THE LEGALITY OF FIRM ENDORSED LEGAL PROCESSES AND THE AUTHORITY OF LEGAL PRACTITIONERS IN NIGERIA

Abstract
There is no gainsaying the fact that legal processes or documents (otherwise called pleadings) to be used in litigation must be signed by the makers of such processes. This is to authenticate it to the effect that it reflects the mark of the person who prepared it. There has recently emerged a rich legal jurisprudence on the issue of a firm endorsing legal processes and the legal implications or effects of such endorsements on the entire action or judicial proceedings. The extant view of the apex court, which lower courts in Nigeria, have followed since Okafor v. Nweke was decided in 2007, has remained that such a process where it originates or commences a suit or an appeal, renders the suit or appeal incompetent, null and void. This article queries this apparently settled legal position and the researchers feel strongly that a timeous amendment should cure any apparent defect in such a process. Our various High Court Civil Procedure Rules again contain sweeping corrective provisions and our Judges' Blue Pencil Rule can come to the rescue in such situations. What not? We dedicate the following pages to trying to make you see reasons why it should be so. The law should change on this issue as lawyers are not above honest and genuine mistakes. After all, they are not infallible. Where this happens, should the inadvertence or mistake of counsel in such situations, be heavily visited on the litigant(s) when the contrary should be the rule? This paper recommends in the main that the Supreme Court of Nigeria should please seize the next opportunity that comes its way to override/overrule the legal position which started in 2007 in Okafor v. Nweke and enthrone a more liberal and progressive approach in ruling on legal processes signed or endorsed by a legal firm to such extent that there will be room for regularization of legal documents and/or processes so signed or endorsed.

Keywords: Legal, Firm, Mistake, Signature, Blue-pencil,Counsel.

1.00 Introduction

As humans we all know that unlike a machine, which can repeat exactly the same task in the same way over and over, we are prone to mistakes or errors. We perform poorly if stressed, under pressure or through lack of concentration. As such we are fallible due to our physical, biological, mental and emotional characteristics. Thus, we are susceptible to errors/mistakes.[463]

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Human mistake refers to something having been done that was "not intended by the actor; not desired by a set of rules or an external observer; it is a deviation from intention, expectation or desirability.[464] Legal practitioners are human beings and as such, from to time, mistakes may be made either by way of oversight or omission or inadvertence or even negligence. The foregoing point was well captured by the Supreme Court of Nigeria in *Ibodo & Ors. v. Enarofia & Ors*[465]wherein the apex Court noted that '…legal practitioners as human beings are susceptible to human errors in the performance of their duties. They are not like computers working perpetually without fail…'.Now, in all appropriate cases where a mistake is made by a legal practitioner, will it not be reasonable to expect that there should be room for cure or regularization especially in the pursuit of substantial justice and so that the mistake or even the sin of Counsel should not be heavily visited on the litigant[s]?

It is in view of the foregoing backdrop that this paper interrogates and/or appraises the extant position of the law applicable in a situation where a legal practitioner makes a mistake vis-à-vis the endorsement or signing of a legal document or process especially where the legal process is an originating process.

2.00 The Essence of Signature or Authentication on Legal Processes or Documents

The law is settled that only the litigants personally or their duly employed legal practitioners or counsel can sign or endorse legal or court processes to be deployed in litigations. A document not signed or irregularly signed or endorsed is of no use or utility to the person for whom it is prepared. Such a document is worthless and not worth the paper on which it is prepared or written[466]. It is of no evidential moment and is entirely valueless in the eye of the law.

In *Aja v. Aja and Others*[467], the Court held that:

> A painstaking look at Exhibit D show that Exhibit D – a building plan in respect of the duplex which the appellant allegedly said

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[463]J Wellwood, 'Why do Humans make inadvertent mistakes and how can we stop them? Part 2' (2019) <https://www.linkedin.com/pulse/why-do-humans-make-inadvertent-mistakes-how-can-we-stop-john-wellwood> accessed on 28 June, 2021.

[464] JW Senders and NP Moray, *Human Error: Cause, Prediction, and Reduction* (Mahwah: Lawrence Erlbaum Associates, 1991) p.25.

[465] (1980) NSCC Vol. 12, p. 159 at 201 cited with approval in *Savannah Bank of Nigeria Ltd. v. Starite Industries Overseas Corporation* (2009) LPELR-3020(SC) p. 23, paras. B – E.

[466] See *Awojolu v. Odeyemi* (2013)14 WRN 28 at 97; *Tsalibawa v. Habiba* (1991)2 NWLR (pt. 174) 461.

[467] (2019)38 WRN 140 at 148

> that he built on the land is not neither dated nor signed. The legal implication of this is that it is of no probative use or value.

In the case of *NNPC v. Roven Shipping Ltd and Another*[468], the Supreme Court of Nigeria held that where a motion on notice is signed by an unknown person 'for Seyi Sowemimo SAN', such a process signed by an unknown person is incompetent and incurably bad. In *SLB Construction Ltd v. NNPC*[469] the Court made it very clear that 'once it cannot be said, who signed the process, it is incurably bad". This is so because the law is settled or trite that a signature identifies a document as an act of a particular person and without a signature the document cannot pass as the act of such an unknown and/or unnamed person, it is therefore totally useless.[470].

The essence of a signature on a document is to authenticate it to the effect that it is the mark of a person who prepared it. In Strouds Judicial Dictionary[471] appears the following:

> Speaking generally, a signature is the writing or otherwise affixing a person's name or mark to represent his name by himself or by his authority (R. v. Kent Justice L.R. 6Q.B. 305) with the intention of authenticating a document as being that of, or binding on, the person whose name or mark is so written or affixed.

In *Gbadamosi v. Biala*[472], the Court of Appeal of Nigeria held *inter alia*that:

> an unsigned document is a worthless piece of paper and therefore cannot confer any legal rights or benefits on any party or the party who seeks to rely on it. In such a circumstance, the document is not capable of activating the jurisdiction of the court to adjudicate on the matter. In that respect, the law requires that the identity of the person who purported to sign a document must be clearly and unambiguously disclosed.

3.00 The Extant Legal Position on Firm Endorsed Processes

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[468] (2019) 52 WRN 1 at 20-22
[469] (2011)9 NWLR (Pt. 1252) 317
[470] *Tsalibawa v. Habiba* (*supra*).
[471] F Stroud, *Strouds Judicial Dictionary of Words and Phrases Judicially Interpreted, Vol. 3*(4th edn, London: Sweet and Maxwell, 1890) p. 2547
[472] (2015)10 WRN 112 at 127; *Adighije v. Nwaogu* (2010)12 NWLR (Pt. 1209)419 at 481, para A-G.

In *Ogundele v. Agiri*[473], the Supreme Court held that:

> if learned counsel who appear before this court, persist in this practice of signing any process of this court as '&Co.' without evidence of being duly registered as such, it may be obliged to disregard or discountenance such process including briefs. Such signing in my respectful; but firm view is not an irregularity. It is a fundamental error.

In *Awojulu v. Odeyemi*[474],the Court held that:

> A firm of legal practitioners cannot undertake (to practice law) and where they do so, the notice of appeal becomes fundamentally defective…such notice is incompetent, and is null and void.

In *Anderson v. Laniyonu*[475], where the issues for determination included whether the Writ of Summons signed by Akin Aiyedun & Co. dated the 10th of June1999 were incompetent, the Court of Appeal per Iyizoba JCA (as she then was) lambasted the learned counsel for the Claimants and infact said:

> I find it hard to believe that there is a legal practitioner in Nigeria today who is not conversant with the long line of authorities handed down by the apex court and its attitude to the signing of originating processes by law firms; the knowledge of the full facts of the case of *Okafor v. Nweke* (2007)19 WRN 1; (2007)10 NWLR (pt. 1043)521 as the fons et origo of this entire saga is the beginning of wisdom for legal practitioners in Nigeria; yet it is obvious from the fact that Mr. Olatunji did not even get the name right; that his knowledge in this notorious area of our legal discourse is very limited.[476]

In the case of *S.P.D.C. Nigeria Ltd. v. Sam Royal Hotel (Nig.) Ltd.*[477] the Supreme Court of Nigeria had on the 26th of February, 2016 unanimously struck out 'the notice of appeal signed by N. Nwanodi & Co. as being incurably bad, the said N. Nwanodi & Co. not being a person on the Roll of legal practitioners in Nigeria'. The Supreme Court further held that:

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[473] (2010)9WRN 1 at 31

[474] (2013)14 WRN 28 at 79; *NNB Plc. v. Denclag Ltd.* (2005)4 NWLR (Pt. 916) 549 at 573; *Edet v. Chief of Air Staff* (1994)2 NWLR (Pt. 324)41 at 65-66. *Aderibigbe v. Abidoye* (2009)43 WRN 39; (2009)10 NWLR (Pt. 1150)592.

[475] (2017)42 WRN 111.

[476] (*Supra*) at p. 121

[477] [2016] 8 NWLR (Pt. 1514) 318 at 333; [2016] LPELR-40062(SC) p. 26, paras. B – F.

> It is not over adherence to technicality to annul process improperly filed. Counsel must not overlook the sense in ensuring that the laws guiding the legal practice are properly observed. The time cannot be more auspicious than the present to ensure that the standard of practice in the legal profession is well maintained. The apex court must enforce this.

In*Ekundayo v. Abenugba*[478],the Court of Appeal, Ibadan Division decided that the originating processes having been signed by a law firm rather than legal practitioner whose name is on the roll of barristers and solicitors in the Supreme Court of Nigeria, the proceeding is a nullity'. In this case, the originating process (Writ of Summons) and other accompanying processes were signed by *Chief Olusegun Otayemi & Co*. which was described as not a person entitled to practice as a Barrister and Solicitor since that name as stated is not in the roll of Barristers and solicitors in the Supreme Court of Nigeria.

4.00 Settling the Disquieting Controversy: the Case of *Okafor v. Nweke*

There was no defined position on this issue before the Supreme Court decision in *Okafor & 2Ors. v. Nweke& 5Ors*.[479]This can be gleaned or gathered from a consideration of certain cases prior to 2007. In *Registered Trustees of Apostolic Church Lagos Area v. Rahman Akindele*[480], the notice of appeal bore "J.A. Cole & Co." and was signed as "J.A. Cole for J.A. Cole & Co". An objection was raised on this at the High Court as it was a Magistrates Court matter. The High Court[481], dismissed the appeal as improper for being issued in the name of a firm – J.A. Cole & Co. which was not a legal practitioner under the Legal Practitioners Act, 1962. On further appeal on this objection, it was held that the business name was correctly given as that of the lawyer representing the appellants. It held that even if signing in a business name is not permitted, the signature sufficiently complied with the rules being in the lawyer's name, the addition would not invalidate the process. Brett, Acting CJN stated,

> 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…that was sufficient compliance and we do not accept the submission that the addition of the words "for J.A.Cole & Co". would invalidate

[478](2017) 40 WRN 161.
[479] (2007)10 NWLR (Pt. 1043) 521.
[480] (1967)1 All NLR 118.
[481]*Heritage Bank Ltd. v. Bentworth Fin (Nig.) Ltd.* (2018)19 WRN 54 at 77

> the signature if a signature in a business name was not permitted[482].

In another case: *Auguta Cole v. Olatunji Martins &Another,*[483] the Supreme Court held upholding the decision of Sowemimo J of the Lagos High Court that:

> 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 the notice of appeal and representing the appellant is clearly known, then it is a sufficient compliance with the requirement for a legal practitioner to sign and give his name; if a legal practitioner practicing alone gives the name under which he is registered as a business name as this can only refer and apply to the legal practitioner's name. No possible doubt or confusion can therefore arise in these circumstances.[484]

Reviewing the above judicial authority, a learned commentator asserted that the apex court "adopted a proper attitude in interpreting the meaning of the provision requiring the legal practitioner to sign a legal document by their recourse to the purpose of the provision being interpreted"[485]. Another writer, Oamen, saw things differently. To him;

> 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.[486]

We shall return to the opinion of this learned commentator later on in the course of this article.

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[482] (1967) 1 All NLR 118 at 120.
[483] (1968) All NLR 161.
[484]P. 165
[485] CN Uwaezuoke, 'The Validity of a Legal Document Signed without the Name of a Legal Practitioner: A Review of the case of Okafor& 2 Others v. Nweke& 5 Others', *Anambra State University Law Journal Vol. 1*, (2009) 203 at 210.
[486] PE Oamen, 'Judicial Attitude towards Entitlement to Practise Law in Nigeria vis-à-vis the Competence of Court Processes signed by Law Firms', *Journal of Private and Property Law, Faulty of Law, University of Benin, vol. 4* (2015) 42 at 54.

The decision in *Okafor & Anor. v. Nweke & 5 Ors.*[487]is now not only the law on this issue but is a locus classicus. The facts are that on 6th March, 2005, following Applicant's motion on notice for extension of time within which to cross-appeal, G.R.I. Egonu SAN, contended that "J.H.C. Okolo, SAN & Co" is not a legal practitioner within the meaning of the Legal Practitioners Act, 1990 (now 2004)[488] such a name could not file or sign a legal process or document under the Rules of the Supreme Court. Applicants in their brief of argument, signed by J.H.C. Okolo, SAN stated that since there appeared a signature on top of "J.H.C. Okolo, SAN & Co", it was necessary for the apex court to take further evidence to establish the identity of the person who signed or endorsed the document. In a unanimous judgment or decision, the apex court with Onnoghen JSC presiding held *inter alia* that:

> …since both counsel agree that J.H.C. Okolo SAN & Co is not a legal practitioner recognized by law, it follows that the said "J.H.C. Okolo SAN & Co" cannot legally sign and/or file any process in the courts and as such the motion on notice filed on 19th December 2005…and the Applicant's Brief of Argument in support of the said motion all signed and issued by the firm known as and called J.H.C. Okolo, SAN & Co. are incompetent in law particularly as the said firm of J.H.C. Okolo, SAN & Co., is not a registered legal practitioner.

The Supreme Court further held, adducing another reason for its stance above, that:

> …we therefore owe the legal profession the duty to maintain the very high standards required in the practice of the profession in this country…The effect of the ruling is not to shut out the Applicants but to put the house of the legal profession in order by sending the necessary and right message to members that the urge to do substantial justice does not include illegality or encouragement of the attitude of "anything goes.

In his concurring judgment, Chukwuma-Eneh, JSC stated *inter alia* that:

> it is completely out of the question for Applicants' counsel to canvass of the necessity firstly of calling evidence to unveil whose signature has been so appended on top of J.H.C. Okolo SAN & Co, before the processes are otherwise dumped as the Rules of court have merely required no more than that a legal

[487] (2007)10 NWLR (Pt. 1043)521; (2007)19 WRN 1; (2007)3 SCNJ 185.
[488] LFN, 1990 Cap. 207-Section 2(1) and 24.

> practitioner do sign and so authenticate processes (as the aforesaid ones) as emanating from him on behalf of his client[489]

Since 2007, several cases both of at High Courts, Court of Appeal and even the Supreme Court itself have followed *Okafor v. Nweke*, almost blindingly without even an attempt at rationalization or even distinction. For example, in *Alozie v. David*[490], the firm that offended the law was "G-E Akponamase & Co". The Court in this case held *inter alia* that:

> A valid statement of claim is a valid requirement for a suit to be competent. And for a statement of claim to be competent, it must be signed and the name of the signatory written at the foot thereto. Any person signing a process on behalf of a principal partner in chambers must state his name and designation to show that he is a legal practitioner…The said statement of claim is incurably defective because the person who signed the process could not be ascertained; the effect of this is that the said statement of claim is incapable of initiating a competent suit.[491]

Infact, the Court of Appeal has stated the law pungently when it held that: "In law, a document required to be signed by a legal practitioner if signed by a firm of legal practitioners is grossly incompetent.[492]

In a similar vein, in *SLB Consrtium Limited v. NNPC*[493], the Supreme Court of Nigeria held that:

> A firm of solicitors is not competent to sign a process… Adewale Adesokan& Co.," which signed the originating summons is not a legal practitioner known to the applicable Legal Practitioners Act…The signature of Adewale Adesokan & Co. on the originating summons of the appellant robbed the process of competence abinitio as the said firm is not a registered legal practitioner enrolled to practice law as a barrister and solicitor in the Supreme Court.

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[489] (Supra) at pp. 535-536.
[490] (2015)23 WRN 110.
[491] (*Supra*) at pp. 130-131; *Alozie v. David (Supra)* at p.133 per Georgewill JCA. See also *Braithwaite v. Skye Bank Plc.* (2013)15 WRN 27, *Alawiye v. Ogunsanya* (2013)28 WRN 29; (2013)6 NWLR (Pt. 1348)570.
[492] See also *Gbadamosi v. Biala* (2015)10 WRN 112 at 127 -128.
[493] (2011)9 NWLR (Pt. 1252) 317 at 323; (2011)4 SCNJ 211.

In *FBN Plc. &Ors. v.Alhaji Salimanu Maiwda&Ors*,[494] Mahmud Mohammed JSC emphasized the law when he stated as follows:

> The act or duty required to be performed by the provisions of the LPA is that of signing relevant court process, which can only be performed by a human being who is a legal practitioner duly registered under the LPA, and not by a non-juristic person registered under Section 573(1) of the CAMA as a firm of legal practitioners to practice law under the LPA, which does possess the blessing of having human hands to hold a pen or any writing instrument to sign a court process.

Recently in *Ekundayo v. Aberugba*[495], the Court of Appeal of Nigeria held *inter alia* that:

> The main issue on the appeal is about the effect of a writ of summons or other originating process begun by a firm of legal practitioners not registered in the roll of legal practitioners, the Writ which was issued by Chief Oluesgun Otayemi & Co., is not a person entitled to practice as a barrister and solicitor… The entire proceedings on the Writ is a nullity as the lower court has no jurisdiction to entertain it.[496]

Further in *Guaranty Trust Bank Plc. v. Innoson (Nig) Ltd.*[497], the Supreme Court of Nigeria through Eko JSC stated and we beg to quote in *extenso* that:

> It is the seal or signature of the author on a document that authenticates the document. A legal document or process of court must be settled or signed by either the legal practitioner of the choice of the litigant or the litigant himself…A court process that purports to be settled by a legal practitioner must, as a requirement of statute, have not only the signature of the legal practitioner but also his name clearly shown and indicating that the signature is his. The decision of this court in SLB Construction Ltd v. NNPC (2011)9 NWLR (Pt. 1242)317 and many others…clearly demonstrate that for the signature thereon

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[494] (2013)5 NWLR (Pt. 1348)444 at 499; *Ogundele v. Agiri* (2010)9 WRN 1 at 31.
[495](*supra*).
[496] In this case Iyizoba JCA who concurred with Okoronkwo JCA with the leading judgment said that "… the originating process having been signed by a law firm rather than a legal practitioner whose name is on the roll of barristers and solicitors in the Supreme Court of Nigeria, the proceeding is a nullity"- at p. 175.
[497] (2017)42 WRN 1 at 15. *See Okeyale& Others v. Oguntowo* (2019) 9 WRN 151 at 165. *Okpe v. Fan Milk Plc. &Another* (2016) LPELR 42562 (S.C).

> appended to be valid, it must be traceable to a legal practitioner. The process must have the signature or mark of the legal practitioner either against his name or over and above his name.

In short, '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 on the roll'[498]. It is clear from the provisions of the law that a law firm is not a legal practitioner and therefore cannot practice as such by filing processes in the Nigerian Courts. Only legal practitioners as human beings called to the Bar can practice by signing documents[499].

5.00 Mistakes and the Authority of Legal Practitioners to Authenticate Legal Processes in Nigeria

The law is now settled that:

> Court processes…have to be signed and issued in the course of the proceedings of the suit by a legal practitioner who must be a person enrolled to practice law in this country as a legal practitioner as cognizable under the Legal Practitioners Act.[500]

The authority of Legal Practitioners or solicitors to sign or authenticate legal processes is anchored on two key provisions of the Legal Practitioners Act 2004. The two key provisions are contained under *sections 2 and 24 of the said Legal Practitioners Act* provide as follows:

> 2. 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"
>
> 24 …Legal Practitioner" means a person entitled in accordance with the provisions of this Act to practice as a barrister or asa barrister and solicitor, either generally or for the purpose of any particular office or proceedings.

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[498]Bage JSC in *Guaranty Trust Bank plc. v. Innoson (Nig.) Ltd.* (*Supra*) at p. 26.

[499]*David v. Alozie*(2015)23 WRN 110 at 128 per Bada JCA. In this case, the Statement of Claim under consideration in the appeal or matter was signed by "G-E Akpanamasi& Co' which are the names of partners and law partners are not legal practitioners recognized by the Legal Practitioners Act. The Statement of Claim was held incurably defective and not capable of initiating a competent suit.

[500]*Braithwaite v. Skye Bank Plc.* (2013) 15 WRN 27 at 41 (SC)

Construing the above provisions of the Legal Practitioners Act, the Supreme Court of Nigeria per Bage JSC in *Guaranty Trust Bank Plc. v. Innoson (Nig) Ltd.*[501] asserted that the purpose of the aforesaid key provisions is:

> …to ensure responsibility and accountability on the part of a legal practitioner who signs a court process, it is to ensure that fake lawyers do not invade the profession.…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.[502]

In *Adeosun v. Laniyonu*[503], the Court pointed out that:

> The effect of the above provisions which are not rules of court but statutory is that only legal practitioners whose names are enrolled in the Register of legal practitioners in the Supreme Court of Nigeria are entitled to practice law in Nigeria; all court processes must therefore be signed by such legal practitioners whose names are so registered. Failure to comply means that a condition precedent for the court to assume jurisdiction has not been complied with and thus the court is deprived of jurisdiction to hear the suit.

In *David v. Alozie*[504], the Writ of Summons dated 22nd July 2010 was signed by one *G.E. Akpanamasi, Esq.* of *G.E. Akpanamasi & Co.* However, when the statement of claim was filed on 17th August, it had or contained an unknown signature on top of *G.E. Akpanamasi & Co*. The name of *G.E. Akpanamasi* was not on the document. The Court of Appeal, in allowing the appeal, held that a law firm is not a legal practitioner and therefore cannot practice as such by filing processes in the Nigerian Courts. Only legal practitioners, human beings called to the Nigerian Bar can practice by signing documents. Again, in Ministry of *W& T., AdamawaState v. Yakubu*[505] the Supreme Court aptly observed as follows:

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[501] (2017)42 WRN 1 at 25 -26.

[502] *FBN Plc. v. Maiwada& Others* (2013) 32 WRN 31; *Alawiye v. Ogunsanya* (2012) S.C. (Pt. II) 1. *Ibrahim v. Barde* (1996)9 NWLR (Pt. 474)513, *U.A. Ventures v. FCMB* (1998)4 NWLR (Pt. 547) 546.

[503] (2017) 42 WRN 111 at 122.

[504] (2015) 23 WRN 110. See *FBN Plc. v. Maiwada& others* (2013)5 NWLT (Pt. 1348) 444 at 499. per Mahmud Mohammed JSC. *SLB Consortium Ltd*
. *v. NNPC* (2011)9 NWLR (pt. 1252) 317 at 323. *Nwani v. Bakari*(2007)1 NWLR (Pt. 1015) 333. *Ogundele v. Agiri* (2010)9 WRN 1 at 30-31 per Ogbuagu JSC.

[505] (2013) 24 WRN 1; (2013)6 NWLR (Pt. 1351)481; *NNPC v. Roven Shopping Ltd. &Another* (2019)52 WRN 1 at 20-22.

> The fatal effect of the signing of an originating process by a law firm is that the entire suit was incompetent ab initio. It was dead at the point of filing. This highlights the painful realities that confront a litigant when Counsel fails to sign processes as stipulated by law… (It) is fundamentally defective and incompetent. It is inchoate and legally non-existent.

It is probably imperative to note that the scope and amplitude of a Counsel's authority and powers over his client's case or matter remains sacrosanct. This emboldens us in our position in this paper that the inadvertence or mistake of Counsel in signing a legal process in his firm's name should be treated as a forgivable and curable irregularity instead of having the present vitiating effect on the case or matter in Court. The law is settled that:

> The Client's consent is not needed for a matter which is within ordinarily the authority of counsel, thus, if in court, in the absence of the client, a compromise or settlement is entered into by counsel whose authority has not been expressly limited, the client is bound[506].

Despite the above ratio, which we must put in context, we are of the firm view that such a counsel having assumed full control of his client's matter can make an honest mistake or be susceptible to an oversight in the franking of the originating legal process. In such a case, applying the extant law, may work serious hardship and/or injustice on the litigant who may not likely follow up the cause of action given abundant factors in Nigeria. Such a counsel's mistake must not be visited on his client. Striking out the case of such a litigant may be tantamount to visiting the sins of counsel on that litigant which our legal system frowns at[507].In *Fajebe & Ors. v. Opanuga & Ors.*[508], the Supreme Court held that:

> …the fault of counsel be it blunder, inadvertence or mistake, cannot be an obstacle to a hapless litigant in such a way as to deny him the right to ventilate or defend his case. The reason is

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[506]*State v. Okiye* (2019)31 WRN 135 at 144 (SC); *Afegbai v. A.G., Edo State*(2001)14 NWLR (Pt. 733) 425 at 456, para. 1181It is also true that once a counsel is instructed and announces his appearance, the presumption of his authority is raised and the law proceeds to allow him assume full control of his client's case – *Adekanye v. FRN* (2005)15 NWLR (Pt. 949)433, *"FRN v. Adewunmi* (2007)10 NWLR (Pt. 1042) 399.

[507] See *Okumagba v. Esisi* (2005)4 NWLR (Pt. 916) 501, *Ndika v. Chiegina*(2003)1 NWLR (pt. 802) 483, *Sani v. The State* (2018)12 WRN 57 at 89 (SC).

[508] (2019)10 WRN 21 at 34 -35 per Peter –Odili (JSC). See *Okafor v. Bendel Newspapers Corporation* (1991)7 NWLR (Pt. 206) 651 at 666. *Ekpenyoung&Ors. v. Nyong&Ors*. (2003) 51 WRN 44.

> because the court has moved away from the realm of technicalities but stands for substantial justice which will enable the court allow the trashing out of all parts of the case and decision either way made.

Again in *Fidelity Bank Plc. v. Monye*[509], the Supreme Court held *inter alia* that:

> it is trite law and the courts have not made it a practice to punish the litigant for the mistake of the court or their counsel. Amadi v. Acho (2005)12 NWLR (Pt. 939) 386. The Court will not allow the provisions of an enactment to be read in such a way as to deny access to court by a citizen pursuant to Section 6(6) and 38(1) of the 1999 Constitution.

6.00 The Innocuous Irregularity or Misnomer: Conferment of Validity

The issue of the responsibility of a Legal Practitioner to the profession and what mistakes made in the course of his professional dealings can result in a case being struck out or dismissed, comes in here. The position of the law will be stated before our reform projections will be laid out. For the avoidance of doubt, Rule 1 of the Rules of Professional Conduct 2007 states that the general responsibility of a lawyer is to uphold and observe the rule of law, promotes and foster the course of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner[510].

In *Ogndele v. Agiri*[511], the Supreme Court of Nigeria per Ogbuagu JSC held *inter alia* that:

> if learned counsel who appear before this court, persist in this practice of signing any process of this court as & Co without evidence of being duly registered as such it may be obliged to disregard or discountenance, such a process including briefs. Such signing in my respectful but firm view, is not an

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[509] (2015)8 WRN 1 at 37(SC). We are not unmindful of the current trend or attitude of the apex Court to the effect that '…Mistake, inadvertence and sickness of counsel can always be distinguished from ineptitude, complete ignorance or malfeasance exhibited by counsel, thus the rule that a litigant should not be punished for the mistake or inadvertence of counsel does not extend to a situation where his counsel has exhibited tardiness and incompetence" – *GTB Plc. v Est. Master Construction Ltd*. (2018)221 WRN 37 at 53 per Augie JSC. We maintain however that counsel as human beings or mortals, can make honest mistakes, which must not be allowed to scuttle the proceedings in the matters they are procured to handle for their clients. Contrast *Malari&Ors. v. Leigh* (2019)8 WRN 63 (SC.)

[510] See *Ojigho v. Nigerian Bar Association (NBA) &Anor* (2019)6 WRN 70 at 80 per Bage JSC

[511] (2010)9 WRN 1 at 31 PerOgbuagu JSC.

> irregularity as held by the Court of Appeal, per Allagoa JCA in the case of Unity Bank Plc. v. Oluwafemi (2007) All FWLR (pt. 382) 1923 relying on the case or decision in Cole v. Martins (1968) All NLR 161; (1968) NMLR 217 (Lardner's case). It is a fundamental error.

We are concerned with the phrase "without any evidence of being registered as such" in the above dictum. Does this imply that where any evidence exists that the firm is registered that that firm can sign a process in its registered name? The law appear settled that once it is proven that a particular law firm is a registered partnership, and then it must sign processes as such, in its name as registered[512].

In this work, permit us to wholeheartedly agree with the Editor's note to the article written by Oamen[513] to the effect that: 'the law is simple: a Court has authority to consider the excess words as innocuous misnomer and uphold the endorsed document as valid'.[514]

What is being stated here as the correct position of the law is that the addition of *"& Co"*, *"& Associates"*, *"& Partners" etc* to the name of a Legal Practitioner on Court processes such a lawyer endorses becomes a mere irregularity or misnomer which most Rules of Court in Nigeria presently condone. It should not rob the process of the validity it deserves. The court should still make use of the document/process while downplaying the attached words. For example – *Order 5 Rule 1 of the Abia State High Court (Civil Procedure) Rules 2014* provides that:

> Where in beginning or purporting to begin any proceedings or at any stage in the course of or in connection with any proceedings, there has by reason of anything done or left undone, been a failure to comply with the requirements of these Rules, whether in respect of time, place, manner, form or content or in any other respect, the failure shall be treated as an irregularity and if so treated, will not nullify the proceedings, any step taken in the proceedings or any document, judgment or order therein.

In the same vein, *Order 5 Rule 5*of the above stated Rules stipulates that:

> No proceedings in the Court, and no process, order, ruling, judgment issued or made by the Court shall thereafter be declared void solely by reason of any defect in procedure or writ or form, as prescribed by these Rules, rather the Court shall

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[512] EChianu, *Company Law* (Lagos:Lawlords, 2012) Chapters 3 and 17.
[513]PE Oamen, *op. cit.,* pp. 42-63.
[514]*Ibid.,* p. 63

> decide all issues according to substantial justice without undue regard to technicalities.

It is our considered view that our courts faced with endorsements such as the ones above (the subject matter of this paper) should excise the additions and hold such documents as valid documents. Counsel may have mistakenly included *"& Co."* or *"& Associates"* or *"& Partners"*. Substantial justice clearly demands that such mistakes of counsel, his clerk or even the Court Registry should not be harshly visited on the litigant. This principle of law was upheld by the Supreme Court of Nigeria in the case of *Fidelity Bank Plc. v. Monye*[515] where it was held inter alia:

> It is trite law and the courts have not made it a practice to punish the litigant for the mistake of the Court or their counsel. Amadi v. Acho (2005)12 NWLR (Pt. 939) 386: The Courts will not allow the provisions of an enactment to be read in such a way as to deny access to Court by a citizen pursuant to Section 6(6) and 36(1) of the 1999 Constitution.[516]

It is our considered opinion that allowing the rule in *Okafor v. Nweke* to stand unbendingly has continued and will continue to occasion grave injustices in the due administration of justice in Nigeria. *Section 2 and 24 of the Legal Practitioners Act*, are clearly enactments of the National Assembly. To persevere in the extant legal position on this issue of firm endorsed legal processes being seen or declared fundamentally invalid by our courts, rubbishes the statement of Adekeye JSC to the effect that 'the Court will not allow the provisions of an enactment to be read in such a way as to deny access to court by a citizen'[517]. We are not unmindful of the fact that in a clear case of dereliction of duty or insubordination, to the unambiguous and mandatory provisions of the statute neither the litigant nor his counsel… can plead that the error of counsel forced him to disobey or flout the law; that has indisputable sanctions for disobedience or dereliction.

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[515] (2015)8 WRN 1 at 37 per Adekeye JSC. In *Oladiti v. Ode* (2010) 33 WRN 180 at 184 -186, the Court of Appeal held that "the fault of the Court's Registry should not be visited on the Litigant". See also *Engineering Enterprise of Niger Contractor of Nigeria v. A.G. of Kaduna State* (1987) 22 NWLR (Pt. 57) 381 at 475 Per Bello CJN.

[516] Or. 2 Rule 2 of the Fundamental Human Rights (Enforcement Procedure) Rules, 1979 was the Rule in consideration in that case.

[517] See *Willie v. Charlie* (2012) 11 WRN 112 at 126 per Eko JCA (as he then was).

In *Okeyale & Ors. v. Oguntowo*[518], the Court of Appeal held that the effect of a Court process signed in contravention of the statutory provisions of *sections 2 and 24 of the Legal Practitioners Act*:

> affects the competence of the process, and therefore the jurisdiction of the courts to entertain an action initiated by such invalid process. In other words, any originating process filed in breach of a statutory provision is null and void and cannot be relied upon in judicial proceedings. The defect goes to the competence and therefore jurisdiction of the court to adjudicate on the matter brought before it on that invalid process.

7.00 Reform Projections

It is beyond doubt that many viable and good causes or matters that deserve judicial redress or remedy have been negatively affected by the rule in *Okafor v. Nweke* (since 2007). This is rather unfortunate. The monstrosity or inherent injustice in the extant rule without exceptions can be seen in the words of Okoronkwo JCA to the effect that:

> …such defect or omission rendered the entire proceedings a nullity ab initio, the defect being irreparable. The reason in my view why the entire proceedings become a nullity is that it was not begun at all. If it was not begun, there is nothing to cure or remedy as the learned counsel for the 1st -4th Respondents tearfully pleaded. Being a nullity it does not exist; as it does not exist, every superstructure founded or erected thereupon rests on nothing and therefore is vitiated, the superstructure include the proceedings and the judgment of the lower court the subject of this appeal. They all rest on nothing and are therefore vitiated by being set aside.[519]

In *S.P.D.C. Nigeria Ltd. v. Sam Royal Hotel (Nig.) Ltd*[520],the Supreme Court of Nigeria held or rationalized its insistence on the extant rule on this topic thus:

> A Court process signed in the name of a law firm without indicating the name of the particular legal practitioner who issued and signed the process is incompetent and is liable to be struck out. The effect of such is not to shut out the litigant but to put the house of the legal profession in order by sending the necessary and the right message to members that the urge to do

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[518] (2019)9 WRN 151 at 166.
[519] See *Ekundayo v. Aberuagba* (2017)40 WRN 161 at 173-174 Per Okoronkwo JCA.
[520] (2016)8 NWLR (Pt. 1514)318 at 333 -334 (SC)

> substantial justice does not include illegality or encouragement of the attitude of 'anything goes'. Thus, no injustice is done to the litigant since the result of the irregularity is an order striking out the suit or process, which leaves the real legal practitioner with an opportunity to come back to court to lift the veil and file a proper process as the legal practitioner whose name is on the roll of the Supreme Court. The Court should consider such an application on its merits. Such will enhance good practice culture among legal practitioners.[521]

We are firmly of the view that skipping to sign a legal process honestly on the part of counsel, should be treated as an innocuous irregularity which should not vitiate the affected or concerned proceedings. Moreso, since the rationale for the extant or prevailing rule is the sanitization of the legal profession. In our considered opinion, it should have the same effect as the non-affixation of stamp and seal on a legal process by a counsel to wit:

> Accordingly where a document is signed and filed in Court without the NBA stamp/seal, maybe inadvertently, such legal practitioner should be afforded the opportunity to prove his status as such legal practitioner wherever objection is raised about the authenticity of such document…It therefore remains settled that the process can be saved by a subsequent signing and filing of same affixing of the appropriate stamp and seal.[522]

The position is so relaxed presently that even attaching or providing evidence or receipt of payment of the requisite practice fee makes the Courts deem the process as properly signed and filed. It cures the defect complained of and same is treated

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[521] See also *F.B.N. Plc. v. Maiwada* (2015)5 NWLR (Pt. 1348)444. The extant rule in Nigeria predicated on S.2 (1) and 24 of the LPA, LFN, 2004 "…is to ensure that only a Legal Practitioner whose name is on the roll of the Supreme 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 that fake lawyers do no invade the profession" – *GTB Plc. v. Innoson (Nig.) Ltd.* (2017)48 WRN 1 at 25 -26 Per Bage JSC.

[522]See *Ajagungbade v. Gov. of Oyo State &Ors.* (2019)6 WRN 54 at 80. The Court of Appeal stated that the rule (Rule 10(1) RPC 2007) was '…meant to protect the legal profession from infiltration by quacks and impostors such that, a person signing or filing any document (including court processes) as a legal practitioner, has the onus of providing evidence to show that he is qualified to practice law in Nigeria; and that his name is on the roll of legal practitioners kept in the Supreme Court Registry'*; Bello SarkinYaki&Anor v. Bagudu&Ors.* (2017)24 WRN 1.; (2015);*Garba v. The State* (2017)38 WRN 158 (2017) LPELR 43348 (CA),*Abaa v. Yusuf &Ors.* (2015)LPELR – 42414(CA)*, Tarzoor v. Ioraer&Ors.* (2016)3 WRN 158; (2015) LPELR -25975 (CA)*. Today cars Ltd. v. Lasaco Assurance Plc. &Anor*(2016) LPELR – 41260 (CA)*. Sani v. The State* (2018)12 WRN 57 at 89(SC).

as a mere irregularity which should not avoid or vitiate the processes filed. Our courts should merely give Counsel an opportunity to cross-out or rule off the "& Co" put in the name of the Counsel and treat the default as a mere irregularity cured, once it ascertains that counsel involved is really a qualified legal practitioner, not a quack or an impostor. If the document so signed or filed is not null or void or incompetent like the case of a court process signed in the name of a Partnership or Association (even) of lawyers (which is clearly incompetent) due to our extant laws, we feel the incidence of both should be the same. Counsel should be given an opportunity to make the necessary corrections, and sign on it for the proceedings to continue unabatedly.

Alternatively, a variant of the Blue Pencil rule[523] should be made use of in correcting or severing the offending suffix from the name of counsel to ensure the competence of the process. Let us be reminded that the Blue Pencil Rule at common law, with respect to contracts, and where a court finds that a portion of such a contract is void and/or unenforceable and other portions of the contract are valid, regular and enforceable, the legally enforceable portions of the contract are allowed to stand despite the nullification of the void and unenforceable portions. Our Courts should adapt this Rule in saving processes filed by firms instead of individual legal practitioners in Nigeria. Justifying our approach, the Supreme Court had in *NEPA v. R.O. Alli & Anor.*[524]held that:

> The so-called Blue Pencil Rule prescribes that if a point is successfully attacked, the court should as it were, run a blue pencil across it and see whether the other grounds which have not been successfully attacked can sustain the decision appealed from. If they can, the Court will still dismiss the appeal.

The above reasoning was on how an appeal can be allowed or dismissed which is definitely not referring to a contractual relationship or instrument. The blue pencil rule otherwise known as the severability test or rule is a judicial standard for deciding whether to invalidate the whole contract or only the offending words therein. Under this principle, only the offending words are generally liable to be invalidated where it is possible to delete them simply by running a blue pencil through them as opposed to changing, adding or rearranging words[525].

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[523]*Aondo v. Benue Links (Nig.) Ltd* (2019 WRN 87 at 133. *Ezekpelechi v. Ugoji* (1997) SCNJ (2) 196 at 258.
[524] (1992) NWLR (pt. 259) 279
[525]*Idika v. Uzochukwu* (2008)9 NWLR (Pt. 1091)34 at 64 Paras C-D

8.00 Conclusion and Recommendation(s)

There is really no need for our courts to continue to strike out legal processes signed or endorsed in the name of a firm or treat same as an incompetent process capable of extinguishing or removing the jurisdiction of the courts. This position of the law has occasioned more injustice than justice on litigants. There is an urgent need for a rethink of our extant law and judicial precedents on this issue. We most respectfully invite the Supreme Court of Nigeria to seize the next opportunity that comes its way to override the legal position that started in 2007 and enthrone a more liberal and progressive approach in ruling on legal processes signed or endorsed by a legal firm to such extent that there will be room for regularization of legal documents and/or processes so improperly signed or endorsed.