REGULATION OF THE LEGAL PROFESSION AND REMUNERATION OF COUNSEL: PROCEDURE FOR RECOVERY OF COMPENSATION*

Abstract
Though primarily, the professional calling of a lawyer is cognisable within the parameters of his relationship with his client, the lawyer is also a public offer whose motivation should transcend private gain and whose relationship with public order and the society should surpass the narrow strictures of professional practice for profit. That does not however suggest that the profit motive is incompatible with the duty of the lawyer to the society. Thus, on a balance of parity, the duty of the society to ensure prompt and reasonable remuneration of lawyers for their services is as important as the duty of advocates to serve as a bulwark for the society against arbitrariness and oppression. From the perspective of the recent Legal Practitioners (Remuneration for Business, Legal services and Representation) Order, 2023 which repeals the erstwhile Legal Practitioners' (Remuneration for Legal Documentation and other Land Matters) Order, 1991, his paper conducted a deep and coherent examination of the procedure for recovery of compensation by a legal practitioner. Proceeding from the concept that the society's desire for justice would be impossible of attainment without a properly funded and functioning private legal practice system, the paper theorised that establishment of the relation of attorney and client by contract, express or implied, creates a duty for the client to pay his attorney for services thus enjoyed, and also creates a right for the attorney to be paid for services thus rendered. The paper found that this duty and right are enforceable in court by actions for recovery of compensation, and established that before any such actions for recovery of compensation may be properly founded, delivery of the a duly rendered bill of charges by the attorney to his client is a condition precedent. In this regard, the paper found that delivery of such bill of charges may be followed by a request for taxation of the bill of charges. The paper found that having delivered abill of charges, the attorney's right to sue on the bill of charges is postponed till one month after delivery of the bill, and even at when he does finally sue, he may not simply rest his case on the fact that he delivered a bill of charges, but must prove that the client is liable to pay the bill of charges. The paper found that upon due proof of his case, the court will normally give judgment for the amount of fees so claimed unless there are other factors preventing it from doing so. The paper then concluded.
Keywords: *Attorney, bill of charges, condition precedent, legal practitioner, remuneration, taxation,*

Introduction

Lawyers, litigants, non-litigants and the society at large agree in principle that in all cases, justice must and should be done. An extension of this principle requires that the doing of justice must be accompanied by adequate remuneration. Justice must be done, and the doing of justice must be sufficiently recompensed. This ensures that the business aspect of legal practice is not rendered subservient to the professional aspect of it; for one is impossible of attainment without the other. Previously, professional remuneration for legal services was basically regulated by the Legal Practitioners' (Remuneration for Legal Documentation and Other Land Matters) Order, 1991. A major shortcoming with this regulation was its restriction to conveyancing matters. It left other areas of legal services unregulated. Furthermore, without an internal adjustment mechanism, the scale of fees it provided for, after more than three decades were considered dated. To ameliorate these deficiencies, the Legal Practitioners (Remuneration for

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Business, Legal services and Representation) Order, 2023, was passed. In order to emphasise the seriousness with which payment of adequate remuneration for legal services is viewed, the new regulation stipulates that fees chargeable for any business or service conducted by a legal practitioner are as prescribed in the Order and are not subject to negotiation except as prescribed in the Order. Thus, a legal practitioner who contravenes the provisions of the order is liable for unprofessional conduct.[1]In order to create a regulation that encompasses the entire rubric of services likely to be rendered by an attorney to a potential client, the Order sketchily categorizes legal services into consultations and legal opinions; incorporations, or registration of Companies and Business Names; litigation; property transactions, including Mortgages and related transactions and commercial or other transaction or service not covered in the categorization.[2]The Order stipulates the sums due to a legal practitioner in respect of itemised services. If though, the service rendered by a legal practitioner falls outside the categories enumerated in the Order, he is entitled to charge such fees as may be fair having regard to the circumstances of each case and in particular to: the complexity of the matter or the difficulty or novelty of the questions raised; the skill, labour, experience, specialised knowledge and responsibility involved on the part of the legal practitioner; the number and importance of the documents prepared or perused, without regard to length; the time expended by the legal practitioner on the business or service; the place and the circumstances in which the business or service, or a part thereof is transacted or carried out; the turn-around time required by a client for completion of the business; the amount of money or value of property involved; and the importance attached to the business by the client.[3] Rendering a service, charging for the service, and receiving the sums due for the service constitute cardinal issue in the solicitor and client relationship. The Legal Practitioners (Remuneration for Business, Legal services and Representation) Order, 2023 has substantially regulated the issue of sums due and payable to a legal practitioner for services rendered by him to his client. It is generally expected that payment of the legal charges of a lawyer is made voluntarily by the client on receipt of the lawyer's legal invoice for the services rendered. The obverse is also possible, i.e., payment of the lawyer's invoice may be obtained by legal compulsion exerted by the lawyer upon the client upon his failure to willingly settle the invoice on presentation. The first issue does not present a legal issue for interrogation. The second issue explores the entire question of a lawyer's right to remuneration and the processes and legal procedure to compel payment of the remuneration due and owing to a lawyer. This paper is written in nine sections. In the section next, this paper explores the right of counsel to receive due remuneration for services properly rendered. Thereafter, the paper investigates the remedies available to a counsel to recover from a recalcitrant client, the sums due and payable for him as his fees for legal business conducted for the client, and the procedure for taxation of a bill of charges. The paper then considers the conditions precedent to exercise of the right to enforce recovery by court proceeding and scrutinises the time within which to sue and the effect of laches. The paper then considers evidence in support of an action for recovery, leading to the findings and a verdict. The paper then concludes.

Right of Counsel to be Remunerated for Services Rendered

Generally, one who practices a profession, and renders his professional services to another at his request is entitled to receive remuneration or professional fees from the beneficiary of such

[1] Art. 8 of Legal Practitioners (Remuneration for Business, Legal services and Representation) Order, 2023
[2] Art. 1 (*ibid*.)
[3]*Ibid*.

professional services unless he voluntarily waives the payment[4]. Accordingly, the employing of a professional person implies an undertaking to remunerate him; although the inference may be rebutted by circumstances[5]. It is in the public interest that lawyers be fairly compensated in order to maintain the independence and integrity of the bar[6]; and in this respect, even where lawyers are called upon to perform duties for clients which do not require the application of legal skills, and where it is necessary that they perform them, they should be entitled to compensation[7]. Furthermore, even where a counsel retained by a client to perform an instruction retains a specialist for the purposes of discharging the instruction, the payment of the fees of the specialist by the client does not operate to make the counsel forfeit his fees[8]. Commonly, the creation of the relation of attorney and client by contract, express or implied, is essential to the right of an attorney to recover compensation for services[9], so that an attorney is required to look to his client for compensation for his services[10], and each litigant must pay his own counsel's fees. An attorney cannot make another party who receives an indirect benefit, his debtor by voluntarily rendering services in his behalf without his express or implied assent[11]; and one who had received benefits from services rendered by an attorney to his clients, but who had no contract for employment of the attorney, and made no request for the services, is not liable for the reasonable value of such services on *quasi* contract, which applies only to prevent unjust enrichment of one party at the expense of another[12]. Ordinarily, an attorney is

[4]*Owena Bank of Nigeria Plc v. Adedeji*, (2000) 7 NWLR (Pt. 666) 609; *First Bank of Nigeria Plc v. Ndoma-Egba*, (2006) All FWLR (Pt. 307) 1012. In *Akingbehin v. Thompson* (2008) 6 NWLR (Pt. 1083) 270, Dongban-Mensem, JCA stated at 294A-E thus: '*the case put forward by the respondent is self-limiting. Having admitted, albeit tacitly, asking the appellant to oversee her interest in the transaction with the bank, she cannot now he heard to say that the bank's solicitors were engaged to serve her interest. She felt uncomfortable. She was apprehensive that the bank might take undue advantage of her, being, both the provider and of the facility and the lawyer to drawing up the terms. With good sense she approached the appellant conscious of his professional calling. If the respondent was not engaging the professional skills of the appellant, why did she not ask her house-help or hairdresser to represent her at the transaction? A learned counsel watching proceedings of whatever nature, in brief, entails the allocation of time, some mental alertness, physical presence and travel from one point to the next. All these activities are time consuming and time is money. Thus, the appellant as a good labourer deserves his wages.'*

[5]*Mauson v. Baillie*, (1855), 43 E&ED 136.

[6]*Manatee County v. Harbor Ventures* 7A CJS 519.

[7]*In Re Hardwick & Magee Co*.7A CJS 519.

[8]*King & Co. Ltd. v. McVeagh*, 43 E&ED 171, here, a solicitor, who had been retained for the formation of a company of a complicated nature, consulted counsel, and instructed him to settle the memorandum and articles of association. On being informed by counsel that it would be easier for him to prepare the documents from instructions than from any draft which might be submitted to him on the lines of Table A. of Companies Act, 1908, the solicitor sent instructions to counsel and did not submit a draft. After receipt of the documents, which were drafted and settled by counsel, the solicitor did everything necessary to form the company, and there was no evidence to suggest that he did not apply the necessary skill and attention to the consideration of the draft prepared by counsel. The bill of costs which was subsequently furnished by the solicitor included a fee for "*drawing memorandum and articles of association*" and this fee was allowed by the Taxing Master on the taxation of the bill. On a motion on behalf of the client to review the taxation, it was held that inasmuch as the solicitor had procured the drawing of the documents for the benefit and requirements of the client, he was entitled to a fee for drawing the documents, notwithstanding the fact that they had not been drafted by him personally, but by counsel, for whom a fee had been allowed on taxation.

[9]*Wylie v. City Commission of Grand Rapids*, 7 Am Jur 2d 277.

[10]*Andrews v. Central Sur. Ins. Co.*, 4 FPD 2d 751.

[11]*Richter v. US*, 4 FPD 2d 751; however, in *Clarks v. Hot Springs Electric Light & Power Co.*, 56 S Ct 147, 296 US 624, 80 L Ed 443, where services rendered by attorneys resulted in substantial recovery for bondholders other than plaintiffs, it was held that such bondholders so benefited should pay for services, since it would be inequitable to permit them to share in proceeds without contributing to expense.

[12]*Aronstam v. All-Russian Central Union of Consumers' Societies*, 6 FD 396; in *Guinness Nigeria Plc v. Nwoke*, (2000) 15 NWLR (Pt. 689) 135, in a claim for detinue, the plaintiff had also claimed certain sums as special

entitled to collect any fee for which he has express or implied contract with his client[13]; however, an attorney is entitled to no more than a reasonable fee, no matter what fee is specified in his contract with his client[14]. Attorneys are entitled to have allowed to them for their professional services what they reasonably deserve therefore, having due reference to the nature of the service and their own standing in the profession for learning, skill and proficiency[15]. Statutorily, a lawyer, although precluded from entering into an agreement for, or charging or collecting an illegal or clearly excessive fee is entitled to be paid adequate remuneration for his service to the client[16]. A legal practitioner can either be paid in advance upon named fees or rely on the terms of any agreement reached for his fees, but if he has not received his fees and no agreement was reached as to what they would be, he must submit his bill of charges[17]. An agreement to pay a solicitor a fixed sum as a yearly salary in lieu of paying items in detail, is neither illegal nor unusual, whether it provides for the past or the future[18]; and an attorney may agree to do work for a client for a lump sum in lieu of his ordinary fees[19]. Attorneys and solicitors are entitled to have allowed them for their professional services what they reasonably deserve to have therefore, having due reference to the nature of the service, and their own standing in the profession for learning, skill and proficiency. A written agreement made by a legal practitioner with his client in respect of any professional business done or to be done by him for a sum should appear to be fair and ought to be such that was not made under circumstances of suspicion of an improper attempt by the solicitor to benefit himself at his client's expense; and a written agreement made by a legal practitioner with his client in respect of any professional business done or to be done by him for a sum is usually jealously regarded by the court and the tendency is to lean in favour of the client and put the burden of justifying its propriety on the legal practitioner[20].An agreement to pay an attorney a lump sum for professional services is valid and binding unless undue advantage has been taken by one party to the agreement of the other, and neither of the parties can, without the consent of the other, go behind the agreement and insist that bill of costs containing such agreed lump sum shall be taxed[21]. While, a solicitor's bill of costs may be rendered with a lump sum charge for services rendered, a reasonable statement or description of the services performed must be given. It is not necessary to go into extensive detail but the nature of the services performed must be sufficiently stated to enable the taxing officer to fix the proper amount of fees chargeable or to

damages in respect of fees paid to its solicitor. In dismissing the claim, the court held that it is unethical and an affront to public policy for a litigant to pass on the burden of solicitor's fees to his opponent in a suit. See also *SPDCN Ltd v. Okonedo*, [2008] 9 NWLR (Pt. 1091) 85

[13]*Andrews v. Central Sur. Ins. Co.*, (n 10).

[14]*Kiser v. Miller*, 4 FPD 2d 763.

[15]*Stanton v. Embrey* 93 US 548, 23 L Ed 983.

[16] Article 48(1) & (2) of Rules of Professional Conduct for Legal Practitioners, 2023, a fee would be found clearly excessive when, after a review of the facts, it is found that it does not take into account the consideration set out in rule 51. In *Re Geddies & Wilson* (1869) 43 E&ED 143, it was held that no bargain between a solicitor and client, whereby the latter undertakes to pay more than the recognized fees for the work to be done, can be enforced.

[17]*Oyo v. Mercantile Bank of Nigeria Ltd*. (1989) 3 NWLR (Pt 108) 213.

[18]*Falkiner v. Grand Junction Railway Co*. (1883), 43 E&ED 143.

[19]*Incorporated Law Society v. Hubbard*, (1904) 43 E&ED 143; in *GMO Nworah & Sons Co. Ltd. v. Akputa*, [2010] 9 NWLR (Part 1200) 443, the Supreme Court cited O. 34 R. 5(a) of High Court of Anambra State (Civil Procedure) Rules, 1988, which provided that notwithstanding any authorised scale of fees, it is lawful for any legal practitioner to enter into an agreement with a client to act for him and conduct his case in any cause or matter in the court for an amount to cover all fees for his services as legal practitioner up to final judgment provided that every such agreement shall be in writing.

[20]*Oyekanmi v. NEPA*, (2000) 15 NWLR (Pt. 690) 414.

[21]*Murray v. Yoyo* (1912) 43 E&ED 143.

say whether the amount claimed is reasonable[22]. A trustee is not entitled to any payment at law or in equity for personal trouble or loss of time in the execution of the duties of his office except reimbursement for out of pocket expenses. The solicitor/executor stands in the same position as a broker, commission agent, or the like, who may be appointed executor or trustee, and who may transact some of the business relating to the estate which requires the assistance of either broker, commission agent, or the like; and if the executor or trustee transacts business of that kind for the estate, he is allowed his costs, out of pocket, that is to say, the expenditure, but not anything for his time and trouble. A solicitor who is a trustee cannot receive remuneration for transacting legal business on behalf of the trust. Where he intends to be remunerated, he must ensure that a charging clause is included in the trust instrument. The rule is not that reward for services is repugnant to fiduciary duty but that he who has the duty shall not take any secret remuneration or any financial benefit not authorised by law or by his contract or by the trust deed as the case may be. The lawyer as an executor is in an awkward position of having to contract with himself for remuneration. If the services he intends to render cannot be done without receiving remuneration in addition to out of pocket expenses, it is better to instruct another lawyer unless the lawyer acting as an executor can secure the consent of all beneficiaries for whom he acts as a trustee.[23]

Remedies for Recovery of Compensation

Ordinarily, there is no law permitting an attorney to compel a recovery of his fees through a summary procedure, in the proceeding in which the fees were earned. It is however possible, subject to the discretion and indulgence of the court for an attorney to obtain an order of court for the payment of his fees in the same proceeding in which the fees were earned. This would be possible where the parties in a contingent fee contract, having agreed on the percentage of the recovery due to the attorney, have gone further to stipulate the power of the court seised of the original action to adjudicate any controversy in respect of the remuneration. This would be more so, where the recovery made by the attorney on his contingent fee contract has been paid into court and is still in the custody and control of the court. Furthermore, if the attorney's services have brought a fund into the custody and control of the court in the exercise of its equitable jurisdiction, or has protected, the court may in an ancillary proceeding, award him a reasonable compensation to be paid out of such fund[24].

In dealing with solicitors' costs, the court has a threefold jurisdiction. First, there exists a statutory jurisdiction conferred by statute. Secondly, the court has jurisdiction to deal with solicitors under its general jurisdiction over officers of the court. Thirdly, there remains the ordinary jurisdiction of the court in dealing with contested claims[25]. Accordingly, the jurisdiction of the court and its authority to make such orders is independent of statute, and is founded in the necessary inherent control of the court over the conduct of its officers[26]. A legal practitioner can and has the right to sue for his professional fees[27]; and, generally, counsel fees constitute a legal demand for which an action will lie[28]. The issue of professional fees is a contract between the counsel and his client. Thus, the remuneration of counsel is entirely the business between the counsel and his client, and the court will only intervene when an issue

[22]*Boland v. Bunker Hill Extension Mines*, (1944) 1 DLR 692.
[23]*Nigerian Bar Association v. Koku*, [2006] 11 NWLR (Pt. 991) 431.
[24]*Wallace v. Fiske* 107 ALR 728.
[25]In *Re Park, Cole v. Park* (1888), 41 Ch. D 326; 58 L J Ch. D 336, C. A.
[26]*R. v. Bach* (1821) 147 E R 115; Re Solicitor., (1961) 2 All E R 321; (1961) Ch. 491.
[27]*Mabogunje v. Odutola; In Re Benson*, [2002] 1 NWLR (Pt. 802) 536.
[28] In *Re Paschal*, 77 U S 483, 19 L Ed 992.

pertaining to counsel's fees is properly brought before it[29]. Subject to the provisions of the Legal Practitioners Act 1975 (LPA), a legal practitioner is entitled to recover his charges by action in any court of competent jurisdiction[30]. When a legal practitioner has to sue for his fees, however, he must comply with the provisions of the Legal Practitioners Act[31] and show that the fees demanded are not objectionable[32]. There must be a linkage between the bill of charges served on a client and the claim later filed in court by the legal practitioner to recover the charges. It is not permissible for a legal practitioner to rely in the suit in court as his bill of charges, letters which communicated varying and inconsistent charges which were being negotiated by the parties.[33]

In actions by attorneys to recover compensation for professional services performed under a contract, the usual rules as to defences to actions *ex contractu* are available[34]; so that the court will give judgement for the amount claimed in an action brought under s. 16(1) of LPA unless -: no such agreement as alleged existed; or, if such existed, it does not rule out an improper attempt by the legal practitioner to benefit himself at his client's expense.[35]In effect, where there is no agreement as to charges or there is agreement which looks improper for the legal practitioner, there can hardly be an award of the charges claimed by the legal practitioner in an action therefore.[36]

Conditions Precedent to Actions for recovery of Compensation

Where the law prescribes the doing of a thing as a condition for the performance of another, the non-doing of such thing renders the subsequent act void; and where a pre-condition for the doing of an act has not been complied with, no act subsequent thereto can be regarded as valid. This is because, the act to which it is subject has not been done. It is however, a different consideration where the non-competence relates to a condition not fundamental to the constitutive elements, but is subsequent to the act sought to be done. This is because, the act is not conditional to the act not complied with. The last mentioned non-compliance is a mere

[29]*Sobodu v. Denloye*, (1998) 12 NWLR (Pt. 578) 341, appellant was counsel who represented plaintiffs at High Court. Before commencement of trial, parties and their counsel effected reconciliation by a compromise which culminated in filing terms of settlement consequent upon which plaintiffs withdrew their action. In entering judgment upon the terms of settlement, the trial made an order in respect of professional fees paid by plaintiffs to their counsel. After signing the order, the trial Judge made a variation of the order in respect of plaintiff's counsel's fees. The Court of Appeal held per Ayoola, JCA at 357E-F *'In this case, the trial Judge acted as a gratuitous arbitrator after the case between the parties before him had been disposed of by settlement, and in a matter concerning fees between counsel and client which had not at all been submitted for adjudication before him. The gratuitous use of the office of a Judge as facilitator of the settlement of a dispute not placed before him for adjudication cannot convert whatever terms were agreed to judgment of the court. the order made and appealed from in this case cannot be valid. It was made without jurisdiction and must be set aside.'*

[30] s. 16(1) of Legal Practitioners Act, 1975.

[31] s. 16(2)(a) (ibid) provides that a legal practitioner shall not be entitled to begin an action to recover his charges unless a bill for the charges containing particulars of the principal items included in the bill and signed by him, or in the case of a firm by one of the partners or in the name of the firm, has been served on the client personally or left for him at his last address as known to the legal practitioner or sent by post addressed to the client at that address.

[32] Article 52(1) (n 16), the professional fee charged by a lawyer for his services shall be reasonable and commensurate with the service rendered: accordingly, the lawyer shall not charge fees which are excessive or so low as to amount to understanding: provided that a reduced fee or no fee at all may be charged on the ground of the special relationship or indigence of a client.

[33]*Owena Bank of Nigeria Plc v. Adedeji*, (n 4).

[34]*Nichols v. Kroelinger*, 7A CJS 665.

[35]*Aburime v. Nigeria Ports Authority*, (1978) 4 SC 11.

[36]*Oyo v. Mercantile Bank of Nigeria Ltd*. (n 17).

irregularity[37]. Cases occur in which, although everything has happened which would appear to be necessary to the case being advanced, there is something further requiring fulfilment, whether by reason of the provisions of some statute, or perhaps because the parties have expressly so agreed; this something more is called a condition precedent. It is not ordinarily of the essence of such a cause of action, but has been made essential by being superimposed[38]. Where a pre-condition for the doing of an act has not been complied with, no act subsequent thereto can be regarded as valid; this is because the act to which it is subject has not been done. Concisely put, where the law prescribes the doing of a thing as a condition for the performance of another, the non-doing of such thing renders the subsequent act void[39]. Where there is non-compliance with a stipulated condition for the commencement of an action or for setting a legal process in motion, any suit or action instituted in contravention of such a provision of the relevant law or statute is regarded as incompetent, and as such, the court in which the action is instituted or sought to be instituted would lack jurisdiction to entertain the suit or action[40].

A Bill of Costs is an account of the charges and disbursements of an attorney in the conduct of his client's business. It is an account of fees, charges and disbursements by a solicitor in a legal business. It can relate to contentious as well as non-contentious business[41]. A client may pay his solicitor a bill of costs, without ever having seen or had delivered to him any bill, but such a course would be bad conduct in the solicitor and imprudent in the client[42]. Thus, before a client is to be called upon to pay his attorney's bill, he is entitled to a copy of it specifying the items[43], and, before an attorney could bring an action for his fees he had to leave the bill with his client[44], so that an attorney cannot maintain an action even for the money out of pocket in a cause until he has delivered a bill signed[45]. In respect of these, the failure or delay of the client in applying for delivery of a bill will not relieve the solicitor from the obligation to deliver a bill where he has in his possession the necessary materials[46]. Where services are rendered in different matters, the client is entitled to have a bill which shows how much the solicitor claims in each matter – in substance a separate bill for each matter; and disbursements must unless in special cases, be kept separate from fees[47]. A legal practitioner is entitled to recover his charges by action in any court of competent jurisdiction; however, the legal practitioner shall not be entitled to begin an action to recover his charges unless, a bill for the charges containing particulars of the principal items included in the bill and signed by him, or in the case of a firm by one of the partners or in the name of the firm, has been served on the client personally or left for him at his last address as known to the legal practitioner or sent by post addressed to the client at that address; and the period of one month beginning with the date of delivery of the bill has expired[48]. The provision in s. 16(2) of LPA, 1975 is mandatory following the use of the word *'shall'*[49]. Consequently, a legal practitioner would be debarred from recovering his professional fees unless he first prepares a bill of charges which contains particulars of the

[37]*Orakul Resources Ltd. v. NCC* (2007) All FWLR (Pt. 390) 1482.
[38]*Provincial Council, Ogun State University v. Makinde* (1991) 2 NWLR (Pt. 175) 613.
[39]*Ndukwe v. Baronci* (1994) 9 NWLR (Pt. 367) 241.
[40]*Akingbehin v. Thompson*, (n 4).
[41]*Sobodu v. Denloye*, (n 29).
[42]*Re Harding* (1847), 16 L J Ch. 288; 50 E R578.
[43]*Ex Parte Philips*, 43 E&ED 149.
[44]*Brooks v. Mason* (1789) 126 ER 170.
[45]*Miller v. Towers* (1791) 43 E&ED 149.
[46]*Re Baylis*, (1896) 2 Ch. 107; (1895—9) All E R Rep. 599; 65 L J Ch. 612; 74 L T 506; 12 T L R 339
[47]*Re Solicitor* (1923) 3 DLR 882.
[48] s. 16 (1) & (2) (n 30); *Oyekanmi v. NEPA*, (n 20); *Abubakar v. Manulu*, (2001) 8 NWLR (Pt. 716) 717.
[49]*Agusiobo v. Onyekwelu*, (2003) 14 NWLR (Pt. 839) 34; *Kallamu v. Gurin*, (2003) 16 NWLR (Pt. 847) 493; *First Bank of Nigeria Plc* v. Ndoma-Egba, (n 4).

principal item of the service rendered with the fees payable on each[50]. Section 16(2) of the LPA, 1975 imposes a condition precedent to the institution of an action for the recovery of fees, and a condition precedent to the exercise of jurisdiction by the court. The words used therein are simple, clear and unambiguous, and they must be given their literal and grammatical meaning. Accordingly, non-compliance with the mandatory provisions of section 16(2) of LPA, 1975 renders any suit instituted by a legal practitioner for recovery of legal fees a nullity[51]. A solicitor has the right, depending on the circumstances to deliver his bill in parts, so that where an attorney did different kinds of professional work for a client, and after all the business was transacted sent in a bill for one part of the business, and subsequently sent in a bill for the other part, and commenced an action for the first part of the business before the expiration of the month in respect of the delivery of the second bill, and after the expiration of that month commenced an action for the other part, the court made an order for the consolidation of the two actions[52]. Accordingly, there is no reason why a solicitor's bill may not be delivered in parts, or why successive bills, respectively showing the costs due down to a certain date, or including particular groups of items, may not be delivered, provided that it clearly appears that they are all really parts of one bill[53]. However, anticipated charges introduced into a bill in respect of business to be transacted at a future period, is not allowed[54].Such Bill of charges must be signed by the legal practitioner personally, and if he practises in a firm, then one of the partners can sign or in the name of the firm[55].

The bill of charges must be a complete bill, containing sufficient information to enable the client obtain advice as to its taxation, and the taxing master to tax it; otherwise, there is no bill[56]. An attorney's bill must show the court and the cause in which the business referred to in it, or the greater part thereof, was done. These particulars should be expressly stated, or must be capable of being collected by fair and reasonable intendment from the nature of the several items of charge[57]. Where the nature of the business is apparent from the items, such as where an attorney's bill gave the court in which the business was transacted, and the nature of such business appeared from the various items, which related to proceedings in reference to particular causes, such bill was sufficient though it did not specify by name the causes in which the business was so transacted[58]. All bills of charges must be adequately particularised. Particularisation in this context requires that the heads of services rendered by the legal practitioner with respect to which he claims compensation and the sums claimed in respect of

[50]*Owena Bank of Nigeria Plc v. Adedeji*, (n 4).
[51]*First Bank of Nigeria Plc v. Ndoma-Egba*, (n 4); *Abubakar v. Manulu*, (1998) 10 NWLR (Pt. 568) 41.
[52]*Beardsall v. Cheetham* (1858),L J Q B 367; 120 E. R. 499.
[53]*Cobbett v. Wood*, (1908) 2 K B 420; 77 L J K B 878; 99 L T 482; 24 T L R 615; 52 Sol. Jo. 517,
[54]*Re Bedson* (1845) 15 L J Ch. 153; 50 E R 244.
[55]*Owena Bank of Nigeria Plc v. Adedeji*, (n 4); *Goodman v. J. Eban Ltd* (1954) 1 All ER 763; (1954) 1 QB 550
[56]*Duffet v. McEvoy*, (1885) 10 A C 300; Re Baylis, (n 46); *Cobbett v. Wood*, (n 53).
[57]*Martindale v. Falkner* (1846) 135 E R 1124; in *Sargent v. Gannon* (1849) 137 E R 294, it was held that an attorney's bill, to be in strict compliance with Solicitors Act,1843 (c. 73), s. 37 (repealed), had to contain, in express terms, or by reasonable inference, a statement of the name of every cause and of every court in which any part of the business charged for had been transacted. A bill of costs headed *"Yourself v. Round,"* the client's name being Gannon, and indorsed *"Hancock v. Round,"* was inclosed in a signed letter addressed to Gannon, beginning *"Hancocks v. Round,--- I send you my bill in this matter."* All the business comprised in the bill had reference to a purchase of land under a decree of court of Chancery in a cause of *"Hancock v. Round"*. It was held that the name of the cause sufficiently appeared. The bill was not headed in any court, but the whole related to one transaction, and some of the items were for attendances at the Accountant- General's and at the Master's offices, and in court upon a petition to the VC. It was held that the bill gave reasonable information to the client as to the course to be pursued in order to tax the bill, and therefore that the (repealed) statute was complied with.
[58]*Anderson v. Boynton* (1849), 13 Q B 308; 19 L J Q B 42; 116 E R 1281.

each head of service must be set out[59]. In *Amimike Investment Ltd v. Ladipo*[60], Muhammad, JCA stated as follows[61];

> *In the instant case, section 16(1) and (2) of the Legal Practitioners' Act has made the particularisation of respondent's bill of charges mandatory. The lower court has found the bill devoid of the particulars which the section required as of necessity to be stated in the bill. This finding followed the objection raised by the appellant that the bill of charges has not satisfied the condition precedent to its being invoked in litigation for the recovery of the fees it purportedly charged. The use of the bill having been objected to and found by the lower court that indeed the bill of charged has not fulfilled the mandatory precondition required by section 16(1) and (2) of the Legal Practitioners' Act, the plaintiff has not fulfilled a pre-condition for instituting his action. ..... The lower court's finding that such an incompetent bill, issued contrary to section 16(1) and (2) of the Legal Practitioners' Act could be proceeded upon notwithstanding the right of the appellant to oppose same, has caused a miscarriage of justice, and being perverse, must not be allowed to endure. The lower court has no jurisdiction to try the instant suit.*

However, though an itemised bill of charges as required by section 16(2) of LPA, 1975 is desirable, if the legal practitioner sets out the heads of services rendered without stating the compensation claimed in respect of each head, his failure to itemise the Bill of Costs with particularity would not render it a nullity for non-conformity with the law; and this is more particularly so where a timely objection is not take to any insufficiency in the bill of charges[62]. Where the bill of charges rendered by the legal practitioner does not contain particulars of the principal items as required by section 16(2) of LPA, 1975 the bill will fail.[63] There is no

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[59]*Oyekanmi v. NEPA*, (n 20); in *Carlton v. Theodore Goddard & Co*, (1973) 2 All ER 877, solicitors delivered a gross sum bill to their client in respect of wardship proceedings. The client, after the expiration of three months, asked for a detailed bill which was greater than the gross sum bill. The court ordered the gross sum bill to be taxed and refused an application by the solicitors for leave to substitute the detailed bill for the gross sum, bill.

[60] [2008] All FWLR (Pt. 426) 1929, here the court analysed the decision of *Oyekanmi v. NEPA*, (n 20), and held that real decision there was that firstly, courts must decide cases only with respect to such issues that had been joined by the parties including those other matter as to objections and the evidence led in proof of the issues as joined. Also, because parties in *Oyekanmi's* case had not joined issue on the sufficiency of the appellant's bill of costs, it was wrong of the trial court and the court of appeal to find the bill, the sufficiency of which had not been objected to by the respondent, non-litigable. Had the respondent raised objection to the bill's sufficiency, therefore, the pronouncements of the two courts as to its competence would have availed.

[61] Ibid at page 1952F-H

[62]*Oyekanmi v. NEPA*, (n 20), here the Supreme Court found that the appellant's bill of charges although not detailed as to what was claimed in respect of different items of the service rendered, contained separate heads of charges for expenses in respect professional fees, transport charges, filing expenses, sundry expenses on witnesses, investigation, and consequently could be distinguished from the impermissible catchall *'for professional services rendered'* or *'for work done in connection with your litigation.'* The decision in *Oyekanmi v. NEPA* must be read in the light of its very own peculiar particulars. Here, the Supreme Court, per Uwais, JSC in his lead judgment while allowing the appeal stated as follows *'In the present case, no objection of any kind was taken to the bill of charges, exhibit, whether on a preliminary issue or in the statement of defence, or in the course of hearing at the trial court or even specifically on appeal. The learned trial Judge adverted for the first time, and suo motu, to the question of the adequacy of the said bill of charges by his discussion of A Solicitor (supra). The issue was not raised or canvassed by any of the parties, what the learned trial Judge did was a digression which was unwarranted. ..... in view of the aspect discussed above in relation to the bill of charges, I will answer issue 1 in the negative and say that in the circumstances of the case, the bill in question, not having been objected to by the respondent, nor did it apply for the taxation of the same, at worst remained litigable as to its quantum, unless it was considered proper to sign judgment for the entire sum. It accordingly became a matter falling within the general jurisdiction of the court to resolve depending on the issues joined by parties and evidence available.'*

[63]*First Bank of Nigeria Plc v. Ndoma-Egba*, (n 4), here, the bill of charges rendered by respondent simply indicated that the bill was*'to professional fees being 15% of =N=38,597,491.58'* There were no further particulars as to the

distinction between contentious and non-contentious matters in regard to particulars expected in a bill of charges in Nigeria. A general guideline as to the form, content and purpose of a bill of charges should be as follows[64]:

(i) The bill should be headed to reflect the subject-matter. If it is in respect of litigation, the court, the cause and the parties should be stated.

(ii) The bill should contain all the charges, fees and professional disbursements for which the legal practitioner is making a claim. Professional disbursements include payments which are necessarily made by the legal practitioner in pursuance of his duty such as court fees, witness' fees, cost of production of records etc if paid by him.

(iii) Charges and fees should be particularised e.g. (a) Perusing documents and giving professional advice, (b) Conducting necessary (specified) inquiries or using legal agent in another jurisdiction for a particular purpose, (c) Drawing up the writ of summons and statement of claim or defence, (d) Number of attendances in court and the dates, and (e) Summarised statement of the work done (in court), indicating some peculiar difficult nature of the case (if any) so as to give an insight to the client as to what he is being asked to pay for.

(iv) It is required to give sufficient information in the bill to enable the client to obtain advice as to its taxation and for the taxing officer to tax it. It is therefore necessary to indicate against each of the particulars given in the bill of charges a specific amount, taking into account the status and experience of the legal practitioner, and the time and effort involved.

A synopsis of the expected contents of a bill of charges as summarised from the general guideline above shows that the bill of charges must contain a summarised statement of the work done, sufficient to tell the client what it is for which he is asked to pay. A bare account for *'professional services'* between certain dates or, for *'work done in connection with your matrimonial affairs'* would not do. The nature of the work must be stated, such as advising on a certain stated matter, instructing counsel to execute a certain stated instruction, drafting a certain stated document, and so forth[65]. In respect of particularization, though it is not necessary to go into extensive detail, nonetheless the nature of the services performed must be sufficiently stated to enable the taxing officer to fix the proper amount of fees chargeable or to say whether the amount claimed is reasonable. A defect in the sufficiency of the bill, in this respect, cannot

principal items of the claim. There was no agreement whatsoever as to any fees or commission or the quantum of the charges, thus rendering it imperative that the respondent give the particulars of the principal items claimed. The Court of Appeal held that the fact that there was no agreement as to the fees or commission to be paid to the respondent and having regard to the fact that the appellant denied the respondent's claim made it compelling for the respondent to give the particulars of the principal items of the claim and to indicate in the bill the nature of the various aspects of the services rendered. Omokri, JCA stated as follows at 1039A-C *'It is glaringly clear and undeniable that the respondent's bill of charges did not contain particulars of the principal items included in the bill as required by section 16(2) of the Legal Practitioners Act 1975. From the first paragraph of the subsection it is clear that one of the conditions precedent for an action to recover the charges is that the legal practitioner must have a bill of charges containing the particulars of the principal items included in the bill. Where that is not done the action filed by the legal practitioner is of no moment. Indeed, the respondent in this case on appeal, not having given the particulars of the principal items included in the bill is not entitled to begin an action to recover his charges because he has not fulfilled the condition precedent stipulated in section 16(2) of the Legal Practitioners Act, 1975.'*

[64]*Oyekanmi v. NEPA*, (n 20), per Uwaifo JSC at 437C-G; *Savannah Bank of Nigeria Plc v. Opanubi*, [2004] 15 NWLR Part 896, 437.

[65]*Bakassi Local Government Council v. Bassey*, [2009] All FWLR (Pt. 473) 1293.

be cured by the delivery of particulars after action is brought nor does a sufficient description of the services rendered at that time remedy the non-compliance with the statute[66].

In any case in which a legal practitioner satisfies the court, on an application made either *ex parte* or if the court so directs after giving the prescribed notice; that he has delivered a bill of charges to a client; and that on the face of it the charges appear to be proper in the circumstances; and that there are circumstances indicating that the client is about to do some act which would probably prevent or delay the payment to the legal practitioner of the charges, then, notwithstanding that the period one month beginning with the date of delivery of the bill has not expired, the court may direct that the legal practitioner be authorized to bring and prosecute an action to recover the charges unless before judgment in the action the client gives such security for the payment of the charges as may be specified in the direction[67]. On the other hand, the court may, if it thinks fit, on the application of a client, order a legal practitioner to deliver his bill of charges to the client; and, make an order for the delivery up of, or otherwise in relation to, any documents in the control of the legal practitioner which belong to or were received by him from or on behalf of the client, and without prejudice to the generality of the powers of the court to punish for contempt or to the provisions of LPA 1975, relating to the discipline of legal practitioners, the court may punish for contempt any legal practitioner who fails to comply with an order under this rule[68].

The court shall, on an application made by a client within the period of one month from the date on which a bill of charges was delivered to him, order that the bill shall be taxed and that no action to recover the charges shall be begun until the taxation is completed. However, subject to the further provisions of this section, the court may if it thinks fit, on an application made after the expiration of the period aforesaid by the legal practitioner or (except as foresaid) by the client in question: order that the bill shall be taxed; order that until the taxation is completed no action to recover the charges mentioned in the bill shall be begun and any such action already begun shall be stayed, and an order under the subsection may be made on such terms (other than terms as to the costs of the taxation) as the court may determine. However, no such order shall be made: in any case, after the period of twelve months from the date on which the bill in question was paid; and except in a case where the court determines that there are *special reasons* for making such an order, if twelve months have expired since the date of the delivery of the bill or if judgment has been given in an action to recover the charges in question. An order so made may contain terms as to the cost of the taxation[69]. The provisions of section 17 of LPA 1975, create two possible orders for taxation which, depending on the circumstances, may be made by the court. The first order is the order of course for taxation which is made when an application is brought within one month of delivery of the bill of charges. If however, the application is brought after the expiry of the period of one month from the delivery of the bill, the court may still competently make the order of course for taxation. The second order for taxation which the court may make is in respect of applications for

[66] *Boland v. Bunker Hill Extension Mines* (1944) 1 D L R 692.
[67] s. 16(3) (n 30).
[68] s. 16(4) (n 30); in *Re Thomas, Jaquess v. Thomas* (1894) 1 Q B 747, one of the defences by a solicitor to a claim for the delivery of a bill of costs, and an account of money paid in connection with certain litigation, was that the work which the solicitor was employed to do was illegal, on the ground of maintenance and champerty, and that no assistance ought therefore to be afforded by the court to either party as against the other. It was held that such a defence in the case of a solicitor could not be set up as aground of immunity from the jurisdiction of the court and must be regarded as wholly untenable, and the order asked for must be made.
[69] s. 17 (n 30).

taxation brought after a period of twelve months from the delivery of the bill of charges. This order is the special order for taxation is made only upon the showing of special reasons rendering it requisite for the order to be made. Where the rules of court provide the format for an application for taxation of the bill of costs, the provisions of the rules of court would control, but in the absence of any such provision, the order of course may be obtained by an *ex parte* application, while the special order must necessarily be upon an application on notice. If the bill of costs was rendered in respect of contentious business, it is permissible to make the application within the matter, but if the bill is rendered in respect of an uncontested matter, the application for taxation must necessarily be by way of an originating application.

Taxation of Bill of Charges

The first requirement in the taxation of a legal practitioner's bill of charges is that where the bill is in respect of a contentious matter, it should state clearly the amount or type of legal work done to justify the fee being charged[70]. For the purposes of an application for taxation of a legal practitioner's bill of charges, there is no distinction between the bill of charges in respect of a completed act and an uncompleted act of a legal practitioner. Thus so long as the application for taxation by the client is made outside the period of twelve months from the delivery of the bill without any enlargement of time having been obtained, whether the act for which the bill is issued is completed or not, the proceedings will be caught by the provisions of section 17(3) of LPA, 1975[71]. Where a bill of costs had been delivered more than twelve months before, and therefore the period within which the client was entitled to have the bill taxed had expired, it is permissible to treat the claim upon the bill of costs as if it were an action at law in which the defendant would be allowed to question the reasonableness of the particular items in the bill which could have been objected to had there been taxation. In *Oyekanmi v. NEPA*[72], Uwaifo, JSC stated as follows[73]

> *The solicitor delivered their bills of costs much more than a twelve month before the death of the testator, he paid money on account, and had not referred the bills for taxation, nor in any way objected to them. It is not contended that there are any special circumstances which would entitle the client to have the bills taxed under the Solicitors Act after the length of time that has elapsed. But that to my mind does not settle the question. The solicitors are bringing in a claim against the state of the deceased client, and that claim is to be dealt with as if it were an action at law. If it were so, of course the fact of the testator's having had those bills of costs so long without making any objection is prima facie evidence in favour of their being right, but it is nothing more than prima facie evidence, and if any objection were taken, that objection would have to be considered, and the matter would have to be dealt with upon hearing the evidence on both sides, unless it could be referred to the taxing master, who is the usual and proper person to decide whether costs are reasonable.*

When taxing a legal practitioner's bill of charges, the following factors must be taken into consideration - the complexity of the case; the experience of the legal practitioner concerned; the amount involved in the case for which he is briefed to claim ore defend; the level of charged

[70]Okonedo-Egharegbemi v. Julius Berger, [1995] 5 NWLR Part 398, 679, here Akpabio, JCA stated at 694A-B *'Also, it is my firm view that since both parties had appeared before the Taxing Master and were given opportunity of presenting their arguments both orally and in writing, before the final award, it cannot be said that the Taxing Master acted arbitrarily*.'

[71]*Chuka Okoli & Associates v. Crusader Insurance Co Nigeria Ltd* (1994) 2 NWLR (Pt. 329) 635.

[72](n 20).

[73] Ibid at 436C-E quoting Cotton L J in *Re Park* (1889) 41 Ch 326.

made by other counsel in other jurisdictions in similar cases. An award on the taxation of a bill of charges is at the discretion of the Master in the same manner that an award of costs is at the discretion of the court. This discretion must be exercised both judicially and judiciously, so that the master, just like the courts must hear arguments from both sides before making the award, otherwise, it becomes arbitrary. Where however, arguments have been taken from both sides, the award cannot be said to be arbitrary even if nothing on the record indicates the yardstick used in arriving at such an award[74]. Where a bill of charges is being taxed, it makes no difference that the bill of charges is in respect of completed or uncompleted acts of a legal practitioner. This is because; section 17(3) of LPA 1075, does not import any distinction as to its terms[75]. The statutes do not authorize the taxation of every pecuniary demand or bill of a solicitor, for every species of employment in which he might happen to be engaged. A bill may be taxed though no part of the business was transacted in any court of law or equity, but such business must be connected with the profession of an attorney or solicitor- business in which the attorney or solicitor was employed because he was an attorney or solicitor, or in which he would not have been employed if he had not been an attorney or solicitor or if the relation of attorney or solicitor and client had not subsisted between him and his employer[76]. Thus, if a solicitor retains money received by him in his character of solicitor for the use of his client, his bill is taxable, though it contains no charges for business done in a court of law or equity[77]; and, where an attorney makes out one bill against one of his clients, which contains taxable item, and another against that client jointly with others, which has no taxable item, the former does not draw the latter with it for taxation[78]. The"*court*" means the High Court of the State in which the legal practitioner in question usually carries on his practice or usually resides or in which the client in question usually resides or has his principal place of business or, in the case of a legal practitioner authorized to practice by warrant, the High Court of the State in which the proceedings specified in the application for the warrant were begun.

The taxation of a bill of charges is required to be in accordance with the provisions of any order in force under section 15 of LPA 1975; and where no such order is in force or any item falling to be taxed is not dealt with by the order, the charges to be allowed on taxation of the item shall not exceed such as are reasonable having regard to the skill, labour and responsibility involved and to all the circumstances of the case.[79]If, at the time and place appointed in pursuance of rules of court for the taxation of a bill, one of the parties appears and any other party does not, the taxing officer shall proceed to tax the bill unless for special reasons he

[74] *Okonedo-Egharegbami v. Julius Berger*, (n 70), here, Akpabio, JCA stated at 700E-F and 701E *'All his grouse was that the Taxing Master did not state the criteria or yardstick used by him in arriving at his award. With respect, there is no such requirement on a taxing Master. All that is required are those stated in Oyekanmi v. NEPA, prominent among which are that: 'the judge must act judicially and judiciously; and that there must be a balanced consideration of the facts for each party before he arrives at a proper exercise of his discretion'. Since the application before the taxing Master was in respect of contentious legal matters in respect of which no scale of fees has been fixed by any law, what was required of the Taxing Master was purely an exercise of his discretion done judicially and judiciously after a balanced consideration of the facts for each party.'*

[75]*Sobodu v. Denloye*, (n 29), s. 17(3) (n 30) provides that: *No order shall be made under subsection (2) of this section – (a) in any case, after the period of twelve months from the date on which the bill in question was paid; (b) except in a case where the court determines that there are special reasons for making such an order, if twelve months have expired since the date of the delivery of the bill or if judgment has been given in an action to recover the charges in question, And an order made by virtue of paragraph (b) of this subsection may contain terms as to the cost of the taxation.*

[76]*Allen v. Aldridge, Re Ward* (1844), 13 L. J. Ch. 155; 49 E. R. 633.

[77]*Re Barker* (1834) 58 E. R. 673, 43 E&ED 180.

[78]*Langley v. Furnival* (1828), 43 E&ED 180.

[79]s. 18(1) (n 30).

determines to adjourn or further adjourn the taxation so as to afford an absent party an opportunity to be present; and where he does so determine he may also determine by whom any costs of the adjournment shall be payable[80].The master's office is the proper place for taxation of a bill of costs[81]; and in taxing costs the master should adhere strictly to established rules, without reference to the hardship of any particular case[82]. Where a defendant obtains an order for the taxation of an attorney's bill, with the usual undertaking to pay what shall be found to be due, the court will not permit him to dispute his liability on the ground that the work done was useless[83]. Although the master, on taxation, has no jurisdiction to determine whether acts done by the attorney were useful, he may determine what were necessary[84]; nevertheless, on taxation of an attorney's bill, the master has no jurisdiction to disallow items on the ground that in respect of the business to which they refer, the attorney was guilty of negligence[85]. On the completion of the taxation of a bill, the taxing officer shall forthwith declare the amount due in respect of the bill and shall file in the records of the court a certificate signed by him stating that amount; and any party to the taxation shall be entitled on demand to have issued to him free of charge an office copy of the certificate[86].

The taxing officer's allocatur is sufficient and conclusive proof that the business charged for was done by the solicitor[87]. The taxing master's allocatur of costs need not be a separate document, but may be indorsed on or written at the foot of the bill of costs provided the bill of costs together with the allocatur contains the name of the cause or matter, the name of the party whose costs are to be taxed, the amount at which the costs are taxed, and the signature of the taxing officer. The *allocatur* is not bad because the taxing fee is not paid before it is given[88]. Arithmetical errors can be corrected on taxation[89]; and if there is an error in casting up the amount after taxation, and the error is not brought under the attention of the master before he makes his *allocatur,* the party damnified by the error has no right himself to set it right, but should apply to the judge or the master[90].Where on the taxation of a bill of costs a party objects to the course which the taxing master proposes to adopt in the taxation, it is not at once bring the matter before the court on motion. He should allow the taxing master to make his certificate, and then carry in his objections to it, and allow the master to answer them, and upon that apply to the court to vary the certificate[91]. An application to review the taxation of costs ought not to be made before the master has made his *allocatur*, as he has not, until doing so, finally decided what costs he will allow[92]. Upon such an application [for a review of taxation] it is necessary that the person who seeks for a review should show that he has taken

[80] s. 18(2) (*ibid*).
[81]*Bricknall v. Stanford* (1838), 43 E&ED 226.
[82]*Rivis v. Watson*, (1840), L. J. Ex. 100.
[83]*Walker v. Rogers* (1836), 5 L. J. Ex. 249.
[84]*Heald v. Hall* (1833), 43 E&ED 232.
[85]*Matchett v. Parkes* (1842) 11 L. J. Ex. 287, where A. & B. delivered a bill in their joint names for business done as attorneys, and the master, on taxation, disallowed part of the bill, on the ground that B. was not a certificated attorney during a portion of the time to which the bill referred; the court, on affidavit that B.'s name was used at the request of friends, but that he was really not a partner with A., allowed A. to deliver a fresh bill in his own name only for the items so disallowed.
[86] s. 18(4) (n 30).
[87]*Clarke v. Union Fire Insurance Co., Caston's Case* (1884), 43 E&ED 233.
[88]*R. v. Kingston- Upon- Hull District Registrar, Ex p. Norton*, (1944) 1 All E R 546.
[89]*Re Grant* (1906) 1 Ch. 124.
[90]*Levy v. Drew* (1847), 43 E&ED 232.
[91]*Re Le Brasseur & Oakley* (1896) 2 Ch. 487; 65 L. J. Ch. 763; 74 L. T. 717.
[92]*Sellman v. Boorn*, (1841), 10 L J Ex. 433; 151 E R 1158.

his objections to the taxation when before the master[93], as otherwise, the court will not grant a review of taxation upon a ground which was not specially presented before the master[94].The master's certificate on taxation of costs cannot be questioned without the special leave of the court to be obtained by petition setting forth the grounds of complaint, and the charges alleged to be erroneous, and it must be shown that there has been an erroneous principle upon which the master has acted[95]. When by the taxation of an item it is simply reduced, the question being one of amount only, the taxation will not be disturbed[96]. This is founded on the basis that the court will only determine questions on items in a bill of costs, which involve some principle, and not those relating to *quantum* only[97].The certificate of the taxing officer in respect of a bill of charges, or where the certificate is varied on appeal, the certificate as so varied, is conclusive as to the amount of the charges payable in respect of the bill. However, nothing in this provision is construed as relieving a legal practitioner of any obligation to prove that a client is liable to pay a bill of charges or as precluding a client from disproving that he is so liable.[98]

Subject to the provisions of any order made under 17(3) of LPA 1975, if the amount stated in a certificate under that section relating to a bill of costs, or in such a certificate as varied on appeal, is less than the amount of the bill before taxation and the difference is equal to one sixth or more of the amount of the bill before taxation, the costs of the taxation shall be payable by the legal practitioner, and in any other case those costs shall be payable by the client[99]. In accordance with this provision, where an attorney's bill is reduced on taxation by a sixth part, the client is entitled to the costs of taxation, and this entitlement is not in the discretion of the court[100]; so that, however small the sum is beyond one-sixth, which is taken off in taxation, the attorney is equally liable[101]. The amount, on which one-sixth is taken, includes disbursements[102], and costs already taxed and paid by the opposite party[103]. It includes the total of the bills ordered to be taxed by one order, but not other bills delivered under the same retainer[104]. It includes the full amount of the bill and, and disregards any approximations[105], or

[93]*Shrapnel v. Laing* (1888) 20 Q B D 334; 57 L J Q B 195; 58 L T 705; 4 T L.R.241.
[94]*Hore v. Saxl* (1856), 139 E R 1211; in *Craske v. Wade* (1899) 80 L T 380, in taxing a bill of costs in an action where judgment on a counterclaim had been given for plaintiff with costs, the master disallowed the whole of the costs incurred by the plaintiff in meeting the counterclaim upon the merits. The plaintiff took out a summons to discharge the certificate of the master on the ground of misconstruction of principle without having previously carried in objections to the taxation. It was held that there was nothing in this case to prevent the ordinary rule as to carrying in objections from applying.
[95]*Re Congreve* (1841), 49 E R 271, here, the master, on evidence before him, allowed a few items on taxation of a solicitor's bill for business, as to which there was a conflict whether the solicitor had authority to perform it. it was held that this was not a sufficient reason for permitting a review of the taxation.
[96]*Re Price*, (1845), 43 E&ED 239.
[97]*Re Catlin*, (1854) 52 E R 200;in *Stocken v. Dawson* (1836), 5 L J Ch. 123, the master having taxed a solicitor's bill, the client presented a petition, stating a rule, that in the taxation of bills there was a distinction in the amount allowed for attendances by solicitors and those by their clerks; that, for a number of attendances which had been made by the solicitor's clerk, the master had allowed the same amount as if they had been made by the solicitor himself, and prayed liberty to except to the master's report, and for a retaxation. The court, considering this a mere question of quantum, and acting on the principle that the court will not interfere where an objection is made to the *quantum* allowed by the master, in his taxation of a solicitor's bill, refused the application with costs.
[98] s. 18(6) (n 30).
[99] s. 18(7) (n 30).
[100]*Higgins v. Wolcott*, (1826) 108 ER 283.
[101]*Swinburn v. Hewitt*, 43 E & E D 2411.
[102]*Re Haigh*, The Supreme Court Practice, 1997, vol. 2 para 3707.
[103]*Re Osborn & Osborn*, (1913) 3 KB 861 CA.
[104]*Devereaux v. White*, (1896) 13 TLR 52.
[105]*Re Mackenzie*, (1894) 69 LT 751.

the fact that a lesser figure alone is claimed[106]. On the other hand, the amount on which one-sixth is taken, excludes items in the cash account[107], and excludes items struck out of the bill for want of retainer[108]. In any event, no action shall be begun until the taxation is completed, and any such action already begun shall be stayed.[109]

Time to Sue and Limitations

An attorney's right of action for compensation generally accrues at the time the services contemplated by his contract of employment have been substantially performed. If it is agreed by the parties that the compensation is to be paid on the happening of a certain contingency, the right of action for compensation accrues upon the occurrence of the agreed contingency[110]. Thus, basically, the right of the solicitor to deliver a bill of charges arises on completion of the work which he was employed to perform, for example, the termination of the suit[111]. Accordingly, the Limitation Act begins to run from that time and not from the expiry of the month[112]. Furthermore, if an appeal is brought and the same solicitor is retained for it, there is a continuance of the contract so that it includes the appeal, and postpones the commencement of the period of limitation[113]. However, the circumstances may give rise to a right to deliver the bill at stages in the work, and a bill may be a final bill though one of a series[114]. Upon the service of the bill on the client, a period of one month from the date of service must expire before an action for the recovery of the fees can be commenced. Thus section 16(2) of LPA 1975, imposes a condition precedent to instituting an action for the recovery of a fixed sum stated in the bill of charges forwarded by a legal practitioner.[115]

Presumptions and Burden of Proof

Legal practitioners are required to draw up their bills of charges carefully and explicitly so as to prevent unnecessary litigation in respect of such bills. In any event, if there is an issue of insufficiency of particulars, it should be formally raised by objection[116]. There is no law which says that counsel suing for his bill of charges must produce certified true copies of the proceedings to show that he appeared in the cases or to show the outcome of the cases for which he is suing for his bill of charges. It is sufficient if the counsel states clearly what he did, the cases he handled and the professional fees due to him and other expenses[117]. On the other hand, whether or not a client has settled his solicitor's bill of charges by paying the professional fees

[106]*Re Paul*, (1884) 27 Ch. D. 485.
[107] Re Haigh, (n 102).
[108]*Re Taxation of Costs, Re A Solicitor*, [1936] 1 KB 523.
[109]s. 17 (n 30): *Owena Bank of Nigeria Plc v. Adedeji*, (n 4).
[110]*Jones v. Pearce*, 7A CJS 669.
[111]*Re Romer & Haslam*, [1893] 2 QB 286; in *Re Savignac*, [1928] 4 D L R 433, a solicitor was retained by C. to conduct proceedings in an action against S. The retainer was not disputed. The solicitor conducted the action until the judgment of the trial judge was given. C. decided to appeal and commenced proceedings for an appeal. From that time, he took over from the solicitor the conduct of and control of the proceedings and of the appeal, and thereafter the solicitor merely performed such services as C. from time to time required of him. The solicitor then delivered his bill of costs, and in due time obtained an order for its taxation pursuant to Solicitors Act, s. 33 (c). It was held that C., by taking over the conduct and control of the proceedings put an end to the general retainer, as he had a right to do, and the solicitor was thereupon entitled to claim payment of his costs, and in the absence of *"special circumstances,"* to have an order for taxation of his bill.
[112]*Coburn v. Colledge*, [1897] 1 QB 702.
[113]*Harris v. Quine*, (1869) L R 4 QB653.
[114]*Re Romer & Haslam*, (n 111); *Re Hall & Barker* (1878) 9 Ch. D 538.
[115]*Owena Bank of Nigeria Plc v. Adedeji*, (n 4).
[116]*Oyekanmi v. NEPA*, (n 20).
[117]*Uyo Local Government Council v. Otu Inwang*, (2010) 4 NWLR (Pt. 1185) 529.

of the lawyer is not something to be proved by mere *ipse dixit*. There is a general presumption that lawyers issue receipts for any money paid to them. Thus, an averment of payment of fees to a lawyer may be proved by either tendering the receipt of payment or by calling the lawyer paid to testify in court[118].

The legal practitioner cannot simply rest his case on the fact that he has submitted a bill of charges, and then be content to urge that he is entitled to its payment because the client has failed to apply for taxation. He has to prove that the client is liable to pay the bill of charges. In this event, the client is not precluded from showing that he is not liable to pay the bill of charges[119]. For the purposes of showing the value of the services rendered, and the amount of compensation due to the attorney, competent evidence of pertinent facts and circumstances which tend to show the value of the attorney's services is admissible for such purpose, such as the contract between the parties, if any, the amount usually charged for such services, and the financial ability of the client. Similarly, evidence is admissible as to the labour and length of time the plaintiff spent on the case, the importance of the case to the defendant, the care and diligence exhibited, the expenses incurred by the plaintiff, the experience, skill, ability, character and standing of the attorney, and the defendant's knowledge of these qualities[120]. The attorney possesses full testimonial competence as a witness to the value of the services rendered by him, and he may testify as to his experience and knowledge, his judgment concerning value, and his knowledge of the charges of other attorneys for like services in similar cases[121]. In determining the value of an attorney's services, it is proper to receive evidence as to the price usually charged and received for similar services by other persons of the same profession in the same vicinity, and practicing in the same court[122]. However, on the question of the value of an attorney's services in a particular action, evidence is not admissible as to the value of services rendered by him in another action[123]. In an action by an attorney to recover compensation for professional services on the *quantum meruit*, the financial ability of the defendant may be considered; not to enhance the fees above a reasonable compensation, but to determine whether or not he is able to pay a fair and just compensation for the services rendered[124]. Since the financial ability or wealth of the client is an element to be considered in determining the reasonable value of the attorney's services to him, evidence is admissible on such question which tends to show the financial ability or value of the estate of the defendant[125]. However, such evidence is admissible only to show the nature of the litigation in which the client has been involved and his financial ability to have responded to any judgment which might have been rendered against him, and is not admissible to draw a distinction between a

[118]*First Bank of Nigeria Ltd. v. Owie* (1997) 1 NWLR (Pt 484) 744.
[119]*Oyo v. Mercantile Bank of Nigeria Ltd*. (n 17), the legal practitioner, for instance may prove that that client requested him to render the services, that he did so, that by virtue of his age at the bar and the extent of his practice and experience he was able to provide a certain amount of skill which the particular legal matters demanded, that the charges do not exceed such as are reasonable having regard to the skill, labour and responsibilities involved in the services rendered and to all the circumstances of the case. The client can proceed to disprove all these assertions or at least minimise their effect and relevance so as to show that he is not liable to pay those or all of the charges.
[120] 7A CJS § 348.
[121]*Slayton v. Russ*, 146 A L R 64.
[122]*Stanton v. Embry* 93 US 548, 23 L Ed 983; in *Head v. Hargrave* 105 US 45, 26 L Ed 1028, it was held that in an action for legal services, the opinions of attorneys as to their value are not to preclude the jury from exercising their judgment; and it is in their province to weigh the opinions by reference to the nature of the services rendered, the time occupied in their performance, and other attendant circumstances.
[123]*Davis v. Walker*, 7A CJS 689.
[124]*Ward v. Kohn*, 6 F D 399.
[125]*Fitzgerald v. Eisenhauer*, 7A CJS 689.

rich and a poor man or to prejudice the client's rights[126]. Where the plaintiff is able to successfully produce evidence of his retainer by the defendant, and evidence of the services rendered by him to the defendant, and, either an agreed fee, or the value of those services, he will be seen as having made out a prima facie case to entitle him to a decision. Alternatively, if the plaintiff, having proved his retainer, proves his discharge without cause by the defendant, he will be seen to have established a prima facie case to entitle him to a decision for the resulting damage.

Verdict and Findings

When the Bill of Charges or fess are properly brought by the legal practitioner in compliance with the provision of LPA 1975, the court will normally give judgment for the amount of fees so claimed unless there are other factors preventing it from doing so, such as the absence or non-existence of any agreement for the payment of the fees by the client or an attempt by the legal practitioner to illegally enrich himself at the expense of his client (by way of Champerty). In certain cases, even where the charges or fees were not agreed upon or fixed by a contract between the lawyer and his client, the court can award a reasonable fee or remuneration to the legal practitioner for his services actually rendered or admitted to have been rendered by him at the request or instruction of his client on the basis of *quantum meruit* or quasi-contract[127]. Where there is no agreement as to legal charges, or there is an agreement which seems improper, there would not be an automatic award of the charges claimed by the legal practitioner[128].

Conclusion

Payment by the client for the services of the attorney lies at the heart of the relationship between the attorney and his client, so that the attorney may not be lightly deprived of his justly earned compensation, and justification to refuse to pay the attorney may be contemplated only in a few strict circumstances. Normally, a total failure by the attorney to perform the service he is employed for would justify a refusal to remunerate him since in that circumstance, he has not earned any fees. On the other hand, blunders of the attorney, not damaging his client do not affect his right to compensation, neither may he be denied his remuneration on account of the fact that the client did not prevail in the litigation or did not attain the objective anticipated in employing the attorney. It is not unethical for an attorney to sue for his fees; accordingly, subject to the provisions of the Legal Practitioners Act, a legal practitioner is entitled to recover his charges by action in any court of competent jurisdiction. Where however, the fee sought to be recovered by the attorney by action in court is a clearly excessive or illegal fee, the action to recover it would be improper and unethical. Although a lawyer may enter into a contract with his client for a contingent fee in respect of a civil matter undertaken or to be undertaken for a client whether contentious or non-contentious, the enforcement of an attorney's fee or lien for services rendered may not interfere with public policy. Thus, a lawyer shall not enter into an agreement to charge or collect a contingent fee for representing a defendant to a criminal case. While a lawyer suing his client for his fees is not a course of action that should be anticipated with great pleasure, it is not misconduct to do so, and may at times constitute the sole available prudent course action. This paper dealt in detailed fulsomeness, the procedure for conducting such a process to fruition.

[126]*Scales v. Wynne & Wynne*, 7A CJS 689.
[127]*Akingbehin v. Thompson*, (n 4).
[128]*Oyo v. Mercantile Bank of Nigeria Ltd*. (n 17); *First Bank of Nigeria Plc v. Ndoma-Egba*, (n 4).