of *functus officio* by reason of the earlier ruling of this Court on 17/11/2022 on the same or similar issue like the one under consideration. I will not repeat this but only bound to summarise real *RPL*. The claimant's erudite counsel replied that, the defendant, by failure to reply paragraph 2(vi) of the *AS* of the 1st *NPO*'s admitted to the effect

that: “there is no post or rank known as legal officer under the defendant” and thereby, admitted the absence of such rank. Erudite counsel cited SS. 7(1)(c) of the *Labour Act* and 122(1) & 124(1) of the *Evidence Act* to the effect that, the Court must take cognisance of the job description contained in the letter of appointment and cited Ss. 123 & 169 of the *Evidence Act* to the effect that, facts admitted needed no further proof. The erudite counsel submitted that, in virtue of this, the defendant must be held to its earlier oral addresses on 17/11/2022 and 21/1/2023 that their letters of appointment contain no job description “as legal officer” but of general duties by virtue of S. 169 of the *Evidence Act*.

Erudite counsel also submitted that, the burden of proof that the legal representatives of the defendant are legal officers rested on the defendant by virtue of S. 140 of the *Evidence Act*. Thereafter, the erudite counsel lapsed again to re-argument of his previous arguments in the *NPO*. I will not bother to summarise these. Thus ended the *RPL* and that equally ended all addresses. I shall now move to give my decision. But before then, let me state that, I have carefully read and digested all the pertinent processes and, have carefully summarised them as seen above. I have also noted the focal authorities cited and consulted some of them to refresh my memory. By these, I am home and dry to give my considered opinions on these thorny issues.

COURT’S DECISION AND THE *RATIONES DECIDENDI*

I will take all the points of disagreements under the four issues distilled as follows:

- 1. Whether the Court is *functus officio* to take the same issue twice?**
- 2. Whether the condition precedent to regularisation of the defence processes has been fulfilled?**
- 3. Whether the change of counsel and address and, the failure to produce email address, are fatal to the defendant’s processes?**
- 4. Whether the lawyers that franked the defence processes and the extant defence lawyer, are barred from franking the processes and from advocating this case for the defendant?**

I will take the four issues seriatim. Issue 1, as distilled above, deals with the vires of this Court to take the same point it has taken and decided earlier in the same case again. Both claimant’s counsel and the defence counsel are, with the utmost respect, confused about this point. If the claimant/objector actually truly believed that the Court was *functus officio*, he would not have filed both the first and second *NPOs*. He would have filed an entirely different *NPO*. He would have filed an *NPO* raising only the issues of *res judicata* and *functus officio*. Alas, he did not! *Stare decisis* is different from being *functus officio*. That he filed the same objection against the right of the defendant’s officers to appear to prosecute this civil case on behalf of the defendant, as salaried employees, is a signification that he is blowing hot and cold on the issue. That, the defence too, argued at one point that, the claimant could not raise the same issue the Court had decided again: is pointer to an admission that, the issue was supposedly *res judicata* and, the Court *functus officio*. And the erudite counsel has not gone on appeal! So, it

ought to be sore to the defence mouth that, the current defence counsel was not a party to the earlier decision and, could therefore not be bound by it, which argument in the main, contradicts the doctrines of *res judicata* and *functus officio* obliquely raised.

It is seen that both sides are guilty of double speak, which the law forbids – **Ajuwon & Ors v. Governor of Oyo State & Ors (2021) LPELR-55339 (SC) 34-35, F-A**. But the Court is bound to state the correct position of law on an issue and not to be unduly concerned with the desperations of the parties to win a point by all means, especially that both parties, with great respect, were speaking from both sides of their mouths on the same issue and thus, guilty of the same offence – **Ogbere & Anor v. Ukpo (2021) LPELR-56390 (CA) 36-37**. What then is the correct position of law on this issue, bearing in mind the facts of the case? This takes us to the distinction between actions *in personam* and actions *in rem*. The learned defence counsel had obliquely touched on these, but shot herself on the leg, when she lapsed into arguing that, the Court could not take the same issue twice. Let me quote from **Dike & Ors v. Nzeka II & Ors (1986) LPELR-945(SC) 12-13, C-B** to begin the resolution of the issue:

“A judgment is said to be *in rem* if it is an adjudication pronounced upon the status of a particular thing or subject matter by a tribunal having the jurisdiction and competence to pronounce on that status. Such a judgment is usually and invariably founded on proceedings instituted against or on something or subject-matter whose status or condition is to be determined. It is thus a solemn declaration on the status of some persons or things. It is therefore binding on all persons in so far as their interests in the status of the property or person are concerned. **That is why a judgment in rem is a judgment contra mundum – binding on the whole world – parties as well as non-parties.** A judgment in personam, on the other hand, is on an entirely different footing. It is a judgment against a particular person as distinguished from a judgment declaring the status of a particular person or thing. **A judgment in personam will be more accurately called a judgment inter partes.** A judgment in personam usually creates interest to, or in the subject-matter in dispute whether it be land or other corporeal property or a liquidated or unliquidated demand, but does not affect the status of either the persons to the dispute or the thing in dispute.”

Rhein Mass UND See & Ors v. Rivway Lines Ltd (1998) LPELR-2948 (SC) 15-16, F-C says further, of actions in personam:

“Etymologically an action in personam is an action brought against a person, an action to compel to do or not to do a particular thing or take or not to take a particular course of action or inaction. Actions for damages in tort or for breaches of contract are clearly directed against the person as opposed to actions which are brought for the purpose of declaring or challenging a status, like proceedings under the matrimonial laws of the country or of the legitimacy or an admiralty action directed against a ship or res (and also known as action in rem) or the like. **Generally therefore, all actions which are aimed at the person requiring him to do or not to do or to take or not to take an action or course of conduct must be and are actions in personam.**”

Arising from the foregoing, I am of the candid opinion that, the objections against the appearance of the lawyers from the defendant in this action and their right to frank processes for the defendant, are actions in personam and not in rem. They seek to stop these lawyers from

taking the actions or the course of conducts of representing their employer as advocates in this case and, from franking court processes for their employer. They do not declare their status as lawyers, but their rights contingent upon conditions precedent and, they do not impact their ranks and statuses as officers of the defendant. The Rules 8(1)-(4) of the *RPC* allegedly violated or breached, only contained conditions precedent for lawyers in full-salaried employment to appear as advocates in courts to prosecute cases and, to frank court processes for their employers. In essence, the rules provide for the contract of engagement between lawyers and their regulatory bodies. They do not affect the status of the lawyers as lawyers, but their rights to take the action or course of representing their employers in court and, franking court processes for their employers, until they have shown that, their employers met the conditions precedent therein stated.

I therefore clearly and unequivocally hold that, the objections against the appearances of the lawyers from the defendant are actions in personam and, the decision previously rendered, is a decision in personam, only binding on the parties to the decision. The erstwhile lawyer [Chiedozie], whom the previous decision barred from conducting this case, not being the same as the present lawyers, there is no *res judicata* between the present erudite defence counsel and the claimant or the claimant's erudite counsel and thus, this Court is not *functus officio* on the issue. The previous decision just serves as binding precedent.

In fact, the objection against appearance in court and franking of court processes is not even between the claimant and the defendant, but between the claimant's lawyer and the defence counsel, being purely matter of professional ethics, which is none of the businesses of the claimant, whose case is being delayed by this lawful rigmarole. The claimant's lawyer is burden with the duty imposed on him, as a member of the legal profession, to raise objection against any perceived infringement of the rules of professional conduct for lawyers in Nigeria. The interest of the claimant is that, his case be heard on time. He had no interest in the niceties of the legal profession. Each challenge to right of appearance must therefore be individually determined, not being a declaration in rem against the whole world. But in subsequent cases, it might be easier to decide, as a matter of course, having written a well-considered opinion. Like the *Supreme Court* held in **Dike & Ors v. Nzeka II & Ors [supra]**, my previous decision was: "...A **judgment in personam**' and '**will be more accurately called a judgment inter partes...**' Hence, issue 1 is dismissed as lacking merits. I move to issue 2.

Issue 2 is: **Whether the condition precedent to regularisation of the defence processes has been fulfilled?** I need not waste time on this. It has been fulfilled. The defendant exhibited *CTC* of the *Record of Proceedings* of 14th July 2021 and photocopy of the receipt for payment of the default fee as Exhibit 1 of its *CA* filed 17th January 2023. They are at p. 172-176 of the *Process File*. I have also found the original receipt kitted into page 82 of the *Process File*, obviously in line with my directive in the previous decision in issue, that it be kitted into the file – p. 2, para. 3 of Exhibit 1 of the *CA* of 17/01/2023, at p. 173 of the *Process File*. The objection is therefore dismissed. I move to issue 3.

Issue 3 is: **Whether the change of counsel and address and, the failure to produce email address, are fatal to the defendant's processes?** I need not waste time on this too. I agree entirely with the defence that, change of counsel in the same chambers does not necessitate the

need to file *Notice of Change of Counsel*. I am of the firm view that, the rule relating to change of counsel is all about securing the interest of an outgoing counsel from another chamber, to prevent a situation whereby the Court would be used as an instrument of chicanery against an outgoing counsel. In a nutshell, it is designed to promote probity and edification of the rules of professional conducts between lawyers so that, the unethical practice of client-snatching, would not thrive amongst lawyers, to cause embarrassing distractions in court, when counsel begin to haggle on the proper counsel. By its nature, it is totally inapplicable to counsel from the same office, who have joint and non-contradictory interests in all the matters regarding their joint office and joint employer and, cannot be heard to complain in court of briefs being snatched or of fees not settled amongst themselves, as is wont between two different chambers. This aspect of the objection is red herring and, it is accordingly dismissed as lacking totally in merits.

I take the second leg of the objection, which is about change of address and refusal to submit email address in accordance with the rules of this Court. While it is understood that, the defence counsel who have appeared and franked processes in this case, are from the same office, I took notice of the evidence before the Court, which is undisputed that, the office has branches across the federation and a headquarter in Abuja. These signified that, addresses might change, even though, the same office employed these lawyers, once different counsel from the same office takes over. Even the same counsel could change address, if s/he moves to another of the defendant's offices or branches. The important thing is that, s/he must make the new address available to the Court and the other side on time. But let me state that, after appearance has been entered, a counsel outside the immediate locality of the Court's division in issue, is obliged by the rules of this Court, to produce address within the local jurisdiction of the division for subsequent service of processes – Order 4, R. 4(2) of the *NICN Rules*.

So, all the arguments about failure to produce addresses are not worth splitting the air on because, these are issues that the Court can order the defence to comply with and therefore, they do not constitute enough reason to strike out any process as being incompetent. The worse that could happen is that, the Court would grant cost against the defaulting party, if for that reason, the matter had to be adjourned. The *NIC* is a Court of substantive justice, being a labour Court, where litigants could personally prosecute cases – Order 1, R. 9(2)-(3) and Order 5, R. 5(1) & 6(3) of the *NICN Rules*, this Court would not rely on undue technicality to hinder the merits of a case. For these reasons, I decline the invitation of the objector's learned counsel to strike out the processes and instead, order the defence to comply with the rules of this Court, as elaborated above, by providing the email address and address for service within the local jurisdiction of the *Enugu Division* of this Court and, not the national jurisdiction. That is if the processes survive the onslaught of the fourth issue to be examined. Hence, issue 3 is decided in the equilibrium. I move to issue 4.

Issue 4 deals with the question: **Whether the lawyers that franked the defence processes and the extant defence lawyer are barred from franking the processes and from advocating this case for the defendant?** This is the major crux in the two *NPOs* filed and, the issue has two segments. The first is with regard to the question: whether the duo of C.C. Agomoh and Ekoh S.N. could frank processes, for their employer, before this Court, being in full-time salaried employment without being legal officers, in contravention of the *RPC*? The second is objection to the right of appearance of the extant erudite defence counsel to frank court processes and

prosecute this civil case for the defendant on the same ground as the first segment. Arguments and counter-arguments have been canvassed. I have resolved an aspect of it as a preliminary point. This is the aspect relating to *res judicata* and *functus officio*. I shall consider the remaining aspects of the fight together. The starting point is the pieces of evidence before me. I shall take the two *NPOs* together on this issue because, they raised virtually the same issues and arguments, as I have indicated earlier.

Now, the crux of my earlier ruling of 17th November 2022 is as found at p. 20 para. 3 of the *Proceedings File*:

“For a fulfillment of the R. 8(1) of the *RPC*, twin issues must be satisfied. 1. **The erudite Chiedozie must first and foremost be employed as a legal officer, and 2, this appointment must be in a government department so created for that specific purpose.** The erudite Chiedozie failed to satisfy the first condition precedent to the second. He did not also satisfy the 2nd. He was not employed as a legal officer into government department but as a general duty officer.

Hence, the fact that he is a fully qualified lawyer is notwithstanding; he cannot appear in this case to represent the NSCDC. I fortify my decision with the authorities of *PTI & Ors v. Juliana* (2013) LPELR-20311 (CA) 33-34, B-F and *Gladys & Ors v. Council of Legal Education* [supra].” [Emphasis supplied]

Has the regnant counsel met the above prescriptions? Let us examine this. Now, the new defence counsel has exhibited her letter of appointment and the letter of acceptance. I will not bother to cognisance the 1st and 2nd documents exhibited, which are legal opinions of administrative officers on matters of law because, they are not qualified to express opinions on issues of law, particularly on matters pending before a court of law, as to the propriety or otherwise of the Court’s decision on its previous ruling in issue. Hence, I discountenance Exhibits 1 & 2 of the defendant’s second CA. Issue of non-certification of these documents is germane. I will not countenance this because, I observed that, the claimant did not challenge their authenticity, but was rather arguing about the inconsistent arguments of the erudite defence counsel about what she was employed as and what she accepted.

To effectively challenge the documents, the claimant’s counsel ought to have demanded for their originals or applied for *CTC* personally, to show that they were falsified. Secondly, with regard to the letter of appointment, the defence counsel must be the one with the original and, is not obliged to obtain its *CTC* and can therefore, lawfully exhibit its photocopy, as she could tender the original without reproach – ***Seleiko Communications Ltd v. Access Bank Plc* (2020) LPELR-51284 (CA) 19-21, B-F**. Since the erudite defence counsel did neither of these, he is deemed to have admitted their veracity and, by virtue of S. 12(2)(b) of the *National Industrial Court Act [NICA]*, as validated in the *Court of Appeal’s* decision in Suit No. **CA/IL/2021 – Adegboyu v. UBA [Delivered 14/04/2022]**, which eschewed technicality in favour of substantive justice, I will cognisance these documents. The letter of appointment is Exhibit 3 and, it clearly states that: “...I have the pleasure to inform you that the Board of CDIPB has approved your appointment into the Nigeria Security and Civil Defence Corps as Assistant Superintendent of Corps (ASC 1) Professional Cadre [Legal Services] on CONPASS 09...”

The second of the *Exhibit 3 Series* is the photocopy of the handwritten application for employment. By it, the learned counsel applied as *Legal Officer* in the *Legal Services* in the defendant – see the caption – and also accepted it in the third in the *Exhibit 3 Series*, as a *Legal Officer* in the *Legal Department*. There is also evidence of posting to the legal unit in document 6 of the *Exhibit 3 Series* and, evidence of deployment, which ordered the learned defence counsel to: “maintain statusquo Ante [sic] as Legal Officer in Legal Unit...” at the 7th document in the *Exhibit 3 Series*.

I think this scenario marks a distinction between her employment and that of Chiedozie in my ruling of 17th July 2022, which is a reason why the objection herein must be examined further. The question is: has this met the requirements of the law? Let us examine it to see. In my ruling of 17th July 2022, I had held that, the officer must be employed as legal officer in a department of government specifically created for that purpose. The erudite claimant’s counsel had cited **Gladys & Ors v. Council of Legal Education**[1] in which His Lordship Kado J. held:

“From all I have been saying above is that the law does not prohibit or disallow a law lecturer from engaging in private legal practice in so far as it is to render services to third party and not his employer. This means that a law lecturer like Dr. E.O. Olowononi, Esq; cannot appear in court in a matter involving his employer for purposes of providing legal representation for his employer (the defendant in this case). But, he can appear in respect of other persons.

Having held that an employee of the defendant cannot provide legal representation for the defendant in court, this also means that he cannot in view of the provisions of Rule 8(2) prepare, signed [sic] or franks [sic] pleadings, applications, instrument agreements contracts deeds letters memoranda [sic], reports, legal opinions or similar instruments or processes or file any such documents for his employer.

With the state of the law it is only a private legal practitioner or a legal officer from the office of the Honourable Attorney General of the Federation that can provide legal representation for his employer.”

It is pertinent to mention that, the *Council of Legal Education* was the employer of the lawyer in issue, as a law lecturer and, construing the provisions of Rule 8(2) of the *RPC* in issue herein, this Court came to the conclusion, per Kado J. that, only the office of the *AGF* could represent the Council and frank court processes for it and thereby, struck out all the processes prepared by the said counsel. I think the case is similar to the extant case because, the lawyer in issue was employed as a law lecturer and, the employer subsequently deployed him to frank court processes in the case and to advocate the case and, this Court held, per Kado J. that, while he had the right to frank court processes and prosecute cases for third parties, he however had no such rights with respect to his employer. It is without doubt; the Council is a public department or institution, just like the *NSCDC*.

What the forgoing simply means is that, to have the rights to frank court processes and audience to advocate in court for the employer, he must be employed as a legal officer in accordance with the *LPA* and *Law Officers Act’s* [**LOA**] definition of law officers or, by a statute specifically creating an exception for him. Otherwise, he cannot enjoy the rights of audience and franking of

court processes for his employer. Now, the erudite defence counsel has argued that, the public cannot dictate the nomenclature to adopt by the defendant to christen its employees and that, to adopt the line of reasoning of the claimant's erudite counsel would mean, even the Ministry of Justice would be affected. Learned counsel has also argued that, only the office of the AGF could use the title "law officer" and that, the relationship between her and the defendant, is contractual in which the public cannot interfere.

The *Court of Appeal's* authority in **Forson v. Calabar Municipal Govt & Anor [2003] LPELR-7273 (CA) 15-17, E-C** seemed to support this part of the defence arguments recited above. The *Court of Appeal* had disagreed with the erudite counsel to the appellant in that case, when it held that, he cited Rules 30 & 31(a) of the then *Rules of Professional Conduct in the Legal Profession (Legal Practitioners Act, 1975)* without taking cognisance of the exceptions contained therein, in spite of the fact that, the other side actually deposed to CA that the lawyer in issue was a legal officer in the respondent with exhibits showing this. The *Court of Appeal* frowned on this in the following words:

"...Still learned counsel to the appellant, made a hallowed submission that 'the purport of Rule 31(a) of the Rules of Professional Conduct... is that no member of the Bar whilst a servant or agent in salaried employment of any kind, should not [sic] appear as advocate in the Supreme Court or any High Court...and the purposes is to exclude a member of the Bar who are servant (sic) or in all salaried employment.' With due respect, this submission is not only empty and untenable, but a deliberate distortion of a clear and unambiguous provisions of the law. It is an attempt to erase the exceptions in Rule 31(a)(i), (ii), (iii) and (iv). There is no doubt that if the above submission is accepted, then from the Hon. Attorney-General at the Federal or State level, down to pupil state counsel who are all servants of the state and are on salaries, will be barred from appearing in Courts. The framers of the Rules of Professional Conduct for Legal Practitioners never intended such a weird proposition."

That is the exact accusation raised by the erudite defence counsel against the claimant's objections and the arguments on them. Taking this excerpt in isolation without being very careful, it would appear to echo the erudite defence counsel's arguments, though the erudite defence counsel did not cite the authority. But the authority showed that, the *Court of Appeal* said the lawyer in issue came squarely within the confines of the exceptions in the Rules cited, having been employed as a legal officer in a government department. The nagging question remains: was the regnant defence counsel employed as legal officers in the government department? I turn this same question to the *Court of Appeal's* decision in **Forson's case** [supra] for further guidance. It further held:

"In resolving issue No. 1 in favour of the respondents, it has been shown by Exhibits CMG 2 that E. Edet Okon is a legal officer with the respondents. In counter-affidavit...it is clearly stated that the functions and duties of legal officer is succinctly spelt out in the **Federal Government Approved Scheme of Service**. Looking at page 41 of record, which is the contents of Exhibit CMG 2, duties of a legal officer is clearly spelt out. It provides thus: '...2.1.3 *Drafting and filing legal documents in courts.* 2.1.4 *Appearing for the Local Governments in matters of Civil Litigations in Courts...*' Thus, it is very clear that a legal officer in the service of the respondents, perform the duties of a solicitor and advocate as any other legal practitioner, as

contemplated by Legal Practitioners Act...In section 80(3)(b) of Cap. 51 Laws of Cross River State 1981, it is provided that: '(3) In case of: (b) a suit brought by or against that Local Government, the Local Government may be represented in court, at any stage of the proceedings by (i) A legal practitioner or (ii) An officer or employee of the local government who shall satisfy the Judge that he has the authority to represent the Local Government.'... In like manner section 80(3)(b) of the High Court Law of Cross Rivers State, 1981 has taken care of the civil and criminal prosecution of Local Government Councils in Cross River State i.e. the respondents in this matter. Moreover, it is a notorious fact that is beyond any dispute, that all tiers of government have been engaging the services of private legal practitioners to handle their civil litigations before all the courts of record. That is the similar import of section 80(3)(b) of the High Court Law [supra] when it provided for (i) a legal practitioner or an officer or employee." [P. 22-24, A-B].

From the above, there are clear statutory provisions that in-house salaried lawyers could represent the local governments in Courts. It is clear from the foregoing that, the decision of the *Court of Appeal* in the instant case, was based strictly on the provisions in an enabling statutes that created the department and granted the in-house salaried law officers or legal officers or lawyers therein the direct powers to frank court processes and advocate cases for the local governments in *Cross River State* and, not by way of necessary implications of administrative fiats, as is the instant case. There was also an approved *Scheme of Service*, another statutory instrument made pursuant to the *Constitution* – **Okoroafor v. Orthopaedic Hospital Management Board & Anor**[2] – that spelt out clearly the functions of these legal officers and their rights of audience in courts and to frank court processes. There is no equivalent provision in the *NSCDC Act*. In this regard, I quote my previous decision on the issue:

"First, let me point out that the provisions of S. 3(1)(f) of the *NSCDC Act* did not cover civil cases but criminal cases. It is similar to S. 23 of the *Police Act*, which gives the Police the powers of criminal prosecution by its officers only subject to the right of take-over by the AGF. That is exactly the function of S. 3(1)(f) of the *NSCDC Act*.

The corporate personality of the Corp is provided in S. 1(2)(b) of the *NSCDC Act*, and it did not say the Corp could establish a government department for the purposes of prosecution of cases. It only says it could sue in its own name but not that, it could prosecute such cases by its lawyers but it did not bar it too from creating such department.

The only section that says it could personally prosecute its cases is S. 3(1)(f) of the *NSCDC Act* and incidentally, it limits the prosecution to criminal cases. Unfortunately, the case before me is a civil matter. Hence, S. 3(1)(b) of the *NSCDC Act* did not nullify the provisions of the R. 8(1) of the *RPC* with respect to the prosecution of civil cases. I so find and hold."

It is clear that the *NSCDC Act* did not provide in any place for the right of a law officer employee or lawyer-employee of the defendant to frank court processes and to appear to advocate civil cases on its behalf and none of its provision creates the office of law officer or legal officer. It is also clear that, no scheme of service is presented before this Court to show the schedule of duties of the law officers it employed, not to talk of being made pursuant to an enabling statute. What this simply means is that, to have the lawyers employed by the defendant in full-time salaried

employment, to possess the rights to frank court processes and audience to advocate in court for it, these lawyers must be employed as a legal officers in accordance with the *LPA* and *LOA*'s convergent definitions of law officers or, by a statute specifically creating an exception for such lawyers, as in the *High Court Law of Cross River State*, as cited in **Forson's case** [supra]. Otherwise, they cannot enjoy the rights of audience and franking of court processes for their employer [the defendant herein] and, I so hold.

Besides, the observation made that, even law officers in the Ministry of Justice would not have been able to practise, had the interpretation of the appellant's counsel in **Forson's case** been adopted, apart from the reasons given above, it, with the greatest respect, did not take cognisance of S. 2(3)&(4) of the *Legal Practitioners Act [LPA]*, which specifically provides for the *Attorneys-General [AGs]* and law officers and, for persons with fiats from the offices of the AGs, the rights to frank processes and audience in courts for their employers, even though, in full-time full-salaried employments. S. 6(1)&(2) of the *LPA* defines the AGs as law officers. The exception given to the law officers are so strong that, they are even exempted from payment of the Bar Practicing Fees, by virtue of S. 8(2) of the *LPA*. It is clear from a close perusal of the Rule 8(5) of the *RPC*, which specifically limits the duty of lawyers in the military to appearance in court martial alone, and even at that, not as a lawyer, but as an officer and, can never appear as advocates in the regular courts that, the *RPC* actually intended to, and did actually forbid all lawyers in salaried employments, from franking court processes and advocating cases in courts for their employers, except the legal officers, as defined under the *LPA* and *LOA*.

The *LPA* seemed to have covered the field such that, the *RPC* could widen the scope of exceptions. Rule 8(1)-(5) of the *RPC* actually refers to the legal officers or law officers in the *LPA*, as the only full-salaried lawyer-employees with full rights to frank court processes and advocate cases in courts for their employers and, nothing more. The *RPC*, having been made pursuant to S. 12(4) of the *LPA*, as a subsidiary legislation, it cannot override its parent statute – **African Natural Resources and Mines Ltd v. SS Minerals Resources Ltd (2021) LPELR-55151 (CA) 10-11, E-A**. The *RPC* cannot therefore, override any statute duly passed by the *National Assembly [NASS]*. S. 2 of the *LPA* actually conceived lawyers as independent contractors, not amenable to full-time salaried employment, for which reason, it created exceptions for the law officers, to accommodate the special need for them.

It would therefore appear to me that, since the *LPA* has covered the field of exceptions to the bar against the franking and advocacy of lawyers in salaried employment, specific legislation by higher authority than the *RPC* [that is the *NASS*], is necessary to widen the scope of the legal officers or lawyers with exceptions to frank court processes and advocate in courts, even though, in full-time salaried employment, for their employers. **That is why the Rule 8(4) of the *RPC* even says, for such lawyers, they can only appear as agents or officers**, even where the employer is: “permitted by law to appear by an officer or agent, and in such cases, the lawyer shall not wear robes.” Likewise, lawyers employed in the *Armed Forces* are denied rights to frank court processes and audience in courts – R. 8(5) of the *RPC*. This is why it has always been necessary for statutes to specifically provide for further exceptions outside the breadth of the *LPA*.

By the forgoing, it is very manifest that, the *RPC* did not intend to widen and did not widen the scope of the exceptions granted in the *LPA*. It follows therefore, that, for a lawyer in full-time full-salaried employment to frank court processes and advocate cases in courts for their employers, outside the exceptions created in the *LPA*, there must be in existence, a valid statute that creates the office or government department and, specifically allows the lawyers employed therein as law officers, the rights to frank court processes and advocate cases in courts for the department or office. Where there is none, there is no power or right in lawyers employed by any government department, to frank court processes and advocate cases for their employers in courts. The letters of employment and the like, cannot and is not, capable of circumventing this statutory restrictions against lawyers in full-time salaried employment, to frank court processes and advocate cases in courts for their employers. I so hold. They are limited to giving in-house legal advice to their employers. I so hold. Rules 9&10 of the *RPC*, relating to payment of annual practising fees, being on different issue, therefore, did not, at all, impact Rule 8(1)-(5) of the *LPC* and, S. 2(3)&(4) of the *LPA*, contrary to the defendant's assertion. That this is so, is further buttressed by S. 3 of the *Law Officers Act [LOA]*, which provides:

“Every person appointed as Attorney-General or Solicitor-general of the Federation, the Director of Public Prosecution of the Federation, Legal Draftsman of the Federation, or **State Counsel**, shall, so long as he continues to hold such office be deemed to be, and every person who shall have been appointed to any such office shall have been deemed to be, a barrister, advocate and solicitor of the Supreme Court of Nigeria ex-officio and shall be entitled, and shall be deemed to have been entitled, to appear as counsel in all courts in Nigeria in which counsel may appear.”

“*State counsel*” is another name for ‘legal officer’ or ‘law officer’. The above provisions of the *LOA* is a further confirmation of the assertion that, by virtue of the *LPA* and *RPC*, only law officers, as defined in the *LPA* and the *LOA*, are permitted as lawyers in full-time salaried-employments, who can frank court processes and advocate cases in courts for their employers. To obviate this, there must be a statute that specifically widens the scope. Hence, the arguments of the learned defence counsel that, issue of right to appear in court, being purely contractual, the public cannot dabble and that, by virtue of the fact that, the defendant can sue and be sued, it thereby had the liberty to field lawyers in its employment in court to represent it as advocates, is not correct, with the greatest respect. The issue of legal representations in courts for employers by their salaried-lawyers is purely statutory and external to the individual contracts the lawyers might have with their employers.

A lawyer being a professional, his/her right of appearance in courts is dictated by the rules of the profession. Hence, deployment or posting to a legal department, superficially created, does not solve the problem, being the defendant's internal affair. To confer these rights, there must be in existence a statute creating the legal department and, giving the law officers or lawyers therein-employed, the rights to frank and advocate cases in courts for the employers, just like the *LPA* and the *LOA* gave to the legal officers and state counsel or, just like the *High Court Law of Cross River State* [supra] gave the state's Local Governments' in-house lawyers these rights. The intendment of the *LPA*, *LOA* and *RPC* is to bar lawyers in full-time salaried-employment in government departments from exercising the rights to frank court processes and advocate cases, just like in the private corporations, except there is an enabling statute that clearly and directly negates that negative effect.

With respect to the learned defence counsel's advocacy that, the right of lawyers in full-time salaried employment to frank and advocate cases in courts for their employers is contractual and not subject to the control of the public, this argument is wrong, with the utmost respect. It must be noted that, the right of lawyers to appear in court is not dependent on the whims and caprices of the defendant/employer, but on the rules of the *LPA*, *LOA* and *RPC* for lawyers; meaning, the conferment of these rights are externally secured and moderated by enabling statutes and, for the defendant to have their lawyers prosecute civil cases for them, they must follow the dictates of the *LPA*, *LOA* and *RPC*. As the defendant did not call the lawyers to the Bar, it cannot secure or moderate their rights to frank court processes for it or their right of appearance in courts. The *RPC* are made pursuant to the *LPA* and, for it to be displaced by another statute, that statute must expressly override it and the *LPA* and, not by implication or any unclear means, and definitely, not by administrative fiats.

At the centre of the whole scenario, as I can understand, is that, statute must specifically create the department and give the lawyers employed therein as law or legal officers or state counsel, rights to frank court processes and of audience in court. These lawyers in full-time salaried employments must be employed under a law similar to the *LPA* and *LOA* to effectively widen the scope of the exemptions granted in the *LPA*, *LOA* and *RPC*. It cannot be widened by mere letter of appointment or the like, but by clear statutory provisions to that effect. Otherwise, the defendant must rely on either the office of the *AGF*, the fiat of the *AGF* or *AG* of state in accordance with S. 2(4) of the *LPA* or, take the services of private lawyers to prosecute civil cases. I must point out that, the provisions of S. 2(3)(b) of the *LPA* specifically mentioned civil service and, this implies that, the defendant cannot even take advantage of the provisions of S. 2(4) of the *LPA*, not being in the civil service, but in the public service – S. 318 of the *Constitution*, which makes a distinction between civil and public services of the federation and state, is in focus.

The defence counsel has argued too that, to deny the defendant and its lawyers the right of audience and the right to frank court processes would infringe their fundamental right to fair hearing. I do not see how this could arise. The lawyers are not barred from earning their full salaries and their in-house ranks/privileges are not diminished, so they have not suffered any injury. The defendant too is not in a position to moderate the right of lawyers as professionals, who, by opting to belong to the legal profession, have subjected themselves to the rules of the profession, as legal practitioners. And the defendant must take them as such. And I do not find that these rules in any way constitute restraints of trade because, lawyers in full-time salaried employment are not barred from the practice of their profession, which is not limited to franking of courts processes and advocacy of cases in courts, but include rendering of legal advice in-house, which they will still continue to do for their employers as in-house lawyers and many other duties, the legal profession being a versatile profession. In any case, if there be restraint of trade, it is not illegal, having been made by statutes: the *LPA*, *LOA* and the *RPC*.

Besides, it has always been the law that, imposition of conditions precedent to the exercise of a right is not unlawful or unconstitutional – **Ugwuanyi v. NICON Insurance Plc (2013) LPELR-20092 (SC) 78-79, D.** The defendant must do the needful, by moving the *NASS* to amend the *NSCDC Act* to incorporate these rights, as exceptions to the ban of lawyers in full-time salaried employment from franking court processes and advocating civil cases in courts for their employers. Hence, the statutory bar does not infringe any right of the defence counsel and the

defendant. The defendant still has the right to legal representation from the AGF and private legal practitioners. The objections were therefore not *mala fide* but *bona fide*.

The learned defence counsel also tackled the objections by arguing that, the objector has not placed anything before the Court to warrant the grant of the applications and that, the objections amount to speculation, which a court of law is forbidden from entertaining. With the utmost respect, I did not for once feel this line of reasoning was valid. Going by the **Forson's case [supra]**, it would be observed that, when similar objection was raised, the respondent responded by filing CA with the necessary exhibits to show that, the lawyer in issue had right of audience. The instant objections by their nature, the grounds are obvious on the face of the defence processes, as the defence counsel did not enter or announce appearances as legal or law officers or state counsel and did not frank their processes in that capacity but clearly as salaried employees of the defendant thus, raising the immediate concern that, they may **not** be entitled to frank court processes or appear in court for the defendant. It is the duty of the defence to bring forth the necessary documents to displace the obvious lack of rights in them.

Hence, apart from my previous holdings, the refusal of the defendant to exhibit the employment documents in relation to the duo of Agomoh and Ekoh, is fatal to their defence. He who asserts the negative has no duty to prove, but he who asserts the positive in reaction, must prove – **ISC Services Ltd v. International Starchem Industries Ltd (2019) LPELR-48842 (CA) 34, C-D**. It is the defendant that asserts the positive in reaction and therefore, has the burden of proof. The qualifications of the defence counsel as lawyers in full-salaried employment to frank court processes for their employer and to advocate in court, not being apparent on the face of the processes filed and appearance in court, must logically be within the exclusive closet of the privacy of the lawyers in issue to prove. Hence, the learned regnant defence counsel could not deny and, was not in a position to deny, any allegations against the duo of Agomoh and Ekoh about their lack of right to frank the processes in issue, having not filed the necessary evidence – **Neka B.B.B. Manufacturing Company Ltd v. African Continental Bank Ltd (2004) LPELR-1982 (SC) 12, B-E**.

Arising from the foregoing, I am of the firm view that, the arguments of the erudite objector's counsel that, the *LPA* and *RPC* totally forbid the erudite defence counsel from franking the defence processes and from advocating the defendant's case in court are unassailed and, not in any way contradictory. The *RPC* takes its life from S. 12(4) of the *LPA* and, the *RPC* and the *LPA* are bound together by that umbilical cord and, must be construed together. That, this line of reasoning is correct, is ascertained in the *Court of Appeal's* decision in **PTI & Ors v. Juliana (2013) LPELR-20311 (CA) 33-34, B-F**, where the Rule 8 of the *RPC*, which is in issue herein, was construed, as follows:

“Rule 8 of the Rules of Professional Conduct provides as follows: ‘8(1) A lawyer, whilst a servant or in a salaried employment of any kind, shall not appear as advocate in a Court or judicial Tribunal for his employer except where the lawyer is employed as a legal officer in a Government department. (2) A lawyer, whilst a servant or in salaried employment, shall not prepare, sign or frank pleadings, applications, instruments, agreements, contracts, deeds, letters, memoranda, reports, legal opinions or similar instruments or processes or file any such documents for his employer. (3) A director of a registered company shall not appear as advocate

in Court or judicial Tribunal for his company. (4) A lawyer in full-time salaried employment may represent his employer as an officer or agent in cases where the employer is permitted by law to appear as an officer or agent, and in such cases the lawyer shall not wear robes. (5) An officer in the Armed Forces who is a lawyer may discharge any of the duties devolving on him as such officer and may appear at a Court Martial as long as he does so in his capacity as an officer and not as a lawyer.’ **It is clear that the provisions state clearly that a lawyer in salaried employment cannot appear for his employer as an advocate in Court...**”

It is this sense that, his Lordship Kado J., in **Gladys’ case** [supra] held that:

“Having held that an employee of the defendant cannot provide legal representation for the defendant in court, this also means that he cannot in view of the provisions of Rule 8(2) prepare, signed [sic] or franks [sic] pleadings, applications, instrument agreements contracts deeds letters memoranda, reports [sic], legal opinion or similar instruments or processes or file any such documents for his employer.

With the state of the law it is only a private legal practitioner or a legal officer from the office of the Honourable Attorney General of the Federation that can provide legal representation for his employer.”

These two decisions exemplify the absolute bar of lawyers in salaried employment from franking court processes and advocating for their employers, of course subject to the exceptions created in the *LPA, LOA & RPC*. To circumvent this total ban, another statute must clearly and unequivocally create a department in the public service and state clearly too, that, the lawyers employed therein on full-time salaries are entitled to frank court processes and advocate cases for the public department or office, otherwise, such lawyers are totally banned; and I so hold. Letters of appointment or the like documents cannot cure this statutory void, as you can neither give what you do not have – **Oluwatuyi & Anor v. Owojuyigbe & Anor (2014) LPELR-23529 (CA) 33-34, G-A** – nor, can you put something on nothing and, expect it to stand: it would collapse – **Macfoy v. UAC (1961) 3 WLR 405 at 409**. In view of my forgoing holdings, issue 4 is decided in the positive in favour of the claimant-objector and, against the defendant-respondent. The defence counsel is therefore barred from franking court processes for filing in this matter and from appearing in court to prosecute this civil matter. The case must therefore come to an end.

CONCLUSION

As a convergence of my foregoing holding, the processes franked and filed in this Court by the duo of Agomoh and Ekoh, and even those franked by the regnant counsel, who had been barred by this decision from appearing in this matter, are hereby struck out. The objections in issue 4 are upheld. I award cost of **N50,000 [Fifty Thousand Naira]** only against the defendant and in favour of the claimant.

The suit would be adjourned for hearing to enable the defendant sort out itself in accordance with the law by either engaging the office of the *AGF* to represent it or, hire a private legal practitioner or whatever.

The decision is hereby entered under my hand as the presiding judge today Tuesday the 27th day of June 2023.

.....

HON. JUSTICE Oluwakayode Ojo AROWOSEGBE

Presiding JUDGE

ENUGU DIVISION

NATIONAL INDUSTRIAL COURT OF NIGERIA

TheNigerianLawyer