

**NIGERIA BAR ASSOCIATION DISCIPLINARY PANEL ‘A’, LAGOS
HOLDEN AT LAGOS**

CASE NO: 40/2014

BEFORE:

MR. C. A. CANDIDE-JOHNSON SAN (CHAIRMAN); MR. KEMI PINHEIRO SAN; DR FABIAN AJOGWU SAN; MRS. IFEOMA OKWUSOA; MRS. TOSIN ADEKOYA; AND DR DAPO OLANIPEKUN

IN THE MATTER OF A COMPLAINT OF PROFESSIONAL/INFAMOUS MISCONDUCT MADE BY

MRS. CHINWE ADELEKAN

AGAINST

MS. TOYIN BASHORUN

Brief facts of the case

Petitioner’s position

- 1.1 By a letter dated May 24, 2013, one Mrs. Chinwe Adelekan (the Petitioner) wrote to the Honourable Chief Justice of Nigeria, alleging several cases of professional misconduct/infamous conduct against one Ms. Toyin Bashorun (the Respondent) practicing under the name and style of Churchfileds Solicitors, and craving the indulgence of the Honourable Chief Justice to intervene in the matter to ensure the Petition dated August 20, 2007 which had been submitted to the Legal Practitioners Disciplinary Committee of the Nigerian Bar Association on August 26, 2007, is heard.
- 1.2 By another letter dated February 14, 2014, the Petitioner also wrote to the Nigerian Bar Association (NBA) seeking to draw the attention of the NBA President to the above referenced Petition which had been submitted to the NBA almost 7 (seven) years prior, and also pointing out the Petitioner’s grievance at the Respondent becoming a Prosecutor for the NBA despite the subsistence of the Petition.
- 1.3 The Petitioner states that the Estate in issue is the Estate of her late husband, Mr. Peter Adelekan, who until his death on board the ill-fated

Bellview Airlines plane crash on October 22, 2005, was the Regional General Manager (North-East) of Intercontinental Bank Plc.

- 1.4 The Petitioner further states that the Estate of her late husband was desirous of maintaining an action against Bellview Airlines for the irreparable damage it had occasioned the Adelekan family, and the services of Ms. Toyin Bashorun was recommended, after which Churchfields Solicitors was appointed as Solicitors to the Estate.
- 1.5 From our summation of the Petition, the Petitioner alleges against the Respondent the following:
 - 1.5.1 Unprofessional conduct in refusing to abide by the instructions of her client to cease further dealings with Intercontinental Bank Plc on behalf of the Estate.
 - 1.5.2 Falsely representing herself as solicitors to the Petitioner, after being debriefed.
 - 1.5.3 Deceitfully withholding the Petitioner's items/property.
 - 1.5.4 Receiving Share Certificates/money for and on behalf of her former Client and appropriating same to herself by failing to disclose its existence.
 - 1.5.5 Inciting disaffection and causing division among the family members/beneficiaries of the Estate.

The Respondent's Position

- 1.6 The Respondent by a letter dated June 4, 2014 essentially denied the allegations as contained in the Petition, to wit:
 - 1.6.1 That there was never in existence any Share Certificate reflecting shares belonging to Intercontinental Bank Plc, and that what she had recovered was an old Share certificate reflecting shares belonging to Equity Bank of Nigeria Limited held by the deceased, which had been in the custody of the lead counsel, Prof. A. B. Kasunmu SAN.
 - 1.6.2 That she had received three petitions thus far, two written by one Chinwe Adelekan, dated August 20, 2007 and February 14, 2014, respectively, and another dated January 20, 2012 written under the hand of Mrs. Maryam Uwais, solicitor to the Petitioner,

which were all essentially the same and referring to the same subject matter.

- 1.6.3 That she had responded to the earlier petitions since July 5, 2010, and reiterated that the Petition is false and malicious and designed to ridicule the Respondent and invariably the entire disciplinary process of the Body of Benchers.

2 Issue for Determination

- 2.1 From the totality of the facts before us, the sole issue for determination is as follows:

“Whether in the circumstances of this case a prima facie case of Professional Misconduct/Infamous Conduct has been established against the Respondent”

3 The Determination

Petitioner’s Petition dated August 20, 2007

- 3.1 The Petitioner’s allegations against the Respondent shall be taken seriatim:

CONDUCT OF REFUSING TO ABIDE BY THE INSTRUCTIONS OF HER CLIENT

- 3.1.1 The first thing to note here is that the appointment of Ms. Toyin Bashorun as the Solicitor to the Estate of late Mr. Peter Adelekan is somewhat defective, as same was not done by both administrators to the Estate, but by the widow of the deceased in her capacity as administrator, and Mr. Adesanmi Adelekan, the brother of the deceased for and on behalf of the family, in his capacity as “administrator”, which said Mr. Adesanmi Adelekan was not.
- 3.1.2 The onus is on the Petitioner to prove the above allegation that the Respondent refused to abide by her instructions. See **Section 136 (1) & (2) of the Evidence Act** which is authority for the principle of law that the burden of proof lies on the party who asserts and continues to shift from one party to the other

until the burden is discharged. See also **Adighije v Nwaogu (2010) 12 NWLR (Pt 1209) 419 paras A-D; 463 paras A-F** and **S.P.D.C (Nig.) Ltd v Emehuru (2007) 5 NWLR (Pt 1027) 347 at 372-373 paras D-B**.

- 3.1.3 The Petitioner attached to the Petition a letter dated **March 13, 2007** and marked **Exhibit M**, written under the hand of the Petitioner wherein the Petitioner had instructed the Respondent to discontinue all communications and representation of the Estate with Intercontinental Bank Plc (the “Bank”) until an agreement is negotiated and reached for future representation of the Estate with the said Bank.
- 3.1.4 Contrary to the instructions of the Petitioner, the Respondent wrote a letter to the Bank dated **June 4, 2007** marked **Exhibit S**, requesting for the balance of the deceased’s benefits, after being instructed by the Petitioner to discontinue her representation of the Estate in this regard. The Respondent also wrote another letter to the Bank dated **July 2, 2007** marked **Exhibit T**, requesting for the entitlements of the deceased as well as the computations thereof.
- 3.1.5 The Respondent in her Reply to the Petition dated **July 8, 2010** did not provide any defence to the allegation of refusing to abide by the instructions of her client, and therefore did not satisfactorily discharge the burden of proof placed on her. We therefore find for the Petitioner, and hold that there is a prima facie case of unprofessional conduct established against the Respondent for not abiding by the instructions of her client, and exhibiting behavior which is capable of bringing the profession into disrepute.

REPRESENTING HERSELF AS SOLICITOR TO THE ESTATE AFTER BEING DEBRIEFED

- 3.1.6 The Petitioner attached a letter dated **May 15, 2007** marked **Exhibit O** wherein she debriefed the Respondent from representing herself and her family. Also attached to the Petition is a letter dated **June 8, 2007** marked **Exhibit P**, allegedly

written under the hand of Adetola Ifedayo Adelekan, the other Administrator to the Estate, wherein the Petitioner's debriefing of the Respondent was ratified, and the Respondent was also informed of the engagement of the law firm of Uwais & Co as solicitors to the Estate.

- 3.1.7 The Respondent's response to the said **Exhibit O, dated June 1, 2014** and marked **Exhibit Q** is also annexed to the Petition. The Respondent essentially refused to be debriefed by the Petitioner, and stated that withdrawal of her firm's instructions at that stage was "ill advised and impossible..." The Respondent's response was essentially that she could only be debriefed by both Administrators to the Estate and not unilaterally by the Petitioner alone; that she had engaged the services of Prof. A. B. Kasunmu SAN to lead her in the matter, and that the matter had reached an advanced stage and was nearing conclusion, after which the Respondent's contingency fees would be paid.
- 3.1.8 From the evidence provided by the Petitioner, it is apparent that after the Respondent received **Exhibit P**, the Respondent still refused to be debriefed, and wrote to the Managing Director/CEO of the Bank on **July 2, 2007** on behalf of the Estate.
- 3.1.9 The Petitioner also attached **Exhibit U** dated **June 1, 2007** which is a letter from the law firm of Wali-Uwais & Co. which had been retained by the Estate to take over the suit against Bellview Airlines. The said **Exhibit U** essentially requested the Respondent to make available all personal documents of the Petitioner and the Estate documents in the custody of the Respondent.
- 3.1.10 The Respondent responded to **Exhibit U** via a letter dated **June 7, 2007**, and attached to the Petition and marked **Exhibit V**, wherein she stated that the Petitioner could not debrief the Respondent at that stage because of the complexities of the matter, and that the Respondent was therefore precluded from sending any documents to the Petitioner's new Counsel.

- 3.1.11 The Respondent's defence to the above allegation was to basically attach the **Judgment of Honourable Justice Abutu** of the Federal High Court, Lagos, dated **September 26, 2007**, wherein the Petitioner and the Petitioner's daughter's names were struck out of the suit against Bellview Airlines. The Respondent claims that the Honourable Court in that judgment upheld her engagement as the Solicitor to the Estate, when in actual fact, a perusal of the said judgment revealed that her engagement by Ms. Kehinde Dada (the estranged customary ex-wife of the deceased) to act for herself and her two children was what the Court upheld, and not her engagement to act as the Solicitor to the Estate. A perusal of the said judgment also revealed that the Learned Senior Advocate leading the Respondent, Prof A. B. Kasunmu had submitted that the suit had not been instituted on the basis of the letters of administration granted to the Petitioner and the older son of the deceased, Mr. Adetola Adelekan, but was brought by virtue of the provisions of Section 3 of the Fatal Accidents Act, 1990. It was on that basis that the engagement of Ms. Toyin Bashorun to represent Ms. Kehinde Dada and her children was upheld, and the names of the Petitioner and her daughter (suing as the 1st and 5th Plaintiffs in that matter) were struck out.
- 3.1.12 The Respondent also attached a letter allegedly written by Mr. Adetola Adelekan, to the Chairman, Legal Practitioners Disciplinary Committee, dated **July 7, 2010**, wherein Mr. Adetola Adelekan essentially denied willingly signing the Petition and claimed he had signed it without reading it. The letter also claimed that the Honourable Justice Abutu upheld the Respondent's appointment as the Solicitor to the Estate.
- 3.1.13 Also attached to the Petition is a letter dated **June 11, 2007** and marked **Exhibit X** allegedly written under the hand of Mr. Adetola Adelekan, to his mother, Ms. Kehinde Dada, informing her of being forced by the Petitioner to sign off on a letter debriefing the Respondent.
- 3.1.14 It is our opinion that the view of Mr. Adetola Adelekan that the Honourable Court upheld the Respondent's appointment as

Solicitor to the Estate is misguided, as the Respondent was not acting on behalf of the Estate in the above referenced suit, but on behalf of Ms. Kehinde Dada and her two Children in their personal capacities.

3.1.15 The Respondent's claim that the Honourable Court upheld her engagement as the Solicitor to the Estate is also therefore misguided. Taking into consideration the entire circumstances, we are of the view that the Respondent's defence is not a satisfactory explanation as to why even after being debriefed, the Respondent continued to hold out as the Solicitor to the Estate. We therefore hold that there is a prima facie case of professional misconduct/infamous conduct against the Respondent, for continuing to falsely represent herself as Solicitors of her Client after being debriefed, and for also refusing to hand over the documents in her possession to the Petitioner's new counsel, contrary to **Rule 11 of the Rules of Professional Conduct 2007**.

3.1.16 On the issue of Mr. Adetola Adelekan's claims of being forced to sign off on the letter to debrief the Respondent, as well as his claims on signing off the Petition without reading it, we are of the view that a Hearing would be required to determine the correct position.

WITHHOLDING HER CLIENT'S PROPERTY

3.1.17 Attached to the Petition are **Exhibits U and V** wherein the Petitioner's Counsel requested the Respondent to make available all documents belonging to the Petitioner, as well as the Estate, and the Respondent refused to do so. Going by the Petition, the documents requested for at that time included the **originals of the Letters of Administration** which had been issued in favour of the Petitioner and Mr. Adetola Adelekan, as well as other personal documents of the Petitioner's which had been given to the Respondent upon her engagement.

3.1.18 The Respondent's response to this request for documents was that she could not be unilaterally debriefed, but even when the

Respondent received the letter from Mr. Adetola Adelekan wherein she was debriefed by him, the Respondent still held on to the documents in her attempt to retain her appointment as the Solicitor to the Estate.

- 3.1.19 We are of the view that the evidence attached to the Petition in this regard has successfully established a prima facie case against the respondent for withholding her client's property, even after she had been debriefed by the Estate, and was only acting for Ms. Kehinde Dada and her children in their personal capacity. Therefore, contrary to **Rule 16 of the Rules of Professional Conduct 2007**, we find for the Petitioner and hold that a prima facie case of professional misconduct/infamous conduct has been established against the Respondent.

RECEIVING SHARE CERTIFICATES/MONEY FOR AND ON BEHALF OF HER CLIENT AND FAILING TO DISCLOSE THEIR EXISTENCE

- 3.1.20 The Petitioner alleges against the Respondent that the Respondent received Intercontinental Bank Plc Share Certificates belonging to the deceased and appropriated them to herself by failing to disclose their existence to the administrators of the estate.
- 3.1.21 In her defence, the Respondent stated in her letter of **June 4, 2014** to the President of the Nigerian Bar Association that:

“it is however imperative that I bring to your attention sir, that there was never in existence, any share certificate relating to the shares of Intercontinental Bank Plc. Rather, we recovered an old share certificate reflecting shares belonging to the Equity Bank of Nigeria Limited held by the deceased. Photocopy of the same is now attached. It is necessary to state that the original of the same is with the lead counsel in this matter, Prof. A. B. Kasunmu SAN. I have never been in physical possession of the original certificate.”

- 3.1.22 The Petitioner however attached a letter from Intercontinental Bank Plc to the Respondent, dated **May 22, 2007** and **marked Exhibit R** forwarding to the Respondent, Intercontinental Bank Plc share certificates with **certificate number: 147652 for 887,040 units owned by the deceased, which was received and duly acknowledged by the Respondent on May 25, 2007.**
- 3.1.23 We are of the view that the evidence adduced by the Petitioner, as well as the above denials by the Respondent as contained in her Reply to the Petition, effectively establish a prima facie case against the Respondent for receiving the share certificates in question and retaining custody of them without informing the Estate or the Petitioner of their existence.
- 3.1.24 Furthermore, the Respondent also failed to inform the Estate of the existence of the Equity Bank of Nigeria Limited Share Certificate which she claimed had always been in the custody of Prof. A. B. Kasunmu.
- 3.1.25 Taking the entire circumstances into consideration, it is our view that a prima facie case of professional misconduct/infamous conduct has been established against the Respondent in this regard, contrary to **Rule 49 of the Rules of Professional Conduct 2007.**
- 3.1.26 As an aside, we would like to state that Respondent did not have the authority of the Estate to engage the services of Prof. A. B. Kasumu to lead her in the matter against Bellview Airlines, as neither the Petitioner nor Mr. Adetola Adelekan in their capacities as administrators to the estate gave such authority to the Respondent. The Respondent also stated in her Reply to the Petition that she had engaged the services of Prof. A. B. Kasunmu to lead her in the matter of her own accord. In this regard, the Respondent has also acted contrary to **Rule 11 (a) of the Rules of Professional Conduct 2007, and we therefore find against the Respondent for professional misconduct/infamous conduct.**

DISAFFECTION AND DIVISION AMONG THE FAMILY MEMBERS/BENEFICIARIES OF THE ESTATE

3.1.27 The Petitioner alleges that upon briefing the Respondent on February 20, 2006 on behalf of the Estate, the Respondent on March 6, 2006, also received separate instructions from Ms. Kehinde Dada who is the ex-wife of the deceased and mother to the two older children of the deceased. Attached to the Petition and marked **Exhibit W** is the said letter of instructions, dated **March 6, 2006**.

3.1.28 The Petitioner further alleges that the Respondent failed to disclose this apparent conflict of interest to the Estate until it was exhibited in a Counter Affidavit deposed to in the course of the lawsuit, whilst the Respondent was representing the interest of the said Ms. Kehinde Dada and her two children.

3.1.29 In support of the Petitioner's allegation is an extract from the judgment of Honourable Justice Goodluck of the High Court of the F.C.T in **Suit No: CV/1311/07 - Kehinde Adelekan v. Chinwe Adelekan**, in delivering her judgment on October 30, 2009, held thus:

*“By way of an aside, I find it needful to express an observation regarding the conduct of Counsel in this suit. It is noted that the Applicant's counsel, Miss Toyin Bashorun of Churchfields Solicitors acted in her professional capacity for and on behalf of Chinwe Adelekan and late Peter's children. Her involvement with the Estate of late Peter are manifest from the statement of the Estate accounts reflecting payments to her chambers, presumably, for professional services rendered. **Strangely enough, counsel undertook this brief for the Applicant against her former client...indeed, the records of this court reflect that she also acted for both sides when the going was good between them. Applicant's counsel ought to have declined this brief and maintained a dignified distance from this suit in the light of her involvement with this Estate...it portends of professional impropriety and I dare say moral impropriety**”.* (Emphasis mine)

- 3.1.30 The Petitioner further alleges against the Respondent that the Respondent caused an Originating Summons to be issued for the cancellation of the Letters of Administration in favour of the Petitioner.
- 3.1.31 The Respondent, in her Reply to the Petition stated that the Judgment of Honourable Justice Goodluck was currently on appeal and attached a copy of the Notice of Appeal as an exhibit. The Respondent further stated that the Honourable Court had not been privy to certain information before “launching an attack on her”
- 3.1.32 In light of the evidence provided by the Petitioner and taking into consideration the circumstances as put forward by both parties, we find against the Respondent. We are of the view that under no circumstance should the Respondent have accepted instructions from Ms. Kehinde Dada after accepting the instructions of the Petitioner on behalf of the Estate. Furthermore, the Respondent owed it a duty to the Estate to disclose the existence of her engagement by Ms. Kehinde Dada timely, which she never did until the letter of instruction was annexed to a counter affidavit. The Respondent is also representing Ms. Kehinde Dada against the Petitioner, seeking an Order from the Honourable Court to cancel the Letters of Administration issued in favour of the Petitioner on the ground that the Letter of Administration was fraudulently obtained.
- 3.1.33 From the foregoing, it is quite apparent that indeed the Respondent has been compromised, and may be said to be indeed guilty of inciting disaffection and division among the family. This is behavior is capable of bringing the profession into disrepute, and we find against the Respondent.
- 3.1.34 We therefore find that a prima facie case of professional misconduct/infamous conduct has been established against the Respondent, contrary to **Rule 10(b) of the RPC 2007**.

- 3.1.35 I must state that the fact that a Judge in the case made categorical remarks that the conduct of the Respondent was professionally improper and morally improper is in itself enough without more to refer the Respondent to a disciplinary hearing.
- 3.1.36 I must observe that I am somewhat concerned as to what extent the learned Senior Advocate, Professor A. B. Kasunmu is aware of how his name has been dragged into this matter and severally mentioned therein by the Respondent, albeit that the Senior Advocate is not party to this matter. It is not enough for the Respondent to severally mention the name of the respected Senior Counsel as leading her and also as being in possession of the documents allegedly withheld by her. It is somewhat curious what the intention is for severally mentioning the Senior Counsel's name all through her response to the petition. Nonetheless, suffice to say that it goes to no issue in the circumstances of this case, and does not provide an excuse or justification for her acts or omissions.

4. Conclusion

4.1 In conclusion:

- 4.1.1 The allegations by the Petitioner against the Respondent are valid and supported by evidence. It is clear from the evidence provided by the Petitioner and the inadequate Reply of the Respondent that the Respondent had no valid reasons for committing the acts alleged by the Petitioner. It is trite that Counsel must at all times act professionally without being unduly or personally involved in the Client's matter as to take it personal to the extent of refusing to be debriefed by the client. The Respondent ought to have acted in a more dignified manner and accepted to be debriefed by her client who in actual fact had been the sole person to rightfully and validly instruct her in the first place, and negotiated her fees for work already done based on the *Quantum Meruit* principle.

4.1.2 The Respondent however failed to do so. Instead, the Respondent refused to be debriefed, and refused to make the documents in her possession (the original Letters of Administration, share certificates, among others) available to the Petitioner's Counsel. The Respondent also compromised herself by accepting the instructions of Ms. Kehinde Dada, to represent the said Ms. Dada whilst already representing the interest of the Estate, and then proceeded to represent the said Ms. Dada against the Petitioner in a latter suit. In the words of Goodluck J. describing the actions and omissions of the Respondent, "*Applicant's counsel (the Respondent in this petition) ought to have declined this brief and maintained a dignified distance from this suit in the light of her involvement with this Estate...it portends of professional impropriety and I dare say moral impropriety*".

4.1.3 We therefore find that the Respondents deliberate acts and omissions reek of professional misconduct and infamous conduct, and really "**portends of moral impropriety**".

4.2 In the final analysis and against the backdrop of the conclusion reached in all the allegations above, **we hold the view that there is a *prima facie* case of serious professional misconduct/ infamous conduct against the Respondent, which should be forthwith referred to the Legal Practitioners' Disciplinary Committee.**

Dated this 27th day of June, 2014
