



GSJ: Volume 10, Issue 2, February 2022, Online: ISSN 2320-9186
www.globalscientificjournal.com

INCREASE IN CASES OF IMPERSONATION OF LAWYERS IN NIGERIA: MAKING A CASE FOR REFORMS

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Abstract

Lawyering and legal practice requires proper certification by the regulatory bodies in the legal profession in line with extant legislations. It is getting worrisome to see persons not called to the bar rendering services to undiscerning clients, albeit, illegally. The vice of impersonation is on the increase within the Nigerian legal market. Cases of fake lawyers across the Nigerian legal hemisphere are being reported almost on a monthly basis. The aim of this paper is to reconcile the extant provisions dealing with impersonation of lawyers in Nigeria and examines contemporary impersonation practices in other jurisdictions. The research methodology is doctrinal. The paper ends with suggested reforms such as a review of the provisions of extant statutes in this respect and call for other socio – legal alternatives towards curbing the menace.

Keywords: impersonation, Nigerian legal market, undiscerning clients.

Introduction

In Nigeria, the legal profession has grown with the economic, social and political developments in the country and the level of awareness and dependence of the public on legal services has also increased. In entrusting the legal profession with these important functions, society has vested considerable power and trust in it, in order to ensure it can carry out its duties. Legal culture in the sense of people's notion that they need professional assistance in certain circumstances is on the rise. Most of these people inquire how and from whom they can obtain these services. The Legal Practitioners Act defines who a Legal practitioner is⁴ and services that are exclusive to them. Regulation by way of unauthorized practice of law is also stated⁵. If law broadly defines exclusive activities and jurisdictions within which only lawyers may operate, and against trends of legalization, we can expect a steady increase in the number of people interested

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⁴ Section 24 Legal Practitioners Act Cap L 11 LFN 2004

⁵ Rule 3 Rules of professional conduct 2007

in entering the legal profession in Nigeria. The combination of a monopolized territory within which assistance from experts and professionals becomes essential, together with unauthorized of practice rules restricting non-lawyers from providing services within this defined terrain, will evidently cause the number of entrants into the legal profession to rise. We believe this process carries significant force in explaining the sharp rise in the number of lawyers in Nigeria. Nigerian law restricts any kind of activity entailing the provision of legal advice, preparation of a legal document, as well as representation of another before designated administrative and all judicial and quasi-judicial tribunals, to lawyers only.⁶

Regulation of the profession is therefore required to ensure that the societal trust which is necessarily placed in lawyers is not abused through the unauthorized practice of law by third parties to the profession.⁷ The word impersonation is derived from the word impersonate. Impersonate could be defined to mean, to pretend to be somebody in order to trick people or to entertain them.⁸ To impersonate is simply to falsely represent a person, profession or thing to achieve some untoward aims. The Merriam – Webster Online Dictionary of English defines impersonation as ‘to assume or act the character of’.⁹ There is recent rise in the crime of impersonating legal practitioners in Nigeria. The pertinent question is whether there is adequate legislative intervention to curb this ugly trend. Section 22 of the Legal Practitioners’ Act 2004 as amended which is extant law regulating the legal practice in Nigeria will be examined in order to ascertain the content of what constitute impersonation in Nigerian legal market and whether the punishment provisions are adequate in line with curbing such contemporary menace. The paper will end with recommendations on how to drastically reduce cases of impersonation of lawyers in Nigeria.

Evolution of the Impersonation Provisions in the Legal Practitioners Act

Section 17 of the repealed Legal Practitioners Act 1962 provides for punishment for impersonation of a legal practitioner as follows:

⁶ Ibid Section 8

⁷ Principle 12 of the UN Basic Principles on the Role of Lawyers in Maintaining the Reputation of the Legal Profession states: *Lawyers shall at all times maintain the honour and dignity of their profession as essential agents of the administration of justice.* Basic Principles on the Role of Lawyers Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990 <https://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx> accessed on the 27 July 2020

⁸ Hornby A. S., Oxford Advanced Learner’s Dictionary, Oxford University Press New 9th Edition, (2015), p. 788

⁹ Merriam – Webster Online Dictionary of English.

17.—(1). Subject to the provisions of this section, if any person other than a legal practitioner—

(a) practises, or holds himself out to practise, as a legal practitioner; or .

(b) takes or uses the title of legal practitioner ; or

(c) wilfully takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that he is a legal practitioner or is qualified or recognised by law to act as a legal practitioner ; or

(d) prepares for or in expectation of reward any instrument relating to immovable property, or relating to or with a view to the grant of probate or letters of administration, or relating to or with a view to proceedings in any court of record in Nigeria, he shall be guilty of an offence and liable, in the case of an offence under paragraph (a) of this subsection or a second or subsequent offence under paragraph (d) of this subsection, to a fine of an amount not exceeding one hundred pounds or imprisonment for a term not exceeding two years or both, and in any other case to a fine of an amount not exceeding fifty pounds.¹⁰

From the above, it could be deduced that impersonation in the legal profession has been criminalized as far as 1962 and the punitive measures then were weightier than now. This is because a fine of 100 pounds as of July 2020 is N48,735.49 (Forty Eight Thousand, Seven Hundred and Thirty – Five Naira, Forty Nine Kobo) at the official rate.¹¹

Upon the repeal of the Legal Practitioners Act 1962, the Federal Military Government in 1975 enacted Decree No 15 of 1975 which is the Legal Practitioners Act No 15 of 1975. With respect to impersonation in the legal profession, section 21 of the Legal Practitioners Decree No 15 of 1975 varied the provisions of section 17 of the Legal Practitioners Act 1962 by providing thus:

1) Subject to the provisions of this section, if any person other than a legal practitioner— ;

(a) practises; or holds himself out to practise, as a legal practitioner ; or

(b) takes or uses the title of legal practitioner ; or ”

(c) wilfully takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that he is a legal practitioner or is qualified or recognised by law to act as a legal practitioner; or —

(d) prepares for or in expectation of reward any instrument relating to immovable property, or relating to or with a view to the grant of probate or letters of administration, or relating to or with a view to proceedings in any court of record in

¹⁰ Section 17 of the Legal Practitioners Act No 33 of 1962

¹¹ <https://ex-rate.com> accessed 15 July 2020

Nigeria, he shall be guilty of 'an offence and liable, in the case of an offence under paragraph (a) of this subsection or a second or subsequent offence under paragraph (d) of this subsection, to a fine of an amount not exceeding N200 or imprisonment for a term not exceeding two years or both, and in any other case to a fine of an amount not exceeding N100.

Unlike the payment of a fine of £100 and £200 under the Legal Practitioners Act 1962, it is N100 and N200 under the Legal Practitioners Act 1975. The terms of imprisonment under both legal regimes are the same. This will prompt us to examine the punishment provision under the present legal regime. The current major legislation governing the practice of law in Nigeria is the Legal Practitioners Act LFN 2004 (as amended). Section 22 (1) of the Legal Practitioners Act LFN 2004 (as amended) provides as follows:

22. Offences

(1) Subject to the provisions of this section, if any person other than a legal practitioner-

(a) practises, or holds himself out to practise, as a legal practitioner; here, there are two offences in this respect. The first being practicing as a legal practitioner and second is holding out to practice as a legal practitioner. This offence is committed when a person who is not a legal practitioner engages in activities which are exclusively reserved for the legal practitioners. For instance when he appeared before a court for his client. And the offence could be committed when he makes words or conduct himself before people to show that he is a lawyer. When this offence is committed the person shall be guilty and liable to fine of an amount not less exceeding two hundred naira or imprisonment for a term not exceeding two years or both.

(b) takes or uses the title of legal practitioner; in this offence, the non -legal practitioner adds the title of legal practitioner after his name in business cards, sign boards or any means of communication by him shows that he is legal practitioner. The provision of this section is to punish the offender of the usage of the legal practitioners title and nothing more.

(c) wilfully takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that he is a legal practitioner or is qualified or recognised by law to act as a legal practitioner; this provision punishes the willful use of any name , title that suggest that of legal practitioner or falsely implies that he is legal practitioner such as Attorney, Counsel, The law. The offence also relate to a situation where person who takes or uses such name, title or description pretends to be legal practitioner.

(d) prepares for or in expectation of reward any instrument relating to immovable property, or relating to or with a view to the grant of probate or letters of administration, or relating to or with a view to proceedings in any court of record in Nigeria, he is guilty of an offence and liable, in the case of an offence under paragraph (a) of this subsection or a second or

subsequent offence under paragraph (d) of this subsection, to a fine of an amount not exceeding N200 or imprisonment for a term not exceeding two years or both such fine and imprisonment, and in any other case to a fine of an amount not exceeding N100.

From the above, the current position of the law concerning impersonation of a legal practitioner is a fine of N100 or at most N200 or a term of imprisonment not exceeding two years. The essence of this paper is to reconcile this provision of the Legal Practitioner Act LFN 2004 (as amended) with present reality. We note that a fine of N200 is less than \$1 in terms of value as of 2020 in Nigeria.

However, in section 22 (5) of the Legal Practitioners Act 2004 as amended, the offence of impersonation of legal practitioners is made applicable to Corporate bodies who connives with their company officers to prepare instruments which ordinarily should be prepared by legal practitioners for a fee.

The relevant portion of Section 22(5) of the Legal Practitioner Act LFN 2004 (as amended) provides:

Where an offence under this Act which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be deemed to be guilty of that offence and shall be liable to be prosecuted and punished accordingly.

In essence, there is corporate criminal liability on the part of a body corporate for rendering legal services without using qualified legal practitioners in line with the rules of professional conduct. This paper is therefore a clarion call to corporate bodies in the act of drafting instruments and collecting monies for legal services such as legal fee to desist from such act. It is observed that the Nigerian Bar Association has been up and doing in respect of interacting with such culpable corporate bodies. It is encouraged to do more.

Instances of Recent Impersonation Practices in the Legal Profession

In recent times, there is a surge in the number of fake lawyers infiltrating the legal profession.¹² BBC reported recently that a Nigerian man pretending to be a solicitor for 15 years has been

¹² <https://www.educeleb.com> Police nab fake lawyer who dropped out of University accessed on 24th May, 2021. A 50 year old fake lawyer confessed to the police that though he read law in the University, he has not been called to Bar because he did not pass the law school examination.

charged for impersonation, the police say.¹³ Local media reports say the man told police that he had studied law at a Ukrainian university but had yet to be called to the bar in Nigeria. Despite this, he has reportedly won several court cases.¹⁴ In analyzing the live – scenario above, it is pathetic to note how weak the mechanism for detecting quackery in lawyering has become. The writers will not go further with this analysis for fear of such being subjudice.

In another case, a 37-year-old graduate of Estate Management at the Federal Polytechnic, Ado-Ekiti, Melvin Oromidayo, has been sentenced to nine years imprisonment by an Ipetumodu Magistrate’s Court in Osun State for impersonating a lawyer.¹⁵ In this particular case, it is obvious that the court relied on other penal provisions to sentence the convict to 3 years imprisonment since section 22 of the Legal Practitioners Act provides that such offences should carry a maximum punishment not exceeding 2 years imprisonment.

In another recent development, the Isheri Oshun Police Division Ijegun, Ikotun on Friday arraigned a Fake Lawyer, Adekunle Adegboye, before an Ejigbo Magistrate court, in Lagos. He

¹³ <https://www.bbc.com/news/world-africa-43002700> Nigerian fake lawyer practised for 15 years in Lagos’ Accessed 30 June 2020. The 49-year-old man was arrested earlier this week as he was making a bail application for his client in a Lagos state court. Police spokesman Chike Oti told the BBC, ‘the man could not articulate his legal argument and was challenged by another lawyer present in court’. The suspect pleaded not guilty and was granted bail. Mr Oti said the man had been practising for the past 15 years undetected. Working with lawyers, the man had some "elementary knowledge of how lawyers go about their business but he's not a professional", the police spokesman told the BBC's Newsday programme. Suspicions about his qualifications arose during court proceedings in a criminal case on Tuesday. He wanted to vary the bail conditions for his client but "did not know how to go about it", Mr Oti said. He added that a lawyer present in the courtroom immediately challenged the suspect, saying that a bar-registered lawyer should be able to deal with a bail issue.

¹⁴ *Ibid.*

¹⁵ <https://guardian.ng/news/man-bags-nine-years-jail-term-for-faking-as-a-lawyer/> Man bags nine years jail term for faking as a lawyer. Mr. Oromidayo was said to have been practising law and handling cases at different courts for unsuspecting members of the public for over a year before he was apprehended at the Ipetumodu court while appearing for an accused person. The Police Prosecutor, ASP Joseph Adebayo, informed the court that Oromidayo was arrested on January 20, at Ipetumodu Magistrate’s Court, Ipetumodu, Ife North Local Government Area of Osun while handling a case as a lawyer. Adebayo said Oromidayo forged a stamp with the inscription: “Melvin A. Oromidayo ESQ, Barrister, Solicitor, Real Legal Chamber,” which was false. The prosecutor explained that the accused person has been using the stamp to pretend as a qualified lawyer that was called to the Nigerian Bar. But on January 21, Adebayo said Oromidayo confessed that he was not a law student neither did he attend any university. The accused person was said to have finished from Federal Polytechnic, Ado-Ekiti where he studied Estate Management. Adebayo stated that the offence contravened sections 467(4) and 484 of the Criminal Code, Laws of Osun, 2002. Oromidayo pleaded guilty to the three-count charge of forgery, impersonation and fraud that he was slammed with by the police. The presiding Magistrate, Mrs. Abosede Sarumi, convicted Oromidayo as charged and sentenced him to three years imprisonment for each of the three counts with hard labour and without any option of fine.

pleaded not guilty to 3 count charges consequent upon which he was admitted to bail.¹⁶ This case which is still pending in court shows the comradeship of the NBA at the branch level to put an end to this menace.

In a recent development 42-year-old man, Charles Nwadiani, was arraigned before an Ikorodu Magistrates' Court in Lagos for allegedly claiming to be a lawyer. Nwadiani is facing a six-count charge bordering on impersonation, forgery, obtaining under false pretences and resisting arrest.¹⁷ The Chief Magistrate, Mrs F.A. Azeez, granted Nwadiani bail of N250,000 with two sureties in like sum. Azeez adjourned the case until October 22 for mention. The subjudice rule will hinder the writers to comment on this particular case.

In October 8, 2019, the Yenagoa Branch of the Nigerian Bar Association made a Press Release vowing to go tough on impersonators of legal practitioners. In the Statement issued by Nelson Abali on behalf of the Branch, impersonators under different guise of legal practice were warned to desist from such illegal act.¹⁸ Legal Practitioners are Persons called to the Nigerian Bar and enrolled at the Supreme Court of Nigeria as Barristers and Solicitors, with annual license to practice upon payment of prescribed Fees and possession of the Nigerian Bar Association

¹⁶ <https://thenigerialawyer.com/police-finally-arraigns-fake-lawyer-adekunle-adegboye-for-impersonation-granted-bail/> Police Finally Arraigns Fake Lawyer, Adekunle Adegboye For Impersonation, Granted Bail. Adekunle Adegboye was arrested by men of the Nigerian Police attached to the Isheri-Oshun Police Station following a tip-off and complaint lodged by Onyeaghana Abohor Henry Esq., a member of NBA Ota Branch. He was arrested for impersonating as a lawyer. *TheNigerialawyer* has earlier reported that the alleged imposter operated with a seal which he printed from a Business Centre, and claimed to be working with the Law Firm of Glory Q A. & Associates when luck ran out of him. Mr. Adekunle Adegboye who has practiced as a lawyer for several years was arrested alongside his cohort, a 65 years old Estate Agent whom he described as a long-time client of his. During what seemed to be a stormy interrogation, Mr. Adekunle Adegboye voluntarily confessed to have been in this dubious habit for an upward of two decades as he claimed his legal services are not just limited to issuance of statutory notices and deeds but also have tasted a few high profile cases in the course of his legal practice. Meanwhile, Mr. Adekunle's misfortune began on the 26th November 2019 following an incurably defective purported notice to quit with a faceless fake NBA seal. The interrogation continues while preparations are ongoing for an immediate arraignment. Members of the Nigerian Bar association from Ota branch and Ikeja branch respectively held watching brief with the team led by Messrs Basil Owolabi (Finsec Nba Ikeja), K. E. Umana, from NBA Ota Branch and a host of other lawyers from Ikeja present to witness the trial. The matter was adjourned to 13th January 2020.

¹⁷ The Prosecutor told the court that the accused committed the offence in 2017 at No. 19, Lajo St., Igbogbo Town in Ikorodu. Agoi said that the defendant falsely presented himself to Shamsodeen Ali as a lawyer and used such to extort money from unsuspecting members of the public.¹⁷ The prosecutor further said that the defendant used forged business documents bearing Nwadiani and Co. to operate an illegal law office at Igbogbo. He said that Nwadiani unlawfully collected the sum of N1.45 million from Ali with the pretext of providing him legal services. Agoi said the offences contravened several sections of the Criminal Law of Lagos State, 2015

¹⁸ loyalnigerianlawyer.com/impersonation-of-legal-practitioners-nba-yenagoa-branch-vows-to-go-tough-on-culprits/. Impersonation of Legal Practitioners: NBA Yenagoa Branch Vows to Go Tough on Culprits. Accessed 30 June

customized Stamp and Seal issued with a Supreme Court Number; all other persons not in the bracket of the above professional categorization, whether they are undergoing legal Studies or possess law degrees or related courses, are not Lawyers or Legal Practitioners as contemplated by the Legal Practitioners Act, 1975. It is our view in buttressing this Press Release that the fact that a person is duly called to the Nigerian Bar by the Body of Benchers and receives certificate from the aforesaid body does not entitle such person to practice law until his name has been enrolled in the Supreme Court by the Registrar of the Supreme Court.¹⁹

The Press Release further warns that such impersonators, imposters and fake professionals holding themselves out as Legal Practitioners, when they are not, shall henceforth be fished-out and severely dealt with in accordance with the laws of the land. A non-lawyer should henceforth not dare: represent another person or party in any proceedings, prepare Deeds and related documents and Agreements reserved for lawyers, use titles, stickers, crests, and other representations preserved for legal practitioners, occupy a position in the public or private sector designed for a lawyer, and render legal opinion. Legal Practitioners' qualifying Certificates are not transferable or inheritable. No Person becomes a lawyer by friendship, association or relationship. Unwholesome infiltrations and worrisome incursions into the legal profession shall not be further tolerated and condoned. As Ministers in the Temple of Justice, a lawyer shall not aid and abet the unauthorised practice of Law.

In another jurisdiction, a fake lawyer, identified as Iddrisu Yahaya who appeared in court to seek bail for his supposed clients ran out of luck and got arrested upon the orders of the judge of the Techiman Circuit Court where the drama unfolded.²⁰ According to Ghana Crimes, Mr. Yahaya was in the court to seek bail terms for four accused persons who had been charged with robbery, kidnapping, and murder in Atebubu last Wednesday. As is usually the case, he had charged and duly collected a part of his legal fees amounting to GHC 25,000 from his 'clients' so as to act – literally - as their lawyer. While seated in court with superior airs and all, His Honour Mr. Alexander Graham who was presiding over the circuit court called for his arrest while alerting *JoyNews's* correspondent in the Bono Region to witness, take pictures and report accordingly. This was after the self-styled legal practitioner while trying to convince the judge on why his

¹⁹ Section 8 of the Legal Practitioners Act LFN 2004

²⁰ <https://www.vanguardngr.com/2020/02/fake-lawyer-arrested-in-court-while-representing-clients/>

clients must be granted bail, exhibited his ignorance in the legal terminologies to the shock of His Honour Mr. Alexander Graham who wondered where he studied his version of the law. Upon further interrogation, it was realized that the suspect in question was a teacher but claimed to be a lawyer and could neither mention the name of one of his mates nor when he was actually called to the bar. This shows that the vice of impersonation is not limited to Nigeria.²¹ In one breath he claimed to have been called to the bar last year September and in another instance said he was a third-year law student who was yet to be called to the bar. His conflicting accounts gave credence to the fact he was fake and therefore was whisked away by the police to commence investigations into his claim. He is currently assisting with investigations at the Techiman Divisional Police Command in Ghana.²²

On March 28, 2017, a fake lawyer was sentenced to 9 years, six months imprisonment. Soyinka, 34 years old, was arraigned on a five count charge bothering on falsely presenting himself as a lawyer, stealing and forging of court documents before Magistrate R.O. Davies by the Police Prosecutors, Aminu Isaac and Etim Ufoh Ikechukwu on February 16, 2020. The matter was later taken over by a prosecuting team of the Nigerian Bar Association (NBA), Ikorodu Branch led by Prince Adetayo Ladega. The convict had in the course of trial changed his not guilty plea to guilty consequent upon which Magistrate Davies pronounced a total of nine and half years imprisonment on him. Magistrate Davies sentenced the convict to six months imprisonment on the first count and three years each on counts 3, 4 and 5. The convict would, however, spend three years in prison as the magistrate said the sentences would run concurrently.²³ The sentencing by the Honourable Magistrate in this case taking into consideration the totality of the charges against him and his plea of guilty is gladdening because it serves as a deterrent to others committing impersonation offence boldly and are yet to be caught.

Taking it further, the Ilorin Zonal Office of the Economic and Financial Crimes Commission, EFCC, recently arrested a 53-year-old man, Muhammed Bolaji Abdulraheem, for obtaining money under false pretence, while parading himself as a lawyer representing the EFCC. But Abdulraheem suddenly ran out of luck when one of his victims, Mallam Yusuf Bello, who accused him of fleecing him of N300,000, reported him to the EFCC via a strongly worded

²¹ <https://www.vanguardngr.com/2020/02/fake-lawyer-arrested-in-court-while-representing-clients/>

²² Ibid.

²³ <https://thenationonlineng.net/lawyer-jailed-nine-years-impersonation/>

petition. This happened following the Commission's discovery that the suspect was a fake lawyer who did not finish from the Nigerian Law School, having failed its qualifying examinations twice. A statement by EFCC spokesman, Wilson Uwujaren, said that the man would soon be charged to court.²⁴ This and many more are plethora of cases of impersonation in the legal profession which has become rampant of late.

As of July 23, 2020, a fake lawyer reportedly bags 3 years imprisonment in Ogun State, Nigeria.²⁵ In the month of September, 2020, another fake lawyer was caught practicing in the law firm of a qualified legal practitioner by the combined team of the Nigerian Police and the Aba Branch of the Nigerian Bar Association.²⁶ Specifically on 21 September 2020, the suspect, Iheanacho Emenike was in practice with the office of Larry Iroka at Azikiwe Road. During interrogation at Area Command, Aba, he confessed failing his law school and was not called to bar.²⁷

Statutory Provisions for Impersonation as an offence in Nigeria

Impersonation is an offence under the Criminal and Penal Codes in Nigeria. The Criminal Code described the offence generally and further makes it an offence when a person commits a specific offence. It states that a person shall be guilty of impersonation in general when he intends to defraud any person, falsely represents himself to be some other person, living or dead.²⁸ And he shall be guilty of felony and liable to imprisonment for three years. If the representation is that the offender is a person entitled by will or operation of law to any specific

²⁴ <https://www.vanguardngr.com/2019/10/efcc-nabs-fake-lawyer-over-n300000-fraud-impersonation/> EFCC nabs fake lawyer over N300,000 fraud, impersonation. In the petition he sent to the EFCC, Bello accused Abdulraheem, whom he described as his "lawyer," of recovering a debt of N300,000 from his debtor and making away with the cash. Bello told the EFCC that when he tried to recover the said cash from the suspect, he claimed that the money had been lodged with the EFCC and that there was nothing he could do about it. However, when he was arrested and questioned by EFCC operatives, Abdulraheem confessed that the money was neither brought to the EFCC nor did the Commission know anything about it. The story, however, also took a new dramatic turn on Monday as the suspect shocked everyone by destroying his statement wherein he had claimed to have been called to the Bar and had been practising as a lawyer for over two decades.

²⁵ <https://www.vanguardngr.com> July 23, 2020. Fake lawyer bags 3 years imprisonment in Ogun State, Nigeria.

²⁶ <https://thenigerialawyer.com/nba-aba-apprehends-alleged-fake-lawyer-iheanacho-emenike-practicing-in-a-known-law-firm/> Accessed 22 September 2020.

²⁷ Ibid. <https://thenigerialawyer.com/nba-aba-apprehends-alleged-fake-lawyer-iheanacho-emenike-practicing-in-a-known-law-firm/> Accessed 22 September 2020

²⁸ Section 484 Criminal Code Act Cap C38 LFN 2004

property and he commits the offence obtain such property or possession is liable to imprisonment of fourteen years. Section 486 of the Act which provides:

Any person who alters any document which has been issued by lawful authority to another person, and whereby that other person certified to be a person possessed of any qualification recognized by law for any purpose, or be the holder of any office, or to be entitled to exercise any profession, trade, or business, or to be entitled to any right privilege, or to enjoy any rank or status, any falsely represents himself to be the person named in the document, is guilty of an offence of the same kind and is liable to the same punishment as if he had forged the document.

Section 179 of the Penal Code Law of provides for the offence of impersonation as follows:²⁹

Whoever falsely personates another, whether that other is an actual or fictitious person, and in such assumed character makes any admission or statement, or causes any process to be issued or becomes bail or security, or does any other act in any suit or criminal prosecution, shall be punished with imprisonment for a term which may extend three years or with fine or with both.³⁰

From the foregoing, when a non-lawyer impersonates and causes any legal process to be issued he shall be punished accordingly. The provisions of these laws do not provide for fine as an alternative to imprisonment of the accused person.³¹ It is noted that the Penal Code laws provide for an option of fine but the amount is not stated and this would have assisted the court in the exercise of his discretion judiciously to impose a reasonable fine. We humbly submit that most of the Nigerian cases are brought under the penal laws of the States and were sentenced to a fair though not enough terms of years without options of fines because of the wordings of the statute.³² There is discretion in the penal code law that allows the court to impose a term of sentence more than three years. The law used the word 'may' which confers discretion on whether to comply with a requirement or not.³³ We are of the view that this discretion should be exercised judiciously and judiciously, especially in favour of the prosecution. We suggest that the

²⁹ Section 179 of the Penal Code Law

³⁰ Section 22 (3) LPA Cap11 LFN 2004

³¹ Criminal Code Act

Commissioner of Police V. Emmanuel Ojo MI/425c/2017 unreported case in Oyo State. The accused was sentenced to term of 30 months for contravening Sections 516 and 484 of the Criminal Code laws of Oyo State Cap 38, Vol. 11

³³ Auchu Polytechnic V. Okuoghae (2005) 10 NWLR (Pt 933) 279.

punishment provisions under the Legal Practitioners Act be amended to actualize the need to sanitize and protect the legal profession.

An Examination of Section 22 of the Legal Practitioners Act 2004

In the light of the evolution of the provisions relating to impersonation in the legal profession, it is apposite to examine the applicable provision on impersonation by virtue of section 22 (1) of the Legal Practitioners Act Cap L11 LFN 2004 (as amended).

- (1) Subject to the provisions of this section, if any person other than a legal practitioner -
 - (a) practises, or holds himself out to practise, as a legal practitioner; or
 - (b) takes or uses the title of legal practitioner; or
 - (c) wilfully takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that he is a legal practitioner or is qualified or recognised by law to act as a legal practitioner; or
 - (d) prepares for or in expectation of reward any instrument relating to immovable property, or relating to or with a view to the grant of probate or letters of administration, or relating to or with a view to proceedings in any court of record in Nigeria, he is guilty of an offence and liable, in the case of an offence under paragraph (a) of this subsection or a second or subsequent offence under paragraph (d) of this subsection, to a fine of an amount not exceeding N200 or imprisonment for a term not exceeding two years or both such fine and imprisonment, and in any other case to a fine of an amount not exceeding N100.

From the above provision, it is crystal clear that practicing as a legal practitioner or using the title of a legal practitioner having not been called to the bar appears to be a strict liability offence. It is unequivocal that where a person prepares an instrument and he is not being rewarded or expecting a reward for it, it is not an offence as envisaged by this provision under examination. It is our view that considering the recent increase in the rate of impersonation in the legal profession as reported above, the fine of N100 and N200 and two year imprisonment appears obsolete and mild. Such provision provides an easy escape route for impersonators to thrive in the legal profession. The monetary value of N100 and N200 in 1975 when Decree No 15 was enacted and the value in 2020 which is 45 years after cannot be the same. The Attorney – General of the Federation ought to have presented a Bill to the National Assembly to reflect contemporary punitive realities. In the alternative, lawyers who are members of the National Assembly should initiate a private member Bill to amend section 22 of Legal practitioners Act

LFN 2004 to provide for a minimum of ₦1,000,000 (One Million Naira) and ₦2,000,000 (Two Million Naira) fine in lieu of ₦100 and ₦200 fine as applicable in 1975 respectively.

Similarly, when a person commits an offence under these laws he can be charged at any time unlike what is obtainable under the Legal practitioners Act which provides that no proceedings for an offence shall be begun after the expiration of the period of three years beginning with the date of the offence.³⁴ Similarly, a person in breach of any of the offences may in appropriate situations be charged and punished for contempt of court; provided that no further criminal charge for any of the offences shall be commenced or continued against such person after he has been dealt with for contempt of court.³⁵ We are of the view that the punishment for contempt of the offence under section 22 (1) of the Legal practitioners Act will not be enough this is because the court cannot impose a sentence which exceeds the statutory limits.³⁶ Though the punishment for the offence for a term not exceeding 2years seems higher than the contempt sentencing, we are of the view that the court can still order him to pay a specific amount of fine provided under the Act and this will continue to negate the intention of the draftsmen in protecting the Legal profession and as well as reserving certain activities for legal practitioners only. It is our further view that the limitation of action under the Act is also a mitigating factor that enables the non-lawyers not to face the wrath of law.

It is to be noted that this offence shall not be committed in the following instances where a person prepare an instrument:³⁷

- a. In the course of his activities as a pupil of a legal practitioner or of his employment
- b. Relating only to property in which he has³⁸ or claims an interest (including an interest as a personal representative or as a person entitled to any part of the estate of a deceased person)
- c. Relating only to proceedings to which he is a party, or prepared with a view to proceedings to which he may be a party.

³⁴ Section 22(6) LPA Cap 11 LFN 2004

³⁵ Section22 (3) LPA Cap 11 LFN 2004

³⁶ Section 133 of the Criminal Code Lagos stipulates a maximum of 3months imprisonment.

³⁷ Section 22 (4) of the LPA 2004

³⁸ *Ibid.*

- d. For the purpose only of recording information or expert opinion intended for use in, or with a view to, any proceedings;
- e. Which is intended to be, a will or other testamentary instrument;
- f. of such a class or description as the Attorney – General may by order determine.

Comparative Impersonation Practices in the Legal Profession and Regulatory Interventions

Under the South African Attorneys' Act No 53 of 1979, impersonation of a lawyer is an offence as provided in section 83 as follows:

83. Offences

(1) No person other than a practitioner shall practise or hold himself out as a practitioner or pretend to be, or make use of any name, title or addition or description implying or creating the impression that he is a practitioner or is recognized by law as such or perform any act which he is in terms of any regulations made under section 81(1)(g) prohibited from performing.

Section 81(1) g stipulates the acts which shall not be performed by any person other than a practitioner or an agent referred to in section 22 of the Magistrates' Court Act, 1944.

(3) Notwithstanding anything to the contrary in any law contained, no person other than an advocate or an attorney or an agent referred to in section 22 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall appear for or on behalf of any other person in any proceedings or categories of proceedings which are held under the provisions of any law and which have been designated by the Minister by notice in the Gazette after consultation with the presidents of the various societies.

(7) A person who contravenes any of the provisions of subsections (1) to (6) or of section 13A shall be guilty of an offence and on conviction liable to a fine not exceeding R2000 in respect of each offence.

South African Attorneys' Act 1979 is much more detailed as it relates to impersonation of legal practitioners when compared with the provision of section 22 of the Legal Practitioners Act 2004 as it applies in Nigeria.

In the state of Ontario in Canada, the Law Society of Ontario has measures in place to check the illegal provision of legal services. The Law Society Act gives the Law Society authority to

prosecute illegal practitioners. Upon a complaint to the Law Society of an individual who may be practising illegally, the body may do one or more of the followings:

- a) Send a cease and desist letter demanding that the person stop providing legal services they are not licensed to provide.³⁹
- b) Conduct an investigation, especially if the person accused of illegal practice is persistent or is placing the public directly at risk.
- c) Ask the person to sign an undertaking (agreement) to cease the unauthorized activity. This is a document that may be used later in court if the behaviour persists.
- d) Initiate court proceedings. The Law Society has the power to seek injunctions in Superior Court. If the injunction is breached, this may result in an application to have the person found in contempt. Contempt can be punishable by fines or imprisonment or both. The Law Society can also prosecute illegal practice in provincial court or provincial offences court. The Law Society Act provides for significant fines as well as probation orders if someone is convicted of unauthorized practice.⁴⁰

In the case of *Hersch Harry Kpyto vs Law Society of Upper Canada*, the Applicant was called to the bar in 1974 but was disbarred in 1989 for engaging in professional misconduct in connection with irregular legal aid billings. Thereafter, the Applicant provided services as an unregulated paralegal until October 2007, when he applied to the Society for a Class P1 licence as a grand-parented candidate. In his application, the Applicant undertook to “obey the Rules of Professional Conduct for Paralegals and all other rules, by-laws, regulations, policies and requirements” of the Society, but he deliberately failed to provide information about his disbarment in his Paralegal Registration and Application form. The Applicant acknowledged that he had provided unauthorized legal services on hundreds of occasions since his disbarment, and on numerous occasions since giving the Undertaking. The Applicant’s record keeping had not improved, as he maintained no books of original entry for non-trust receipts and disbursements, no fees book and no bank statements. He had also failed to meet financial obligations to the CRA and to pay costs orders and had not co-operated with the Society’s investigation into his good

³⁹ The Law Society of Ontario vs Kopyto Harry (Court File No: CV – 19 – 617826 – 0000 and section 26.3 of the Law Society Act of Ontario

⁴⁰ Part I.1 Prohibitions and Offences of the Law Society of Ontario 1990 RSO. Also available via <https://lso.ca/protecting-the-public/taking-action-against-illegal-practitioners> Accessed 24 July 2020

character. The Applicant advised the panel that if granted a Class P1 licence, he intended to continue to disregard By-Law 4 in so far as it restricted the scope of paralegal practice. If a Class P1 licence were denied, he intended to disregard the law and continue to provide legal services. The Applicant was ungovernable. Good character required that an individual be ethically and morally trustworthy regarding his or her obligations as a member of the profession under the Society's by-laws and the Paralegal Rules of Conduct, including the restrictions on paralegal practice, the record-keeping requirements, the obligation to comply with undertakings, and the duty to co-operate with the Society. The Applicant stated that he would not fulfill those obligations, and accordingly he could not be trusted to do so. The Applicant did not meet the good character requirement of the Act and his application for a Class P1 licence was dismissed.⁴¹ Former lawyer Harry Kopyto took his case all the way to the Supreme Court of Canada, and ultimately lost.⁴²

Part I.1 of the Law Society Act⁴³ makes it illegal for an unlicensed person to render legal services in the state of Ontario. The punishment ranges from payment of fine of not more than \$25,000 for a first offence; and not more than \$50,000 for each subsequent offence.⁴⁴ Unlike Nigeria where a first offender pays a fine of N100 and subsequent offender pays N200, the Canadian and South African has much more punitive measures in terms of the amount of money payable as fine by first and subsequent offender. It is apposite to posit that the fine payable for impersonation in Nigeria as of 21st century when nations are slamming heavy fines on erring impersonators who makes money illegally from rendering legal services and denying attorneys who have toiled hard to get called to the bar, their lawful return on investment.

Observations and Suggested Reforms in curbing Impersonation Practices in the Legal Profession in Nigeria

From the above, it is suggested that the provision of section 22 be amended with respect to punishment by the National Assembly. The offences should be treated with equal levity and we humbly suggest that the punishment for the offences should be the same.

⁴¹ Citation: Kopyto v. Law Society of Upper Canada, 2015 ONLSTH 29, Tribunal File No.: PLC14/09, February 3, 2015

⁴² <https://www.canadianlawyermag.com/news/general/scc-dismisses-kopyto-appeal-on-paralegal-regulation/271987> 24 July 2020. Case No. 35242/2015

⁴³ Part I.1, Section 26 of the Law Society Act RSO 1990

⁴⁴ Section 26.2 (1) of the Law Society Act RSO 1990

In the same vein, the term of imprisonment should be higher or instead discretion should be given to the court to impose a higher term of imprisonment by inserting the word “May” in the section as contained in the Penal Code.

The ridiculous option of fine be amended to meet the economic value of the country at present or no amount of fine be included in the statute. We further suggest that the amount of fine be determined by the court depending on the case and the economic status of the country.

There is paucity of cases bothering on impersonation in Law Reports across Nigeria partly because most impersonation cases hardly gets to appellate level within the hierarchy of courts. This is because most convicts for impersonation knows that taking appellate steps may result to an exercise in futility and possible aggravation of the court sentence. It is therefore recommended that law reporters and publishers should endeavour to report notorious impersonation cases by way of Special Issue in law reporting or dedicate specialized law reports such as Economic Crimes Law Reports to report such cases. For instance, the Nigerian Bar Association can fund and published an Online Law Report solely devoted to reporting cases of impersonation in the legal profession.

It is further suggested that the Nigerian Bar Association should start invoking section 22(5) of the Legal Practitioners Act LFN 2004 (as amended) to curb the menace of corporate bodies engaging in rendering legal services under one guise of service provision or the other. Therefore, we urge for a Special Task Force in each branch of the Nigerian Bar Association to monitor this development across the country.

The Federal Government is urged to provide an enabling environment for the private sector to thrive with the multiplier effect of generating employment for the nation’s growing youth population in order to curb the menace of fake lawyers in Nigeria. It is our view that foreign investors will be happy to invest in climes where they are sure quacks in a sensitive profession such as law have been reduced to the barest minimum.

Conclusion

In recent times, there have been increases in cases of impersonation of lawyers in Nigeria. This paper is a clarion call to the various regulatory bodies of the Nigerian legal profession to act decisively and timeously in curbing this ugly menace. It is observed by the writers of this paper

that from the beginning till the end of this paper, cases of impersonation of lawyers were pouring in across Nigeria. A fine of N200 which is less than \$1 as of year 2020 cannot be of any deterrent effect towards curbing the increasing menace of impersonation of lawyers in Nigeria. We should borrow leaves from jurisdictions such as South Africa and Canada to deepen our jurisprudence in this respect.

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