

FABIAN AROH AJAH

V.

**FRANCIS CHIDI NGWOKE, ESQ.
PAUL OGBONNA AROCHUKWU, ESQ.**

**LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE
OF THE BODY OF BENCHERS
(HOLDEN AT ABUJA)**

COMPLAINT NO. BB/LPDC/317/2020

HON. JUSTICE DR. ISHAQ BELLO, OFR - *(Chairman) (Presided and Read the Direction of the Committee)*

HON. JUSTICE RABI UMAR (C.J., Bauchi State) - *(Member)*

HON. JUSTICE AISHA BASHIR ALIYU (C.J., Nasarawa State) - *(Member)*

AHMED MUSTAPHA GONIRI, ESQ. - *(Member)*

EBENEZER OBEYA, ESQ. - *(Member)*

MR. OBAFEMI ADEWALE, SAN - *(Member)*

MONDAY, 28TH NOVEMBER 2022

LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee - Proceedings of - Parties thereto - Rule 71(1), Legal Practitioners Disciplinary Committee Rules, 2020.

LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee - Complainant - Whether can withdraw allegation.

LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee - Originating application - Filing of - Filing without authority - Propriety of.

LEGAL PRACTITIONER - Legal Practitioners Disciplinary Committee - Process of - Whether legal practitioner can use to harass and witch-hunt.

LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE -

Legal Practitioners Disciplinary Committee - Originating application - Filing of - Filing without authority - Propriety of.

LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE - Legal Practitioners Disciplinary Committee - Proceedings of - Parties thereto - Rule 71(1), Legal Practitioners Disciplinary Committee Rules, 2020.

LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE - Legal Practitioners Disciplinary Committee - Process of - Whether legal practitioner can use to harass and witch-hunt.

LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE - Legal Practitioners Disciplinary Committee - Complainant - Whether can withdraw allegation.

Issue:

Whether the Legal Practitioners Disciplinary Committee could proceed in the proceedings without a complainant.

Facts:

A complaint was written by Nkemakolam Okoro, Esq. and Innocent Okorie Omoko, Esq. purportedly on behalf of the complainant against the respondents. The complaint alleged that the respondents committed professional misconduct contrary to rule 47 of the Rules of Professional Conduct for Legal Practitioners. The complaint was verified by an affidavit deposed to by the alleged complainant.

However, the complainant filed a notice of objection challenging the filing of the originating application without his knowledge and consent. Based on the objection, the Committee directed Nkemakolam Okoro, Esq. and Innocent Okorie Omoko, Esq. to provide evidence of being briefed by the complainant. But rather provide the evidence of the briefing, Nkemakolam Okoro, Esq. and Innocent Okorie Omoko, Esq. filed a notice of

discontinuance and a letter purportedly written by the complainant titled: "Letter of Authority to I. O. Omoko & Associates to Withdraw and Discontinue Proceedings with No. BB/LPDC/317/2020".

The complainant filed a motion objecting to the notice of discontinuance on the grounds that he never wrote, signed or thumb printed the letter to discontinue the originating application and that he never gave his consent to Nkemakolam Okoro, Esq. and Innocent Okorie Omoko, Esq. to either initiate or discontinue the originating application.

On 31st August 2021, Nkemakolam Okoro, Esq. and Innocent Okorie Omoko, Esq. appeared for the complainant while O. O. Onu, Esq. appeared for the complainant on protest. The respondents were respectively represented by counsel. The attention of the Committee was drawn to the fact that the complainant was present to state whether or not he instructed the filing of the complaint. He spoke through an interpreter and stated that he did not file the application against the respondents and did not ask any person to do so.

Nkemakolam Okoro, Esq. confirmed to the Committee that he had never met the complainant; that it was Innocent Okorie Omoko, Esq. that briefed him; and that in view of the appearance of the complainant in person and his assertion that he is not his lawyer, he applied to withdraw his appearance. Innocent Okorie Omoko, Esq. also confirmed that he was the one that briefed Nkemakolam Okoro, Esq. and that in view of what the complaint stated, he also withdrew his application.

Held (*Unanimously that the Secretary of the Committee should forward a complaint to the Nigerian Bar Association for investigation and appropriate action against Nkemakolam Okoro, Esq. and Innocent Okorie Omoko, Esq.*):

1. *On Propriety of filing originating application without authority -*

It is a disturbing and embarrassing development in legal practice for an originating application to be presented without authority. In the instant case, the

Committee lamented over the development and the situation was strongly condemned. The Committee warned Nkemakolam Okoro, Esq. and Innocent Okorie Omoko, Esq. and further directed that they should write and deliver to the complainant and the respondents appropriate letters of apology in respect of the embarrassment caused them by filing the application without lawful authority. (P. 418, paras. B-C)

2. *On Parties to proceedings of Legal Practitioners Disciplinary Committee -*

By virtue of Rule 7(1) of the Legal Practitioners Disciplinary Committee Rules 2020, parties to proceedings before the Disciplinary Committee shall be the applicant, the legal practitioner whose conduct is subject matter of the proceedings as the respondent and any other person required by the Committee or by leave of the Committee to be joined. In the instant case, the supposed applicant disowned the complaint in its entirety and denied ever instructing the duo of Nkemakolam Okoro, Esq. and Innocent Okorie Omoko, Esq. to file the complaint and the notice of discontinuance of the complaint. So, there was no petitioner. (Pp. 418-419, paras. F-B)

3. *On Whether legal practitioner can use process of Legal Practitioners Disciplinary Committee to harass and witch-hunt -*

The Legal Practitioners Disciplinary Committee will not allow a situation where legal practitioners use its processes to harass and witch-hunt perceived enemies. If the Committee cannot proceed, the person responsible for wasting the precious time of the Committee must be made to face the consequence of his action. In the instant case, the two counsel who acted without instructions were

directed to apologise to the respondents and the person they used his name in filing the complaint. (P. 419, paras. D-F)

4. *On Whether complainant at Legal Practitioners Disciplinary Committee can withdraw allegation -*
By the provisions of the Legal Practitioners Act and Legal Practitioners Disciplinary Committee Rules, 2020, a complainant at the Legal Practitioners Disciplinary Committee has no power to withdraw an allegation as by the conduct, the complainant may be approbating and reprobating. (P. 419, paras. B-C)

Nigerian Rules of Courts Referred to in the Direction:

Rules of Professional Conduct, R. 47

Legal Practitioners Disciplinary Committee Rules, 2020, R. 7

BELLO, OFR (Delivering the Direction of the Committee):

This direction emanates from a complaint written on behalf of Fabian Aroh Ajah by Nkemakolam Okoro, Esq. and Innocent Okorie Omoko Esq against Francis Chidi Ngwoke, Esq and Paul Ogbonna Arochukwu, Esq.

The complaint alleged *inter alia* that the respondents had committed professional misconduct contrary to Rule 47 of the Rules of Professional Conduct for Legal Practitioners. The complaint is verified by an affidavit deposed to by the alleged complainant.

The 2nd respondent on the 9th February, 2021 filed a defence and an affidavit verifying facts contained in his defence and documents in proof of his defence. The applicant upon receipt of the defence filed supplementary statements, affidavit and documents in support of his claim on the 12th day of March, 2021 while the 2nd respondent on the 25th March, 2021 filed a reply to the supplementary statements, affidavit and documents.

Meanwhile, Mr. Fabian Aroh Ajah through his counsel Mr. Okeke Decency Onu, Esq had earlier filed a notice of objection challenging the filing of the originating application BB/

A LPDC/317/2020 without his knowledge and consent and based on the objection the Committee directed Innocent Okorie Omoko, Esq and Nkemakolam Okoro Esq to provide evidence of briefing from Mr. Fabian Aroh Ajah on the next adjourned date.

B On the 5th July, 2021, Innocent Okorie Omoko Esq and Nkemakolam Esq rather than provide the evidence of briefing by Mr. Fabian Aroh Ajah filed a notice of discontinuance and a letter purporting to have been written by Mr. Fabian Aroh Ajah titled: "*Letter of Authority to I.O. Omoko & Associates to Withdraw and Discontinue Proceedings with No. BB/LPDC/317/2020*".

C Mr. Fabian Aroh Ajah on the 3rd day of August, 2021 brought a motion objecting to the notice of discontinuance that he never wrote or signed or thumb printed the said letter to discontinue originating application BB/LPDC/317/2020 presented to the Legal Practitioners Disciplinary Committee, and that he never gave D his consent to Nkem, Okoro, Esq or Innocent Okorie Omoko, Esq to either initiate or discontinue, originating application BB/LPDC/317/2020.

E On the 31st day of August, 2021 Nkemakolam Okoro, Esq and Innocent Okorie Omoko, Esq appeared for the applicant, while O.D. Onu Esq appeared for the applicant in protest. The 1st respondent was represented by Friday Iburu Esq while the 2nd respondent was represented by C.K. Orji Esq and Dr. Uchenna Orji.

F The attention of the Committee was drawn to the fact that Mr. Fabian Aroh Ajah was present to state whether or not he instructed the filling of the complaint, Mr. Fabian who spoke through an interpreter had this to say:

G "My name is Aroh Fabian Ajah. I did not file the present application against the two lawyers before the Committee as respondents, namely Francis Chidi Ngwoke Esq and Paul Ogbonna Arochukwu, Esq and did not ask any person to do so. I did not also instruct Omoko, Esq to file a case for me. My lawyer is Okeke Decency Onu, Esq.

H Okoro Esq confirmed to the Committee that he has never met the applicant, but that it was Mr. Omoko that briefed him and that in view of the appearance of the applicant in person and his

assertion that he is not his lawyer, he cannot insist and he applied to withdraw his appearance. Omoko, Esq also confirmed that he was the one that briefed Mr. Okoro and in view of what the applicant has said, he do not insist that he represent him, he also withdrew his application.

The Committee lamented over this disturbing and embarrassing development in legal practice where an originating application is presented without authority, the situation was strongly condemned.

The Committee warned Mr. Nkemakolam Okoro, Esq and Innocent Okorie Omoko, Esq and further directed that they should write and deliver to the applicant Mr. Fabian Aroh Ajah and the respondents appropriate letters of apology in respect of the embarrassment caused them by reason of the filing of this application without lawful authority. That they are to undertake in the said letters of apology not to do any other act to embarrass or harass them as a result of the subject matter of the complaint or any other related matter. The letters of apology were to be filed in the registry of the committee within 7 days, the matter was then adjourned to 8/11/2021 for report on the compliance with the order.

It is worthy of note that the Committee after the above sitting suspended her sitting for some time and in her resumed sitting on 19th September, 2022, the applicant was absent and was not represented, the respondents adopted their affidavit and urged the Committee to dismiss the petition.

This committee is now saddled with the task of deciding the status of this complaint where there is no petitioner and where the counsel who have filed the petition have withdrawn their appearance and the petition for want of instructions.

Rule 7(1) of the Legal Practitioners Disciplinary Committee Rules 2020 provides:

“Parties to proceedings before the disciplinary committee shall be:

- (a) The applicant;
- (b) The legal practitioner whose conduct is subject matter of the proceedings as the respondent; and

- A (c) Any other person required by the disciplinary committee or by leave of the disciplinary committee to be joined.

B In the instant complaint before this committee the supposed applicant has disowned the complaint in it's entirety and has denied ever instructing the duo of Nkemakolam Okoro, Esq and Innocent Okorie Omoko, Esq to file the complaint and the notice of discontinuance of the complaint. it then follows that there is no petitioner.

C On the issue of discontinuance of the complaint this committee has held at different times that in the light of the provisions of the Legal Practitioners Act and Legal Practitioners Disciplinary Committee Rules, the complainant has no power to withdraw an allegation as by the conduct, the complainant may be approbating and reprobating. See *Nigerian Bar Association v. Mohammed Babangida Umar* (Directions & Rulings of the Legal Practitioners Disciplinary Committee of the Body of Benchers May 2014 - July 2018).

D But the issue to be considered now is can this committee proceed without a complainant? Bearing in mind that the complainant have disowned the petition. If the Committee cannot proceed the person(s) responsible for wasting the precious time of this Committee must be made to face the consequence of their action, therefore, this honourable Committee will not allow a situation where legal practitioners will use her processes to harass and witch hunt perceived enemies. This present Committee has resolved that these counsel who acted without instructions should apologise to the respondents and the person they used his name in filing this complaint that is Fabian Aroh Ajah.

G The Committee who earlier sat on this petition ordered that Nkemakolam Okoro, Esq and Innocent Okorie Omoko, Esq should file the letters of apology in the registry of the Committee within 7 days, sadly this order has not been complied with. The Committee finds their conduct reprehensible and unrepentant. It is pertinent to state that when they were notified of the Committee's sitting of 19th September, 2022, they did not appear, and therefore we hereby

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direct the Secretary of this committee to forward a complaint to the NBA for investigation and appropriated action against the two counsel.

Dated at Abuja this 28th November, 2022.

Complaint dismissed.