

It goes without any argument that a lawyer and the client are fated to co-exist. The union between both is also recognized statutorily and judicially. Whether this union will co-exist for a long time or it will break down irretrievably mostly depends on issues of professional fees recovery. It is not traditionally good for a lawyer to engage in controversies with his client and any issue(s) that will militate each suing the other should be dreaded and eschewed. It is pertinent to infer that the legal practitioners should be seen as arbiters in the court of justice and should not be exposed to legal battles with their own clients unless when absolutely necessary. But on many occasions, clients default in making payments for professional services rendered by solicitors. This is disheartening to many solicitors who might have trusted the client at his time of need and rendered services, only for the client to renege to pay fees.<sup>i</sup>

The society being dynamic and human nature incomprehensible, a lawyer may once in the life of his practice encounter a difficult client and breach of his professional fees may be the contention. To this end, this paper raises some issues in regard the subject matter as follows:

- Should the lawyer forfeit his professional fees?
- Are there procedures laid down for the recovery of unpaid professional fee?

### **The Cardinal principles of Lawyers professional fees.**

A lawyer is entitled to be paid adequate remuneration for his service to the client.<sup>ii</sup> It is an ancient practice that a legal practitioner has a right to be remunerated for his services. He can, however, either be paid in advance upon named fees or rely on the terms of any agreement reached as for his fees. On the other hand, if he has not received his fees and no agreement was reached as to what they would be, he must submit his bill of charges. If in the long run he has to sue for his fees, however, he must comply with the procedure laid down by law<sup>iii</sup> and show that the fees demanded are unobjectionable. Nonetheless, the action must be filed in a court of competent jurisdiction. The Legal Practitioners Act however defines a court of competent jurisdiction for this purpose as:

the High Court of the State in which the legal practitioner in question usually carries on his practice or usually resides or in which the client in question usually resides or has his principal place of business or, in the case of a practitioner authorised to practise by warrant, the High Court of the State in which the proceedings specified in the application for the warrant were begun.<sup>iv</sup>

The above cardinal principles is strict and non-adherence to it may be fatal to the case of the legal practitioner who seeks to recover his unpaid professional fees.

## **Summary of the Procedure for the recovery of lawyers professional fees<sup>v</sup>**

It is a precondition that before a legal practitioner can bring an action in court to recover his professional fees, he must have sent a bill of charges to his debtor-client and the said bill must contain the particulars of the items included or to be considered by his debtor-client. The bill, however, must state the services rendered for which the legal practitioner is making claims and shall be signed by the legal practitioner or a partner in the law firm. Also, the bill must be served personally on the debtor-client or left on his last known address.

The legal practitioner must allow a period of one month from the date of the service on the client to elapse before instituting an action in default of compliance with his demand as contained in the Bill of Charges. It is instructive to note that the one month period may be reduced by the court if satisfied upon an application by the legal practitioner that the bill had been delivered and that the charges therein appear to be proper and reasonable. Note also that another factor the court must consider in order to abridge the time is whether the debtor-client is doing or about to do some acts aimed at preventing or delaying the payment of the charges.

Once the matter is in court the defendant has an option to raise a preliminary objection to the effect that the legal practitioner has not delivered his charges and (or) other relevant documents to him before instituting the action. In the case of *Bakare v. Okenla*<sup>vi</sup>, this point was vividly canvassed by the debtor-client. In brief, there was an agreement between legal practitioner and the client to prosecute a case for and on behalf of the client by the legal practitioner. Having performed the legal services and the client failing to pay the professional fees, the legal practitioner brought an action to recover the agreed sum being charges for acting as defendant's counsel. The defendant had however earlier refused to pay despite several demands for same by the legal practitioner.

At the High Court, the legal practitioner succeeded in the action and it was held that the legal practitioner was entitled to his legal fees. The debtor-client appealed to the Court of Appeal and finally to the Supreme Court where it was contended that the claim was for professional fees and the legal practitioner ought to have sent in a bill of charges before instituting the action as provided under the Legal Practitioners Act<sup>vii</sup> and that since the legal practitioner did not do so, he was not entitled to his claim for legal fees or charges

## **Guidelines on Issues Raised in the Procedure for Legal Practitioner's Recovery of his professional fees in Court.**

### **Need for the Bill of Charges to be Unequivocal, Clear and Particularized.**

In strict sense, legal practitioners are enjoined that in the process of drawing up their bill of charges, efforts should be strained to draft same with due care in order that they will be explicit and lucid. This is in the best interest of the legal practitioner in order to eschew unnecessary litigations over such bills. Its explicitness will rather make for easy comprehension by clients, for adequate tax assessment by taxing officers<sup>viii</sup> where necessary and for appropriate fees to be earned by legal practitioners in view of services duly rendered.

### **Essentials as to the Form and Content of Bill of Charges:**

It is salient at this stage to refer again to Section 16(2)<sup>ix</sup> as to the form and contents of a bill of charges. This provision requires that a bill of charges shall contain particulars of the principal items. It is instructive to note that in the Nigeria legal system there is no distinction between contentious and non-contentious matters in regard to particulars expected in a bill of charges. However, a general guideline as to the form and content of bill of charges shall include, inter alia:

- a. The bill should be headed to reflect the subject matter. However, if it is in respect of litigation, the court, the cause and the parties should be adequately stated.
- b. The bill should contain all the charges, fees and professional disbursement for which the legal practitioner is making a claim. Professional disbursements among others includes payments which are necessarily made by the legal practitioner in pursuance of his professional duty as court fees, witness fees, cost of production of records e.t.c.<sup>x</sup>
- c. It is required to give sufficient information in the bill to enable the client to obtain advice as to its taxation and for the taxing officer to tax it.<sup>xi</sup>
- d. It is therefore necessary to indicate against each of the particulars given in the bill of charges a specific amount taking into account the status and experience of the legal practitioner and the time and efforts involved. This point was vehemently canvassed by *Uwaifo J.C.A* (as he then was) in his lead judgment in the case of *Oyo v. Mercantile Bank (Nigeria) Ltd*<sup>xii</sup>. He underscored:

The legal practitioner, for instance, can show that the client requested him to render services; that he did so; that by virtue of his age at the Bar and the extent of his practice and experience he was able to provide a certain amount of skill which the particular legal matters demanded; that the charges do not exceed such as are reasonable having regard to the skill, labour and responsibilities involved in the services rendered and to all the circumstances of the case.

### **Need for Legal Practitioner to make written Agreement for any Professional Business**

A legal practitioner is entitled to make written agreement with his client in respect of any professional business done or to be done by him for a sum<sup>xiii</sup> and this is in line with the provision of **Section 15(3) (d) of the Legal Practitioners Act**. Such agreement in its entirety should appear fair and ought to be such that was not made under circumstances of suspicious of an improper attempt by the solicitor to benefit himself at his client's expense.

However, in order for a legal practitioner to be able to institute an action to recover his fees upon a bill of charges, he has to satisfy three pertinent conditions, namely-

- a. He must prepare a bill of charges which should duly particularize the principal items of his claim.
- b. He must serve his client with the bill, and
- c. He must allow a period of one month to elapse from the date the bill was served.<sup>xiv</sup>

Note, an itemized bill of charges as required under section 16 of the Act is desirable, failure on the part of the legal practitioner to itemize the bill of charges with particularity would render such a bill a nullity for non-conformity with the Act- **See First Bank of Nigeria Plc. v. Ndoma-Egba<sup>xv</sup>**

## Conclusion

Having gone through the length and breadth of this topic, it has been exposed that there is statutory provision<sup>xvi</sup> for a lawyer whose client refuses to pay his professional fees to follow in an endeavor to recover his charges and that any breach of this provision may give the client breathing air to survive any suit on the debt recovery. Also as lawyers are warned to avoid controversies with their clients especially in respect of payment of professional fees, clients are also cautioned to be objective and trustworthy in relation to issues of finance with their lawyers.

ENDNOTES.

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<sup>i</sup> Dadem; Y.Y, Property Law Practice in Nigeria, Jos: Jos University Press Limited,2015, P.428-4429.

<sup>ii</sup> Rule 48 of the Rules of Professional Conduct for Legal Practitioners 2007

<sup>iii</sup> Section 16 of Legal Practitioners Act, Cap L.11, L.F.N 2004

<sup>iv</sup> Section 19(1) of Legal Practitioners Act, Cap L.11, L.F.N 2004

<sup>v</sup> Section 16 of Legal Practitioners Act, Cap L.11, L.F.N 2004

<sup>vi</sup> [1988] 1 All.N.L.R at 327

<sup>vii</sup> Cap L.11, L.F.N 2004

<sup>viii</sup> See Section 17 of the Legal Practitioners Act

<sup>ix</sup> Legal Practitioners Act

<sup>x</sup> Mc Cullie v. Butler[1961]2 ALL E.R. 554.

<sup>xi</sup> See Section 18 of the Legal Practitioners Act

<sup>xii</sup> [1988] 3 NWLR (Pt. 108) 213 at P.223

<sup>xiii</sup> See Aburime v. N.P.A (Nig) Ltd [1989] 3 NWLR (Pt 108) 213 at 230-232, where it was ruled that-“There would be occasions where albeit no real contract would be found on a legal practitioner. There might be quasi-contract or other circumstances giving rise to fees claimed on a quantum mewit basis”.

<sup>xiv</sup> Oyekanmi v. NEPA [2001] F.W.L.R (Pt. 34) 408, ratio 4.

<sup>xv</sup> (2006) All FWLR (Pt. 307) 1012 at 1034

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<sup>xvi</sup> Section 16 of the Legal Practitioners Act

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