A CRITICAL APPRAISAL OF JUDICIAL ATTITUDE TOWARDS ENTITLEMENT TO PRACTISE LAW IN NIGERIA VIS – A – VIS THE COMPETENCE OF COURT PROCESSES SIGNED BY LAW FIRMS (published in the University of Benin Journal of Private and Property Law, Vol. 4, 2015, pages 42-63).

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Abstract

The issue of the propriety or competence of Law Firms in signing Court Processes has assumed an interesting dimension in the Nigerian legal or justice administration system. Court Processes have been thrown out or struck out by the Courts on the basis that they were not properly signed by either litigants themselves or their Legal Practitioners, even where such Processes have been clearly signed by the Law Firms of Legal Practitioners retained by the litigants. While some concerned legal experts have argued that the Courts ought not to strike out a Process signed by a Law Firm on the ground that such action smacks of unguarded adherence to technicalities, some others and indeed the Courts are of the firm view that a Law Firm is not a Legal Practitioner as defined by the Legal Practitioners Act, Cap L11, Laws of the Federations, 2010 and as such, any Process purportedly signed by such a firm is incompetent and liable to be struck out.

In this paper, we have examined the position of the law, both extinct and extant, on this burning or topical issue. We have contended that any Suit or Appeal initiated by a Process which is signed by a Law Firm is liable to be struck out, same having not been initiated by the due process of the Law. Thus, we have gravitated towards the extant judicial position that a Law Firm cannot validly sign a Process, in view of the fact that it was not called to the Bar or enrolled by the Supreme Court to practise Law –including signing of Processes – in Nigeria. However, we have also argued that the extant position of the Law should not apply to Processes signed and filed by Law Firms under the now extinct pre - 2007 Supreme Court position. In respect of such Processes, we have recommended a "judicial saving provision". We have also not failed to criticise some awkward pronouncements by the apex Court as regards the issue discussed in this paper.

KEY WORDS : Court, Legal Practitioner, Law Firm, Process, Sign

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Introduction

Quite recently, there has been some concern or anxiety over the pronouncements of the Nigerian appellate Courts on the propriety of Law Firms signing and filing Court Processes on behalf of litigants. There is this issue of whether a Legal Practitioner can validly sign a Court Process without indicating his name, below the signature, before reflecting the name of his Law Firm. As a matter of fact, many bigwigs in the Legal Profession have been embarrassed by having their Processes thrown out by the Superior Courts of Records, as a result of this thorny or vexed issue of Processes signed without indicating the name of the signatory.

In this paper, we shall examine who a Legal Practitioner is, vis – a - vis the right or entitlement to practise Law under the Legal Practitioners Act, Cap L11, Laws of the Federation of Nigeria, 2010 **(The LPA).** Essentially, it is our intention to appraise the seemingly conflicting decisions of the Supreme Court as represented by the now popular **Mattins case** school of thought and the **Nweke case** school of thought, on the competence of Law Firm – signed Processes. We would gravitate towards the Supreme Court decision in **Nweke case,** to the effect that, quite apart from litigants themselves, only Legal Practitioners, as against Law Firms, can validly sign and file Court Processes. Thus, we would contend that any Suit or Appeal based on an Originating Process purportedly signed by a Law Firm is liable to be struck out, same having not been initiated by the due process of the Law. It is trite law that before a Court can exercise Jurisdiction in a Suit, the Suit must have been initiated by the due process of the Law[1]. However, we would argue hereunder that the extant position of the Law should not apply, retroactively, to pre – **Nweke Rule** Processes which were signed and filed by Law Firms under the now extinct pre – 2007 **Mattins Rule**. We would recommend a "judicial saving provision" for such Processes by not having them struck out alongside the post – **Nweke case** wrongly signed Processes.

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[1] *Madukolu v. Nkemdilim* (1962) 1 All NLR (pt. 4) 587 and *Zakari v. Nigerian Army* (2013) All FWLR (658) 999 at 1013 paras D – F

Entitlement to practise Law in Nigeria

Under the LPA, only Barristers and Solicitors are entitled to practise Law in Nigeria. This entitlement could be as a result of enrollment at the Supreme Court, a Warrant from the Chief Justice of Nigeria **(CJN)** or by virtue of office. As a preliminary point on this, we hasten to state that nowhere in the LPA or the Rules of Professional Conduct for Legal Practitioners, 2007**(RPC)** or any other Nigerian statute or case - law are the words, "barrister and solicitor" defined. We will thus place reliance on available literal definition of the terms. According to *Osborn's Concise Law Dictionary*[2], "A barrister in England is a member of one of the Inns of court who has been called to the Bar by his Inn and has the exclusive right of audience in the Superior Court." Also, the*Black's Law Dictionary*[3] defines a barrister as an advocate, a counselor learned in the law who has been admitted to plead at the Bar, and who is engaged in conducting the trial or argument of causes. On the other hand, a solicitor in England is a person admitted as a solicitor having his name on the roll of solicitors and employed to advise on legal matters including preparing legal documentations and or for legal proceedings and may practise only before most inferior courts.

Rather than define "barrister and solicitor", the draftsman of the LPA opted to define the phrase, "Legal Practitioner". Hence, the LPA in its Section 24 defines "Legal Practitioner" in the following words:

> *"legal practitioner" means a person entitled in accordance with the provisions of this Act to practise as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings*[4].

The question that thus arises is, who is this "person entitled in accordance with the provisions of ssthis Act [the LPA] to practise as a barrister or as a barrister and solicitor"? This poser has sufficiently been answered by the LPA itself in its Section 2 which we have now taken the liberty to reproduce as follows:

Section 2

(1) Subject to the provisions of this Act, a person shall be entitled to practise as a barrister and solicitor if, and only if, his name is on the roll.

(2) If –

a) an application under this subsection is made to the Chief Justice by or on behalf of any person appearing to him to be entitled to practise as

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[2] 7th Ed., Sweet and Maxwell, London, 1983, p.46

[3] 6th Ed., 1990, p.151

[4] See also Order 1 Rule 2(3) of the Edo State High Court (Civil Procedure) Rules 2012 (Edo Rules) which defines "Legal Practitioner" as "a Law Officer, a State Counsel or a Legal Practitioner entitled to practice before the Court."

an advocate in any country where the legal system is similar to that of Nigeria; and

b) the Chief Justice is of the opinion that it is expedient to permit that person to practise as a barrister for the purposes of proceedings described in the application,

the Chief Justice may by warrant under his hand authorize that person, on payment to the Registrar of such fee not exceeding fifty naira as may be specified in the warrant, to practice [sic, practise] as a barrister for the purposes of those proceedings and of any appeal brought in connection with those proceedings.

(3) A person for the time being exercising the functions of any of the following officers that is to say –

a) the office of the Attorney – General , Solicitor – General or Director of Public Prosecutions of the Federation or of a State:

b) such offices in the civil service of the Federation or of a State as the Attorney – General of the Federation or of the State, as the case may be, may by order specify, shall be entitled to practise as a barrister and solicitor for the purposes of that office.

The import of the above quoted Section 2 is that, under the LPA, only three categories or classes of persons are entitled to practise Law in Nigeria, or to bring it home to the issue discussed in this paper, only three classes of persons can sign Originating Processes on behalf of litigants in Nigeria. These are:

a) Those who are entitled to practise generally by virtue of their being called to the Nigerian Bar and enrolled by the Supreme Court of Nigeria[5].
b) Those who are entitled to practise in particular proceedings by virtue of a Warrant personally issued by the CJN**[6].**
c) Those who are entitled to practise by virtue of the office they occupy, either in the Federal or State Civil or Public Service[7].

As regards the first class, attending the Nigerian Law School and passing the Bar Finals is a condition precedent to being called to the Bar and Call to the Bar is equally a pre – requisite for enrollment at the Supreme Court. Hence, whoever has his name on the Roll of the Supreme Court is entitled to sign and file Court Processes as well as appear and argue matters before Nigerian Courts.In **Commissioner of Police v. Ali[8] Nsofor, JCA** had this to say:

Now, section 2(1) of the Legal Practitioners Act, Cap 207 Laws of the Federation, 1990, provides as follows:-

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[5] Sections 2 (1) , 4 (1) & (2) & 7 (1) of the LPA
[6] Section 2 (2) of the LPA
[7] Section 2 (3) of the LPA
[8] (2003) F.W.L.R. (pt. 157) 1164 at 1176 – 1177 paras F – A

> *2 (1) Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll.*
>
> *It was not disputed that Mr. S.A. Mbara's name was "on the roll". Therefore he was entitled to practice as a barrister and solicitor. Similarly, it was agreed on all sides that the name of Mr. E. Obia was "on the roll". He was, equally, entitled to practice as a barrister and solicitor. As a person entitled to practice as a barrister and solicitor, Mr. S.A. Mbara did, on the 14th February, 1994, sign and file the "notice of appeal" as "counsel for the prosecutor". The "notice of appeal" thus signed and filed by him, I do hold was competent as Mr. S.A. Mbara was competent to sign and file it.*

For the second class, such practitioners must be well – armed with a Warrant from the CJN. The wording of Section 2(2) of the LPA suggests that the Warrant to practise must be issued, personally, by the CJN. Thus, it is arguable that notwithstanding the business schedule of the CJN, he or she cannot delegate this statutory duty. Moreover, before a person can practise Law under this category, he must be qualified to practise Law in another country that has similar legal system as Nigeria's. Quite apart from his application, he must have paid the prescribed fee to the Chief Registrar of the Supreme Court[9]. Fundamentally, any person entitled to practise Law in Nigeria by virtue of the CJN's Warrant must restrict his practice to the particular proceedings and the consequent Appeal in respect of which he was issued the Warrant in the first place. He cannot hide under the canopy of the Warrant to engage in general practice which is the exclusive preserve of those entitled to practise under Section 2 (1) of the LPA, as explained above. The express mention of particular proceedings means the exclusion of general proceedings[10].

The last category of persons entitled to practise Law in Nigeria by virtue of Section 2 (3) relates to those who can practise because of the offices they occupy. These include the Attorneys – General of the Federation and the States, the Solicitors – General of the Federation and the States, the Directors of Public Prosecution of the Federation and the States. In addition, to these persons, the subsection under consideration also gives the Attorneys – General the power to, by Order, specify or name other officers of the Civil Service[11] of the Federation or the State who would be entitled to practise Law as Barristers and Solicitors, albeit for the purposes of their offices only. Thus, in exercise of this power, the Attorney General of the Federation made ***TheEntitlement to practise as Barrister and Solicitors (Federal Officers) Order of 1992***[12].

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[9] Section 24 of the LPA defines "the Registrar" to mean the Chief Registrar of the Supreme Court

[10] *SEC v. Kasunmu* (2009) All FWLR (pt.475) 1684 at 1706 paras E - F

[11] Now Public Service. See Section 318 of the Constitution of the Federal Republic of Nigeria, 1999 (The Constitution) for the definition of "Public Service."

[12] Wherein the Directors, Deputy Directors, Assistant Directors, Chief Legal Officers, Assistant Chief Legal Officers, Principal Legal Officers, Senior Legal Officers, Legal Officers and Pupil Legal Officers in the Federal Ministry of Justice have been empowered to practise as Barristers and Solicitors **for the purposes of their offices only.** See also *The Entitlement to practise as Barristers and Solicitors (National Assembly Office) (Legal*

It has been argued elsewhere, and rightly in our view, that the power vested in the Attorneys – General under Section 2(3)(b) does not include power to disqualify those who are already qualified to practise Law in Nigeria, independent of Section 2(3)(b). Put differently, the Attorneys – General are only authorised by the subsection to enlarge, not to restrict or reduce the number of those entitled to practise Law in Nigeria[13]. It is therefore possible for a person to have dual capacity to practise Law in Nigeria. This dual capacity is enjoyed by lawyers who are employees in the Public Service. In the first place, they are qualified to practise by virtue of their Call to the Bar and Enrolment at the Supreme Court[14]. In another instance, they are entitled to practise by virtue of their being officers in the Public Service, provided the Attorney – General concerned has, by an Order, pursuant to Section 2(3)(b) of the LPA, permitted them to practise by virtue of their offices. May we also add here that, further to the subsection under consideration, law graduates who are yet to go to the Nigerian Law School can practise as Barristers and Solicitors on two conditions, viz : (i) they are officers in the Public Service and (ii) the Attorney – General has issued an Order entitling them to practise as Barristers and Solicitors for the purposes of their offices.

Judicial attitude towards the competence of Court Processes signed by Law Firms

We would now examine judicial decisions, extinct and extant, on the competence of Court Processes signed by Law Firms. Before then, it is apposite to look at the meaning of the words"Process" and "Signature".

Meaning of Process or Court Process

The High Court of Lagos State (Civil Procedure) Rules 2012[15] provides:

> *"Court process" or "process" includes writ of summons, originating summons,originating process, notices, petitions, pleadings, orders, motions, summons, warrants and all documents or written communication of which service is required*[16].

On the other hand, Legal Dictionary defines a Process in the following words:

Practitioner) Order of 1995, The Entitlement to practise as Barristers and Solicitors (Federal Housing Authority) (Legal Practitioners) Order of 1995 and *The Entitlement to practise as Barristers and Solicitors (Federal Road Safety Commission) (Legal Officers) Order of 1997*

[13] Ojukwu, E., "Entitlement to Practise as a Legal Practitioner in Nigeria: A Comment", Nigerian Law Review 1994, p. 122 at 125.

[14]Note however the limitation placed on their right to practise under Order 8 of the RPC. Further to the said Order, only lawyers who are employed as Legal Officers in a Government Department are entitled to appear for their employers. This means if, for instance, a lawyer is employed as an Administrative Officer 11 in the Federal Ministry of Works, he is legally incapable of appearing in Court for the Ministry, in his capacity as a lawyer duly called to the Bar and enrolled. Thus he can only appear for the Ministry under the second leg of his entitlement to practise, i. e., by virtue of an Order of the Attorney – General where such Order enures in his favour.

[15] Order 1 Rule 2(3)

[16] Order 1 Rule 2 (3) of the Edo Rules and Order 1(2) of the High Court of Delta State (Civil Procedure) Rules 2009 contain similar provisions, save for the latter's addition of "applications, affidavits, valuation reports, sketches and litigation plans" in its definition of the term.

> *In civil and criminal proceedings, any means used by a court to acquire or exercise its jurisdiction over a person or over specific property. A summons or summons and complaint; sometimes, a writ.*[17]

In the case of **Bello v. Adamu**[18]**, Tur, JCA** stated thus:

> *Legal process as defined by Black's Law Dictionary, 7th Edition at page 1205 includes a summons, writ, warrant, mandate or other process issuing from a court. If a process is incompetent, the resultant effect will be striking out of the same.*

Going by the above definitions and in view of the frontloading system that has been adopted by almost all the states in Nigeria, it can be safely said that all documents which are frontloaded (including letters/correspondence relating to the substance of the Suit) are Court Processes which must, as would soon be seen, be properly signed by a human being, as against a corporate or artificial person. We equally state that, at the Appellate Courts, Notices of Appeal[19], Notices of Cross – Appeals, Respondents' Notices, Briefs of Arguments and Motions as well as exhibits are all Court Processes.

Meaning of signature

Legal Dictionary defines or describes "signature" as:

> *A mark or sign made by an individual on an instrument or document to signify knowledge, approval, acceptance, or obligation.*
>
> *The term signature is generally understood to mean the signing of a written document with one's own hand. However, it is not critical that a signature actually be written by hand for it to be legally valid. It may, for example, be typewritten, engraved, or stamped. The purpose of a signature is to authenticate a writing, or provide notice of its source, and to bind the individual signing the writing by the provisions contained in the document*[20]

From the judicial circles, Romer L.J. in **Goodman v. Eban Ltd**[21]said:

> *It is stated in Stroud's Judicial Dictionary (3rd edn) under the title 'Signed;signature' that 'speaking generally a signature is a writing or otherwise affixing a person's name, or a mark to represent his name, by himself or by his authority with the intention of authenticating a document as being that of, or as binding on, the person whose name or mark is so written*

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[17] www.http://legal-dictionary.thefreedictionary.com/process. Accessed on 31 July 2013 at 11.45am
[18] (2013) All FWLR (pt. 671) 1582 at 1591 para E.
[19] See *Fortune Int'l Bank Plc v. City Express Bank Ltd* (2013) All FWLR (pt. 679) 1124 at 1140 -1141 paras H – A on Notice of Appeal being the foundation of the Appeal prosecution.
[20] www.http://legal-dictionary.thefreedictionary.com/signature. Accessed on 31 July 2013 at 1.08pm
[21] (1954) 1 Q.B.550

or affixed.' This statement appears to me to be in accordance with the authorities, and, in my opinion, Mr Goodman's letter was 'signed' within this formula. The letter was typewritten and concludes with the words (also typed) 'Yours faithfully Goodman, Monroe and Company.'

In **Ngun v. Mobil Producing Nigeria Unlimited**[22] , Tur, JCA opined:

…. The word "signature" is further defined (P. 1507) as 1. A person's name or mark written by that person or at the persons [sic, person's] direction…. The name of the chamber [sic, chambers] that settled the amended statement of defence is:

"PP Kayode Sofola & Associates…."

The party suing is Bernard Ngun and the party defending is Mobil Producing Nigeria Unlimited. The chambers that represented the respondent is "PP Kayode Sofola & Associates." But what is the name of the legal practitioner who scribbled a signature on top of the entry "PP. Kayode Sofola & Associates, 9, Ondo Street, Osborne Foreshore Estate, Ikoyi, Lagos"? That is not stated…."

The above definitions of signature have made it clear that the essence of signing a Process or document is to authenticate it and *ipso facto*, be accountable or responsible for its contents. Another point we can draw from the above is that a signature need not be a mark or some scribbled symbols. A person's name, where clearly written on the signature block or column, suffices. Worthy of note is also the fact that a person can be signed for, by another person. Hence Mr. A, while acting on Mr. B's clear instructions, can sign a Process or document for and on behalf of Mr. B. The question now is, can an inanimate personality, such as a Law Firm, sign a Process for itself or on behalf of any person or company? The Courts have answered this question. To the answer we now turn.

[22](2013) All FWLR (pt. 677) 665 at 684 paras E -G

The Judicial Attitude before 2007

Prior to the year 2007, the Courts in Nigeria were disposed to treating Processes signed and filed by Law Firms as properly signed and filed. This was especially so in cases of Law Firms having a sole practitioner, for instance, "E. O. Eze & Co" where Mr. Eze does not have any Junior in chambers. The Courts were of the opinion that E.O. Eze was the same as E .O .Eze & Co. in which case he did not necessarily have to write his name after his signature, provided he wrote his firm name. Some decided cases would help drive home the point being made.

Registered Trustees of Apostolic Church v. Akindele[23]

This was an Appeal which originated from a Hearing before the Registrar of Titles in respect of an Application for registration of title to land. An Objection to the said Application was upheld by the Registrar, hence the Appellants' Appeal to the High Court vide a Notice of Appeal signed by "J. A. Cole for J.A. Cole & Co". The Courtdismissed the Appeal on the ground that it was not properly signed by either the Appellants or their Legal Practitioner but by an inanimate Law Firm[24]. The Appellants' further Appeal to the Supreme Court was upheld. Bret Ag. C.J.N., while delivering the Judgment of the Court, held:

> *Mr. J.A. Cole is admittedly a duly registered legal practitioner, and entitled to practice as such under the Legal Practitioners Act, 1962. He has no partner in his practice, but he has registered the name of J. A. Cole & Co. under the Registration of Business Names Act, 1961 and uses that name in his practice. It is not suggested that there is any professional objection to his doing this[25], and it is frequently done by solicitors in England, as the Law List shows.* ***In our view the business name was correctly given as that of the legal practitioner representing the appellants. In signing the notice of appeal Mr. Cole used his own name, that is to say, the name in which he is registered as a legal practitioner[26].*** *We hold that on any interpretation of the rules that was a sufficient compliance with them, and we do not accept the submission that the*

[23](1967) N.S.C.C. 117 at 118 – 119

[24] The Court raised this issue of signature *suo motuo* and decided on same without inviting Counsel to address it on same.

[25] Order 5 (4) of the RPC 2007 now forbids this practice. That is to say, it is no longer professionally permissible for a sole practitioner to register or use a firm name that suggests that he is not alone in the firm but in partnership with other lawyers.

[26] Emphasis ours. The emphasized suggests that the saving grace in this case was that Mr. Cole wrote his name as signature before writing his firm name. As discussed earlier, signature need not be some mark or scribbled symbols. A person's name, J.A. Cole in this case, suffices as signature.

addition of the words "for J. A. Cole & Co." would invalidate the signature if a signature in a business name was not permitted.

That is enough for the determination of this appeal. Counsel addressed the court, and invited it to pronounce, on the wider issue of the use of a business name, including a name under which two or more legal practitioners carry on a practice in partnership, for the signature of documents which are required to be signed by a litigant or by the legal practitioner representing him, as it was said that its regularity had been doubted on occasion. The question does not arise in the present case, and we prefer to reserve it for a case in which it does arise.

Unfortunately, the question the Supreme Court reserved for a future case in the **Akindele case** is the issue being addressed in this paper. That is, can a Law Firm sign or use its name as signature for Processes meant to be signed by litigants or their Legal Practitioners? Would the Supreme Court have taken the same position if the Appeal was signed by "J.A. Cole & Co." without "J.A. Cole" being written before "J.A. Cole & Co."? The apex Court appeared to have answered the question in the affirmative, in a subsequent but now impliedly overruled case.

COLE V. MATTINS[27]

In this similarly situated case, the same High Court held that the Appeal was not competent, the Notice and Grounds of Appeal having being signed by an inanimate Law Firm, "Lardner & Co.", instead of the Appellant or his Legal Practitioner (Mr. Lardner). His Lordship thus dismissed the Appeal on the basis that Lardner & Co., though a firm of Legal Practitioners, was not a Legal Practitioner under Sections 2 and 24 of the LPA and could not have validly signed a Court Process. On further Appeal to the Supreme Court, Lewis J.S.C. held:

The notice filed here was on the prescribed form, but the name and address of the legal Practitioner representing the appellant was given as "Lardner & Co. 22 Kakawa Street, Lagos". And the notice was signed "Lardner & Co". Now this court had occasion on the 14th April, 1967, to consider in The Registered Trustees of the Apostolic Church, Lagos Area v. Rahman Akindele, 1967 N.M.L.R 263 the effect of an appeal under these Registration of Titles (Appeals) Rules where the signature on the prescribed form of appeal was "J.A. Cole for J. A. Cole & Co." and this court said at page 265 –

> *"Mr. J.A. Cole is admittedly a duly registered legal practitioner, and entitled to practice as such under the Legal Practitioners Act, 1962. He has no partner in his practice, but he has registered the name of J. A. Cole & Co. under the Registration of Business Names Act, 1961 and uses that name in his practice. It is not suggested that there is any professional objection to his doing this, and it is*

[27] (1968) 1 A.N.L.R 161 at 164 – 165

> *frequently done by solicitors in England, as the Law List shows. In our view the business name was correctly given as that of the legal practitioner representing the appellants. In signing the notice of appeal Mr. Cole used his own name, that is to say, the name in which he is registered as a legal practitioner. We hold that on any interpretation of the rules that was a sufficient compliance with them, and we do not accept the submission that the addition of the words "for J. A. Cole & Co." would invalidate the signature if a signature in a business name was not permitted."*

In the present appeal it is not disputed that just as Mr. J.A. Cole was practicing on his own under the registered business name of J. A. Cole & Co. for the purpose of The Registered Trustees of the Apostolic Church, Lagos Area v. Rahman Akindele, (supra), so was Mr. H.A. Lardner here practicing alone under the registered business name of "Landner & Co." The sole difference between that appeal and this one is that Mr. Cole did sign his own name but added "for J.A. Cole & Co.", though on the appeal form the legal practitioner representing the appellants was also described as "Messrs J. A. Cole & Co.", whilst here the description in each case was "Lardner & Co.". The effect, however, of registering a business name under the Registration of Business Names Act, 1961, is that where only one person constitutes that business it is correct to describe that person as in the terms of the registered business name. In other words Lardner & Co. here referred solely to Mr. H.A. Lardner…. In our view having regard to the context of rule 4 of the Registration of Titles (Appeals) Rules, the purpose of which on this issue, it seems to us, is to ensure that the name of the legal practitioner giving notice of appeal and representing the appellant is clearly known, then it is sufficient compliance with the requirement for a legal practitioner to sign and give his name, if a legal practitioner practising alone gives the name under which he is registered as a business name….

The summary of the above Supreme Court decisions is that, provided a Law Firm is composed of just one Legal Practitioner, it can validly sign Processes which the Practitioner himself ought to sign. This means Law Firms which have two or more lawyers in chambers cannot benefit from the reasoning in these decisions. As convincing as the Apex Court's reasoning in the above cases may be, we submit, with respect, that it is reasoning without any legal foundation. Having agreed that it is only a "Legal Practitioner" under the LPA that can practise Law, the Supreme Court should have gone ahead to hold that "Lardner & Co."was not a Legal Practitioner within the purview of the LPA and it thus could not have signed a Process in that capacity. It is trite law that where the words of a statute are clear, the Court should give effect to them rather than implying into the statute what is not clearly stated in it[28]. The Court did the exact opposite of what was expected of it by recognizing a Law Firm as a Legal Practitioner, contrary to the clear provisions of Sections 2 and 24 of the LPA.We also question the attempt by the Supreme Court to give a garment of similarity to the **Akindele case** and the **Mattins case**. We submit that the two cases are

[28] See *Agundi v. Commissioner of Police* (2013) All FWLR (pt. 660) 1247 at 1309 para B -D

fundamentally distinguishable. While Mr. Cole properly signed the Process in the **Akindele case** by writing his name on the signature column, Mr. Lardner did not sign the Process in the **Mattins case**; rather, it was his Law Firm which signed. The similar treatment given to both cases by the apex Court was, with all due respect, unfortunate.

The Post 2007 Judicial Position

The year 2007 was remarkable as far as the issue under consideration is concerned. In that year, the Supreme Court made a *volte – face*. Without expressly overruling or reversing its earlier decisions in the afore –considered cases, the Court held that a Law Firm cannot validly sign a Court Process. This far - reaching decision was delivered in the case of**Nweke v. Okafor**[29]which has now become the pillar on which all subsequent Supreme Court decisions, on this issue, find rest.

Nweke v. Okafor

In this celebrated case, Court Processes, viz: Motion on Notice, Notice of Cross – Appeal and Applicant's Brief of Arguments were signed and filed by " J.H.C. Okolo, SAN & Co." The Respondent raised an Objection to the competence of the said Processes on the ground that "J. H. C. Okolo, SAN & Co." was not the Applicant neither was it a Legal Practitioner for the Applicant, and thus incapable of signing the Processes. When the matter got to the Supreme Court, Their Lordships held:

> *However section 2(1) 0f the Legal Practitioners Act, Cap. 207 of the Laws of the Federation of Nigeria, 1990 provides thus : "Subject to the provisions of this Act, a person shall be entitled to practise as a barrister and solicitor if, and only if, his name is on the roll." From the above provision, it is clear that the person who is entitled to practise as a legal practitioner must have had his name on the roll. It does not say that his signature must be on the roll but his name. Section 24 of the Legal Practitioners Act defines a "legal practitioner" to be "a person entitled in accordance with the provisions of this Act to practise as a barrister or as a barrister and solicitor, either generally or for the purposes of any particular office or proceedings". The combined effect of the above provisions is that for a person to be qualified to practice as a legal practitioner, he must have his name on the roll otherwise he cannot engage in any form of legal practice in Nigeria. The question that follows is whether J.H.C. Okolo, SAN & Co. is a legal practitioner recognized by law? From the submissions of both counsels [sic, counsel], it is very clear that the answer to that question is in the negative. In other words, both*

[29] (2007) All FWLR (pt. 368) 1016; (2007) NWLR (pt. 1043) 521

> *senior counsels [sic] agree that J.H.C. Okolo, SAN & Co. is not a legal practitioner and therefore cannot practice as such by say, filing processes in the courts of this country…, it follows that the said J.H.C. Okolo, SAN & Co. cannot legally sing [sic, sign] and/or file any process in the courts….*

By the above pronouncement, the Supreme Court introduced what we would call a new legal order vis – a – vis the competence of Processes signed by Law Firms. The above judicial position has been consistently maintained by the Supreme Court in subsequent cases. Thus, in the case of **S.L. B. Consortium Ltd. v. NNPC**[30], Court Processes signed by "Adewale Adesokan & Co." were struck out by the Supreme Court. In **F .B.N. Plc v. Maiwada**[31]**,**the Supreme Court, sitting as a Full Court, invited eminent Senior Advocates of Nigeria[32] as *Amici Curiae* to address it on the competence of a Notice of Appeal which was signed and filed by "David M. Mando & Co." After a calm review of the respective submissions of learned Senior Counsel, the Court was, and rightly in our view, minded to pitching its tent with the Daudu camp[33] by striking out the Appeal for incompetence. In his Lead Judgment, Fabiyi, JSC had this to say at page 1464 paragraphs A - D of the Law Report:

> *….The purpose of sections 2(1) and 24 of the Act is to ensure that only a legal practitioner whose name is on the roll of this court should sign court processes. It is to ensure responsibility and accountability on the part of a legal practitioner who signs a court process. It is to ensure fake lawyers do not invade the profession….*
>
> *my considered pinion, the words employed in drafting sections 2 (1) and 24 of the Act are simple and straight forward. The literal construction of the law is that legal practitioners who are animate personalities should sign court processes and not a firm of legal practitioners which is inanimate and cannot be found in the roll of this court.*

While we agree with the reasoning of His Lordship as to the requirement that a Process be signed by Legal Practitioner, we however fail to see how that would, in His Lordship's words, *"ensure fake lawyers do not invade the profession…."* We submit that this requirement alone does not guard against fakery or

[30] (2011) All FWLR (pt.583) 1902
[31] (2013) All FWLR (pt. 661) 1433
[32] Including J.B. Daudu, SAN and Wole Olanipekun, SAN
[33] Daudu and Olanipekun were on the opposite sides.

quackery in the Legal Profession. After all, a non – lawyer can simply sign and write his name under a Process meant for filing without being caught. The much touted Roll at the Supreme Court is not available at the Court Registries – save for the Supreme Court Registry - and that makes it difficult to know those whose names are actually on the Roll for the purposes of entitlement to practise Law.

Also germane on the issue under consideration is the Apex Court decision in the equally recent case of**Alawiye v. Ogunsanya**[34]where Chuknwuma – Eneh, JSC, in the Lead Judgment, said:

> *... In this regard, I have to advert to the manner of wrongfully signing and issuing the said writ of summons, statement of claim and the notice of cross- appeal i.e. the initiating processes by a non – recognizable Legal Practitioner of the law firm of "Chief Afe Babalola, SAN & Co." and to hold that they are therefore nullities and void ab initio resulting in the action itself being a nullity all the same again as its foundation has been fatally eroded...."*

Certain issues agitate our minds as regards the extant position of the Law. First, is the present judicial position not an undue adherence to technicalities or technical justice at the expense of substantial justice? Second, what is the procedure for raising an Objection, on this issue, for the first time before an appellate Court? Third, what is the effect of a successful Objection to a Process signed by a Law Firm on a Trial Court Judgement before the issue was raised on Appeal? Fourth, can a wrongly signed Process be amended? To these issues we now turn.

On the first issue, while we concede that the present position of the Law would no doubt create hardship on innocent litigants who may not be aware that their Lawyers did not properly sign their Court Processes, we however opine that the issue at stake goes beyond the settled principle of law that litigants should not be made to suffer for the sins of their Counsel[35]. The issue involved is more substantive than procedural, thus leaving the Courts in a helpless situation. Until the LPA is amended by the Legislature to accommodate Law Firms within the meaning of "Legal Practitioner", we humbly contend that no amount of judicial activism or quest for substantial justice would justify a departure from the **Nweke case**. The LPA is a substantive Law, not a mere adjectival Law like the Rules of Court. Hence, the issue of allowing a Law Firm to sign a Process, under the guise of doing substantial justice, does not arise. We entirely agree with Fabiyi, JSC when he said in the **Maiwada case** that:

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[34](2013) All FWLR (pt. 668) 800 at 830 paras F –H
[35]*Long John v. Black* (1998) 6 NWLR (pt. 555) 524 on this principle

..... This is because it is the duty of the legislature to make the law and it is the assigned duty of the judges to interpret the law as it is; not as it ought to be. That will be flouting the rule of division of labour as set out by the Constitution .... The provisions of sections 2(1) and 24 of the Act as reproduced above remain the law and shall continue to be so until when same is repealed or amended. For now, I see nothing amiss about the law.

The decision in Okafor v. Nweke was based on a substantive law – an Act of the National Assembly i.e. the Legal Practitioners At. It is not based on Rules of court....

We are further fortified on our contention that Law Firm cannot validly sign Processes, nay practise Law in Nigeria, by the pronouncement of **Iguh, JSC** in **Emuze v. V.C., University of Benin**[36]where he stated:

....Where a statute [in this case the LPA] confers specific or special powers on any person or authority for the performance of certain acts or duties, it is only that person or authority and no other person that is contemplated in the performance of such acts or duties under the relevant law....

The case of **Federal Polytechnic**, **Idah v. Onoja**[37] is to the effect that the much touted "substantial justice" should not be left at large. In the said case, **Okoro, JCA** who read the Lead Judgment, had this to say at page 758 paragraphs E – F of the Law Report:

All courts in this country are enjoined to do substantial justice and to avoid technicalities. ***At the same time, all courts are bound by statute, both substantive and subsidiary. Where a statute lays down the procedure for the doing of an act, the court must follow it....to ignore the rules and leave the attainment of justice to the discretion, caprices or idiosyncrasies of individual judges could lead to tyranny and injustice which may end in chaos but clearly not in the interest of justice according to the law[38].***

The second and third issues to be considered are the procedure for raising an Objection relating to wrongly signed Processes before an appellate Court and the effect of the success of such Objection on

[36] (2003) FWLR (pt.170)1411 ; (2003) 10 NWLR (pt. 823) 378 at 401 – 402. See also *Hajaig v. Hajaig* (2013) All FWLR (pt.679) 1047 at 1085 – 1086 paras H - E
[37] (2013) All FWLR (pt. 667) 745
[38] Emphasis ours. See also *Sekoni v. UTC (Nig.)* Plc (2006) All FWLR (pt. 310) 1620

the Judgment of the Trial Court. Assuming a Defendant/ Appellant had filed an Appeal against a Judgment before he discovered that the Writ of Summons and Statement of Claim upon which the Judgment was founded were not properly signed, does he have to file an Application for Leave to amend his Notice and Grounds of Appeal to incorporate the Objection, or can he just file a Motion before the Appellate Court for setting aside the Judgment since it has no legal leg to stand on? The Supreme Court appears not to have taken a settled position on this.

In **Alawiye v. Ogunsanya**[39], in a manner that suggests that the Applicant's Objection would not have been upheld if he had not obtained Leave to raise the issue of Jurisdiction, Chukwuma –Eneh, JSC said in his Lead Judgment:

> *…. It must be observed that unless and until leave to raise fresh issue and as well as the grounds of appeal upon which it is predicated is put in place, it is not acceptable to raise the issue of jurisdiction for the final time in this court….*

With the greatest respect to His Lordship, we vehemently disagree with the above judicial pronouncement. We contend that the statement does not have any legal foundation to rely on. Whereas we concede that it is generally a settled principle of Law that fresh issues can only be raised on appeal after Leave of Court has been sought and obtained[40], we however contend that that legal principle is not applicable to a fresh issue relating to Jurisdiction which requires a calm construction of the relevant provisions of a statute. It is trite that the issue of Jurisdiction is a threshold matter and lack of it is fatal to all proceedings, both the well - conducted and the not - so - well conducted[41]. It is therefore our contention that a party raising, for the first time, the issue of Jurisdiction on the ground of improperly signed Originating Processes does not require Leave of Court. Assuming the above decision of His Lordship holds true, the implication is that where a party fails to obtain Leave before applying for the striking out of a Suit or Appeal predicated on a wrongly signed Process, the Court would not grant the Application to strike out, that is, the Court will continue to hear the Appeal even

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[39] Supra.The Respondent obtained a Judgment against the Appellant/ Applicant based on Originating Processes improperly signed by a Law Firm, "Chief Afe Babalola, SAN & Co." The Applicant only discovered this fundamental defect on the Originating Processes when his Appeal got to the Supreme Court. Consequently, he applied for Leave of the Apex Court to raise a fresh issue and file additional Grounds of Appeal so as to challenge the Jurisdiction of the Trial Court to hear the defective Suit in the first place. His Application for Leave was granted and the Court in exercise of its general powers under Section 22 of the Supreme Court Act, set aside the defective Processes and the Judgment given pursuant to it, and of course, the subsequent Court of Appeal Judgment as well as the pending Appeal before the apex Court

[40] *Ayinke Stores Ltd v. Adebogun* (2013) All FWLR (pt. 682) 1797 at 1805 paras C - E

[41] *Ape v. Olomo* (2013) All FWLR (668)895 at 910 paras F – G; *Masu v. Udeagbala* (2013) All FWLR (pt.680)1402 at 1407 – 1408 paras H - A

when its attention has been drawn to facts establishing its lack of Jurisdiction. This, in our view, would be tantamount to turning age – long principles of Law on their heads. It is settled Law that Jurisdiction, being the linchpin or spinal cord of adjudication, which oxygenates all proceedings, is not amenable to waiver, admission, acquiescence, collusion or compromise of any kind. Parties cannot by consent or waiver confer Jurisdiction on a Court where none constitutionally or statutorily exists.[42]

We submit that the correct procedure to follow in the above painted scenario would be to file a Preliminary Objection urging the Court to strike out the entire Suit, beginning from the Trial Court to the Supreme Court, for want of Jurisdiction. Happily, this was the position taken by the Supreme Court in **Tunji Braithwaite v. Skye Bank Plc**[43]where Muhammed, JSC, while reading the Lead Judgment at pages 48 – 49, paragraphs E – A said:

> *I am unable to agree with learned appellant/respondent counsel that the defect in exhibits SKYE 1 and 3 are procedural and having not been made an issue timeously, the respondent/objector is deemed to have waived his right….*
>
> *Learned counsel must be reminded that respondent's preliminary objection is not founded on Order 6 rule 2(3) and Order 15, rule 2 of the High Court of Lagos State (Civil Procedure) Rules, 2004 applicable to the trial court alone non – compliance with which adjectival provisions the same rules of court consider to be mere irregularity. Beyond that, the preliminary objection is also founded on sections 21[sic, 2](1) and 24 of the Legal Practitioners Act, Cap. 207, Laws of the Federation of Nigeria, 2004.*
>
> *The resolution of the issue that arises from the respondent's preliminary objection in the case at hand, learned appellant counsel is to be reminded, also requires the application of the provisions of sections 2 (1) and 24 of the Legal Practitioners Act,Laws of the Federation of Nigeria, 2004 the application of which provisions, to similar facts, inform the decisions of this court in Okafor v. Nweke and SLB Consortium Ltd v. NNPC.*

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[42] *Zain (Nig.) Ltd v. Ilorin* (2013) All FWLR (pt.681) 1518 at 1569 -1570 paras H - C

[43] (2013) All FWLR (pt.664) 39 where the Respondent Counsel filed a Notice of Preliminary Objection to the Appeal at the Supreme Court when he discovered that the Appellant's Originating Processes at the Trial Court were signed by "Oluyede & Oluyede". The Appellant's Counsel contended that the Respondent could not raise an Objection to the apex Court's Jurisdiction without first seeking and obtaining Leave of Court, the issue of Jurisdiction being a fresh issue or having not been raised at the lower Courts.

The fourth question has to do with the possibility of amending a Process initially wrongly signed. Before addressing the issue, may we quickly add that the third issue raised above was equally settled in the **Ogunsanya case** where the Court held that a Judgment based on a wrongly signed Process is a nullity. Now, can a Legal Practitioner move the Court to amend a wrongly signed Process, say by replacing the defective page (signature page) in a Notice of Appeal with another page containing a proper signature? This question appears to have been answered by the Supreme Court in **Unity Bank Plc v. Denclag Ltd**[44]where Debo Akande, SAN (may God bless his soul) orally moved the Court of Appeal to amend a Notice of Appeal signed by "Ibrahim Hamman & Co." by replacing the last page of the said Notice with another page bearing the name and signature of the Learned Silk. When the propriety of such amendment became an issue at the Supreme Court, the Court, *Coram***Peter – Odili, JSC** held:

> *Going by the decision in Okafor v. Nweke, learned counsel for the respondent submits that the implication is that there was no appeal. That sweeping assertion and solution cannot be in keeping with the tenets of substantial justice and the age long principle that a litigant should not be made to suffer for the inadvertence or mistake of counsel. Bearing that in mind therefore, and attempts made to rectify the anomaly and the order of amendment made by the Court of Appeal itself, even though the right process as a full amended notice of appeal not having been filed but learned counsel merely filed the amended offending last page properly signed, this in keeping with the oral application and the order of court….*
>
> *This comes into one of those exceptions that could alleviate the hardship that otherwise would have resulted. Therefore, the process was redeemed and consequently valid.*

As beautiful and litigant – sympathetic the above dictum make sound, we humbly disagree with the position of the Court**.** We find it difficult to fathom the rationale behind the apex Court's statement of the Law which clearly flies in the face of the more settled position of the Law that you cannot putsomething on nothing and expect it to stand, it will collapse[45]. We submit, with humility, that a wrongly signed Originating Process cannot be amended. In point of fact, the Court's Jurisdiction can only be activated by a valid Originating Process. The import is that the Court has no legal basis to

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[44] (2013) All FWLR (pt. 675) 206 at 341 paras D - F

[45] *Ikpongette v. C.O.P.* (2009) All FWLR (pt.471) 996 at 1016 – 1017 paras F – A *; UAC v. Macfoy* (1961) 3 All ER 168

exercise Jurisdiction to order an amendment of a fundamentally defective Process, such as a wrongly signed Process[46]. Such a Process is afflicted with a fundamental vice which is incapable of amendment, it is incurably bad. What the Court ought to have done in the above case was to strike out the Appeal, for want of Jurisdiction, just like it did in the **Ogunsanya case**[47]**.** That would have enabled the party concerned to put his house in order and then file a validly signed Process[48]. In arriving at its conclusion, the Court seemed to have mixed up compliance with Rules of Court with compliance with an Act of the National Assembly. While non – compliance with Rule of Court could be treated as a mere or curable irregularity, non – compliance with an Act is irreparably fatal to the entire Proceedings[49].

Recommendations and Conclusion

Further to the foregoing analysis, it is our submission that the extant position of the Court should be sustained rather than being jettisoned. Our position is informed by the fact that substantial justice cannot be a matter at large; it can only be done in line with the provisions of the Law, both statutory and judicial. However, in view of the fact that some Processes were signed and filed by Law Firms before the 2007 **Nweke case** revolution, we hereby recommend a "judicial saving provision" for such pre – 2007 Processes. It would be recalled that before the **Nweke case**, the **Mattins case** had affirmed the competence of Law Firm – signed Processes. It is only just or fair that Processes filed under the **Mattins case**regime be not struck out under the **Nweke caseRule**. It is a settled principle that the Law abhors a retroactive or retrospective application of its provisions[50]. We contend that this principle, though generally applicable to statutory provisions, can however be stretched to apply to judicial decisions, such as the instant case. Furthermore, rather than urge the Court to depart from its present stand on striking out Processes signed by Law Firms or other inanimate personalities, we enjoin Legal Practitioners to be more diligent and meticulous by ensuring that Processes are properly signed before rushing to Court for filing. After all, in the words of Onnoghen, JSC in the **Nweke case**, *"Legal practice is a very serious business that is to be undertaken by serious minded practitioners particularly as both legally trained minds and those not so trained always learn from our examples. We therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country."*

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[46] See *Madukolu v. Nkemdilim*(supra**)** and *Zakari v. Nigerian Army* (supra)
[47] Supra. See also *The Government of Cross River State v. NTA* (2013) All FWLR (pt. 676) 543 at 577 paras A - C
[48]*Okafor v. Nweke* (supra)
[49] *Federal Polytechnic, Idah v. Onoja* (supra)
[50]*Hope Democratic Party v.Peter Obi* (2012) All FWLR (pt.612)1620 at 1634 para. C