

Electoral Committee of the Nigerian Bar Association

28 August 2023

The National Executive Committee of the NBA
Through the President of the NBA
Mr. Yakubu Chonoko Maikyau, SAN FCIArb
NBA HQ
Abuja.

Distinguished Members of the Committee,

Re: REQUEST FOR PAYMENT FOR OUTSTANDING EXPENSES INCURRED BY THE ECNBA DURING THE CONDUCT OF 2022 ELECTIONS OF NATIONAL OFFICERS AND THE GENERAL COUNCIL OF THE BAR - SETTING THE RECORDS STRAIGHT

We refer to the above.

The ECNBA is aware that the President of the NBA, Mr. Y.C. Mikyau SAN during the NBA National Executive Committee (NEC) meeting held on Saturday, 26 August 2023 either alleged or insinuated that the ECNBA and/or service providers are involved or intend to defraud the NBA.

We understand that his assertions were based on the underlisted documents pertaining to the above subject:

- (i) The ECNBA's letter dated 24 August 2022 (**Annexure A**) addressed to the former President of the NBA (Mr. Olumide Akpata) requesting for payment with the handwritten notes by NBA staff which is reproduced below for ease of reference:

"Ayodeji please treat as directed".

DA 9/2/2023

Ag ED

"Dear Madam,

Kindly confirm the expenses that the NBA will be paying at the moment.

Kindly note that the following expenses were incurred according to the letter:-

1. \$15,000.00 (USD) ICT
2. **70% Outstanding from INITS & there is no list of expenditures incurred by ECNBA - ~~N~~44,940,679.73**
3. *The outstanding balance from ECNBA expenses.*

Also note that there is no "green ink" on the document and no evidence it was duly received by NBA.

I would like to be properly guided on the Memo & no budget attached.

Signed 9/02/2023"

Please note that **Annexure A(i)** is the version of **Annexure A** without the notes by NBA Staff.

- (ii) Internal Memo dated 27 February 2023 (**Annexure B**) from Legal Regulatory & Compliance to the NBA President in respect of "*Request for reimbursement to Electoral Committee of the Nigerian Bar Association (ECNBA) 2022*". For ease of reference the Memo reads:

"Dear Sir,

We write further to the approved ECNBA's budget at the emergency NEC meeting of 17th March, 2022 during the Olumide Akpata led administration. He approved the sum of ₦28,653,300.00 which was disbursed into the ECNBA's Access Bank Account Number 1584000594.

By a letter sent by email dated 24th August 2022, the Electoral Committee of the Nigerian Bar Association (ECNBA) is requesting for disbursement of the sum of Fourteen Million, Two Hundred and Twenty-Three Thousand, Sixty -Four Naira and Forty -Four Kobo (₦14,223,064.44) represents the outstanding obligations due to service providers and the refund to the members of the ECNBA.

In view of the above, we kindly recommend that you approve the total sum of Fourteen Million, Two Hundred and Twenty-Three Thousand, Sixty-Four Naira and Forty-Four Kobo (₦14,223,064.44) only being the outstanding sum due to the ECNBA.

Please find attached to the memo the letter dated 24th August, 2022 and budget.

Thank you.

Signed

*Miss Ayodeji Oni
Head, Legal Regulatory & Compliance Directorate"*

- (iii) Please note that ECNBA's letter of the 24th of August 2022 requesting the NBA to pay it the sum of ₦14,223,064.44 representing the outstanding obligations due to service providers and the refund to the members of the ECNBA was not given attention until the 9th of February 2023 (over 5 months after the swearing in of the Y.C. Mikyau Administration) and even after the President received the recommendation of Mrs. Ayodeji Oni, Head of Legal Regulatory & Compliance Directorate by her Memo of the 27th of February 2023, Mr. President has not approved payment. Please note that the

handwritten notes and memos are all NBA internal processes by NBA staff with no input whatsoever by the ECNBA.

Setting the Record straight.

1. By Section 10(1); Part I (1) and Part II (3) of the Second Schedule of the Constitution of the Nigerian Bar Association 2021 (*as amended*) (**The Constitution**), **the Electoral Committee of the Nigerian Bar Association (ECNBA) is an independent body responsible for the conduct of free, fair and credible elections** of National Officers of the NBA and the election of NBA Representatives to the General Council of the Bar.
2. At an Emergency Meeting held on 17 March 2022, the National Executive Committee (NEC) approved ECNBA's "**interim budget**" of **₦28,653,300.00** (*Twenty-eight million, six hundred and fifty-three thousand, three hundred Naira*) and **\$15,000.00** (**Fifteen Thousand USD**) to conduct the 2022 NBA election of National Officers and members of the general council of the Bar.
3. The ECNBA could not have accurately determined the actual cost for conducting the entire elections at the material time, hence the submission/reliance on an "**interim budget**".
4. In estimating the cost for procuring the services of the Information Communication Technology (ICT) service provider, the ECNBA was guided by the cost incurred during the previous election (2020). More importantly, because of the inflation and fluctuation in the Naira to the USD, it was prudent to request the cost of ICT in dollars based on precedent.
5. Consequently, an estimated sum of \$15,000.00 USD was included for the services of the ICT provider in the interim budget approved by NEC.
6. To maintain its independence, for a free and fair election, the Chairman and the members of the ECNBA funded the various activities pertaining to the 2022 Elections before the NBA disbursed the Naira component of the approved interim budget in the sum of **₦28,653,300.00** (*Twenty-eight million, six hundred and fifty-three thousand, three hundred Naira*) on Thursday, 19 May 2022.
7. The NBA Constitution prescribed procedures that were sacrosanct for purposes of engaging/appointing the ECNBA's Service providers. To this end, Part III (1), (2) and (3) of the Second Schedule of the NBA Constitution expressly states as follows:

"The ECNBA shall be solely responsible for the selection, appointment, and engagement of all the service providers required in the electoral process.

The ECNBA shall engage a Technical Support Consultant who shall provide technical assistance to the ECNBA throughout the electoral process and post-election activities.

The ECNBA shall, with the assistance of the Technical Support Consultant, engage a competent Information Communication Technology (ICT) service provider, who shall:

- (a) Review and validate the voters' register generated from the Association's database.*
 - (b) Provide and configure the voting portal for use, send notifications to voters via electronic media including emails, SMS and any other electronic medium as may become applicable; provide online real -time dashboard and leaderboard for monitoring the election; as well as provide a support help desk during the election.*
8. Pursuant to the above provisions, the ECNBA requested for proposals from potential Technical Support Consultant (TSC) providers on Monday 11, April, 2022.
 9. In compliance with the due process stipulated in the NBA Constitution, that is, notifying members of the Association of all the proposals submitted, the ECNBA called for any reservations, objections and without any objection, the ECNBA engaged the service of Finesse Integrated Limited (TSC). **Please see the detailed report at para. 3, pg. 18 -19 of the ECNBA Report on The 2022 Elections of National Officers of The Nigerian Bar Association And NBA Representatives To The General Council of The Bar held on the 16 July 2022, dated 25th August 2022. (Annexure C)**
 10. The TSC's service was procured at the sum of ₦9,500,000.00 (Nine million, five hundred thousand Naira). Please find attached invoice dated 3 June 2022 (**Annexure D**). The sum of ₦5,106,250.00 representing 50% inclusive of VAT was paid to the TSC on the 8 June 2022 as shown by the ECNBA's Cheque dated 8 June and cheque deposit slip dated 9 June 2022. (**Annexure E(i) and E(ii)**).
 11. Thereafter, with the help of TSC, the ECNBA requested for proposals from potential ICT providers, shortlisted and published names of all Respondents, conducted the requisite due diligence, held several technical virtual meetings with all the Respondents and subsequently identified INITS Limited as the most suitable provider. (**Annexure C @ para 3.4, pg.19-21**)
 12. INITS Limited submitted a robust proposal dated 30 May 2022 (**Annexure F**) for providing Election Management (e-Voting) System (EMS) services to the ECNBA. INITS demonstrated competence during the engagement process and an extensive virtual technical session was held with INITS on Tuesday, 14 June 2022 at 6:30 pm. Please refer to the ECNBA's email of same day wherein the login detail was provided (**Annexure G @ pg. 6**).
 13. After the virtual technical session between the ECNBA, TSC and INITS a further technical session was held on Tuesday 21 June 2022 at 5:00pm. Prior to this meeting, the TSC requested for access to INITS e-voting system as part of the due diligence exercise. Please see TSC's email of 21 June 2022 at 12: 07 (**Annexure G @ pg.8**) with members of the ECNBA in copy to INITS.

14. INITIS financial proposal formed part of the deliberation during the virtual technical session of 21 June 2022. INITIS had initially quoted the sum of ₦28,628,500.00 (Twenty-eight million, six hundred and twenty-eight thousand, five hundred Naira) inclusive of all local taxes as the price for providing the requisite EMS services for the Elections. Please refer to **Annexure H**). Subsequently, on 30 May 2022, INITIS submitted another financial proposal for the same service at the price of ₦34,937,500 (Thirty-four Million, nine hundred and thirty-seven thousand five hundred Naira) excluding local taxes. Please see **Annexure I**.
15. For this reason, the ECNBA requested for a downward review of the proposed amount at the said meeting and consequently, INITIS submitted its revised financial proposal dated 22 June 2022 wherein the sum of ₦30,000,000 (Thirty million Naira) was quoted (**Annexure J**) attached to the email of 22 June 2022 at 17:54 (**Annexure G @ pg. 10**).
16. The ECNBA was unwilling to accept the prices proposed by INITIS as shown in its email of 24 June 2022 at 09:00 and thus summoned INITIS for a virtual meeting at very short notice (i.e., 09:30 of same day). Please see (**Annexure G @ pg. 10**).
17. After rigorous negotiation with INITIS at this meeting, INITIS conceded to ECNBA's request and further submitted a revised financial proposal dated 23 June 2022 (**Annexure K**) via its email of 24 June 2022 at 11:49 (**Annexure G @ pg. 12**) for the sum of ₦21,301,260.00 excluding local taxes.
18. INITIS adduced various reasons for the increment in the price for the service, one of such reason was the astronomical increase in the number of voters from 29,635 during the 2020 Elections to no less than 57,569. Please see (**Annexure G @ pg. 12 and 13**).
19. At this stage, the TSC assisted the ECNBA in the negotiation process as demonstrated by the TSC's email of 24 June 2022 at 13:42. (**Annexure G @ pg. 13**)
20. To assist the ECNBA in making an informed decision during the negotiations with INTIS, the proposal from e-Ballot dated 14 June 2022 (**Annexure L**) was considered, e-Ballot proposed the sum of \$35,920.00 (Thirty-five thousand, nine hundred and twenty USD) for the same EMS services which was subject of the negotiations with INITIS.
21. Likewise, the amended Constitution introduced the elections for the NBA Representatives to the General Council of the Bar, in addition to the election of National officer, thus, the dynamics of the 2022 Elections was significantly different from the previous elections of the NBA. For these reasons, the ECNBA conceded to the sum of ₦16,744,186.05 (Sixteen million, seven hundred and forty-four thousand, one hundred and eighty-six Naira, five kobo) plus VAT of ₦1,255,813.95 (One million, two hundred and fifty five thousand, eight hundred and thirteen Naira, ninety five kobo) as specified in the revised invoices dated 28 June and 3 July 2022 respectively. (**Annexure M (i) and M (ii)**).
22. Please note that the distinction between both invoices were the request for payment of 80% of the agreed sum but the ECNBA only conceded to payment of 70%.

23. The ECNBA prevailed upon INITS to accept the sum of ~~₦~~18,000, 000.00 inclusive of all taxes. Please see (**Annexure G @ pg. 14 and 15**).

Allegations of Fraud is Baseless

24. The fundamental principle of natural justice is expressed in the Latin maxim *audi alteram partem*. The ECNBA notes that at no time did Mr. President formally raise his allegations of fraud nor provide any particulars, let alone request for clarifications from the ECNBA regarding his fraud allegations.
25. For the records, the ECNBA by its email of 15 May 2023 at 10:50am, sent Mr. President its Financial Report as at August 2022 and its letter dated 8 May, 2023, Disbursement of Funds (**Annexure N (i) and N (ii)**)
26. On the fraud allegations the ECNBA states as follows:
- i. **Annexure A** (i.e., ECNBA's letter of 24 August 2022 to the former President) shows that the handwritten note on the said letter were made and signed by members of staff within the NBA Head Quarters on 9 February 2023 and not the ECNBA.
 - ii. **Annexure B** (i.e., an Internal Memo to the NBA President) was authored by the Head, Legal Regulatory & Compliance Directorate of the NBA Head Quarters.
 - iii. Both **Annexures A & B** clearly reveal the confusion created by the author of the handwritten notes. For instance, the ECNBA's letter at the third paragraph expressly stated:
 - i. *"We note however that the ECNBA's ICT Service Provider – INITS Limited presented a bill for its service in Naira (not USD) totalling ~~₦~~18,000,000. 000 (Eighteen Million Naira) inclusive of all statutory taxes. Of this sum, 70% was disbursed to the service provider before the Elections."*
 - iv. On what basis were the handwritten notes (reproduced below) made having clearly represented the fact that 70% payment was made to INITS by the ECNBA?
 - a. "(2) 70% outstanding from INITS & there is no list of expenditures incurred by ECNBA- ~~₦~~44,940,679.73"?.
 - v. **Annexure O (i)** is the ECBNA's cheque dated 4 July 2022 in the sum of ~~₦~~12,600,000 (Twelve million six hundred thousand) representing 70% of ~~₦~~18,000,000.00 due to and issued in favour of INITS. While **Annexure O (ii)** is the Cheque Deposit Slip Z09327251 showing that the referenced cheque was paid into INITS Limited's account on the same day.
 - vi. It is not in doubt that NEC approved \$15,000 USD for the services of the ECNBA's ICT service provider. Moreso, as this information was within the public domain. It is also not in doubt that the NBA failed, refused and or neglected to disburse the approved \$15,000.00 USD till this day.

- vii. From the interim budget it was clear that the Naira component in the sum of **₦28,653,300.00** was inadequate and could not have possibly covered or catered for all the expenses required to conduct a free and fair election. Therefore, members of the ECNBA expended their personal resources to carry out their duties to expedite the seamless execution of the successful 2022 elections.
- viii. The “green ink” referred by the author of the handwritten note on Annexure A, which appears to form part of the inner workings of the office of the NBA President is clearly not within the purview of the ECNBA’s responsibilities. It also does not warrant an allegation of fraud since; no request was made was made to the ECNBA as stipulated by Part II (8) (b) of the Second Schedule of the Constitution.
 - a. The handwritten notes were either misconceived or deliberately contrived to allege fraud where none was perpetuated. To demonstrate this, **Annexure B**, (the Internal Memo to the NBA President dated 27 February 2023) written about 18 days after the handwritten notes made on Annexure A, unequivocally stated that the
 - i. **“ECNBA’s budget was approved at the emergency NEC meeting of 17 March 2022 during the Olumide Akpata administration”**.
 - ii. **“Please find attached to the memo the letter dated 24th August, 2022 and budget”**.
- ix. The office of the NBA President evidently had records of the budget approved by NEC and knew all along that they were in default of disbursing the \$15,000 USD meant for ICT provider. Bearing in mind the continuity in the governance of the NBA, the President and his team are presumed to have records of the NEC bundle for the emergency meeting wherein the \$15,000USD was approved.

Distinguished NEC members, it is unconscionable and hard to fathom why the President of the NBA will refuse to disburse to the ECNBA the \$15,000 USD, this august body approved for the elections. The ECNBA budget was clearly an interim budget and extra costs were advised in our various correspondence with NBA before and after the election.

If the President had any reasonable request regarding the decisions made by the ECNBA in accepting to procure the services of its ICT provider, then he should have engaged the ECNBA directly, instead of attacking the ECNBA at the last NEC meeting without any justification and without giving the opportunity respond. The issues are so simple and straightforward, and it is unbelievable the way the NBA President has spined it.

The financial activities of the ECNBA have been open and transparent and if the NBA President or the NBA Secretariat had any question or query, we would have gladly provided them with clarifications. Clearly, the NBA President was out of order with the unguarded statements and allegations he made at the last NBA NEC meeting against the ECNBA and sincerely, he should apologise to members of the ECNBA.

In concluding, we wish to sound this note of warning that the continued unjustifiable refusal of the NBA President to pay the sums requested by the ECNBA or table the matter for discussion and resolution by NEC will cause the NBA enormous reputational damage within a small community of expertise that provide the ICT services required for online elections. We know all the convincing we had to do before the service providers agreed to work with us because of their past experiences.

We urge the NBA-NEC to urgently look into this matter. We are available at short notice to answer questions and clarify any issues.

ZAyodele Akintunde, SAN, C.Arb	Chairman	
Mabel Ekeke	Secretary	
Aisha Ado Abdullahi	Member	
Basil Udotai	Member	

List of Annexures

1. **Annexures A-** ECNBA's letter dated 24 August 2022 addressed to the former President of the NBA (Mr. Olumide Akpata) with notes by NBA staff dated 9 February 2023.
2. **Annexures A (i)** is the version of Annexure A without the notes by NBA staff.
3. **Annexures B-** Internal Memo dated 27 February 2023 from Legal Regulatory & Compliance to the NBA President in respect of *Request for reimbursement to Electoral Committee of the Nigerian Bar Association (ECNBA) 2022*.
4. **Annexures C-** the ECNBA Report on the 2022 Elections of National Officers of The Nigerian Bar Association and NBA Representatives to The General Council of The Bar held on the 16 July 2022, dated 25th August 2022.
5. **Annexures D** - Invoice dated 3 June 2022
6. **Annexures E** - ECNBA's Cheque dated 8 June and cheque deposit slip dated 9 June 2022
7. **Annexures F-** **INITS Limited submitted a robust proposal dated 30 May 2022**
for providing Election Management (e-Voting) System (EMS) services to the ECNBA.

8. **Annexures G-** ECNBA's email correspondence.
9. **Annexures H-** INITS financial proposal dated 21 June 2022.
10. **Annexures I -** INITS submitted another financial proposal on 30 May 2022.
11. **Annexures J -** INITS submitted its revised financial proposal dated 22 June 2022
12. **Annexures K -** INITS at this meeting, INITS revised financial proposal dated 23 June 2022
13. **Annexures L -** e-Ballot's proposal dated 14 June 2022.
14. **Annexures M(i) -** INITS revised invoices dated 28 June and 3 July 2022 respectively.
15. **Annexure M(ii) -**INITS revised invoices dated 28 June and 3 July 2022 respectively.
16. **Annexure N -** ECNBA'S email of 15 May 2023 at 10:50
17. **Annexure O (i) -**is the ECBNA's cheque dated 4 July 2022
18. **Annexure O (ii)-** Cheque Deposit Slip Z09327251.