NBA V IBEBUNJO: A REVIEW OF CRIMINALIZATION OF SALE OF LAND BY NIGERIAN LAWYERS*

Abstract

This paper is a review of the direction or decision of the Legal Practitioners Disciplinary Committee in Nigerian Bar Association v. Ibebunjo, wherein the Disciplinary Committee held that sale of land by legal practitioners is a professional misconduct and accordingly ordered the name of the concerned legal practitioner struck off the roll of legal practitioners. This review of the case analyzes the facts and the evidence in the case as well as the direction of the Disciplinary Committee. It also considers the relevant legislation such as the Legal Practitioners Act, the Rules of Professional Conduct for Legal Practitioners 2007, the Land Use Act and the Constitution of the Federal Republic of Nigeria 1999. The relevant judicial decisions of the Supreme Court and of the Legal Practitioners Disciplinary Committee are also considered. The derivatives from the statutory and judicial authorities are that the direction of the Disciplinary Committee is statutorily and judicially baseless. The paper also shows that the decision is practically and sociologically unsustainable in view of the current socio-economic state of the legal profession in the country. Accordingly, recommendations are made on the need not to sustain the decision in the case. Recommendations are also made for the amendment of the relevant provision of the Rules of Professional Conduct for Legal Practitioners to make it come in tandem with the current economic and global realities.

Keywords: Sale of land, Nigerian lawyers, Criminalisation, *NBA v Ibebunjo*, LPDC

1. Introduction

'Criminalization' forming part of the title of this paper is deliberately chosen because the respondent in the case under review was declared found '*guilty* of infamous conduct,'[1] which term connotes criminality. The term would also serve to convey and emphasize the enormity and the gravity of the decision in that case, which should be a matter of concern for all stakeholders at the bar, in legal education and in the legal profession in general. From the inception of the modern practice of law in Nigeria, it had been taken for granted by the bar, the bench and the public that one of the pivotal areas of practice for legal practitioners is the sale of landed properties on behalf of their clients and for themselves. Lawyers were considered not only competent and fit but in the best professional position to engage in the legal consultancy of selling and buying real properties for their clients, whether they were at home or abroad. Indeed, it was commonplace for legal practitioners to obtain powers of attorney with which to sell or buy land for their clients who might be home or abroad. A great deal of lawyers derived most of their income from property consultancy. Yes, I am aware that property consultancy involves far more than the selling of land and includes property document drafting, title document perfection, mortgage advice and rental, but the truth remains that the sub-division of property consultancy that engaged the largest number of lawyers was and is the selling of real properties. And, it is by far the most lucrative. What is more, many lawyers were so passionate about their engagement in the selling of land, buying of land and re-selling the same at profit that they had to form the Real Estate Lawyers Association of Nigeria (RELAN). Then came the big shocker and setback from the Legal Practitioners Disciplinary Committee (LPDC) of the Body of Benchers in in the case of *Nigerian Bar Association v Ibebunjo*[2] on May 10, 2013 as the Committee therein found a legal practitioner guilty of professional misconduct for selling land and directed his name struck off the roll of legal practitioners. The decision or direction in the case emphasized that it is a misconduct for a legal practitioner to engage in the sale of landed property. Unfortunately,

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[1]Page 429 of the judgment. The same term 'guilt,' which is only reserved for criminal matters, is also repeatedly used by the sections of the Legal Practitioners Act dealing with professional misconduct. See sections 11 and 13.

[2](2013) 18 NWLR (Pt 1386) 413 LPDC.

because the decisions of the LPDC are usually not given the needed circulation or publication among lawyers,[3] many lawyers, including even those who engage in the selling of land, were apparently not aware of that shocking decision until a sketchy review by this author appeared in three online publications in October 2018, thereby giving the decision a wider circulation and awareness among legal practitioners with attendant responses.[4]

For the sake of clarity, it may be pertinent at this juncture to briefly throw some light on the Nigerian Bar Association (NBA), the prosecutor of Mr. Anozie A. Ibebunjo, the legal practitioner charged in the case and on the Legal Practitioners Disciplinary Committee (LPDC), the quasi-judicial body before which he was charged in the case. The NBA is not established by any law and *ipso facto* is not a statutory body and has no enabling establishment Act, though the name of the NBA is mentioned and given a great deal of privileges in the Constitution of the Federal Republic of Nigeria 1999[5] and in many statutes[6] in the country. To that extent, as long as it was not registered, it was argued that the NBA was not a juristic person but a juridical entity. The NBA has however now been registered with the Corporate Affairs Commission, which has power to perform such a duty under the Companies and Allied Matters Act 1990.[7] Though the 1999 Nigerian Constitution guarantees the right to freedom of association,[8] all legal practitioners in Nigeria have been held as automatic members of the NBA, whether they like it or not. For instance, no court process filed or legal document prepared by a legal practitioner in Nigeria shall have a legal force or be admissible unless the NBA stamp and seal are attached to it.[9] In practice, the NBA and its branches entertain petitions alleging professional misconduct against their members and file petitions based on the same before the LPDC.

The LPDC is established by section 10 of the Legal Practitioners Act.[10]There shall be a committee to be known as the Legal Practitioners Disciplinary Committee, which shall be charged with the duty of considering and determining any case where it is alleged that a person whose name is on the roll has misbehaved in his capacity as a legal practitioner or should for any other reason be the subject of proceedings under this Act.[11] The procedure to be

[3]Each time the LPDC gives its direction upon satisfaction of the commission of a misconduct, its typical direction is just that copies of its decision be communicated by the Chief Registrar of the Supreme Court to the NBA President, General Council of the Bar, NBA National Executive Council and organs, Chief Justice of Nigeria, President of the Court of Appeal, Chief Judge of the Federal Capital Territory, Chief Judges of the 36 States, Attorney-General of the Federation, 36 State Attorneys-General, Inspector-General of Police and the State Commissioners of Police: e.g. in *NBA v Nwoye* (2016) 11 (Pt 1522) 176 LPDC at 190. Worse still, except the Nigerian Weekly Law Report, Nigerian law reports generally do not report the matters decided by the LPDC. In fact, they have a tradition of not reporting even High Court judgments; it is an anomaly that they mainly report only Supreme Court and Court of Appeal judgments, not minding that many public-interest cases end in the High Court. As if that is not enough, there is hardly any NBA National Secretariat or NBA Branch journal or newsletter that dutifully and regularly reports such important developments in the legal profession.

[4]See 'A Review of J. B. Daudu-led LPDC's Criminalization of Sale of Land by Lawyers by Anthony S. Aladekomo' on thenigerialawyer.com, www.barristerNG.com and on the Lawyers in Nigeria Facebook wall of this author. Reactions to its publication on those three online sources on October 12, 2018 demonstrated that many lawyers were hitherto oblivious of the case.

[5] See para. 12 (e), Pt I, Third Schedule, Constitution of the Federal Republic of Nigeria 1999 and para.20 (i) Pt I, Third Schedule, Constitution of the Federal Republic of Nigeria 1999 as instances.

[6]S. 1 (1) and (2) (c) of the Legal Practitioners Act, Chapter L 11, Laws of the Federation of Nigeria 2004; s. 2 (c), Companies and Allied Matters Act as amended, Chapter C20, Laws of the Federation of Nigeria 2004; s. 2 (1) (e) and s. 2 (1) (f) of the Legal Education (Consolidation, etc) Act 1976, Chapter L10, Laws of the Federation of Nigeria 2004; s. 1(2) (f) (ii), Public Procurement Act No. 14 of 2007.

[7] Chapter C 20, Laws of the Federation of Nigeria 2004.

[8] S. 40, Constitution of the Federal Republic of Nigeria 1999.

[9] Rule 9, Rules of Professional Conduct for Legal Practitioners 2007; *Yaki v Bagudu* App. No.SC/722/15, judgment delivered ON October 27, 2015 and reason given on November 13, 2015; *Okorocha v PDP* (2014) 7 NWLR (Pt 1406) 213 SC; *Wike v Peterside* (2016) 7 NWLR (Pt 1512) 452 SC.

[10] Chapter L 11, Laws of the Federation of Nigeria 2004.

[11] S. 10 (1), Legal Practitioners Act, Chapter L 11, Laws of the Federation of Nigeria 2004.

followed in punishing a legal practitioner is expressly stated in the Legal Practitioners (Disciplinary Committee) Rules, which has been quoted with the approval by the Supreme Court as follows in *Okike v LPDC*:[12]

(1) When an allegation or complaint is lodged against a legal practitioner pertaining to his profession, the compliant or allegation will normally be referred to the Disciplinary Committee of the Nigerian Bar Association for investigation.
(2) If after its investigation, the NBA Disciplinary Committee is of the opinion that no *prima facie* case is shown against the legal practitioner, that is the end of the complaint or allegation. Most of the complaints or allegations against legal practitioners end at this stage and never go to the LPDC for trial.
(3) Where after investigation, the NBA Disciplinary Committee is of the opinion that a *prima face* case is shown against the legal practitioner, the Committee shall forward to the Secretary of the LPDC:
    a. its report of such investigation or case together with all the documents considered by the NBA Committee;
    b. a copy of the charges on which the NBA Committee is of the opinion that a *prima facie* case is shown.[13]

The orders that the LPDC has powers to make on legal practitioners found guilty of professional misconduct include striking name off the roll,[14] suspension from practice,[15] admonition,[16]refund of money to client,[17] return of any document[18] and any other thing.[19]

2. Facts of the Case

In the said *NBA v Ibebunjo*,[20] one Mr. Frank Ezeife,[21] the petitioner, did in instalments in 2002 pay an amount, which was eventually found to be =N=1,100,000:00 (one million, one hundred thousand), to the respondent Mr. Anozie A. Ibebunjo, a legal practitioner cum owner of Obiligwe Chambers of No. 19B, Okwulehie Avenue, Umuahia, as full and final consideration for eight plots of land at Agbama, Olokoro, Umuahia, Abia State. The respondent legal practitioner claimed to have bought the land from the customary owners. According to the respondent, after the payment of the first instalment, the petitioner brought a surveyor to the land. Receipts of purchase, and an irrevocable power of attorney dated January 22, 2002 were issued by the respondent to the petitioner. In 2006, the petitioner notified the respondent of the encroachment by some people on the land, as a result of which the respondent accompanied the petitioner to the place to address the encroachment. In letters dated January 22, February 1, August 15, 2008 and October 10, 2008 addressed to the Nigerian Bar Association (NBA), Umuahia Branch, the petitioner called for the intervention of the NBA. The respondent sent his defence to the NBA in his letters, one of them dated October 20, 2008. Some of the paragraphs of one of his letters read thus:

> The truth is that most of my land at Agbama Olokoro which I sold to people including Mr. Ezeikpe [Ezeife] are now the subject of contention both at the local arbitration levels, the Chikoneze shrine, and the Magistrate and High Courts. By reason of the fact that I am vendor to many people, including Mr. Ezeikpe, I have been expending my money, time and resources to see how I could settle those cases, and ensure that he and others have quiet enjoyment of their lands. I have never called Mr. Ezeikpe or any of the others to assist me with one kobo.

[12](2005) 15 NWLR (Pt 949) 471 SC at 545.
[13] See also *NBA v Atie* (2016) 10 NWLR (Pt 1520) 394 LPDC at 422-423 and *NBA v Gbenoba* (2015) 15 NWLR (1483) 585.
[14] S. 11 (1) (c) (i),Legal Practitioners Act, Chapter L 11, Laws of the Federation of Nigeria 2004.
[15]S. 11 (1) (c) (ii), Legal Practitioners Act, Chapter L 11, Laws of the Federation of Nigeria 2004.
[16]S. 11 (1) (c) (ii), Legal Practitioners Act, Chapter L 11, Laws of the Federation of Nigeria 2004.
[17]*Ibid*.
[18]*Ibid*.
[19]*Ibid*.
[20]*Supra* note 3.
[21]Also identified as Ezife or Eziekpe in some documents tendered before the LPDC.

> The area of the land shown on Mr. Ezeikpe's survey plan is the correct size of the land he bought from me. Plot sizes normally differs [sic], but there was specific encroachments [sic] on his land, and I had no hand in that, hence, when he reported to me, I commenced fighting to recover his interest, and that matter has not been resolved till that day.
>
> Sir, kindly inform Mr. Ezeikpe that I have 2 very humble options for him:
>
> (a) He has a choice to exercise patience and wait out the cases I am presently embroiled in over the lands I sold to him and others at Agbama Olokoro, and after the resolution of those cases, take back his land, or
> (b) He can still exercise a little patience and expect instalmental refunds of the =N=1,680,000:00 he paid to me (by instalments) with effect from the end of February 2008, at which date I am hopefully sure I would have completely defrayed the debts I incurred over the funerals I handled in October, November and December 2007.[22]

A receipt from the petitioner dated March 4, 2008 was evidence that the respondent made a part refund of =N=300,000:00 to the petitioner. In a complaint dated July 7, 2010 before the LPDC, the NBA Disciplinary Committee filed two counts against the respondent as follows:

1. That you, Anozie A. Ibebunjo, Esq., legal practitioner sometimes in the year 2002, received that total sum of =N=1,600,000: 00 (one million, six hundred thousand naira) from Mr. Frank Ezeife of No. 2, Lagos Street, Umuahia, Abia State, as purchase price for the purported sale of eight (8) plots of land and also neglected to fully refund/account for the entire sum paid to you by Mr. Frank Ezeife despite repeated demands for same, thereby taking advantage of the confidence reposed in you by the petitioner and by so doing, you have failed to maintain the high standard of professional conduct expected of a legal practitioner; by engaging in a conduct unbecoming of a legal practitioner all contrary to rules 21, 24, 49, and 59 of the Rules of Professional Conduct in the Legal Profession 1979 now Rules 1, 23 and 55 of the Rules of Professional Conduct in the Legal Profession 2007.

2. That you, Anozie A. Ibebunjo, Esq., legal practitioner sometimes in the year 2002, in Umuahia, Abia State, personally engaged in the business of trading, buying and selling of land and by so doing, you have failed to maintain the high standard of professional conduct expected of a legal practitioner, by engaging in a conduct unbecoming of a legal practitioner all contrary to Rules 21, 24, 49, and 59 of the Rules of Professional Conduct in the Legal Profession 1979 now Rules 1, 7 (2) and 55 of the Rules of Professional Conduct in the Legal Profession 2007.[23]

The respondent was served by substituted means published in *The Punch* newspaper of January 24, 2013, but he did not put up an appearance, neither did he send any legal representation. As a result, the LPDC on February 25, 2013 invoked its powers under Rules 8 (1) of the LPDC Rules and directed that the two counts be read out in the absence of the respondent. A plea of not liable was entered for him and adjourned to March 25, 2013. Another notice of sitting was made to the respondent via the same newspaper on March 1, 2013. He still did not turn up while the complainant called two witnesses, PW 1 who was the Assistant Secretary described as a public servant working in the LPDC of the Body of Benchers and the petitioner himself. The complainant eventually closed its case while the matter was adjourned for defence and address. On May 6, 2013, which had again been published in the same newspaper on April 16, 2013 as the next date, for defence and address, the respondent was again absent. His defence in the letters that he had sent to the Chairman of the NBA, Umuahia Branch, and to the General Secretary of the NBA were considered.

3. Judgment and Decision in the Case

The five-member panel of the LPDC in the case was made up of Mr. Joseph Bodunrin Daudu (SAN, who read the judgment), Mr. Emmanuel C. Ukala (SAN), Mr. R. A. Lawal-Rabana (SAN), Mr. Edward C. Pwajok (Attorney-

[22]At 423.
[23]At 425 and 426.

General of Plateau State) and Mr. Tijjani Inuwa-Dutse. In its judgment on May 10, 2013, the LPDC considered[24] rules 1, 7 (2), (3), 23 and 55 of the Rules of Professional Conduct for Legal Practitioners 2007:

1. A lawyer shall uphold and observe the rule of law, promote and foster the course of justice, maintain a high standard of professional conduct, and shall not engage in any conduct which is unbecoming of a legal practitioner.

7. (2) A lawyer shall not practice as a legal practitioner while personally engaged in –
   (a) the business of buying and selling commodities;
   (b) the business of a commission agent;

   (c) such other trade or business which the Bar Council may from time to time declare to be incompatible with practice as a lawyer or as tending to undermine the high standing of the profession.

   (3) For the purpose of the rule, "trade or business" include all forms or participation in any trade or business, but does not include-

   (a) membership of the Board of Directors of a company which does not involve either executive, administrative or clerical functions;

   (b) being Secretary of a company; or

   (c) being a shareholder in a company.

   23. (1) A lawyer shall not do any act whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by the client.
   (2) Where a lawyer collects money for his client, or is in position to deliver property on behalf of his client, he shall promptly report, and account for it and shall not mix such money or property with or use it as, his own.

   55.(1) If a lawyer acts in contravention of any of the rules in these Rules or fails to perform any of the duties imposed by the rules, he shall be guilty of a professional misconduct and liable to punishment as provided in Legal Practitioners Act, 1975.

   (2) It is the duty of every lawyer to report any breach of any of these rules that comes to his knowledge to the appropriate authorities for necessary disciplinary action.

The most relevant parts of the judgment of the LPDC, as a result of which the name of the respondent was struck off the roll of legal practitioners by it, went thus:

> As the respondent himself confirmed in exhibits P4-P7 and P24-P25, most of the lands he sold in that area are so riddled with disputes and uncertainty that they are now before courts, arbitrators and several shrines for determination. The result is that the respondent neither has land nor his money since the year 2002. Consequently we find count 1 proved.[25]
>
> As it relates to count 2, it is clear beyond per adventure that the business of selling land is a trade or business incompatible with the practice of law. Rule 7 (3) clearly provides the category of

[24]At 426.
[25]At 427 and 428.

> businesses that are incompatible with the practice of law. From what we have reproduced above the respondent was clearly playing with fire when he was using the platform of his legal practice to sell land. The justice of this case demands that we allow him go full-time into his main business of selling land and to leave the business of practising law to those who are *bona fide* legal practitioners. We accordingly find count 2 proved.[26]

As a result, the LPDC ordered his name struck off the roll of legal practitioners. This is the most severe penalty that it could impose on a legal practitioner under the relevant law.

4. A Critique of the Decision in the Case

Indeed, the decision of the LPDC in *NBA v Ibenunjo*[27]has been severely criticized by many legal practitioners. The decision would actually have many far-reaching implications for legal practitioners and for the legal profession. Firstly, it legally bars all legal practitioners and firms of legal practitioners in the country from engaging in that juicy property consultancy arm of legal practice, which is the sale of landed properties. Secondly, it, *ipso facto*, cedes that lucrative, hitherto perceived, arm of legal practice to unlearned, mere estate agents. This critique of the decision will be done from judicial, legal, practical and sociological perspectives. Is the decision having any foundation in our statutes and *stare decisis*? Is the decision in the practical and sociological interest of the legal profession and of the nation? Is the LPDC decision in *NBA v Ibenunjo* really judicial, judicious and sustainable?

How the Decision is bad for lacking Statutory Basis: Does the LPDC's decision in *NBA v Ibenunjo*have any basis or support in our legislation? I think not so. Neither the Rules of Professional Conduct for Legal Practitioners 2007 nor the Legal Practitioners Act[28] expressly or impliedly criminalizes or states as a professional misconduct sale of landed properties by a lawyer. Now, section 11 of the Legal Practitioners Act has the following provisions on what may constitute professional misconduct on the part of a legal practitioner:

(1) Where-

(a) a person whose name is on the roll is judged by the Disciplinary Committee to be guilty of infamous conduct in any professional respect; or

(b) a person whose name is on the roll is convicted, by any court in Nigeria having power to award imprisonment, of an offence (whether or not an offence punishable with imprisonment) which in the opinion of the disciplinary committee is incompatible with the status of a legal practitioner; or

(c) the disciplinary committee is satisfied that the name of any person has been fraudulently enrolled, the disciplinary committee, may, if it thinks fit, give a direction-

(i) ordering the registrar to strike that person's name off the roll, or

(ii) suspending that person from practice by ordering him not to engage in practice as a legal practitioner for such period as may be specified in the direction, or

(iii) admonishing that person,

[26]At 428.
[27]*Supra* note 3.
[28] Chapter L 11, Laws of the Federation of Nigeria 2004.

> and any such direction may, where appropriate, include provision requiring the refund of moneys paid or the handing over of documents or any other thing as the circumstances of the case may require.
>
> (2) Where a person whose name is on the roll is judged by the disciplinary committee to be guilty of misconduct not amounting to infamous conduct which, in the opinion of the disciplinary committee, is incompatible with the status of a legal practitioner, the disciplinary committee may, if it thinks fit, give such a direction as is authorised by paragraph (c) (ii) or (iii) of subsection (1) of this section; and any such direction may, where appropriate, include provision requiring the refund of moneys paid or the handing over of documents or any other thing, as the circumstances of the case may require.

Section 11 (4) of the Legal Practitioners Act provides that it shall be the duty of the bar council to prepare, and from time to time revise, a statement as to the kind of conduct which the council considers to be infamous conduct in a professional respect, and the registrar shall send to each person whose name is on the roll and whose address is shown in the records of the Supreme Court relating to legal practitioners, by post to that address, a copy of the statement as for the time being revised. But no such a statement was referred to by the LPDC as existing or supporting its decision in the case under review.

The criminalization of sale of landed properties by lawyers in the case is also no where to be found in rule 7 of the Rules of Professional Conduct for Legal Practitioners 2007. Rule 7 thereof, titled Engagement in business, which is relevant to this discourse, provides as follows:

> (1) Unless permitted by the General Council of the Bar (hereinafter referred to as the "Bar Council"), a lawyer shall not practice as a legal practitioner at the same time as he practices any other profession.
> (2) A lawyer shall not practice as a legal practitioner while personally engaged in –
> (a) the business of buying and selling commodities;
> (b) the business of a commission agent;
> (c) such other trade or business which the Bar Council may from time to time declare to be incompatible with practice as a lawyer or as tending to undermine the high standing of the profession.
> (3) For the purpose of the rule, "trade or business" include all forms or participation in any trade or business, but does not include-
> (a) membership of the Board of Directors of a company which does not involve either executive, administrative or clerical functions;
> (b) being Secretary of a company; or
> (c) being a shareholder in a company.

The respondent could not be said to have run foul of rule 7 (2) (a) of the Rules of Professional Conduct for Legal Practitioners 2007 because land is not a commodity. The familiar fact that land is different from a commodity is crystal clear from the fact that commodities (which means goods) are regulated by a distinct statute, which is the Sale of Goods Law.[29] Rule 7 (2) (b) of the said Rules is also not relevant to this case because nothing shows in the case that the respondent acted as 'a commission agent.' Rule 7 (2) (c) of the same Rules further provides that a lawyer shall not practise as a legal practitioner while personally engaged in such other trade or business which the Bar Council may from time to time declare to be incompatible with practice as a lawyer or as tending to undermine the high standing of the profession. There was no evidence before the court and even till now that the Bar Council at any time classified selling of landed property as incompatible with legal practice or as a professional misconduct. If

[29] S. 2 (1) of the Sale of Goods Law, Chapter S 1, Laws of Ekiti State 2010 provides that ''goods' includes all chattels personal, other than things in action and money, and includes emblements, industrial growing crops, and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale.'

there was such, it is submitted that it must remain inchoate until it complies with section 11 (4) of the Legal Practitioners Act, which provides thus:

> It shall be the duty of the bar council to prepare, and from time to time revise, a statement as to the kind of conduct which the council considers to be infamous conduct in a professional respect, and the registrar shall send to each person whose name is on the roll and whose address is shown in the records of the Supreme Court relating to legal practitioners, by post to that address, a copy of the statement as for the time being revised; but the fact that any matters are not mentioned in such a statement shall not preclude the Supreme Court or the disciplinary committee from adjudging a person to be guilty of infamous conduct in a professional respect by reference to such matters.

Apparently recognizing the needed role of legal practitioners on the sale, conveyance, transfer or assignment of landed properties in the country, the Land Use Act[30] even provides that a legal practitioner shall at all times be a member of the Land Use and Allocation Committee for the State. In the absence of any express or implied provision in the Rules of Professional Conduct and Legal Practitioners Act and by virtue of that said provision of the Land Use Act, will it not be correct to say that the spirit of our land law does not even impliedly forbid a legal practitioner from selling of real properties? Indeed, our law does not expressly or impliedly make sale of land by a legal practitioner incompatible with the status of a legal practitioner or a misconduct of any kind. What is more, it is expressly provided in our Constitution that no one shall be held guilty of any offence 'unless that offence is defined and the penalty therefor is prescribed in a written law.'[31] For the avoidance of doubt, the written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.[32] It is submitted that the decision of the LPDC in *NBA v Ibenunjo* clearly fails this constitutional test just as it has no statutory basis.

How the Decision is bad for lacking Judicial Precedent: Does the LPDC's decision in *NBA v Ibenunjo*have any basis in our *stare decisis*? I think not so. A classic judicial reference in the discussion of infamous conduct in a professional respect is the case of *Allison v General Council of Medical Education and Registration*.[33] Professional misconduct or misconduct, which is the generic name in the Rules of Professional Conduct for Legal Practitioners 2007 covering the various offences for which a legal practitioner may be punished, is not defined in the Legal Practitioners Act[34] or in the Rules of Professional Conduct for Legal Practitioners 2007. Misconduct is defined by *Black's Law Dictionary* as 'a dereliction of duty; unlawful or improper conduct.'[35] It also defines wanton misconduct as 'an act, or a failure to act when there is a duty to do so, in reckless disregard of another's rights, coupled with the knowledge that injury will probably result.'[36] In the absence of any statutory definition, reliance has continued to be placed more on judicial definitions.

In *Allison v General Council of Medical Education and Registration*,[37] the Medical Defence Union brought a charge of infamous conduct in a professional respect having to do with advertisement for medical service against Dr. Thomas Richard Allison. It was alleged that the consultant of the Royal College of Physicians and Surgeons sought to attract practice by a system of extensive public advertisement containing his name, address and qualification, and an invitation to persons in need of medical service to consult him. The advertisement contained reflections on medical practitioners in general and their method of treating patients, urging the public to have nothing to do with them or their drugs. From the judgment in that case, infamous conduct in a professional respect would be committed 'where a medical man in the pursuit of his profession has done something with regard to it which would be

[30] S. 2 (3) (b), Land Use Act, Chapter L 5, Laws of the Federation of Nigeria 2004.
[31] S. 36 (12), Constitution of the Federal Republic of Nigeria 1999.
[32] *Ibid*.
[33] (1894) 1 QB 750.
[34] Chapter L 11, Laws of the Federation of Nigeria 2004.
[35] Bryan A Garner (ed).:*Black's Law Dictionary* (8th edn, West Publishing Company, St. Paul, Minn,, USA, 2004) 1019.
[36] *Ibid*, pp. 1019- 1020.
[37] *Supra* note 34.

reasonably regarded as disgraceful or dishonourable by his brethren of good repute and competency.' From the facts and decision in that case, the following are the three ingredients of infamous conduct in a professional respect:

a. The act complained of must have been done in professional respect.
b. It must be capable of disparaging or defaming his fellow practitioners.
c. It must seek to attract business or obtain remuneration or fee which ordinarily would not be obtained.

The facts and evidence in the case under review here seem not to fit into at least the second and the third ingredients. Indeed, it appears there is not yet any Supreme Court, Court of Appeal or even High Court precedent that the LPDC decision could, by any stretch of imagination, be said to have followed. The case of *Iloabachie v Iloabachie*[38] was a case where the Supreme Court dealt extensively with the sale of land by a legal practitioner, whose actions in the sale appear worse than those of Mr. Ibebunjo in the case under review, yet without the Supreme Court striking his name off the roll of legal practitioners. It will be pertinent to briefly look at the facts and the decision of the court in that case. The appellant legal practitioner was the son of one Alfred, the deceased first son of Peter Iloabachie. The appellant unilaterally sold or purportedly sold the landed property situate at No. 1, Allen Lane, Onitsha. His extended family had regarded the land as a family property. He made the sale without the consent of the Head of the Family or of the principal members. The respondent Head of the Family issued a statement on the sale to the people that he thought should know about it. The statement claimed that the sale was fraudulently made as it was without the authorization or consent of the respondent and that the act of the appellant was unprofessional and unethical.
The appellant regarded the document as libellous, as a result of which he instituted an action for defamation in the High Court of Anambra State. He averred that, by the publication, his name had been tarnished and brought into odium and ridicule, more so as he was a solicitor, an alumnus of the prestigious University of Nigeria, Nsukka and was married to a woman from a reputable family in Edo State. He averred further that he was a member of the Inwelle Age Grade, Ogidi, and the only solicitor from Ogidi appointed by their traditional ruler to be a member of an arbitration panel in the area.

In his reply, the respondent stated that the property purportedly sold belonged to his late father, Peter Iloabachie, and that the land was bought from Mgbelekeke family of Onitsha. He stated further that members of the Peter Iloabachie family, including himself, contributed money in 1963 to put a magnificent edifice on the land. He denied that the property belonged to Alfred Iloabachie, the appellant's father. He added that as the only surviving son of Peter Iloabachie and the Head of the Family, the publications that he made in that capacity were privileged and addressed to the people concerned.

The trial court dismissed the case on the grounds that the publication complained about was justified and privileged. His appeal to the Court of Appeal was also dismissed, as a result of which he appealed to the Supreme Court, which unanimously dismissed the appeal. In his leading judgment, Ignatius Pats-Acholonu, JSC, held thus:

> The appellant had at all times held out that he sold a property which he inherited and therefore he had no need to consult any one. The respondent had repudiated this and based his letter upon probe to Ex. S written to him by the appellant. He used some words which the appellant described as being libelous and held out himself to the world as being a person of impeccable character not used to ignoble ways. Is this really so? Can this seemingly pompous and self-aggrandisement stand the test when shown in the mirror of character analysis? The learned trial Judge pointed out and indeed analytically showed all the falsehoods told by the appellant including false oath. The respondent's description of him as someone without consideration of the ethics of his profession cannot in my view be considered overstatement seeing that the appellant's skewed philosophical bent could be hinged on the Machiavelli philosophy that the "end justifies the means." The respondent had libelled him as a forger and one lacking in ethics. I tend to believe that the worst mistake the appellant made was instituting this action and putting his name in the mirror to be x-

[38](2005) 13 NWLR (Pt 943) 695 SC.

> rayed. In his bid to show that what a great person he is and who has been unjustifiably libelled, he cuts a very poor figure and succeeds in showing how unreliable he is and therefore really has not much of a character to protect. By this I do not mean that if a man is convicted of burglary or rape, a defamer should go scot-free by calling him a murderer or even an armed robber. In a case where a defendant feels genuinely affronted by an act of a relative in respect of disposing or alienating a property of which he the defendant strongly feels that as the head of the family, no such disposition could validly take place without his consent, and he upbraided the relation who purported to make the sale, it is his duty to inform those who ought to be told and I believe he may be exonerated by the use of a language which fits the occasion having regard to the circumstances of that case.[39]

In his concurring judgment, Sunday Akintan, JSC, held thus:

> In the instant case, it is not in doubt that the contents of the letters published by the respondent and relied on by the appellant are defamatory in nature. But the respondent had proved that they are true. It was a very bitter truth that the appellant played an infamous role when he sold the family property, of which the respondent was the head, and that such sale was made without the consent or knowledge of the respondent or that of any principal member of the family whose prior consent was required before any such sale could be validly made. The appellant was a grandson, totally lacked the authority to make the sale and misappropriate the money realised from the sale. The alleged publications were also made to only those who were entitled to receive the complaints made in the publication. The defence of justification was therefore rightly available to the respondent.[40]

Whereas the Supreme Court described the actions of Mr. Iloabachie in the said sale of land by the legal practitioner as 'ignoble'[41] and 'infamous'[42] and accordingly castigated him severely, the apex court never expressly or impliedly said that a sale of land by a legal practitioner was unlawful, unprofessional, unethical or even undignified. Neither did the apex court suspend him from practice, let alone strike the name of the concerned legal practitioner off the role, even when it had the power to do so.[43] In a nutshell, the decision of the LPDC in *NBA v Ibenunjo* clearly lacks judicial precedent.

How the Decision is bad for Misdirection and Misconception: The decision of the LPDC in *NBA v Ibenunjo*[44]is also liable to being attacked for misconception and misdirection. Now, it has to be noted that the same LPDC has held in *NBA v Kareem*[45]that a legal practitioner cannot be liable for professional misconduct for selling his own land. If it is not undignified for a legal practitioner to sell his own land, by what rule of law, logic or ethics is it undignified for him to sell his client's landed property? Facts and evidence in the case under review even show that the land that the respondent sold belonged to himself. So, why is the difference in the LPDC's decisions in the two cases? Now, the Nigerian public policy enjoins all Nigerians, including legal practitioners in the public service, to be engaged in farming as their secondary occupation.[46] Going by the logic of the LPDC in *NBA v Kareem*, a legal practitioner can personally go about selling his farm products like yam, fish and pigs in the open market. Which one

[39] At 715-716.
[40]At 737.
[41] A weighty adjective used by Justice Ignatius Pats-Acholonu in his leading judgment at page 709.
[42] Another weighty adjective used by Justice Sunday Akintan in his concurring judgment at page 737.
[43] Under s. 13 (1), Legal Practitioners Act, Cap L 11, Laws of the Federation of Nigeria 2004.
[44] *Supra* note 3.
[45](2015) 12 NWLR (Pt 1472) 190 LPDC.
[46]Para. 2 (b), Part I, Fifth Schedule, Constitution of the Federal Republic of Nigeria 1999. Return to and mass engagement in agriculture has also been the goal of the agricultural programmes of successive administrations in Nigeria, e.g. Operation Feed the Nation of the Obasanjo military administration and the, Green Revolution of the Shagari administration.

is more dignifying in a legal practitioner[47] selling such farm products of his and selling his clients lands? The answer is obvious.

I hope also that the LPDC is not being lost in a narrow conception or misconception that legal practice is limited to litigation or advocacy. But such a narrow conception of legal practice will be myopic, because, legal practice is all-embracing as it includes such sub-fields as advocacy, and solicitorship aspects such as real property consultancy, corporate practice, legal drafting, probate administration and immigration service, among others. It has to be noted that property consultancy is also subdivided into property sale, property documentation, land perfection, property management and property development, among others. It further must be realized that land is an asset that connects and provides means of livelihood to a wide range of professionals who include lawyers, land surveyors, architects, estate surveyors and civil engineers, among others. It is now left for us lawyers, including the LPDC, to decide if we want to shortchange ourselves. What is more, it has to be noted that the Nigerian law permits a legal practitioner to engage simultaneously in advocacy and solicitorship.

Sale of Landed Property does not really rob the Legal Profession of its Lustre: In its judgment, the LPDC stated that it must 'forestall a situation where the profession of law will be robbed of its lustre and brought into odium, opprobrium and disrepute by allowing the ethic of other professions to fuse or intermingle with the noble ethics of the legal profession.'[48] But does selling of land by a legal practitioner really rob the legal profession of its lustre or bring it into disrepute? It does not appears so. Sale of land by a lawyer in neat dark suit would not really lower our noble profession in the estimation of right-thinking members of the public. The LPDC's decision in *NBA v Ibebunjo*[49] is clearly distinguishable from its decision in *NBA v Nwoye*,[50] where a legal practitioner was found guilty of infamous conduct in professional respect and had his name struck off the roll of legal practitioners after it had been established that he was engaged in the buying and selling of 'gemstones, gold and other precious stones and allied products' contrary to the clear provisions of the Rules of Professional Conduct for Legal Practitioners 2007, which provides that 'a lawyer shall not practise as a legal practitioner while personally engaged in … the business of buying and selling commodities.'[51]

As stated above, the same LPDC has held in *NBA v Kareem*[52] that a legal practitioner can lawfully sell his own land. If it is not undignified for a legal practitioner to sell his own land, by what logic or ethics is it undignified for him to sell his client's landed property? If a lawyer selling his own landed property is not a professional misconduct, there appears to be no tenable logic behind making selling land for his client a misconduct. Or, does it mean that while pursuing the sale of his own land, the legal practitioner will have to go about making public announcement or blowing a trumpet that he should not be seen as bringing the legal profession into disrepute because 'this particular land that I am selling belongs to me'? More posers will certainly ensue. If the legal practitioner can sell his own landed property, will it be lawful for him also to sell a land jointly owned by him and his spouse? Will it be lawful for him to sell a land jointly belonging to all his family members? Will it be lawful for him to sell a land belonging to his spouse alone? Will it be lawful for him to sell a land belonging to a member of his immediate family? How can selling land for oneself bring the legal profession into disrepute and selling land for another person will not? It is therefore submitted that, whether for himself or for another person, sale of land by a lawyer dressed in his professional neat dark suit would not have a negative sociological effect on the legal profession.

It can also be contended that if selling a landed property by a lawyer is a misconduct, then, by simple logic, it will also probably be a misconduct on the part of a legal practitioner to manage a landed property for rental for his client.

[47] Be it a legal practitioner in private practice or in the public service.
[48] At 429.
[49] *Supra* note 3.
[50] (2016) 11 NWLR (Pt 1522) 176 LPDC.
[51] Rule 7 (2) (a), RPC 2007.
[52] *Supra* note 46.

Both services have to do with land. In fact, managing a landed property will require that the lawyer be at the site of the landed property more often that when he wants to sell it. And, if managing a landed property is also held to be a professional misconduct by the LPDC, then the profession will certainly suffer more loss of clients and income, and that will not be good for the profession and its image. Perhaps, the LPDC needs to be reminded that the Constitution of the Federal Republic of Nigeria 1999 and the Code of Conduct Bureau and Tribunal Act allow the legal practitioners in the public service to engage in farming.[53] If the LPDC considers selling a landed property by a lawyer so bad and undignified to be held a professional misconduct, I wonder whether it would not consider farming by a legal practitioner in public service as a worse undignified professional misconduct, more so as piggery, fishing and poultry are part of the value chain of farming. But it is strongly submitted that the LPDC cannot make unlawful what the Constitution has made lawful.

Law Curriculum suggests that Lawyers can Sell Land: The university undergraduate law curriculum and Nigerian Law School curriculum are formulated by the Council of Legal Education[54] and the National Universities Commission (NUC).[55] Now, land law is a compulsory course in the university law curriculum. Property law practice[56] is also one of the five courses[57] that all Bar final examinations students of the Nigerian Law School must be trained in. Related courses[58] could also be found in the master of laws curriculum of some universities in the country. As a matter of fact, some of the specific topics in the Law School property law practice syllabus are contract of sale of land, investigation of title to land for sale, roots of title to land, conveyancing documents, form and contents of a deed of assignment, and registration of title to land. Are aspiring lawyers in our universities and the Law School trained to know all these things only in theory? Should they be a mere academic exercise?

Well, I am aware that the teaching of land law in the university and property law practice in the Law School is needed not only to enlighten lawyers who might wish to engage in selling land, but also those who might wish to engage in mortgage transactions, documentation, land perfection and secured credit transaction and probate matters. But the truth remains that the largest chunk of income to lawyers comes from the selling of landed properties. Our land law lecturer in the university and our property law practice lecturers in the Law School never one day taught or suggested to us that selling of land by a legal practitioner is a professional misconduct. If a lawyer cannot render a service of sale of land to his client, why wasting time in our university law faculties and in the Law School teaching the *modus operandi* for selling land?

Now, with sweat and toil in and after school, lawyers have so much studied the nitty-gritty of the sale of landed properties. Should they now abandon the dividends thereof for non-professionals and touts, who have already been encroaching on different fields of legal practice as property documentation, land perfection and registration of companies?

Decision as a Threat to Lawyers' Job Security and Image: It is now a notorious fact that thousands of lawyers are today jobless in Nigeria. Even the NBA National Secretariat has in recent years raised alarm about jobless 'lawyers roaming the streets.' One of the reasons responsible for this is the fact that all the traditional works of lawyers are what lay men now do. These are business registration, drafting of agreements, probate administration, preparation of affidavits, and search of land and companies. Indeed, no law in Nigeria now preserves any of them for lawyers.

[53]Para. 2 (b), Part I, Fifth Schedule, CFRN 1999. See also section 6 (b) of the CCBT Act, Chapter C 15, Laws of the Federation of Nigeria 2004.

[54] S. 1 (2)of the Legal Education (Consolidation, etc) Act 1976, Cap L10, Laws of the Federation of Nigeria 2004, which provides thus: 'The Council shall have responsibility for the legal education of persons seeking to become members of the legal profession.'

[55] The NUC was established under the National Universities Commission Act No. 1 of 1974, Chapter N 81, Laws of the Federation of Nigeria 2004. As its long title says, it is an Act to set up the National Universities Commission as a body corporate charged with the responsibility of advising the Federal Government and State Governments of all aspects of university education and the general development of universities in Nigeria.

[56]Formerly called legal practice and conveyancing.

[57]The other ones being professional ethics and skills; corporate law practice; criminal litigation; and civil litigation.

[58]E.g. Law of secured credit transactions and law of tenancy.

Worse still, some non-lawyer Nigerians have in recent years chosen to personally conduct their litigations up to the Court of Appeal and even the Supreme Court![59] The trend has had negative implications on the job security of the annually increasingly number of lawyers in the country. Even thousands of lawyers who seem to be employed by senior lawyers are being paid ridiculous wages, which in many cases are less that the =N=18,000:00 (eighteen thousand naira) minimum wage statutorily prescribed.[60] It is a notorious fact that many senior lawyers today even announce occasionally to new wigs in their chambers that they are only over-indulging them by paying them any salary based on their egoistic and callous opinion that it is the new wigs who should be paying them because the seniors are training them and 'the new wigs are only here to tap skills.' No wonder, new wigs today work or 'receive training' in some chambers who do not pay them a dime! This is not good at all for the image of our profession. Far more than selling of land, these are the things that are really threatening to bring our noble profession 'into odium, opprobrium and disrepute.'

To save their family from humiliating hunger and save the legal profession from disrepute resulting from the foregoing trend, many lawyers have wisely learned to supplement their meager income from litigation with the more robust earnings from property consultancy, including selling of landed properties. So it is rife today that many junior and senior lawyers supplement their litigation income through the selling of landed properties. On their own, many relatively junior lawyers who could no longer bear with the ridiculous and near slave wages being paid them by shylock seniors have found succour in supplementing the moderate income they earn from litigation with income from selling and managing landed properties.

So, any decision or law that threatens to deny such lawyers of this and more lucrative and yet less strenuous source of income would indeed be a threat to the survival of many legal families and the legal profession. It would compound the often repeated problem of (young) 'lawyers roaming the streets.' Indeed, many senior lawyers in Ikorodu/Lekki/Ajah axis of Lagos, Mowe/Ofada axis of Ogun State and even Abuja will also be seriously affected. What gain does the legal profession derive, under the excuse of defending the lustre of the profession, if it decides to pauperize its members by denying them of the huge and lucrative opportunity of selling landed properties? What shall it profit the Nigerian legal profession if it is making an imaginary defence of the lustre of the profession while its members and their family members are dying of hunger? What shall it profit the legal profession if it keeps misplacing its priority while its members become objects of derison in the society as a result of poverty? Let us remind ourselves that, similar to what the postulation of Jeremy Bentham's utilitarian school of jurisprudence teaches on the greatest happiness of the greatest number, we need to realize that the welfare of the people is the supreme law.[61]

5. Conclusion and Recommendations

This paper analytically reviews the case of *NBA v Ibebunjo*[62] wherein a legal practitioner was arraigned before the Legal Practitioners Disciplinary Committee (LPDC) established by section 10 of the Legal Practitioners Act. He was in 2002 charged with personally engaging in the business of trading, buying and selling of land in Umuahia, Abia State, thereby engaging in a conduct unbecoming of a legal practitioner contrary to Rules 21, 24, 49, and 59 of the Rules of Professional Conduct in the Legal Profession 1979 now Rules 1, 7 (2) and 55 of the Rules of Professional Conduct in the Legal Profession 2007. The five-member panel of the LPDC in the case found him guilty of engaging in the business of selling land, which it described as a trade or business incompatible with the practice of law.

[59] E.g.: *Tijjani&Ors v First Bank of Nigeria* (2015) 17 NWLR (Pt 1487) 136 CA; *Kubau v Rilwanu* (2014) 4 NWLR (Pt 1397) 284 CA; *Iweka v SCOA Nigeria Limited* (2000) 7 NWLR (Pt 664) 325 SC.

[60] Under the Minimum Wage (Amendment) Act 2011 and regulated by Item 34, Pt I, Second Schedule, Constitution of the Federal Republic of Nigeria 1999.

[61] M. D. A. Freeman, *Lloyd's Introduction to Jurisprudence,* 8th ed, 2008, Thomas Reuters (Legal) Limited, Toronto, Canada, 248.

[62] *Supra* note 3.

The paper notes that the decision of the LPDC is statutorily, judicially and practically unwarranted. It is submitted that it would be tantamount to veering off our statutes and *stare decisis* if any court or quasi-judicial body in Nigeria ever takes the step of striking the name of a legal practitioner off the roll under the excuse that he has sold a landed property belonging to his client even while acting in accordance with the instructions of that client.

There is certainly the need for stakeholders in the legal profession to consider what will be the short-term and long-term negative implications of the decision of the LPDC in *NBA v Ibenunjo*[63] case with the view of finding a way out of it. I hope the stakeholders in the legal profession, the LPDC and/or the Supreme Court will consider all these pertinent issues and then make an appropriate decision on whether to sustain or reverse the decision.

It is submitted that barring lawyers from selling landed properties will deny thousands of them of the lion share of their income, thereby worsening the already serious problem of joblessness in the legal profession, especially in this era when the universities, the Law School, the Council of Legal Education, the Body of Benchers and the National Universities Commission keep churning out thousands of fresh lawyers biannually without providing any mechanisms to make jobs available for them so as not to bring the noble profession into disrepute. Indeed, it is now feared that, if care is not taken, the legal profession may soon lose its age-long dignity, prestige and nobility as a result of the incidents of "jobless lawyers roaming the streets," more so as more Federal, State and private universities keep establishing law faculties. Considering the multi-faceted implications of the judgment and the critique of it done above, its is recommended that there is no legal or practical basis for sustaining the decision of the LPDC in *NBA v Ibebunjo*.[64] But, as long as the decision remains, the only option that may be left for lawyers wishing to keep engaging in the sale of landed properties may be the floating of limited liability companies under whose cover they may continue.[65]As a matter of fact, it is close to 20 years now that a few prominent legal practitioners have adopted this strategy. It is however hoped that we would not soon enter into an era when the LPDC would begin to take advantage of the relevant provisions in the Companies and Allied Matters Act to pierce the veil of the incorporation of such companies,[66] if the judgment is sustained.

But, really, there is no basis for sustaining the judgment. It would be interesting to note that the LPDC stated that 'the respondent had collected large sums of money from him under the pretext of selling him land and when it was time to put him in possession, there was no land to deliver,'[67] as a result of which the respondent 'engaged in tissues of lies and deceit'[68] and 'the respondent was clearly using his office as a lawyer to lend the veneer of trust and respectability to the rather distasteful and dishonourable business of duping people through phony land sales.'[69] With due respect, this was a baseless statement, as far as the facts and evidence before the Disciplinary Committee were concerned. The facts of the case and the exhibits before the court did not expressly or impliedly disclose any element of duping people or fraud. It is on record that the respondent issued the necessary purchase receipts and an irrevocable power of attorney assigning the subject-matter to the petitioner. The petitioner also brought a surveyor to the land in question and he surveyed the land without let or hindrance from any quarters. There was apparently quit possession of this land purchased and whose possession was delivered in 2002 until 2006—four years after—when the petitioner informed the respondent of encroachment by some people on the land. Despite the relatively long interval, the respondent took it upon himself to ward off the encroachment, though he did not succeed immediately;

[63]*Supra* note 3.
[64]*Supra* note 3.
[65] S. 37 of the Companies and Allied Matters Act, Chapter C 20, Laws of the Federation of Nigeria 2004, provides as follows: 'As from the date of incorporation mentioned in the certificate of incorporation, the subscriber of the memorandum together with such other persons as may, from time to time, become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the powers and functions of an incorporated company including the power to hold land, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Decree.'
[66] See ss. 39, 66 and 67 of the CAMA, Chapter C 20, Laws of the Federation of Nigeria 2004.
[67]At 422.
[68]*Ibid*.
[69]At 427.

he never denied selling land to the peititioner or collecting money from him. It is not on record that the petitioner ever told the NBA or the LPDC that those responsible for the encroachment on the land were agents, servants and/or privies of the respondent. Rather it is on record that the respondent informed the NBA of his then ongoing efforts to ward off the encroachment. He started refunding the purchase price and, in his letter to it, he told the NBA of his willingness to refund the balance while pleading for a little more time. So, how was the learned respondent into fraud in this pure and transparent contractual relationship with the petitioner? In a nutshell, there was a misdirection and a miscarriage of justice. Thus, Mr. Ibebunjo appears to have inadvertently and unjustly been made a scapegoat. But it is consoling that a way out is provided by section 14 (1) of the Legal Practitioners Act, which provides thus:

> Where either before or after the commencement of this Act the name of any person has been struck off the roll or a person has been or is deemed to have been suspended from practice, he may, subject to the provisions of subsection (2) of this section, make an application for the restoration of his name to the roll or the cancellation of the suspension-
>
> (a) if the striking off or suspension was ordered by the Chief Justice of the Supreme Court, to that court; and
>
> (b) in any other case, to the disciplinary committee.

Based on all the foregoing analysis of the relevant law and facts in the case under review, it is accordingly recommended that the respondent has a big chance of success if he approaches the relevant authority for the restoration of his name.

It is also submitted that the Rules of Professional Conduct needs to be amended. For instance, rule 7 (3) thereof, as it is currently, gives room for misconception. Now, rule 7 sub-rule (3) interprets 'trade or business,' which a legal practitioner must not engage in, as follows:

> (3) For the purpose of the rule, "trade or business" include all forms or participation in any trade or business, but does not include-
> (a) membership of the Board of Directors of a company which does not involve either executive, administrative or clerical functions;
> (b) being Secretary of a company; or
> (c) being a shareholder in a company.

This creates the impression that legal practice itself is not a business. It is incontrovertible that legal practitioners do charge for their services and collect monetary remuneration in return. What is that if not business? It is high time we stopped having the wrong perception that legal practice is no business while only buying and selling is business. The truth is that professionals like bankers, accountants, architects, surveyors and lawyers are also all engaged in business, even though they mainly provide services, rather than buying and selling. Legal practice too is a serious business! Legal practice or advocacy, in particular, has long ago moved from its traditional trend of not charging for its services but only rendering services *pro bono* or receiving honorarium only. Lawyers have got not to shortchange themselves especially in this age wherein globalization and information and communication technology are changing or modifying the tradition and conservatism of many professions. The legal profession cannot afford to stand still while other professions move on in this era of globalization. The need to note this is all the more urgent because many traditional preserves of legal practitioners such as registration of companies, drafting of affidavits, preparation of agreements and/or procurement of letters of administration are now being performed by non-lawyers, including chartered accountants, chartered secretaries, estate agents and even touts.