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PROFESSIONAL NEGLIGENCE AND LEGAL PRACTITIONERS IN NIGERIA

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Abstract

Professional negligence by a legal practitioner happens when a lawyer fails to perform his legal duties to the required standard or breaches a duty of cares which he owes his client; and such poor conduct subsequently results in a financial loss, physical damage or injury to the client. The relationship between a client and his lawyer is a fiduciary one which creates duties and obligations on both parties, and more especially on the legal practitioner. The Legal Practitioners Act and the Rules of Professional Conduct, 2023 are the principal legislations that create the duties of a legal practitioner to his client and establish the basis for his liabilities where he fails to perform same. By virtue of the provisions of these legal regimes, legal practitioners are not immuned from liability arising from their professional negligence. The work examines the legal framework regulating professional negligence of legal practitioners in Nigeria. The paper adopts the doctrinal legal research methodology. The paper founds that the legal practitioner owes his clients the duty of honesty, duty of care and skill and the duty of secrecy and confidentiality. The work recommends that section 9(3) of the Legal Practitioners Act should be amended as such clause is no longer tenable in the contemporary times.

Keywords: duty of care and skill, legal practitioner, liability, professional negligence

Introduction

In every profession, there exists a set of rituals, formalities, code of conducts, ethical standards and moral obligations that have been established over many years with the aim of uplifting such profession to a dignified level and to ensure that the profession remains in touch with modern realities. The legal profession is one of such professions

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with code of conduct and rules of engagement that regulate the activities of its members in terms of relationship with client and how they carry out a client's brief.[1] A legal practitioner is regarded by members of the public as a professional in his field and as a professional it means he has undergone through a competent and rigorous apprenticeship and certified to have acquired requisite knowledge and skills which makes him proficient to render legal services to any member of the public that hires his services.[2] Therefore, it is the duty of a legal practitioner who is hired by a client to exhibit professional competence and expertise in the conduct of any case for which legal fees/charges have been paid to him. A legal practitioner that exhibits incompetence and laxity in the handling of a client case by mismanagement of such matter may be liable in civil action for negligence which would arise from the way he handled a client's brief.

Discourse on Negligence

Negligence is defined as the breach of any duty of care which results in damages to the party to whom the duty is owed. In *MT Sea Pioneer & Ors v Adeyeye*,[3] the Court of Appeal elaborately considered the meaning of tort of negligence and held that it is the failure to exercise the standard of care that a reasonably prudent person would have exercised in a similar situation. It is any conduct that falls below the legal standard established to protect others against unreasonable risk of harm and also could be a careless behaviour, lacking proper care and attention.

My Lordship Muhammad, JSC, (former CJN), in *Okwejiminor vs. Gbakeji & Anor*,[4] defined negligence as follows: "Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do."

Lord Wright had this to say in defining negligence: "In strict legal analysis, negligence means more than heedless or careless conduct, whether in omission or commission. It properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing."[5] The latter definition spells out for us the three

1 Safiyanu, S., "The Law Liability of Legal Practitioners in Nigeria: The True Position of the Law", ResearchGate, May, 2020.

2 This is because he has been trained as a law graduate from the Faculty of Law with the Bachelor of Law degree (LLB); then the Nigerian Law School with Barrister-at-Law (BL) degree and finally Call to the Bar with Call and issued with the Bar Certificate and then enrolment as a Barrister and Solicitor of the Supreme Court of Nigeria.

3 (2022) LPELR-57891 (CA)

4 (2008) LPELR-2537 @ 50-51

5 *Lochgelly Iron and Coal Co. v. M'mullan* (1934) A.C. 1 at P. 25; See also *Rabiu Hamza vs. Peter Kure* (2010) LPELR-1351.

basic components of the torts of negligence: [a] duty of care [b] breach of the duty of care [c] damage caused by the breach."

The breakdown from the above passage is that negligence is the breach of legal duty of care owed by the Defendant, which results in damage or injury to the Plaintiff. Therefore, the ingredients of the tort of negligence are (a) a legal duty owed to the Plaintiff by the Defendant to exercise care within the scope of his duty; (b) the breach of the said duty; and (c) the consequential damage or injury caused to the Plaintiff. For a Plaintiff to succeed in a claim founded on negligence, these three ingredients must be proved on preponderance of evidence. The most important of the ingredients is the prove of duty of care. How does a duty of care arise? It arises where there is sufficient proximity between the Plaintiff and the Defendant such that the Defendant ought to have the Plaintiff in contemplation in the act complained of.

In determining the proximity that would create legal duty, Lord Atkins developed the formular in the case of Donoghue vs. Stevenson,[6] in his now famous dictum, as follows:

> The rule that you are to love your neighbor, becomes, in law, you must not injure your neighbor. Who then in law is my neighbor? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

The duty of care is said to exist where there is sufficient relationship of proximity as between the Defendant and the Plaintiff who suffered the damage or injury, such that a reasonable man can conclude that carelessness on the part of the Defendant likely caused the damage. The position has now been reached that in order to establish that a duty of care arises in a particular situation, it is not necessary to bring the facts of that situation within those of previous situations in which a duty of care has been held to exist. First, one has to ask as between the alleged wrong doer and the person who has suffered damage if there is a relationship of proximity or neigbourhood that in the reasonable contemplation of the former, carelessness on his part may be likely to cause damage to the later in which case a prima facie duty of care arises.

Section 9(1) of the Legal Practitioners Act, provides as follows:

> Subject to the provisions of this section, a person shall not be immune from liability for damage attributable to his negligence while acting in his capacity as a legal practitioner, and any provision purporting to exclude or limit that liability in any contract shall be void.

6 (1932) AC 562

From the above, it is very clear that a legal practitioner is liable to the tort of negligence for actions or inactions against their clients in the discharge of their professional duties.
In England, there was never the issue whether or not solicitor could be liable for the tort of negligence in the performance of their duties to their clients. We shall consider the general position of the tort of negligence. In *Cocottonpoulous v P. Z. Co. Ltd,*[7] it was held that a solicitor is under a duty to show reasonable diligence and caution and ought to warn his client against the initiation of a case that is purely speculative and devoid of merit. In the same vein, in *Bello Raji v X (a legal practitioner)*,[8] the court held that counsel was liable for gross negligence for misadvising his client to bring an action that was statute barred. Again, in *Fitzpatrick v Batget & Co.*,[9] the court held that the plaintiff's solicitor was liable for negligence for inordinate delay in the prosecution of the case.
Can a Barrister be liable for professional negligence in the cause of appearing on behalf of a client in a court of law? However, this question was answered by the House of Lords in *Rondel v Worsley*,[10] where the plaintiff in that case was tried and convicted on a charge of causing bodily harm. The defendant, a Barrister-at-law, had accepted a dock brief and defended the plaintiff unsuccessfully. The plaintiff brought the action against the defendant for professional negligence. The issue for determination was whether or not an action for negligence could lie against a Barrister. The court held no action can lie against a Barrister. The immunity from action for negligence against a Barrister was based on public policy which constitutes three elements:

i. That the administration of justice required that a Barrister should be able to carry his duty to the court fearlessly and independently
ii. That action for negligence against barristers would make for the re-trying of the original actions inevitable and so prolong litigation; and
iii. That a Barrister was obligated to accept any client, however difficult, who sought his services.

The House of Lords in 1978 affirmed the principle as enunciated in Rondel's case in *Saif Alli v Sydney Mitchell*,[11] where that court held that a Barrister's immunity from suits for negligence extended to those matters of pre-trial work, which were so intimately connected with the conduct of the cause in court, and could be said to be a preliminary

7 (1965) LLR 170
8 (1947) NLR 74
9 (1967) 1 WLR 76
10 (1969) AC 191; (1967) 1 QB 443; 3 WLR 1666 HL
11 (1978) 3 All ER 1033

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decision affecting the way the cause was conducted when it came to hearing. Thus, under these decisions, it was established that a Barrister was immune from an action for negligence at the suit of a client in respect of his conduct and management of a case in court and preliminary work connected therewith.

In Nigeria, Section 9(1) of the LPA makes the decisions considered above inapplicable in Nigeria as legal practitioner, including a Barrister is not immune to the tort of negligence attributable to his lack of duty of care in the handling of his client's case. Some have argued that section 9(3) upheld the decisions in *Rondle's case, Saif Alli's* case as it provides as follows:

> Nothing in subsection (1) of this section shall affect the application to a legal practitioner of the rule of law exempting barristers from the liability aforesaid in so far as that rule applies to the conduct of proceedings in the face of any court, tribunal, or other body.[12]

The essence of the above provision is the recognition and acknowledgement of the English rule exempting barristers from liability for negligence. Lord Denning MR,[13] maintained that originally the Barrister was not liable for negligence. Any matter on this by a client against him was struck out. The reason was because, as a matter of public policy, a barrister could not be held for negligence in the conduct of a case. He continued as follows:

> I will first consider the law as it was understood by the profession up till may of 1963 when the House of Lords decided Hedley Bryrne & Co. Ltd v Heller & Partners Ltd (1964) AC 465. Beyond doubt the barrister was treated differently from other professional men. He could not sue for his fees. He could not even make a contract for them with his client nor with the Solicitors who represent the client. The obligations to pay him was an obligation which was binding in honour, not in law.[14]

So under the Roman law and English law, the barrister does not receive professional fee and simply paid honorarium or given a gift. The barrister was not paid a wage. Under that era, the robe of the barrister has a flap of little pocket strategically positioned where the client could place his gratuity in the pretence that the barrister did not know he was being

12 Section 9(3) LPA

13 Denning MR, *The Discipline of Law*, England, Butterworths, 1979

14 Ibid.

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given a reward.[15] Later in the book, Lord Denning admitted that the principle of immunity for a barrister against the client was segregational, discriminational, anachronistic and against public policy. He criticized it as thus:

> The rule itself was an anomaly. No other professional man was exempt from liability. A medical man was liable for negligence. So was Solicitor. Only a barrister was exempt. In addition, the reason given for the rule was bad. Both judges and text writers said it was because he could not sue for his fees…yet in other professions, it has been held ever since 1789 that if a professional man undertook a task involving his skill, without any fee at all, he was liable if he performed it negligently.[16]

Similarly, in *Hedley Byrnes case*,[17] it was held that: "If someone possessed a special skill and undertakes quite irrespective of contract to apply that skill for the assistance of another person who relies upon such skill, a duty of care will arise"

This above principle was considered wide enough to apply to a barrister in all his work both in court and out of court.

However, the above judicial rule and principle has been overruled as there is no more immunity for barristers on tort of negligence committed against a client. In *Arthur JS Hall v Simons*,[18] the issue was whether or not the immunity for a barrister in respect of and relating to the conduct of legal proceedings as pronounced by the House of Lords in Rondel v Worsley, was maintainable in England. The House of Lords reversed its decision in Rondel's and Saif Alli's cases and held that such immunity was no longer needed to deal with collateral attacks on civil and criminal decisions as public interest must be satisfactorily protected by the court the court. It further held that the abolition of the immunity should strengthen the legal system by exposing isolated acts of incompetence when exhibited by a member of the legal profession. Lord Steyn, who read the lead judgment of that court stated as follows:

> …on the information available and developments since Rondel v Worsley, I am satisfied that in today's world, that decision no longer correctly reflects public policy. The basis of immunity of barristers has gone.[19]

15 Adiele-Thomas, C. C., "Growth in the Legal Profession: An International and Purposeful Act", *One Day Symposium of Eminent Person Lecture*, organised by the NBA Aba Branch on 25th March, 2024

16 See, Denning MR, Op. Cit., 246

17 Op. Cit.

18 (2000) 3 All ER 673

19 Ibid.

From this decision of the House of Lords in England, immunity of barristers from actions on tort of negligence in the conduct of civil cases came to an end and thereby reversing, upturning and overruling *Rondel v Worsley*.

In criminal matters, does immunity avail a barrister over a suit filed against him by his client for his conviction in a criminal office? The answer to this question can be gleaned from the decision of the court per Lord Browne-Wilkinson in *Hall v Simmons*,[20] where the court held as thus:

> It follows that, in the ordinary case, an action claiming that an advocate has been negligent in criminal proceedings will be struck out as an abuse of process so long as the criminal conviction stands. Only if the conviction has been set aside will such an action be normally maintainable. In these circumstances there is no need to preserve an advocate's immunity for his conduct of a criminal case…[21]

So, ultimately a barrister can also be sued or held accountable for professional negligence by his client for lack of good faith and laxity which he exercised in his criminal defence, especially if his conviction was quashed on appeal.

Liability in the Present era

Liability in the current dispensation is regulated by section 9 of the LPA which extensively provides as follows:

1. Subject to the provisions of this section, a person shall not be immune from liability for damage attributable to his negligence while acting in his capacity as a legal practitioner, and any provision purporting to exclude or limit that liability in any contract shall be void.
2. Nothing in subsection (1) of this section shall be construed as preventing the exclusion or limitation of the liability aforesaid in any case where a legal practitioner gives his services without reward either by way of fees, disbursement or otherwise.
3. Nothing in subsection (1) of this section shall affect the application to a legal practitioner of the rule of law exempting barristers from the liability aforesaid in so far as the rule applies to the conduct of proceedings in the face of any court, tribunal or other body.

20 Ibid.

21 Ibid.

Subsection 1 provides for the classical liability of the legal practitioner for negligence in the performance of his duty to his client and forbids any contract the parties may sign or enter into that may limit or exclude his liability. A legal practitioner, who is hired and paid professional fees/charges in order to render legal services[22] is accountable to his client and may be liable for negligence.

Subsection 2, on the other hand, provides that a legal practitioner who renders his services free and without any charge or fee, is allowed to limit or exclude his liability for negligence by an express agreement/contract mutually signed and entered into by the parties. However, where he fails to limit or exclude his liability, he will be liable for negligence as provided for in subsection (1) above.

In subsection 3, the question is to be answered is as to what exactly was meant by the phrase "the rule of law"? is it the English common law rule or the rule of law as interpreted by Nigerian courts? Since the rule of law on liability of barrister in England had since changed with the decision in *Hall v Simons*, the position of the law in Nigeria has followed accordingly. Therefore, under the Nigerian law, a barrister is also liable for negligence for the conduct of proceedings in the face of the court. Thus, it can be conveniently state that there is no longer any rule of law conferring immunity from action in negligence on a legal practitioner in respect of what is done or omitted to be done in the face of the court.

In Nigeria, there have been various judicial authorities where a legal practitioner was found liable in negligence over his mismanagement or mishandling of the client's case. In *Chidoka v First City Finance Company Ltd*,[23] the Supreme Court held that a legal practitioner is a master of his case. He could decide not to call any witness or even cross examine the witnesses of the other party. However, where the legal practitioner negligently conducts his client's case, he will be liable for tort of negligence in a professional respect.

Legal practitioner owes a fiduciary duty to his client and will be liable for negligence if he gives a wrong advice to his client.[24] It means that if a legal practitioner advises his client to invest money in a landed property but carelessly fails to investigate the Assignor's title and as a result of which the client lost huge sums of money, is liable in negligence. [25] similarly, in *Ross v Caunters*,[26] it was held that a solicitor in drawing up a will for a client owes a duty of care to a proposed beneficiary under the will and may be liable in damages for negligence.

22 Legal advice, preparation of documents, litigation in court etc

23 (2012) LPELR-9343 (SC)

24 See, Rule 14 of the Rules of Professional Conduct, 2023

25 See, *Lawson v Siffre* (1932) 11 NLR 113

26 (1980) Ch. 297

Similarly, in *Ayua v Gbaka*,[27] the Supreme Court held that if a Counsel handles the case of his client carelessly or negligently and creates a situation that imposes an injury on his client, such counsel places himself at risk of being sued for professional negligence by his client. However, the liability for the tort of negligence is not automatic, there are ingredients or elements that must be proved to the satisfaction of the court before the legal practitioner will be liable for this specie of tort. In proof of professional negligence, it must be shown that what the legal practitioner did is what his professional brothermen would term is a mistake which he ought not to have made. It means that the action of the legal practitioner must be such that falls short of the standard of a reasonable skillfull legal practitioner placed in the same circumstances.

Analysing Professional Negligence

There are various services which a client may engage the legal practitioner to do on his behalf. These legal duties may include legal advice on any business/transaction, preparation of legal documents either for contentious or non-contentious matters, representation in court or litigation, conduct of searches in designated registries, drafting of land documents and so on. These matters may involve large amount of money to be spent by the client and which the latter demands a professional services or advise before going into investment or payment to a third party.

The client will rely and depend solely and completely on any advise or information which the legal practitioner would give him in this regard. For this business/transaction, the lawyer is like "god" to this client will do anything he will be advised to do. Therefore, the legal practitioner must exhibit and demonstrate a highly reasonable degree of care and competence in giving his advice or handling the client's matter. Irrespective of the type or nature or type of legal brief given to a legal practitioner, he is obligated to invest his energy, time and integrity into the delivery of the matter to the approval of the client. This is because the client in hiring the legal practitioner donated his personal confidence on him and dances to every advisory tune that is played by the lawyer because of the infinite trust and faith he has in him. A legal practitioner may, therefore, be liable for negligence in the following instances: where he gives wrong advice,[28] brings an action that is statute-barred,[29] delays in instituting proceedings that leads to the action becoming statute-barred, delays in entering an appearance or serves defence that leads to default judgment being obtained against the client, failure to prosecute a case with due diligence that leads to the case being struck out for want of prosecution and so on.

27 (1997) 7 NWLR (Pt. 514) 659

28 See, *Inye v Regd Trustees of Foursquare Gospel Church* (2020) LPELR-51143 CA

29 Tukur v Kaita (2023) LPELR-59558 CA

The courts have established that the relationship between the client and the legal practitioner is contractual in nature[30] and as such there is duty of care and skill owed to the client by the legal practitioner and one of the general duty of care and skill expected of a legal practitioner in Nigeria is to avoid a breach of that contract. To determine the liabilities of a lawyer to his client, it is necessary to examine the duties of a legal practitioner in this regard.

Duty of Care and Skill

One of the duties which a legal practitioner owes his client is one which obligates him not to handle any matter which he is not competent in.[31] even though a lawyer is presumed to know all the law, however, lawyers do not know all the law but they know where to find the lawyer, including reference to certain brief to colleagues who have more expertise than them in a particular case. He is expected to refer any matter which he knows that he lacks the requisite knowledge and skill, to another with the knowledge required to deal with it.

Pursuant to Rule 21(1),[32] a legal practitioner is expected not to withdraw from his employment except with a good reason. In the prosecution of any client aces, if the legal practitioner realises that he can no longer put forward any supportable argument in support of his client's case, it is required of him to immediately withdraw and inform his client the circumstances. A legal practitioner is the master of his case and should withdraw the moment he realises that he can no longer sustain an argument in the case he is handling for his client, except he has express instructions to the contrary.[33] It is professionally inconveniencing for a legal practitioner to have first conference with his client's witnesses in court.[34]

A client's instruction or brief to his legal practitioner gives him power to do all necessary things as he deems fit for the successful outcome of the matter. This means that he has the powers to compromise or withdraw a matter already going in court without reference to his client. As he withdraws a suit, it means he can also withdraw an appeal already pending be an appellate court without any recourse to his client. He determines the accommodations he can admit in favour of an opposing party/counsel without informing his client and that stands in law, provided the merits of the matter is not corrupted and

30 *Edoziem v Edoziem* (1993) 1 SCNJ 166, 189; *Mosheshe v NSP Ltd* (1986) 2 NWLR (Pt. 55) 110, 119; *Adewumi v Plastex Nig. Ltd* (1986) 6 SC 214, 223

31 See, Rule 16, RPC, 2023

32 RPC, 2023

33 See, *Adewunmi v Plastex Nig. Ltd* (1986) 3 NWLR (pt. 32) 767

34 Agwu, S. K. and Buzugbe, K. S., "Rethinking Professional Negligence by legal Practitioners in Nigeria", *Journal of Public and Private law, UNIZIK*, Vol. 13, 2023

his client prejudiced. The basis of the client's right and duty to control incidents of the trial is as a function of the level of confidence reposed on him by his client who hired him for the job.[35]

Duty of Honesty

This duty relates also to and is referred to as the fiducial duty. This demonstrates that the lawyer is superior to the client and hence is required to deal with the client very honestly in a professional respect. In this regard, a legal practitioner has a duty to represent his client within the bounds of the law;[36] duty not to file frivolous and malicious cases in court on behalf of his client;[37] duty not to breach agreement with client;[38] duty to disclose conflict of interest;[39] duty of dedication towards the performance of the client's brief;[40] a legal practitioner who prepares a will is not expected to be beneficiary under such will, especially when his benefit in that will is huge.[41] A legal practitioner must bring to the knowledge of his client the fruitlessness of his case and advise him accordingly.[42] A legal is obligated to inform his client the state of his matter, especially if the case is statute barred of which no legal action is necessary. He could be held in negligence when he fails to inform the client as appropriate and goes ahead and sues. The Rules of Professional Conduct, 2023 provides various duties which a legal practitioner owes his client when acting in his professional capacity and a failure same will entitle the client to be indemnified by the legal practitioner.

Duty of Legal Practitioner in the Conduct of Cases

Lawyers owe the clients legal duty to exercise reasonable care in the conduct of cases for clients. It must be stated that in law, the standard of care is a higher one and depends upon the relationship that exists between the parties. The legal practitioner has that legal duty to exercise reasonable skill, diligence and expertise in the execution of the instructions of his clients. it is the duty of the legal practitioner to dedicate his attention, energy and expertise to the service of his client,[43] and to act in his best interest.[44] He also

35 See, Sect 192(1) of the Evidence Act, 2011; Rule 19(1) and (2), RPC, 2023

36 Rule 15 RPC, 2023

37 Rule 15(3)(b), ibid.

38 Rule 18(2), ibid.

39 Rule 17, ibid.

40 Rule 14, ibid.

41 *Farelly v Conigen* (1896) 7 QLJ 105

42 Rule 14(2)(e), Op. Cit.

43 Rule 14(10), ibid.

44 Ibid.

has a duty to handle his client's case with utmost devotion.[45] Such devotion must carry with it a certain level of professionalism as negligence in the handling of a client's case may amount to professional negligence.[46]

The legal practitioners' behaviour must be in compliance with the relevant laws and Code of Conduct for lawyers and must represent clients within the bounds of the law as laid down in the Code of Conduct for lawyers.[47] The overall duty of a legal practitioner is to uphold and observe the rule of law, promote and foster the course of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner.[48] However, the conduct of some legal practitioners in Nigerian falls below the threshold of high standards required of a legal practitioner. It is required that a legal practitioner's devotion to the client's case must conform with the prescription of the law and not beyond as he must execute his duty within his professional discretion and judgement.[49]

There have been many cases of professional misconduct which the court has heard and judgment passed as appropriate as some of the convictions were overturned[50] while others were dismissed for want of diligent prosecution.[51] Practically speaking, clients do not possess the confidence to take up a writ against their lawyers for negligence because of the belief that the case will eventual not see the light of the day in court. Clients are entitled to diligent prosecution of their cases by their lawyer in so far as they have paid the agreed professional fees to the legal practitioner.[52] In *Udofia v The State*,[53] the lawyer was absent when two important witnesses testified in the matter. His cross-examination was very weak on the days he was in court. At the final address, all he could say was "I leave the matter to the court". This is an instance of lack of diligence and competence of a legal practitioner.

Another specie of misconduct on the part of lawyers is the engagement of delay tactic in the conduct of cases in court. This is because such methods delay the cause of justice and this also demonstrate laxity in the handling of client's cases by lawyers. The law today is that a court has the power to take action against a legal practitioner who deliberately engages in delay tactics, without violating the provisions of section 36(1) of the

45 Adewunmi v Plastex Nig. Ltd, Op. Cit.

46 Rule 14(5), RPC

47 *Dariye v FRN* (2015) LPELR-24398 (SC)

48 Rule 1 Op. Cit.

49 Rule 14(3), ibid.

50 *Udofia v State* (1984) 12 SC 139;(1998) 3 NWLR (Pt. 82) 316

51 *Chime v Ude* (1996) 7 NWLR (Pt. 461); M/V Baco Liners v Emmanuel Adeniji (1993) 2 NWLR (Pt. 274) 195

52 See, Rules 14(1)-(5); 16(1)(a)-(d); 30 and 31(3) of the RPC, 2023

53 Op. Cit.

Constitution which provides for right to fair hearing.[54] A legal practitioner is an officer of the court and must not be a clog in the wheel of the administration of justice. Rule 30 provides as follows: "A lawyer is an officer of the court and, accordingly, he shall not do any act or conduct himself in any manner that may obstruct, delay or adversely affect the administration of justice". From the above, a lawyer who would always write several letters of adjournment on similar flimsy excuses of being ill or his vehicle got damaged on his way to the court or his siblings and children are sick, when in actual cases, they are false forms a clog in the wheel of the administration of justice and a breach of Rule 30 of the Rules of Professional Conduct, 2023. Any breach of the Rules attracts the sanction as prescribed in Rule 74 as follows:

> A lawyer who acts in contravention of the provisions of Chapter 1 of these Rules or fails to perform any of the duties imposed by that Chapter, commits professional misconduct and is liable to punishment as provided in the Legal Practitioners Act.

In *Iteogu v LPDC*,[55] the Court held that any conduct that constitutes an infraction of acceptable standard of behaviour or ethics of the legal profession, of any conduct which connotes conduct despicable and morally reprehensible as to bring the legal profession into disrepute if condoned or unpunished, will amount to misconduct. This lawyer conceded that he collected the 50% compensation sum meant for his clients as money pas as compensation for the land acquired for "Naval Base" at Akwa Ibom and thereby put himself in a fiduciary position vis-vis his clients named on the payment Schedule and so accountable to each and everyone of them. In the circumstances, there is no hiding place for the lawyer as he cannot be allowed to so enrich himself in the most unconscionable circumstances of the case. lawyers must practice their profession within the ambience of the rules of the legal profession.

The moral lesson from Iteogu's case for lawyers is that a legal practitioner should refrain from abuse of client's confidence which was reposed on him by the client. This also include the fact that the legal practitioner should keep the client's confidentialities, trust and to rendered proper account of client's money or property.[56]

54 See, *Eze v FRN* (2017) LPELR-42097 (SC)

55 (2009) LPELR-1559(SC)

56 Rule 19 RPC, 2023

Defences to Professional Negligence

The general rule is that a legal practitioner is liable for tort of professional negligence for breach of his duty to his client.[57] However, there seem to be exceptions provided for by the statute as can be found in section 9(2) for legal practitioners engaged in pro bono services and section 9(3) is on immunity for ligation in the face of the court. For immunity in the face of the court, the reason for such deals with the following:

a. The need for legal practitioners to be fearless and independent in conducting their client's case in court;
b. The need to forestall endless litigation as every legal practitioner who loses a matter will surely be sued by his client;
c. Legal practitioners are by their calling regarded as responsible men, presumably and arguably men with high sense of responsibility and diligence and cannot be reduced to the fireworks of litigation against them by their own client they filed suits on their behalf earlier.[58]

By Section 9(2), any legal practitioner that is involved any services that is rendered remuneration-free or without any form of payment (pro bono) is immune from the tort of negligence by clients. this is because it is regarded that a pro bono service is for the interest of the society and the public at large and such legal practitioner must be protected from such public embarrassment by way of litigation for negligence. However, for this to avail the legal practitioner, there must be an agreement signed by the parties expressly and clearly limiting and exempting the legal practitioner from any form of negligence in the performance of his services to the client. In the event that such agreement was not entered into, the legal practitioner will be liable for negligence, where necessary. This provision does not align with the English Court decision in *Lawson v Siffre*,[59] where the court held the legal practitioner liable for negligence having rejected his defence that he rendered the legal service free and without payment of fees to him. From the facts of the case in the above matter, the legal practitioner failed to expressly limit or exempt his liability in the matter, he was held liable in negligence notwithstanding that he rendered the service gratuitously.

Under Section 9(3), a legal practitioner may not be held liable for negligence for any conduct of proceedings in the face of the court in Nigeria. This is simply immunity from action in negligence for legal practitioners with respect to he did or did not do in the

57 Odeyinde, O., "The Legal Practitioners Professional Negligence in Nigeria: Evaluation of the General Liability and Immunity Afforded on Legal Practitioners in the Conduct of their Client's Case", (2021)(1)(5) *Scholarly Journal of Advanced Legal Research*, 27-40

58 Agwu, S. K. and Buzugbe, K. S., "Rethinking Professional Negligence by legal Practitioners in Nigeria", Op. Cit., 99

59 (1932) 11 NLR 113

prosecution of his case in court. However, by the decision of the Supreme Court in *Chidoka v First City Finance Company Ltd,*[60] a legal practitioner is liable in negligence even in proceedings in the face of the court. This Apex Court decision has completely put to rest the issues and commentaries on section 9(3) with respect to liability in the face of the court of legal practitioners in Nigeria.

Challenges in Liability for Professional Negligence

Below are some of the challenges that face liability of legal practitioners for professional negligence in Nigeria.

a. **Poor or lack of implementation of Laws regulating Conducts of Lawyer:** Laws are dead when they are not executed or implemented by the authorities concerned. Most lawyers in Nigeria who engage in unethical and unprofessional practises which are gross violation of the Code of Conduct always go unpunished as a result of the none enforcement of these laws. When the above happens, it breeds impunity on the part of legal practitioners as professional laxity hits the roof-top both in courtrooms and outside the courtrooms.
b. **Difficulty of Proving Negligence:** To prove negligence against a legal practitioner, the claimant is required to prove that in similar situation, that a member of the legal profession of ordinary skill and competence who is placed in the same circumstances would do something different and more to avert the injury suffered by the client. In doing this, he is expected to bring an expert witness, who is supposed to be a different lawyer, who most likely may not be ready and eager to appear and give evidence against his colleague. Form this point, clients are not so much eager in pursuing profession negligence against a lawyer.
c. **Judicial Barriers:** Some judicial officers serve a clog to the wheel as it relates to parties in court. These clog in the judiciary include procedural delays, technicalities, high cost of litigation and judicial corruption.[61]

The Need to Strike Out/Amend Section 9(3) of the Legal Practitioners Act

The provision in section 9(3) is in the main an exemption/immunity of legal practitioners from the tort of negligence in proceedings in the face of the court, tribunal or other body in Nigeria. It means no client has the vires to sue his lawyer for failure to handle his case with diligence and competence. A lawyer who mismanaged and compromised a client's case cannot be held accountable by the said client. This is grossly unreasonable and invitation to anarchy, at worst. Clients deserve to be treated with dignity and decency

60 Op. Cit.

61 Agwu, S. K. and Buzugbe, K. S., "Rethinking Professional Negligence by legal Practitioners in Nigeria", Op. Cit., 111

with respect to their litigation. It will be insensitive not to accord a client an avenue to face his lawyer who betrayed the trust he hanged on his neck. The ever constant practice by lawyer of delaying cases, laxity in the management of client's cases in court, and other terrible instances are possible as a result of the fact that lawyers believe that they enjoy immunity from civil prosecution by their client for professional negligence. Lawyers will stand up to their responsibility if Section 9(3) of the legal Practitioners Act is struck out or deleted through an amendment.

In England, America and Canada absolute immunity has since been abolished and dead both in the corpus of their legislation and in the decisions of courts in those countries. Nigeria inherited legal practitioners immunity from England and which principle they no longer practice, therefore, it was time for Nigeria to jettison similar practice or law. In *Arthur J. S. Hall v Simons,*[62]the House of Lords held that barristers and solicitors are not immune from suit on professional negligence in the conduct of proceedings. This decision reversed the decision in *Rondel v Worsley*,[63] as the House of Lord declared that lawyers' immunity against suit on professional negligence no longer exists. They held that immunity in favour of lawyers, especially in criminal proceedings will create anomalies and removing immunity will not affect the duty of the lawyer to the court as the removal will preserve the confidence in the legal system.

This writer advances the argument that the decisions in *Hill v Simons*[64] and the Nigeria's Supreme Court's decision in *Chidoka v First City Finance Company Ltd*[65] suffice to invite the National Assembly to amend Section 9(3) of the LPA or in the alternative, the Legal Practitioners Disciplinary Committee of the NBA approach the court to strike down the said section for being inconsistent with the present reality of the law and court decisions. The utility of this will be that lawyers will guide their activities and buckle up or gird their loins to give efficient and responsible services to their clients in all proceedings in the face of the court. There might be no more unnecessary litany of letters of adjournment from counsel, which serves as a ploy to delay matters; there might no longer be excuses of ill-health of counsel or his relatives; there might no longer be vehicle damage or accidents that happened to counsel while on his way to the court and so on. I am positive that such may heard no more at the Bar, the moment there is an amendment to Section 9(3) of the LPA.

62 (2002) 1 AC 615

63 Supra.

64 *Op. Cit.*

65 *Op. Cit*

Conclusion/Recommendations

The provision against negligence and the liability of lawyers and some specific exceptions can be found in section 9 of the Legal Practitioners Act. However, there are some challenges discovered in the enforcement of this provision which this work identified above. This work recommends that there is the urgent need for the review of these legal regimes in other to have an effective and satisfactory enforcement in other that legal practitioners will be held accountable in the event of any such professional negligence committed by them against their clients. the General Council of the bar should further amend the Rules of Professional Conduct with particular reference to professional negligence of a Legal Practitioner with regard to adequate enforcement of this provision.

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