

Imposition of the Nigerian Bar Association Stamp and Seal on Legal Practitioners and the Question of Fundamental Right to Freedom of Association

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Abstract

The nature of membership of the Nigerian Bar Association (NBA) has presumably, over the years, been left undisturbed owing much to the assumption that membership of the NBA is automatic upon enrolment of a legal practitioner at the Supreme Court of Nigeria. Hardly had situations arisen when a legal practitioner's decision not to belong to the NBA had been subjected to litigation until the recent decision of the Supreme Court of Nigeria in *Bello Sarkin Yaki v. Agudu and others* that any court process or similar document filed without the NBA stamp and seal in line with Rule 10(1) of Rules of Professional Conduct for Legal Practitioners, 2007 is voidable. This decision brought to the fore many fundamental questions relating to the constitutionality or otherwise of the decision itself *vis-à-vis* the membership of the NBA and the fundamental right to freedom of association. These questions such as: If a person has a right to join a lawful association, should he also be free to choose not to join a particular one? What happens to a legal practitioner who, in exercise of his right to freedom of association, chooses not to belong to NBA? How do we then reconcile this decision with the constitutional right to freedom of Association guaranteed in Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 10 of the African Charter on Human and Peoples Rights? This paper examines the status of and membership of the NBA; the constitutionality or otherwise of the Supreme Court's decision in the above mentioned

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case and concludes by stating that the decision is unconstitutional and proffers solutions and recommendations.

1.0 Introduction

The Nigeria Bar Association¹ is an association for all legal practitioners in Nigeria. It is assumed, owing to long time practice in Nigeria, that its membership is automatic upon enrolment of a legal practitioner at the Supreme Court of Nigeria.² Undoubtedly, the NBA performs certain fundamental professional functions. It is also, directly or indirectly, a member of some statutory and regulatory bodies in the legal profession like the Body of Benchers,³ Legal Practitioners' Disciplinary Committee (LPDC),⁴ the Council of Legal Education (CLE), General Council of the Bar,⁵ *et cetera*. Its membership of these statutory bodies makes it possible for its existence to be acknowledged and recognized in statutes especially those establishing those statutory bodies.⁶

It is also interesting to note that membership of the NBA, is given prominence by the Legal Practitioners' Act, among other statutes, in several important respects. For instance, it is trite that no legal practitioner in Nigeria shall have right of audience in any court in Nigeria, unless he pays his practicing fees for the year.⁷ This practicing fee is from time to time, as prescribed by the Attorney-General of the Federation, after consultation with the NBA.⁸ The Registrar of the Supreme Court is also required to pay 90% of the aggregate of the practicing fees collected to the NBA.⁹ The Legal Practitioners Disciplinary Committee Rules of 2006¹⁰ provides:

¹ Hereinafter referred as "NBA" or "Association."

² As a matter of fact, this assumption is being given authoritative flavor even by senior members of the legal profession, including some authors. See For instance, Obi Okoye, A. (2015), *Law in Practice in Nigeria (Professional Ethics & Skills)*, 2nd Edition, Snaap Press Nig. Ltd., Enugu. P.112

³ Legal Practitioners Act, 2007, S. 3(1)(j).

⁴ See *Ibid*, S. 10(2), as altered by Decree 21, o 1994, S. 9.

⁵ *Ibid*, S. 1(2).

⁶ Legal Education Consolidation Act, Cap 26 LFN, 2004, S. 2(1) (e) & (f).

⁷ Legal Practitioners' Act, Cap L11, Laws of the Federation of Nigeria, 2004, S. 8 (2).

⁸ *Ibid*.

⁹ *Ibid*, S. 8 (3)(b)&(c)

¹⁰ Body of rules made pursuant to paragraph 2 of the Second Schedule to the Legal Practitioners Act, 2004.

A complaint received by any of the persons specified in sub-rule (1) of this Rule shall be forwarded to the *Nigerian Bar Association* which shall cause the complaint to be investigated (Words in italics ours for emphasis).

Like other professional associations registered or incorporated under Part C of the Companies and Allied Matters Act (CAMA), no statute establishes it. Thus, NBA and its members are only governed by the Constitution of the Association.¹¹ It should be noted that NBA is not the only professional body or association of legal practitioners in the legal profession in Nigeria. Bodies like the Nigerian Association of Law Teachers (NALT)¹², Muslim Lawyers Association of Nigeria (MULAN), Law Officers Association of Nigeria, Christian Lawyers Fellowship of Nigeria,¹³ and Young Lawyers Forum (YLF),¹⁴ exist within the legal profession. Like the NBA, none of these associations is a statutory body. Thus, it is possible to be a member of the NBA on one hand and also member of one or two of the other associations, like MULAN or CLASFON.¹⁵

Recently, the Supreme Court of Nigeria, in its judgment in *Bello Sarkin Yaki v. Agudu and Others*¹⁶ held that any process signed or filed without the NBA stamp/seal in line with Rule 10(1) of Rules of Professional Conduct for Legal Practitioners, 2007, is voidable. In that case, one of the issues for determination was Issue No.5, which states:

Whether the Court of Appeal was right to hold that failure of a legal document to have affixed to it a stamp/seal as mandated by Rule 10 (1) of the Rules of Professional Conduct did not carry with it the

¹¹ See NBA Constitution, S. 22, which provides: "This Constitution may be cited as the Nigerian Bar Association Constitution 2015 and shall come into effect upon its being approved by the General Meeting."

¹² Formed since 1962 as a voluntary association for law teachers.

¹³ The core focus of CLASFON is to equip members spiritually and professionally to serve God and humanity in their respective legal and professional capacities as judges, magistrates, advocates, solicitors, legislators, teachers, administrators and law students. For information about CLASFON, see www.clasfon.com.

¹⁴ This is not a faith based association; rather, its membership is constituted by young lawyers in Nigeria.

¹⁵ Constitution of the Federal Republic of Nigeria, 1999, (as amended), S. 40.

¹⁶ The Supreme Court of Nigeria delivered the judgment on the 27th of October, 2015 but gave reasons for its decision on the 13th of November, 2016. (2015) ALL FWLR (PT. 810) 1026.

consequence of rendering such legal document incompetent.

The Supreme Court, *per* Ngwuta, JSC, held, *inter alia*:

The document in question here purportedly signed and filed by a lawyer in his capacity as a legal practitioner did not have on it “ a seal and stamp approved by the Nigerian bar Association” The process so signed and filed is a legal process within the intendment of Rule 10 (2) of the Rules. What is the consequence of a legal document signed and filed in contravention of Rule 10 (1) in the Rules? The answer is as provided in Rule 10 (3) to the effect that...the document so signed or filed shall be deemed not to have been properly signed or filed (Words in italics ours for emphasis).

Prior to the judgment, the NBA had earlier issued a statement wherein it noted that “[I]awyers would be required to affix their stamp on every legal document prepared and/or endorsed in accordance with law.” The NBA maintains that the use of “the stamps shall become mandatory from the 1st Day of April, 2015.”¹⁷ It is noteworthy that the said stamp/seal is exclusively produced by the NBA. Hence every legal practitioner must apply to the NBA to get it. An applicant willing to get the stamp/seal must therefore belong to or registered with, and pay the NBA dues, in addition to other requirements. Consequently, every legal practitioner in Nigeria has no alternative but to join the NBA, if he or she wants to practice the law in Nigeria.

This invariably means that while every Legal Practitioner in Nigeria has a right to belong to the NBA, he or she does not have the right to freedom to choose not to belong to the association, at least for the sake of the stamp/seal.¹⁸ Failure of legal practitioner to be a member of NBA, he or she cannot obtain the seal; consequently, any process or document filled by him or her shall be mandatory The NBA maintains that the use of “the stamps

¹⁷ See the NBA website at <http://www.nigeriabar.com/index.php> for the press release.

¹⁸ One of the requirements an applicant for the NBA seal/stamp must fulfill as captured in the online application form is that the “lawyer’s enrolment number as verified and captured in the computerized database of the NBA is a pre-requisite for the issuance of Stamp.” See the NBA website at <http://www.nigeriabar.com/index.php>.

shall become mandatory voidable. This obviously means that membership of the NBA, is now not a matter of choice for any person willing to practice law in Nigeria but is compulsory. The following questions may be asked:

- a. Is this not a violation of the right to freedom of association of every legal practitioner in Nigeria?
- b. Is this development not tantamount to compelling legal practitioners in Nigeria to join join MULAN or CLASFON or YLF?
- c. Is the Supreme Court's decision in the above case complied with constitution provision on the right to freedom of association?
- d. What happens to a legal practitioner who, in exercise of his right to freedom of association, chooses not to belong to NBA?¹⁹
- e. Whether a person, in this regard a legal practitioner, does not also have the right not to belong to an association?

This paper critically analyses the Supreme Court's decision in *Bello SarkinYaki's* case²⁰ wherein the provisions of Section 10 of the Rules of Professional Conduct for Legal Practitioners, 2007 was expounded, with a view to answering the questions raised in the foregoing paragraph and arriving at a conclusion whether or not the Supreme Court was right in its decision and whether that decision is in consonance with the fundamental right to freedom of association as provided in Section 40 of the Constitution of the Federal Republic of Nigeria, 1999, as amended.

2. Status of the Nigerian Bar Association

The Nigerian Bar Association is an association of all legal practitioners in Nigeria. Registered under the then Land (Perpetual Succession) Ordinance on the 8th day of April, 1983, it acquires the status of a juridical body.²¹ It will be recalled that the Company and Allied Matters Act (CAMA), 1990 replaced the Land (Perpetual Succession) Ordinance under which the

¹⁹ What happens to the right to freedom of association guaranteed in section 40 of the 1999 Constitution of the Federal Republic of Nigeria (as variously amended) and article 10 of the African Charter on Human and Peoples' Right (*Enforcement and Ratification*) Cap A9, LFN, 2004?

²⁰ (*Supra*)

²¹ Obi-Okoye B., (2011) *Law in Practice in Nigeria: (Professional Responsibility and Lawyering Skills)* (1st edn. Snaap Press, Nigeria p. 192.

NBA was registered.²² Thus, since incorporated trustees replaced the registration done under the Land (Perpetual Succession) Act, 1958, now Part C of CAMA, all such registrations²³ done under the previous law are validated.²⁴ Therefore, the NBA is deemed as incorporated trustees and, being incorporated trustees, only the trustees, not the members, obtain legal personality. Thus, the legal title of the association does not vest in all the members but only on the few members called the trustees.²⁵ To this extent, it will not be out of place to suppose that the NBA is not a juristic person which can sue or be sued in its name.²⁶

Admittedly, there are references to the existence of the NBA in a number of statutes.²⁷ The question is: does a mere fact of reference to an association in a statute, without more, make it acquire a status higher than that of any other association with similar registration?²⁸ We suppose that the mere references to or acknowledgement of its existence in those statutes notwithstanding, the NBA is still an association as its name simply implies, Nigeria Bar Association.

3. Is Membership of the NBA Automatic upon Enrolment?

Over the years, it is believed that membership of the NBA is automatic upon enrolment at the Supreme Court of Nigeria.²⁹ This assumption may not be unconnected with the fact that every legal practitioner called to the Bar in Nigeria, at enrolment at the Supreme Court of Nigeria, is made, as a matter of obligation, without being given any other option, made to pay a practicing fee, 90% of which is paid to the NBA.³⁰ It is indeed a wrong

²² NBA was formally registered on the 8th day of April, 1983 under the then Land (Perpetual Succession) Ordinance.

²³ NBA's own inclusive.

²⁴ Nelson, O. C.S., (2014) *Essentials of Corporate Law Practice in Nigeria*, Novena Publishers Ltd (2nd edn., Lagos, p. 64-65

²⁵ As such the name of the association must start with the words "Incorporated trustees of"

²⁶ Except preceded with the appellation: "Incorporated trustees of..." because only its trustees can sue or be sued.

²⁷ See for instance, Legal Practitioners Act, 1967, SS. 1(1), (2), 3 (1) & 12(d).. See also Legal Education (Consolidation) Act, 1976, S. 2(1) .

²⁸ See *Fawehinmi v. NBA* No.2 (1989) 2 NWLR (105) 558.

²⁹ See *Tanimola A., (2015) 'The Nigerian Bar Association (NBA) Seal And Stamp Policy: Prospects And Constraints*, available at <http://baralpha.com/2015/08/16/the-nigerian-bar-association-nba-seal-and-stamp-policy-prospects-and-constraints/> accessed on 1/03/2016. See also *Obi Okoye, A., supra*, note, 20.

³⁰ Legal Practitioners Act, *Ibid*, S. 8 (3) (b) & (c).

assumption to maintain that membership of the NBA is automatic upon enrolment. This will mean that once a legal practitioner is called to the Nigerian Bar, without more, he becomes a member of NBA. For clarity sake, Section 4 of the NBA Constitution provides that "(1)[t]here shall be two categories of membership; viz (a) Full membership, and (b) Honorary membership." The Constitution went further to define "full membership" thus: "(i) A full member of the Association shall be *any person duly enrolled at the Supreme Court of Nigeria as a legal practitioner and registered with a Branch of the Association*" (Words in italics ours for emphasis).

The foregoing section imposes two criteria for membership of the NBA, namely; enrolment as a legal practitioner at the Supreme Court of Nigeria and registration with a branch of the Association. Hence, it is wrong to assert that there is an automatic membership of the NBA upon enrolment.

4. Whether or Not Membership of the NBA is Compulsory for All Legal Practitioners

Having clarified that membership of the NBA is not automatic upon enrolment the next question is whether or not the membership of the NBA is compulsory for every legal practitioner in Nigeria? This question raises a fundamental Constitutional issue. Thus, in exercise of his fundamental right to freedom of association, can a lawyer choose not to belong to the NBA? What will happen if a lawyer chooses not to associate with the NBA, can he/her be forced or sanctioned?

The fundamental right to freedom of association is guaranteed in section 40 of the Constitution of the Federal Republic of Nigeria, 1999 (as variously amended). To succinctly drive home the point, section 40 of the Constitution provides:

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or *any other association* for the protection of his interests (Words in italics ours for emphasis)

In the case of *Anigboro v. Sea Trucks Ltd*,³¹ the Court of Appeal held that it is not for the employer to choose a trade union for his

³¹ (1995) 6 NWLR (pt.399) 35.

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employees. Thus, applying this to the case at hand, no matter what, nobody has the right to choose a particular association for a legal practitioner in Nigeria. Even the Supreme Court, in *Egri v. Uperi*³², recognized that it may be contrary to the right to freedom of association for a court to compel a wife to return to her husband. Article 10 of the African Charter on Human and Peoples' Rights,³³ provides:

- (1) Every individual shall have the right to free association provided that he abides by the law.
- (2) Subject to the obligation of solidarity provided for in Article 29 *no one may be compelled to join an association* (Words in italics ours for emphasis).

It is obvious from the foregoing provisions of the law that the law has guaranteed the right to freedom of association. In this regard, in its Resolution on the Right to Freedom of Association, the African Commission, in Communication 225/98 in *Huri-Laws v Nigeria*,³⁴ held that the competent authorities, that is the state parties, including Nigeria, should not override constitutional provisions or undermine fundamental rights guaranteed by the constitution and international standard; in regulating the use of this right,³⁵ the competent authorities should not enact provisions which would limit the exercise of this freedom; the regulation of the exercise of the right to freedom of association should be consistent with state's obligations under the African Charter on Human and Peoples' Rights.

Similarly, pronouncing on the Right to Freedom of Association of 1992, the African Commission, in Communications 147/95 and 149/96, in *Jawara v The Gambia*,³⁶ stated that "[t]he regulation of the exercise of the right to freedom of association should be consistent with states obligations under the African Charter on Human and Peoples' Rights." The community reading of the foregoing provisions leaves no one in doubt that the right to freedom of association also imposes a corresponding duty on the party that adopts it. Thus, the state must not, under any circumstance, adopt measures that will take away this right. Ruling on this point, the African Commission, in the case of

³² (1973) 1 SC 299.

³³ (Enforcement and Ratification) CAP A9, LFN 2004.

³⁴ (2000) AHRLR 273 (ACHPR 2000).

³⁵ That is to say the right to freedom of association.

³⁶ (2000) AHRLR 107 (ACHPR 2000) para 68.

*Free Legal Assistance Group & Others v. Zaire*³⁷, held that the internationally accepted idea of the various obligations engendered by human rights indicate that all rights – both civil and political rights; and social and economic rights – generate at least four levels of duties for a state that undertakes to adhere to a right regime namely; the duty to respect, protect, promote and fulfill these rights.

Needless to say, the African Charter is an international treaty that has been domesticated in Nigeria. Hence, it is applicable and enforceable in relation to right to freedom of association as well as the issue of membership of the NBA. In this regards, the Supreme Court, per Adekeye JSC, in *Harka Air Service (Nig) Ltd v Keazor*³⁸, while pronouncing on the status of the War Saw Convention of 1929, held *inter alia*:

An international treaty is an international agreement which the high contracting states have submitted to be bound by, and *its terms and provisions are above domestic legislation. Thus, any domestic legislation in conflict with an international treaty is void*

In addition, as earlier stated, the African Charter is an international treaty that has been domesticated. Hence, it is applicable and enforceable in relation to right to freedom of association as well as the issue of membership of the NBA. Thus, an appreciable understanding of the aforementioned authorities will leave no one in doubt that membership of the NBA is not compulsory, as this will directly run contrary to Section 40 of the Constitution and Article 10 of the African Charter on Human and Peoples' Rights. Anything short of this will bring about the question: If a person is free to join any lawful association, shouldn't he also be free to choose not to join a particular one?

5. Requirement for Seal/Stamp for Advocates and Lawyers in Corporate Law Practice

In order to enforce and ensure compliance with Rules 9 and 10 of the Rules of Professional Conduct for Legal Practitioners, 2007, the Nigerian Bar Association issued a directive to the effect that

³⁷ (2000) AHRLR 74 (ACHPR 1995).

³⁸ (2011) 13 NWLR (Pt. 1264) p. 344 paras E-F.

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³⁹ See the NBA website
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from 15th of April, 2015, no documents or processes should be reckoned with except same bear the seal/stamp of the NBA.³⁹

In pursuance of the directive, the NBA stipulates the green seal for those in private practice while the red seal for the members of the official or public Bar and those in corporate law practice. Had the NBA stopped at that, it could have been manageable, but it moved further to extend the requirement of stamp and seal to those in corporate law practice. This, we submit, runs directly contrary to Rule 8 of the Rules of Professional Conduct, RPC, 2007. For the avoidance of doubt, Rule 8 of the RPC reads:

(1) A lawyer, whilst a servant or in a salaried employment of any kind, shall not appear as advocate in a court or judicial tribunal for his employer except where the lawyer is employed as a legal officer in a Government department.⁴⁰

(2) A lawyer, whilst a servant or in a salaried employment, shall not prepare, sign, or frank pleadings, applications, instruments, agreements, contracts, deeds, letters, memoranda, reports, legal opinion or similar instruments or processes or file any such document for his employer .

(3) A director of a registered company shall not appear as an advocate in court or judicial tribunal for his company.

(4) A lawyer in full-time salaried employment may represent his employer as an officer or agent in cases where the employer is permitted by law to appear by an officer or agent, and in such cases, the lawyer shall not wear robes.

(5) An officer in the Armed Forces who is a lawyer may discharge any duties devolving on him as such officer and may appear at a court martial as long as he does so in his capacity as an officer and not as a lawyer (Words in italics, ours for emphasis)

It is usually the practice that almost every correspondence emanates from the office of the secretary in corporations and

³⁹ See the NBA website, *supra*, note 16 for the press release.

⁴⁰ Not even where the lawyer is a legal officer in a private sector or company.

government offices in Nigeria. In line with the requirement of the Companies and Allied Matters Act, CAMA, a secretary who is a lawyer must also write or issue out communications on behalf of the company. Hence, being in the corporate world, he is not expected in the first instance to appear as an advocate in court nor can he prepare, sign, or frank pleadings, applications, instruments or processes or file any such document for his employer, why then are these set of lawyers subjected to the requirement of the NBA seal/stamp? For what will they use the stamp/seal?

Furthermore, even Rule 10 has a little issue. After providing in Rule 8 that lawyers in corporation "shall not prepare, sign, or frank those legal documents and pleadings", it comes down in Rule 10 again to say they must affix the seal/stamp of the NBA. It is our submission that apart from the fact that this is unnecessary as there is nothing those in corporate practice will do with the stamp/seal the provision also violates the right of those practitioners to freedom of association. It will then mean that whether they like it or not they must join the NBA. They are not being given any option.

As legal practitioners are battling to come to terms with the directives of the Nigerian Bar Association, arguing for and against the question whether the Nigerian Bar Association, a supposedly voluntary association of lawyers in Nigeria, can issue a directive with a threat, seeking to enforce the provisions of the Rules of Professional Conduct, 2007, the Supreme Court of Nigeria, sometimes on the 27th October, 2015 handed down the decision in *Bello Sarkin Yaki v. Agudu and Others*,⁴¹ wherein it endorsed the directive of the NBA to the effect that the documents or processes even though signed and filed are voidable if not affixed with the NBA seal/stamp. In the lead judgment, the Court, per Nwali Ngwuta JSC, held that such a document, even though signed and filed, is not proper in law for the reason that the condition precedent for its proper signing and filing, has not been met. The Court also held that such a document is akin to a legal document or process filed at the expiration of the time allowed by the Rules of courts or extended by the court.

⁴¹ *Supra*.

What is disturbing; not the provisions the directive issued by the Supreme Court. What is disturbing is not the stamp and seal of a voluntary association.

6. Status of Legal Practitioners

These are rules regulating the conduct of lawyers. These rules were made in 1967. The Rules of Professional Conduct, 2007.⁴³ The Legislature has made and revised the Rules of Professional Conduct. The General Council of the Nigerian Bar Association has recommended the recommendations of the recommendations of legal practitioners then known as Nigerian Bar Association, 1967, when the first Rules of Professional Conduct was made.

It is trite law that the provisions of the subsidiary legislation are not subject to the provisions of the main legislation. The provisions of the subsidiary legislation are not subject to the provisions of the main legislation and are, therefore, valid and enforceable in Nigeria, in the absence of any other subsidiary legislation.

⁴² *Supra*.

⁴³ Which was made by the Council of the Bar, Lagos, Ojo, SAN.

⁴⁴ Legal Practitioners' Association.

⁴⁵ In April, 1959, the Council of the Nigerian Legal Practitioners' Association, Chairman of the Council, E.I.G Unsworth. The Council of the Nigerian Legal Practitioners' Association, October, 1959.

⁴⁶ (2006) 11NWLR (Pt 107) 107.

What is disturbing here, and which gave rise to this research, is not the provisions of the Rules of Professional Conduct, 2007 or the directive issued by the Nigerian Bar Association, but the issue of endorsement of such a directive as declared by the Supreme Court in *Bello Sarkin Yaki's*⁴² case. What is more disturbing is not the Supreme Court's decision but insistence on stamp and seal solely produced and issued by the NBA, a voluntary association.

6. Status of the Rules of Professional Conduct for Legal Practitioners

These are rules made by the General Council of the Bar for regulating the conduct of legal practitioners in Nigeria. These rules were made in 1967, 1979 and 2007. The current rules are the Rules of Professional Conduct for Legal Practitioners, 2007.⁴³ The Legal Practitioners' Act confers the power of making and revision of the Rules of Professional Conduct on the General Council of the Bar.⁴⁴ This was in line with the recommendations of the Unsworth Committee.⁴⁵ This aspect of the recommendations of the Unsworth Committee on discipline of legal practitioners through the General Council of the Bar, then known as Nigerian Bar Council, was not implemented until 1967, when the first Rules of Professional Conduct for Legal Practitioners was made.

It is trite law that the Rules of Professional Conduct is a subsidiary legislation, having been made pursuant to the provisions of Section 1 of the Legal Practitioners' Act. The provisions of the Rules are binding on all legal practitioners in Nigeria and are, therefore, enforceable in the same manner as any other subsidiary legislation. This position was held in several cases in Nigeria, including the cases of *NBA v Koku*⁴⁶ and *NBA v*

⁴² *Supra*.

⁴³ Which was made on the 7th of February, 2007 by the Chairman of the General Council of the Bar, the then Hon. Attorney-General of the Federation, Chief Bayo Ojo, SAN.

⁴⁴ Legal Practitioners' (Amendment) Decree 21 of 1994, S. 10 (c).

⁴⁵ In April, 1959, the Government of Nigeria, set up a 'Committee on the Future of Nigerian Legal Profession' (The Unsworth Committee), named after the Chairman of the Committee, the then Attorney-General of the Federation, Mr. E.I.G Unsworth. The Committee submitted its report with recommendations in October, 1959.

⁴⁶ (2006) 11NWLR (Pt. 991) 431.

Akintokun.⁴⁷ In *Bello Sarkin Yaki v. Agudu and Others*,⁴⁸ the Supreme Court held:

The legal status of the Rules of Professional Conduct in the legal profession made by the General Council of the Bar, pursuant to section 1 of the Legal Practitioners Act, Laws of the Federation of Nigeria, 2004, is that of a subsidiary legislation since it is made by provision in a statutory enactment. By virtue of Section 18 (1) of the Interpretation Act, a subsidiary legislation has the force of law.⁴⁹

7. **Samp/Seal of the NBA and the Question of Fundamental Right to Freedom of Association**

An appreciable understanding of the Supreme Court's decision in *Bello Sarkin Yaki v. Bagudu and Others*,⁵⁰ based on the provision of the Rules of Professional Conduct, 2007, will show that without the NBA stamp/seal, a legal practitioner cannot properly prepare, issue or file a process or any other legal document in Nigeria. Meanwhile, we have noted earlier that the seal/stamp is an exclusive preserve of the NBA. As a matter of fact, in addition to other requirements for issuance of the stamp/seal, the form being issued by the NBA has on it, a column requiring an applicant for the stamp and seal to state: the "NBA Branch ...", presupposing that the applicant must have a branch of the NBA which he belongs to; and an applicant for the seal/stamp must belong to or be registered with and pay the NBA due. Thus, it becomes practically impossible for a non-member of the NBA to get the seal/stamp despite his having qualified as a legal practitioner in Nigeria. It is not in doubt that this requirement has answered the question whether or not legal practitioners are being directly or indirectly forced to join the NBA in the affirmative. It is necessary to remember that the right to freedom of association also carries with it a privilege to choose not to join any particular one.

To succinctly drive home the point, section 40 of the Constitution of the Federal Republic of Nigeria, 1999, as amended, provides:

⁴⁷ (2006) 13 NWLR (Pt. 996) 167.

⁴⁸ *Supra*.

⁴⁹ *Supra*, at p. 1056, paras. D-E.

⁵⁰ *Supra*.

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⁵² *Op.cit.*

Every person shall be entitled to assemble freely and associate with the other persons, and in particular he may form or belong to any political party, trade union or *any other association* for the protection of his interest (Words in italics ours for emphasis).

This is clear to the extent that NBA falls in the category of “any other association”. In addition, this reflected in the name “Nigerian Bar Association”. Lawyers may try to create an exception to the extent that the NBA is different from just *any other association*. The question that should be asked is: what makes it different? Is it its name or its membership? Or is it the fact that tacit reference is made to it in the Rules of Professional Conduct, 2007 and a number of other statutes? The fact that tacit reference is made to it in those statutes notwithstanding, it does not derogate from its real status which is that it is an association the existence of which is merely acknowledged in those statutes.

Again, we must not lose sight of the fact that section 40 of the Constitution is derogable only to the extent provided by section 45 of the same Constitution. To this extent, as far as we understand, from the provisions of section 45 (1) and (2) of the Constitution, it has not provided any legal sanctuary under which one can hide to justify membership of the NBA being tactically made mandatory, through the requirement of the NBA seal/stamp. It is noteworthy to make reference to the provision of the Constitution of the Federal Republic of Nigeria, 1999, as amended, which states:

(1) This Constitution is supreme and its provisions shall have binding force on all authorities and persons throughout the Federal Republic of Nigeria.

...

(3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law, shall, to the extent of the inconsistency be void.⁵¹

From the foregoing, the question that a discerning mind will ask is: can the provision of the Rules of Professional Conduct or the Legal Practitioners’ Act or even the decision in *Bello SarkinYaki v. Bagudu and Others*,⁵² withstand the Constitutional provisions

⁵¹ Constitution of the Federal Republic of Nigeria, 1999, as amended, S. 1 (1) & (3).

⁵² *Op.cit.*

in sections 40 and 1 (1) and (3), respectively? The answer to this question is certainly a capital "No". Any doubt arising from this answer could be cleared by the provision of Article 10 of the African Charter on Human and Peoples' Rights⁵³, which provides:

1. Every individual shall have the right to free association provided that he abides by the law
2. Subject to the obligation of solidarity provided for in Article 29 *no one may be compelled to join an association.*

It is settled that nobody shall be compelled to join the NBA, then what is the effect of the Supreme Court's decision in *Bello Sarkin Yaki v. Bagudu and Others*,⁵⁴ on all legal practitioners in Nigeria, knowing very well that only the NBA produces the seal/stamp and set out the requirements an applicant must fulfill to get it? The effect of the judgment is to make it almost, if not practically impossible, for all legal practitioners in Nigeria to practice without belonging to the NBA. Not until an accused person is branded with the label 'Criminal' before he becomes an ex-convict. The mere fact of his conviction by a court of competent jurisdiction is enough a justification to regard him as an ex-convict; nature or type of its sentence notwithstanding. What matters is his conviction, even though he might be made to pay a fine. Thus, it is our humble view that Rule 10 of the RPC, 2007 as well as the decision of the Supreme Court in *Sarkin Yaki's* case are unconstitutional for violating the right to freedom of association enshrined in Section 40 of the Constitution of the Federal Republic of Nigeria, 1999, as amended and Article 10 of the African Charter on Human and Peoples' Rights.

⁵³ The African Charter on Human and Peoples' Rights, June 27, 1981, OAU CAB/LEG/67/3/Rev. 5 (1981) reprinted in I.L.M 59 (1982) (hereinafter African Charter or the Charter). The African Charter is also called the "Banjul Charter", because it was adopted in 1981 by the 18th Assembly of Heads of State and Government of Organization of African Unity (hereinafter OAU), the official body of African States in Banjul, the Capital of the Gambia. The provisions of the Charter have been incorporated in the domestic Laws of Nigeria, in compliance with the provisions of Section 12 of the Constitution of the Federal Republic of Nigeria, 1979 and 1999 (as amended), known as: African Charter on Human and Peoples' Rights (Enforcement and Ratification) CAP 10 LFN, 1999, now as CAP A9, LFN 2004.

⁵⁴ *Op.cit*

8. Conclusion

The directive of the from 15th of April reckoned, which do accordance with the Professional Condu serious concern a concern became n Nigeria handed its *Bagudu and Other* provisions of Rule Legal Practitioners, whether or not imp practitioners in Nig to freedom of ass Constitution of th Article 10 of the A paper examined the it is automatic or r status of the R Practitioners, 2007,

- a. The Nigeria
- b. Membership automatic, e system that
- c. Membership compulsory there are pra
- d. The Rules Practitioner pursuant to Practitioner binding on a
- e. The impos practitioner right to free

In view of the follows:

⁵⁵ *Supra.*

8. Conclusion and Recommendations

The directive of the Nigerian Bar Association to the effect that from 15th of April, 2015 no document or process should be reckoned, which does not bear the seal/stamp of the NBA, in accordance with the provisions of Rules 9 and 10 of the Rules of Professional Conduct for Legal Practitioners, 2007, has raised serious concern among legal practitioners in Nigeria. The concern became more serious when the Supreme Court of Nigeria handed its decision in the case of *Bello Sarkin Yaki v. Bagudu and Others*.⁵⁵ This decision, which is based on the provisions of Rule 10 of the Rules of Professional Conduct for Legal Practitioners, 2007, has raised a fundamental legal issue of whether or not imposition of the NBA stamp/seal on all legal practitioners in Nigeria is not a violation of the fundamental right to freedom of association guaranteed by section 40 of the Constitution of the Federal Republic of Nigeria, 1999 and Article 10 of the African Charter. In addressing this issue, this paper examined the status of the NBA; its membership (whether it is automatic or not for all legal practitioners in Nigeria); the status of the Rules of Professional Conduct for Legal Practitioners, 2007, *et cetera*. This paper observes as follows:

- a. The Nigerian Bar Association is a voluntary association;
- b. Membership of the Nigerian Bar Association is not automatic, even though there are practices in the NBA system that seem to be on the contrary;
- c. Membership of the Nigerian Bar Association is not compulsory for every legal practitioner, even though there are practices making it look as if it is compulsory.
- d. The Rules of Professional Conduct for Legal Practitioners is a subsidiary legislation, having been made pursuant to the provisions of Section 1 of the Legal Practitioners' Act. The provisions of the Rules are binding on all legal practitioners in Nigeria.
- e. The imposition of the NBA stamp/seal on all legal practitioners in Nigeria is a violation of the fundamental right to freedom of association.

In view of the foregoing observations, we recommend as follows:

⁵⁵ *Supra*.

- a. Rule 10 of the Rules of Professional Conduct for Legal Practitioners, 2007 on stamp/seal by legal practitioners should be revisited and couched in such a manner that the stamp/seal issuance should be regulated by a statutory body like the Body of Benchers or any other.
- b. The Nigerian Bar Association should be treated like any other voluntary association of legal practitioners in Nigeria; in the alternative, if NBA will continue to play the role it is playing, it should at best be upgraded to the status of a statutory body.
- c. The Supreme Court of Nigeria should, when given the opportunity, revisit its position in *Bello Sarkin Yaki v. Bagudu and Others*⁵⁶ on the consequence of failure to comply with the requirements of the provision of Rule 10 of the Rules of Professional Conduct for Legal Practitioners, 2007.

⁵⁶ *Op.cit.*

Abstract
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