

RIGHT TO LEGAL REPRESENTATION OF ARTIFICIAL PERSONS IN NIGERIA- A CONTEMPORY GESTALT

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ABSTRACT: Right to legal representation is guaranteed under the extant Nigerian Constitution. This can be done by the defendant himself or through his retained lawyer. What has remained unsettled is whether right of legal representation extends to artificial entities and if so, whether it extends to its officials conducting its case on its behalf or whether it must only be through counsel acting on the artificial person's behalf. To settle this legal quagmire, this paper deployed the doctrinal research method and considered constitutional and other statutory provisions on legal representation of artificial persons and the interpretations placed on them by the Courts. The paper found that, in as much as an artificial person is entitled to legal representation, it is a physical impossibility for it to attend Court in person as it must act through its officials or directing minds. The paper further established that an artificial person cannot, while acting on the pedestal of exercise of right to legal representation procure the services of its official who is a non-lawyer to represent it. Thus, unlike a natural person, an artificial person must at all material times be represented in Court by its employees or officials but it cannot conduct its case in Court without being represented by a qualified counsel or lawyer as there is no law authorising such. Consequently, it was recommended among other things that the Courts should remain steadfast in

inhibiting the right of audience of a non-lawyer scheming to offer legal representation to an artificial person in the Court.

Keywords: *artificial, lawyer, natural, person, representation.*

1.0 Introduction

This aim of this paper is to determine the extent to which juristic persons or artificial persons other than natural persons can exercise its right to be represented in Court. Under Nigerian law, there are two types of persons or juristic persons namely- the natural person and the artificial person. As established *Akas v Manager*, "A juristic person is either a natural person in the sense of a human being of the requisite capacity or an entity created by the law which includes an incorporated body and special artificial being created by legislation and vested with the capacity to sue and be sued". "Juristic" or "legal personality" can only be denoted by the enabling law which may be the Constitution or a Statute such as those brought into existence under the Companies and Allied Matters Act, 2020. In *Abubakar & Ors v Yar'dua & Ors*, it was held that "if the enabling law provides for a particular name by way of juristic or legal personality, a party must sue or be sued in that name. He has no choice to sue or be sued in any other name. In other words, juristic or legal personality is a creation of statute and a party which seeks relief must comply strictly with the enabling statute. The position of the law is as stringent and as strict as that."

Against the foregoing backdrop, this paper will be further divided into the following segments- Establishing right to legal representation as a constitutional right; Propriety of a non-lawyer making legal representation in Court on behalf of an artificial person or corporate entity; Summation of applicable principles; Justificatory reasons for the position of the law; and Conclusion.

2.0 Establishing right to legal representation as a constitutional right

Legal representation is a constitutionally guaranteed right in section 36(6)(c) and (d) of the CFRN, 1999 as amended wherein it is proclaimed that "Every person who is charged with a criminal offence shall be entitled to (c) defend himself in person or by legal practitioners of his own choice; and (d) examine, in person or by his legal

practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution.” Thus, a natural person is constitutionally consecrated with the right self-representation or through his own lawyer. By the same extension, a juristic person is equally entitled to legal representation. Although the right guaranteed in the aforementioned subsections is limited to criminal cases, subsection 36(1) provides that “in the determination of his civil rights and obligations, a person shall be entitled to a fair hearing within a reasonable time by an independent and impartial Court or tribunal”. Undoubtedly, any natural person may conduct his case in person or by a legal practitioner of his choice. In *Fawehinmi v. N.B.A. (No.1)*, it was decided by the Supreme Court that every appellant, be he a barrister or solicitor or ordinary member of the public, has a right to argue his case either at first instance or an appeal in person. In addition, section 15(1) of the Supreme Court Act, 1960 enacts that "Subject to the provisions of any other enactment, in all proceedings before the Supreme Court, the parties may appear in person or be represented by a legal practitioner entitled by or under enactment or rules of Court to practice in that Court."

However, the challenge sought to be addressed in this paper are the questions whether an artificial person, not being a natural person, can represent itself in Court or whether it can be offered legal representation in Court by its official who is not a lawyer. The idea of an artificial person attending and arguing personally, or representing itself is a physical or legal impossibility. It is settled law that *persona ficta* (artificial person) acts not in person, but through its authorised agents and servants. It was held in *Kate Ent. Ltd v Daewoo Nigeria Ltd* that "A company is only a juristic person, it can act through an alter ego, either its agents or servants". It was further explained in *MMA Inc. & Anor v NMA* that "A company may in many ways be likened to a human body. It has a brain and nerve centre which controls what it does. It also has hands which hold the tools and act in accordance with directions from the centre. Some of the people in the company are mere servants and agents who are nothing more than hands to do the work and cannot be said to represent the mind or will. Others are directors and managers who represent the directing mind and will of the company,

these managers are the state of the mind of the company and are treated by the law as such."

Against the foregoing legal clarification that an artificial person can only act through its directing mind and will, the outstanding issue begging for resolution is whether an artificial person is entitled to have any of its directing minds who is not a lawyer conduct its case in Court? Answer to this critical poser will be provided in the next segment of this paper.

3.0 Propriety of a non-lawyer making legal representation in Court on behalf of an artificial person or corporate entity

The question whether a non-lawyer or layman, be he an agent or director, is entitled to file Court processes and make legal representation in Court on behalf of an artificial person or corporate body has continued to raise its ugly head in the Nigerian legal system. This is because, very often, officials of incorporated bodies who are non-lawyers seek to rely on the guaranteed right to self-representation to file Court papers on behalf of the Company and or even seek right of audience in Court on behalf of the incorporated body. This precarious situation presented itself in *Mode (Nig) Ltd v UBA Plc.* In that case, the Supreme Court was constrained to make a ruling on an application for a Company to appeal by its agent or representative in Court. The facts were that the plaintiff/appellant/applicant brought an undefended suit against the respondent at the High Court claiming sums of money alleged to be what should be the credit balance in the applicant's account with the respondent's branch. The respondent had applied to be allowed to defend the suit but it was refused. The High Court also proceeded to give judgment for the said amount with costs. The respondent's appeal to the Court of Appeal was allowed. The applicant desired to appeal against the said judgment and in asking for leave to do so, included a prayer for "Leave for the applicant to appeal by its Agent/Representative, a layman, to argue the appeal on its behalf." The respondent opposed the application on the ground that the same was incompetent as it was not signed by a legal practitioner. Two closely related issues for determination by the Supreme Court were the questions whether the applicant's application under consideration was competent having been initiated by a person who is not a legal practitioner and whether it was

right for the Court of Appeal to have granted leave to a company to appear by its agent/representative, a layman and director of the company to argue the appeal. In its considered ruling, the Supreme Court struck out the application and held among other things that (a) when an appeal or an application is argued in the Supreme Court, no one has any right of audience except counsel briefed on behalf of a party or (when the litigant is a natural person) the party himself. (b) In the case of a corporation or limited liability company which are not natural persons, the right of audience is necessarily limited to counsel briefed on the corporation's behalf. In other words, a limited liability company cannot be represented in Court proceedings by its managing director or other officer or servant.

Furthermore, Ogwuegbu, JSC held in *Atake v Afejuku*, that "A body corporate may not be able to conduct its case in Court without being represented by counsel owing to its inability to appear in person. See *Frinton & Walton UDC v Walton & District Land & Mineral Co. Ltd* (1938) 1 All ER 649 and *Scriven v Vescott (Leeds) Ltd.* (1908) 53 Sol. JO. 101"

4.0 Summation of applicable principles

From the body of statutory and judicial decisions considered in this paper, the guiding principles on the right of artificial persons to be accorded legal representation in Court in Nigeria may be summarised as follows:

- a. Generally, the right to legal representation includes the right to represent oneself or through a lawyer. Note however that by extension, an artificial person can only be represented by a duly qualified lawyer of its own choice.
- b. A body corporate can be represented in Court by its employees or officials as it cannot appear in Court in person but it cannot conduct its case in court without being represented by a qualified counsel or lawyer.
- c. No official or directing mind or will of an artificial person (who is not a legal practitioner) can file Court processes or defend cases in Court on behalf of the artificial person.

- d. The latitude of self-representation available via section 36(6)(c) and (d) of the CFRN, 1999 as amended does not extend to or cover non-lawyers to act in that capacity on behalf of a company as there is no law, statutory provision or case law permitting such.

5.0 Justificatory reasons for the position of the law

It is submitted that there is no necessity for deviating from the law which provides specifically for only a natural person to argue his case in person or by an advocate in this Court. It is further submitted that provision ought not to be made either in the rules or any legislation to accommodate laymen to argue cases for corporate bodies or any persons in Court. The reasons for this position are many folds. In the first instance, consideration must be given to preserving the established usage that only legal practitioners have a right of audience in superior Courts. This is the clear provision of the Legal Practitioners Act. Any contrary stipulation will be aberrant and subject the legal profession to avoidable quackery. Besides, it must not be forgotten that it is only legal practitioners who can be compelled to observe the rules of their profession and who are subject to a disciplinary code in rendering legal services particularly in litigation matters. Other reasons for disallowing laymen right to conduct cases in Court on behalf of artificial persons were clearly outlined by Uwaifo, JSC in *Mode (Nig) Ltd v UBA Plc* when he held that "The dispensation of justice is a serious and solemn business for which cause the Courts should at all times be in a position to receive assistance from those trained and experienced in advocacy. It seems to me that it will not serve the purpose for which Courts are established to permit laymen to double as 'practitioners' in justice administration in Courts of law. As the House of Lords, which is the highest Court in the United Kingdom, in the case of *Tritonia Ltd* (supra) makes clear also, those who are trained in the law and are entitled to practice as advocates can better ensure that the highest Court in the land is given proper professional assistance in the performance dispensation of justice. The Supreme Court which is the highest Court in the Irish Republic, as has been shown in the *Edgar E. Battle* case, has also come to the conclusion that a layman cannot appear for a corporate body in that Court. I have no reason to suggest that we take a different attitude."

6.0 Conclusion

An artificial person or incorporated entity remains entitled to legal representation in Court. This right is constitutionally secured. However, no layman (be he director or managing director or secretary or other official) is allowed to take advantage, instead of taking the services of some legal practitioners, to attempt a sheer adventure into advocacy in the Court on behalf of a corporate body. These boundaries are sensible, logical and ought to be respected. Nigerian Courts are encouraged to continue to discourage such tendency as to do otherwise will inhibit the law on the right of audience or legal representation in the Court. Needless to over-emphasise that Court room advocacy is technical and specialised area within the professional competence and training of lawyers who at all appropriate times avail the benefit of their professional assistance to enhance the work of the Court and the cause of justice.

REFERENCES

1. (2001) 8 NWLR (715) 436 at 444.
2. (2008) LPELR-51(SC) (Pp. 137-138 paras. G).
3. (1989) 2 NWLR (Pt.105) 494.
4. (1985) 2 NWLR (Pt. 5) 116.
5. (2012) LPELR-20618(SC) (Pp. 48-49 paras. D) per Galadima, JSC.
6. (2004) LPELR-55287(SC) (Pp. 5-15 paras. A) per Katsina-Alu, JSC.
7. The English case of *Triotinia Ltd & Ors v Equity and Law Life Assurance Society* (1943) 2 All ER 401 was cited in support.
8. (1994) 9 NWLR (Pt. 368) 379 at 416.