A LAW FIRM SIGNING A COURT PROCESS IS A MERE PROCEDURAL IRREGULARITY: THE SUPREME COURT DECISION IN HERITAGE BANK V. BENTWORTH FINANCE

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Introduction

In a landmark decision delivered on 23 February 2018 in the case of *Heritage Bank Ltd v. Bentworth Finance (Nig) Ltd,*[1] the Supreme Court of Nigeria appeared to abandon in part, the rule that any process that was signed by a person who was not called to the Nigerian Bar was incompetent. In this decision, the Supreme Court declared that, except for originating processes, courts should no longer strike out court processes that are inadvertently signed in the name of a law firm, unless the other party objects to such irregularity at the earliest opportunity. Before this decision, the Supreme Court had previously laid down a rule in *Okafor v. Nweke*[2] to the effect that a court process signed by a law firm (rather than by a natural person called to the Bar in Nigeria) was "incompetent and liable to be struck out".

Facts of the Case

The Appellant[3] lodged an appeal challenging the decision of the Court of Appeal dismissing its appeal against the judgment of the High Court of Lagos State. At the Supreme Court, the Appellant, for the first time, objected to the competency of the matter before both the High Court and the Court of Appeal. The objection was

[1] Suit No.: SC/175/2005
[2] (2007) 10 NWLR (Pt.1043) page 52, decided on the 9 March 2007
[3] Heritage Bank Limited

based on the ground that the Respondent's Statement of Claim, filed on 19 September 1990, was issued and signed by "Beatrice Fisher & Co", a person who had not been called to the Bar in Nigeria. In support of his objection, the Appellant cited the provisions of sections 2(1) and 24 of the Legal Practitioners Act[4] as well as the case of *Okafor v. Nweke* and other relevant authorities.

The Supreme Court's Decision

In the lead judgment delivered by Honourable Justice Ejembi Eko, the Court held that although the Statement of Claim was not signed by a person who had been called to the Bar in Nigeria, this irregularity was merely procedural and did not go to the root of the matter. The Court reasoned that the Appellant's right to object to the defect was a private right which may be waived. The Court further held that the Appellant's failure to raise an objection based on this irregularity before the lower courts meant that it condoned the defective process and thereby waived its right to complain. However, if it were the originating process that was signed by a person who had not been called to the Bar in Nigeria, the irregularity would have been a fundamental defect that would go to the root of the matter and would therefore affect the competence of the action.

The Position before the Heritage Bank Case

Before now, the position of Nigerian law on the subject was laid down in the case of *Okafor v. Nweke*. In that case, the Supreme Court struck out three court processes filed by the Applicant because the said processes were issued and signed by "J.H.C. Okolo, SAN & Co", a firm of legal practitioners. The Supreme Court relied on the provisions of the Legal Practitioners Act to hold that only a person who had been

[4] Cap 207 LFN 1990

called to the Bar in Nigeria can sign court processes. This excluded law firms who were not natural persons and could not have been called to Bar in Nigeria.

This decision became a reference point on the question of the propriety of a law firm issuing or signing a court process.[5] Six years after the decision in *Okafor v Nweke,* a full panel of the Supreme Court was constituted in *First Bank of Nigeria Plc v. Maiwada*[6] to review *Okafor v Nweke*, but the Court re-affirmed its position in *Okafor v Nweke*.

Later, in the case of *Alhaji Tajudeen Babatunde Hamzat & Anor v. Alhaji Saliu Ireyemi Sanni & Ors*[7] decided in 2015, the Supreme Court granted the preliminary objection of the Respondent and struck out the Statement of Claim filed by the Appellant at the trial court because a law firm signed it. It appeared not to matter to the court then that this objection was raised for the first time at the Supreme Court and that the process in question was not an originating process.[8]

The Possible Impact of the Heritage Bank Case on Future Cases

The *Heritage Bank* case is a watershed in Nigeria's jurisprudence. The Supreme Court has relaxed its hard-line stance in *Okafor v Nweke,* and some cases decided after that in which the Court struck out defective court processes, even where the matter had gone on appeal.[9] Consequently, court processes - except originating processes - signed by a law firm will not be struck out unless the other party timeously objects to the defect. Such objection must be raised in the court where

[5] The Supreme Court and other lower courts have since then relied on the Okafor. Consistent decisions made by these courts include *Oketade v. Adewumi* (2010) 8 NWLR (Pt. 1195) 63; SLB Consortium v. NNPC (2011) 9 NWLR (Pt. 1252) 317; Brathwaite v. Skye Bank Plc (2013) 5 NWLR (Pt. 1346) 1; and Nigerian Army v. Samuel (2013) 14 NWLR (Pt. 1375) 466

[6] (2013) 5 NWLR (Pt 1348) 444 SC

[7] (2015) LPELR-24302(SC)

[8] The writ of summons, in this case, was, in fact, properly signed.

[9] See for instance Alhaji Tajudeen Babatunde Hamzat & Anor v. Alhaji Saliu Ireyemi Sanni & Ors (earlier cited)

the process was filed, at the earliest opportunity after it is served on that other party. Otherwise, the right of objection will be deemed to have been waived.

Conclusion

The Heritage Bank case is consonant with the attitude of the Supreme Court towards issues which do not go to the merit of the case[10]. By this decision, an indulgent party with a bad case will not be allowed to rake up procedural niceties to scuttle the hearing of a claim on the merit. It is of note that on some occasions, cases have been struck out at appellate stages because of this procedural irregularity, sometimes decades after the trial court had given its decision. As a result, parties would be caught between re-litigating the dispute or abandoning it entirely. Nonetheless, it has resulted in Claimants being prone to litigation fatigue after expending time and financial resources in finding a judicial remedy to their disputes. The Supreme Court's decision is an indication that it may now be unwilling, under compelling circumstances, to punish innocent litigants for the inadvertence of their counsel.

If you would like to get more information on this, you may contact the Dispute Resolution Practice Group of the firm through its email address: drp@aelex.com.

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[10] See Falobi v. Falobi (1976) 1 NMLR 169