Resolving the Seeming Conflicting Decisions of the Supreme Court: Where Lies Appeal from the Legal Practitioners' Disciplinary Committee?*

Abstract

For over two decades, there have been controversies regarding where appeals from the directions of the Legal Practitioners' Disciplinary Committee should go to – whether to the Appeals Committee of the Body of Benchers or to the Supreme Court. Notable Supreme Court judgments at different times gave different verdicts in cases such as *Okike v LPDC, Akintokun v LPDC*, *NBA v Aladejobi* and *Nwalutu v NBA*. Consequently, there are agitations that have question the seeming contradictions from the apex Court. This paper therefore analyses the circumstances and decisions of each of these cases from the Supreme Court as well as the applicable laws to ascertain the reasons behind the seeming contradictions. This is with the intention of explaining the true position of the law and to eliminate the uncertainties surrounding the verdicts of the Supreme Court by presenting a chronological explanation of the circumstances that informed the seeming contradictions of the Supreme Court in its holdings. The paper holds that the judgments were correctly in consonance with what the applicable laws were perceived to be at the time of judgment except for the Okike case which was based on an assumption of the applicable law.

1. Introduction

When a legal practitioner is found guilty of any of the professional misconducts by the Legal Practitioners' Disciplinary Committee, the question as to which court or body has the power to entertain appeals from the directives of the Legal Practitioners' Disciplinary Committee has been a subject of controversy. This is largely due to the re-enactments and amendments of the relevant legislation in this regard, with the attendant divergent pronouncements by the Supreme Court on the matter, over time. By section 7 (6) of the Legal Practitioners' Act 1962, appeal against the direction of the Legal Practitioners' Tribunal was to the Federal Supreme Court. It should be noted that there was no Appeal Committee of the Body of Benchers under the 1962 Act. Conversely, section 11 of the Legal Practitioners' Act 1975, (LPA 1975) the successor to the Legal Practitioners' Act 1962 established the Appeal Committee of the Body of Benchers and

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provided that appeals from the Legal Practitioners' Disciplinary Committee will go to the Appeal Committee of the Body of Benchers and subsequently to the Supreme Court. It is this Act, with related amendments that was produced in the 1990 Laws of the Federation which maintained the same position. However, section 10 (e) of the Legal Practitioners' (Amendment) Decree 21 of 1994 (1994 Decree) repealed section 12 of the Legal Practitioners' Act 1990 that established the Appeal Committee of the Body of Benchers. It puts the responsibility of disciplinary committee on the Body of Benchers and provided that appeals from the Legal Practitioners' Disciplinary Committee (LPDC) lies to the Supreme Court. By virtue of the Legal Practitioners' (Amendment) Decree 21, 1994, the Appeal Committee of the Body of Benchers ceased to exist.[1]

The Supreme Court in *Okike v LPDC,*[2] based on the 1994 Decree, held that appeals from the Legal Practitioners' Disciplinary Committee lied to the Supreme Court. In *Akintokun v LPDC,*[3] and *NBA v Aladejobi*[4] on the other hand, the Supreme Court, held that appeals from the Legal Practitioners' Disciplinary Committee is to the Appeal Committee of the Body of Benchers as it lacks jurisdiction to hear appeals directly from the decision of the LPDC. It should be noted that when the Supreme Court enunciated this position there was no Appeals Committee of the Body of Benchers in existence. Recently the Supreme Court in *Nwalutu v NBA,*[5] properly, heard appeal from the decision of Legal Practitioners' Disciplinary Committee and did not decline jurisdiction in favour of the Appeal Committee of the Body of Benchers. The position as enunciated by the Supreme Court in *Okike v LPDC* seemed to be restated by the act of the Supreme Court in *Nwalutu v NBA*. The decision of the Supreme Court in *Nwalutu v NBA* was based on the fact that eventually, 'the Revised Legal Practitioners' Act 2004, incorporated the provisions of the Legal Practitioners' (Amendment) Decree No 21 of 1994 published as the supplementary to the Laws of the Federation 2004'[6] which states the Supreme Court as the right body to hear appeals from the decisions of the LPDC. To this end, this paper intends to examine the laws and the judicial authorities in this respect with the intention of stating the true position of the law by presenting a

[1] RE Badejogbin, 'The Unresolved Conflict of the Regulatory Law of the Legal Profession' *Nigerian Bar Journal* [2007] (5) (1) 64-66.
[2] (2005) 15 NWLR (Pt.949) 471; (2006) NWLR (Pt.960) 67.
[3] (2014) LPELR- 22941 (SC).
[4] (2008) 14 NWLR (Pt.1108) 611.
[5] (2019) LPELR-46916 (SC).
[6] Ibid 4.

chronological explanation of the circumstances that led to the seeming contradictions of the Supreme Court in its holdings in each of the cases mentioned above. Hence, this paper commences by stating the controversial verdicts of the court and thereafter examines the relevant statutes in this regard. It analyses the relevant cases and concludes by clearing the uncertainties surrounding the verdicts and making recommendations.

2. Analysis of the Applicable Laws

The historical antecedent for the making of an Act to regulate the legal profession in Nigeria could be gleaned from the setting up of the first court in Nigeria by the colonial government of Britain in 1862, to the enactment of the Legal Education Act and the Legal Practitioners' Act,[7]both of 1962.

The Legal Practitioners' Act, 1975 with attendant amendments which replaced the 1962 Act was produced as Cap 207 Laws of the Federation of Nigeria 1990 and interestingly, was also subsequently produced as Cap L11 2004 LFN. However, prior to 2004, the 1975 Act had been amended by a number of Decrees, among which are Legal Practitioners' (Amendment) Decree No. 21, 1993; Legal Practitioners' (Amendment) Decree No. 38, 1993; Legal Practitioners' (Amendment) Decree No. 120, 1993; Legal Practitioners' (Amendment) Decree No. 21, 1994; Legal Practitioners' (Amendment) (Repeal) Decree No. 43, 1998 and Legal Practitioners' (Amendment) Decree No. 31, 1999.[8] It is important to state here that Decree No. 21 and 38 both of 1993 were repealed by Decree No 120, 1993 which reverted to the 1975 Act as the applicable law. However, Decree No. 21 1994 which is a reproduction of Decree No. 21 1993 as amended by Decree No. 38 1993 was enacted shortly after, to take precedence over the 1975 Act as produced in the 1990 LFN.[9] The consequences of these amendments as regards the disciplinary process of erring legal practitioners is the seeming uncertainties of the appropriate disciplinary bodies especially in relation to where appeals from the Disciplinary Committee should go to.[10] Hence, the Supreme Court has made some pronouncements on the appropriate body to hear appeals.

[7] Legal Practitioners' Act, Cap 101, Laws of the Federation of Nigeria and Lagos, 1958.
[8] RE Badejobin. (n.2) 61.
[9] RE Badejobin (n.2) 62-65.
[10] RE Badejobin (n.2) 61-66.

Whilst the Legal Practitioners' Act No. 33 of 1962 provided for 3 steps in the prosecution and trial of an erring legal practitioner, starting from the Legal Practitioners' Investigating Panel, to the Disciplinary Committee and finally to the Federal Supreme Court,[11]the Legal Practitioners' Act, Cap 207, Laws of the Federation of Nigeria 1990 (subsequently, referred to as the Principal Act) recognizes 4 steps viz, (i) Nigerian Bar Association (to investigate and determined whether a *primafacie* case has been established against the legal practitioner (ii) The Legal Practitioners' Disciplinary Committee of the Body of Benchers (LPDC) (to conduct the trial and levy punishment on an erring Legal Practitioner) (iii) the Appeal Committee of the Body of Benchers (to hear and determine all appeals from the direction of the LPDC and finally (iv) the Supreme Court to hear and determine all appeals from the Appeal Committee of the Body of Benchers [12].

For clarity, section 11(7) of the Principal Act provides thus: - 'The person to whom such a Direction relates may, at any time within twenty – eight days from the date of service on him of the notice of the direction, appeal against the direction to the Appeal Committee of the Body of Benchers established under section 12 of this Act …'

Section 12(1), (6) and (7) provides as follows:

> 12 (1) There shall be a committee to be known as the Appeal Committee of the Body of Benchers (in this Act referred to as 'the Appeal Committee') which shall be charged with the duty of hearing appeals from any direction given by the disciplinary committee.
>
> (6) When the disciplinary committee gives a Direction under subsection (1) or subsection (2) of this section direction to be served on the person to whom it relates and submit to the Body of Benchers a report its findings which resulted in the issuance of the notice.
>
> (7) The person to whom such a direction relates may, at any time within twenty – eight days from the date of service on him of notice of the direction appeal against the direction to the Supreme Court established under section 12 of this Act: and the disciplinary committee may appear as respondent to the appeal, for the purpose of enabling directions to be given as to costs of the appeal and of proceedings before the disciplinary committee, shall be deemed to be a party thereto whether or not it appears on the hearing of the appeals.

[11] Section 6 (3) and 7 (1) & (6) of the Legal Practitioners' Act No.33 of 1963.

[12] Section 11 (7); 12 (1), (6) & (7); 6 (3) and 7 (1) & (6) of the Legal Practitioners' Act Cap 207, Laws of Federation of Nigeria 1990.

From the above provisions, the following steps are clearly involved. Complaints made against a legal practitioner investigated by the NBA who will then lodge a complaint before the LPDC, if it established that a *prima facie* case has been laid out. The LPDC will then try the case and where the legal practitioner is found guilty, give direction in the form of punishment. From the LPDC's direction, appeal goes to the Appeal Committee of the Body of Benchers, and finally to the Supreme Court as the Apex Court.

Analysis of the applicable law has been a subject of academic and judicial engagements and has become the source of divergence and conflicting opinions amongst scholars with respect to the 1994 Decree, which made specific amendments to the Legal Practitioners' Act, Cap 207, and LFN. Decree No. 21 of 1994 amended some sections of the LPA 1975 as amended. Of interest to this paper is the disciplinary jurisdiction of the LPDC and where appeal lies against its directions. It repealed section 12 of Cap 207 Act. The existing section 11 of Cap 207 Act was renumbered as section 12. A new section 11 was inserted which provided for the establishment of the Legal Practitioners' Disciplinary Committee made up of the members of the Body of Benchers and specifically in subsection (7) the Appeal Committee of the Body of Benchers was replaced with the Supreme Court as the institution that will hear appeals from the decision of the LPDC.[13] Simply put, the Appeal Committee of the Body of Benchers ceased to exist.

The fulcrum of the confusion is in the content of the Legal Practitioners' (Amendment) (Repeal) Decree No. 43 of 1998 which purportedly repealed Decree 21 of 1994 when in its marginal notes, it listed Decree No. 21 of 1993, No. 38 of 1993 and No. 21 of 1994 as having been repealed. The lone paragraph of the Decree simply repealed the 1993 Decree as amended.[14]

There have been divergent views by scholars on the effect of this repeal Decree.[15] The position taken is determined by the approaches utilized by the scholars which have been basically twofold. The first approach is the purposive canon of interpretation which may engage the mischief rule in trying to decipher and make sense of the repeal Decree, based on available facts, which appears to achieve nothing since both Decree Nos 21 and 38 of 1993 had earlier been repealed by Decree No 120 1993. It did not make sense why a Decree will be promulgated to

[13] RE Badejobin (n.2) 66.
[14] RE Badejobin (n.2) 66.
[15] OB Akinola, 'Section 12 of the Legal Practitioners' Act Examined' *Nigerian Law and Practice Journal,* [2013] (12) 94 -106.

repeal Decrees Nos 21 and 38 but for the reason of returning to the status quo to usher in a new democratic government. Hence, the utilization of extraneous factors and antecedents to make a case for this path.[16] The second approach which this paper focuses on is purely based on the black letter law. This is with no reference to other extraneous factors except the positions of the *amici curiae* who made subsequent appearance in *Akintokun'*s case. That is, a position that is without the application of legal realism that permits the consideration of other relevant extraneous factors in interpreting the position of the law. The second approach inclines to the argument that the inclusion of the 1994 Decree in the marginal notes is ineffective. This is because, marginal notes do not and cannot ordinarily impute on the provision of the statute that which was never its position in the first place. The Supreme Court has however held that marginal notes can be used to 'resolve a doubt in the interpretation of the substantive provision of a statute'.[17] The rule of interpretation that supports the black letter law position – expression *Unius Est Exclusion Alterios,* which means that 'the express mention of one is the exclusion of another'. For instance, section 1(1) & (2) of Decree No. 43 of 1998 is set out hereunder:

> Section I (1) The Legal Practitioners' (Amendment) Decree 1993, as amended is hereby repealed.
> (2) The repeal of the enactment specified in subsection (1) of this section shall not affect anything done or purported to be done under the repealed enactment.

The marginal note of section 1(1) reads:

> Repeal of 1993 No. 211993 No. 381994 No. 21.

On the face of it, section I (1) of Decree No. 43 of 1998 did not appear to contemplate, nor envisage the repeal of any other Decree except 'the Legal Practitioners' (Amendment) Decree 1993' and thus appears unambiguous. Based on this black letter law approach, the provision above will be termed unambiguous even if the supposed intended mischief was not cured. The argument is that nothing can detract from the fact that the marginal note is clearly an ineffective surplusage which cannot override the express provisions of section 1(1) of Decree No. 43 of 1998. Adherents to this position claim that it may explain why up till now there is still no Appeal

[16] RE Badejogbin (n 2) 73-77.
[17] *Oloyo v Alegbe* (1983) ANLR (Pt.387) at 44; *Schroeder & Cov Major* (1989) 2 NWLR (Pt. 101); and *NTC Ltd v Agunanne* (1995) 5 NWLR (Pt. 397) 574. RE Badejogbin (n 2) 77 had relied on the Supreme Court cases of *Oloyo v Alegbe; Schroeder & Co v Major* and *NTC Ltd v Agunanne* (Supra).

Committee of the Body of Benchers on ground, giving further credence that the intendment of Decree No. 43 of 1998, as perceived by the NBA is that only Decree No. 21 of 1993 was repealed. This sound convincing but for the fact that the NBA had taken on a 'schizophrenic approach' in relation to the provisions of the 1994 Decree where in some instances, it adopted the provisions of the 1993 and in others, it adopted the provisions of the 1994.[18] For instance, the Legal Practitioners' (Amendment) Decree No 31 1999 made just a year after the said 1998 Decree is a direct amendment of section 8 of the LPA 1975 contained in the 1990 Act and not of the 1994 which extensively amended the provision of section 8 of the Principal Act.[19]

Claims have been made that the reason for the omission of the 1994 Decree from the 2004 LFN is that it was done inadvertently. The then Attorney General of the Federation and Minister of Justice Mr Adoke, SAN and the then President of NBA Okay Wali, SAN who were invited as *amici curiae,* said so in *Akintokun v LPDC*[20]and this cannot be ignored and will be analysed subsequently. Whether or how this position affects the appropriate appellate body to the LPDC will be considered. It is therefore necessary at this point to analyze the relevant cases on this point.

3. Trails of judicial engagements

The Supreme Court has taken some paths which appear to be contradictory in the cases it decided on the applicable appellate body to entertain appeals from the LPDC. Are there justifiable reasons for these seeming contradictory paths? The responses to these enquiries are in the analysis of the cases below:

3.1 Okike v LPDC[21]

In the case of *Okike v LPDC*, one Charles Okike was found guilty of infamous conduct and the LPDC ordered the Chief Registrar of the Supreme Court to have his name struck off the Roll of Legal Practitioners in Nigeria. It is important to note that despite several hearing notices, Charles Okike failed to attend the hearing of the LPDC. In his response to the complaint forwarded to him before the hearing, he did not deny that he recovered money for his client which he did not remit. The LPDC arrived at a decision based on the uncontroverted oral and documentary

[18] RE Badejogbin (n 2) 67-70.
[19] RE Badejogbin (n 2).
[20] (2014) LPELR-22941 (SC).
[21] *Okike v LPDC* (n 2).

evidence presented at the hearing. Charles Okike wrote a number of complaints challenging the jurisdiction of the LPDC to hear the matter and eventually appealed to the Supreme Court to say that the LPDC lacked the jurisdiction to hear the matter and that he was not accorded fair hearing. The Supreme Court held that it had the jurisdiction to entertain an appeal directly from the LPDC without such going through the Court of Appeal.

3.2 NBA v Aladejobi[22]

In this case, one Jide Aladejobi, a legal practitioner was found guilty of Infamous Conduct by the LPDC which culminated in a directive to the Chief Registrar to strike off his name from the Roll of Legal Practitioners in Nigeria. Mr Aladejobi appealed against the decision of the LPDC directly to the Supreme Court. The Respondent filed a notice of preliminary objection to strike out the appeal on a number of grounds one of which was that:

> [B]y virtue of the sections 11 and 12(1) of the Legal Practitioners' Act 1990 as amended, the appellant can only appeal to the Appeal Committee of the Body of Benchers…The appellant cannot appeal directly to the Supreme Court against the directive of the Legal Practitioners' Disciplinary Committee of the Body of Benchers … without first appealing to the Appeal Committee of the Body of Benchers.

The matter was heard by the Supreme Court constituted by five judges who unanimously dismissed the appeal on the ground that it lacked the jurisdiction to entertain the appeal which should have been made to the Appeals Committee of the Body of Benchers which statutorily is the right body to entertain appeals from the LPDC.

The ground for the Supreme Court's decision was the provisions of the applicable law which is the 1999 Constitution of the FRN and the reenacted Legal Practitioners' Act, LFN, 2004. According to the Supreme Court:

> It is the law that where a statute prescribes a legal line of action for initiating court process, all remedies in the statute should be duly followed to the letter. [and] in the instant case, the law provided that the appeal lies to the Appeal Committee of the Body of Benchers…[23]

The Supreme Court stated that it is the extant law that must guide the appeal process and the extant law is clear on this. It is a clear mandate devoid of discretion as to which other process to

[22] *NBA v Aladejobi* (n 4).
[23] *Akintokun v LPDC* (n 3) 71.

adopt since it clearly prescribes the course which is the Appeal Committee of the Body of Benchers and the Supreme Court is bound by its provisions. The Supreme Court specifically stated that 'Now it is the law that where a statute provides for a particular method of performing a duty regulated by statute, that method, and no other, must have to be adopted.'[24]The Supreme Court has always reiterated this position that for there to be certainty in the law, all courts must place reliance and apply extant laws codified in the Laws of the Federation of Nigeria 2007.[25]

It is imperative to note that the extant law which the Supreme Court relied on was the 2004 LFN which provided that an appeal from the direction of the LPDC must be made to the Appeal Committee of the Body of Benchers. The 2004 LFN was enacted after the Decree No. 43 of 1998. The exclusion of the provisions of the 1994 Decree was according to the *amicicuriae* in the subsequent case, an inadvertence.

In the *Aladejobi's* case, the Supreme Court elucidated its position in the *Okike's* case where it stated that appeal from the LPDC lies directly to the Supreme Court. It claimed that 'the issue of jurisdiction was not remotely raised' in the manner that it was raised in the *Aladejobi's* case, hence its decision was *per incurium* and cannot be relied upon in the *Aladejobi's* case.[26] The jurisdiction of the Supreme Court as against that of the Appeal Committee of the Body of Benchers to entertain appeal from the direction of the LPDC was not in contention in *Okike's* case. Hence the *Okike's* case was not analysed with the depth with which the *Aladejobi's* case was on the subject of the body where appeal lies to. However, should the Supreme Court not have known that the applicable law that applied during the hearing of the *Okike'*s case did provide for the Appeal Committee of the Body of Benchers as the appropriate body to hear appeals from the decision of the LPDC even if it was not in issue in the case? Can the Supreme Court be possibly excused of this error?

3.3 Rotimi Williams Akintokun v LPDC

This is a landmark case in which the full court of the Supreme Court was constituted. In this case, a petition was written by the Ogunesu family against their legal practitioner Mr Rotimi Williams Akintokun for acts that constitute 'Professional misconduct' with respect to role in his dealings with their land. At the end of the hearing, the LPDC directed the Chief Registrar to

[24]*Akintokun v LPDC* (n 3).
[25]*NBA v Aladejobi*(n 4).
[26]*Akintokun v LPDC* (n 3) 84.

strike off the appellant's name from the roll of register kept at the Supreme Court. The appellant thus appealed against this direction to the Supreme Court.

When the matter came up in court, the Supreme Court *suo moto* raised the issue whether it was within the jurisdiction of the Supreme Court to hear appeals directly from the LPDC.
In addition to the counsel on both sides, the Supreme Court invited two *amici curiae* in the persons of the Attorney General of the Federation and the President of the Nigerian Bar Association to address it on the issue of whether or not it has the jurisdiction to hear the matter. The presentations made by the *amici curiae* were quite in-depth covering an in-depth analysis on the applicable laws and the disciplinary authorities in the legal profession as far back as 1958.

4. Analysis of the Issues

Despite the positions taken by both *amici,* the Supreme Court held that the 1994 Decree ought to be the extant law which states that appeal from the LPDC lies to the Supreme Court. The full court of the Supreme Court unanimously confirmed its position in *Aladejobi'*s case which is that the proper channel of appeal from the LPDC is to the Appeal Body of the Body of Benchers. After considering in details the circumstances surrounding the enactments, the chaotic provisions of the so-called repeal Decree no 43 of 1998 and NBA's schizophrenic approach, the basis of the Supreme Court's decision was that the extant law, was what was included in the LPA 2004 LFN which was repeated in the LPA 2007 revised edition. It provided in section 11 & 12 LPA that appeal lies from the LPDC to the Appeal Committee of the Body of Benchers. The 1975 LPA as amended was what was published in both 2004 and 2007 revised edition of the LFN. The 1994Decree amendment of the LPA was omitted in both the 2004 and 2007 revised edition LFN. According to both *amici curiae*, i.e., the Attorney-General of the Federation and the NBA President, the omissions were inadvertent. How excusable could that be? First it was omitted from the 2004 that is not considered while revising the laws for inclusion into the 2004 LFN. It was also not included in the subsequent 2007 LFN authorized by the Revised Edition (Laws of the Federation of Nigeria) Act, which empowered the Attorney General of the Federation to 'authorize the omission of certain enactments from the revision exercise'.[27]

[27] Ibid 93.

The Supreme Court held that since no such omission order by the Attorney General exists, there is no statute on ground upon which it can rely on to recognize the 1994 LPA as an existing law. A position the Supreme Court had taken earlier, in *Ibidapo v Lufthansa Airlines.*[28] The Supreme Court pronounced that the 1994 Decree 'is not a current law having been inadvertently omitted in the revision exercise of the Laws of the Federation…'[29] and cannot be applied since it conflicts with the provisions of the extant law. The Supreme Court also held that while it is a cardinal principle in law that a statute cannot be repealed by inference or implication, 'in law, there are circumstances the repeal of a statute can be 'inferred or implied: for instance where two acts of legislature are plainly repugnant to each other, that effect cannot be given to both'.[30]This position directly negates the position of Akinola where he explained: 'that laws cannot be repealed by implication or abandonment of harmonization in subsequent Laws of the Federation.'[31] Respectfully, Akinola's summation of Badejogbin's position on this point (which is but one of the number of factors Badejogbin relied on to canvass the position that the 1994 Decree could not be the extant law), is incorrect. According to the Supreme Court, where the provisions of the earlier statute conflicts with that of a later enactment, the later takes precedence. The Supreme Court specifically stated that:

> For there to be certainty in the law, this court and indeed all courts in the land must be able to place reliance on and apply the laws as contained in the compilation of the Laws known as the Laws of the Federation of Nigeria, 2004 as authenticated by the Revised Edition (Laws of the Federation of Nigeria) Act, 2007.

The Supreme Court admits that the provisions of both laws on the appellate bodies are 'certainly conflicting'.[32] In its analysis, the Supreme Court agreeing with Orojo and Badejogbin admits the presence of a dilemma as to whether or not the 1994 LPA was subsisting.[33] However with respect to pronouncing on the 1994 decree as the extant law as canvassed by the *amici curiae*, the Supreme Court held that the 'duty of resolving the anomaly' does not rest on it but 'falls within the legislative functions of the National Assembly'.[34] Therefore it held that the LPA contained in

[28](1997) 4 NWLR (Pt. 498) 124 at 149.
[29]*Akintokun v LPDC* (n 3) 95-96.
[30] *NBA v Aladejobi* (n 4) 30.
[31] OB Akinola (n 14).
[32]*NBAvAladejobi* (n 4) 22.
[33] Ibid 21.
[34] Ibid 23.

the 2004 LFN and its revision in the 2007 LFN which reflects the position of the 1975 Decree rather than the 1994 decree is an 'existing law approved by the National Assembly.'

A number of issues ensued in the course of the cases which were addressed in the judgments. First was with respect to the seeming disparity on its position on the *Okike* and *Aladejobi* cases. Commenting on its seeming conflicting decisions in *Okike* and *Aladejobi*, the Supreme Court explained that the cases are quite distinguishable. That *Okike* was clearly a constitutional matter where the court was to determine whether the appellate jurisdiction of the court limits it to entertain appeals only from the Court of Appeal with no power to entertain appeals from the LPDC. It stated that the provisions of the conflicting laws were never brought to its attention and the Court never averted its mind to the provisions of the 2004 LFN since it was never brought up in the case.

The second pertains to the line of argument by the appellant's counsel in *Akintokun* with regards to the fact that the Appeals Committee of the Body of Benchers was non-existent. The counsel's position was that since the Appeals Committee of the Body of Benchers was not in existence and was yet to be constituted, the aggrieved appellant being 'entitled to the reliefs he seeks by coming to this court,' must not be left at large. The Supreme Court's response to this was to reiterate that it was constrained by the express provisions of the extant law and could therefore not take an otherwise position even with the rights of the appellant to have access to an arbiter to hear his appeal being at stake. The Supreme Court went a step further to merely suggest the constitution of the Appeal Committee of the Body of Benchers if indeed it is not yet constituted. It again merely suggested that such body should be a standing committee just as the LPDC.

It is not in doubt that the LPA 1975 as amended clearly mandated the establishment of this committee and the failure to constitute it no doubt deprives litigants of their rights to seek redress in a court of law for whatever legal wrongs they suffer however mild and in this case, as grievous as being stripped of the right to practice as legal practitioners. The Supreme Court, sitting at the apex of the judiciary should at the least, have used a much stronger stance to condemn in no uncertain terms this severe violation of the rights of the citizens.

Whilst it must be conceded that the Supreme Court's analysis of the extant statutes is apt, should it be excused for failing to utilize an appropriate opportunity to engage in judicial activism,

especially when the Attorney General of the Federation whose job it was to compile the Laws of the Federation 2004, in his own words admitted the omissions, however inadvertently, of the 1994 Decree? The implication of not using this opportunity to put things right is that Rotimi Williams Akintokun whose neck was in the noose by virtue of the direction of the LPDC to have his name struck off the roll of legal practitioners, had no other place to lodge his appeal but to the non- existent Appeal Committee of the Body of Benchers. The foremost purpose of the Supreme Court's existence is for dispensing justice and protecting the rights of the citizenry therefore could it have done otherwise? Did it undermine the maxim 'where there is a right there must be a remedy'[35] and, 'where the ordinary remedy fails, recourse is made to the extraordinary remedy'?[36] Recourse is never made to the extraordinary where the ordinary is sufficient. The ordinary remedy here would have been the existence of the Appeal Committee of the Body of Benchers which was nonexistent. Could the Supreme Court thence have assumed jurisdiction as an extraordinary remedy in order to do justice to Mr Rotimi Akintokun as to do otherwise is to do great injustice to Mr Akintokun in the circumstance? Mr Akintokun had a right of appeal which unfortunately he could not exercise.

A more appropriate response however from the Supreme Court is that it should have ordered a structural interdict which is an order 'that compels a violator to take steps to correct a wrong … under the court's supervision'.[37] The Supreme Court should have therefore taken a firmer stance by ordering the expeditious establishment of the Appeal Committee of the Body of Benchers. The Supreme Court should have clearly stated the timeline within which this order must be fulfilled to ensure that the appellant's right of appeal is exercised within reasonable time. It should also have given a definite date on which the appropriate authority responsible for the establishment of the body would report to it that it has complied with the order. Structural

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[35] *Ubi Jus, Ibi Remedium*.

[36] *Ubilessat Remedium ordinariu Mibi Decurritur Ad Extra – ordinarian Ex Nunquam Decurretur Ad Extraordinarium Ubi Valet Ordinarium.*

[37] N. Swanepoe, ' The application of the Structured Interdict in the South African legal Order: A Distinctive Adjudication Process' *Litnet University Seminar* [2015] <www.litnet.co.za/the- application-of- the-structured-interdict-in- the-south- africanlegal- order-a- distinctive-adjudication- process.> accessed on 22 April 2020; J Klaaren, 'Judicial Remedies' in M Chaskalson, J Kentridge, J Klaaren, G Marcus, D Spitz, and S Woolman (eds), *Constitutional law of South Africa* (Cape Town, CT: Juta & Co Ltd 1999) 1-32. See also RE Badejogbin, 'Trajectory of a Noble Passion' in Josephine Jarpa Dawuni & Akua Kuenyehia (eds) *International Courts and the* N Swanepoel, (n 37) *African Woman Judge Unveiled Narratives* (Routledge, 2018) 134.

interdict is 'recognised as one of the most effective ways of dealing with constitutional rights violations and developing effective and appropriate relief'.[38]

5. Post Script

Responding to the decision of the Supreme Court that the 'duty of resolving the anomaly' does not rest on it but 'falls within the legislative functions of the National Assembly', the National Assembly in 2014 enacted the provisions of the 1994 Decree in the Laws of the Federation clearly stating that appeal from the LPDC lies to the Supreme Court. The case of *Nwalutu v NBA& Another*[39]decided in 2019 came up at the Supreme Court after the 2014 rectification of the LPA, hence there was no controversy as to whether or not the appeal on the right composition of the LPDC was rightly made to the Supreme Court from the decision of the LPDC. Determining the true extent law is crucial because it would prescribe the right body to hear appeals from the LPDC.

An important point to note throughout the pendency of the *Okike, Aladejobi* and *Akintokun* cases is that, both the 1975 LPA as amended and the 1994 Decree were applied at varying degrees and on diverse issues by the NBA hence the dilemma as to which of them was correctly the extant law.[40] This was what the Supreme Court sought to determine however, with respect to the appellate body to hear appeals from the LPDC. Based on the decision by the Supreme Court in *Akintokun's* case, the National Assembly took steps to correct the omission in the 2004 and 2007 LFN by reproducing the provisions in the 1994 Decree which provides that appeal from the LPDC is to the Supreme Court. This was corrected in 2014 in the 2004 LFN and remains the extant law hence appeals from the LPDC are made to the Supreme Court thereafter.

It may seem that the position of *Okike* that appeal from the LPDC is to the Supreme Court,was reinstated by the Supreme Court hearing appeal from the LPDC in *Nwalutu* but this was not so. The Supreme Court in *Nwalutu* stated that:

> The extant law which is in operation is the Legal Practitioners Act 2004 (incorporating the provisions of the Legal Practitioners) (Amendment) Decree No 21, 1994) published as Supplementary to the Laws of the Federation of Nigeria, 2004.

[38]; J Klaaren, (n 37).
[39] *Nwalutu v NBA* (n 5).
[40] RE Badejogbin (n 2).

By this, it means that the provision of the extant law is that the Supreme is the appropriate body to hear appeals from the LPDC. Hence, the positions of the Supreme Court in both cases were totally based on different premises. For the former, the Supreme Court was not aware of the position of the 2004 and 2007 LFN even though embarrassingly so. For the latter, it was solely based on the extant law duly corrected by the legislature eventually.

It is vital to note that the seeming repeal of the 1994 Decree was by inference and implication, hence, it seems from the case of *Nwalutu* that where the circumstances that create such inference and implication no longer exist, the Decree may survive. This must have been the basis for the eventual inclusion of the 1994 Decree in the 2014 amendment of the LFN and consequently the LPA. The 2010 LFN which reproduced the 1975 LPA was not in issue. Its process of enactment being challenged is an issue hence the reliance on the 2004 LFN. In addition, the 2014 amendment of the LPA was an amendment of the 2004 LFN and the Legal Practitioners' Disciplinary Committee Rules 2020 is a schedule to the 2004 LPA.

Conclusion and Recommendation

The Supreme Court's decision in the *Okike'*s case which held that appeal from the decision of the LPDC goes to the Supreme Court was made without any knowledge of the content of the 2004 and 2007 LFN. The decisions that appeal lies to the Appeal Committee of the Body of Benchers in the *Aladejobi's* and *Akintokun* cases where made based on the provisions of the extant law as the time the decisions were made. With respect to the Supreme Court's response in the *Akintokun* case, as explained earlier, it is recommended that the Supreme Court should have taken a firmer stance by ordering the expeditious establishment of the Appeal Committee of the Body of Benchers through a structural interdict which is an order 'that compels a violator to take steps to correct a wrong … under the court's supervision'.[41] This would buttress the foremost purpose of the Supreme Court's existence for the dispensation of justice and protection of the rights of the citizens.

Undoubtedly, the re-enactment and amendment of statutes and the judicial pronunciation by the Supreme Court on where lies appeal from Legal Practitioners' Disciplinary Committee have created mystery and obscurities. The paper has however endeavored to clarify the seeming mystery.

[41]N Swanepoel, (n 37).

It explained that the foundation statutes which was the legal practitioners Act 1962 provided that appeal shall lie to the Supreme Court from the LPDC, the 1975 Legal Practitioners' Act which succeeded the 1962 Act provided for the Appeal Committee of the Body of Bencher to whom appeal shall lie from LPDC. The LPA 1975 was enacted in the 1990 LFN. The 1994 Decree provided that appeal from the decision of the LPDC lied to Supreme Court. The Legal Practitioners' Decree 43 of 1998 which was meant to repeal the 1994 Decree did not achieve this aim.

These elucidations have undoubtedly demystified the seeming contradictions of the Supreme Court with respect to where appeal from the directions of the LPDC lies. Thankfully, this predicament has been addressed by the 2014 amendment of the LPA contained in the Laws of the Federation and confirmed by the Supreme Court and thence, solved the seeming mystery and controversies.