

SECTION 12 OF THE LEGAL PRACTITIONER'S ACT EXAMINED*¹

Abstract

The Supreme Court recently reaffirmed its decision in *Jide Aladejobi v. NBA* by its ruling in *Rotimi Williams Akintokun v. LPDC*. The ruling of the court is to the effect that appeals from Legal Practitioner's Disciplinary Committee (LPDC) lie to the Appeal Committee of the Body of Benchers. Prior to this period, the same court had ruled in *Charles Okike v. LPDC (No. 1)* that appeals from the decisions of the LPDC lie to Supreme Court without any amendment to the extant laws applicable to both cases. The court had in these two cases relied on the provisions of section 12 of the Legal Practitioners Act 1990 as amended. Section 11 of the Legal Practitioners (Amendment) Decree 1994 expressly repealed section 12 of the Legal Practitioners Act. This paper reconciled these seeming conflicting decisions of the apex court by suggesting an amendment of the section under examination. The paper critically examined all the tentacles of the repealed and amended portions of section 12 of the Legal Practitioners Act. The paper identifies two schools of thoughts in arriving at some seemingly safe recommendations. The paper further proposed the harmonization of the scattered provisions of the various amendments to the Legal Practitioners Act in a proposed Legal Practitioners (Consolidation) Act.

Introduction

A legal practitioner is simply a lawyer. In the traditional English system, he is a member of the recognized branches of practice i.e. he may be either barrister, special pleaders not at the bar, certified conveyancer, or solicitor.² In the Nigerian context, the Legal Practitioners Act³ defines a legal practitioner to mean a person entitled in accordance with the provisions of this Act to practice as a barrister or a barrister or solicitor, either generally or for the purposes of any particular office or proceedings. The poser is: who are the persons entitled to practice? Section 2 of the Act answered the question when it provides that a person shall be entitled to practice as a barrister and solicitor, if, and only if, his name is on the roll.⁴ The Council of Legal Education in partnership with the Body of Benchers is the door through which a person enters into the legal

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² Garner, B. A, *Black's Law Dictionary*, West Publishers, (2009) Pg. 978

³ Legal Practitioners Act Cap L11 LFN, 2010. S. 23

⁴ The three categories are therefore provided for in the definition namely: those entitled to practise generally; those entitled to practise for the purpose of any particular office, e.g. Attorney General, Solicitor General and those entitled to practise for the purpose of any particular proceeding.

profession and the Legal Practitioners Disciplinary Committee (LPDC) is the exit door out of the profession in Nigeria. A verdict of the LPDC is usually referred to as a direction. In the same vein, under the Legal Practitioners Act 1990, the Appeal Committee of the Body of Benchers is the appellate body to which appeals from the directions of the LPDC lies by virtue of section 12 of the Legal Practitioners Act.⁵Section 12 of the Legal Practitioners Act 1990 has been amended by Decree No 21 of 1994 which substituted the appeal committee with Supreme Court. This section in question has been judicially tested by the courts and it has produced two different decisions of the Supreme Court. This paper seeks to examine the decision of the Supreme Court in *Charles Okike v. LPDC (No.1)*⁶ and the recent decision of the same court in *Jide Aladejobi v. NBA*⁷ and *Rotimi Williams Akintokun v. LPDC*.⁸While *Okike's case* invoked section 12 of the Legal Practitioners (Amendment) Decree No. 21 of 1994 to the effect that appeals from the direction of the LPDC lies directly to the Supreme Court, *Aladejobi* and *Akintokun* overruled the decision of the same court invoking the same section 12 of the Legal Practitioners Act 1990 to the effect that appeals from the direction of the LPDC now lies to the Appeal Committee of the Body of Benchers. It should be noted that there is no new legislation within the period under review in these two decisions of the apex court. This paper shall critically examine the import of section 12 of the Legal Practitioners (Amendment) Decree No. 21 of 1994 in the light of the appellate jurisdiction of the Appeal Committee of the Body of Benchers and Supreme Court in disciplinary matters at it relates to legal practitioners in Nigeria. The paper shall make appropriate recommendations with respect to the amendment of the section under consideration.

Brief Evolution of the Discipline of Legal Practitioner from 1962 - 2010

The Legal Practitioners Act 1962 established the General Council of the Bar⁹ and made provisions, *inter alia*, for entitlement to practise law, professional discipline, remuneration of legal practitioners and the keeping of accounts and records of clients' money. Under the 1962 Act, two bodies were created to deal with the issue of discipline of lawyers, namely: the Legal Practitioners Investigative Panel and the Legal Practitioners Disciplinary Tribunal. The former was exclusively charged under section 6(3) of that Act, with the duty of conducting preliminary investigations into allegations of professional misconduct against a legal practitioner, while the latter under section 7 of the Act was vested with the power of trial and punishment. The 1975 Act made fundamental changes to the 1962 by establishing the Legal Practitioners Disciplinary Committee. By virtue of section 9 of the 1975 Act, the LPDC was saddled with the responsibility of considering and determining any cases or conduct against a legal practitioner. By section 10 of that Act, the LPDC has the powers of trial and punishment thereby abolishing the Legal Practitioners Investigative Panel set up under the 1962 Act. The practicability of these

⁵ Legal Practitioners Act Cap L11 LFN, 2010. S. 12

⁶ (2005) 3 – 4 SC 49 at 67. *Charles Okike v. LPDC (No. 2)* (2005) 15 NWLR (Pt. 949) 471

⁷ (2013) 15 NWLR (Pt. 1376) 66

⁸ (2014) LPELR 22941 (SC)

⁹ Legal Practitioners Act 1962. S. 1

new powers under the 1975 Act was judicially tested in the case of *Legal Practitioners Disciplinary Committee v. Chief Gani Fawehinmi*¹⁰ wherein the Supreme Court dismissed the appeal brought by the LPDC and frowned at a situation where the Attorney General of the Federation was the complainant, the prosecutor and the judge at the same time. The court held that such proceedings were unequivocally null and void as it offends the universal principle of natural justice: *nemo judex in causa sua* enshrined in section 33(1) of the 1979 Constitution of the Federal Republic of Nigeria. The Supreme Court canvassed for an amendment of the relevant provisions of the 1975 Act.

In 1975, the 1962 decree was repealed and replaced by the Legal Practitioners Decree 1975 which consolidates the entire provisions on the legal profession. In essence, certain provision of the 1975 Act have however been amended by a number of subsequent decrees. The legal framework for the regulation of the legal profession has suffered incoherent enactments in the past. This is due to the logjam which occurred in National Conference of the Nigerian Bar Association held in 1992 between the 24th – 28th August, 1992 in Port Harcourt, Rivers State, Nigeria. The aftermath of the National Conference produced plethora of Decrees¹¹ which seeks to regulate the legal profession. The state which these decrees have left us shall be examined in the light of conflicting judgments of courts in the course of interpreting the various sections of the various harmonised volumes of the Legal Practitioners Act.

Jurisdictional Scope of the LPDC Examined

At this juncture, it is apposite to ask, what is the status of the LPDC in terms of hierarchy of courts in Nigeria? In appraising the status of the LPDC, it is pertinent to juxtapose it with other sister bodies or tribunals. Let us borrow a leaf from the Investments and Securities Tribunal (IST). By virtue of section 295 of the Investments and Securities Act 2007, the decision of the IST is appealable to the Court of Appeal. In the same vein, by the provision of section 25 and 28 of the National Population Commission

¹⁰ (1985) 2 NWLR (PT. 7) Pg. 300 at 307

¹¹ The following Decrees were enacted consequent upon the crisis at the aforestated conference: they are Legal Practitioners (Amendment) Dec

ree No. 21 of 1993; Legal Practitioners (Amendment) Decree No. 38 of 1993; Legal Practitioners (Amendment) Decree No. 120 of 1993; Legal Practitioners (Amendment) Decree No. 21 of 1994; Legal Practitioners (Amendment) (Repeal) Decree No. 43 of 1998 and Legal Practitioners (Amendment) Decree No. 38 of 1999

Act¹² appeals from the Census Tribunal lies to the Court of Appeal. The Medical and Dental Practitioners Disciplinary Tribunal which is a similar quasi-judicial body to the LPDC channels its appeals to the Court of Appeal in line with section 240 of the 1999 constitution. For instance, in *Medical and Dental Disciplinary Tribunal v. Okonkwo*¹³ the Supreme Court upheld the appeal which came directly from the Court of Appeal to it. By way of emphasis, the requisite poser is whether this is also applicable to the LPDC since what is good for the goose is also good for the gander? In the case of *Medical and Dental Practitioners Disciplinary Tribunal v. Dr.Emewulu Nicholas Okonkwo*¹⁴ the appeal goes to the Court of Appeal and later to the Supreme Court. In essence, it is settled that the status of the Medical and Dental Practitioners Disciplinary Tribunal is that of an administrative tribunal¹⁵ with coordinate jurisdiction with the LPDC. This position was reaffirmed by the Supreme Court in *Okike v. LPDC*¹⁶

The jurisdiction of the LPDC can be likened to that of an administrative tribunal. It appears that this is the reason why section 12 of the Legal Practitioners Act 1990 makes its decisions appealable to the Appeal Committee of the Body of Benchers. It is the view of the appellate order theorists that to make appeals lie from the LPDC to the Supreme Court amounts to a rushed justice delivery system. For instance, a tribunal named Urban and Regional Planning Tribunal is established under section 95 of the Abia State Urban and Regional Planning Board and Planning Authority Law 1999. In the light of the foregoing, appeals from the Abia State Urban and Regional Planning Tribunal lies to the High Court in the State under Section 101(2) of the Abia State Urban and Regional Planning Board and Planning Authority Law of 1999.

In the same vein, section 246 (1) of the Constitution provides that appeals from the Code of Conduct Tribunal shall lie to the Court of Appeal. The same is applicable to the Governorship and National Assembly Election Tribunal. In effect, both the Code of Conduct Tribunal and the Governorship and National Assembly Elections Tribunal enjoy coordinate jurisdiction with the High Court.

It should be noted that appeals lie from the decisions of the Court of Appeal to the Supreme Court in accordance with section 233 of the Constitution. It is submitted that the Constitution did not rule out a situation where appeals will lie from the decision of any tribunal or quasi judicial body straight to the Supreme Court. However, to argue that because the livelihood and the means of the livelihood of the legal practitioner is involved as a ground for a straight appeal to the Supreme Court is not detrimental since the Supreme Court judges are first and foremost lawyers before attaining their present height.

¹² Cap N 67 Section 25 makes such offences committed under the Act triable by the Federal High Court while section 28 (6) mandates the President to carry out the decisions of the Census Tribunal. However, an examination of section 25 and the requirement of section 28 (3) of the Act in terms of the composition of the tribunal, which requires the chairman of the tribunal to be qualified to hold the office of a High Court judge or must have held the said office will make one to infer safely that the Census Tribunal is of coordinate jurisdiction with the High Court. By inference, appeals from the Census Tribunal lies to the Court of Appeal.

¹³ (2001) 7 N.W.L.R. (Pt. 711) 206; (2002) AHRLR 159 (NgSC 2001)

¹⁴ SC/213/199 delivered on the 21st March, 2001 by the Supreme Court

¹⁵ Section 10 of Legal Practitioners (Amendment) Decree No. 21 of 1994; Obi Okoye, *Law in Practice in Nigeria* Snapp Press, Enugu (2011) Pg. 156

¹⁶ *Supra*

From the above, it could be safely deduced, that a tribunal may enjoy coordinate jurisdiction with the High Court depending on the provisions of the enabling statute. However, the status of LPDC can be said to be of coordinate jurisdiction with the Court of Appeal. Therefore, decisions such as *Okike v LPDC*¹⁷ it is submitted might not have been reached *per incuriam*. Hence, it is still a fashionable practice for the Supreme Court to hear appeals in disciplinary proceedings concerning legal practitioners directly from the LPDC as it was done in *Abuah v. LPDC*¹⁸ and *LPDC v. Idowu*.¹⁹ This position is further reinforced since the provisions of section 118 of the 1963 Constitution which provides that Parliament may confer jurisdiction upon the Supreme Court to hear and determine appeals from any decision of any court of law or tribunal but this is no longer an existing statute. However, without an express repeal of section 12 Decree No. 21 of 1994, the Supreme Court is still empowered to hear appeals from the directions of the LPDC.

Establishment and Abolition of the Appeal Committee of the Body of Benchers

By virtue of section 7(6) of the Legal Practitioners Act 1962,²⁰ an appeal against the direction of the Legal Practitioners Disciplinary Tribunal shall lie to the Federal Supreme Court.²¹ It should be noted that there is no Appeal Committee of the Body of Benchers under the 1962 Act. The Legal Practitioners Decree of 1975 made provision for the establishment of the Appeal Committee of the Body of Benchers by virtue of section 11 of the Act. Section 11(1) of the 1975 Act provides:

There shall be a committee to be known as the Appeal Committee of the Body of Benchers which shall be charged with the duty of hearing appeals from any direction given by the disciplinary committee.

It should be noted that the composition²² of the appeal committee under the 1975 Act comprised of 7 members of the Body of Benchers as follows:

¹⁷ (2005) 3-4 SC 49

¹⁸ (1962) 1 All NLR 278

¹⁹ (1971) All NLR 128

²⁰ The 1962 Act has been repealed by the Legal Practitioners Act 1975

²¹ Legal Practitioners Act 1962. S. 8

²² Legal Practitioners Act 1975. S. 11(2)

- a. Chairman, who is a member of the Body of Benchers other than by virtue of section 3(1) (g)²³ of the Act;
- b. two Attorneys-General in the Federation;
- c. two judges of the High Court of any state; and
- d. two members of the association.

Under the 1975 Act, section 11(5) empowers the Supreme Court to hear appeals from the Appeal Committee of the Body of Benchers arising from the direction of the LPDC. Hence, the 1975 Act deviated from the above position of the 1962 Act which vests the Federal Supreme Court with direct appellate powers to hear and determine appeals from the direction of the LPDC.

The Legal Practitioners Act of 1990 also towed the line of the 1975 Act by the establishment of the Appeal Committee of the Body of Benchers by virtue of section 12 (1) of the Act. The 1990 Act provides that appeals from the decision of the LPDC shall lie to the Appeal Committee of the Body of Benchers and a further appeal shall lie to the Supreme Court by virtue of section 12 (5) of the 1990 Act.

It is apposite to state that section 12 of the 1990 Act in terms of composition of the Appeal Committee of the Body of Benchers is *in pari material* with the same²⁴ composition as captured above under the 1975 Act.

However, the related provisions of Decree No. 21 of 1994 amended the Legal Practitioners Act of 1990 with respect to the composition of the LPDC under section 11 (2) as follows:

The disciplinary committee shall consist of –

- (a) a chairman who shall not be either the Chief Justice of Nigeria or a justice of the Supreme Court
- (b) two justice of the Court of Appeal, one of whom shall be the President of the Court of Appeal
- (c) two chief judges;
- (d) two Attorneys – General who shall be either the Attorney – General of the Federation and the Attorney – General of a State or two State Attorneys – General; and
- (e) four members of the association who are not concerned with either the investigation of a complaint or the decision of the association to present a complaint against a legal practitioner for determination by the disciplinary committee.

²³ i.e. 12 members of the Body of Benchers of not less than 15 years post call nominated by the NBA into the Body of Benchers are expressly excluded from being the Chairman of the Appeal Committee of the Body of Benchers.

²⁴ Legal Practitioners Act 1975. S. 11(2)

It suffices to state that the composition in Decree No 21 of 1994 is still operational till date. The poser is, if Decree No 21 of 1994 has been repealed, why would the Body of Benchers still constitute its LPDC to reflect a repealed decree? In the same vein, section 11 of the Legal Practitioners (Amendment) Decree No. 21 of 1994 provides:

Section 12 of the principal Act is hereby repealed.

It should be noted that the said section 12 of the principal Act is the provision which establishes the Appeal Committee of the Body of Benchers. This is an express abolition of the body named Appeal Committee of the Body of Benchers. Till date, no other statute has re-enacted the appeal committee. There is also no Appeal Committee of the Benchers in existence. One begins to wonder how the learned lords of the hallowed apex court arrived at the decisions in *Aladejobi*²⁵ and *Akintokun*²⁶ wherein the Supreme Court referred the case back to a non – existent Appeal Committee of the Body of Benchers.

Section 12 of the Legal Practitioners Act 2010 Examined

This writer states that under section 12 of the Legal Practitioners Act 1975,²⁷ appeal against the direction of the LPDC could only lie to the Appeal Committee of the Body of Benchers and that it remains the law till the harmonization in the published statutes of the Laws of the Federation of the Federal Republic of Nigeria. The position changed when the Legal Practitioners (Amendment) Decree No. 21 of 1994 was promulgated. The recent harmonisation of the Laws of the Federation excluded the Legal Practitioners (Amendment) Decree No. 21 of 1994 as it did in the 2004 and 2010 volumes of the Laws of the Federation. Section 12 of the LPA 1990²⁸ provides:

- (1) There shall be a committee to be known as the Appeal Committee of the Body of Benchers (in this Act referred to as “the Appeal Committee”) which shall be charged with the duty of hearing appeals from any direction given by the Disciplinary Committee.

By the provisions of section 12 of 1990 Act, appeals from the directions of the LPDC lie to the Appeal Committee of the Body of Benchers. This is the premise upon which the Supreme Court decided the recent decisions in *Aladejobi v NBA*²⁹ and the case of *Rotimi Akintokun v. LPDC*.³⁰ In *Charles Okike v. LPDC*³¹, the appellant is a legal practitioner. Sometimes in

²⁴ Legal Practitioners Act 1975. S. 11(2)

²⁵ Supra

²⁶ Supra

²⁷ Decree No. 15 of 1975 is the original principal Act.

²⁸ These are harmonized in Laws of the Federation Cap L11 of 2004 and 2010 respectively. This Act is on all fours with 1990 Act.

²⁹ (2013) 15 NWLR (Pt. 1376) 66

³⁰ Supra

³¹ Supra

1995, the appellant was briefed by one Mr. A. Kaihara, a Japanese and Chief Executive of Kaiyou Systems Inc., Japan, in respect of a claim against a company, Nabegu & Co. Nigeria Limited of Bello Road, Kano. Suit No. K/118/95 was consequently instituted at the High Court of Kano State. Judgment was given against Nabegu & Co. Nigeria Limited in the sum of N14,500,000.00, which money was allegedly collected by the appellant on behalf of his client. The total amount received by the appellant on behalf of his said client was N14,500,000.00. As all efforts made by the client to recover the money from the appellant failed, the company therefore sought the assistance of one Alhaji Salisu Mohammed to assist in recovering the money from the appellant. To that end, the company gave a power of attorney to the said Alhaji Salisu Mohammed.

Armed with the power of attorney given to him by the foreign company, Alhaji Salisu Mohammed contacted the appellant and demanded for the money he collected on behalf of his said client. The appellant did not deny receiving the money on behalf of his said client, but he appealed to Alhaji Salisu Mohammed to give him time to source for the money so that he could pay up the said amount. According to the evidence given at the hearing before the Legal Practitioners Disciplinary Committee, Alhaji Salisu Mohammed informed the LPDC, *inter alia*, that the appellant had since his appointment as Mr. Kaihara's attorney, paid to him N70,000 out of the total amount the appellant collected on behalf of his said client. The Alhaji Salisu Mohammed said further that the N70,000 was, in fact, paid in three installments. The appellant thereafter pleaded with Alhaji Salisu Mohammed that he should allow him (appellant) more time to pay "as he had properties including generators to sell" which would enable him raise the balance of US\$123,000.

This was the position when Alhaji Salisu Mohammed decided to seek the assistance of the Hon. Chief Justice of Nigeria through a petition he sent to the Honourable Chief Justice. The Chief Justice referred the petition to the Nigerian Bar Association. It is the same petition that was finally referred to the LPDC for action. On receipt of the complaint, the LPDC wrote to the appellant inviting him to appear before it. It enclosed copies of the petition and other related documents in its possession along with the letter. The appellant received the letter but instead of appearing before the LPDC, he replied by raising objections on various grounds among which is that the procedure adopted by the LPDC was not in accordance with the rules under which the LPDC took the action against him. The appellant also queried the validity of the power of attorney issued to Alhaji Salisu Mohammed.

The LPDC reacted by informing the appellant in another letter that all his objections were matters the appellant could raise when he appeared before the LPDC. He was then given another date on which he was to appear and present his defence to the allegation made against him but he still failed to honour the invitation. Consequently, when the appellant refused to honour several invitations sent to him, the LPDC decided to proceed with the matter in his absence in line with its rules. During the hearing before the LPDC,

evidence was taken from Alhaji Salisu Mohammed. At the hearing, the LPDC came to the conclusion that the appellant was guilty of professional misconduct. The LPDC then gave directions by ordering the registrar to strike the appellant's name off the roll; and ordered the appellant to refund the sum of \$123,000 US Dollars to the complainant/petitioner. The appellant appealed directly to the Supreme Court from the above decision of the LPDC. The Supreme Court, by a majority of 6 – 1,³² assumed jurisdiction and dismissed the appeal. It is my view that the Supreme Court relied on Decree 21 of 1994 in allowing this direct appeal from the LPDC to the Supreme Court. The Supreme Court upheld sections 10 (c) and 11 of Decree No. 21 of 1994 which is still an existing statute.

The facts in *Rotimi Williams Akintokun v. LPDC*³³ is that the appellant is a legal practitioner under the name and style of “ROTIMI WILLIAMS AKINTOKUN & COMPANY” of 75B, Coker Raod, Ilupeju, Lagos. The complaint levied against Mr. Akintokun emanated from a petition written against him to the Nigerian Bar Association (NBA) by his clients, the Ogunesu family of Ule Ogunesu, 4 Olubi Street, Itundegun, Ikorodu, Lagos State. The clients alleged in their petition that the appellant committed acts of professional misconduct in that while acting as their solicitor, he deliberately misled them regarding an alleged acquisition of their land by the Lagos State Government. That he failed to carry out his clients' instructions to promptly move against adversaries in respect of the land. He also caused the land to be under-surveyed with intent to cheat his clients. It was alleged that the appellant went further to sell the land without any authorization and contrary to the instructions of his clients. It was also alleged in the petition that the appellants employed extra – judicial methods while pretending to be carrying out the instructions of his clients. On the 4th day of April, 2006, after completion of hearing, the LPDC delivered its directions in which it directed the Registrar of the Supreme Court to strike off the name of Mr. Rotimi Williams Akintokun from the Roll as a legal practitioner in Nigeria. Dissatisfied, the appellant appealed to the Supreme Court. The Supreme Court ruled that it lacks jurisdiction to hear appeals directly from the direction of the LPDC. Hence, the case was referred to the Appeal Committee of the Body of Benchers.

The facts in *Jide Aladejobi v. NBA*³⁴ is that on the 16th of March, 2005 the respondent addressed a complaint to the LPDC against the appellant, a member of legal profession.

The complaint was based on a petition by one Mrs. Victoria Akinyele Aliu through her solicitors - Mike Umonnan & Co. which alleged that the appellant conspired with a tenant of the complainant, one Alhaji Saliu Gbolagade and forged the complainant's signature on a lease agreement in respect of the complainant's property situate at No.52, Western Avenue, Surulere, Lagos with intent to deprive the complainant of the ownership of the property.

³² Kutigi JSC (as he then was) dissented.

³³ Supra

³⁴ Supra

The complaint against the appellant before the LPDC reads as follows:- “That you Jide Aladejobi, counsel to Alhaji Saliu Gbolagade, on or about the year 2007, conspired with the said Alhaji Saliu Gbolagade to draft and execute a 10 Years Lease Agreement purportedly on behalf of Mrs. Victoria Akinyele Aliu (the petitioner) in respect of the Petitioner’s property situate at No. 52, Western Avenue, Surulere, Lagos with the intent to interfere with the petitioner’s ownership rights over the property, all contrary to Rules 24, 28 and 49 (a) and (b) of the Rules of Professional Conduct in the legal profession and section 12 of the Legal practitioners Act, 1990 as amended.” Before the Committee, two witnesses testified for the respondent. Abubakar Ibrahim Maude, the Secretary of the Committee tendered the complaint received by the Committee while Mike Umonnan identified the petition as the one written by him on the instructions of the petitioner. As P.W.2, he maintained that he had been instructed to withdraw the complaint. At the close of the respondent’s case, the appellant testified and was cross-examined. Pursuant to the order of the Committee, the appellant filed his written address to which there was no reaction by the respondent. The appellant’s written address was adopted before the Committee delivered its direction. The Committee considered the evidence placed before it and thereafter found the appellant culpable of infamous conduct and directed the Chief Registrar of the Supreme Court to strike off the name of the appellant from the Roll of Legal Practitioners in Nigeria. The appellant felt unhappy with the decision of the Committee and has decided to appeal directly to the Supreme Court. The Supreme Court however referred the case back to a non – existent Appeal Committee of the Body of Benchers in line with section 12 of the Legal Practitioners Act.³⁵

Section 12 subsection 2 of the 1990 Act provides that the Appeal Committee shall consist of the following seven members of the Body of Benchers as may be appointed by the Body of Benchers from time to time, that is –

- a. As chairman, a Benchers, who is a member of the Body of Benchers other than by virtue of section 13 (1) (g) of this Act;
- b. two Attorneys – General in the Federation;
- c. two judges of the High Court of any State; and
- d. two members of the Association.

It should be noted that the aforesaid section 12 (1) and (2) of the 1990 Act may not see the light of the day in the light of the provisions of section 10 (e) of Decree No. 21 of 1994 which replaced the words “appeal committee o the Body of Benchers” with the words “Supreme Court”. This is the tripod upon which the case of *Okike v. LPDC* as decided by the Supreme Court stands.³⁶ No other enactment in any form whatsoever has created the Appeal Committee of the Body of Benchers till date. It could therefore be safely deciphered that the Committee is non-existent till date.

³⁵ Cap L 11 L.F.N. 2010

³⁶ *Supra*

This writer humbly arrived at two schools of thought with respect to the above cited cases.³⁷ The first school of thought which is the *due process and appellate order theory* as propounded by this writer safely argue that section 233 (1) of the 1999 constitution vests the Supreme Court with jurisdiction to the exclusion of any other court of law in Nigeria to hear and determine appeals from the Court of Appeal. The poser is: does the interpretation maxim, *expressio unius est exclusio alterius* which means that the express mention of a person or thing is to the exclusion of another³⁸ become applicable in this provision? Assuming without conceding that an examination of section 233 of the constitution will reveal that there is no legislative intent which envisages direct appeal to the Supreme Court from any other court or tribunal except the Court of Appeal. This is because a cursory look at section 240 of the constitution reveals that the legislature envisaged appeals from other tribunals as may be conferred on the Court of Appeal by an Act of the National Assembly. This school of thought argue that referring *Aladejobi*³⁹ and *Akintokun s*⁴⁰ cases back to the Court of Appeal or Appeal Committee of the Body of Benchers seems to be stretching litigation to an experimental process. Moreso, the livelihood and the means of the livelihood of the legal practitioner is involved. The theorists opined that an appeal directly to the Supreme Court directly from the LPDC is not detrimental since the Supreme Court judges are first and foremost lawyers before attaining their present height.

*Badejogbin*⁴¹ opined that Decree No. 21 of 1994 has been repealed. From the foregoing, I humbly find myself unable to align with that submission. This is because laws are expressly repealed by the legislature or pronounced a nullity by the courts and not by implication or abandonment of harmonization in subsequent Laws of the Federation. *Badejogbin's* view it is submitted respectfully will collapse in view of the earlier composition of the LPDC by virtue of section 10 of the Legal Practitioners Act L.F.N 1990⁴² which has been declared null and void by the Supreme Court in *Fawehinmi v. LPDC*.⁴³ This is the fulcrum upon which section 9 of Decree No 21 of 1994 enacted a new section 11 of the principal Act to reflect the new composition of the LPDC which composition is still being implemented to the letters till date.

In deviating from the above argument, this writer also proposed the parliamentary powers theory and argue that Decree (now Act) No 21 of 1994 is still a good law as it has not been repealed by any express legislation. This writer opines that to argue that the said Act has being repealed by the Marginal Note in Decree No. 43 of 1998 amounts to a misconception of the legislative intent of the said Decree 1998. Section 1 of Decree

³⁷ *Charles Okike v. LPDC*(Supra); *Aladejobi v. NBA*(Supra) and *Akintokun v. LPDC* (Supra)

³⁸ See *Ogbunjiya v Okudo* (1976) 6-9 S.C. 32

³⁹ Supra

⁴⁰ Supra

⁴¹ *Badejogbin R. E. The Unresolved Conflict of the Regulatory Law of the Legal Profession, Nigerian Bar Journal* (2007) Vol. 5 No. 1, Pg. 61

⁴² Now Cap L11 L.F.N. 2010

⁴³ Supra

No. 43 of 1998 expressly repealed Legal Practitioners (Amendment) Decree No. 21 of 1993 and not Decree 21 of 1994. To buttress this assertion, section 3(2) of the Interpretation Act L.F.N. 2010 provides that a heading or marginal note to an enactment does not form part of the enactment and is intended for convenience or reference only.⁴⁴ Some jurisdictions⁴⁵ hold that notes of this kind cannot be used as the basis for an argument about the interpretation of a statute.⁴⁶ In furtherance of this position, the explanatory note of Decree No. 43 of 1998 states that the Decree in question, repeals the 1993 Decree as amended and nothing more. In effect, it is humbly submitted that the decision of the Supreme Court in *Charles Okike v. LPDC (No. 1)*⁴⁷ is a good law. This is because the Supreme Court acted based on section 10 (e) of Decree No. 21 of 1994 which replaced the words “Appeal Committee of the Body of Benchers” with the words “Supreme Court”. This is the basis upon which the Supreme Court has been exercising direct appellate jurisdiction from the directions of the LPDC.

The proponent of the parliamentary powers theory may safely hid under the decision in *Fawehinmi v. LPDC*⁴⁸ which upheld section 233 of the constitution which allows an Act of the National Assembly to confer further jurisdictional powers on the Supreme Court to hear appeals from other courts of law in Nigeria. The court elucidated further that the Supreme Court is empowered exclusively to hear appeals emanating from the decision of the Court of Appeal and it does not mean that it is only from the Court of Appeal that the Supreme Court can hear appeals from. The Supreme Court held that section 12 (7) of the Legal Practitioners Act is not inconsistent with section 233 (1) of the 1999 constitution. Therefore, appeals against the judgment of the Court of Appeal can lie to the Supreme Court by virtue of section 233 of the 1999 constitution as a statutory creation. Section 12 (7) of the Legal Practitioners (Amendment) Act 1994 which confers Supreme Court with jurisdiction to hear appeals from the LPDC is also a creation of statute.

In analyzing this provision, it is pertinent to ask whether the LPDC enjoys the same status and powers with the Court of Appeal which empowers it to also file appeal therefrom straight to the Supreme Court? The answer to my mind is in the negative. Vesting the LPDC with such direct appellate right to institute appeal directly to the apex court may be jumping the gun before the whistle for appellate right is blown. This is the basis upon which this writer argues that in order for the decisions of *Aladejobi* and *Akintokun* to be a good law, it is pertinent to amend section 12 of the Legal Practitioners Act 1990 to reflect the restoration of the Appeal Committee of the Body of Benchers.

Recommendations

From the foregoing, it is safe to submit that Decree No 21 of 1994 has not been repealed by Decree No. 43 of 1998 or any other statute.⁴⁹ This is because the Marginal Note which brought it under the list of legislations intended for

⁴⁴ Section 3(2) of the Interpretation Act, Cap. I23 L.F.N. 2010

⁴⁵ Nigeria inclusive

⁴⁶ Garner, B. A., *Black's Law Dictionary*, West Publishing Co. U.S.A., (2009), Pg. 1053

⁴⁷ *Supra*

⁴⁸ (1985) 2 NWLR (Pt. 7) 300

⁴⁹ Legal Practitioners ((Amendment) (Repeal) Decree No. 43 of 1998

repeal is not sufficient to repeal an existing legislation of such nature. However, the explanatory note betrayed the Marginal Note when it expressly mentioned Decree No 21 of 1993 and excluded Decree No 21 of 1994. Assuming without conceding that Decree No. 21 of 1994 has been repealed by Decree No. 43 of 1998, that means the composition of the LPDC under the Legal Practitioners Act which was repealed in *Okike v. LPDC*⁵⁰ would continue to hold sway.

Secondly, the National assembly should do the needful by amending section 12(7) and harmonizing the provisions of the Decree 1994 into the Legal Practitioners Act L.F.N. 1990 to put it in proper perspective. The abandonment of Decree No. 21 of 1994 which is still an existing law is not a sign of good draftsmanship on the part of our policy and law makers.

Thirdly, by virtue of section 11 of Decree No. 21 of 1994, section 12 (4 – 7) of the Principal Act of 1990 is no longer a good law because it has been repealed as aforesaid. There is a need for the proper renumbering and amendment of the Principal Act to reflect the new provisions. There is therefore the need for a Legal Practitioners (Consolidation) Act which must reflect all the amendments to the Legal Practitioners from 1962 till date. In this way, the attention of the Supreme Court would be duly drawn to the existence of Decree No 21 of 1994 in the same statute. The scattered nature of the Decrees (Now Act) is not helpful.

Conclusion

It could be safely concluded that the view of some writers who posits that the Legal Practitioners (Amendment) Decree No. 21 of 1994 has been repealed is with due respect misconceived because none of them has been able to clearly state the legislation which expressly repealed this existing law by virtue of section 315 of the 1999 constitution. Section 12 of the Legal Practitioners Act L.F.N. 1990 is no longer the applicable law by virtue of section 11 of Decree No 21 of 1994. In essence, any provision relating to the establishment of the Appeal Committee of the Body of Benchers is null and void until an Act of the National Assembly re-enacts the body.⁵¹ In effect, the decisions of the Supreme Court in *Aladejobi v. NBA*⁵² and *Akintokun v. LPDC*⁵³ it is submitted with the greatest respect were reached *per incuriam*. Hence, *Okike v. LPDC*⁵⁴ with respect to appeals from the LPDC to the Supreme Court appears to be the good law in view of the extant provisions of section 10 (e) and 11 of Decree No. 21 of 1994. The mere fact that this Decree was abandoned by the draftsman in the harmonization of the Laws of the Federation is not sufficient to repeal an existing legislation. There is the urgent need to amend section 12 of the Legal Practitioners Act 2010 to reflect the amendments provided in Decree No 21 of 1994. A stitch in time saves nine.

⁵⁰ Supra. The composition which requires the A. G Federation to chair the LPDC under the 1975 Act (now 1990 Act) which was harmonized into the Laws of the Federation 2010 has been declared a nullity under the ground that it negates the principle of natural justice.

⁵¹ Appeal Committee of the Body of Benchers

⁵² Supra

⁵³ Supra

⁵⁴ Supra