

**RECOVERY OF LEGAL PRACTITIONERS CHARGES: A REVIEW OF THE DECISION OF THE COURT IN THE CASE OF *BANMAH OLIVER ESQ (DOING BUSINESS IN THE NAME AND STYLE OF CHAMBERIAIN LAW) V. MR. MICHAEL NWAJEI*, UNREPORTED SUIT NO: FCT/HC/CV/150/2018**

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### **1. Introduction**

This subject matter of the case is the entitlement of a legal practitioner to his professional charges from clients. Section 19 of The Legal Practitioners Act defines charges to mean “any charges (whether by way of fees, disbursements, expenses or otherwise) in respect of anything done by a legal practitioner in his capacity as a legal practitioner.”<sup>1</sup> The decision of the court in *Banmah Oliver Esq (Doing Business in the Name and Style of Chamberlain Law) v. Mr. Michael Nwajei*<sup>2</sup> outlines the steps to be taken for a legal practitioner to recover his professional fees from a client. This is in tandem with the provisions of the Legal Practitioners Act<sup>3</sup> and Rules of Professional Conduct.<sup>4</sup> The court in determining the matter relied on the uncontroverted evidence of the Claimant adduced before it. The review aims to appraise the requisite steps for the

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<sup>1</sup> Legal Practitioners Act, CAP L 11, Laws of the Federation of Nigeria, 2004.

<sup>2</sup> Unreported, Suit No: FCT/HC/CV/150/2018. Before His Lordship, Hon. Justice O.O. Goodluck of the Federal Capital Territory High Court, Court 5, Maitama, Abuja, delivered 20<sup>th</sup> of June, 2019.

<sup>3</sup> Section 16, Legal Practitioners Act.

<sup>4</sup> Rules 48 and 49, Rules of Professional Conduct (RPC) 2007.

recovery of professional charges of a legal practitioner from a client in line with necessary statutory provisions. 127

## **2. Facts of the Case and Hearing**

The facts of the case are that, the Claimant, a legal practitioner instituted the action through a writ of summons on 8<sup>th</sup> November, 2018 and judgment was delivered on 20<sup>th</sup> June, 2019. His case is that, he rendered legal services to the Defendant and the Defendant was owing him the sum of Five Hundred Thousand Naira (₦500, 000. 00) being outstanding of his professional fees. He also claimed the interest at the rate of 25% per annum on the judgement sum from May 2018 until judgement sum is fully paid. Finally, he claimed the sum of Five Hundred Thousand Naira (₦500, 000. 00) as general damages and the sum of Two Hundred and Fifty Thousand Naira (₦250, 000. 00) as cost of the suit. He filed a 13 paragraph affidavit dated 8<sup>th</sup> November, 2018 which he personally deposed to in support of his case. Claimant claimed that, sometimes in between December 2016 and March 2018, he was briefed on several occasions to provide legal services to the Defendant.

Claimant further averred that the Defendant was fully aware of his indebtedness to him. He stated that a bill of charges was served on the defendant and that despite repeated demand for his money, the defendant failed and neglected to pay him. To further buttress this, a letter of demand for the sum of Five Hundred Thousand Naira (₦500, 000. 00) representing outstanding professional fees for services rendered to the Defendant was tendered and admitted as “Exhibit A” during hearing. Defendant failed to make a defence neither did he controvert the claims of the Claimant. Based on this, the Defendant had no defence on the merit.

### **3. Judgement**

In doing justice to the case at hand, the court acted judicially and judiciously by allowing the case of the Claimant. Accordingly, the Claimant's case against the Defendant succeeds. The Defendant is ordered to pay the sum of Five Hundred Thousand Naira (₦500, 000. 000) being outstanding unpaid legal service rendered by the Claimant to the Defendant.

Unfortunately, Claimant's claim for 25% interest per annum from May 2018 till judgement sum is fully paid fails in the absence of any averment to the effect that by the professional ethics, custom and usage, the Claimant is entitled to such interest claimed. The third claim succeeds partially as the sum of Fifty Thousand Naira (₦50, 000.00) is awarded as damages against the Defendant. Cost in the sum of Twenty Five Thousand Naira (₦25, 000.00) is further awarded against the Defendant.

### **4. Analysis**

The relationship between a legal practitioner and clients is statutorily recognised and judicially backed. It is imperative to point out that, in the course of the relationship, a legal practitioner may come across one or more difficult clients who may breach the agreement to pay the legal practitioner his professional fees for services rendered. To that end, the bedrock of this case therefore, is the entitlement of a legal practitioner to his professional charges.<sup>5</sup> The Holy Bible says, a labourer is entitled to his due wages.<sup>6</sup> In tandem with the Holy Bible, Section 16 of the Legal Practitioners Act and Rules 48-49 of the Rules of Professional Conduct provide that, a legal practitioner is entitled to be paid adequate

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<sup>5</sup> Section 16, Legal Practitioners Act.

<sup>6</sup> Romans 4:4; Leveticus 19:13; 1 Timothy 5:18.

remuneration for his services to the client. This could be in form of  
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a retainer or non-retainer.

These fees and charges should be contained in a bill of charges.<sup>7</sup>In addition to the aforementioned, a legal practitioner may also justify his charges based on expertise, age at the bar, experience and other relevant skills which he utilised in carrying out the brief of the client.<sup>8</sup>However, such charges must not be excessive but should be what is reasonably expected of a legal practitioner of his status.<sup>9</sup>It must be clear, detailed, signed by the legal practitioner or the representative of the law firm (in case of a firm), itemised and easy to understand by the client and the tax authority.<sup>10</sup>Section 16 (2) (a) of the Legal Practitioners Act further provides that, such a bill of charges and letter of demand for the payment of a professional charge must have been served on the client personally or at his last known place of abode for a period of at least one month before the institution of an action for the recovery of the sum by the legal practitioner.<sup>11</sup> In the case of *Bakare v. Okenla*, the Supreme Court upheld the appeal of the Appellant/Client on the ground that, the case of the Respondent/Legal Practitioner must fail for his failure to send the bill of charges to the Appellant/Client before instituting an action in court to recover his professional fees.<sup>12</sup>It is also pertinent to note that the court of competent jurisdiction for the recovery of the professional fees of a legal practitioner is the State High Court.<sup>13</sup> Therefore, a legal practitioner is entitled to his

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<sup>7</sup> Section 16 (2) (a) Legal Practitioners Act.

<sup>8</sup> *Oyo v. Mercantile Bank (Nig.) Ltd* (1988) 3 NWLR (Pt. 108) 213 at 223.

<sup>9</sup> *First Bank of Nigeria Plc v. Ndoma-Egba* (2006) all FWLR (Pt. 307) 1034.

<sup>10</sup> Section 18, Legal Practitioners Act.

<sup>11</sup> *Oyekanmi v. NEPA* (2001) 15 NWLR (Pt. 690) 414 at 432A.

<sup>12</sup> (1987) 1 all NWLR (Pt. 52) 579.

<sup>13</sup> Section 19, Legal Practitioners Act.

professional fees for services rendered and as a responsible member of the society with financial responsibilities to discharge, he should be paid his professional charges by clients promptly.

In the instant case, the Defendant never controverted the claims of the Claimant for the outstanding sum of Five Hundred Thousand Naira (₦500, 000. 00) representing his professional charges neither did he complain that the charge was excessive. The court also did not find the Claimant wanting in the aspect of first serving the Defendant with a copy of the bill of charges as well as letters of demand at least one month before approaching the Federal Capital Territory High Court, Abuja for intervention as provided for in the Legal Practitioners Act. Therefore, as held by the court, the Claimant is fully entitled to his wages from the Defendant.

## **5. Observations**

The Claimant is commended for his civility and adherence to the relevant statutes by seeking the intervention of the court in recovering his professional charges rather than resorting to self-help. The court on the other hand played the role of fair umpire by being realistic and considerate in the award of damages and cost against the Defendant despite that he did not make any defence on the merit. The court in its wisdom awarded damages and cost that are not likely to inflict hardship on the Defendant. Instead of awarding the sum of Five Hundred Thousand Naira (₦500, 000. 00) as prayed by the Claimant as general damages, the court awarded Fifty Thousand Naira (₦50, 000. 00). Also, instead of awarding the sum of Two Hundred and Fifty Thousand Naira (₦250, 000. 00) as prayed by the Claimant being cost of the suit, the court in its wisdom awarded the sum of Twenty Five Thousand Naira (₦25, 000. 00) as cost against the Defendant.

It is also pertinent to note that, where the evidence of a party is *DELSU Law Review Vol. 7 2021* 131 unrebutted or uncontroverted by the adverse party, such can be acted upon by the court. That was the decision of the court in the cases of *Adeleke & Ors v. Iyanda & Ors*<sup>14</sup> and *Okike v. LPDC*.<sup>15</sup> In the instant case, the Defendant failed to controvert the evidence of the Claimant about the claim for the professional charges hence, the court acted upon it to decide in favour of the Claimant.

Again, it can be said that the time spent in the determination of the case is reasonable, that is, 8<sup>th</sup> November, 2018 to 20<sup>th</sup> June, 2019. Having said that, since the matter is a simple one and uncontroverted, it could have been determined within a shorter period than it was done.

## **6. Conclusion**

The judgement in the instant case is commendable and fair to both parties. It again affirmed the saying that, the judiciary is the last hope, not just of the common man but the society. It will further encourage legal practitioners to tow the path of honour by exploring the rule of law rather than resorting to self-help in settling whatever differences they may have with their clients. It will also put clients on their toes by ensuring their commitment in perfection of briefs of legal practitioners since they can now see that the concerned legal practitioners can explore the full apparatus of the law in recovering their professional charges from them.

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<sup>14</sup> (2001) 13 NWLR (PT. 729) 1 at 22-23.

<sup>15</sup> (2006) 1 NWLR (PT. 960) 67.