IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA

ON FRIDAY THE 19TH DAY OF JULY, 2024

BEFORE HIS LORDSHIP HON. JUSTICE OBIORA ATUEGWU EGWUATU
JUDGE

SUIT NO.: FHC/ABJ/CS/25/2023

BETWEEN:

1. ABU AROME .... PLAINTIFF

(Carrying on legal practice under the name And style of "The Counsel Legal Practice")

AND:

1. CENTRAL BANK OF NIGERIA
2. ECONOMIC AND FINANCIAL CRIMES COMMISSION
3. GUARANTY TRUST BANK LTD
4. ATTORNEY GENERAL OF THE FEDERATION

DEFENDANTS

JUDGMENT

By an *Originating Summons* dated and filed on the 9th of January, 2023, the Plaintiff sought the determination of three (3) questions and the grant of seven (7) reliefs as follows;

Questions:

1. Whether in the light of the decision in **Central Bank of Nigeria V. Registered Trustees of the Nigerian Bar Association (2021) 5 NWLR PART 1769 at 268** and the provision of Section 20 and 21 of the Legal Practitioners Act 1962, Section 192 of the Evidence Act 2011 and Rule 19(1) of the Rules of Professional Conduct for legal practitioners, Section 6, 7, 8, 9, 11 and 30 of the Money Laundering (Prevention and Prohibition) Act 2022 in so far as they relates to legal practitioners are not unconstitutional, null and void and of no effect whatsoever?
2. Whether the exclusion of fundamental doctrine of Legal professional privileges and Client confidentiality in transactions touching on the purchase or sale of property, purchase or sale of any business, management of client money, securities or other assets, creation, operation or management of trust, companies or similar structures under Section 11 (4) of the Money Laundering (Prevention and Prohibition) Act 2022 is not unconstitutional, null and void and of no effect whatsoever and inapplicable to legal practitioners and legal practice in Nigeria in the light of Section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 20 and 21 of the Legal Practitioners Act and Section 192 of the Evidence Act 2011?
3. Whether the Special Control Unit Against Money Laundering (SCUML) as established under the Money Laundering

(Prevention and Prohibition) Act can require the registration of Legal Practitioners or otherwise regulate the practice of law in Nigeria?

Reliefs:

1. A declaration that Sections 6, 7, 8, 9, 11 and 30 of the Money Laundering (Prevention and Prohibition) Act 2022 in so far as they purport to apply to legal Practitioners are unconstitutional, null and void.
2. A declaration that the inclusion of "Notaries" and re-inclusion or recategorization of "legal practitioners" in the definition list of Designated Non -financial businesses and professionals in section 30 of the Money Laundering (Prevention and Prohibition) Act 2022 is null, void and unconstitutional.
3. An order of perpetual injunction restraining the 1st Defendant from taking any step to implement its circular referenced FPR/DIR/PUB/CIR/001/052 dated 20th June 2022 and the "Economic and Financial Crimes Commission (Anti-Money Laundering, Combating the Financing of Terrorism and Countering, Proliferation) Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and professions, and other related Matters) Regulation, 2022" in so far as it purports to apply to legal practitioners.

4. An order of perpetual injunction restraining the 2nd Defendant from taking steps to implement the Economic and Financial Crimes Commission (Anti-Money Laundering, Combating the Financing of Terrorism and Countering, Proliferation) Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and professions, and other related Matters) Regulation, 2022, in so far as it purports to apply to legal practitioners and law practice.
5. A declaration that the re-inclusion of "Legal practitioners and Notaries" as "Designated non-financial business and profession" under Section 30 of the Money Laundering Act 2022, is inapplicable and undermines the confidentiality obligations lawyers owe their clients under Section 192 of the Evidence Act 2011 and Rule 19(1) of the Rules of Professional Conduct for legal practitioners.
6. A declaration that the exclusion of fundamental doctrine of Legal professional Privileges and Client confidentiality in transactions touching on the purchase or sale of property, purchase or sale of any business, management of client money, securities or other assets, creation, operation or management of trust, companies or similar structures under Section 14 (4) of the Money Laundering (Prevention and Prohibition) Act 2022 is unconstitutional, null and void.

7. *A declaration that the restriction placed on bank accounts operated by the Plaintiffs law firm with account numbers 0725501429 (Naira) 0725501443 (Pounds) 0725501436 (Dollar) 0725501450 (Euro) The Counsel Legal Practice, Guarantee Trust Bank on the basis of the circular of the 1st Defendant is unconstitutional, null and void.*

The application is supported by an affidavit of 32 paragraphs deposed to by one John Ayobami Akinwumi attached with six (6) exhibits marked ***'TCLP A'-'TCLP F'*** respectively.

A written address was also filed in compliance with the Rules of Court.

Upon service of the originating processes, the 1st **Defendant** filed a counter affidavit of 22 paragraphs deposed to by one Idongesit Ekpo on the 7th of June, 2023 attached with two exhibits marked ***'A'*** and ***'B'*** respectively. A written address was also filed alongside the counter affidavit. The written address was however amended and an amended written address dated 20th of May, 2023 was filed on the same date.

For the 2nd Defendant, a counter affidavit of 54 paragraphs deposed to by one Tahir Ahmed attached with two exhibits marked ***EFCC 1*** and ***EFCC 2*** respectively was file on the 9th of February, 2024. A written address was also filed alongside the counter affidavit.

The 3rd Defendant in opposition filed a counter affidavit of 4 paragraphs deposed to by Habila Danladi attached with a written address on the 24th of February, 2023.

The 4th Defendant on her part filed an amended counter affidavit of 15 paragraphs deposed to by one Barnabas Onoja and an amended written address on the 30th of May, 2023.

In response to the processes of the Defendants, the Plaintiff filed further affidavits.

To that of the 1st Defendant a further affidavit of 12 paragraphs attached with an exhibit marked 'AA' and a reply on points of law was filed.

To that of the 2nd Defendant a further affidavit of 24 paragraphs was filed together with a reply on points of law on the 2nd of January, 2024.

A further affidavit of 7 paragraphs and a reply on points of law was filed in reaction to the process of the 3rd Defendant on the 27th of March, 2023. And to that of the 4th Defendant, a further affidavit of 22 paragraphs deposed to by John Ayobami Akinwumi attached with a reply on points of law was filed on the 2nd of November, 2023.

The summary of the facts of the Plaintiff's case as can be gleaned from the affidavit in support of the originating summons are that the Plaintiff is a private legal practitioner, carrying on legal practice under the name and style of *"The Counsel Legal Practice"* registered under *Companies and Allied Matters Act.*

On the 15th day of March 2013, the *Nigerian Bar Association* (NBA), as Plaintiffs, instituted *Central Bank of Nigeria v. Registered Trustees of the Nigerian Bar Association (2021)5 NWLR PART 1769 at 268* on behalf of all lawyers challenging the Anti-Money Laundering regime under the *Money Laundering (Prohibition) Act 2011* following the circular issued by the 1st Defendant herein, directing Banks and other financial institutions to direct their customers to update their account information with evidence of registration with the *Special Control Unit Against Money Laundering* (SCUML).

The *NBA* took exception to the said circular in the light of the obligations shouldered by legal practitioners under Sections 20 and 21 of the *Legal Practitioners Act*, Section 192 of the *Evidence Act* and Section 37 of the *Constitution of the Federal Republic of Nigeria 1999 (as amended).*

In a considered judgment this Honourable Court per Kolawole J (as he then was) granted the reliefs sought by the *NBA*. By the said judgment, the court held that legal practitioners were excluded from complying with the requirements of SCUML.

The 1st Defendant herein, being dissatisfied by the decision of the trial Court, exercised its right of appeal. In dismissing the appeal for lacking in merit, the Court of Appeal Coram Honourable Justice Abdu

Aboki JCA (as he then was), Abubakar D. Yahaya JCA, Honourable Justice Peter O. Ige JCA, Honourable Justice Emmanuel A. Agim JCA(as he then was), Honourable Justice Mohammed Mustapha (JCA) held that the establishment of SCUML as it relates to Lawyers is contrary to the provisions of the *Legal Practitioners Act* and that legal practitioners in Nigeria owe clients a duty to keep private and confidential, their correspondences and communication, hence the money laundering regime undermines this obligation.

In a later case of ***Federal Republic of Nigeria V. Chief Mike Ozekhome (SAN) (2021) 9 NWLR (Pt. 1782) Pg. 448*** the Court of Appeal relying on its previous decision in ***Central Bank of Nigeria V. Registered Trustees of the Nigerian Bar Association (2021) 5 NWLR PART 1769*** at 268 Coram Honourable Justice Chidi N. Uwa JCA, Honourable Justice Tunde O. Awotoye JCA, Honourable Justice James G. Abundaga JCA, held that Legal practitioners are excluded from the definition of *Designated Non-Financial Institutions* contained under Section 25 of the *Money Laundering (Prohibition) Act 2011.*

On the 16th day of March 2022, the National Assembly passed a new Money Laundering Law with the short title, ***Money Laundering (Prevention and Prohibition) Act 2022***. On the 12th day of May 2022, the *Money Laundering (Prevention and Prohibition) Act 2022* received presidential assent hence repealing the *Money Laundering*

(Prohibition) Act 2011. Under the new *Money Laundering Act* Legal professional privileges and client confidentiality has been purportedly abolished in relation to transactions touching on purchase or sale of property, purchase or sale of any business, management of client money, securities or other assets, creation, operation or management of trust, companies or similar structures. Secondly, Legal firms have been purportedly re-categorized under the definition of designated non-financial Business and professionals hence, purportedly obligated to register with the SCUML amongst other obligations.

A number of banks including the 3rd Defendant have now started implementing the directive of the 1st Defendant (CBN).

The danger which the *NBA* envisaged and sought to avert in 2013 when it instituted FHC/C/173/2013 between ***Registered Trustees of the Nigerian Bar Association v. Central Bank of Nigeria and Anor*** (unreported) on behalf of its members demonstrated itself on the 27th day of September 2022, when the 3rd Defendant acting on the circular of the 1st Defendant's placed a restriction on the Plaintiff's law firm account Numbers 0725501429 (Naira) 0725501443 (Pounds) 0725501436 (Dollar) 0725501450 (Euro) with account name ***"The Counsel Legal Practice"***.

On the 27th Day of September 2022, the Plaintiff approached the Malabo Street, Wuse II, FCT branch of the 3rd defendant to request for a hardware token and cheque book to enable the Plaintiff's law firm set up online banking services and to access funds but the Plaintiff was informed by a customer service representative in the Bank that a restriction was placed on the account for failure of the Plaintiff's firm to present the *Special Control Unit Against Money Laundering* (SCUML) certificate.

The 1st Defendant who did not deny the facts of the promulgation of the ***Money Laundering (Prevention and Prohibition) Act 2022***, her position is that section 63(1) of the Central Bank of Nigeria *(Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapon of Mass Destruction in Financial Institutions) Regulations, 2022* mandated designated non-financial businesses and professions, to obtain the certificate of registration with SCUML or a Non-Financial Certificate from a self-regulatory organization as part of KYC documentation.

The Plaintiff, a legal Practitioner (a designated non-financial institution) refused to obtain a certificate from the Special Unit Against Money Laundering (SCUML) despite the regulations in sections 30(1) and 17(2) of the *Money Laundering (Prevention and Prohibition) Act* (MLPPA) 2022 and Section 63(1) of the *Central Bank of Nigeria (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapon of Mass Destruction in Financial Institutions)* Regulations, 2022.

The Plaintiff's refusal to obtain the certificate violates sections 30(1) and 17 (2) of the MLPPA 2022 and Section 63(1) of the CBN AML Regulations, 2022. The duty imposed on the plaintiff as a lawyer by MLPPA 2022 is the duty to report and submit records. It does not affect his right to practice law in any way.

By the provisions of Rule 19 (3) (b) RPC, the Plaintiff is obligated to disclose confidential information of a Client, when permitted under the rules or required by law or Court Order. The legal profession is not above the law. It must, by virtue of its unique position, be at the very vanguard of the movement to entrench obedience to the law, instead of manufacturing baseless reasons to avoid compliance with the laws of Nigeria.

It is the 1st Defendant's case that in enacting the *Money Laundering (Prevention and Prohibition) Act 2022* which repealed the Money Laundering (Prohibition) Act 2011, the National Assembly was in full compliance with the directive of the Court of Appeal in the case between the *Registered Trustees of the NBA v. CBN* and *FRN v. Ozokhome (SAN)* referred to by the Plaintiff. That the exclusion of Legal Professional Privileges and client confidentiality principle in relation to matters listed in section 11(4) of the MLPPA 2022 is in line with the recommendations 22 and 23 of FATF recommendations and accords with Global best practices in anti-money

Laundering/combating Financing of Terrorism Regulations, as well as the decisions of the Court of Appeal aforesaid.

The 1st Defendant counter claimed against the Plaintiff.

For the 2nd Defendant her position is that the cases referred to by the Plaintiff did not contemplate the provisions of section 11(4) of the *Money Laundering (Prevention and Prohibition) Act 2022* as they concern legal practitioners performing the specific functions contained in those sections of the Act and that nothing in section 11 (4) of the Act precludes or limits a legal practitioner from carrying out his duties and responsibilities to his or her client in the normal course of his legal practice, except where the legal practitioner carries on business connected with the listed types under section 11 (4) (a) to (e) of the Act which duties are equally carried out by other professionals like accountants, secretaries, real estate agents etc and are not limited nor specific to legal practitioners.

Further that none of the measures stipulated in sections 6, 7, 8, 9, 11 and 30 of the *Money Laundering (Prevention and Prohibition) Act 2022* interfere with the practice of law or conflicts with any other statute or legislation regulating law practice in Nigeria or breaches the confidentiality obligations of the Plaintiff to his client.

Contrary to the deposition of the Plaintiff, the provisions of the *Money Laundering (Prevention and Prohibition) Act 2022* are designed to strengthen legal practice and ensure accountability and transparency in relation to legal professionals' duties to their clients in Nigeria as a country. That the entire provisions of the *Money Laundering (Prevention and Prohibition) Act 2022*, especially sections 6, 7, 8, 9, 11 and 30 are domesticated from the Financial Action Task Force (FATF) Standard Recommendations as inspired by the United Nations Convention against Transnational Organised Crime which Nigeria is a signatory.

Finally that if this application is granted the FATF will in its plenary coming up in November 2023, blacklist Nigeria as a None Corporative and Complaint Territory (NCCT) to the FATF Standards and very devastating consequences will follow.

The 3rd Defendant on her part admitted that the Plaintiff is a customer of the 3rd Defendant bank and operates the corporate account numbers 0725501429 (Naira) 0725501443 (Pounds) 0725501436 (Dollar) 0725501450 (Euro) under the account name ***"The Counsel Legal Practice"***. The restrictions placed on the Plaintiff's listed accounts was in strict compliance with the provisions of the extant *Money Laundering (Prevention and Prohibition) Act 2022* which law does not envisage substantial compliance but strict compliance with the provisions of the law. Substantial non-compliance carries legal consequences that is capable of amounting to legal liabilities for the 3rd Defendant under the Act.

Further that by the 1st Defendant's circular to all Banks, Other Financial Institutions (OFIs) and Payment Service Providers (PSPs) referenced FPR/DIR/PUB/CIR/001/052 dated 20th June, 2022, all commercial banks, including the 3rd Defendant, were directed to comply with the 1st Defendant's Regulation with short title '*Central Bank of Nigeria (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction in Financial Institutions(Regulations, 2022*'. This made SCUML certificate a mandatory KYC documentation for firms including that of the Plaintiff.

Finally that an Act of the National Assembly and subsidiary legislations made under inherent powers remains in effect and still carries the force of law until the new law is repealed by subsequent re-enactment or the offensive provisions is annulled by an order of court of competent jurisdiction making the enforcement of such a law an illegality and statutory rights, duties and obligation put permanently in abeyance.

On her part the 4th Defendant's position is that the *Money Laundering (Prevention and Prohibition) Act 2022* was enacted with the objective to provide for an effective and institutional frame work for the prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria and it is of general application to all monetary transactions irrespective of persons or bodies corporate. That the SCUML statutory duty is to ensure that the provisions of the Money Laundering (Prevention and Prohibition) Act is complied with and not to interfere with or regulate the practice of law as the legal profession and its practice is legal and law abiding and does not shroud itself or its activities in secrecy.

It is also the case of the 4th Defendant that the cases referred to by the Plaintiff did not contemplate the provision of section 11 (4) of the *Money Laundering (Prevention and Prohibition) Act 2022* as they concern Legal Practitioners performing the specific functions contained in that section and that none of the provisions in sections 6, 7, 8, 9, 11 and 30 of Act interferes with the practice of law or the statute regulating law practice in Nigeria or breaches the confidentiality obligation of the Plaintiff to his client. Further that contrary to the depositions of the Plaintiff, some legal professionals practicing law in Nigeria have registered with SCUML and are committed to implement the Anti-Money Laundering and Counter Terrorism Financing Measures which is a global legal framework provided for and demonstrated in the Act.

Finally that the intentions and objective of the *Money Laundering (Prevention and Prohibition) Act 2022* is to ensure that criminals do not abuse the Designated Non-Financial Businesses and Professionals sector as a means or platform to launder money and finance terrorism.

As I noted earlier, the Plaintiff filed further affidavits in reaction to the processes filed by each of the Defendants. I have read these further affidavits and shall refer to them in the cause of this judgment should the need arise.

The above represent the positions of the parties in this suit.

At this point let me state that the 2nd Defendant's counter affidavit is deemed abandoned firstly because the process was filed out of time and was not regularized and secondly because the 2nd Defendant was in contempt of the order of this court made on the 14th of February, 2024 to pay cost to the Plaintiff and the 3rd Defendant which necessitated the 2nd Defendant not being heard.

Written addresses:

The Plaintiff nominated three issues for determination which he argued together as follows;

1. *Whether in the light of the decision in Central Bank of Nigeria V. Registered trustees of the Nigerian Bar Association (2021) 5 NWLR PART 1769 at 268 and the provision of Section 192 of the Evidence Act 2011, Sections 20 and 21 of the Legal Practitioners Act and Rule 19(1) of the Rules of Professional Conduct for legal practitioner, the phrase "Legal practitioners and Notaries" is not liable to be deleted in the definition of designated non-financial*

institutions under Section 30 of the Money Laundering (Prevention an d Prohibition) Act. 2022?

2. *Whether in the light of the decision in Central Bank of Nigeria V. Registered trustees of the Nigerian Bar Association (2021) 5 NWLR PART 1769 at 268 and the provision of Section 192 of the Evidence Act 2011, Sections 20 and 21 of the Legal Practitioners Act and Rule 19(1) of the Rules of Professional Conduct for legal practitioner, Section 6, 7, 8, 9 and 11 of the Money Laundering (Prevention and Prohibition) Act 2022, in so far as they purport to apply to legal practitioners are not null and void?*
3. *Whether all subsidiary legislation, circular or directive made or issued pursuant to the Money Laundering (Prevention and Prohibition) Act 2022 in so far as it relates to legal practitioners are not illegal, null and void?*

The 1st Defendant also nominated three (3) issues for determination as follows;

1. *Whether the Plaintiff has made out a good case for the relief in his originating summons*
2. *Whether the suit as presently constituted discloses any reasonable cause of action against the 1st Defendant?*
3. *Whether 1st Defendant is entitled to reliefs in the counter claim?*

The 3rd Defendant's sole issue is;

> *'Whether in the light of the facts and circumstances of this case, the 3rd Defendant is bound by the extant provisions of the Money Laundering (Prevention and Prohibition) Act 2022 which is the later in time law?'*

For the 4th Defendant her single issue for determination is;

> *'Whether the Plaintiff's suit as constituted and conceived entitles him to the reliefs sought in this suit?'*

Having painstakingly read all the addresses of the parties in this suit, it will be safer to adopt the issues nominated by the Plaintiff in the resolution of this summons after all it is his case.

I shall treat the three issues together.

There is no doubt that the legislative powers of the Federal Republic of Nigeria is vested in the National Assembly by virtue of section 4 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). By the said section, the National Assembly shall have powers to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative List set out in Part 1 of the Second Schedule to the Constitution. It is pursuant to these powers that on the 16th of March, 2022, the National Assembly passed the *Money Laundering (Prevention and Prohibition) Act, 2022* (herein after called MLA 2022) to which the President of the Federal Republic of Nigeria assented to on the 12th of May, 2022.

The grouse of the Plaintiff is against sections 6, 7, 8, 9, 11 and 30 of the MLA 2022 contending that in so far that they purport to apply to legal practitioners, the sections are unconstitutional. Counsel submitted that this court in the previous case of ***Central Bank of Nigeria v. Registered Trustees of the Nigeria Bar Association (2021) 5 NWLR (Pt. 1769) Pg. 268,*** delivered in 2014, applied the blue pencil rule in severing the phrase 'legal practitioners' under the definition of designated non-financial institutions and professionals under section 25 of the Money Laundering (Prohibition) Act 2011 (MLA, 2011), now repealed and replaced with the MLA, 2022. Counsel submitted that in the said case, the court held that if the National Assembly had thought of section 192 of the *Evidence Act* and the provision of the *Legal Practitioners Act*, it would not have enacted section 25 of the now repealed MLA 2011 to include legal practitioners in the list of designated non-financial institutions which requires Legal Practitioners to report transactions involving cash in excess of US$1000 or its equivalent to SCUML.

After reproducing what counsel termed the main findings of both this Court and the Court of Appeal in the cited case, counsel submitted that the excerpts underscore the statutory reality that the *Legal Practitioners Act* (LPA) already places sufficient safeguards for the protection of facts that clients of legal practitioners to maintain Client's bank account wherein moneys received for and on behalf of client must be deposited. That under the LPA, there are penalties for legal practitioners who fail to open and maintain client's account.

After reproducing the provisions of sections 6, 7, 8, 9 and 11 of the MLA, 2022, Regulation 8 of the *Economic and Financial Crimes Commission (Anti-Money Laundering, Countering, Proliferation) Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and Professions, and other Related Matters) regulation, 2022* and section 192 of the *Evidence Act*, counsel submitted that juxtaposition of the above provisions will reveal that the LPA together with the Evidence Act are not harmonious with the MLA, 2022 in so far as they relate to legal practitioners. Counsel submitted, relying on the case of ***Central Bank of Nigeria v. Registered Trustees of the Nigeria Bar Association (supra),*** that the court preferred the specific regulatory framework under the LPA over the general inconsistent provisions of the MLA 2022. According to counsel, the LPA places a responsibility on legal practitioners to keep client's money and to do so with utmost confidentiality, while the MLA 2022 and the Regulations made pursuant to it requires legal practitioners and legal firms to report information received from client to EFCC.

The Court was urged to resolve this conflict against the MLA 2022, it being later in time submitting that sections 11 and 30 of the MLA 2022 and the Regulation 8 of the EFCC in so far as it relates to legal practitioners are liable to be nullified and declared void as they cannot co-exist with the LPA.

With regard to the restriction placed on Plaintiff's law firm's accounts, counsel submitted that it is a truncation of the right to fair hearing of the Plaintiff's clients as the Plaintiff's law firm is unable to render representation in contentious suits pending before different courts in Nigeria.

Counsel finally urged the court to give expression to the doctrine of stare decisis, find and hold that sections 6, 7, 8, 11 and 30 of the MLA 2022 in so far as it applies to legal practitioner is invalid, null and void, hence, the inclusion of *legal practitioners and Notaries* in the definition of Designated Non-Financial Business and Professionals be served accordingly.

The position of the 1st Defendant as submitted in her written address is that the National Assembly by the provisions of section 11 (4) of MLA 2022 expressly excluded the principle of Legal Professional Privilege and the invocation of client confidentiality provided in the LPA and Rules of Professional Conduct for Legal Practitioners (RPC) made thereunder and section 192 (1) of the Evidence Act 2011 in their application to the MLA 2022 in obedience to the expressed written decisions and prescriptions of the Court of Appeal in ***Central Bank of Nigeria v. Registered Trustees of the Nigeria Bar Association (supra).***

Counsel contended that the National Assembly by MLA 2022 has expressly amended the LPA and the RPC made thereunder and section 192 of the Evidence Act, 2011 in their application to MLA 2022 as prescribed by the Court of Appeal. According to counsel this is by section 11(4) of MLA 2022 wherein it was provided that the operation of the principle of Legal Professional Privilege and the invocation of Client confidentiality shall not apply in connection with the matters listed therein. It was argued that the language and intention of the Legislature in section 11 (4) of MLA 2022 are clear and unambiguous. It was intended to remove the impediment in the fight against Money Laundering and terrorism engendered by the decisions in the cases of ***Registered Trustees of the Nigeria Bar Association v. Central Bank of Nigeria (2021) 5 NWLR (Pt. 1769) Pg. 268*** and ***FRN v. Chief Mike Ozokhome (SAN) (2021) 9 NWLR (Pt. 1782) Pg. 448. (supra)***, submitting that Plaintiff's counsel has erroneously conflated the provisions of the repealed MLA 2011 with the provisions of the extant MLA 2022.

It is counsel position that the MLA 2022 and the CBN AML regulations, 2022 are valid and enforceable.

For the 3rd Defendant her position is that she acted in the manner she acted in restricting the accounts of the Plaintiff in compliance with section 63 (1) of the *Central Bank of Nigeria (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction in Financing Institutions) Regulations, 2022* and Paragraph 5 (2) of the *Economic and Financial Crimes commission (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and Professions, and Other Related Matters) Regulations, 2022* as a law abiding and tax paying limited liability company registered under the laws of the land.

Counsel urged the court to hold to the effect that the 3rd Defendant was right and bound to comply with the later in time laws and the subsidiary legislations made thereto.

The 4th Defendant in arguing her sole issue urged the court to resolve her issue in the negative. It was submitted that the issues raised by the Plaintiff calls for the proper interpretation of the provisions of the 1999 Constitution, the *Money Laundering (Prevention and Prohibition) Act, 2022, Legal Practitioners Act, Evidence Act* and the *Rules of Professional Conduct for Legal Practitioners* to be able to find out the true intention of the Legislature by carefully attending to the whole of the statute to be construed.

After taking a ride on the powers of the National Assembly to make laws for the Federation including the MLA 2022, counsel submitted that reliefs 1, 2, 6 and 7 of the Plaintiffs claim will fail as the 4th Defendant has stated the source of the powers of the National Assembly to enact MLA 2022 and thus the MLA 2022 cannot be deemed to be unconstitutional as erroneously claimed by the Plaintiff.

On the provisions of sections 7, 8, 9, 11 and 30 of the MLA 2022, counsel submitted that these sections are not inconsistent with any other laws passed by the National Assembly especially as it relates to Legal Practice in Nigeria. Counsel contended that the submissions of the Plaintiff to the effect that the provisions of the LPA, Evidence Act and RPC are specific provisions tailored for the regulation of law practice and therefore such specific legislation should apply, is an attempt to mislead the Court anchoring her submission on the premise that both statutes are for different legal regime-the MLA 2022 applies to crime prevention and criminal proceedings while the LPA is for civil law cum administrative regulation. Thus, counsel contended, the principle of *generalia specialibus non-derogant and specialibus derogant generalia*-general things do not derogate from special things and special things derogate from general things-is not applicable to the facts of this suit as it can be seen that the two laws are not of the same application and effect.

Now, the powers of the National Assemble to make laws for the Federation and indeed the enactment of MLA 2022 is not contested by the parties. The issue is whether sections 6, 7, 8, 9, 11 and 30 of MLA 2022 are ultra vires the National Assemble in view of the provisions of sections 20 and 21 of the Legal Practitioners Act, section 192 of the Evidence Act and Rule 19 (1) of the Rules of Professional Conduct for legal practitioners in so far as they relate to legal practitioners.

Section 192 (1)-(3) of the *Evidence Act, 2011* provides as follows;

'192 (1) No legal practitioner shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such legal practitioner by or on behalf of his client, or to state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his professional employment or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure-

(a) any such communication made in furtherance of any illegal purpose; or

(b) any fact observed by any legal practitioner in the course of his employment as such, showing that any crime or fraud

has been committed since the commencement of his employment.

(2) It is immaterial whether the attention of such legal practitioner was or was not directed to such fact by or on behalf of his client.

(3) The obligation stated in this section continues after the employment has ceased.'

Sections 20 and 21 of the *Legal Practitioners Act* on the other hand provides as follows;

20(1) Subject to subsection (4) of this section, the Bar Council may, from time to time, as the Council considers expedient, make rules-

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

(c) as to the opening and keeping by a legal practitioner who is the sole trustee, or who is a co-trustee only with one or more of his partners, clerks or servants, of an account at a bank for moneys of any trust of which he is the sole trustee

or such a co-trustee as aforesaid; and
(d) as to the keeping by such a legal practitioner as is mentioned in paragraph (c) of this subsection, of records containing particulars and information as to moneys received, held or paid by him for or on account of any such trust as is so mentioned; and

(e) empowering the Bar Council to take such action as it thinks necessary to enable it to ascertain whether the rules are being complied with.

(2) Rules made under subsection (1) of this section shall not come into force until they are approved by order of the Attorney-General, either without modification or with such modifications as he thinks fit; but before approving any such rules with modifications the Attorney-General shall afford the Bar Council an opportunity of making representations made in pursuance of this subsection.

(3) If it appears to the Attorney-General that any rules should be made, revoked or altered in exercise of the powers conferred on the Bar Council by this section, he shall make a recommendation in that behalf to the Bar Council; and if within the period of six months beginning with the date of the recommendation the council has not acted in accordance with the recommendation, the Attorney-General may, within the

period of twelve months beginning with that date, make rules giving effect to the recommendation.

(4) Rules under this section shall not require the keeping of accounts or records-

(a) by a legal practitioner in respect of moneys received, held or paid by him as a member of the public service of the Federation or a State; or

(b) in such other circumstances as may be specified by the rules.

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

Rule 19 (1) of the RPC provides that *'except as provided under sub-rule (3) of this rule, all oral or written communications made by a client to his lawyer in the normal course of professional employment are privileged.'*

Section 5(1)-(6) of the MLA 2011 is the same with section 6(1)-(3) of MLA 2022. Section 25 of MLA 2011 is substantially the same with section 30 of the MLA 2022 save for the addition of *'Notaries'* to *'Legal Practitioners'* contained in the MLA 2011 to now read *'Legal Practitioners and Notaries'*.

The above sections of the statutes reproduced above including the provisions of the MLA 2011 came under scrutiny in the case of ***C.B.N. v. Registered Trustees, NBA (2021) 5 NWLR (Pt. 1769) Pg. 268***, the facts of which case are similar to the facts of the instant case. At the trial Court, the 1st Respondent by her originating summons posited four questions for determination (similar to the questions posited herein) before the court as follows;

1. *'Whether in the light of the provisions of section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), section 192 of the Evidence Act and Rule 19 (1) of the Rules of Professional Conduct for Legal Practitioners 2007, the provisions of section 5 of the Money Laundering (Prohibition) Act, 2011, insofar as they purport to apply to legal practitioners, are not unconstitutional, ultra vires the National Assembly and therefore void?*
2. *Whether the Special Control Unit against Money Laundering (SCUML) is a body properly established under the Money Laundering Act 2011 and/or is empowered by law to require the registration of legal practitioners or otherwise regulate the conduct of legal practice and legal practitioners?*
3. *Whether considering the clear provisions of the Legal Practitioners Act, Cap. L11, Laws of the Federation of Nigeria, the Federal Minister of Commerce (now Minister of*

Trade and Investment) has any power, right, duty or jurisdiction to make rules regulating or guiding the operation of legal practice and legal practitioners in Nigeria?

4. Whether the provisions of section 5 (5) of the Money Laundering (Prohibition) Act 2011 insofar as they purport to relate to legal practice and legal practitioners, contravenes the right to privacy enshrined in section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended); and section 192 of the Evidence Act 2011 which enshrines the fundamental doctrine of lawyer client confidentiality and are therefore unconstitutional and void inapplicable to legal practice in Nigeria?'

In anticipation of answers to the above questions, the 1st Respondent sought and prayed for 5 reliefs.

The trial court resolved the questions in favour of the Respondent and granted all the reliefs and removed *legal practitioners* from the definition of *designated non-financial institutions* as contained in section 25 of MLA 2011.

Being dissatisfied with the decision, the appellant appealed to the Court of Appeal.

Five issues were distilled for determination before the Court of Appeal. Two of the issues were;

1. *Whether the trial Court was right in law when it declared section 5 of the Money Laundering (Prohibition) Act, 2011 insofar as it relates to lawyers void, when the said law was validly passed by the National Assembly.*
2. *Whether the trial Court was right when, having found the Money Laundering (Prohibition) Act validly passed by the National Assembly, it went on to edit the words of the said Act by excluding the 1st Respondent from its applicability.'*

Let it be noted that section 5 of the MLA 2011 is the same with section 6 of the MLA 2022.

The Court of Appeal in dismissing the appeal, after reproducing the provisions of sections 20 and 21 of the *Legal Practitioners Act*, held thus;

'It is thus clear that the Legal Practitioners Act already put in place safeguards for the protection of clients of a Legal Practitioner. Special provisions are also provided or made in the Legal Practitioners Act concerning moneys of the clients. It is mandatory for a Legal Practitioner to open CLIENT'S BANK ACCOUNT at a bank where all monies collected for or on behalf of a client by a legal practitioner must be paid. The Act constituted the legal practitioner a trustee for the monies of the client which must not be mixed or joined with the legal practitioner's money. With such an account of a client in a

licenced bank it is easy for those charged with operation and enforcement of Money Laundering (Prohibition) Act, 2011 to monitor and follow client's account directly from the institution at which clients account is opened and client's account lodged pursuant to sections. It will then be the duty of the financial institution (i.e. the Bank) to classify or do identification of its (Bank) customers. It has nothing to do with a legal practitioner. There is already enacted into the Legal Practitioners Act the penalties or punishment a legal practitioner would face if he fails to comply with the mandate and positive demand of the Legal Practitioners Act to open client's account.'

The Court went further to hold that;

'There is no doubt that the Legal Practitioners Act and the Money Laundering Act cannot operate side by side or at the same time insofar as it relates to legal practitioners. There are violent conflicts between the two legislations as they affect lawyers and their client and legal practice in Nigeria.'

The Court of Appeal reasoned that the National Assembly made the Money Laundering (Prohibition) Act 2011 without making any reference whatsoever to any provisions of the Legal Practitioners Act 1976. More importantly, that the Money Laundering (Prohibition) Act 2011 does not directly or by implication amended or repealed either in whole or part. The Court held that the trial Court was right in expressing preference for the provisions of the Legal Practitioners Act over the provisions of sections 5 and 25 of the MLA 2011 rendering the two sections of the MLA 2011 invalid, null and void insofar as they purport to apply to legal practitioners.

With regard to exhibit NBA-1 dated 25th February, 2013 attached to the 1st Respondent's originating summons (CBN circular to Banks), the Court of Appeal, after reproducing the said circular which directed all Banks and other financial institutions not to allow customers without evidence of registration with SCUML to operate their bank accounts, held thus;

> *'The letter quoted above is seen as an affront and interference with the practice of law vis-à-vis the Legal Practitioner's obligations to their clients and that the provisions of section 5 and 25 of the Money Laundering Act conflicted with the provisions and regulations governing the legal practice in Nigeria.'*

Exhibit NBA-1 is similar to Plaintiff's exhibit TCLP D.

The content of exhibit TCLP D, dated 20 June 2022 and was authored by the 1st Defendant (CBN) is as follows;

'Ref: FPR/DIR/PUB/CIR/001/052

Circular to all Banks, Other Financial Institutions (OFIs) and Payment Service Providers (PSPs).

CENTRAL BANK OF NIGERIA (ANTI-MONEY LAUNDERING, COMBATING THE FINANCING OF TERRORISM AND COUNTERING PROLEFERATION FINANCING OF WEAPONS OF MASS DESTRUCTION IN FINANCIAL INSTITUTIONS) REGULATIONS, 2022.

The Central Bank of Nigeria reviewed the CBN AML/CFT Regulations 2013 and its amendments to comply with the provisions of the Money Laundering (Prevention and Prohibition) Act, 2022, Terrorism (Prevention and Prohibition) Act, 2022 and relevant extant AML/CFT/CPF regulations. This resulted in the issuance of a new Regulation titled Central Bank of Nigeria (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapon of Mass Destruction in Financial Institutions) Regulations, 2022.

These Regulations, which revoked the CBN AML/CFT Regulations 2013, is issued by the CBN to promote compliance with AML/CFT laws and regulations and safeguard financial institutions from being used for financial crimes.

Therefore, all banks, other financial institutions and payment service providers are directed to note and immediately comply with the provisions of the CBN (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of

Weapon of Mass Destruction in Financial Institutions) Regulations, 2022.

Signed:

Chibuzor A. Efobi Director, Financial Policy and Regulation Department.'

One of the notable provisions in the MLA 2022 which was not contained in the MLA 2011 is the provision in section 11(4) of the Act. The section provides thus;

> *'11(4) Legal professional privilege and the invocation of client confidentiality shall not apply in connection with-*
>
> *(a) The purchase or sale of property;*
>
> *(b) The purchase or sale of business;*
>
> *(c) The managing of client money, securities or other assets;*
>
> *(d) The opening or management of bank, savings or securities accounts;*
>
> *(e) The creation, operation or management of trusts, companies or similar structures; or*
>
> *(f) Anything produced in furtherance of any unlawful act.'*

Now, the 1st Defendant had contended that this section 11 (4) of the MLA 2022, expressly excluded the principle of Legal Professional Privileges and the invocation of client's confidentiality provided in the *Legal Practitioners Act* and *Rules of Professional Conduct* made thereunder and section 192 (1) of the *Evidence Act* in their application to MLA 2022 in obedience to the expressed decision and prescription of the Court of Appeal. Counsel further contended that MLA 2022 expressly amended the LPA and RPC made thereunder and section 192 (1) of the Evidence Act in their application to MLA 2022 as prescribed by the Court of Appeal.

In response to this submission the Plaintiff submitted that the only Act repealed by the MLA 2022 was the MLA 2011. That the Court of Appeal in ***CBN v. Registered Trustees, NBA*** prescribed how express and implied amendment ought to be done and the MLA 2022 fell short of the judicial prescription. Further that section 11(4) of the MLA 2022 has not amended or substituted section 192 of the *Evidence Act* contending that the manner an amendment of an earlier legislation by a latter legislation is by specifically stating so. He relied on the decision of Kolawole J in suit No. FHC/CS/Abj/173/2013-***Registered Trustees of the NBA v. Central Bank of Nigeria***.

The provision of section 11(4) of the MLA 2022 reproduced above, in my view, did not amend section 192 of the Evidence Act nor did it repeal or amend the provisions of the LPA or the RPC made thereunder. The provision of section 11(4) of the MLA 2022 cannot override the provisions of section 192 of the Evidence Act, 2011.

A repeal of a statute must be done by clear words or language in a subsequent statute. The court will not presume that a statute has been repealed. In ***KLM Airline v. Kumzhi (2004) 8 NWLR (Pt. 875) Pg. 231@ 242*** a case referred to by the Plaintiff, the Court held that;

> *'A repeal of a statute must be done by clear words or language in a subsequent statute. Consequently, the Court will not presume that a statute has been repealed. In the instant case, if it was the intention of the framers of the 1999 Constitution to repeal the Federal High Court (amendment) Decree No. 60 of 1991 or revoke the jurisdiction conferred thereunder on the Federal High Court to hear suits relating to carriage of passengers and goods by air and meteorology, the provision of section 251 of the 1999 Constitution would have expressly stated so. Since it did not, the provisions of the Federal High Court (amendment) Decree No. 60, 1999 were not affected by section 251(1) of the 1999 Constitution.'*

It was also held in ***CBN v. Regd. Trustees, NBA (supra)*** that the Courts usually lean heavily against implied repeal of an earlier statute by a later statute on the same or similar subject matter unless the words of the provisions of the later statute is very clear either in express terms or lucid implication. See also ***The Governor of Kaduna State v. Lawal Kagoma (1982) FWLR (vol 1) 317.***

It is not correct as contended by the Defendant that the inclusion of section 11(4) of the MLA 2022 was in compliance with the direction of the Court of Appeal in ***CBN v. Regd. Trustees, NBA (supra)***. This is because the said provision has not in any way amended section 192 of the Evidence Act or LPA and RPC made thereunder.

As it stands, the decision of the Court of Appeal in ***CBN v. Regd. Trustees, NBA (supra)*** still stands after all the addition of '*Notaries*' to '*Legal Practitioners*' in the definition of '*designated non-financial business and profession*' in section 30 of the MLA 2022 as against just '*Legal Practitioners*' in the definition of '*designated non-financial institutions*' in section 25 of the MLA 2011 is materially insignificant.

I am not unmindful of the sentiments expressed by the 1st and 4th Defendants with regard to the fight against money laundering which funds could be channelled towards terrorism financing and other crimes. The detailed explanations of the Court of Appeal in ***CBN v. Regd. Trustees, NBA (supra)*** as to the roles to be played by the Banks in passing information concerning transactions over the threshold of $1000 to the security agencies in a client's account opened by a legal practitioner and domiciled with a bank. In the words of the Court of Appeal;

> *'With such an account of a client in a licenced Bank it is easy for those charged with operation and enforcement of Money Laundering (Prohibition) Act, 2011 to monitor and follow client's account directly from the financial institution at which clients account is opened and client's account lodged pursuant to*

sections. It will then be the duty of the financial institution (i.e Bank) to classify or do identification of its (Bank) customers. It has nothing to do with a legal practitioner. There is already enacted into the Legal Practitioners Act the penalties or punishment a legal practitioner would face if he fails to comply with the mandate and positive demand of the legal practitioner to open a client's account.'

The case of the Plaintiff is not that the MLA 2022 should be declared unconstitutional, null and void but rather that the sections complained of insofar as they relate to legal practitioners should be declared unconstitutional, null and void. In other words the blue pencil rule should be applied to remove the offensive sections as it relates to legal practitioners. That being the case, the arguments of the 4th Defendant to the effect that the provisions complained of are policy decisions on the implementation of the Financial Action Task Force (FATF) recommendations and global Anti-Money Laundering and Counter Terrorism Financing strategies which is in line with international best practices or the blacklisting of the Nigeria, (though no FATF recommendations was annexed to the counter affidavit of the 4th Defendant), will not be defeated by the exclusion of legal practitioners from the definition of designated non-financial businesses and profession there being a frame work under the LPA to fall back on.

At the risk of being repetitive, the Legal Practitioners Act places a responsibility on legal practitioners to keep client's money and to do so with utmost confidentiality, while the sections complained of (which a I have carefully read)-sections 6, 7, 8, 9, 11 of the MLA 2022 and Regulation 8 of the *Economic and Financial Crimes Commission (Anti-Money Laundering, Combating the Financing of Terrorism and Countering, Proliferation) Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and Professions, and other related Matters) Regulation, 2022*, a subsidiary legislation made pursuant to the MLA 2022-requires legal practitioners and law firms to report information received from client to the EFCC.

There is an obvious conflict.

It is my view that removing *legal practitioners and notaries* from the definition of designated non-financial businesses and professions as provided in section 30 of the MLA 2022 will not undermine the intendment and objectives of MLA 2022 which is encapsulated in section 1 of the Act thus;

'(a) provide for an effective and comprehensive legal and institutional framework for the prevention, prohibition, detection, prosecution and punishment of money laundering and other related offences in Nigeria; (b) strengthening the existing system for combating money laundering and related offences; (c) make adequate provisions to prohibit money laundering, (d)

expand the scope of money laundering offences and provide appropriate penalties (e) establish the Special Control Unit Against Money Laundering under the Economic Financial Commission for effective implementation of money laundering provisions of the Act in relation to the designated non-financial businesses and professions".

It remains to be added that the 3rd Defendant in placing restrictions on the accounts of the Plaintiff acted within the bounds of existing laws and regulations. The MLA 2022 included *'Legal practitioners and Notaries'* amongst others as *'designated non-financial business and professions'* pursuant to which the 3rd Defendant acted. The Plaintiff is a legal practitioner. The 3rd Defendant, a private business entity and a limited liability company, is bound by the MLA 2022 and any regulation(s) made under it including the Central Bank of Nigeria's regulation made pursuant to MLA 2022. The 3rd Defendant is obligated to strictly comply with its mandatory provisions unless otherwise stated by the Court. This is particularly so because certificate of registration with SCUML is part of KYC documentation by Banks for designated non-financial business and profession by virtue of section 63 (1) of *Central Bank of Nigeria (Anti-Money Laundering, Combating the Financing of Terrorism Countering Proliferation Financing of Weapons of Mass Destruction in Financial Institution) Resolutions, 2022.*

I will be standing on a strong wicket therefore in applying the decision in ***CBN v. Regd. Trustees, NBA (supra)*** to the facts of this case.

Accordingly, I resolve the three issues distilled for determination by the Plaintiff in favour of the Plaintiff.

As stated earlier in this judgment, the 1st Defendant counter claimed against the Plaintiff as follows;

a) *The 1st Defendant/Counter claimant is statutorily empowered by the provisions of the Central Bank Act 2007, the Banks and Other Financial Institution Act. No. 5 of 2020 (BOFIA) 2020 and Central Bank of Nigeria (Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapon of Mass Destruction in Financial Institutions) Regulations, 2022 to issue the CBN AML/CFT Regulations 2022.*

b) *The 1st Defendant/counter-claimants' Circular No: FPR/DIR/PUB/CIR/001/052 dated 20th June 2022 is lawful and valid and made in compliance with valid and subsisting law, itself in obedience to the prescription of the Court of Appeal.*

c) *That the 1st Defendant/Counter-claimants' Circular No: FPR/DIR/PUB/CIR/001/052 dated 20th June 2022 is not a violation of the rights of the Plaintiff to practice law generally in Nigeria under the Legal Practitioners Act 1962 or the* constitution of the Federal Republic of Nigeria 1999 (as amended).

d) By virtue of section 45 of the 1999 Constitution FRN (as amended), Sections 6,7, 8, 9, 11 and 30 of the Money Laundering (Prevention and Prohibition) Act 2022 is fully supported by section 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), Sections 20 and 21 of the Legal Practitioners Act and Section 192 of the Evidence Act 2011, and

e) The restriction placed on the Bank accounts operated by the Plaintiffs law firm with account numbers 07255 429 (Naira) 0725501443 (pounds) 0725501446 (dollar) 0725501450 (Euro) The counsel Legal Practice, by Guaranty Trust Bank for noncompliance with Money Laundering (Prevention and Prohibition) Act 2022 is lawful and a valid KYC requirement.

f) AN ORDER awarding N100, 000. 000 (One Hundred Million Naira) to the 1st Defendant/Counter-Claimant as cost for being discommoded by defending the suit.'

The facts relied upon for the above counter claim are the same with the facts in opposition to the Plaintiff's claim.

On the face of exhibit TCPL D, it could be seen that the said exhibit was issued pursuant to MLA 2022 being an amendment to an earlier circular issued by the CBN pursuant to MLA 2011 and not jointly pursuant to the Central Bank Act 2007 and the Banks and Other

Financial Institution Act. No. 5 of 2020 (BOFIA) 2020 as contended by the 1st Defendant counsel.

Having resolved the issue posited for determination in favour of the Plaintiff, and having taking a holistic view of the counter claim, I find myself unable to accede to the counter claim of the Defendant insofar as they relate to legal practitioners.

In any case, the counter claim is incompetent.

The concept of a counter claim to an originating summons is not appropriate. It cannot be contemplated in originating summons procedure or proceedings as it would suggest a situation of disputing facts which should take the matter to the writ of summons procedure, wherein the parties can file pleadings, and the Defendants would then be free to counter claim. In an originating summons procedure, the Defendant can only file a counter affidavit to deny what he does not agree with factually. See **A-G., Imo State v. Imo Rubber Estates Ltd (2020) 13 NWLR (Pt. 1741) Pg. 209 @ 243 Paras F-G** where the Court of Appeal held as follows;

> *'But before I drop the pen, I noticed that the appellants had filed a counter claim to the originating summons. Though that was argued in a faulty issue in this appeal, I think I should say that the concept of a counter claim in/to an originating summons appears strange, as I cannot contemplate it (a counter-claim) arising in originating summons procedure/proceedings, as that*

would suggest a situation of disputing facts, which would take the matter to the writ of summons procedure, wherein the parties can file pleadings, and the defendants would then be free to counter claim. In originating summons, the defendant can only file a counter affidavit, to deny what he does not agree with factually.'

In totality therefore, I answer the questions posited in favour of the Plaintiff. Accordingly I grant the following reliefs;

1. A declaration is made that Sections 6, 7, 8, 9, 11 and 30 of the Money Laundering (Prevention and Prohibition) Act 2022 in so far as they purport to apply to legal Practitioners are unconstitutional, null and void.

2. A declaration is made that the inclusion of "Notaries" and re-inclusion or re-categorization of "legal practitioners" in the definition list of Designated Non -financial businesses and professionals in section 30 of the Money Laundering (Prevention and Prohibition) Act 2022 is null, void and unconstitutional.
3. An order of perpetual injunction is made restraining the 1st Defendant from taking any step to implement its circular referenced FPR/DIR/PUB/CIR/001/052 dated 20th June 2022 and the "Economic and Financial Crimes Commission (Anti-Money Laundering, Combating the Financing of Terrorism and Countering, Proliferation) Financing of Weapons of Mass Destruction for

Designated Non-Financial Businesses and professions, and other related Matters) Regulation, 2022" in so far as it purports to apply to legal practitioners.

4. An order of perpetual injunction is made restraining the 2nd Defendant from taking steps to implement the Economic and Financial Crimes Commission (Anti-Money Laundering, Combating the Financing of Terrorism and Countering, Proliferation) Financing of Weapons of Mass Destruction for Designated Non-Financial Businesses and professions, and other related Matters) Regulation, 2022, in so far as it purports to apply to legal practitioners and law practice.

5. A declaration is made that the re-inclusion of "Legal practitioners and Notaries" as "Designated non-financial business and profession" under Section 30 of the Money Laundering Act 2022, is inapplicable and undermines the confidentiality obligations lawyers owe their clients under Section 192 of the Evidence Act 2011 and Rule 19(1) of the Rules of Professional Conduct for legal practitioners.

6. A declaration is made that the exclusion of fundamental doctrine of Legal professional Privileges and Client confidentiality in transactions touching on the purchase or sale of property, purchase or sale of any business, management of client money, securities or other assets, creation, operation or management of trust, companies or similar structures under Section 11 (4) of the

Money Laundering (Prevention and Prohibition) Act 2022 is unconstitutional, null and void.

7. A declaration is made that the restriction placed on bank accounts operated by the Plaintiffs law firm with account numbers 0725501429 (Naira) 0725501443 (Pounds) 0725501436 (Dollar) 0725501450 (Euro) The Counsel Legal Practice, Guarantee Trust Bank on the basis of the circular of the 1st Defendant is unconstitutional, null and void.

The counter claim of the 1st Defendant is dismissed.

I make no order as to cost.

Hon. Justice Obiora Atuegwu Egwuatu

Judge

July 19, 2024

APPEARANCES:

Parties: Plaintiff in Court. Defendants are absent

1. **Abu Arome** in person for the Plaintiff
2. **Ubong Akpan** with **Emeh Ikenna, C.J. Awoke, Oladele Oladipupo, Olawale Sarumi** for 1st Defendant
3. **Francis Usani** for the 2nd Defendant
4. **Kodilinye Arinze** for the 3rd Defendant
5. **Habibatu U. Chime** for the 4th Defendant