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THE SIGNING OF COURT PROCESSES: THE LEGAL ISSUES ARISING AND ITS EFFECTS ON THE ADMINISTRATION OF JUSTICE IN NIGERIA

Oluwaseun Viyon Ojo, Lagos State University
The signing of court processes by a person not known to law has significantly dominated the arena of legal discourse among legal practitioners and major stakeholders in the legal community. The question of whether a person not known to law (in the light of the Nigerian Legal Practitioners Act Cap 207 1962 as amended) can validly sign any court process to be adopted in any legal proceeding has generated intense debate and discussions from every angle. The main thrust of the issue relates essentially to whether the ends of justice are better realised when the courts hold that the absence of a named legal practitioner on a court process necessarily renders same incompetent or invalid, thereby operating to divest the court of its jurisdiction to entertain and determine the substantive questions of law raised before it. The questions that should be asked at this juncture are: should the decision in Okaro v. Nweke (2007) 10 NWLR (Part 1043) 521 still continue to hold sway in relation to the judicial position of signing of court processes? In case the decision still continues to subsist, would it augur well for the administration of justice in Nigeria? Possibly, what should the Bench and the Bar do in the case of the occurrence of the same situation? What should they do to obviate the possibility of occurrence of the signing of court processes by a person not known to law? Hopefully, this piece should be able to discuss these issues perfunctorily with reference to judicial cases and statutory position. It will also touch on the implications of the rigid and inflexible application on the administration of justice in Nigeria whilst concluding on the possible way forward.

For the sole purpose of clarity and better understanding, it is apt to define the term “court process” as evident from the concept of signing of court processes. A judicial process (or court process), according to the Black’s Law Dictionary (9th Edition) refers to “summons or writ, especially to appear or respond in court”. According to the High Court (Civil Procedure) Rules 2012 of Lagos State, “Court processes” 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. From the above, it can be safely concluded that court process comprises all documents that would be exchanged between the court and the parties thereto which is not limited to the ones expressly stated above.

It is the acceptable position of law that any court process must be duly signed and authenticated by a person whose name is found on the roll of the legal practitioners. That is, only 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 of legal practitioners. The above position was a directive essentially to whether the ends of justice are better realised where the courts hold that the absence of a named legal practitioner on a court process necessarily renders same incompetent or invalid, thereby operating to divest the court of its jurisdiction to entertain and determine the substantive questions of law raised before it. The questions that should be asked at this juncture are: should the decision in Okaro v. Nweke (2007) 10 NWLR (Part 1043) 521 still continue to hold sway in relation to the judicial position of signing of court processes? In case the decision still continues to subsist, would it augur well for the administration of justice in Nigeria? Possibly, what should the Bench and the Bar do in the case of the occurrence of the same situation? What should they do to obviate the possibility of occurrence of the signing of court processes by a person not known to law? Hopefully, this piece should be able to discuss these issues perfunctorily with reference to judicial cases and statutory position. It will also touch on the implications of the rigid and inflexible application on the administration of justice in Nigeria whilst concluding on the possible way forward.

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The signing of court processes: legal issues and its effects on the administration of justice in Nigeria

As soon as the decision in Okafor’s case was made, the state of the law in this respect was largely unsettled. It was a complete deviation from the age-long position of the Supreme Court in Cole v. Martins (1968) All NLR 161 where the court held that the practice of endorsing or presenting processes of courts by lawyers in their business names is permissible. Be that as it may be, the decision of the Supreme Court in Okafor’s case remains the extant position of the law.

No sooner than the decision was made, there has been intense controversy amongst legal practitioners within the legal community as to the appropriateness (or soundness) or otherwise of the decisions. The protagonists of the decision advocate that the rules and procedures of court as to the signing of court processes must be strictly and scrupulously complied with by legal practitioners. As such, only those who have the right of audience before the court of law must have their identities properly placed before it as against parading nameless, unidentifiable entries before it. The antagonists, on the other hand, vehemently opine that the strict adherence to the import of the decision would invariably amount to the gross toleration of legal technicality which essentially defeats the true ideals of justice. Thus, the court should be more concerned about the substantive matters brought before it instead of inordinately providing room for parties to unconscionably avert the imposition of liability on them by invocation of technical nuances. The above appears to be the real state of things in respect of this emerging vexed issue in the legal world.

The pertinent point of discourse is whether the decision in Okafor’s case should continue to hold sway having regards to the administration of justice in Nigeria. The argument shall be proposed from the angle of the judicial policy of substantial justice. Substantial justice is the whole essence of resort to court by the parties in various legal proceedings. The intentional approach to substantial justice was loudly affirmed by Justice Opata in Nishizawa v. Jethani (1984) All NR 470 when he declared that:

"...having regard to the primary fundamental duty of the courts to do substantial justice by deciding not on a mere technicality at the expense of a hearing on the merits, I hold that the trial judge was entitled to look at the respondent’s statement of defence notwithstanding that it was irregularly filed..."

Further on this and more recently, the Supreme Court per Tobi JSC in Omoju v. FRRN (2008) 7 (PT. 1085) SC 38 R.B at Page 57, Paras D-G remarked that:

"Courts of law have long moved away from the domain or terrain of doing technical justice. Technical justice, according to the legal colossus, is not justice, but a caricature of it. Caricatures are not the best presentations or representations, substantial justice is justice personified and is secreted in the aboves of cordial and fair jurisprudence with a human face and understanding".

Based on this, the outcome of Okafor’s case cannot qualify for substantial justice. It will only promote the slaughter of substantial justice on the altar of undue adherence to technicalities. It may be said that the effect of the decision is only to render the court processes incompetent and to be set aside with the room for the re-institution of the proceedings still wide open. The administration of justice in Nigeria moves so slowly to the extent that it will take a long time to terminate a matter. Setting aside a matter based on the imposition of liability on them by invocation of technical nuances. The above appears to be the real state of things in respect of this emerging vexed issue in the legal world.

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Also, section 122(2)(j) of the Evidence Act 2011 provides that the court is bound to take judicial notice of every legal practitioner appearing before it. If the identity of the legal practitioner is well noticed of every legal practitioner appearing before it. If the identity of the legal practitioner is well

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to follow current best convenient and appropriate practices. The justice sector is better served by holding firms accountable for the conduct of cases rather than individual counsel. We can say here, in view of the foregoing that the decision of the Supreme Court can still be reversed with a view to serving the better ends of justice. The decision in Okafor’s case may have been the decision of the Supreme Court but it definitely can be revisited and possibly reversed. Thus, in the epochal words of Oputa Jsc in Abegoke Motors Ltd v. Abesan and Anor (1989) 2 NSCC 327 at 388, he observed that

“We are not final because we are infallible, rather we are infallible because we are final. Justices of this court are human beings capable of erring. It will certainly be short-sighted arrogance not to accept this obvious truth. It is also true that this court can do inestimable good through its wise decisions. Similarly, the court can do incalculable harm through its mistakes. When therefore it appears to learned counsel that any decision of this court has been given per incuriam, such counsel should have the courage to ask that such decision be overruled. This court has the power to overrule itself [and has done so in the past] for it gladly accepts that it is better to admit than to preserve in error”

This epochal pronouncement should be resorted to on this issue by the supreme court with a view to revisiting the decision in Okafor’s case to accommodate the above-stated observations all in a bid to serve and realise the better and true ends of justice which will ultimately augur well for the administration of justice and justice sector efficiency in Nigeria.

Ojo Oluwaseun Vlyon

Ojo Oluwaseun Vlyon is a graduate of law from Lagos State University (LASU)

Author: tlc

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