

PROPRIETY OF POLITICAL APPOINTEES' ENGAGEMENT IN PRIVATE LEGAL PRACTICE IN NIGERIA: *ACHIKA & ORS. V. N.K.S.T. HOSPITAL MKAR* IN PERSPECTIVE

David Tarh-Akong Eyongndi¹, Lukman Lambo Akanbi² & Lawrence Oyelade Oyeniran³

ABSTRACT

The National Industrial Court of Nigeria (NICN) in *David Achika & Ors. v. N.K.S.T. Hospital Mkar & Anor* adopted the *expressio unius est exclusio alterius* rule of interpretation and held that a Special Adviser (SA) on legal matters appointed on a permanent basis, with salary is not prohibited from engaging in private law practice while serving because he is not a public officer (PO) within the framework of part 2 of Code of Conduct for Public Officers (CCPO). This paper, through doctrinal method, reviews this decision by examining the propriety of permitting a Special Adviser on full-time basis and remuneration to engage in private law practice (PLP). It interrogates the nuances of permanent employment/engagement and argues that while an SA is not mentioned in Part 2 of the CCPO, engagement in PLP fosters divided attention despite being remunerated on full-time basis and it is a detraction from the notion of full-time employment/engagement. It further contends that engagement in PLP can expose a political appointee to conflict of interest which should be avoided. It makes recommendations on the amendment of the 5th Schedule to the 1999 Constitution to include political appointees within the prohibited ambit of persons to engage in private practice.

Keywords: Civil Service, Nigeria, National Industrial Court of Nigeria, Legal Practitioner, Public officer, Private law practice

INTRODUCTION

Part 1 of the Code of Conduct for Public Officers (CCPO) contained in the 5th Schedule to the Constitution of the Federal Republic of Nigeria, 1999 (hereinafter simply referred to as

¹Assistant Professor, College of Law, Bowen University, Iwo, Osun State, Nigeria. david.eyongndi@bowen.edu.ng or eyongndidavid@gmail.com

² PhD Candidate at Rivers State University, Email: fasabitna@yahoo.com

³ Lecturer, Department of Public Law, Faculty of Law, Adeleke University, Nigeria.

1999 CFRN) prohibits a Public Officer (PO) from putting him/herself in a position where his/her personal interest will conflict with his/her duties/responsibilities.⁴ Thus, where a PO is engaged in full-time employment, he/she is prohibited from engaging or participating in the management or running of any private business, profession or trade save farming.⁵ Part 2 of the CCOP which is *pari materia* with Section 318 of the 1999 CFRN lists the category of public officers (PO) Part 1 of the CCPO applies to and expressly exclude political appointee such as Special Adviser on Legal Matters.⁶

The NICN in *David Achika & Ors. v. N.K.S.T. Hospital Mkar & Anor*⁷ held that political appointees, such as Special Adviser on Legal Matters (SALM) and others, who are not expressly mentioned in Part 2 of the CCOP and invariably section 318 of the 1999 CFRN are not excluded from engaging in private practice such as private law practice. This is so notwithstanding that such political appointees' appointment is on a full-time basis and are entitled to regular remuneration like any other appointee/employee during the period of their appointment, are remunerated from taxes paid by citizens to whom they are expected to offer continuous/full-time services. The foregoing, despite its right standing in law, raises several fundamental questions which are: what is the propriety of permitting a full-time political appointee to engage in private practice whether on a full or part-time basis? Whether the decision does not detract from the concept of full-time employment/engagement? Whether or not such permission is not capable of festering conflict of interest or affects the appointee's duty to render faithful and continuous service to the appointer for the benefit of the citizenry? These issues form the crux and crucibles of this paper. Previous works have focused mainly on the propriety/legality of PO engaging in private practice, especially lawyers, thus, the majority of case laws revolve on this aspect of the issue without extending to political appointees. There is a dearth of both scholarly and judicial expositions on whether or not political appointees, who are by the extant provision of the law, not public officers, should be allowed to engage in private practice especially an appointee who is a lawyer bearing in mind the existence of a Ministry of Justice

⁴ Part 1 5th Schedule to the Constitution of the Federal Republic of Nigeria 1999.

⁵ *Ogbuagu v. Ogbuagu* (1981) 2 N. C. L. R. 680.

⁶ *Chief Chinekwu Iwuanyanwu & Anor. v. Inspector General of Police & Ors.* Unreported Suit No. FCT/HCM/871/2011.

⁷ Unreported Suit No: NICN/MKD/67/2016 Judgment delivered on the 12th day of April, 2022 by Essien J.

that provides legal services at the federal and state government levels. This article bridges this gap in knowledge by clinically appraising this issue which forms the fulcrum of the work.

By structure, the paper comprises five parts. Part one of this write-up contains the introduction. Part two traces the genesis of the prohibition of public officers from engaging in private practice in Nigeria with an emphasis on the legal profession. Part three contains a brief fact about the decision. Part four examines matters arising from the decision by focusing on its impropriety or otherwise. Part five captures the conclusion and recommendation of the study.

The paper adopts a doctrinal method in carrying out the study. The paper relies on primary and secondary data such as statutes, case laws, scholarly articles in learned journals, textbooks, and internet materials relevant to the subject matter. These data were subject to jurisprudential analysis.

EVOLUTION OF PROHIBITION OF PUBLIC OFFICERS FROM ENGAGEMENT IN PRIVATE PRACTICE

Prohibition of public officers from engaging in private practice dates to the enactment of the Regulated and Other Professions (Private Practice Prohibition) Act on the 12th day of December, 1984, in connection with any of the scheduled professions. Under the Act, the scheduled professions or calling are Architecture, Accountancy, Engineering, Estate Management, Law, Midwifery and Nursing, Pharmacy, Physiotherapy, Quantity Surveying, Radiography, Surveying, and Teaching. Thus, any public officer in these aforementioned professions was prohibited from engaging in private practice with limited exceptions.⁸

Section 1(2) of the Act defines what would amount to engaging in private practice within the purview of the aforementioned scheduled professions or callings. Acts such as establishment of an undertaken by a professional solely or in conjunction with others with the aim of offering services to the public for a fee, issuance of certificate or certification of persons in relation to the named professions/callings for a fee would amount to engaging in private practice. It should, however, be noted that, while the aforementioned

⁸ BU Ihugba, S Danwanka, S Oguche, and JE Omotokoro, "Revisiting the Prohibition of Private Practice for Public Officer in Nigeria and its Implication on Provision of Technical Services: The Case of Law Lecturers" (2019) 13(1) *Journal of Commonwealth Law and Legal Education* 1-13.

profession/calling and professionals are expressly prohibited from engaging in private practice, this prohibition is neither absolute, sacrosanct or untrammelled. They are permitted to offer their services to members of their family, close allies, charitable organisation to which they are members and other benevolent gestures without charging a fee. Commenting on the permissible allowance to engage in private practice by these professionals, Abdulkarim⁹ has opined that while these professionals are engaged in government employment as dentists, nurses, quantity surveyors, etc., they can simultaneously render their services to members of their church, community/neighbourhood, clubs or charitable organisations in which they are members or that have demanded their services on humanitarian grounds. Services rendered in this manner, would not come within the prohibited degree of private practice for obvious reasons. According to Giwa,¹⁰ the Act is not unmindful of the fact that every professional, must have a community value based on his/her acquired knowledge/skill. In fact, when an individual acquires advanced skills and knowledge, it is not meant for the betterment of his/her economic fortune only but that as his economic fortune is invariably improved, the society benefits thereof. While it is appreciated that the restriction placed on the aforementioned POs is to prevent conflict of interest and divided attention, Ihugba *et al*¹¹ have argued that there is a need to creatively balance the seemingly conflicting interest so that both sides can mutually benefit.

Thus, when the 1979 Constitution of the Federal Republic of Nigeria was enacted, the above prohibition was given constitutional foundation by virtue of Paragraph 1 of the Fifth Schedule to the Constitution, particularly section 2(b) thereof. Thus, in *Akinwunmi v. Dietespif* where the aforementioned provision of the 1979 Constitution was in issue, the Supreme Court held that a legal practitioner in a government tertiary institution was prohibited from engaging in

⁹ AK Abdulkarim, "All Teachers Can Practice and Act As Consultants For Free or For A Fee: The Case of Law Practice by Law Teachers" *A Paper presented at the 2015 Annual General Conference of the Nigerian Bar Association (NBA) on the 25th of August, 2015* in the International Conference Centre, Abuja. Available at

<<http://www.nigerianlawgru.com/articles/practice%20and%20procedure/LAW%20LECTURERS%20RIGHT%20TO%20PRACTICE%20LAW.pdf>> accessed 25 June 2023.

¹⁰ AO Giwa, "Law Lecturers and Court Room Attendance" (2003)1(4) *Nigerian Bar Journal* 503.

¹¹ BU Ihugba, S Danwanka, S Oguche, and JE Omotekoro, "Revisiting the Prohibition of Private Practice for Public Officer in Nigeria and its Implication on Provision of Technical Services: The Case of Law Lecturers" (2019) 13(1) *Journal of Commonwealth Law and Legal Education* 1-13.

private legal practice. This position was followed in *Ebiesuwa v. Commissioner of Police*.¹² The Regulated and Other Professions (Private Practice Prohibition) Act of 1984 further buttressed the prohibition by specifically outlining certain professions as scheduled professions which include Architecture, Accountancy, Dental Technology, Engineering, Estate Management, Law, Medical Technology, Medicine and Dentistry, Midwifery and Nursing, Pharmacy, Physiotherapy, Quantity Surveying, Radiography, Surveying, Teaching, and Veterinary Medicine. Section 1(2) of the Act defines what private practice means and its ambit. It also prescribed criminal sanctions for offenders and vested concurrent original criminal jurisdiction to trial offenders in the Federal High Court, High Court of a State or the High Court of the Federal Capital Territory, Abuja.

This seemingly draconic position of the law led to a massive exit of law lecturers from the various faculties of law in Nigerian universities in protest.¹³ To address this, the Regulated and Other Professions (Private Practice Prohibition) (Law Lecturers Exemption) (No. 2) Order of 1992 was made in the exercise of the powers conferred on the President and Commander-in-Chief of the Armed Forces, Federal Republic of Nigeria under section 1 (5) of the Regulated and other Professions (Private Practice Prohibition) Act 1984. The 1992 Order provided that, with effect from the 14th day of September 1992, a public officer engaged in the practice of law as a full-time law lecturer is exempted from the provisions of the Regulated and other professions (private Practice Prohibition) Act. Onoja¹⁴ has observed that this exemption brought some respite but same was not too long before it became a controversy requiring urgent settlement considering its importance and seeming volatility. The enactment of the 1999 Constitution included in it the 5th Schedule provisions (which is the same as that under the 1979 Constitution) prohibiting public officers from engaging in the running, management or control of private businesses with the exception of farming which is regarded as the golden profession which has not restriction or place to hide but can be engaged in by all and sundry irrespective of social status. Eyongndi and

¹² (1982) 3 N. C. L. R. 339.

¹³ IH Chiroma, EO Onoja, and O Bukola, "Should LAW Teachers Practice Law in Nigeria?" in IS Chiroma and YY Dadem (Eds) *Conference Proceedings of the 51st Nigerian Association of Law Teacher*, 2018) 54-67.

¹⁴ EO Onoja, "The Code of Conduct for Public Officers and Right of Audience of Law Lecturers in Nigeria: The Benue Valley" (2003) 2 *Journal of Interdisciplinary Studies* 1-17.

Ebokpo¹⁵ commenting on the reintroduction of the prohibition by the 1999 CFRN, stated that the respite enjoyed by law lecturers pursuant to Professions (Private Practice Prohibition) (Law Lecturers Exemption) (No. 2) Order of 1992 was irredeemably extinguished by both constitutions leaving the affected lecturers with the option of either leaving the ivory towers for full blown private law practice (which is undeniably more attractive and lucrative), or stay and comply while lobbying for constitutional amnesty like it was done prior to 1992. Given the supremacy of the 1999 Constitution by virtue of section 1(3) thereof, the erstwhile exemption given to law lecturers and doctors no longer subsist. The only saving grace given by the Courts is that an infraction of the 5th Schedule of the 1999 Constitution, it to be tried by the Code of Conduct Tribunal whose jurisdiction is activated only by the Attorney General (AG) either of the Federal or the various federating states and not the regular courts hence, matters bothering on infraction of the prohibition raised before the regular courts, have been rightly jettisoned on account of lack of jurisdiction.¹⁶

This objection is usually anchored on the legality of legal practitioners in government employ (public universities to be precise), engaging in private practice of law and it is troubling to note that, it is only in relation to law practice that such objections have been raised and argued before the court by legal practitioners against other legal practitioners who are in the academia. This seems to be a case of a dog attempting to (if not actually) eat another dog as there is no reported case where such objections have been raised in relation to any other profession or professional qua members except law (lawyers). It should be noted that in Nigeria, there is an unjustifiable harbouring of animosity by legal practitioners in private legal practice (litigation lawyers as they are styled) towards their colleagues in the ivory towers contending that the latter should remain in the classroom and not access the courtroom so as to prevent them from earning from both sides as a lecturer and as a private legal practitioner. Thus, it is not unusual to hear litigation lawyers (as they would prefer to be called) erroneously and shamefully accuse their law lecturers' colleagues of "wanting to

¹⁵ DT Eyangndi, and JI Ebokpo, "Prohibition of Private Practice by Law Teachers under 1999 Constitution and the Need for an Exemption: Another View" (2017) 1(1) *Afe Babalola University Private and Business Law Journal*, 57-85.

¹⁶ AA Kana, "All Law Teachers can Practice and Act as Consultants for Free or for a Fee: The Case of Law Practice by Law Teachers" being A Paper presented at the Annual Conference of the Nigerian Bar Association (NBA) at the International Conference Centre, Abuja on 25th August, 2015.

eat with both hands or from both sides” without countenancing the benefiting of practical knowledge garnered from courtroom practice to the training of law students in the universities. This animosity is greater and explosive when it comes to the conferment of the prestigious rank of Senior Advocate of Nigeria which the litigation lawyers have vehemently although unjustifiably and sacrilegiously argued, should not be opened to their colleagues in academics as they are not advocates forgetting that advocacy is expansive and extensive beyond the limited and limiting walls of a traditional courtroom. In fact, it is a case of the student claiming to have emerged as a master without the teacher even though it is a truism that the servant/student is never greater than his/her master even if the servant does greater work. It is hoped that the continuous internal wrangling, unhealthy and needless rivalry and hullabaloo on the sphere of practice and professional meritorious acknowledgement/attainment within the legal profession (whether SAN or Professorship as the case may be), will soon become a relic of a bygone era by making these attainments, accessible by all who are deserving and have earned it through dint of hard work and meritocracy. The reason is that even the preferment of the coveted SAN or promotion to professorial rank, are (if not have) become political and hereditary than merit thereby lowering the esteem and honour attached to them.

EXPLICATING DAVID ACHIKA & ORS. V. N.K.S.T. HOSPITAL MKAR & ANOR

From the outset, it should be noted that the National Industrial Court of Nigeria (NICN), is a court of first instance. Given the fact that it is a court of first instance, one may wonder about the utilitarian value of an exegesis of its decision. This question that may sublimely be raised in the minds of readers needs telepathic explanation. First, it must be appreciated that although the NICN is a court of first instance, it is a specialised court. Specialised in the sense that it was created with the sole aim of adjudicating labour and employment matter as pointed out by Akintayo and Eyongndi.¹⁷ The NICN, by virtue of Section 254C (1) of the 1999 Constitution of the Federal Republic of Nigeria (Third Alteration) Act, 2010 (1999 CFRN (Third Alteration) Act, 2010), has an exercise exclusive original civil jurisdiction over

¹⁷ JOA Akintayo, and DT Eyongndi, “The Supreme Court Decision in *Skye Bank Ltd. v. Victor Iwu: Matters Arising*” (2018) 9(3) *The Gravitas Review of Private and Business Law, University of Lagos* 98-119.

labour, employment and ancillary matters.¹⁸ Aside from this, based on the provisions of Section 243 of the 1999 CFRN (Third Alteration) Act, 2010, Eyongndi and Ilesanmi¹⁹ have emphasised the fact that the NICN is an important court for the two-fold reasons that it is a Superior Court of Record (SCR) and appeals from its civil decisions, lie to the Court of Appeal (CA) whose determination is final as no appeal from such civil matters determined by the CA, can proceed to the Supreme Court.²⁰ Eyongndi²¹ has noted the point that the special status of the NICN, coupled with the fact that it is a SCR, gives its judgments special status worthy of intellectual intercourse.

The brief facts of the case are that, the Claimant are staff of the Respondents whose salary were outstanding hence, they instituted an action at the NICN, Makurdi Division. On the 6th day of July, 2021 when the case came up, one Mr. E.Z. Agbakor Esq. announced appearance as counsel for the Defendant. the Claimants' counsel raise an objection to the appearance of Mr. E.Z. Agbakor Esq. on the ground that he is a Special Adviser to the Governor of Benue State on Legal Matters and as such, cannot engage in private legal practice simultaneously. The Court directed parties file addresses on the objection. The Claimant argued vehemently that a legal practitioner on full time basis cannot simultaneously engage in private legal practice just as a public officer cannot engage in private legal practice save for the employer this is pursuant to the Code of Conduct for Public Officer and the 5th Schedule to the 1999 CFRN. The Defendants on the other hand argued that Mr. E.Z. Agbakor Esq. who is said to be a Special Adviser on Legal Matters to the Governor of Benue State is not a public officer within the ambits of Part 1 of the 5th

¹⁸ DT Eyongndi, and C Okongwu, "Interrogating the National Industrial Court Strides towards Attaining Safe Workplace for Nigeria's Female Worker" (2021) 6(1) *Bangladesh Institute of Legal Development Law Journal* 122-146.

¹⁹ Eyongndi, D.T. and Ilesanmi, S. I. (2022) "Territorial Jurisdiction of the National Industrial Court of Nigeria (NICN) and the requirement of Endorsing Originating Processes under the Sheriffs and Civil Process Act (SCPA) Determined" 9(1) *Journal of Comparative Law in Africa*, University of Cape Town, South Africa, 162-177.

²⁰ see the Supreme Court decision in *Skye Bank Ltd. v. Iwu* [2017] 6 SC (Pt.) 1; Eyongndi, D.T. & Ajayi, M. O. (2022) "Effects of Covid-19 on Labour Relations in Nigeria: Navigating through the Murky Waters by Balancing Contending Interests" 17, *The Nigerian Juridical Review, University of Nigeria*, 23-41 ; Eyongndi, D.T. & Dawodu-Sipe, O.A. (2022) "The National Industrial Court Stemming of Unfair Labour Practice of Forced Resignation in Nigeria" 12(2) *Nigerian Bar Association Journal*, 183-197.

²¹ DT Eyongndi, "An Appraisal of HIV and Aids (Anti-Discrimination) Act, 2014 and the Tides of Employment Discrimination in Nigeria" (2020) 8(1) *Africa Nazarene University Law Journal* 111-127.

Schedule to the 1999 CFRN as defined by Section 19 of the 5th Schedule and 318 of the 1999 CFRN. They contended that the sections having clearly omitted mentioning a Special Adviser in the list of public officer, same cannot be imported or incorporated by any stretch of imagination as attempted by the Claimant. They placed reliance on the position of the law that *expressio unius est exclusio alterius* (meaning the express mention of one thing, is the exclusion of all others) as was held in *Amgbare v. Sylva*.²² They argued that Rule 18 of the Rules of Professional Conduct for Legal Practitioners, 2007 does not prohibit a legal practitioner in a salaried employment from putting up appearance for his family as well as any association he belongs hence, Mr. E.Z. Agbakor Esq. being a member of the Defendant, could appear in court as its counsel.

The court after the argument of the parties, noted that Sections 318 and 19 of Part 1 of the 5th Schedule to the 1999 CFRN has unambiguously specified the persons that fall within the confines of public officers and therefore prohibited from engaging in private practice. The Court found that from the provisions above, the position of Special Adviser to the Governor on Legal Matters or any other, is not expressly mentioned under the category of office holders constituting public officers. It adopted the *expressio unius est exclusio alterius* rule of interpretation of statutes adumbrated in *Mazeli v. Mazeli*.²³ The Court agreed that there are avalanche of decisions to the effect that a lawyer in salaried employment cannot engage in the practice of law such as *Plateau State University Bakkos v. Grace Joseph & Ors*²⁴ in which the legal practitioner here was a full time staff on salaried employment of the appellant and comes under section 318(f) of the 1999 CFRN as a public officer. The Court placing reliance on the Court of Appeal (CA) decision in *Sulaiman Adamu v. Mohammad Sani Takori & 7 Ors*²⁵ where the CA held that section 318(1) of the 1999 CFRN provides both political and non-political office in a State and persons who do not owe their appointment to the Civil Service Commission but are appointed by the Governor are not in the civil service or that State and not public officers within the confines of sections 66(1) (f) and 318(1) of the 1999 CFRN. Hence, only a public officer employed in the public service of the federation or a State is caught by the aforementioned provision of the 1999 CFRN. The court based

²² [2007] 18 NWLR (Pt. 1066) 1 at 26.

²³ [2012] LPELR-19945 (CA); *Udo v. Orthopaedic Hospital Management Board* [1993] 7 SCNJ 436.

²⁴ [2018] LPELR-46049 (CA).

²⁵ [2009] LPELR-3593 (CA).

on the CA decision in *Progressive People Alliance v. People Democratic Party*²⁶ emphasised the fact that political appointees such as Mr. E. Z. Agbakor Esq. holds office at the pleasure of the appointer (i.e. the Governor) and not the Civil Service Commission is not by virtue of his appointment, barred from engaging in private legal practice so long as his appointer has not objected to it.²⁷

The Court finally reasoned that “if it is agreed that the occupant of the office of Special Adviser to the Governor is not recognised as a public officer for the purpose of code of conduct, it therefore follows that the holder of that office is exempted from the application of Part 1 of the 5th Schedule to the 1999 CFR. In other words, a Special Adviser to the Governor is not a public officer. This is so because the Constitution does not mention a political appointee as included amongst public officers in section 318 of the 1999 Constitution.”²⁸ It finally held thus “from the above, it is the finding of this court that Mr. E. Z. Agbakor who is alleged to a Special Adviser to the Governor of Benue State on Legal Matters is not a public officer. At most, he can be described as a political appointee and the provisions of Part 1 of the 5th Schedule to the Constitution cannot be invoked to prevent him from appearing for the defendants in this case.”²⁹

Certainly, this decision has far-reaching effect which is discussed below. The detailed highlight of the facts, arguments of the parties and the decision of the court as captured above is necessary. Aside from aiding readers who might be unfamiliar with the decision acquaint themselves, it serves as the launchpad for the subsequent rigorous interrogation of matters arising from the decision.

MATTERS ARISING FROM *DAVID ACHIKA & ORS. V. N.K.S.T. HOSPITAL MKAR & ANOR*

This judgment has of course, raised some salient issues. At the risk of repetition, it is apposite to reiterate the questions which have been raised in part one of this article. These

²⁶ [2009] LPELR-4865.

²⁷ *David Achika & Ors. v. N.K.S.T. Hospital Mkar & Anor*. Unreported Suit No: NICN/MKD/67/2016 Judgment delivered on the 12th day of April, 2022 by Essien J at 6.

²⁸ *Ibid.* at 7.

²⁹ *Ibid.* see also *Comrade Ngodoo Toryem & Anor. v. Nigeria Civil Service Union* Unreported Suit No: NICN/MKD.96/2020 Judgment delivered on the 9/12/2021.

questions are: what is the propriety of permitting a full-time political appointees to engage in private practice whether on full or part-time basis? Does this decision not detract from the concept of full-time employment/engagement? Whether or not permitting a full-time political appointee to engage in private practice is not capable of festering conflict of interest or affects the appointee's duty to render faithful and continuous service to the appointer for the benefit of the citizenry. Whether or not in the interest of the public, it is not necessary and expedient to bar full-time salaried political appointees from engaging in private practice with the exception of law teachers and medical doctors. These issues are addressed in this section of the paper.

The concept of full-time work, according to Agomo,³⁰ connotes that, an employee once engaged, subject to being found worthy, will work until retirement age. During the subsistence of the employment or engagement, the person engaged is rightly expected to undistractedly use the whole of his time, skill and professional resources to further the interest of the employer or the person who has hired him/her solely. It places an obligation on the worker or hiree to continuously devote his/her entire working time to render continuous faithful and loyal services to the employer or the person who has engaged him/her in exchange for the wages/salary being received.³¹ The only periods the worker is permitted to refrain from work is during leave or any other period he/she is so permitted and such permitted periods, is usually for rest and not for the worker to engage in other income generating ventures. It is a fact that political appointees are remunerated from tax payers' money, as such, they (i.e., tax payers) should have the privilege of exclusive service being rendered by such appointees. The fact that the appointer permits or does not object to such engagement does not absolve it from running afoul to the concept of full-time engagement or the legitimate expectation of full-time service delivery by the tax payers. Where same is done for charitable purposes without any real pecuniary benefit accruing to the appointee, it could be understood but should not be encouraged as a pecuniary benefit, is not the only benefit one can get from such engagement. In Nigeria today, the concept or practice of part-time work for political office holders or appointees is unknown. The only existing

³⁰ CK Agomo, *Nigerian Employment and Labour Relations Law and Practice* (Lagos: Concept Publications Ltd., 2011) 77.

³¹ T Mustapha, "The Position of the Nigeria as regards Law Lecturers engaging in Private Practice" <https://legalideasforum.com/the-position-of-the-nigeria-as-regards-law-lecturers-engaging-in-private-practice.html> accessed 25 June 2023.

arrangement is full-time, tenured work which requires the PO or appointee to render continuous service and abstain from engaging in any work that would interfere with his continuous work. The case seems to be the golden rule that no one can serve two masters at a time. Thus, permitting a political appointee to engage in private practice is a detraction from the tenet of full-time employment or being engaged on full-time basis with remuneration.

The rationale of forbidding public officers from engaging in private practice is not farfetched, the need to ensure that the public which remunerates a person, (i.e., a public officer or government appointee), gets undivided attention from services rendered by the individual and avoid a clash of his interest with that of the public he/she is serving is the underpin. In fact, the law is that equity leans against double portion; having been remunerated by the appointer, a political appointee should not earn another wage from private practice concurrently. While it may be sought to be justified as being legal (as seen in the preceding section that the court has held that same is not prohibited) but it is immoral to permit a person who is remunerated with tax payers money to engage in private practice especially law practice that is time-consuming. How does the fellow reconcile the expectation of his clients with that of taxpayers which he ought to meet continuously? We contend that this particular case is more of moral and custom than law, it could not have been the intention of the legislature that a political appointee on a full-time appointment should be allowed to dabble into private practice concurrently. A law or decision that does not accord with moral sanctity of the society or is capable of offsetting same is dangerous to the moral cohesion of the society. The ambit of conflict of interest is expansive, it is not limited to situations where the appointee's personal business (interest) conflicts with his/her official responsibility only. In fact, where a government appointee, accepts extra ordinary gifts from members of the society for instance, where a judge accepts an apartment or any other valuable gift from a politician or a person of influence which would not have been given to him/her but not for the fact that he is a judge, this raises an issue of conflict of interest/abuse. Another instance is when a Special Adviser to the Governor/President gets a car gift or paid vacation from a government contractor for contracts awarded. The concomitance of this is that such a benefactor is likely to get an undue advantage over other bidders with the influence of the beneficiary.

The possibility of conflict of interest in the event of engaging in private practice by a political appointee cannot be wished away. Where a political appointee is engaged in a matter that runs contrary to the interest of the public or raises a conflict of interest between his personal interest and that of the public, which of these interests will be sacrificed? It is our firm contention that a public officer should not even be given the opportunity to be in the sorry state of wrangling with a conflict of interest. The ideal should be that where a political appointee wishes to engage in private practice, he/she should honourably resign from the appointment and then engage in private practice, such does not raise any matter of conflict of interest or probity. Alternatively, where the work schedule of the PO permits him/her to engage in private practice, the engagement must be primarily for the direct benefit of the masses and any income earned, must be transferred to the public coffers and not become an extra income earned by the PO. Take for instance where a PO who is a medical doctor is allowed to undertake surgeries in a hospital and he is not remunerated for such services but mainly *pro bono* but ensuring that the remuneration he/she is given, is only enough to cover his transport expenses and nothing more. The law is meant for man and not man for the law, a court when adjudicating, should always be mindful of the outcome of its decision and its impact on the society thereafter. It is doubtful if a legal practitioner in the employ of the Ministry of Justice could by this decision legitimately engage in private practice at the close of work or during weekend since he is not doing so during official work hour. The restriction is total and complete.

Where it has become expedient that a government appointee engages in private practice due to the luxury of time or during spare time such as a leave period, take for instance, a medical doctor, nurse or any other allied medical professional or the likes, such engagement should be strictly for the benefit of the public. The point being canvassed is that where engagement in private practice is for the furtherance of public good and not as a means of earning extra income, a government appointee may be morally justified to deviate from strict compliance. Take for instance, where such an appointee takes his/her leave to engage in medical consultancy or birth delivery as a form of humanitarian service. The point should be noted that where continuous practice is necessary for such an appointee to keep in touch with his/her profession, permitting such an appointee to engage in private practice without the aim of generating extra income as it were (if income is generated at all, only to carter for the immediate expenses incurred in providing such services), this may be considered worthwhile and permissible.

While it may be argued that law lecturers in public institutions can be justifiably exempted from the restriction placed on public officer by paragraphs 1 and 2 of the 5th schedules of the 1999 CFRN and sections 5 and 6 of the Code of Conduct Bureau and Tribunal (CCBT) Act, same cannot be the case for a special adviser on legal matters. The law lecturer will need to engage in private law practice so as to acquire up-to-date practical knowledge of the law which he will in-turn impart the students he is teaching.³² The need to impart practical knowledge and not mere theory may justify the argument to permit law lecturers to engage in private law practice but a political appointee is not in the position of a law lecturer.³³ In fact, this necessity had led to the exemption of law lecturers in tertiary institutions from the shackles of the Code of Conduct via the Regulated and other Professions (Private Practice Prohibition) (Law Lecturers Exemption) (No. 2) Order 1992 which constitutional status is controversial since the enactment of the 1999.³⁴ While several attempts have been made to challenge the propriety of law lecturers' engagement in private practice, it will seem that the unanimous position of the courts in declining jurisdiction to entertain such challenge as in *Ahmed v. Ahmed*³⁵ and *Plateau State University Bokkos Joseph*³⁶ is in tacit recognition of the utilitarian value of law lecturers engagement in private law practice *vis-à-vis* training of law students. It is therefore imperative that the relevant provisions of the 1999 CFRN and the CCT Act disallowing law lecturers from engaging in private practice be reviewed and expunged from these laws to clear the coast.

The Ministry of Justice (MJ) under the direction of the Attorney General and Minister/Commissioner of Justice (AGCFJ) is available to render legal services to the government of the State. The Attorney General's office has in it many lawyers with experience and expertise in various areas of law who can competently advise and give legal

³² Ebi Robert "The Legality of Law Lecturers in Public Institutions Engaging in Private Practice" <http://www.nigeriabar.com/2017/11/the-legality-of-law-lecturers-in-public-institutions-engaging-in-private-practice#.YuvaWxzMLIU> accessed 26 June, 2022.

³³ Unini Chioma, "A Lawyer in Civil Service Cannot Engage In Private Practice" <https://thenigerialawyer.com/a-lawyer-in-civil-service-cannot-engage-in-private-practice/> accessed 26 June, 2022.

³⁴ David T Eyongndi John Ifeanyi Ebokpo, "Prohibition of Private Practice by Law Teachers under the 1999 Constitution and the Need for an Exemption: Another View" (2017) 1(1) *ABUAD Private Law Journal* 57-85.

³⁵ (2013) ALL FWLR (PT. 699) 1025.

³⁶ (2018) LPELR-46049.

representation to the government in all matters. It is therefore not necessary for an appointee to even seek to offer legal service for the appointer.

In fact, a tidier way out of the quagmire the NICN was faced with was to go the way both the two appellate courts have gone in previous cases bothering on the infraction of the provisions of the 5th Schedule of the 1999 Constitution. From the cases discussed above, the two appellate courts have declined jurisdiction to entertain the objection raised on the ground that any complaint on the infraction of the 5th Schedule can only be validly raised and litigated as first instance at the Code of Conduct Tribunal which has original jurisdiction over that part of the 1999 Constitution.

CONCLUSION AND RECOMMENDATIONS

The Code of Conduct was institutionalised to regulate the conduct of public officers. Pursuant to the Code, public officers are barred from engaging in private practice or management of any business or enterprise except farming. This is to ensure that their obligation to offer continuous and faithful service to the public is not impeded by their private engagement. The 1999 CFRN has clearly spelt out category of workers that are regarded as public officers and the NICN, based on this specification, have held that any officer not expressly mentioned in section 318 and Part 1 of the 5th Schedule to the 1999 CFRN, cannot be imported into it even if the office has public service colouration hence, a Special Adviser to the Governor of Benue State on Legal Matters, having not been mentioned as a public officer, is not a public officer.

While this decision is representative of applying the law the way it is, it is noted that where applying the law the way it is will lead to an absurdity of injurious to the public, the court are excused from giving the ordinary grammatical meaning of the law effect to prevent unintended consequences. This position taken by the NICN as discussed above, unfortunately, has raised more questions than it has resolved. The law is meant for man and not man for the law and the courts must always place the interest of the public over legislative semantics. This decision is capable of negatively affecting public interest and should therefore not be allowed to subsist as same is not a welcomed development as it does not even come within the confines of situations warranting an exception in the interest of the public such as Nigerian university law teachers and medical doctors.

Based on the findings above, it is recommended that the Legislature should forthwith amend the 1999 CFRN especially section 318 and Part 1 of the 5th Schedule to the 1999 CFRN to include full-time political appointee by the President, Vice President, Governor, Deputy Governor, Legislators, etc. as comprising public officers and therefore barred from engaging in private practice during the period of their appointment. This is to ensure that their undivided time is dedicated to the service of the State from which they are remunerated.

The Claimant should appeal the decision to the Court of Appeal seeking same to be overturned although same is in accordance with the law. However, the decision does not take into cognizance the need to protect the interest of the public. Alternatively, if the NICN has the opportunity on deciding on a similar matter, this present decision should not form a precedent as same is not a welcomed development.

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