

LEGAL HERMENEUTICS OF THE SUPREME COURT DECISION IN *AKINTOKUN v LPDC*: NEED FOR PROGRESSIVISM IN JUDICIAL EXEGESIS*

Abstract

*Judicial interpretation is the mainstay of every legal system in the world. It is for the judiciary as it is often said to interpret and expound the law and not to expand same. The need for this exclusive role of the Judiciary is brought to bear due to imprecision, imperfection and inaccuracy attendant to human nature. The various arms of government involved in the running of any government cannot close its eyes to these errors. The Supreme Court in case under consideration held that appeal to from the direction of Legal Practitioners Disciplinary Committee lies to the Appeal Committee of the Body of Benchers. The court as it were affirmed an error by a branch of the executive arm of government when it had the opportunity to right the wrongs. In arriving at its decision, the court considered two inconsistent decisions of the court i.e. *Charles Okike v LPDC (No.1)* and *Jide Aladejobi*. The court followed the latter decision though not overruling the former. It is argued in this discourse that a progressive approach toward the law favour the decision in *Charles Okike v LPDC*. The Court, presumably, in order to defend its latter position went against all known positive and sociological approach in the exercise of judicial powers. The judgment in *Akintokun's* case is capable of eroding the powers of the legislators and laws made by them. The position taken by the court in our most honest consideration calls for review and subsequent abandonment as it is not 21st century oriented.*

Key words: *Legal Practitioner, Discipline, Appeals, Supreme Court and Amendment*

1. Introduction

“An error does not become truth by reason of multiplied propagation” -Mahatma Gandhi.

The Rules of Professional Conduct made copious provisions pertaining to the conduct of a legal practitioner in relation to the court, his colleagues and his client.¹ These loft provisions spelt out in express terms what is expected of a legal practitioner and the attendant consequences for non-adherence. These consequences ranging from striking out the name of the legal practitioner from the Roll among others are no doubt punitive and disciplinary in nature. Thus, there is great need for a proper and definite procedure to be followed before the punishments are meted out on a legal practitioner who is found wanting.²

The Legal Practitioners Act on its part established The Legal Practitioners Disciplinary Committee (LPDC) which as its name suggest see to the discipline of any erring legal practitioner. The Act as at its promulgation in 1975 directs appeals from the direction³ of the LPDC to the Appeal Committee of the Body of Benchers. The outcome of the decision of the Appeal Committee may be appealed against to the Supreme Court by a disgruntled legal practitioner. This position held sway till the 1994 when an amendment beseeched the provisions relating to the appeal of the direction of LPDC by a legal practitioner. The amendment for whatever reason abolished the Appeal Committee of the Body of Benchers and provides that appeal form LPDC shall lie straight to the Apex Court in the Land. The Supreme Court, as it were, was the only court seized with jurisdiction to hear appears from LPDC as imposed by the amendment. Since the 1994 amendment, the law makers have never

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¹ See the provisions of Rules 14 – 38 of the Rules of Professional Conduct 2007

² In order to safeguard the mode of discipline and ensure that legal practitioner enjoys fair hearing which they uphold, the Chief Justice of Nigeria came out with Legal Practitioners (Disciplinary Committee) Rules 2006. The content of the Rules must be observed by all and sundry in the discipline of a legal practitioner.

³ direction here means decision of LPDC

commented or varied the provisions of the Act. In essence the 1994 amendment was the last modification witnessed by the Act itself.

In 2004, the Laws of the federation were collated and the 1994 amendment of the Act which obviously was in a separate document other than the Act itself was not incorporated in the Laws of the Federation. That is to say, what we have as the Laws of the Federation 2004 as long as the Legal Practitioners Act is concerned is same as what we have in the Laws of the Federation of Nigeria 1990. From this historical antecedent of the Legal Practitioners Act, the simple but complex question that calls for answers is: where does appeal lie from the direction of the LPDC? This question does not invite lighthearted or carefree answers but a clinical and considered reaction.

It should be noted that the jurisdiction of the Supreme Court to entertain appeal from the direction of the LPDC has been questioned in two occasions before the case under consideration. The first was the case of *Charles Okike v LPDC (No 1)*⁴ which was decided in 2005 and the second was the decision in *Jide Aladejobi v NBA*⁵ which was decided in 2013. In fact these two decisions were the subject of discourse in our case under consideration i.e. *Akintokun v LPDC*.⁶ It is on this note that we find it expedient to discuss briefly both decisions which form the background of the case under consideration.

2. Background to *Akintokun v LPDC*

Hitherto to the decision of the court in *Akintokun v LPDC*, it must be borne in mind that there are two inconsistent decisions of the Supreme Court as regards jurisdiction of the court to hear appeals from LPDC. Thus the decision in our case under consideration reviewed both decision and followed the latest of them. It is surprising that the inconsistent decision was not held to have been reached *per incuriam* although the full panel of the Supreme Court empowered to overrule any of the previous decisions sat. From that singular act of not overruling one and upholding the other, it appears that the decision not overruled is still a good law and can be cited in any court in the land. The attitude exhibited by the highest court in the land left nothing to be desired as we are still left to battle with the Supreme Court must be positively overruled in order to cease to have effect. The doctrine of overruling a decision of the Supreme Court by implication is alien to our legal system and it is not our intention to argued whether such doctrine should be welcome or not in this paper. As mentioned earlier, a quick glimpse at the decision of the Supreme Court in the case of *Charles Okike v LPDC (No.1)* and *Jide Aladejobi v NBA* is pertinent.

Charles Okike v LPDC

As expected, the case of *Charles Okike v LPDC* involves a complaint of professional misconduct against the appellant. The LPDC found the appellant wanting of the charges and directed that his name by struck off the Roll of legal practitioners in Nigeria. It is also the direction of LPDC that the appellant refund the money involved in the case to his client. The appellant obviously disgruntled by the decision appeal to the Supreme Court. On the day slated for the hearing of the appeal, The Supreme Court *suo motu* raised the issue of jurisdiction of the court to entertain the matter considering the clear provisions of section 233⁷ that provides

⁴ (2005) 3-4 SC 50

⁵ (2013) LPELR 20940 (SC)

⁶ (2014) LPELR 33941 (SC)

⁷ Section 233(1) of the Constitution provides thus: 'The Supreme Court shall have jurisdiction, to the exclusion of any other court of law in Nigeria, to hear and determine appeals from the Court of Appeal' Thus the issue before the court is whether The Supreme Court has jurisdiction to hear appeals from any other Court or tribunal other

that appeal shall lie from the Court of Appeal to the Supreme Court i.e. the Supreme Court hears appeal directly from the Court of Appeal. The issue being constitutional in nature, the court adjourned to be fully empanelled having invited the parties and an amicus curie to address the court on the issue.

After considering the argument of the parties as to the jurisdiction of the court, the court came to a conclusion that it had jurisdiction to entertain the matter. It is worthy of note that all the parties together with a legal practitioner who served as amicus curiae held the same view that the Supreme Court had jurisdiction in the matter. In the words of the court:

In my opinion, the provisions of section 233 subsection 1 of the 1999 Constitution have not in any way ousted the jurisdiction of the court either expressly or impliedly of the Supreme Court to hear appeals from the Disciplinary Committee... It follows from the foregoing that the Court amply has jurisdiction to hear the present appeal from the Disciplinary Committee. I therefore so hold.

The court *per* Uwais CJN who read the lead judgment proffered four reasons why the court had jurisdiction to entertain the matter. According to the learned Justice, The National Assembly is empowered to enact laws that confer jurisdiction on the Supreme Court to hear appeals courts or tribunals outside the Court of Appeal.⁸ The Court equally reasoned that the Legal Practitioners Act as amended by Decree No 21 qualifies as an existing law under section 315 of the Constitution and it is not an Act that is inconsistent with the Constitution. Finally the court traced the historical jurisdiction⁹ of the Supreme Court in hearing appeals directly from Disciplinary Committee or panel set up over the years concerning legal practitioners.

The Supreme Court decision which was reached in 2005 never referred to the Legal Practitioner Act in Laws of the Federation 2004 which omitted the 1994 amendment. The reason for such omission remains unknown and it is left for legal scholars to speculate on the why no such reference was made.¹⁰ Be that as it may, the Law decided in *Charles Okike v LPDC* is that appeals from the direction of LPDC lie to the Supreme Court and not the Appeal Committee of the Body of Benchers as held in *Jide Aladejobi v NBA*.

than the Court of Appeal. In essence Does section 233 limited the appellate jurisdiction of the Supreme Court to appeal coming from the Court of Appeal.

⁸ Here the Supreme Court referred to section 4(2) of the Constitution which gave the National Assembly the powers to legislate on the items found in the Exclusive and Concurrent legislative list as seen in the second schedule to the Constitution. The court specifically located the powers in item 67 and 68 of the Exclusive legislative list and paragraph 2(a) and (b) of part III to the second Schedule.

⁹ In this regard the Court considered section 20, 31 and 37 of the Legal Practitioner Act Cap 101 of the Laws of the Federation of Nigerian and Lagos 1958; section 6 and 7 of the Legal Practitioners Act 1962 which repealed the Act contained in the LFN 1958 and finally section 12 of the Legal Practitioners Act Cap 201 As amended 1994

¹⁰ It is possible the Supreme Court observed the error or omission in the 2004 LFN and ignored same as having no effect. This is because the same text that appeared in Laws of the Federation 1990 is exactly the same with that in 2004 and it is safer and more reasonable for the Court to say Legal Practitioners Act Cap 207 LFN 1990 as amended than Legal Practitioners Act Cap LFN 2004 as amendment because usage of the latter is obviously wrong as there was no amendment in 2004 or afterwards. The Supreme Court used the former all through their pronouncement.

Jide Aladejobi v NBA

The case of Aladejobi just like the case of Charles Okike's case involve a complaint by the client of the appellant alleging fraud concerning a lease agreement on the complainant's property. It was alleged that the appellant forged the signature of his client which was geared towards interfering with the client's ownership rights over the property. The Disciplinary Committee found the appellant guilty of the allegation and directed the Chief Registrar of the Supreme Court to strike out the appellant name from the Roll of legal practitioners. The appellant aggrieved by this decision appealed directly to the Supreme Court. The respondent in his brief of argument raised a preliminary objection which borders on the jurisdiction of the court to entertain the matter. It was the contention of the respondent that the instant appeal should be filed at the Appeal Committee of the Body of Benchers and not the Supreme Court. On the other hand, the appellant argued that the Appeal Committee is nonexistent and appeal should not lie to a non-existent court or tribunal. It was further argued by the appellant that the said appeal committee is made up of two members of the respondent which offends the principle of law: *nemo iudex in causa sua*.¹¹ The appellant also referred the court to the case of Charles Okike v LPDC (No.2)¹² where the Supreme Court heard an appeal from the Disciplinary Committee.

The Supreme Court in their considered ruling held that the appellant jumped the slit when he appealed directly to the court. In the words of the lead judgment per Fabiyi JSC:

The law provides that the appellant should appeal to the Appeal Committee of the Body of Benchers. He must exhaust all the remedies by filling his appeal at the Appeal Committee from where he may have a lee-way to imbue this court with jurisdiction.

The Supreme Court clarified the law that made such provision when it continued:

From a clear reading of the above reproduced section 12(1) of the Act, it is basic that there must be in place the Appeal Committee of the Body of Benchers which is charged with the duty of hearing appeals from any direction given by the Disciplinary Committee. It is clear to me that the appellant herein cannot appeal direct to this court against the direction handed out on 22nd February, 2011 by the Disciplinary Committee without first appealing to the Appeal Committee of the Body of Benchers. It hardly needs any gainsaying that the appeal of the appellant direct in this court without going through the Appeal Committee of the Body of Benchers is incompetent. This court has no jurisdiction to entertain same.

It is obvious from the foregoing that the court was referring to the Legal Practitioners Act as contained in the Laws of the Federation 2004 which did not incorporate the amendment made in 1994 but directed appeals from Disciplinary Committee to the Appeal Committee of the Body of Benchers. The lead judgment made no mention of the 1994 amendment and its position *vis-a-vis* the erroneous compilation evidenced in the Laws of the Federation 2004. However, in the

¹¹ This maxim literally means that no man can be a judge in his own cause.

¹² [2005] 15 NWLR (PT. 949) 471

Concurring judgment of the Ibrahim Mohammed JSC, the learned justice while addressing the issue of the court entertaining similar matter in *Okike v LPDC* (No.2) made reference to the 1994 amendment and held as follows:

By Decree No.21 of 1994 (Legal Practitioners (Amendment) Decree, 1994) the then Federal Military Government made far-reaching amendments to the Principal Act, (Legal Practitioners Act) Cap 207 LFN, 1990....It is to be noted again that although the Decree was signed into law on the 29th day of November, 1994, Section 16 thereof provided that the Decree "shall be deemed to have come into force on 31st July, 1992." Thus, from 31st of July, 1992 to 2004, any right of appeal from the direction of the LPDC was to be exercised or channeled directly to the Supreme Court without the necessity of going through the Appeal Committee.

What must be conceded in the foregoing is that an in-depth analysis was not made on the effect of the 1994 amendment and the Legal Practitioners Act as found laws in the Federation 2004. The appellant in the case seems to know the appropriate court to ventilate his claims without pinpointing the authority for such. This is evidenced in the appellant brief when he argued that there was no appeal committee without telling the court why there was none and that the appeal committee is made up of parties who should ordinarily not be in the panel. This argument is not strong enough to sustain the jurisdiction of the court. No wonder the court in reply to the non-existent of the appeal committee opined:

The non-existence of the Appeal Committee as submitted by the appellant may be an oversight from the body responsible for setting-up such a committee. (Body of Benchers?). This omission cannot entitle the Supreme Court to assume jurisdiction. That Committee (Appeal Committee) must be brought into existence in order to fill-up the loop-holes now apparent.

For the bias that may occasion if appeal lies the Appeal Committee, the court dismissed such by stating that 'The appellant will have his day to challenge the composition of the Appeal Committee when he gets there as dictated by the law. For now, he should keep his gun powder dry'¹³ The Court in our opinion answered the issues as presented by the appellant and did so rightly. For now, we are not concerned with the entire decision i.e. whether appeal lie to the Appeal Committee rather than the Supreme Court was wrongly decided or not but the presentation of the 'conflicting decisions' of the court which forms the background to the case of *Akintokun v LPDC* which is the subject of our contribution.

What is more, the decision of *Okike v LPDC* and *Jide Aladejobi v NBA* is obviously in conflict as the court in the former held that Appeals from LPDC lies to the Supreme Court and such appeal is constitutional and right in law as it does not offend any constitutional provision. On the other hand, The Position in *Aladejobi v NBA* is that appeals lie to the Appeal Committee of the Body of Benchers from the directions of the Disciplinary Committee and not the Supreme Court. In the opinion of the court, any appeal coming directly from the Disciplinary Committee is incompetent and ought to be consigned to the judicial dustbin. However, the court in the

¹³ *Per* Fabiyi JSC

latter case did not declared the decision in *Charles Okike v LPDC* per incuram as the decision in Charles Okike (No.1) where the decision was reached was not called to their attention. What was called to the attention of the court was a situation where the court heard appeal from the LPDC which is *Charles Okike v LPDC (No.2)*¹⁴ Be that as it may, Fabiyi JSC who gave the lead judgment is of the firm view that the decision is *Okike v LDPC* is wrong. The court though not aware of Okike (No.1) stated thus:

On behalf of the appellant, it was submitted that from the decision of this court in Okike v. LPDC (supra) appeal from the direction of the Legal Practitioners Disciplinary Committee lies directly to this court. I dare say it that issue of jurisdiction of this court was not remotely raised therein. The applicable sections of the law were not considered and pronounced upon in the lead judgment therein. With due diffidence, the opinion was given *per incuriam* and cannot stand the test of time in the face of the applicable law earlier on discussed in this judgment.

The tenure of the dicta of Mohammed JSC is suggestive of this error.¹⁵ However the court was not empowered to declare the decision reached in Charles Okike LPDC as reached in ignorance as the court was not properly constituted to do so.¹⁶

The foregoing forms the argument and position taken by the various parties that appeared in our case under review. In fact, it was the decision in Aladejobi that became the issue in Akintokun's case. We shall now examine the position taken by the court in its latest decision.

3. Engagement of the Decision in *Akintokun v LPDC*

In this contribution, it is worthy of note that we are not concerned with the facts of the case under consideration but with the law as applicable in any given facts. After all, if an appeal lies from the decision of the Court of Appeal to the Supreme Court; there is no fact that will warrant an appellant to appeal to the High Court rather than the Apex Court. The position taken by the court was as a result of an issue that was raised *suo motu* by the Court *per* Onnoghen JSC when he inquired on the jurisdiction of the court to entertain the appeal considering the decision of the Court in *Jide Aladejobi v NBA* which was delivered barely 10 months to the hearing of the appeal in the case under consideration. The Court heard argument from both parties and the crux of the parties' argument was for the court to depart from its previous decision in Aladejobi's case. The Court obviously not empowered to so do adjourn to be fully

¹⁴ *Supra*

¹⁵ According to the court 'the case of *Okike v LPDC (supra)* cited and relied upon by the learned counsel for the appellant where it was held that an appeal from the LPDC lies directly to the Supreme Court is quite distinguishable from the present appeal. This is because *Okike's case* was decided by this court in 2005. None of the parties thereto raised an objection against the hearing of the appeal by the Supreme Court *in spite of the fact that the Legal Practitioners Act, Cap L11, LFN, 2004 was the prevailing law which restored the Appeal Committee of the Body of Benchers'* emphasis mine

¹⁶ The Supreme Court can only overturn its previous decision or declare its decision as given *per incuriam* when the full court made up of seven learned justices of the court is involved. This is one of the four instances under our legal system where the full court is empowered to sit. See *Idehen v Idehen* [1991] 6 NWLR (Pt.198) 382 the other three instances where the full court is empowered to sit are as follows: 1) when the court is exercising its original jurisdiction as conferred on the court by section 232 of the Constitution. 2) Where the matter borders on the interpretation of the Constitution in relation to any civil or criminal matter. 3) When the court is sitting in relation is a fundamental right application predicated on chapter IV of the Constitution. See generally section 234 of the Constitution; *A.T Ltd v A.D.H Ltd* [2007] 15 NWLR (Pt 1056) 118

empanelled. The Court also invited The Attorney General of the Federation and the President of Nigerian Bar Association to serve as amici curiae in the matter.

At the hearing of the Appeal, all the parties including the amici curiae were of the view that the decision in *Aladejobi* was wrongly decided. It was their respective contention that the Supreme Court did not take cognizance of the 1994 amendment which was omitted in the Legal Practitioners Act contained in the 2004 Laws of the Federation of Nigeria. In fact, the Attorney General whose office made the compilation of the Laws of the Federation conceded to the error on their part and invited the court to right the wrong and hold that it has jurisdiction. The parties equally called the attention of the court to its decision in *Okike v LPDC (No.1)* which was not considered in *Aladejobi*'s case as the decision was obviously in conflict with the latter decision in that it invites all and sundry to appeal to the Supreme Court whenever they are dissatisfied with the direction of the Legal Practitioners Disciplinary Committee.

The Supreme Court after considering all the arguments proffered by the parties came out with a shocking decision. For the Court, there was nothing wrong with the decision in *Aladejobi*'s case. The court held that it lacked jurisdiction to entertain the appeal and consequently struck out the appeal. The *ratio* given by the court is that The Legal Practitioners Act contained in the 2004 Laws of Federation remains the law in force as it has been approved by the National Assembly.¹⁷ For the court, section 12 of the Act makes it clear for appeals to move straight to the Appeal Committee rather than the Supreme Court thus any appeal to the court is incompetent. The court went on to posit that when two Acts of the legislature is inconsistent with each other, the latter in time is deemed to have repealed the former as it relates the subject matter. It is the decision of the court that the Legal Practitioners Act Cap L11 LFN 2004 is in conflict with the amendment and therefore the latter Act is deemed to have repealed by implication the conflicting provision. It is pertinent at this stage to set out the *ratio decidendi* in that case and make a thorough engagement thereof. The court after making the certain observations¹⁸ had this to say:

So, as far as this court is concerned, all laws contained in the edition of the laws of the Federation of Nigeria, 2004 are authentic Laws of the Federation, having the force of law/legislation. They are not meant for cosmetic show. They must be respected and applied. This court is duty bound to give effect to any of such laws including the Legal Practitioners Act, Cap. L11, LFN, 2004. This is what we did in the case of *Aladejobi* (*supra*).

¹⁷ This purported approval is contained in section 1 of the Revised Edition (Laws of the Federation of Nigeria) Act No 30 of 2007 which provides thus 'The Laws of the Federation of Nigeria compiled and published in 2004 under the authority of the Attorney General of the Federation and Minister of Justice are hereby approved by the National Assembly' The court then went say 'I think, where the National Assembly approves it in its position as a Legislative House(s), it must take the form of a Law passed by the National Assembly except of course, where the contrary is shown' This pronouncement is obviously of doubtful validity.

¹⁸ The court in arriving at the authenticity of the Legal Practitioners Act as contained in the LFN cited the statement of the Ayoola JSC, Chairman of the Committee that did the compilation, who in relation to the LFN stated thus 'a body of Laws of the Federal Republic of Nigeria that is accurate, authentic and accessible to all'. The court equally referred to the statement of the then Attorney General who stated that the LFN 2004 is 'a true and authentic record of the Laws of Nigeria for the period covered' Finally the court referred to the Revised Edition (Laws of the Federation of Nigeria) Act that approved the laws contained in the Laws of the Federation of Nigeria 2004.

As regards the effect of the omitted 1994 amendment to the Act and the application of Legal Practitioners Act contained in the LFN. The court stated:

I think, the law is that where a later enactment does not expressly amend [whether textually or indirectly] an earlier enactment, but the provisions of the later enactment are inconsistent with those of the earlier, the later by implication, amends the earlier so far as is necessary to remove the inconsistency between them. This is because, if a later Act cannot stand with an earlier one, parliament, generally, is taken to intend an amendment of the earlier. This is a logical necessity, since two inconsistent texts cannot both be valid...The Latin maxim puts it that LEGES POSTERIORES PRIORES CONTRARIAS ABROGANT [later laws abrogate prior contrary laws] In the matter on hand, it is my belief, as I stated earlier, that the 2004 Acts and in particular Cap L11 2004 LFN [Legal Practitioners Act] are valid and existing laws of the Federal Republic of Nigeria Equally, the 1994 Decree No 21, may not have been textually repealed... On matters of initiating appeal from the direction of the LPDC, Decree No. 21 of 1994 conferred right of appeal on any person to whom such a direction relates, direct to the Supreme Court. Section 12 of Cap L11 2004 LFN establishes or re-enacts an Appeal Committee of the Body of Benchers...

To our minds the pronouncement of the court above is unacceptable as same is unhealthy. The decision of the court is capable of eroding the power of the legislature and laws properly enacted by them. This will surely usher in another system of government alien to law and any democratic dispensation as it ceded unnecessary powers to the executive arm of government. The observation of the court is pregnant with absurdities which should not be given a warm welcome.

The first question that must be resolved is whether the Legal Practitioners Act contained in the LFN 2004 is really a true and an authentic law of the legislature capable of conflicting with another Act namely the 1994 amendment. Going further, are there really two enactments of the National Assembly? For avoidance of doubt, there is a generally accepted and approved procedure for law making. Law making involves different stages¹⁹ and these stages must be

¹⁹ The stages that must be complied with that will give birth to an Act of the National Assembly are contained in Sections 53 to 61 of the Constitution and the Rules of the Legislative house. A careful perusal of the relevant provisions reveals the following stages. 1) First reading: At this stage, the Bill is first introduced to the house and the short title of the bill read 2) Second reading: Second reading as the name suggest is the next stage of law making in Nigeria. Here the provisions expressed in the bill are debated by members of the legislative chamber. The bill can be knocked out at this stage if the argument against same preponderates over the relevancy of the bill 3) Committee Stage: after the second stage, the bill is committed to a standing Committee for further consideration and the committee is empowered at this stage to conduct public hearing. 4) Report stage: As the name suggest, this stage involves taking report of the committee involved in the further scrutiny 5) Committee of the whole House: It is worthy of note that the Committee set up reports in the plenary session of the house which sits as a committee. 6) Third reading: at this stage, correction and final amendment can be taken and the bill if approved is passed into law at this stage. 7) Presidential Assent: This is the last stage of law making which is clearly not the function of the legislature. However, an Act of the National Assembly cannot materialize without this stage except where the president fails to assent, the two third majority of the house can override the president's accent. See Section 58(5) of the Constitution. For further reading on law making process. See E O Anyaegbunam 'Law

complied with for there to be a law in place. There is no doubt that the procedure obtainable in a democratic setting is different from the one found in a military setting. The Legal Practitioners Act 1975 was duly enacted and subsequently amended in 1994. What happened in 2004 was an executive act. Notwithstanding the approval of the National Assembly of Laws of the Federation which is expected of them, it is our position that the 2004 Act as the Supreme Court would want us to believe is not different from the Legal Practitioners Act which was amended in 1994.

The National Assembly never sat for one day to deliberate on the Legal Practitioners Act. It is not for the National Assembly to proof read all the laws enacted by them before the production of the Laws of the Federation. Any such demand from our Law makers would indeed be overreaching and unacceptable. The National Assembly in given their blessing and approval did so in good faith. They believed that all the legislations have been reflected and they cannot be held accountable for typographical error or an error in form of an omission not occasioned by them.²⁰ Little wonder did section 2 of the Revised Edition (Laws of the Federation of Nigeria) 2007 provides thus ‘An inadvertent omission, alteration or amendment of any existing statute shall not affect the validity or applicability of the statute.’

Our contention is a total disagreement with the position taken by the Supreme Court that there are inconsistent Acts of the National Assembly. The court is of the view that the Legal Practitioner Act as found in 2004 LFN is in conflict with the one contained in 1994 amendment. One is left to ask the following questions:

- 1) When was the Legal Practitioners Act as found in LFN 2004 enacted?
- 2) Assuming there was a new Act in 2004, was it properly enacted?
- 3) Can the executive body enact an Act?

A simple and concise answer to the following question is a follows

Firstly, there was no enactment of the Legal Practitioners Act in 2004. The Laws of the Federation merely collated all laws existing in Nigeria on or before 2004. As at that time, it is worthy to note that the Legal Practitioners Act with its amendment in 1994 was the only valid Act that was in operation and ought to be collated with others.

Secondly, there was no new Act! Assuming there was, such legislation does not qualify as one as the stages obtainable in any democratic settings as regards law making was not followed. More so the purported Act sought to amend a provision relating to appeals of a disciplined legal practitioner. Was this amendment really necessary? Was there an outcry against the appeal procedure? It must be stated at this point that an amendment is not a mere addition or subtraction from the existing law. For there to be an amendment, something must have necessitated such amendment. There must be an issue to be addressed by the amendment. Amendment may be triggered off by lacuna or inadequacy of the provisions of the law concerned. In the case under consideration, such amendment may be due to inefficacy or slow dispensation of justice by the Supreme Court in handling appeals from LPDC. It may even be effected by the desired need to allow a legal practitioner more rooms for appeal as many jurists

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²⁰ After all the court has always maintained that ‘where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskillfulness (or error?) or ignorance of the law’ See *FCSC v Laoye* (1989) ANLR 350

will be involved when Appeal Committee of the Body of Benchers comes on board. In the instant case, nobody has complained of the direct appeal to the Supreme Court. The parties have never at any point in time resented the idea of approaching the highest court in the land.

Finally, the answer to the last question is a straight NO. The executive arm of government lacks the power of law making except in instances where they empowered to make subsidiary legislations which is usually in form of regulations to ensure smooth administration of the government. The duty of the executives is to implement the law and the office of the Attorney General has deemed it necessary as a branch of the executive arm of government to collate the Laws made by the National Assembly prior to 2004. Such action is not legislative in nature and cannot under any circumstances be regarded as one despite any confirmation or approval coming from the law makers.

Unfortunately, the Supreme Court has arrogated to the executive arm of government the power to make laws when the court held that the Legal Practitioners Act as found in LFN 2004 is a different Act which conflicts with the amendment in 1994 and therefore should prevail over an Act rightly enacted. The painful aspect as witnessed in Akintokun's case is not just the law making power conferred on the executive arm of government by the Supreme Court but that Such 'Act' prevails over that rightly enacted by the Law makers in 1994 under the guise of two laws being inconsistent. This decision is not progressive in nature, it does not improve our body of laws and it is counterproductive.

It is our further contention that when two Act are said to be in conflict. The Acts in question must not necessarily be the same in content and character. In essence, both Acts must not be the same with one or two differences. It is not the character of the legislature to enact one and the same law to regulate the same transaction. It is conceivable that the draftsman can enact two different laws on the same subject matter and conflict may arise therefrom or the draftsman can even enact two different laws on different subject matters and conflict may crop up. But having the Legal Practitioners Act as Amended 1994 and the Legal Practitioner Act LFN 2004 would not have been the intention of the legislature. The National Assembly of course would have resented such idea. The Interpretation of the court as regards the position of our laws is to say the least uncharitable.

Another pertinent issue that must be addressed is the issue of jurisdiction of court. We must not pretend to ignore the sole and important issue before the honourable court. For avoidance of doubt, the real issue before the court was not whether an error was made but whether the court is seized or lack jurisdiction to hear Appeal from LPDC. In considering this ever recurrent issue of jurisdiction in our courts, the primary index and position of law must be referred to. It is the position of our laws that jurisdiction must be conferred by a statute constituting the particular court involved or the constitution. This jurisdiction can also be extended by an Act of the Parliament. It is not for the parties to confer jurisdiction on the court or for the court to arrogate jurisdiction to itself. This position of law has been given judicial backing in so many decisions as jurisdiction is the live wire of any litigation. In the case of *Gafar v Government of Kwara State*²¹ The Court stated this position when it held that 'It is settled law that courts are creatures of statute based on the constitution with their jurisdiction stated or prescribed therein'. What is more, for a court to assume jurisdiction, a statute must confer same on the court. Outside the statute creating the court or the Constitution or an Act of parliament the court cannot assume jurisdiction. The Legal Practitioner Act as amended 1994 rightly conferred the

²¹ (2007) 4 NWLR (Pt.1024) 375; See also *Osadebe v A.-G., Bendel State* (1991) 22 NSCC (Pt. 1) 37 at 160;

Supreme Court with jurisdiction to entertain the present appeal. The Legal Practitioners Act as contained in the LFN 2004 which took away that jurisdiction was a creature of the executive. Here it is immaterial whether it was by omission or commission. No Act of parliament positively conferred the Appeal Committee of the Body of Benchers with jurisdiction to hear appeals from the Disciplinary Committee nor did any of such legislation take away the jurisdiction conferred on the Supreme Court.

It is for the Supreme Court to tell us when their jurisdiction was taken away or when the jurisdiction to hear appeal from the disciplinary committee was conferred on the Appeal Committee of the Body of Bencher. The Court cannot rely on a legislation which approved an executive “act” to hold that their jurisdiction has been ousted. Reliance on the Revised Edition of the Laws of the Federation Act is totally unacceptable. In fact, the court went against all known principles of Law which the Court has been known to uphold even in Military regimes. Affirmatively, the court has long hold onto the principle that the Court guides its jurisdiction jealously. This position was even stated in the case under review when the court per Mohammed Stated thus: ‘I am also fully aware that this Court does not readily oust its jurisdiction. In fact in principle, this Court jealously guards and protects its jurisdiction’.²² We see no reason why the court will shy away from its jurisdiction based on the act of the executive body that has no right to confer or take away the jurisdiction of the court notwithstanding any approval of such act by the Legislature. We are further aggrieved that such executive act was an error and the National Assembly honestly, though, erroneously approved same.

This calls to mind the quote at the beginning of this discourse that an error does not become truth by reason of multiplied propagation. The executive was in error. The National Assembly who is not duty bound to proof read over 1000 laws made by them before approval erroneously approved same. This error does not make it the position of the law. We dare to say that the Apex Court still basking in the same error confirmed the executive and legislative error. This still does not make the error the position of the Law. Although the Supreme Court is final; legal scholars have been given the opportunity to declare their decision *per incuriam* at least in law journals. It is also our view that case of *Okike v LPDC* is still a good law and can be cited even in the Supreme Court as the court did not declare the position held in that case to be bad. For avoidance of doubt the court stated in that case that appeal lie to from LPDC to the Supreme Court.

To further buttress our position, it is our considered view that the decision inherent in *Akintokun v LPDC* is capable of leading to many absurdities in the Nigerian. One of such is that the executive arm of government would now have the final say as regards any legislation during the collation and revision process. The Law of the Federation will ever continue and when in future our laws are being revised and collated, the executive or the committee in charge can *suo motu* add, remove or substitute any provision contained in the law as done in the Legal Practitioners Act. This act of removal, addition or subtraction can be by omission or commission.²³ The National Assembly of course will not cease to approve such as it is virtually

²² See also the case of *Adisa v Oyinwola* (2000) 10 NWLR (Pt. 674) 116 where the court stated thus ‘The principle of construction of statutes is now well established. The law presumes against construing statute so as to oust or restrict the jurisdiction of a superior court of record unless there is explicit expression to that effect in the legislation’

²³ For example, we all aware that the jurisdiction of the National Industrial Court was clearly defined in the Third Alteration to the Constitution which clearly is in a separate document known as Third Alteration Act. If per chance there happen to be a revision of the laws and this Alteration was not incorporated into the Constitution, the net effect is that the Jurisdiction conferred on that court by the amendment or alteration would be lost if the National Assembly approves the collation or revision as they will always do. I wonder what will be the attitude of the

impossible to go through all the laws when a committee namely the Revision Committee has been set up for that purpose.

The Supreme Court made the position more difficult when the court did not accept the concession of the error coming from the office that made the error. The office of the Attorney General is an establishment of the Constitution and that office irrespective of who occupies it continues to functions. The actions taken by an occupant of the office is binding on the office and can be changed by a subsequent occupier. In the instant case, there was an error emanating from the office of the Attorney General and the same office acknowledged the error in court yet the court paid no heed. The Attorney General whose office did the revision was not just an amicus curie this case but much more than that. The decision appears to suggest that an error made by an occupant in an office cannot be corrected by a subsequent occupier. Be that as it may, the position has been taken by the court and we have voiced our dissatisfaction over the said decision. What is now left of us is to suggest a way forward.

4. Towards a Better Legal System

A short consideration shall be undertaken on the role of the judiciary. It is our law that the role of the judiciary is to interpret the law and not to expand it. To this regard *Aderemi JSC* expressed the position in the following ways:

We (judges) should regard it as our sacred duty to expound the law as it is by the clear words of the lawmakers. Judges' duty does not extend to expanding the law; that is the exclusive function of the lawmakers.²⁴

Inasmuch as it is conceded that it is the duty of the court to interpret whatever law that emanates from the legislative arm of government, it is also contented in this paper that the judicial powers contained in section 6(6)(a) and (b) cannot be pigeon holed to interpretation only. Such powers as conferred by the constitution involve the power to question the propriety or otherwise of the procedure adopted for any legislation. By so doing, the court will properly be the watch dog of and protector of the *fons et origo* of our *corpus* of laws. The Constitution for avoidance of doubt provides how a law can come into being and where this is not followed; the court cannot pretend or gloss over it. It is on this footing that the position taken by the court is frowned at. The Supreme Court after citing section 12(1) and (5) of the Legal Practitioner Act as found in LFN 2004 which directs appeals to the Disciplinary Committee of the Body of Benchers stated thus:

...it is not the Supreme Court that lifted the two subsections as above, out of the blues and inserted them in the Act. It must have been done by a person/persons having authority so to do. It is immaterial to me by whichever means the two subsections found their way into the Act whether through the process of fresh enactment, re-enactment, amendment or repeal, howsoever, once

judges of the court to such omission. This example though extreme is what happened in our case under review. We expected the Court to cry out against such error and omission but what we have is a betrayal of the court's jurisdiction. Another example to drive home the point is that if a legislation for instance provides: "The Court shall not have jurisdiction in relation to XYZ" and the word 'not' was omitted during the revision of the law of the federation and the revision was subsequently confirmed then automatically the position of law now becomes "The Court shall have jurisdiction in relation to XYZ" This is absurd! Keeping in view that the revision takes care of all the laws made so far and not just a single legislation and there is possibility of typographical errors.

²⁴ *Attorney-General of the Federation v Atiku Abubakar* [2007] 10 NWLR (Pt.1041) 1

the legislature validates same. This, of course, is part of law making which is not the business of this court. It is neither also the business of this court to dig into, or fish out who did it and whether it was rightly or wrongly done. The business of this court, and of course, of any other court, is to interpret and, or, apply the law as it is.

The attitude exhibited above offends the theory of progressivism. In simple terms, this attitude is uncalled for as it will not lead our justice and legal system anywhere. The implication of the above position and statement of the court is very clear and there is no need to stretch the point further. However, we must pretend as if the statement was never made. The court must redefine its position as regards its role in law making and law interpretation. The court is not called upon in this contribution to embark on hunting expedition against legislative processes but to stand up to the occasion when called upon and properly invoked.

Another point that must be addressed is the composition of court when the court is called upon to overrule itself. In our case under review, we must recall that Onnoghen JSC²⁵ was the one that raised the issue of jurisdiction of the court *suo motu* but it is surprising that the Learned Justice was nowhere to be found when the full court was empanelled. Rather four of the five learned justices who gave the judgment the court was called upon to overrule was involved in our case under review. In fact, my lord Ibrahim Mohammed JSC who made far reaching pronouncement in Aladejobi's case read out the lead judgment in the instant case. The attitude of empanelling learned justices who participated in the 'perceived error' that is subject of the complaint to pronounce on same is not totally correct. It must be borne in mind that no matter how learned we are, we remain humans capable of succumbing to Confirmation Bias²⁶ and Status Quo Bias.²⁷ It is therefore suggested that whenever the court is called upon to overrule or upturn its previous decision, it is fitting that the full court be composed of learned justices who neither participated nor sat on the decision sought to be discarded or sustained.

This treatise will not be complete without making observation on the case of *Okike v LPDC* vis a vis *Akintokun v LPDC*. These two cases are in direct conflict with each other in that the former held that appeal lies to the Supreme Court from the LPDC while the latter held the view that appeals lie to the Appeal Committee from LPDC. The position expressed in the latter case appears to be the recent position of the court. However, the decision in *Okike v LPDC* was not positively overruled thus presenting us with two valid decisions of the Supreme Court. The Court was called upon the overrule Jide Aladejobi and follow Charles Okike v LPDC (No.1). The court however followed Aladejobi's case and left Charles Okike's case. It is conceded that the *ratio decidendi* in both cases are different but the decision is in conflict.²⁸

²⁵ Onnoghen JSC never played any role in *Charles Okike v LPDC* (1) and (2) and the case of *Aladejobi v NBA*. Thus it would not be a bad idea to for the learned justice to consider the issue he raised in *Akintokun*'s case.

²⁶ Confirmation Bias is one of the cognitive biases which is to the effect that we tend to agree with people who agree with us and ignore or disagree with what make us insecure about our views. For Dvorsky it is '*the often unconscious act of referencing only those perspective that fuel our preexisting views, while at the same time ignoring or dismissing opinions – no matter how valid that threaten our world view*'. See G Dvorsky The 12 Cognitive 'biases that prevent you from being rational' available on <http://io9.com/5974468/the-most-common-cognitive-biases-that-prevent-you-from-being-rational> accessed on 25 June, 2013.

²⁷ This bias as the name suggest leads us to make choices that sticks to the status quo and abhor change. See Dvorsky *ibid*

²⁸ See *Adesokan v Adetunji* [1994] 5 NWLR (Pt. 346) 540 where the court stated thus: 'this reasoning or principle upon which the case is decided is known as the *ratio decidendi*. It constitutes the general reasons for the decisions (as distinct from the decision itself or the general grounds upon which it is based, detached or abstracted from the

Finally, the position taken by the Supreme Court in Akintokun's case will continue to haunt the legal profession in Nigeria until an Act of the National Assembly is passed to that effect or the Supreme Court reviews its stand. A call is therefore made to all concerned especially the highest and most respected court in the land to make a serious reassessment of their position whenever the opportunity comes while we wait for the legislature.

specific peculiarities of the particular case which gives rise to the decision. The *ratio* in Charles Okike (No.1) is that section 233 of the constitution did not restrict the Supreme Court to hear appeals only from the Court of Appeal. However, the decision is that appeal lies from the LPDC to the Supreme Court. On the other hand, the *ratio* in Akintokun is that Legal Practitioner Act Cap L11 LFN 2004 is valid and existing and its provision should supersede that in the 1994 amendment. The decision is that Appeal lies to LPDC to the Appeal Committee of the Body of Benchers