

RECOVERY OF LEGAL PRACTITIONER'S FEES IN NIGERIA: FEES BY AGREEMENT AND FEES THROUGH BILL OF CHARGES IN PERSPECTIVE*

Abstract

A Legal Practitioner is entitled to his fees for the services rendered to client and same is recoverable even if the client reneges from the agreement. Legal practitioner on being briefed by his client charge professional and sundry fees for the services he is to renders. This becomes part of their agreement and may be oral or in writing. Sometimes, these fees are never paid, sometimes as a result of the client's refusal to fulfill his own part of the contract or on the allegation that the matter is yet to be completed or that the legal practitioner has been debriefed. This nonpayment of the fees may either come up mid-stream or at the conclusion of the case. At whichever stage, the recovery of the fees is important to a legal practitioner as he is entitled to it, haven worked for it. By the provisions of the extant law, a legal practitioner cannot begin an action to recover his fees upon a bill of charges, unless and until he has to satisfy three conditions of preparation of the bill of charges, service of the bill of charges on the client and must allow for it for a period. Presently this has caused some legal practitioners to refuse to accept briefs if the fees are not paid upon briefing. They see it that if they fail to insist on payment of the fees at the beginning, it may become a mere matter of honour. This quagmire has led to some legal practitioners regretting accepting briefs from clients who do not pay upon briefing or pay up after the services had been rendered and others with similar experience have refused to accept further briefs as they are not interested in undertaking another hurdle in pursuit or recovery of their money. This paper examined the cumbersome legal procedure involved in the recovery of a legal practitioner's fees before and after the preparation of bill of charges under the Nigerian law vi-sa-vis the provisions of the legal Practitioners Act. This work it is believed will equip legal practitioners, judges, students and litigants who are likely to be clients to be aware and take necessary precautions to forestall this likely ugly experience. Doctrinal method of data collection using analytical approach in reviewing the relevant laws or statutes, textbooks and judicial decisions was adopted. The findings revealed that a legal practitioner can apply to recover his fees as contained in the bill of charges. This may contain fees like scale fee, fixed fee, appearance fee, hourly rate fee, percentage fee and contingent fee. Either of the parties after the preparation and service of the bill of charges within twelve months, can apply for the taxation. The taxation of the bill of costs (or charges) is the next step by a certain officer of the court directly or at the instance of the court. Here certain sums claimed may be allowed or disallowed at the intervention of the court or its officer and the fees are thereafter recovered as debt or the claim assessed in damages on a quantum meruit basis. The recommendation is that since there is no difference between a bill of charges delivered for a completed and uncompleted act of a legal practitioner, legal practitioners should always enter into a written contract or prepare an explicit bill of charges where money is not paid in advance to prevent an unhealthy end of the contract. Further an amendment of the legal Practitioners Act and Rules of Professional Conduct is imminent to introduce guideline for particularization of the bill of charges.

Keywords: Agreement, Bill of charges, Legal Practitioner, Remuneration, Fees, Court.

1. Introduction

The briefing of a legal practitioner starts with the payment of consultation fee and later culminates into other charges as agreed by the parties. Based on the agreement of the parties, the legal practitioner is paid his fees in advance or he may rely on terms as agreed between him and the client. It is in a situation where he has not received his fess and there is no agreement between them that a solicitor is required to present his bill of charges. By an application for taxation of the bill of charges, the High court will intervene into a solicitor's bill of charges controversy on the invitation to do so by either of the solicitor or client.¹ This takes place within twelve months after the service of the bill of charges. The courts in Nigeria will readily interfere directly with the charges of counsel either practicing as barrister simpliciter or as barrister and solicitor.² It is to be noted that the last step before the intervention of the court, taxation here is used with a circumscribed meaning as provided by the Legal Practitioners Act.³ It is the ascertainment of the charges appropriate for any transaction or activity of a description specified by the order.⁴ It provides opportunity to either allow or

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¹ Legal Practitioner's Act (otherwise referred to as LPA) cap.L11 LFN, 2004, S.16(3)

² *Aburime v Nig Ports Authority*, Vol./ 2 ALL NTC 381

³ *Ibid*, S.19 (1) it says taxation means taxation by the proper officer

⁴ *Ibid*, S.15 (3) (b)

disallow certain sum claimed by solicitors from their clients. For the purposes of an application for taxation, there is no distinction with respect to a completed act or an uncompleted act of a legal practitioner in Nigeria. It is of an advantage to the legal practitioner to prepare an explicit bill of charges.⁵ The Act⁶ provides that subject to other provisions of the Act, a legal practitioner shall not be entitled to begin an action to recover his charges unless:

- (a) a bill for the charges containing particulars of the principal items included in the bill and signed by him or in the case of a firm by one of the partners or in the name of the firm, has been served on the client personally or left for him at his last address as known to the legal practitioner or sent by post addressed to the client at that address.
- b) the period of one month beginning with the date of delivery of the bill has expired.

Bill of charges prepared in line with the guidelines will not only help to prevent unnecessary litigations over such bills but rather will make for easy understanding by clients, for proper taxation by taxing officers where necessary and for appropriate fees to be earned by legal practitioners in respect of services duly rendered. The court will however, put the figure submitted into consideration in the exercise of his discretion to arrive at what will be regarded as fair professional fees for the services rendered by the legal practitioner.

2. The Legal Practitioner

A legal practitioner is a person entitled to practice as a barrister and solicitor and whose name is on the roll.⁷ The name shall be on the roll only if he has been called to the Bar by the Benchers and he produces a certificate of his call to bar to the Registrar.⁸ He is someone who having been licensed to practice law and is qualified to advise people about legal matters, prepare contracts and other legal instruments and moreover he represents people in court.⁹ A person who by virtue of his employment in or deployment by the Federal Ministry of Justice, is the holder for the time being of any of the offices in the civil service of the federation set out in the schedule to the order¹⁰ shall be entitled to practice as a barrister and solicitor for the purposes of that office. A legal practitioner is a person, who because of his or her ethical standards and knowledge gained through education and experience, meets the requirements of a state regulatory body and receives a licence to practice law in the state. A legal practitioner has the responsibility as master of the law to give legal advice to his clients and strictly apply the law to the facts of a client's case. In circumstances where it is apparent to a lawyer that his client's case is frivolous or that the chances of his client succeeding are extremely remote, he has a responsibility of informing the client of the uselessness of pursuing such a course in order to save his client from unnecessary expenses and to save the time of the courts.¹¹ A legal practitioner may before undertaking any business, by writing under his hand and communicated to the client, elect that his remuneration shall be in accordance with the provisions set out in scale 111 in the Legal Practitioner's Remuneration Committee Order.¹² It is also an expectation that a legal practitioner may accept from his client and the client may give his legal practitioner, security for the amount to become due to the legal practitioner, for business to be transacted by him and for interest on such amount. But such interest shall not commence till the amount due is ascertained either by agreement or taxation.¹³ It is also an entitlement of the legal practitioner to charge interest at 10 percent per annum on his disbursement and cost whether by scale or otherwise, after the expiration of one month from demand from the client.

A legal practitioner shall be entitled to recover his charges by action in any court of competent jurisdiction.¹⁴ In *Abubakar v Manulu*¹⁵, the court held thus: 'The fee owed by a client to a solicitor is called 'debt' and is

⁵ LPA, CAP L11 LFN 2004, S.16(2) (a)

⁶ Ibid, S 16 (2) (a)

⁷ Ibid, S 2(1)

⁸ Ibid, S.7 (a) & (b)

⁹ B A Garner, Black's Law Dictionary, 10th ed (Thomson Reuters, St Paul MN, West Publishing co; 2014) 1021

¹⁰ Entitlement to practice as Barristers and Solicitors (Federal Officers) order of 18th November 1992, para 1(1)

¹¹ *Magit v University of Agriculture, Markudi & Ors* (2005) LPELR-1816 (sc). *Jegade v Afe & Anor* (2017) LPELR-43232(CA) and *Okeke vs Okoli & ors* (1999) LPELR-6638 (CA)

¹² Legal Practitioner's (Remuneration for Legal Documentation and other land matters) order 1991, see supplement to official gazette Extra-ordinary No 40 vol 78 of 14th August 1991-Part B, paragraph 5.

¹³ Ibid, paragraphs 6 (1)

¹⁴ *Mabogunje v Oduka* (2003), NWLR (pt 802) 570 However, the admonition of the court in *Guiness Nig Plc v Nwoke* (2000) NWLR (pt 689) 25, that it is unethical and an affront to public policy for a litigant to pass on the burden of his solicitor's fee to his opponent in a suit. It is special damages that must be specifically pleaded and proved. *SPDC Nig v Okonedo* (2008) 9 MWLR (pt.1091) 85. *Lonestar Drilling Nig Ltd v new Genesis Executive Security* (2011) LPELR- 4437 (CA), *ACB Ltd v Ihekwoaba* (200) 16 NWLR (pt 864) 249, *Nnaji v Coastal Services Nig Ltd* (2004) 11 NWLR (pt. 885) 552.

¹⁵ (2001) 8 NWLR (pt.714) 717

recoverable. The procedure for recovering such fees is neither exclusive nor exhaustive since apart from court action, the solicitor may decide to recover his fees by any of the methods of persuasion, mediation, conciliation or negotiation'. The above is suggestive of the choice of legal practitioner to use alternative dispute resolution in recovering his fees, if he must circumvent the rigorous procedure involved in taxation of the Bill of charges.

3. Remuneration of a Legal Practitioner for Service Rendered

The committee¹⁶ on legal practitioner's remuneration possesses the power to make orders regulating generally the charges of the legal practitioner and any such orders concerning related matters which include;

- (a) the maximum charges which may be in respect of any transaction or activity of a description specified by the order.
- (b) the ascertainment of the charges appropriate for any transaction or activity by reference to such consideration as may be so specified.
- (c) the taking by practitioners of security for the payment of their charges and the allowance of interest with respect to the security and
- (d) agreement between practitioners and clients with respect to charges.

However, the Act¹⁷ mandates the committee to liaise with and involve the President of Nigeria Bar Association for the association to make inputs and representations in writing within a specified time. The remuneration normally starts with the payment of a consultation fee or deposit on account and thereafter a full and final bill of charges is presented to the client or agreed upon between the two parties. Based on the order aforesaid, a solicitor can either be paid his fees in advance or he may rely on the terms of any agreement between him and the client. In *FBN PLC v Ndoma-Egba*¹⁸, the court held that in situations where the legal practitioner has not received his fees and there was no agreement between both parties, the solicitor is required to submit his bill of charges. A Lawyer is expected to charge professional fees for his services which shall be reasonable and commensurate with the service rendered.¹⁹ He may charge the following fees;

- i. Scale fee: these are fees charged for non-contentious work.
- ii. Fixed (rate) fee: these are fees charged with a fixed rate for a specific work.
- iii. Appearance fee: these are fees charged by legal practitioners for appearing in court.
- iv. Hourly rate fee: these are fees charged for every hour a legal practitioner renders his service or services.
- v. Percentage fee: these are fees charged with a given percentage based on the value of the transaction.
- vi. Contingent fee: these are fees charged for recovery of debt whether it is contentious or non-contentious. This was prohibited under common law as held in *Abdallah v Barlat*²⁰ and *Wright v Legal Practitioner Disciplinary Committee*.²¹ However, it is permissible under the provisions of the Rules of Professional Conduct.²² The only vitiating factors are fraud, mistake or undue influence or contrary to the public policy or not in a criminal case.

Retainership is another means or service rendered for remuneration. It is an arrangement in which payment is made to the legal practitioner by a client and could be general or special.²³ A general retainer exists where a legal practitioner is instructed to handle all problems in an area of law or on every area of law during an agreed period of time. Under the general retainership, a legal practitioner is precluded from accepting to advise in or appear in any proceedings detrimental to the interest of a client paying the retainer during that period. A special retainer, however, exists where the legal practitioner is instructed to handle a single matter, for instance where a legal practitioner is instructed to represent a client in a lease transaction to draft the lease agreement and obtain Governor's consent. Broadly speaking the fees charged by a legal practitioner that forms the bulk for his remuneration can be broadly categorized as fees by agreement and fees through the bill of charges thus;

¹⁶ LPA , L11 LFN 2004, S.15(3) There shall be a committee to be called the Legal Practitioners Remuneration Committee which consists of the Attorney-General of the Federation as Chairman, the Attorney - General of the States and the President of Association and three members of the Association.

¹⁷ Ibid, S.15(4)

¹⁸ (2006) All FWLR (pt 307) 1012 at 1034

¹⁹ LPA, Rule of Professional Conduct, 2007 ,Rule 52(1)

²⁰ (1931) 1 WACA 137

²¹ (1940) 7 WACA 17

²² RPC, 2007, Rule 50

²³ Ibid, Rules 43

Fees by Agreement

A legal practitioner is entitled to make a written agreement with his client with respect to any professional business done or to be done by him for a sum.²⁴ Such agreement should appear fair and ought to be such that was not made under circumstance of suspicion of an improper attempt by the solicitor to benefit himself at his client's expense²⁵. The agreement is usually jealously regarded by the court and the tendency is to lean in favour of the client and put the burden of justifying its propriety on the legal practitioner. In *Aburime v Nig Ports Authority*²⁶, the court considering an agreement between the legal practitioner and client said that the solicitor could always enforce his agreement with his client for his (the solicitor's) remuneration subject to the qualification that the courts quiet often (if not always) lean in favour of the client and were slow to enforce agreements which were made under circumstances that precluded any suspicion of an improper attempt on the solicitor's part to benefit at the client's expense. However, settlement of a bill of cost between solicitor and a client upon a special agreement precludes an order being made upon application for taxation. In *Re: whit combe*²⁷ it was held that the agreement must first be set aside by action before the matter of taxation can be reopened. Again, there could be occasions where, although no real contract could be founded by a Legal Practitioner; there might be quasi-contract or other circumstances given rise to fees claimed on a *quantum meruit* basis.²⁸

Fees through bills of charges

A legal practitioner cannot charge arbitrary fees, but only fees that are in the provisions of the law. The fees a legal practitioner can charge are regulated by the Legal Practitioner's Act²⁹ and the Rules of Professional Conduct.³⁰ The recovery of a legal practitioner's charges where it is necessary to rely on a bill of charges must follow a procedure laid down under the Act.³¹ There is no specification on how the prepared bill of charges should look like, but it should most likely be in the form of an invoice or statement containing the charges and must be signed by the solicitor preparing the bill of charges. By the provisions of the Act,³² a bill of charges must contain the following;

- i. The principal items to be charged
- ii. Particulars of the principal items
- iii. The date on which the principal items were incurred
- iv. The signature of the solicitor issuing the bill on behalf of the firm.
- v. The date on which the bill of charges was issued. The bill must be served personally or by registered post or left at the client's last address known to the legal practitioner
- vi. The matters to which the bill of charges relate to, and
- vii. The name of the client to whom the bill of charges is being issued.

By the provision of the Act,³³ A legal practitioner shall not be entitled to begin an action to recover his charges unless;

- a) a bill for the charges containing particulars of the principal items included in the bill and signed by him or in the case of a firm by one of the partners or in the name of the firm, have been served on the client personally or left for him at his last address as known to the practitioner or sent by post addressed to the client at that address and
- b) the period of one month beginning with the date of delivery of the bill has expired.

In *Oyekanmi v NEPA*,³⁴ the bill of charges served on the respondent thus;

We are pleased to formally inform you that the above suit in which we defended your Authority had been concluded and judgment delivered on 26th May 1988 by the presiding judge, Mr. Justice T.A. Oyeyipo-Chief Judge of Kwara State. In the judgment, the plaintiff's claim against your Authority for the sum of N3, 270,400.00 (Three Million, Two Hundred and Seventy Thousand, Four Hundred Naira) was dismissed and N200.00 (Two Hundred Naira) cost awarded in favour of your Authority.

²⁴ LPA, L11, LFN 2004, S.15 (3) (d)

²⁵ *Scath v Ruthland (1966) LR ICP 642, Clare v Joseph (1967) 2 KB 369 at 376*

²⁶ Vol 2 All NTC 390

²⁷ (1844) 14 LJ CH 19

²⁸ *Aburime v NPA (supra), Oyo v Mercantile Bank (Nig) Ltd (1989) 3 NWLR (pt.108) 213 at 230*

²⁹ LPA, 1975, S.16(2) (a)

³⁰ RPC, 2007, Rule 50

³¹ LPA, L11 LFN, 2004, Ss.16-19

³² *Ibid*

³³ LPA, L11, LFN 2004, S16 (a) & (b)

³⁴ (1978) 4SC 111

We have thus by our professional expertise, resourcefulness and diligence saved your Authority the said sum which the plaintiff would have otherwise looted from the treasury all in the name of judicial process.

Pursuant to your Authority’s letter of instructions Ref CF/339/84/561 of December, 1984 and DLL/CF/339/85/018 of 21st January 1985 respectively and ours (sic) of acceptance dated 3rd January, 1985 and (sic) hereunder submit our bill for the professional fees and expenses for settlement forthwith

Name of Brief	-	Litigation	
Subject matter – Defending a claim of	-		N3,270,000.00
Client – National Electric Power Authority (defendant)			
1. Towards professional fees all stages			N95,060.00
2. Transportation Charges	-		N7,500.00
3. Expenses filing process witness (Official receipts attached)	-		N1,182.60
4. Sundry expenses on witness, investigation etc			N2,500.00
5. Accommodation (provided by NEPA)	-		
Total			N506,243.20
Less Deposit Paid	-		N30,000.00
Balance Payable	-		N476, 243.20

We will appreciate your efforts to make your Authority’s cheque for the sum of N476, 243.20 available within the next ten days for collection by any member of the chambers dully authorized in writing. This bill was not settled and at the Court of Appeal, it was observed that the bill of charges, Exhibit ‘J’ went beyond the professional services rendered or for work done in connection with the litigation as the case may be. It was more specific than that although not detailed as to what was claimed in respect of different items of the services rendered, however, reliance was placed in the observation of Denning LJ, in *Re A solicitor*³⁵ to circumvent technical submissions and uphold the bill of charges. Hence, a legal Practitioners bill of charges must satisfy the three conditions of preparing bill of charges which should duly be particularized for the principal item of his claim, he must serve the client with the bill and he must allow a period of one month to elapse from the date the bill was served. Again, it should be noted that in Nigeria there is no need to distinguish between contentious and non-contentious business for the purposes of a bill of charges as it was in England before the Order of 1920.³⁶ Denning LJ,³⁷ in respect of a bill for non-contentious business said;

It needed not contain detailed charges as it used to do before 1920. Nor need it contain all the details which the solicitor will have to give, if required, to the law society or the taxing master. But I think that it must contain a summarized statement of the work done, sufficient to tell the client what it is for which he is asked to pay. A bare account for professional services between certain dates or for work done in connection with your matrimonial affairs would not do. The nature of the work must be stated, such as advising on such a matter instructing counsel to do so and so, drafting such and such a document and so forth.

Furthermore, the Law Lord had for contentious business said that a bill of charges for contentious business should contain some items for detailed items for which a specific amount ought to be stated against each item,

There is also, the issue of charges for completed work and non-completed work imported into our jurisprudence and on this, the Supreme Court in *Okoli v Crusader*³⁸ agreed with the submission of the learned appellants’ counsel that S.17 (3)(b) of LPA made no distinction between bills delivered for completed work and non-completed work. The sub section 3(b) of S.17 of the Act did not also exempt disputed bills from its operation. The Supreme Court jettisoned the consideration by the court below of that as completely irrelevant to the application for taxation made outside the period of twelve months from the delivery of the bill. By the Act,³⁹ charges mean any charges (whether by way of fees, disbursement, expenses or otherwise) in respect of anything done by a legal practitioner in his capacity as a pegal practitioner. Where the bill of charges does not contain the particulars, it should be objected to by the client otherwise he will be deemed

³⁵ Solicitor’s Remuneration Act General Order 1920,

³⁶ *Re A Solicitor (supra)* at 287

³⁷ *Re A Solicitor, supra*

³⁸ 3 All NTC 259 at 266

³⁹ LPA L11, LFN 2004,, SS 16 (2) (a) and 19(1)

to have waived his right. Where the bill does not contain detailed particulars and it is objected to, the court will hold that the bill does not comply with the requirement of the Legal Practitioners Act and cannot sustain an action for recovery of professional charges.

It appears that in Nigeria all bills of charges should be adequately particularized. At the moment the position does not seem to be clear in regard to what is sufficient particularization. But in *Oyekanmi v NEPA*⁴⁰, it was held that if there is an issue of insufficiency of particulars, that should be formally objected to at the very beginning. In *Cobbeth v Wood*,⁴¹ the plaintiff had acted as solicitor for the defendant's wife on a petition by her in the High Court for a judicial separation. The petition was dismissed, but the defendant was ordered to pay the costs as between the party and party and accordingly the plaintiff delivered to him a bill of party and party costs. The bill having been taxed, the defendant paid to the plaintiffs the amount allowed upon the taxation. The plaintiff delivered to the defendant a bill in respect of the extra costs of the proceedings on the petition as between solicitor and client, which bill did not contain the items allowed in respect of party and party costs. The bills were not paid and the plaintiffs sued.

A preliminary objection was taken by the defendant that it was not a proper bill in accordance with the Act⁴² which requires a solicitor's bill to specify the fees, charges, and disbursements, for any business done by the solicitor. In spite of the objection, the trial court entered judgment for the plaintiff. But on appeal, the judgment was set aside on unanimous basis that there was no proper bill. It will be appreciated from the reason given that the bill was structurally defective in that what was claimed did not add up even when taken in conjunction with the information in an earlier bill to give the idea of the fees, charges and disbursement as required by the relevant provisions of the statute.

Charges and fees should be particularized as stated in *Savannah Bank of Nig PLC v Opanubi*⁴³ thus;

- i. Perusing documents and giving professional advice
- ii. Conducting necessary (specified) inquiries or using a legal agent in another jurisdiction for a particular purpose.
- iii. Drawing up the writ of summons and statement of claim or defence.
- iv. Number of attendances in court and the dates
- v. Summarized statement of the work done in court, indicating some peculiar difficult nature of the case (if any) so as to give an insight to the client as to what he is being asked to pay for and;
- vi. The standing of the solicitor at the bar in terms of years of experience and/or rank with which he is invested in the profession.

Legal practitioners are well advised that where they have to present their bills of charges, it is in their interest to draw up the same with due care in order that they may be explicit. This will likely prevent unnecessary litigations over such bills and make for easy understanding by clients, for proper taxation by taxing officers where necessary and or appropriate fees to be earned by legal practitioners in respect of services duly rendered despite there are no guidelines laid down for the particularization of that in the Rule of Professional Conduct and Legal Practitioners Act.

4. Form and Contents of a Bill

The Act requires that a bill of charges shall contain particulars of the principal items. What may fall under principal items again is not taken care of by the extant law. There are no distinctions between contentious and non-contentious matters in regard to particulars expected in a bill of charges in the country. There is also no demarcation as between bills for completed and non-completed work. The Act⁴⁴ did not also exempt disputed bills from its operation. A general guideline as to the form, contents and purpose of a bill of charges could be;

- i. The bill should be headed to reflect the subject matter. In⁴⁵, it was suggested if it is in respect of that litigation, the court, the cause and *Oyekanmi v NEPA* the parties should be stated.
- ii. The bill should contain all the charges, fees and professional disbursements for which the legal practitioner is making a claim⁴⁶. Professional disbursements include payments which are necessarily

⁴⁰ 4 All NTC 449 at 458

⁴¹ 458 (1908) 2 KB 420

⁴² The solicitors Act, 1843, S37

⁴³ (2004) All FWLR (pt 222) 1587 at 1610

⁴⁴ LPA, L11 LFN 2004, S16 (2) (a)

⁴⁵ *Ibid*, S17 (3) (b)

⁴⁶ *Supra* at 464, *Lewis v Primrose* (1844) 6QB 2651 *Dimes v Writ* (1849) 7 CB 831

made by the legal practitioner in pursuance of his professional duty such as court fees, witness, cost of production of records for instance, if paid by him.

- iii. Charges and fees should be particularized, for instance,
 - a. Perusing documents and giving professional advice.
 - b. Conducting necessary (specified) inquiries or using legal agent in another jurisdiction for particular purpose⁴⁷.
 - c. Drawing up the writ of summons and statement of claim or defence.
 - d. Number of attendances in court and dates
 - e. Summarized statement of the work done (in court), indicating some peculiar difficult nature of the case (if any) so as to give an insight to the client as to what he is being asked to pay for⁴⁸.
 - f. It is required to give sufficient information in the bill to enable the client to obtain advice as to its taxation and for the taxing officer to tax it⁴⁹.

Under the Act⁵⁰ in drafting the bill of charges regard must be had of the following:-

- a. the complexity of the matter or the difficulty or novelty of the questions raised;
- b. the skill, labour, specialized knowledge and responsibility involved on the part of the Legal Practitioner
- c. the number and importance of the documents prepared or perused, without regard to length.
- d. the time expended by the Legal Practitioner in the business
- e. the place where and the circumstances in which the business or part thereof is transacted.
- f. the amount of money or value of property involved; and
- g. the importance attached to the business by the client.

This is necessary to indicate against each of the particulars given in the bill of charges a specific amount, taking into account the status and experience of the legal practitioner and the time and efforts involved. In *Oyekanmi v NEPA*⁵¹ the court took into account the evidence of the appellant which he assembled through investigations from eminent estate surveyor and valuer, academic who specialized in forestry and agriculture all of whom gave evidence for the defendants. The solicitor should spell out his visits to locus or scene of the incident in preparation to draft the statement of Defence, the preparation of witnesses so that none of them would falter. In *Oyekanmi v NEPA*⁵², the Supreme Court per Uwaifo JSC summarized the missing details and particulars and said that the plaintiff assembled evidence which he used to settle the defendant's statement of defence from the officials of the defendant both at Jebba and Lagos, officials of the Kwara state ministry of Lands and survey in Ilorin and Emir of Jebba, through private investigations as a result of which he obtained the opinions of experts like eminent estate surveyor and valuer, academics who specialized in forestry and agriculture all of whom gave evidence for the defendant to demolish the claim of over three million naira against the defendant.

5. Recovery of Professional Fees.

The Act⁵³ provides that subject to complying with certain conditions, a legal Practitioner shall be entitled to recover his charges by an action in any court of competent jurisdiction. There are situations when clients may fail to fulfill their own side of the contract and delay or blatantly refuse to pay the fees both parties agreed to under the retainer agreement. This presents a very delicate situation because on the one hand the lawyer is entitled to payment and on the other hand the lawyer would want to maintain his self respect and that of the client while trying to obtain his lawful dues. The real dilemma is how to obtain legal fees without alienating the client. The Rules⁵⁴ warns that controversies with clients concerning remuneration are to be avoided by the legal practitioner so much as shall be compatible with his self respect and with his right to receive reasonable recompense for his services.⁵⁵ The fee owed by a client to a solicitor is called "debt"

⁴⁷ Re Bishop, Exp Langley (1879) Ch D 110, *Re Pomery and Tanner Solicitors* (1897) 1 Ch D. 284

⁴⁸ *Re A Solicitor* (Supra) at 287

⁴⁹ *Keene v Ward* (1849) 13 QB 515, *Slings by v Attorney-General* (1918) probate 236

⁵⁰ LPA, L11, LFN 2004, Schedule, Scale 111

⁵¹ *Supra* at 465

⁵² *Supra* at 465, *Mabogunje v Odutika* (2005) INWLR

⁵³ LPA, LII LFN 2004, S 16 (1)

⁵⁴ RPC, rule 47

⁵⁵ Law suits with clients should be resorted to only to prevent injustice, imposition or fraud. Hence, litigation should be undertaken, as a last resort, therefore all other remedies must be exhausted before suing the client.

which is recoverable.⁵⁶ The procedure for recovering such fees is neither exclusive nor exhaustive since apart from court action, the solicitor may decide to recover his fees by any of the methods of persuasion, mediation, conciliation or negotiation.

According to the Legal Practitioners Act⁵⁷ three important and mandatory things which a solicitor must do to recover his charges from defaulting clients are;

- a. He must prepare a bill of charges which should set out the particulars items of his claims.
- b. Must serve the bill on the client
- c. He must allow a period of one month to expire from the date of delivery before the action is commenced. The bill of charges must have been served on the client personally. There are however, circumstance which may make the court to reduce or lessen the period of one month within which a solicitor is expected to wait after service of the bill before the commencement of action against the client.

The place of institution of action is the State High Court⁵⁸ but it must be the High Court where the legal Practitioner in question usually carries on his practice or usually resides or in which the client in question usually resides or has his principal place of business. The steps at this stage include;

Taxation of Charges

Taxation of costs has been defined as the mode by which certain officers of the various courts allow or disallow the sum claimed by solicitors from their clients or by one party in an action from the other⁵⁹. Taxation as between solicitor and client, which may be heard whether the business be transacted in court or not is only obtained upon the application.⁶⁰ A bill of costs (charges) is an account of the charges and disbursements of an attorney or solicitor, which he incurred in the conduct of his client's business. It is account of fees, charges and disbursements by a solicitor in a legal business. Legal Practitioner's Act⁶¹ provides that the taxation of bill of charges shall be in accordance with the provisions of any order in force under section 15 of the Act and where no such order is in force or any item falling to be taxed is not dealt with by the order. The charges to be allowed on taxation of the item shall not exceed such that are reasonable, having regard to the skill, labour and responsibility involved and to all the circumstances of the case. This is done by the ascertainment of the charges appropriated for any transaction or activity by reference to such considerations as maybe specified.⁶² From the above, taxation is a procedure that follows the preparation and service of bill of charges with which a legal practitioner shall be entitled to recover his charges by an action in any court of competent jurisdiction.⁶³ The manner of taxation is provided for by the Act,⁶⁴ thus:

the taxation of bill of charges shall be in accordance with the provisions of any order in force under section 15 of this Act and where no such order is in force or any item falling to be taxed is not dealt with by the order, the charges to be allowed on taxation of the item shall not exceed such as are reasonable having regard to the skill, labour and responsibility involved and to all the circumstances of the case.

It is the law that except where a direction providing for the giving of security is given under subsection (3) of section 16 of the Act and security is not given in accordance with the direction, the court shall, on an application made by a client within the period of one month from the date on which a bill of charges was delivered to him order that the bill shall be taxed and that no action to recover the charges shall be begun until the taxation is completed.⁶⁵ Where at the time and place appointed in pursuance of the rules of court for the taxation of a bill, one of the parties appears and any other party does not, the taxing officer shall proceed to tax the bill unless for special reasons he determines to adjourn. He may further adjourn the taxation so as to afford the absent party an opportunity to be present and where he does so, he may also determine by whom any costs of the adjournment or further adjournment shall be payable.⁶⁶ On the completion of the taxation of a bill, the taxing officer shall forthwith declare the amount due in respect of

⁵⁶ J Kaura, Billing and Professional fees by lawyers under the Nigerian Law ,www .the.lawyerschronicle .com. billing.p5

⁵⁷ LPA, LII LFN 2004, S 16 (2)

⁵⁸ LPA, *ibid*, S 16 (1)

⁵⁹ LPA, LII LFN 2004, S 18(1)

⁶⁰ *Aburine v Nig Ports Authority* ,*Supra* at 391

⁶¹ *Ibid*, S.18 (1)

⁶² LPA, S.15 (3) (b)

⁶³ LPA, S.16 (1) (2)

⁶⁴ LPA, LII LFN 2004, S 18 (1)

⁶⁵ LPA, LII LFN 204, S 17 (1)

⁶⁶ *Ibid*, s. 18 (2)

that bill and shall file in the records of the court a certificate stating the amount.⁶⁷ Any party to the taxation shall be entitled on demand to have issued to him a copy of the decision. Any of the parties has right to appeal within 21 days against the decision.⁶⁸ If the amount stated in a certificate order relating to a bill of cost or in such a certificate as varied on appeal, is less than amount of the bill before taxation and the difference is equal to one sixth or more of the amount of the bill before taxation, the costs of the taxation shall be payable by the legal practitioner. However, in any other case those costs shall be payable by the client.⁶⁹

Court's Intervention

The High Court has the necessary power and jurisdiction to tax a solicitor's bill of charges, on the invitation to do so by the solicitor. The court may if it thinks fit, on an application made after the expiration of the period aforesaid by the legal practitioner or (except as aforesaid) by the client in question.⁷⁰

- (a) Order that the bill shall be taxed.
- (b) Order that until the taxation is completed no action to recover the charges mentioned in the bill shall be begun and any such action already begun shall be stayed.

The order under this heading may be made on such terms (other than terms as to the costs of the taxation) as the court may determine. But no order as stated shall be made in a case, after the period of twelve months from the date on which the bill in question was paid.⁷¹ Further, except where the court determines that there are special reasons for making such as order, if twelve months has expired since the date of the delivery of the bill or if judgment has been given in an action to recover the charges in question. In *Okoli v Crusader*,⁷² the appellants are legal practitioners retained by the respondent to conduct his defence and prosecute a counter-claim in suit No L.D/985/82 at the High Court of Lagos State. An agreement was reached between them as to the total professional fees that were payable to the appellants by the respondent. There was exchange of letters between the parties as to the fees payable by the respondent to the appellants for their services. In the course of correspondences, an agreement was reached for the payment of the sum of ₦55,000.00 to the appellants for the defence of the suit with their counter-claim. Following the said agreement, the appellants delivered a bill of charges to the respondent. The respondent by a letter dated 26/4/83 made a part payment of ₦10,000.00 to the appellants. The appellants having accepted the brief acted for the respondent for some three years, settled and filed the respondent's pleadings in the suit and put in some court appearances on behalf of their client. However, by a letter dated the 21st August 1985, the respondent repudiated the contract between the parties and debriefed the appellants. Following this development, the respondent applied, inter alia, for an order for taxation of the bill of charges served upon it by the appellants. It was contended on behalf of the appellants at the hearing that the application was statute-barred. Perhaps, due to some inadvertence, the trial court made no finding on this vital issue. The learned trial judge, however, found for the respondent and referred the matter to the Assistant Chief Registrar of the court for taxation of the appellants' bill of charges. The appellants being dissatisfied with this decision appealed to the Court of Appeal which dismissed their appeal. On further appeal to the Supreme Court, the Supreme Court resolved the appeal and highlighted the following principles:

- i. It was crystal clear that the application is definitely caught by the provisions of the Act⁷³ as it was brought outside the limitation period prescribed there under. This, the trial court failed to advert its mind to the provisions of the Act in respect of which it made no finding whatsoever.
- ii. The trial court had jurisdiction to determine if there existed special reasons for making the order for taxation of the bill of charges outside the period of twelve months.
- iii. The reasoning of the Court of Appeal that the bill of charges did not relate to a completed job but concerned a disputed bill in respect of an uncompleted assignment was rejected.

The outcome was because the application for taxation by the client was made outside the period of twelve months from the delivery of the bill of charges without any enlargement of time obtained; hence the proceedings would be caught by the provisions of the Act.⁷⁴ Following the decision, the steps to be followed

⁶⁷ *Ibid*, s. 18 (4)

⁶⁸ *Ibid*, S. 18 (5)

⁶⁹ *Ibid*, S. 18 (7)

⁷⁰ *Ibid*, S. 17 (2)

⁷¹ *Ibid*, S. 17 (3)

⁷² *supra*

⁷³ LPA, LII, LFN 2004, S. 17 (1) & (3)

⁷⁴ *Ibid*.

by a legal Practitioner to avoid controversies for the recovery of his remuneration for the services rendered are:

- i. Immediately following the briefing is to prepare an agreement in writing for the legal services (professional) to be rendered by the legal Practitioner.
- ii. As a follow up, prepare a contingent bill of charges particularizing same and serve the client in case he may be debriefed midstream.
- iii. Where there was default in the payment of same, if it is outside twelve months, then relax as it is statute barred except there is an enlargement of time by court.
- iv. It makes no difference that the bill of charges is in respect of completed or uncompleted acts.
- v. Whenever there is an application for taxation of bill of charges court should always refer same to the taxing master to determine conclusion.

6. Conclusion and Recommendations

The recovery of legal practitioner's professional and other sundry fees is very important to a legal Practitioner. This is because the legal practitioner is entitled to his fees as he has worked for it. The fees in question are as agreed by the parties at the point of briefing. These fees are sometimes not paid by the client. When the fees are not paid, the legal practitioner have the options like negotiation and arbitration, however, when negotiation and others used to collect the debt fails, the procedure for recovery through the bill of charges sets in. In order to recover the debt owed by the client to a legal practitioner for service rendered, the legal Practitioners Act has taking care of same and ends with taxation of the bill of charges. It is therefore for the legal practitioners to take advantage of the golden rule in the provisions in order to recover any amount of debt owed him without offending the law. This is to avoid the controversy that follows termination of legal practitioner's brief or refusal of the client to perform his own side of the obligation which will end in litigation. The preparation and service of bill of charges on the client may save the legal practitioner from referring dispute for an assessment of damages on the repudiation of the said contract to a taxing officer to be ascertained on *quantum meruit* basis. It is in interest of the legal practitioner to draw up the bill of charges with due care in order that they may be explicit. This will prevent unnecessary litigations over such bills and the legal practitioner to act within the provisions of rules of professional conduct and legal practitioners Act.