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IN THE HIGH COURT OF ENUGU STATE OF NIGERIA
IN THE ENUGU JUDICIAL DIVISION
HOLDEN AT ENUGU
BEFORE HIS LORDSHIP HON JUSTICE H.O. EYA
ON THURSDAY THE 15TH DAY OF FEBRUARY, 2018

SUIT NO: E/1C/2017

BETWEEN

FEDERAL REPUBLIC OF NIGERIA } COMPLAINANT

AND

VINCENT A. ANEKE } DEFENDANT

RULING

1. ON THE NOTICE OF PRELIMINARY OBJECTION

The defendant by the Notice of preliminary objection filed on 1 March 2017, seeks from the court an order to quash or strike out the Information for lack of competence and/or regularity. The prayer so sought is predicated on 3 grounds as follows:

1. That the Counsel, who signed and filed the Information in this case did not affix the stamp and seal bearing his names, namely. "Elijah Akaakohol" approved by the Nigerian Bar Association in accordance with Rule 10 of Rules of Professional Conduct for Legal Practitioners, 2007.
2. That the names of Counsel who signed and filed the Information, namely: "Elijah Akaakohol" is not the same with the names on the stamp and seal affixed on the Information as "Akaakohol Iorhemba Elijah", which Counsel has no liberty to rearrange his names, as registered in a professional register as the Roll of Legal Practitioners before the Supreme Court of

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CHIEF REGISTRAR
Date 16/2/018

Nigeria in line with the Supreme Court decision in ESENOWO vs. UKONG (1999) 6 NWLR (Pt. 608) 611.

3. The Information preferred against the defendant/objector is said to be preferred at the instance of the Attorney General of the Federation when in fact the person who signed same, one Elijah Akaakohol Esq, is neither the Attorney General of the Federation nor officer of his department through whom the Attorney-General of the Federation can legitimately exercise his powers under S. 174(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

In the written address of Chief G. Tagbo Ike, of Counsel for the defendant/objector, one issue was isolated to wit:

> *"Whether the notice of preliminary objection is sustainable."*

Arguing the issue, Counsel, referred to and reproduced the provisions of Rule 10, of Rules of Professional Conduct for Legal Practitioners 2007, and contended that the failure of Elijah Akaakohol who signed the Information in this case to affix his stamp and seal pursuant to the said provisions, inflicted a debilitating vice on the Information. Counsel cited the case of YAKI vs. BAGUDU (2015) 10 NWLR (Pt. 1491) 288, and submitted that the use of stamp and seal is intended to stop influx of fake lawyers into the (legal) profession, and for that reason, it is not enough for a lawyer to affix stamp and seal on a process, stamp and seal must be referable to the lawyer who signed the process. He argued further that a lawyer does not possess the luxury of power to re-arrange his name, as against the name that appears in the professional Register. In this regard, Counsel, noted that while the name of the lawyer that signed the Information is 'Elijah Akaakohol', the names on the stamp and seal are 'Akaakohol Iorhemba Elijah', both, according to Counsel not being the same. He referred to the case of ESENOWO vs. UKONG (1999) 6 NWLR (Pt. 608) 611.

He concluded on this arm of the issue, by urging the court to hold that there is no stamp and seal of a legal practitioner on the Information.

The second arm of the issue centred on what Chief Ike contended was the expression on the Information, that it was laid or preferred at the instance of the Attorney General of the federation, when the person who signed same is neither the Attorney General of the Federation nor officer in his department, which by S. 174 (2) of the Constitution of the Federal Republic of Nigeria 1999,

as amended reserves the power to initiate and undertake criminal proceedings in courts. Counsel called in aid the cases of BAGUDU vs. FRN (2004) 1 NWLR (Pt. 853) 182; ATTATA vs. C.O.P (2003) 17 NWLR (Pt. 849) 88.

Chief Ike stressed that the person who signed the Information stated his position as the Principal Superintendent, Legal, of ICPC, a position different from Attorney General of the Federation or officer in his department. He cited FRN vs. ADEWUNMI (2007) 10 NWLR (Pt. 1042) 399.

He therefore submitted that in the face of that, the Information so signed is incompetent. And urged the court to strike it out.

On 18 December 2017, when argument was taken on the Notice of objection as aforesaid, D.N. Okoro, of Counsel, for the prosecution sought leave of the court to reply on points of law orally. Leave was so granted.

Mr Okoro submitted that he conceded to the submission that the name in the seal affixed on the Information is not the name on Information as the person who signed it; hence his Motion on Notice filed on 12 October 2017, praying to amend the Information.

On what he stated to be the argument of Counsel for the defendant that an officer of the ICPC cannot sign an Information, Mr Okoro referred to Ss. 104, 106 of the Administration of Criminal Justice Act 2015. He equally referred to Ss. 6(a), 26(2), 61(1) of the ICPC Act 2000; and capped up his argument with a reference to the case of A.G. ONDO STATE vs. A.G. FEDERATION (2013) ICPC Law Report, 254 @ pp. 482 – 483.

Concluding, Counsel submitted that ICPC officers have the right to prosecute, and file Information and sign same.

Let me take the second arm of the objection raised by the defence Counsel, first. And I think there is need for clarification. The prosecution Counsel appeared to me to have misconceived the pith of the objection with respect to the indication by Counsel who signed the Information that the Information is brought or preferred "for Hon Attorney General of the Federation." I did not understand the objection to be that officers of ICPC cannot prefer Information, and sign same. That was not the tenor and purport of the argument of Chief Ike for the defendant.

With that clarification, May I take liberty to delve into the tirade directed at the Information on this arm. It is Chief Ike's argument that the prosecution/legal practitioner who signed the Information comprising the charge indicated that it was brought on behalf of or for the Hon Attorney General of the Federation. Argument advanced was that the legal practitioner being a staff/officer of the ICPC is not an officer in the Department of the Attorney General of the Federation and cannot be a delegate of the Attorney General of the Federation.

The law as rightly stated by the defence Counsel is that the Constitution of the Federal Republic of Nigeria 1999, as amended vested the power to initiate, prosecute, discontinue or withdraw criminal proceedings with respect to Federal offences on the Attorney General of the Federation, vide S. 174 of the Constitution. The Attorney General may exercise the power through officers of his department. It demands no splitting of hairs, to state that ICPC or its officers do not come within the authority stated in S. 174 of the Constitution.

Be that as it may, should there be an impostor to the office or person of Attorney General of the Federation in matters of criminal proceedings, pray, who should challenge it? Narrowing down to the instant case, who should challenge the indication of the Attorney General of the Federation or his authorization to sue or prefer the charge against the defendant? Is it the defendant or the Attorney General of the Federation himself?

In my view, it is the Hon Attorney General of the Federation who can raise alarm or complain that "his name or office is being, or has been, used in vain", or that his authority is being eroded by the ICPC or its Officers. Certainly, the defendant does not possess the right or power to contend for the Attorney General in matters of initiation, continuance, discontinuance or withdrawal of criminal proceedings. As it is said, it is he who has that gives; conversely, no one can give what one does not have.

I do not think that the defendant can challenge the charge merely on the ground that ICPC is not a department of the Attorney General of the Federation or Federal Ministry of Justice. What should concern the defendant is the substance of the charge etc. After all, there is presumption of regularity to official acts; See S. 168 Evidence Act 2011; the case of EZECHUKWU vs. ONWUKA (2016) ALL FWLR (Pt.824) 148 @ p.174. And it behoves the defence to rebut it.

I find no merit in this arm of the objection, same is hereby overruled.

Having dealt with the second arm of the objection; let me now back-pedal to the first arm of the objection. The defence Counsel has argued that the names on the seal affixed to the Information, are different from the names on the process, nay Information.

With a bird's eye view beamed on the Information filed on 3 January 2017, I observe that below the signature thereon, are these names: 'AKAAKOHOL IORHEMBA ELIJAH', but inscribed on the seal affixed to the process are: 'AKAAKOHOL ELIJAH'. There is no "IORHEMBA". The defendant's Counsel argued that prosecution Counsel does not possess the power to re-arrange his name to the extent that the names appearing on a process he signed and filed are different from the way they appear on the register or Roll of legal practitioners.

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ASST. CHIEF REGISTRAR
Sign..... Date.. 16/2/2018

Rules of Professional Conduct (RPC) 2007 as a piece of subsidiary legislation (to the Legal Practitioners Act) has been part of our law, aimed specifically at regulating practice of law by legal practitioners. In Rule 10 (1),(2),(3) thereof are provisions on the requirement of affixing of stamp and seal of legal practitioners acting in that capacity by such legal practitioners on documents prepared, signed and filed in court. The process which is in the 'eye of the storm', ie Information comes within the definitional ambience of Rule 10 (2); and the sanction for non-compliance is consecrated in Rule 10 (3). The law, seemingly has been in the doldrums, lying docile, dormant and prostrate until 2015, when the Supreme Court allowed its jurisprudential faculty to be brought to bear on the said provisions of the RPC 2007, in the case of YAKI vs. BAGUDU (supra). The result was the ground breaking judgment which decided that it is imperative for stamp and seal of a legal practitioner to be affixed on all documents he signs and files, and that the absence of the seal makes the document voidable, to the extent that it may be regularized upon application by the affected legal practitioner, to which the court may accede for his stamp/seal to be affixed subsequently. In other words, the Supreme Court reiterated the provision of Rule 10 (3) as to the effect of failure to affix the seal/stamp, and enunciated that the sanction is that the process filed and signed without seal/stamp of a legal practitioner, would be deemed as not property before the court, per NGWUTA, JSC, who delivered the lead judgment.

In the instant case, there is seal of the legal practitioner who signed the Information; what is missing on the Information is the middle name: 'Iorhemba', but it appears clearly on the seal, in between 'AKAAKOHOL' and 'Elijah'.

I think this argument is overstretching the raison d'etre of the enthronement of the practice or requirement of affixing seal/stamp of legal practitioners on processes they sign and file. The idea that propelled the introduction and or entrenchment of the seal/stamp procedure derives from the necessity to save the legal profession from quackery and infiltration by impostors. It is aimed at ensuring sanity in the profession. In my view, once a Counsel can be identified with a seal he affixes on a process he signed, that suffices for authentication or regularity of the process. I do not think that it is aimed at fettering the choice of a legal practitioner in the way he presents his name on the process. In this case, the defence Counsel has not argued that the person whose names appear on the process and who signed it is not a legal practitioner. He did not even say that he is not the same person as the name that appeared or is inscribed on the seal; his argument is that the names must appear strictly as they are on the roll of call or register of lawyers as kept by the Supreme Court.

In the case of ESENOWO vs. UKPONG (supra), cited and relied on by the Applicant's Counsel, a private medical practitioner was involved, and the Nigerian Medical Register for 1980 & 1981, was consulted and it was discovered that the name the Appellant stated, as 'Dr. E.J.ESENOWO' was not in the Register; instead, what was found was ' Dr. J.E.ESENOWO', hence the Officer in charge of reimbursement stated (in reply to the enquiry) thus: "Dr. E.J.Esenowo is not registered with Nigerian Medical Council. Bill cannot therefore be reimbursed". The scenario in that case is dissimilar to the one in the instant case.

Counsel should remember that he who asserts must prove. And if he suggested fake or forgery, he must prove it strictly on the standard of proof for crimes. I do not agree with the defence Counsel, and I do not subscribe to his opinion that the Counsel who signed the Information does not possess the power to re-arrange his name. Should the opinion of the defence Counsel hold sway, I am afraid, if he too may not have fallen prey to that strict constructionist slant, nay narrow technical interpretation. How? Let me explain. On the Notice of preliminary objection Counsel filed, below the signature thereon, are these names: "Chief G. Tagbo Ike", but the names embossed on the seal affixed to the said Notice are: "Godwin T. Ike". So, even if we ignore the title 'chief', prefixed to the name on the process, reasoning along with Counsel on his line of argument, it would be difficult to believe that 'G. Tagbo Ike' is the same as 'Godwin T. Ike', a case of "re-arranging of name", that is !, in the absence of the Roll (of Solicitors & Advocates) kept in the Supreme Court, presented before the court. Besides, in the case of DANKWAMBO vs. ABUBAKAR (2017) ALL FWLR (Pt. 823) 1801, the Supreme Court endorsed the use of abbreviations of names by Counsel on processes they file and sign.

I think that, in the temple of justice, when raising objection, Counsel should endeavour to be on a strong wicket, or, should I say, above board; and almost without blemish with respect to the matters over which objection is raised. This, to me is the cynosure of the equitable maxim: *'He who comes to equity must come with clean hands'*; this maxim, to my mind, has its provenance in the Holy Book, and I make bold to say that it has propinquity with the scriptural prescription in **Psalm 24 vs. 3-4, to wit: "who shall ascend into the hill of the Lord? Or who shall stand in his holy place? He that hath clean hands, and a pure heart; who had not lifted up his soul unto vanity, nor sworn deceitfully".** Now, can it be said that the defence Counsel has run foul of the ordinance and injunction in both equity and the scripture? I doubt if he has not. So be it on that.

In the light of the foregoing, I consider the grounds on which this objection is founded as having yielded nothing more than technical dexterity on the part of the defence Counsel. It is an exercise in vain pedantry. I hereby overrule the

objection in its totality; accordingly, the Notice filed on 1 March 2017 is hereby dismissed. In consequence of my view as aforesaid, I hold that the Information containing the charge in this case is proper, regular, and competent.

2. **ON THE MOTION FOR AMENDMENT.**

Dennis N. Okoro, Deputy Superintendent Legal, of Independent Corrupt Practices and other Related offences Commission, by a Motion filed on 28 April 2017, beseeched the court for the reliefs as follows:

1. Leave of this Honourable Court to amend charge No: E/1c/2017 in terms of the amended charge accompanying this application.
2. An order deeming the amended charge as having been duly amended and served on the accused person.

The 3- prong grounds are as follows.

1. The Honourable court has the power to alter, add to or substitute any charge pending before it at any time before judgment.
2. The proposed amendment seeks to substitute the name Elijah Akaakohol Esq who signed and filed this charge No: E/1c/2017 with the name Okoro Dennis Nnaemeka Esq.
3. The proposed amendment will not prejudice any of the parties in this case.

In support of the motion is an affidavit of 6 paragraphs, and annexed thereto is the Information and proofs of evidence. D.N. Okoro Esq of Counsel filed a written address.

The defendant opposed the Motion, conveyed through a counter affidavit of 14 paragraphs. Chief G. Tagbo Ike filed a written address.

D.N. Okoro Esq, and B.C. Madu Esq each adopted the addresses filed in argument of the Motion and in argument of the opposition to the motion, respectively.

The main plank on which this motion rests is as can be gleaned from the affidavit in support thereof, viz:

3 (b). That upon review of the case file, it was deemed necessary to amend the charge to substitute the name Elijah Akaakohol Esq who signed and filed this charge No: E/1c/2017 with Okoro Dennis N. Okoro Esq.

(c). That there is the need to amend/substitute the

Information so that the name on the stamp and seal corresponds with that on the charge.

On his part, the fulcrum on which his opposition revolves appears to be embedded in paragraph 5 of the counter affidavit, to wit:

> 'That the prosecution/Applicant rather than respond to my said notice of preliminary objection chose to file an application for amendment of the said Information in order to take the wind out of the seal (sic) of my said objection.'

Admittedly, the Notice of preliminary objection raised by the defence Counsel, was already filed and pending before the motion filed by the prosecution Counsel. The defence Counsel's lamentation is that the Motion will take the wind off the sail of his preliminary objection. Of course yes! We are aware and it is a common place principle of law, bearing immense prominence on the rule of fair hearing that where there are two applications, virtually locking horns, one with the other in terms of their object and purpose, if one is aimed at "killing" a matter and the second is to "revive" or "sustain life" in the matter, the court will very ably lean heavier on the side of the latter.

In the same vein the Notice of preliminary objection was intended to petrify this case while the Motion for amendment was aimed at keeping the case on stream, the motion not unexpectedly would take the wind off the sail of the preliminary objection. The modern and current trend in the administration of justice is to give room for parties to correct errors in their processes instead of allowing such to defeat the case *in limine*; NALSA TEAM ASSOCIATES vs. NNPC (1991) 8 NWLR (Pt.212) 652; ANI vs. EFFIOK (2017) ALL FWLR (Pt.884) 1058.

It would be preposterous to concede the point raised in the Notice of preliminary objection to the defence Counsel, merely because to do otherwise would take the wind offthe sail of the Objection. I find fillip to my view in the case of SHANU vs. AFRIBANK (2000) 13 NWLR (Pt.684) 372; (2000) ALL FWLR (pt.23) 1342, where the Supreme Court posited that:

> **"An Applicant is not foreclosed by preliminary objection from correcting errors or starting the process afresh on a more appropriate footing because the preliminary objection showed the errors in the process"**

Howbeit, I took argument on the preliminary objection and on the Motion on Notice for amendment. I dealt with the objection first, and my views, nay, Ruling has been rendered hereinabove. The resume of my view is that the

Information signed and filed by Akaakohol Elijah Esq, Principal Supt. Legal, Independent Corrupt Practices and other Related offences Commission, on 1 March 2017, is valid, regular, proper, competent.

In the light of that, I consider this Motion filed by D.N. Okoro Esq otiose, accordingly, the said motion is hereby dismissed.

The defendant is to take his plea upon the Information filed 1 March 2017.

I so order.

APPEARANCE: **D.N. OKORO** for the **PROSECUTION**
E.E UDIEDIBOR for the **DEFENDANT**

H.O. EYA
JUDGE

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ASST. CHIEF REGISTRAR
Sign. Date 16/12/2018

HIGH COURT REGISTRY
THE JUDICIARY
DATE 16/12/18
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