Mandatory Requirement of Legal Representation – Whether Applicable in all Criminal Matters

In the Supreme Court of Nigeria
Holden at Abuja
On Friday, the 11th Day of April, 2025

Before Their Lordships
Mohammed Lawal Garba
Adamu Jauro
Moore Aseimo A. Adumein
Festus Obande Ogbuinya
Abubakar Sadiq Umar
Justices, Supreme Court

SC/1433c/2019

Between

FEDERAL REPUBLIC OF NIGERIA ... APPELLANT

AND

SUNDAY ODEH ... RESPONDENT

(Lead judgement delivered by Honourable Abubakar Sadiq Umor, JSC)

Facts

The case arose from a petition to the Economic and Financial Crimes Commission (EFCC) by Alhaji Danlami Abubakar, the PW1, against the Respondent, a civil servant at the Federal Ministry of Works and Housing. The Respondent represented that the Federal Government was offering leasehold on landed properties nationwide and sold three bidding forms to Alhaji Abubakar at ₦15,000.00 (*Fifteen Thousand Naira*) each. He further induced PW1 to pay ₦4,000,000.00 (*Four Million Naira*) as commitment fees for three properties in Makurdi. Contrary to his assurances, the Respondent failed to deliver the properties, prompting the petition to the EFCC and the subsequent arrest of the Respondent.

On 7th October 2016, the Respondent was arraigned before the High Court of Benue State, Makurdi, on an amended 11-count charge under the Advance Fee Fraud and Other Related Offences Act, 2006, and the Penal Code, 1963. The Prosecution called five witnesses, including Alhaji Danlami Abubakar, and tendered several exhibits. At the close of the Prosecution's case, the Respondent applied for an adjournment to enable him make a No-Case Submission. However, after several adjournments, he failed to make a No-Case Submission or open his defence. Consequently, on 19th January 2018, the trial court convicted him, sentenced him to 12 years imprisonment, and ordered restitution in the sum of ₦4,000,000.00 to PW1 .

Dissatisfied with the judgement of the trial court, the Respondent appealed to the Court of Appeal, Makurdi Judicial Division. The lower court set aside the conviction and discharged and acquitted the Respondent for failure to prove the charges against him. Unhappy with the decision of the lower court, the Appellant further appealed to the Supreme Court.

Issues for Determination

The Supreme Court considered the four issues raised by the Appellant as apt for determination of the appeal. The issues are:

(1) *Whether the lower court had the jurisdiction to consider and set aside the decision of the trial court based on a Notice of Appeal that was fundamentally defective?*

(2) *Whether in view of the entire circumstances surrounding the proceedings before the trial High Court, the Respondent can be said to have been denied a fair hearing?*

(3) *Whether the decision in Josiah v. State (1985) LPELR-1963 is applicable in this case?*

(4) *Whether the trial court can convict on the evidence of a single witness (PW5)?*

Arguments

On the first issue, the Appellant contended that the Respondent's Notice of Appeal at the lower Court was fundamentally defective, having been filed in respect of Suit No. MHC/97C/2018, whereas the Judgement appealed against arose from Suit No. MHC/97C/2016. He urged the court to declare it incompetent and a nullity. The Appellant argued further that where an appeal is in respect of a non-existing decision, the appellate court will lack jurisdiction to adjudicate on it. He relied on **UBA PLC v BTL INDUSTRIES (2006) 19 NWLR (PT. 1013) 61,** among others. The Respondent countered the submissions above, contending that since the defect in the Notice of Appeal did not occasion a miscarriage of justice or mislead the court and the parties on the subject matter of the appeal, such defect would not render the Notice of Appeal invalid. While urging the court to do substantial justice and not justice on the basis of technicalities, the Respondent argued further that since the Appellant did not raise any objection to the said Notice of Appeal at the lower court and in fact fully participated in the proceedings, it is too late to raise an objection against the Notice of Appeal. He cited the authority of **OKPEH v STATE (2017) LPELR-42487.**

On the second issue, the Appellant argued that the lower court erred in law when it held that the Respondent was denied fair hearing, as such was baseless. The Appellant's argument was premised on the fact that the Respondent had full opportunity to defend himself but failed to do so. It was submitted that despite 7 adjournments granted to enable him file an address after his counsel failed to represent him, the Respondent failed to act. As such, he could not claim denial of fair hearing, relying on decisions such as **A.G. RIVERS STATE v UDE (2006) 17 NWLR (PT. 1008) 436; UKACHUKWU v PDP (2014) LPELR-22115(SC).** The Respondent, on his part, argued that the trial Judge denied him fair hearing by refusing a further adjournment after his counsel failed to appear on health grounds. He argued that the foreclosure of his defence was premature, particularly as his former counsel had withdrawn his appearance in the matter, leaving him without adequate representation; and thus, such refusal occasioned a miscarriage of justice relying on **SALU v EGEIBON (1994) 6 NWLR (PT. 348) 23, 40;** and **AKINGBOLA v FEDERAL REPUBLIC OF NIGERIA (2018) 14 NWLR (PT. 1640) 395, 414.**

Regarding the third issue, it was argued for the Appellant that the principle established in **JOSIAH v STATE (*SUPRA*)** as to an accused person's mandatory entitlement to a legal practitioner when charged with a criminal offence is not applicable in the instant case because the accused was charged with a non-capital offence and, in fact, was given the opportunity to defend himself with seven adjournments. The Applicant relied on **UDO v STATE (1988) 3 NWLR (PT. 82) 316,** in support of his position. The Respondent argued differently on this issue, submitting that, as held in **JOSIAH v STATE (1985) 1 NWLR (PT. 1) 125**, failure to assign counsel to an unrepresented accused amounts to a denial of fair trial. He argued that the trial court failed to follow this binding precedent and thereby breached the doctrine of *stare decisis*, while placing reliance on **TAMESHWAR v THE QUEEN (1957) AC 476 AT 486.**

On the fourth issue, the Appellant, relying on **ANTHONY IGBO v STATE (1975) 1 ALL NLR (PT. II) 70 AT 74** and **METROTOHUM v STATE (1992) 7 NWLR (PT. 254) 443**, argued that a conviction may be based on the testimony of a single material witness. The Appellant contended that the trial court rightly relied on the cogent and compelling evidence of PW5 to convict the Respondent, and urged the Supreme Court to set aside the decision of the lower court. The Respondent posited otherwise. He contended that the prosecution failed to prove the offences of obtaining money by false pretence and forgery beyond reasonable doubt. The Respondent argued that the evidence of PW5 did not establish the link between the Respondent and the alleged forged documents, and that PW1, the nominal complainant, failed to adduce credible proof of payment of ₦4,000,000.00. he relied on the case of **NWATURUOCHA v STATE (2011) LPELR-8119 (SC)** and **STATE v CHUKWU (2021) LPELR-56610 (SC).**

Court's Judgement and Rationale

In resolving the first issue, the Supreme Court held that the Notice of Appeal filed at the lower court was competent notwithstanding the error in the suit number; and as such, the error did not make it fundamentally defective. The court reasoned that error in the suit number is a mere clerical error that did not prejudice the Appellant in any way. Also, the grounds of appeal and issues for determination in the Notice of Appeal filed at the lower court were directly tied to the judgement

in the case in which the Respondent participated at the trial court. Similarly, the Appellant was not misled, as it filed a Respondent's brief and fully participated in the proceedings without objection until after judgement. *The error is a mere irregularity that the Appellant has waived. It does not affect the validity of the Notice of Appeal filed at the lower court.* Their Lordships held that to hold that the said error in the suit number makes the Notice of Appeal to be fundamentally defective will amount to elevating technicality over the doing of substantial justice - **MARINE MANAGEMENT ASSOCIATES INC v NMA (2012) 18 NWLR (PT. 1333) 506; UWAZURUIKE v A-G FEDERATION (2013) 10 NWLR (PT. 1361) 105;** and **OLLEY v TUNJI & ORS (2013) 10 NWLR (PT. 1362) 275.** *Technical defects, as in this case, the error in the suit number, cannot be said to go to the root of the case or rob a court of jurisdiction*.

Deciding the second issue which is on fair hearing, the Supreme Court held that the trial court did not deny the Respondent his right to fair hearing in view of the circumstances of the proceedings at the trial court. The Supreme Court, quoting the statement of the Respondent as captured on page 103 of the Record of Appeal thus - "*I do not have any defence. I still want an adjournment*"- held that the court cannot continue to adjourn ad infinitum. Therefore, it cannot be said that the trial court failed to give the Respondent fair-hearing but rather the Respondent failed to present his defence each time the trial court gave him the opportunity to be heard, based on established principles in **BIO v STATE (2020) LPELR-50258(SC)**; **MAGNA MARITIME SERVICES LTD. & ANOR v OTEJU & ANOR (2005) 14 NWLR (PT. 945) 517 (SC); INAKOJU & ORS v ADELEKE & ORS (2007) LPELR-1510(SC),** among others.

Further, relying on **OGUNSANYA v STATE (2011) 12 NWLR (PT. 1261)**, as well as the aforementioned established cases, the Supreme Court reiterated that *the Respondent had full opportunity to present his defence but he refuses in deliberate attempt to delay the proceedings.* The court was fully persuaded that *seven adjournments within nine months is enough opportunity for the Respondent to prepare and present his defence in the case at the trial court and having failed to do so, he cannot complain of denial of his right under Section 36(4) and (6) of the 1999 Constitution.*

On the third issue, the Supreme Court held that the lower court erred in law when it held that the failure of the trial court to allow the Respondent's case to be conducted by a legal practitioner, as held in *Josiah v. State* (*supra*), was fatal to the case of the Appellant. ***In reiterating the well-established principle of law in Josiah v. State (supra), the Supreme Court explained that the mandatory requirement of legal representation for a defendant applies only when the defendant is being tried for capital offences, if unrepresented. However, Section 267 of the Administration of Criminal Justice Act, 2015, does not impose the duty on the court to ensure that an accused person is represented by a legal practitioner in all cases. It is clear that an accused person can elect to represent himself in person, except where he is bing charged with a capital offence or an offence with life imprisonment. Even where it is so, the duty of the court is to inform the accused person who elects to defend himself in person of the risk of such election.***

In the present case, the Supreme Court noted that the Respondent faced fraud charges, not capital offences, and received terms of imprisonment rather than death or life imprisonment applicable in capital offences. He was given adequate opportunities to secure counsel but repeatedly sought adjournments. The distinction lies between lack of opportunity for representation and failure to utilize available opportunities. Therefore, *Josiah v. State* (*supra*), is inapplicable, and the lower Court wrongly relied on it. The issue was therefore resolved against the Respondent.

Lastly, on the fourth issue, the Supreme Court reaffirmed the trite principle of law that *cogent and credible evidence of a single witness is enough to convict a defendant, as long as such evidence establishes the guilt of the defendant beyond reasonable doubt, and provided the law does not require corroboration before conviction can be sustained.* The Supreme - **LASE v STATE (2018) 3 NWLR (PT.1607) 502.** In this case, PW5, the Deputy Director of the Presidential Implementation Committee, gave uncontroverted evidence that the Respondent was allocated a single apartment and that the alleged letters of offer and treasury receipts were forged. His testimony established all the elements of forgery as laid down in **ALAKE v STATE (1991) 7 NWLR (PT. 205) 592** and **BABALOLA v STATE (1989) 4 NWLR (PT. 115) 264.** These elements were corroborated by PW1, which further reinforced the Respondent's culpability. In the final analysis, the Supreme Court set aside the

judgement of the lower court and restored the conviction and sentence of the trial court in Charge No: MHC/97C/2016.

Appeal allowed.

Representation
H. G. Erahabor, Esq. (with the *fiat* of the Attorney-General of the Federation) for the Appellant.

Prof. Agbo J. Madaki with S.E. Abu, Esq., P.R. Dajane, Esq. and Maryan A. Madaki, Esq.) for the Respondent.

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