

**RIGHT TO COUNSEL OF ONE'S CHOICE AND SENIOR ADVOCATE OF NIGERIA
COURTROOM APPEARANCE RESTRICTION: INTERROGATING THE COURT OF APPEAL
DECISION IN ATIKU ABUBAKAR V. BOLORI***

Abstract

The Legal Practitioners' Privileges Committee (LPPC) is empowered by the Legal Practitioners' Act, 1975 (LPA, 1975) to confer the rank of Senior Advocate of Nigeria (SAN) on legal practitioners who have contributed to the growth and development of the law and thereby distinguish themselves. Upon conferment, the practice of the SAN is regulated by the Senior Advocate of Nigeria (Privileges and Functions) Rules, 1979 (SAN (P & F) Rules, 1979). Rules, 2, 3, and 6 of the SAN P&F Rules, 1979 disallow an SAN from appearing in inferior courts/tribunals except in criminal matters while Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (CFRN, 1999) grants the right to fair hearing to all citizens. Recently, the Court of Appeal in Mohammed Atiku-Abubakar v Miss Umami Fatima Bolori reaffirmed its decision in The Registered Trustees of the ECWA Church v. Ijesha that by virtue of the aforementioned Rules 2, 3, and 6 of the SAN P&F Rules, 1979, an SAN is barred from appearing in inferior courts/tribunals in Nigeria save in criminal cases and that the Rules do not infract the right to fair hearing especially, the right to counsel of one's choice. This decision raises certain issues one of which is what is the propriety/legality of Section 5(7) of the LPA, 1975 and Rules 2, 3 and 6 of the SAN P&F Rules, 1979 in the light of Sections 1(3) and 45 of the CFRN, 1999? Put differently, bearing in mind that Section 36 of the CFRN, 1999 is not one of the derogated rights mentioned under Section 45 thereof, can Section 5(7) of the LPA, 1975 and Rules 2, 3 and 6 of the SAN P&F Rules, 1979 be qualification of the right to fair hearing? What is the utilitarian value of excluding SAN from appearing in inferior courts/tribunal? These issues form the crux of this paper.

Keywords: Litigant, Legal practitioner, Justice, Right to fair hearing, Senior Advocate of Nigeria

1. Introduction

The Legal Practitioners' Privileges Committee (LPPC) created under Section 3 of the Legal Practitioners' Act, 1975 is empowered to confer the enviable and amiable rank of Senior Advocate of Nigeria (SAN) on legal practitioners who have contributed to the development of the law in Nigeria and thereby distinguished themselves.¹ The rank is a privilege which recognises the distinction which the conferee has attained in the legal profession.² The rank of SAN avails the holder certain rights and obligations within the legal profession and the practice of the SAN is regulated by the Senior Advocate of Nigeria (Privileges and Functions) Rules, 1979 (hereinafter simply referred to as SAN (P & F) Rules, 1979) made pursuant to Section 5(7) of the LPA, 1975. Thus, Rules, 2, 3, and 6 of the SAN P&F Rules, 1979 prohibits an SAN from appearing in inferior courts/tribunals such as Magistrate/Upper Area Court or issue processes to be filed before them except it is in a criminal proceeding. Recently, in *Mohammed Atiku-Abubakar v. Miss Umami Fatima Bolori*³ the Court of Appeal gave judicial recognition and approval to affirm Rules 2, 3, and 6 of the SAN P&F Rules, 1979 contingent on Section 5(7) of the LPA, 1975 reaffirming its earlier position in *The Registered Trustees of the Evangelical Church Winning All v. Ijesha*⁴ that a SAN does not have right of audience in inferior courts except in criminal matters. Meanwhile, Section 36 of the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter simply referred to as CFRN, 1999) guarantees the right to fair hearing of which right to counsel of one's choice is an integral. While it is noted that the rights enshrined under Chapter IV of CFRN, 1999 are neither absolute nor sacrosanct. Section 45 thereof makes provisions for specific and exclusive rights which are derogable of which Section 36 is not one. By virtue of Section 1(1) and (3), the Constitution stands over and above all laws in Nigeria and any law that runs afoul to any of its provisions, stands null and void to the extent of its inconsistency and therefore of no effect whatsoever.⁵

The issue arising from these decisions upholding the propriety/legality of the Rules 2, 3, and 6 of the SAN P&F Rules, 1979 contingent on Section 2(1) and 7(1) of the LPA, 1975 is bearing in mind the fact that Section 36 of the CFRN, 1999 is not one of the derogable sections mentioned under Section 45 of the CFRN, 1999. What is the

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¹ Section 3, Legal Practitioners' Act, Laws of the Federation of Nigeria, Cap. L10, 2004.

² Oluremilekun A. Adegoke, Rebecca E. Badejogbin, Mercy E. Onoriode, *Law in Practice: Professional Responsibilities and Lawyering Skills in Nigeria* (Jos: Jos University Press Limited, 2014) 205.

³ [2024] LPELR-61900(CA).

⁴ [1999] 13 NWLR (Pt.635) 368.

⁵ *Uzodima v. Commissioner of Police* [1983] 3 NCLR 25; *A.G Bendel v. A.G Federation* [1983] All NLR 208; *Inakoju v. Adeleke* [2007] 4 NWLR (Pt. 1025) 423.

legal standing of the SAN Rules? Put differently, was the decision of the court *in tandem* with extant provisions of the law particularly the CFRN, 1999? Bearing in mind, the organic nature and importance of access to court of which right of counsel of one's choice is integral, what is the utilitarian value of excluding SAN from appearing before inferior courts/tribunals? What is the impact of this decision on the administration of justice in Nigeria? These issues form the kernel of this paper.

By structure, this article is divided into four sections. Section one is the introduction. Section two is an analysis of the rules regulating practice of counsel in Nigeria particularly SAN. Section three contains brief facts of the case under review and matters arising therefrom. Section four is the conclusion and recommendations. The paper adopts desk-based method by relying on primary and secondary data such as the Constitution of the Federal Republic of Nigeria 1999, Legal Practitioners' Act 1975, Senior Advocate of Nigeria (Privileges and Functions) Rules 1979, case law, textbooks and articles in learned journals relevant to the subject under interrogation. The data were subjected to analytical and jurisprudential analysis.

2. The Practice and Regulation of the Rank of SAN in Nigeria

The award of the rank of Senior Advocate of Nigeria (SAN) is a privilege that is awarded as a mark of excellence to members of the legal profession who are in full time legal practice, who have distinguished themselves as advocates and have made significant contribution to the development of the legal profession in Nigeria.⁶ Legal practitioners who are conferred with this prestigious rank enjoy certain benefits over and above other members of the profession.⁷ For instance, they are entitled to sit at the inner bar alone or with other SANs and where there is no inner bar in a courtroom, to sit at the front seat alone. They also enjoy the privilege of calling their case first on the cause list.⁸ The rank of SAN is usually conferred on legal practitioners who have distinguished themselves as advocates or in advocacy. However, legal practitioners in the academia who have distinguished themselves in research, teaching and community service whose publications have become a reference source for legal practitioners, judges, researchers, and students are also conferred. It is worthy to note that as from 2023, the Guidelines for the conferment of SAN has limited the number of academics that can be conferred with the rank of SAN to a ridiculous one successful applicant only. Upon attainment of the rank of SAN, the honouree becomes a *sui generis* legal practitioner whose conduct and practice are regulated. Thus, in Senior Advocate of Nigeria (Privileges and Functions) Rules, 1979 this Rule regulates the law practice of SAN. With regards to regulation of the rank of SAN, Udemezie⁹ quoted Oditia to have opined thus:

In Nigeria, the privileges attached to being a senior advocate are largely statutory rather than conventional. They derive in part from Section 5(7) of the Legal Practitioners' Act 1975 and in part from the Senior Advocate of Nigeria (Functions and Privileges) Rules 1979. Three privileges are conferred: the right to wear a silk gown; the right to sit at the inner bar or front row; and the right to mention cases out of turn. Apart from the obligation to appear with a junior counsel which appears to derive from convention rather than statute and the restriction from practicing other than as a barrister (Section 5(8) of the Legal Practitioners' Act 1975), there appear to be no restrictions on a senior advocate - they routinely sign and draft evidence.

Regarding putting up appearances in courts, Rules 2, 3, 4 and 6 of the SAN (F and P) Rules, 1979 are instructive. Owing to the importance of the rules, we take the liberty to reproduce same *verbatim ad literatim* hereunder thus.

A Senior Advocate of Nigeria shall not appear as counsel in any civil case before any superior Court of Record except with a junior or with another Senior Advocate of Nigeria. Notwithstanding paragraph (1) of this rule, a Senior Advocate of Nigeria may appear with or without another counsel in any motion or other civil cause or matter in judge's chambers or elsewhere not in the open Court. A Senior Advocate of Nigeria may appear as counsel in any criminal cause or matter before any Court of Superior record with or without another counsel." A Senior Advocate of Nigeria shall not apply or issue originating process or any other process from or before a Court in any cause or matter except in relation to those matters in which he is entitled to appear pursuant to rules 2 and 3 of these rules. In these Rules, unless the context otherwise requires "Superior Court of Record" means the Supreme Court of Nigeria, the Court of Appeal, the Federal High Court, any State High Court or any other Court or Tribunal with powers not less than those of a High Court.

By the foregoing provisions of the Rules, an SAN is disallowed from entering appearance in inferior courts such as the Magistrate/Area Court in civil matters. The foregoing restriction has been given judicial approval in

⁶ Section 5(2) of the Legal Practitioners Act, Cap L11 Laws of the Federation of Nigeria 2004 and Regulation 10 (1) (4) of the Guidelines for the Conferment of the Rank of Senior Advocate of Nigeria 2022.

⁷ David I. Efevwerhan, *Principles of Civil Procedure in Nigeria*, (Enugu: Chenglo Publishers, 2007) 109.

⁸ Anthony Obi-Okoye, *Law in Practice in Nigeria: Professional Ethics and Skills* (Enugu: Snaap Press Ltd., 2011) 98.

⁹ Sylvester Udemezie, 'Resolving Conundrums Regarding Regulation of the Legal Profession in Nigeria (Part 1)' *International Review of Law and Jurisprudence* (2022) 4 (3), 123.

Registered Trustees of Evangelical Church Winning All v. Ijesha.¹⁰ Thus, it is only in criminal cases that an SAN can appear before an inferior court. Generally, an SAN is entitled to appear before all superior courts of records in Nigeria whether in criminal or civil cases. The rationale for the restriction of appearance before inferior courts/tribunals is to protect the prestige of the rank of SAN which is the highest professional attainment in the legal profession. The prestigious nature of the rank of SAN is not disputable as each year, notwithstanding the cost implication and rigours of the process, several legal practitioners apply for the rank. Despite this, the question that might agitate the mind is whether the protection of the prestige of the rank of SAN is enough justification for disallowing an SAN from appearing before an inferior court/tribunal? These issues and others are addressed in the preceding sections of this paper.

3. Explicating Mohammed Atiku Abubakar v Miss Umami Fatima Bolori and Matters Arising

This section of the paper explicates the brief facts of the case foregrounding the decision of the court, and interrogates matters arising from the decision and its impacts on justice administration in Nigeria. The brief facts of the case are that the appellant and respondent got married under the Sharia law sometime in 2007 and had two children, a boy and a girl who were six and eight years respectively. The marriage hit the rock and due to irreconcilable differences, the marriage was dissolved in 2011. During the proceedings, the children were in the custody of the appellant by default. However, the respondent felt that the paramount interest of the children will be better served if they were in her custody hence, she demanded the appellant to release them to her custody. The appellant refused to heed to her demand and as a result, she filed a suit at the trial Magistrate Court of Lagos State, Family Division seeking several reliefs including but not limited to their custody being granted to her while the appellant is made to be responsible for their maintenance. On the 1st day of November, 2017 when the matter came up before the trial Magistrate Court, Mr. Olasupo Sasore SAN announced appearance for the Respondent/Appellant while Gloria Albert Ekpe Esq. announced appearance for the Applicant/Respondent. The Applicant/Respondent counsel objected to the appearance of the Respondent/Appellant's counsel premised on Rules 3 and 6 of the Senior Advocate of Nigeria (Privileges and Functions) Rules, made pursuant to Sections 2(1) and 7(1) of the Legal Practitioners' Act, 1975 which disallow an SAN from appearing in an inferior court/tribunal like the trial Magistrate Family Court. The Respondent/appellant joined issues with the Applicant/Respondent contending that by virtue of Section 9 of the Magistrate Court Law of Lagos State, 2009 the Respondent/Appellant's counsel suffers no disability inhibiting him from appearing before the trial court. The trial Magistrate on the 10th of January, 2018 delivered ruling on the objection wherein the objection was sustained with the effect that the learned SAN, counsel to the Respondent/Appellant has no right of appearance before the trial Magistrate Family Court. Being aggrieved, the Appellant, vide notice of appeal dated 19th March, 2018, appealed the decision to the Lagos State High Court which in its judgment delivered on the 28th day of November, 2022, affirmed the decision of the trial Magistrate Family Court. Still dissatisfied with the decision of the High Court, the Respondent/Appellant, appealed the decision vide notice of appeal filed on the 25th of July, 2022 to the Court of Appeal contingent on four grounds of appeal.

Appellant's Argument

At the Court of Appeal, the Appellant argued that the decision of the trial Magistrate Family Court upheld by the High Court was in breach of his right to fair hearing enshrined in section 36(1) of the CFRN, 1999 relying on *All Purpose Shelters Ltd. v. Dennis*¹¹. That the right to fair hearing under the substratum of counsel of one's choice its availability is not limited to criminal cases but to criminal and civil cases alike relying on *Ndukauba v. Kolomo & Anor.*¹² It was further argued that it is the provision of the Magistrate Court Law of Lagos State, 2009 that regulates practice at the trial Magistrate Court and Section 9 thereof, empowers the learned SAN, appellant counsel to appear as his legal practitioner. Thus, by section 1 (1) and (3) of the CFRN, 1999, the court below erred when it affirmed the decision of trial court which upheld the amenability of the SAN to Rules 2, 3, and 6 of the SAN (P & F) Rules, 1979. Besides, it was further argued that pursuant to Section 45 of the CFRN, 1999, Section 36 thereof admits of no exception as it is not part of the derogable rights in Chapter IV. Beside this, it was argued that Section 8 of the LPA, 1975 and Rules 2, 3 and 6 of the SAN (P & F) Rules, 1979 made therefrom cannot extinguish a right conferred by the CFRN, 1999. The Appellant further contended based on Sections 4 and 6(4) of the CFRN, 1999 and the decisions of *Attorney General of Lagos State v. Attorney General of the Federation*¹³ and *Attorney General of Abia State v. Attorney General of the Federation State*¹⁴ that the court below as well as the trial Magistrate Family Court erred in law when they held that the SAN (P & F) Rules, 1979 made pursuant to Section 5(7) of the LPA, 1975 regulates practice at the Magistrate Court of Lagos State instead of the Magistrate Court Law of Lagos State, 2009 which Section 9 permits the learned SAN to appear before it unrestrained. The Court of Appeal was therefore urged to set aside the concurrent decision of the trial Magistrate court and the court below.

¹⁰ [1999] 13 NWLR (Pt.635) 368.

¹¹ [2022] 6 NWLR (Pt. 1825) 181.

¹² [2005] LPELR-1976 (SC).

¹³ [2013] 16 NWLR (Pt. 1380) 249.

¹⁴ [2006] 16 NWLR (Pt. 1005) 265.

Respondent's Argument

Regarding the argument canvassed by the appellant on right to fair hearing, the Respondent argued that the learned SAN could not be briefed to appear before the trial Magistrate Family Court since it was not a Superior Court of Record and the exclusion of SAN from appearing from the trial court and its equivalents is not a detraction from the fair hearing right of the Appellant. On the argument that the Magistrate Court Law of Lagos State, 2009 as opposed to the SAN (P & F) Rules, 1979 regulates practice and procedure at the Magistrate Court of Lagos State, the Respondent argued that the limitation placed on the SAN to appear before inferior courts/tribunal has nothing to do with the scope or jurisdiction of the Magistrate court or their regulatory framework. Rather, the learned Appellant's counsel being aware of the Rules, applied for and was conferred with the rank of SAN, cannot avoid the burdens attached to the rank by virtue of Rules 3 and 6 of the Senior Advocate of Nigeria (Privileges and Functions) Rules, made pursuant to Sections 2(1) and 7(1) of the Legal Practitioners Act, 1975 and the decision in *The Registered Trustees of the Evangelical Church Winning All v. Ijesh*¹⁵ which concomitantly disallowed the learned SAN from appearing before the trial Magistrate Court and all inferior courts save in criminal matters which the instant case is not. It was further argued that having acceded to the disability inherent in the conferment of the rank of SAN, premised on the Maxim *volenti non fit injuria* having accepted the SAN, the learned appellant counsel is bound to honour the terms of its conferment and not to renege based on the decision in *Uwah & Anor. v. Akpabio Anor.*¹⁶ It was contended that the Magistrate Court Law of Lagos State, 2009 cannot confer the right to appear before inferior court/tribunals on the learned Appellant's counsel thus, the appellant right to counsel of his choice is qualified by the restriction agreed to by the learned SAN when he applied and was conferred with the rank. The Respondent therefore urged the Court of Appeal to dismiss the appeal and affirmed the concurrent decisions of the trial Magistrate Family Court and lower court.

Court Resolution of the Issues

Having taken arguments from the parties, the Court of Appeal noted that the right to fair hearing encapsulated in Section 36 of the CFRN, 1999 entails right to counsel of one's choice either to prosecute or defend his case and neither the court nor the adverse party can interfere with it. This right is based on the decisions in *Awara Biokpomabo Festus v. African Action Congress & Ors*¹⁷ and *Daily Times v. Inspector General of Police*.¹⁸ However, the court noted that the instant case is different as the objection which was sustained and whereof the instant appeal lies was premised on the provisions of Rules 3 & 6 of the SAN (Privileges and Functions) Rules, made pursuant to Section 5(7) of the LPA, 1975 which disallows a holder of the rank from appearing in Magistrate Court and its equivalents in civil matters. The court therefore came to the conclusion that there is no conflict between Rules 2, 3 and 6 of the SAN P & F Rules, 1979 made pursuant to Section 5(7) of the LPA, 1975 with Section 36(6) (c) of the CFRN, 1999, hence, there is no breach of fair hearing. In conclusion, while the Appellant has right to fair hearing, the right is neither absolute nor untrammelled as his choice counsel, must not be under any form of disability as was held in *Awolowo v. Sarki & Anor*¹⁹ including the one imposed by Rules 2, 3 and 6 of the SAN (P & F) Rules, 1979 which the learned silk had willingly accepted. It resolves the issue that based on its earlier decision in *The Registered Trustees of the Evangelical Church Winning All v. Ijesh*,²⁰ Rules 2, 3 and 6 of the SAN (P & F) Rules, 1979 has rightly and legally circumscribed the courts that the counsel to the appellant can appear in.

By this, the Court of Appeal affirmed its earlier position with regards to the legality of the SAN P & F Rules, 1979 that bars SANs from appearing in Magistrate Court and other inferior tribunal in civil cases and the fact that this restriction, does not breach fair hearing as every litigant has an unrestricted right to choose a counsel that will prosecute or defend his/her case but in making that choice, the litigant must ensure that the preferred counsel, is not under any form of disability.

This decision raises certain concerns. What is the propriety/legality of the SAN P & F Rules, 1979 made pursuant to Sections 2(1) and 7(1) of the LPA, 1975 vis-à-vis Sections 36, 45, 1(1) and (3) of the CFRN, 1999? Bearing in mind, the organic nature and importance of access to court of which right of counsel of one's choice is integral, what is the utilitarian value of excluding SAN from appearing before inferior courts/tribunals? What is the impact of this decision on the administration of justice in Nigeria? These issues are discussed under matter arising from this decision in the subsequent part of this paper.

¹⁵ [1999] 13 NWLR (Pt.635) 368.

¹⁶ (2014) LPEL-22311 (SC).

¹⁷ [2020] 4 NWLR (Pt. 1713) 105.

¹⁸ (2021) LPELR-54633 (CA).

¹⁹ (1966) LPELR-25290(SC).

²⁰ (1999) 13 NWLR (Pt.635) 368.

Matters Arising from the Decision

From the preceding section, it had been stated that the decision of the Court of Appeal in the case under review, raises certain fundamental issues. These issues are: What is the propriety/legality of the SAN P & F Rules, 1979 made pursuant to Sections 2(1) and 7(1) of the LPA, 1975 vis-à-vis sections 36, 45, 1(1) and (3) of the CFRN, 1999? Bearing in mind, the organic nature and importance of access to court of which right of counsel of one's choice is integral, what is the utilitarian value of excluding SAN from appearing before inferior courts/tribunals? What is the impact of this decision on the administration of justice in Nigeria? With regards to the first issue, i.e. propriety/legality of the SAN P & F Rules, 1979 made pursuant to Sections 2(1) and 7(1) of the LPA, 1975 vis-à-vis Sections 36, 45, 1(1) and (3) of the CFRN, 1999, Section 1(1) and (3) of the CFRN, 1999 is to the effect that the Constitution is supreme and its provisions stand over and above every other law in Nigeria and where any law(s) expressly or by necessary implication, is contrary to any provision of the Constitution, the law or the offensive provision therein stands null and void to the extent of its inconsistency.²¹ As earlier stated, Section 36 of the CFRN, 1999 is not an ordinary provision but enjoys special status. It is the law that generally Chapter IV of the CFRN, 1999 is neither absolute, sacrosanct nor untrammelled.²² As a result, Section 45 of the CFRN, 1999 contains the derogation clause for the rights contained in Chapter IV. We take the liberty to reproduce *verbatim ad literatim* the said provision of Section 45(1) thus:

Nothing in Sections 37, 38, 39, 40, and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society; (a) In the interest of defence, public safety, public order, public morality or public health; or (b) For the purpose of protecting the rights and freedom of other persons.

From the foregoing express provision of the derogation provision of the CFRN, 1999, it is patently clear that only Sections 37, 38, 39, 40 and 41 of Chapter IV of the CFRN, 1999 are derogable. Furthermore, subsection (2) of Section 45 empowers the National Assembly by an Act to derogate from the provisions of Sections 33 and 35 of Chapter IV during the period of emergencies only by legislating acts to be taken which are reasonably justifiable under the prevailing emergency situation. The only derogation permitted as far as Section 36 thereof is concerned is Section 36(8) which prohibits retrospective penal laws aimed at punishing a person. Thus, under such emergency situation, the National Assembly can make retrospective penal laws and this will not be an infraction of Section 36(8) by virtue of Section 45(2) thereof. The irresistible and logical conclusion to be drawn from the foregoing is that, the constitution which is the supreme law of Nigeria, does not subject Section 36 to the derogable powers of Section 45 of the constitution. Thus, to the extent that only laws made by the National Assembly during emergency situation derogating from Section 36(8), Section 36 is strictly non-derogable. Based on the foregoing, since the Court of Appeal in the decision under review found that right to counsel of one's choice which the Supreme Court has acknowledged is available in all proceedings (criminal and civil alike), is an integral part of the right to fair hearing guaranteed under Section 36 of the CFRN, 1999 and it is crystal clear that only Section 36(8) by virtue of Section 45(2) is derogable, it is difficult to justify the propriety of Rules 2, 3, and 6 of the Senior Advocates of Nigeria (Privileges and Functions) Rules, 1979 made pursuant to Sections 2(1) and 7(1) of the LPA, 1975. The reason is that the Rules which purportedly prohibit an SAN from appearing in Magistrate/Area Court and other inferior tribunals although made pursuant to an Act of the National Assembly, is a clear sequestration of the right guaranteed in Section 36 of the CFRN, 1999. The fact that the SAN (P & F) Rules, 1979 was made pursuant to Sections 2(1) and 7(1) of the LPA, 1975 does not in any way validate it. The justification for this argument is that Legal Practitioners' Act, 1975 is not an Act that is justified by virtue of Section 45(2) of the CFRN, 1999. It is not covered either generally or specifically by the retrospective exception to Section 36(8) based on the derogation provision of the Constitution. The argument here is that based on the combined provisions of Sections 1(1) and (3) and 45 of the CFRN, 1999, no law-making body in Nigeria can legislate to circumvent the provision of Section 36 of the CFRN, 1999 except to the extent that is constitutionally permitted which extent, does not countenance Rules 2, 3, 4 and 6 of the SAN (P & F) Rules, 1979 made pursuant to Sections 2(1) and 7(1) of the LPA, 1975. While this point was not raised thereby giving the court the opportunity to adjudicate on it, it is vehemently contended that the decision as was reached, is not in accordance with the correct position of the law. The court ought to have taken cognisance of this provision since it extensively dealt with the issue of fair hearing which both are contained in the same chapter of the constitution. Thus, it is argued that if this had been taken into consideration by the court, the decision reached, would have been different.

Considering the organic nature of the right to access to court and to ensure that a litigant does not only gain access to court but his/her cause is pleaded by the most competent counsel he/she can hire, the question is: what is the utilitarian value of prohibiting Senior Advocates of Nigeria from appearing before Magistrate/Area Courts? It is worthy to note that these courts, are manned by qualified legal practitioners who have the requisite training and

²¹ *AG Ondo State v. AG Ekiti State* [2001] LPELR-622(SC), *A.G Abia vs. A.G Federation* [2006] 16 NWLR (Pt. 1005) 265; *Inakoju v. Adeleke* [2007] 4 NWLR (Pt. 1025) 423.

²² Dayo Audu and Esther Randle, 'Fundamental Human Rights under the 1999 Constitution (As Amended)'

<https://www.mondaq.com/nigeria/human-rights/1221232/fundamental-human-rights-under-the-1999-constitution-as-amended> Accessed 6 June, 2024.

knowledge to adjudicate over disputes and not laymen who lack the ability to understand complex and technical legal issues. The only reason given for this prohibition as alluded to by the court is preservation of the prestige of the rank and nothing more. One finds it extremely excruciating and professionally uncharitable suggesting that appearance by an SAN in a Magistrate Court in a civil matter, manned by a qualified legal practitioner amounts to desecration of the rank of SAN. Surprisingly, where the same appearance is put up by an SAN in a Magistrate Court in a criminal matter, the prestige of the rank is of no moment. This contradictory and to say the least, discriminatory situation, aside being hypocritical, is morally and legally unsustainable. A legal practitioner's solemn obligation is to represent litigants who are capable of retaining his/her services and the court especially, when manned by qualified legal practitioners, should be immaterial. One may ask, assuming a police officer who is not a qualified legal practitioner (as it used to be prior to the enactment of the Police Act, 2023), is prosecuting and an SAN is retained to defend the accused, the fact that the SAN is appearing against a layman is not considered as being a desecration of the rank of SAN simply because it is a criminal matter. While criminal matters may enjoy certain privileges, it is contended that every case is as important as the other. It does not matter whether a person is liable to imprisonment or risk losing property. Thus, the justification for the prohibition is hardly justifiable on any front.

The subsistence of this decision has no practical utilitarian value to administration of justice aside an egoistic manipulation. This decision is clearly inimical to administration of justice as a litigant should not be denied the right to retain the services of any legal practitioner that is affordable to them. Thus, the decision is an unwelcomed one aside the fact that it was reached *per incuriam* as already shown. Considering its rather restrictive and unjustifiable nature, fortunately, the Court of Appeal is subject to the appellate jurisdiction of the Supreme Court of Nigeria. In order not to allow the decision remained and becomes precedent, it is important for the Appellant to appeal the decision to the Supreme Court.

4. Conclusion and Recommendations

Extrapolating from the above analysis, the rank of SAN is a coveted one, it signifies the attainment of the pinnacle in the legal profession. It is awarded to legal practitioners who have distinguished themselves in the legal profession either as advocates or academicians. A conferee of the rank enjoys some benefits as well as incur certain burdens. The Senior Advocates of Nigeria (Privileges and Functions) Rules, 1979 made pursuant to Sections 2(1) and 7(1) of the LPA, 1975 is a subsidiary legislation meant to regulate the law practice of an SAN and one of the regulations, is the prohibition of an SAN from appearing before a Magistrate Court in civil matter aimed at preserving the prestige of the rank. This restriction has been given judicial approval in *The Registered Trustees of the Evangelical Church Winning All v. Ijehsa*²³ and recently, reaffirmed by the Court of Appeal in the case of *Mohammed Atiku-Abubakar v. Miss Umami Fatima Bolori*.²⁴ However, it has been shown that based on the provisions of sections 1(1) (3) and 45 of the CFRN, 1999, Rules, 2, 3, 4, and 6 of the SAN (P & F) Rules, 1979 is null and void since they directly interfere with the right to fair hearing as it relates to counsel of one's choice engrained in Section 36 of the CFRN, 1999. To this extent, the decision was reached *per incuriam*. The proposition that the restriction is meant to preserve and protect the prestige of the rank of SAN is preposterous and simply shambolic. In fact, it runs afoul of the hallowed and noble responsibility the course of justice has thrust on all legal practitioners.

Given the foregoing, the need to allow justice over mundane consideration such as prestige of a rank, coupled with the fact that the decision was reached *per incuriam*, more so, contingent on the ripple negative effects the decision can have on administration of justice, it is recommended that where the Court of Appeal has the opportunity to determine this issue in another case, it should overrule itself by departing from these decisions. Alternatively, the appellant should appeal the decision to the Supreme Court with the hope of having the same reversed. The overturning of this decision rather than its subsistence, favours the course of justice better.

²³ [1999] 13 NWLR (Pt.635) 368.

²⁴ [2024] LPELR-61900(CA).