

IN THE LEGAL PRACTITIONERS DISCIPLINARY COMMITTEE
BODY OF BENCHERS
HOLDEN AT ABUJA

COMPLAINT NO.BB/LPDC/360/2020

BETWEEN:

CAPT. DADA OLANIYI LABINJO = = **APPLICANT**

Vs.

JONATHAN CHINEDU NWAGWU, ESQ = = **RESPONDENT**

CORAM

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| 1. | AHMED MUSTAHPA - GONIRI, ESQ, LIFE BENCHER | = = | PRESIDING MEMBER |
| 2. | HON. JUSTICE AISHA BASHIR ALIYU, CJ NASARAWA, BENCHER | = = | MEMBER |
| 3. | HON. JUSTICE HALIMA IBRAHIM ABDULMALIK, CJ NIGER, BENCHER | = = | MEMBER |
| 4. | MR. UMEH KALU, SAN, LIFE BENCHER | = = | MEMBER |
| 5. | EBENEZER OBEYA, ESQ, LIFE BENCHER | = = | MEMBER |

DIRECTION DELIVERED BY EBENEZER OBEYA, ESQ, LIFE BENCHER ON
24TH DAY OF APRIL, 2024

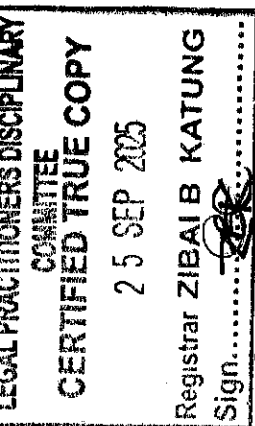
By an Originating Application dated 26th November, 2020 and filed on 7th December, 2020, the Applicant, on behalf of Marina Law Chambers through Chukwudi Nwadike, Esq complained of acts of professional misconduct against the Respondent in the following terms:

- ***“Misappropriations and conversion of the sum of ₦1,947,043.70k (One Million, Nine Hundred and Forty – Seven Thousand, Forty – Three Naira and Seventy Kobo) and also ₦500,000.00 (Five Hundred Thousand Naira) only on different occasions being money belonging to the Chambers; and***
- ***Forgery and Misrepresentation.”***

It was accompanied by a statement of facts by the said Chukwudi Nwadike Esq and a verifying Affidavit of Capt. Dada Olaniyi Labinjo, a lawyer and Managing Partner of Marina Law Chambers.

In his Affidavit of 25th November, 2020, Capt. Dada Labinjo deposed as follows:

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1. That I am the Managing Partner of Marina Law Chambers and by virtue of which I am conversant with the facts deposed to herein;
2. That as the Firm representing the Plaintiffs in the Suit No: FHC/L/CS/1149/2018 between USMAN ILU & 7 ORS V. MT UNITED VENTURES & 2 ORS. Barr. Vivian Ezeukwu and I met with the Counsel representing the Defendants to agree on the Terms for the out of Court Settlement by end of August, 2018;
3. That we settled for 100% of the crew salaries due and 50% of the Master's Disbursement at the time of the settlement. Barr. Vivian Ezeukwu was the Counsel handling the matter;
4. That Mrs. Bola Labinjo the Executive Director (Finance and Admin) of Marina Law Chambers and I were arrested by the Nigerian Navy on 14th and 13th September, 2018 respectively;
5. That we were kept in underground solitary cells in DIA detention facility, Abuja and were not allowed to receive our family, friends and lawyers until our release on 3rd August and 2nd December, 2019 respectively. Attached and marked as MLC 1 are the Courts' Orders for Release;
6. That for ease of disbursement, Mr. Jonathan Nwagwu who was the Head of Marina Law Chambers received the Judgment sum of N25,856,000 (Twenty - Five Million, Eight Hundred and Fifty - Six Thousand Naira) only in his personal account as he was not a signatory to the Marina Law Chambers account. Attached and Marked as MLC 2 is the GT Bank online transfer advise;
7. That the sum of N500,000 (Five Hundred Thousand Naira) was stolen out of the Judgment sum being money

- belonging to the Chambers, which he never disclose (sic) to anyone;
8. That he misappropriated and converted the sum ₦1,947,043.70k (One Million, Nine Hundred and Forty-Seven Thousand, Forty-Three Naira and Seventy Kobo) out of the Judgment sum after disbursement;
 9. That also contrary to my specific instructions to him and all the Lawyers in the Chambers which was clear, unqualified, unambiguous and unequivocal that 1st - 4th Defendants who we represented in the Suit No: FHC/L/CS/1139/2009 between Energy Culture Ltd V. Belfor Nigeria Ltd & 6 Ors have decided NOT to settle out of Court, insisting on their Counter-Claim he entered into Terms of Settlement while I was in detention without authority;
 10. That he further caused my signature to be forged on the Terms of Settlement entered as a Consent Judgment in the said Suit. A Certified True Copy of the Terms of Settlement and Consent Judgment are hereby attached and marked as MLC 3;
 11. That as the Counsel on record, Mr. Jonathan Nwagwu also counter-signed the Terms of Settlement in which my signature was forged;
 12. That as a Counsel in the Suit No: FHC/L/CS/1139/2009 between Energy Culture Ltd V. Belfor Nigeria Ltd & 6 Ors with express limitation not to compromise the Suit, he fraudulently entered into a settlement out of Court and lied to the Court that his Client's approved that the Terms be entered as Court judgment;
 13. That after the release of Mrs. Bola Labinjo on 3rd August, 2019, he was issued query letters on 26th September, 2019 vide an email dated 27th of September, 2019 for being absent from duty without any reason and misappropriation

of the Chamber's fund but he never responded to it and he was subsequently suspended on 30th September, 2019 without pay, vide an email dated same day. Query Letters and Suspension Letter are hereby attached as MLC 4;

14. That after my release on 2nd December, 2019, I called a General Meeting of the Chambers on the 13th of December, 2019 at 1A Rycroft Road, Apapa, Lagos with invitation extended to Mr. Jonathan Nwagwu to provide an account of how the Chambers was run in my absence; and
15. That Mr. Jonathan being in the know of the purpose of the said meeting appeared without records of his financial stewardship of the money received for the Chambers in the Suit No: FHC/L/CS/1149/2018 between USMAN ILU & 7 ORS V. MT UNITED VENTURES & 2 ORS."

In response, the Respondent filed an Affidavit of Defence to the Originating Application dated 8th February, 2021 out of time but was deemed properly filed on a motion moved and granted on 14th July, 2021. Relevant paragraphs of the Affidavit state that:

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2. That I was called to the Nigerian Bar on September 6, 2006 and my Supreme Court Enrollment Number is SCN052392;
 3. That my contact details are No. 15, St. Finbarrs Road, Akoka, Lagos, Nigeria. 08052285223 and jonalism@yahoo.com;
 4. That I acknowledge that I am indebted to Marina Law Chambers to the tune of N1,947,043.70 (One Million, Nine Hundred and Forty – Seven Thousand, Forty – Three Naira and Seventy Kobo) only, which I borrowed from the Chambers as an IOU in order to resolve some urgent and unforeseen personal and family issues;

5. That I used the funds I borrowed to pay my rent which had become overdue, to pay for the medical expenses and eventual burial expenses of my uncle in the village who had stroke and later became deceased at the time and resolve some other unforeseen personal and family issues that emerged at the time;
6. That I had to borrow the money from the chambers account because I could not raise the money otherwise, due to the fact that we were in hiding from the personnel of the Nigeria Navy (sic) who were hunting for us to arrest and detain me and my colleagues because of our connections with the Labinjos (the Petitioner);
7. That the Capt. Dada Olaniyi Labinjo and Mrs. Bola Labinjo were arrested and detained by the Nigeria Navy (sic), initially for absconding from the Nigeria Navy (sic) but that the nature of offense was later stated by the Nigeria Navy (sic) to be offences related to oil bunkering. Please find Nigeria Navy (sic) response to Marina Law Chambers letter authored by me marked JN-01;
8. That after the Labinjos were moved from NNS BEECROFT were (sic) they were initially incarcerated (sic) to Abuja and eventually to an unknown place, personnel of the Nigeria Navy (sic) began parading our office and monitoring me and my colleagues, necessitating us to stop coming to the office and go into hiding instead;
9. That I know that if the Labinjos had not been incarcerated, at the time of the events, they would have considered my immediate predicament at the time and granted the loan to me as an IOU;
10. That at various meetings called by Mrs. Bola Labinjo, at her residence, at Lisabi Road, Apapa Residential Estate, Apapa, Lagos, particularly on 14th September, 2019, I rendered

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account of my stewardship and all expenses to Mr. Bola Labinjo (sic);

11. That I know that I rendered account of the expenditures of the firm, including an excel sheet of all the chambers expenses and all the bank transactions as regards all the payments made out, to Mrs. Bola Labinjo and I forwarded all the bank transactions to her through her Whatsapp 08150646724;

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28. That I met with Capt. Dada Labinjo and at that meeting, I again informed him of the amount I took and the reasons why I had to take the funds;
29. That Mrs. Bola Labinjo came into the meeting and stated, among other things, that I had indeed given account of the chambers finances including the sum I borrowed and that furnished her with all the records as I stated;
30. That Capt. Dada Labinjo thereat informed me that he would convert the funds to a loan borrowed from the chambers and requested for when I would pay back the loan;
31. That I request to be given till the end of the first quarter of the 2020 to repay the funds, and that I had plans to sell my land I owned at Ikorodu, in order to repay him;
32. That Capt. Dada Labinjo promptly requested that I give him the title documents to the land as security for the loan;
33. That thereafter, I informed Capt. Dada Labinjo that in order to be able to earn money, so that I can start paying back what I owe the chambers, I would like to be given some leeway from the numerous chambers meetings being called at the time regarding the rendering of stewardships,

as coming to Apapa had become very difficult for me, due to lack of funds and the notoriously heavy Apapa traffic;

34. That Capt. Dada Labinjo promptly refused and informed me that I was not in a position to make such demand and that I must attend any and all meetings he calls without any question or objection.
35. That I then informed him that I would like to disengage from the services of the chambers so that I can find work to earn money to repay him, but that I would be willing to do works for the chambers, free of charge, at any time I am requested to, in order to also defray the debt I owe;
36. That Capt. Dada Labinjo informed me to forward my resignation and include therein the sum of ₦1,947,043.07 as my outstanding obligations to the chambers and that I would give my land titles to the chambers, which I did, out of respect for him;
37. That contrary to the assertion in paragraphs 7 and 8 of Capt. Dada Labinjo's Affidavit of Verification in Support of the Complaint dated 25th November, 2019, I disclosed all the events that transpired in the chambers including all the monies received and all the expenses, including the monies I borrowed from the chambers and reason for same to Mrs. Bola Labinjo and Capt. Dada Labinjo, upon their release from the clutches of the Nigeria Navy (sic);
38. That it was not (sic) impossible for me to have sought their permission as they were incarcerated and held incommunicado at an unknown location by the Nigeria Navy (sic) at the time;
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43. That I did not, at any material time, forge nor cause the signature of Capt. Dada Labinjo to be forged on any court

papers or any document whatsoever, nor did I act in contrast to any instructions whatsoever given by same Capt. Labinjo;

44. That the Suit No. FHC/L/CS/1139/2009, was instituted by Energy Culture Nigeria Limited against Belfor Nigeria Limited and 6 Ors sometimes in 2009 for contractual fallouts involving the shipment of AGO from Lagos Port to Calabar Port, on the ship MT SANTA CLAUS;
45. That this matter was at trial stage when parties commenced out of Court settlement in order to resolve the matter amicably;
46. That parties in the suit, along with their counsels, met once at the secretariat of the Nigeria Shipowners Association (sic) at 108 Rycroft Road, Apapa, Lagos;
47. That the meeting was adjourned for parties to review their positions when parties could not reach an immediate resolution;
48. That prior to the parties settling the matter, Capt. Dada Labinjo and Mrs. Bola Labinjo, the Directors of AL-DAWOOD Shipping Lines, the 4th Defendant in the aforementioned suit, were arrested and detained by the Nigeria Navy (sic) at unknown locations;
49. That the suit became stalled and could no longer proceed due the protracted absence of Capt. Dada Labinjo and Mrs. Labinjo;
50. That in an effort to resolve the matter, Alhaji Sodeinde, a director of the 7th Defendant in the suit, in company of Mr. Razaq Lawal, the Managing Director of Belfor Nigeria Limited, the 1st Defendant in the suit, brought the prepared Terms of Settlement of the Suit No. FHC/L/CS/1139/2009, between Energy Culture Nigeria Limited and Belfor Nigeria Limited and 6 Ors, to Marina Law Chambers at 41/43 Bombay Crescent, Apapa, Lagos;

51. That contrary to the assertion in paragraph 9 of Capt. Dada Labinjo's Affidavit of Verification in Support of the Complaint dated 25th November, 2019, that during the incarceration of Capt. Dada Labinjo and Mrs. Bola Labinjo, I got a call from one Mr. Gogo, who informed me that he was in the same detention place with Capt. Dada Labinjo but had been granted freedom;
52. That the said Gogo informed me that Capt. Labinjo instructed him to inform me and my colleague that he was still alive but do not know when he would be released;
53. That the said Gogo further informed me that Capt. Dada Labinjo further instructed him to inform me and my colleagues to run the chambers as our own, seek out new clients and to do all that we can in order to keep the chambers alive;
54. That I further received a call from one Apostle Akpos Biki from Bayelsa (07034425858), a former Naval officer, who also stated that he was incarcerated in the same place as Capt. Dada Labinjo;
55. That the said Apostle Akpos Biki also informed me of Capt. Dada Labinjo's advise to me and my colleagues to run the chambers as our own and do everything necessary to keep the chambers going;
56. That the above messages were later confirmed by Capt. Benjamin Gageche, otherwise known as Capt. Bengold, who is a close associate and business partner of the Labinjos and who was also incarcerated with Capt. Dada Labinjo by the Nigeria Navy (sic) at an unknown place;
57. That Capt. Benjamin Gageche confirmed to me and my colleague, Miss. Vivian Chinwendu Ezeukwu, when we went to visit, after he was brought to the EFCC office situate at Okotie Eboh Street, South-West, Ikoyi, Lagos;

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58. That Capt. Benjamin Gageche (alias Capt. Bengold) maintains an office at same premises as Marina Law Chambers as well as the other companies owned and run by Capt. Dada Labinjo and Mrs. Bola Labinjo, at No. 41/43 Bombay Crescent, Apapa, Lagos;
59. That after much persuasions and after discussing with my colleagues, Vivian Ezeukwu Esq and Dorcas Uchechi Martins Esq (Nee Chileuwa), who were there present, I endorsed the Terms of Settlement as the Counsel to the 1st to 4th Defendants only and in the presence of Mr. Razaq Lawal, Alhaji Sodeinde, Miss. Vivian Ezeukwu, Mrs. Dorcas Martins (Nee Chileuwa) and Mr. Kunle Eniola;
60. That I did not at any material time endorse or cause to be endorsed the space for the 2nd and 4th Defendants nor did I forge or cause to be forged the signature of Capt. Dada Labinjo nor the signature of any of the parties on the document;
61. That I received a copy of the filed Terms of Settlement at the Federal High Court, Ikoyi, Lagos, at the next adjourned date and I was surprised to see that all the blank name spaces had been endorsed, including that of the 2nd and 4th Defendants;
62. That I did not lie, nor did I inform the Court about my client's approval or any approval whatsoever because the opportunity to do so never arose in any way possible, as can be gleaned from the Certified True Copy of the Consent Judgment of his Lordship, the Honourable Justice Aikawa, signed and dated the 10th day of December, 2018;
63. That contrary to the assertion in clause 11 of Capt. Labinjo's Affidavit of Verification in Support of the Complaint, I did not counter-sign the Terms of Settlement or any statement whatsoever, even as stated in the petition authored by Chukwudi Nwadike Esq;

64. That contrary to the assertion in paragraph 10 of the Affidavit of Verification in Support of the Complaint dated 25th November, 2020, I did not and could never had cause the signature of Capt. Dada Labinjo to be forged on the said Terms of Settlement entered as Consent judgment of the court;

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Capt. Dada Labinjo filed a “Counter-Affidavit and Reply to the Affidavit of Defence” dated 4th March, 2021 with leave granted on 14th July, 2021 in which he stated as follows:

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1. That the Respondent admitted in his response that he received the sum of N25.856m. In the earlier statement he maintained in the account he rendered to Mrs. Bola Labinjo and the NBA that he received N25.27m. The Process and Transfer Advise are attached and marked DOL A and DOL B;
2. That the sum of N500k kept secretly aside if added to the N1.95m will be N2.45m being the sum Mr. Jonathan Nwagwu misappropriated and converted;
3. That Mr. Jonathan Nwagwu collected the sum of N80,000.00 and N25,000.00 respectively as December, 2019 salary and for sundry expenses on 6th January, 2019 from my son, Tobiloba Ogunniya which is yet to be accounted for. The Transfer Advices are attached and marked DOL C;

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4. That Mr. Jonathan Nwagwu never rendered any account to me on the 2 occasions he came on my invitation: first on the 13th and again on the 19th December, 2019;
5. That on the 2 occasions he did not come with any document to explain/show how he spent the N25.856m Settlement payment and I refused to listen to him without documents. He however informed me that he took N1.95Million for himself and that he would refund same;
6. That on that occasion I directed Mr. Jonathan Nwagwu to firstly render account of the expenses he undertook from the Settlement payment without commenting on the sums misappropriated;
7. That there was no agreement between the parties to settle out of Court the suit FHC/CS/1139/2009 between: Energy Culture Ltd and 6 ORS particularly the 1st – 4th Defendants as I outrightly and vociferously rejected the proposal by the Claimant while sticking to our Counterclaim at the meeting held on 19th July, 2018;
8. That I followed this up same day on 19th July, 2018 with a Chambers' Meeting where I restated that there would be no settlement out of Court. At the meeting were Mr. Jonathan Nwagwu, Vivian Ezeukwu and Mrs. Dorcas Uchechi Martins;
9. That it is true that while we were in detention that I sent words to Mr. Jonathan Nwagwu to run the Chambers like his own through 2 of my former inmates. Luben Gogo from Benue State was released ahead of me on the 27th April, 2019 and Akpos Biki Bayelsa State was released on the 10th December, 2019, 7 days after I was released from detention;
10. That Mr. Jonathan Nwagwu was not influenced by my messages to compromise the suit as he undertook between

- 15th October to 10th December, 2018 the settlement out of Court with the other parties well ahead of the messages;
11. That the signatures of the 2nd and 4th Defendants in the suit on the Terms of Settlement were forged and Mr. Jonathan Nwagwu countersigned against the signatures as the Counsel on record;
 12. That Mr. Jonathan Nwagwu did not raise any alarm when he was served the Terms of Settlement with the signatures of the 2nd and 4th Defendants; and
 13. That Mr. Jonathan Nwagwu informed the Court that the parties represented by him agreed to making the Terms of Settlement a Consent Judgment without any approval from me.”

In response, the Respondent filed a “Reply to Counter-Affidavit and Reply to Affidavit of Defence” dated 13th July, 2021, but filed on 14th July, 2021 with leave of the Committee on same date. The relevant portions are as follows:

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17. That admit that (sic) I am indebted to Marina Law Chambers and I further admit that I pledged that I would pay up the debt before the 1st quarter of 2020;
 18. That I could not pay the debt before the expiration of the 1st quarter of 2020 due to the events that occurred within the period (COVID 19 and End SARS demonstrations) which affected by ability to earn money with which to pay off the debt (sic);
 19. That I would have settled all the debts but for the series of national events (JUSUN Strike, COVID 19, End SARS etc) that affected my ability to earn money;
 20. That however, I insist that regardless of whatever amount that Capt. Dada Olaniyi Labinjo may state that I owe

Marina Law Chambers, I pledge once more that shall settle all my debts if given time within which to earn money to settle the debts (sic);

21. That contrary to paragraph 6 of the Counter-Affidavit of 4th May, 2021, I did render account of the expenses to Capt. Dada Olaniyi Labinjo repeatedly but on each occasion, he would feign ignorance of what transpired the previous day and insist that I repeat everything all over again;
22. That kept insisting that report to the office at Apapa whenever he calls me even though I had resigned from Marina Law Chambers at the time and was about trying to earn money with which to repay the moneys, even though he knew that my coming to Apapa would hamper my running arounds to earn money (sic);
23. That contrary to paragraph 7 of the Counter-Affidavit of 4th March, 2021, that parties in the Suit FHC/L/CS/1139/2009 were on the path of settlement prior to Capt. Dada Olaniyi Labinjo's arrest and subsequent detention by the Nigerian Navy at an unknown place;
24. That events that transpired after the chambers meeting of 19th July, 2018 were indicative that parties would settle out of court eventually;
25. That contrary to paragraph 9 of the Counter-Affidavit of 4th March, 2021, neither Mr. Luben Gogo nor Apostle Akpos Biki were released after the release Capt. Dada Olaniyi Labinjo;
26. That Luben Gogo contacted me severally (not just once) via telephone call to relay Capt. Dada Olaniyi Labinjo's instructions to run the chambers as my own, several months ahead of the signing of the Terms of Settlement;
27. That those same instructions were repeated to me at the EFCC office on Okotie Eboh Street, Ikoyi, Lagos, by Capt.

Benjamin Gageche, who, being incarcerated with Capt. Dada Olaniyi Labinjo, was released ahead of him;

28. That contrary to paragraph 10 of the Counter-Affidavit of 4th March, 2021, I, ordinarily, would not have signed the space for solicitor on the Terms of Settlement of Suit No. FHC/L/CS/1139/2009 but for the instructions to run the chambers as my own, which came several months prior to the release of Capt. Dada Labinjo, as there was no indication at the time he would be released on 3rd December, 2019 or any time so soon thereafter;
29. That contrary to paragraph 11 of the Counter-Affidavit, as at the time I signed the Terms of Settlement and returned same to Alhaji Sodeinde, in the presence of Miss. Vivian Ezeukwu and Mr. Razak Lawal, the Managing Director of Belfor Nigeria Limited, the 1st Defendant in the suit, the alleged forged signatures had not been endorsed on the Terms of Settlement;
30. That I insist that I did not countersign against the alleged forged signature contrary to the false allegation stated in the said paragraph as I had signed the part for the counsel prior to any other signatures being endorsed on the Terms of Settlement;
31. That I was served the fully endorsed Terms of Settlement in the court room after the matter had been called and therefore could not have had time to scrutinize the signatures, as counsels in the suit had previously agreed that the matter be settled out of court and that parties bear their own costs;
32. That contrary to paragraphs 13 of the Counter-Affidavit, I did not at any material point in time inform the court that parties represented by me had agreed to making the Terms of Settlement as the Court was fully aware that Capt. Dada Olaniyi Labinjo was being held by the Nigerian Navy at an

unknown place and for a lengthy period of time without any hope of release any time so soon thereafter; and

33. That I did not object to the Terms as all the claimants and other defendants in the suit had insisted on settling the matter out of court and I already had instructions to run the chambers as my own and do all that is necessary to maintain same, even against the fear of my self being arrested and incarcerated by the Nigerian Navy as well."

The hearing of this Application was commenced under a previous panel of this Committee. Following the reconstitution of the Legal Practitioners Disciplinary Committee, the present panel had to commence the proceeding *de novo*.

The matter first came up under this new panel on 6th day of September, 2023. Parties were absent, but the statutory publication was made in the PUNCH Newspaper of 10th August, 2023. Counsel to the Applicant, Chukwudi Nwadike, Esq sent a message to the Registry of the Committee that his wife put to bed and that they were in the hospital. The matter was adjourned to 3rd October, 2023 for hearing.

On the said 3rd October, 2023, the Registry confirmed that there was proof of service along with the statutory notice by publication in the PUNCH Newspaper of 14th September, 2023. The matter was then adjourned to 1st November, 2023 for definite hearing.

However, the matter ended up coming up on 31st day of October, 2023, but due to lack of service it was adjourned to 28th November, 2023. The Notice for this particular hearing was published on the 2nd day of November, 2023 according to the record from the Registry of this Committee.

On 28th November, 2023, Counsel to Applicant sent a message that he was hospitalized and it was adjourned to 19th February, 2024 for hearing.

On 19th February, 2024, the parties were absent. The Committee confirmed from the Registry that hearing notice was served on Applicant's Counsel on 1st December, 2023 and advertised in the PUNCH Newspaper of 11th January, 2024 for the day's sitting. Hearing proceeded under **Rule 13** and the Affidavits of the parties were adopted in their absence.

As parties did not request to cross-examine deponents, the written addresses already filed in the previous proceeding were adopted by the Committee under **Rule 13 of the Legal Practitioners Disciplinary Committee Rule, 2020** in the absence of the parties.

The Respondent proposed two issues for determination thus –

- “1. Whether in view the plethora of evidence tendered and admitted or uncontroverted by the parties in this matter, that the Respondent committed fraud by taking the said ₦2.45m or any other sum whatsoever and failed to disclose same to the Applicant upon release from custody; and***
- 2. Whether having regards to all the circumstances of this case, the Respondent committed fraud by endorsing the Terms of Settlement in the Suit No: FHC/L/CS/1139/ 2009, as counsel to the 1st to 4th Defendants.”***

On his issue 1, he submitted that he has never denied that he took ₦1.95m from the money that was paid into his account on behalf of the chambers from a judgment debt. He relied on paragraph 5 of the Counter-Affidavit of the Applicant to prove that it was a loan that was granted or ratified by the Applicant. He maintained that this fact was uncontroverted by the Applicant and cited the case of **EZE VS IGP (2017) 4 NWLR (PT. 1554) P. 44 AT 75** in support. He also relied on Rule 37(b) of the Rules of Professional Conduct for Legal Practitioners and the case of **OSHODIN VS THE STATE (2001) 12 NWLR (PT. 720) P. 217**. He went further to state that his evidence shows that he would have repaid this loan were it not for COVID 19 scare and judicial workers strike. On his issue 2, he submitted that evidence was not produced to show that he forged the Applicant's signature in the terms of settlement in Suit No. FHC/L/CS/1139/2009. He relied on **OMOREDE DARLINTON VS FRN ELC (2018) 2415 page 1** and **IKARIA VS STATE (2014) 1 NWLR (PT. 1389) 639** to buttress the fact that he who asserts must prove. He wondered why his former colleagues in the chamber have not been persuaded to testify as to his

innocence. He maintains that the fact that he signed the Terms of Settlement as Counsel to 1st – 4th Defendants does not prove that he procured the signature of 2nd Defendant (present Applicant) who was in detention at the time. Finally, he drew attention to the fact that the Applicant and himself were in agreement that he was to run the chamber “as his own” in the absence of the Applicant. He urged the Committee to dismiss the Originating Application.

The Applicant also proposed two issues for determination thus –

“(a) Whether in view of the plethora of evidence tendered and admitted or uncontroverted by the parties in this matter, that the Respondent committed fraud by taking the said ₦2,533,043.70 (Two Million, Five Hundred and Thirty Three Thousand and Forty Three Naira and Seventy Kobo) only with the addition of the ₦586,000.00 (Five Hundred and Eighty Six Thousand Naira) undisclosed or any other sum and failed to disclose same to the Applicant upon his release from custody?; and

(b) Whether having regards to all the circumstances of this case, the Respondent as counsel to the 1st – 4th Defendants committed fraud by endorsing a document executed by a party with adequate knowledge of the Applicant’s absence in person and signature and thereafter tendered same as terms of settlement in the suit No. FHC/L/CS/1139/200 (sic)?”

On issue 1, he submitted that there is no dispute between the parties that the Respondent stole monies in his custody meant for the Applicant. The said Applicant never in any way ratified the action of the Respondent to take the form of a loan. He cited the case of **EKONG VS ISHIE COMMUNITY BANK (NIG) LTD & ANOR (2014) LPELR-22961 (CA)** to define what a loan is. He also called in aid the case of **EZE VS IGP (supra)** wherein the Court held that –

“It is trite law that depositions in an affidavit in absence of any counter affidavit challenging same are deemed to be admitted as true and established.”

He maintained that paragraph 5 of his Counter-Affidavit and reply to the Affidavit of Defence of the Respondent can never be interpreted to mean an endorsement of the misappropriation of the funds that found its way into the account of the Respondent. He emphasized that what the Respondent admitted to doing was simply misappropriation and cited the case of **ITEOGU VS LPDC (2009) 17 NWLR (PT. 1171) P. 614 AT 639 PARA A – C.**

On his second issue, he submitted that evidence clearly shows that the Respondent as Counsel on record for 1st – 4th Defendants in Suit No. FHC/L/CS/1139/2009 could not have appended his signature to the Terms of Settlement if he was not involved in procuring the signature of the Applicant knowing fully well that he, the Applicant, was not available to append his signature. He pointed to the record of the Court, Exhibit MLC 3 which shows that the Respondent gave the impression that Applicant who was 2nd Defendant in the Suit gave consent to the settlement when he did not. He debunked the claim of the Respondent that he was not involved in procuring the signature when Respondent never protested to Court or about the sudden appearance of the Applicant's signature. On his un-denied instruction to the Respondent to run the firm by proxy, he submitted that it did not amount to procuring his signature or going against the clear instructions of the firm and client not to compromise the case. He urged the Committee to hold the Respondent liable for professional misconduct.

The Respondent filed a Reply on Points of Law. A look at the said reply shows that it was another attempt at making an even more elaborate argument of his defence which is not the purpose of a reply on points of law. Save for the fact that he tried to distinguish the case of **EKONG VS ISHIE COMMUNITY BANK (NIG) LTD & ANOR (supra)** from the peculiar facts of this case i.e. a criminal loan as against a private loan and eventually bring himself within the same definition later by stating that Applicant approved and gave condition for the loan, the reply will be ignored as it is an attempt to have a second bite at the cherry.

FINDINGS

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After a careful consideration of the Affidavits, attachments to the said Affidavits, the proposed issues for determination and the submission based on them, the Committee is of the considered view that the case can be resolved around a single issue for determination thus –

“Whether from the facts of the case, the Respondent committed any acts amounting to infamous conduct in a professional manner to warrant sanctions by the Committee.”

From the Affidavits and the attachments to them which have been adequately reproduced in this Direction, certain facts are not in dispute thus –

- (i) The Respondent was the senior lawyer in the employment of Marina Law Chambers when the Applicant and his wife were under arrest by the Naval Authorities – see paragraphs 4 and 5 of Applicant’s Affidavit in support of complaint and paragraphs 7 and 8 of the Respondent’s Affidavit in response.***
- (ii) In the absence of the Applicant, a sum of N25,856,000.00 was paid into the personal account of the Respondent. The amount represents a judgment debt in favour of their client in Suit No: FHC/L/CS/1149/2018 between USMAN ILU & 7 ORS V. MT UNITED VENTURES & 2 ORS – see paragraphs 6 of Applicant’s Affidavit in support of complaint, paragraph 1 of his Counter-Affidavit and Reply, and paragraph 1 of the Respondent’s Reply to Counter-Affidavit and Reply.***
- (iii) Respondent converted the sum of N1,947,043.70k to his personal use from this judgment debt meant for their clients – see paragraph 8 of the Applicant’s Affidavit of 25th November, 2020 and paragraphs 4, 5 and 6 of the Respondent’s Affidavit of Defence.***
- (iv) The Respondent spent the sum of N500,000.00 which he could not account for other than that he gave the said amount to two individuals namely; Miss Vivian Ezeukwu***

and Miss Dorcas Chileuwa – see paragraphs 5, 6 and 7 of Respondent's "Reply to Counter-Affidavit and Reply to Affidavit of Defence" dated 13th July, 2021 and filed on 14th of July, 2021.

- (v) These two deductions remain unpaid to this day – see paragraphs 17, 18, 19 and 20 of Respondent's Reply to Counter-Affidavit and Reply.*
- (vi) The firm was also representing 1st – 4th Defendants in Suit No. FHC/L/CS/1139/2009, between Energy Culture Nigeria Limited and Belfor Nigeria Limited and 6 Ors.*
- (vii) Prior to his detention, Applicant had meetings in chambers on the position of their clients on the possibility of settling the matter out of Court. This issue was unresolved before his detention – see paragraphs 9 of Applicant's Affidavit in support of complaint, paragraphs 7 and 8 of his Counter-Affidavit and Reply, and paragraphs 45 – 49 of the Respondent's Affidavit of Defence.*
- (viii) The Applicant was a personal representative of the 2nd Defendant/Counter-Claimant in the said suit.*
- (ix) No further meeting was held by the chamber to resolve the issue of settlement out of Court – see (vi) above.*
- (x) Eventually, and in the absence of the Applicant while he was still in detention, Terms of Settlement were filed in Court with the alleged signature of the Applicant appearing in the space for 2nd Defendant and the signature of Respondent appearing as Counsel on record for the 1st – 4th Defendants – see paragraphs 10 and 11 of the Applicant's Affidavit in support of complaint and paragraphs 28 – 33 of the Respondent's Reply to Counter-Affidavit and Reply.*
- (xi) While in detention, the Applicant sent word to the lawyers in chamber, inclusive of the Respondent, that they should*

run the office as if it was their own – see paragraphs 53, 55 and 56 of the Respondent's Affidavit of Defence, paragraph 28 of his "Reply to Counter-Affidavit and Reply to Affidavit of Defence, and paragraph 9 of the Applicant's Counter-Affidavit and Reply.

(xii) That the Respondent signed the Terms of Settlement without his client executing same.

(xiii) That the Respondent saw the executed Terms of Settlement containing the signatures of his client particularly the Applicant for the first time after it had been filed in Court – see paragraph 31 of Respondent's "Reply to Counter-Affidavit and Reply to the Affidavit of Defence".

In light of the foregoing settled facts between the parties, can it be said that the Respondent misconducted himself in:

- (a) Converting part of the judgment debt to his own personal use?***
- (b) Endorsing the Terms of Settlement filed in Court and entered as judgment without ascertaining how the signature of the Applicant who he knew was in detention and could not be reached got on the said Terms of Settlement?***

The Respondent has stated and the Applicant confirmed that he sent word to the lawyers in the firm that they should run the office as their own. Respondent latched on that to say that that gives him the authority to engage in the various actions that are the subject of the Originating Application. The evidence before the Committee does not suggest that the Applicant transferred ownership of the firm to the Respondent. He was not even authorized to change the signatories to the account of the firm. The Committee does not see how that advice authorizes the Respondent to engage in acts that could amount to professional misconduct. The Committee views the said advice as an encouragement to all

the lawyers in the firm to show as much commitment to the affairs of the firm as if it was their own while he remained in incarceration.

The allegations will now have to be considered in light of the relevant rules.

Professional misconduct has been defined as –

“...any conduct that constitutes an infraction of acceptable standard of behaviour or ethics of the legal profession, of any conduct which connotes conduct despicable and morally reprehensible as to bring the legal profession into disrepute if condoned or unpunished, ...” per Chukwuma-Eneh, JSC in Iteogu Vs LPDC (2009) 17 NWLR (Pt 1171) 614 at P.643 paragraph B – C.

Rule 1 of the Rules of Professional Conduct states that –

‘A Lawyer shall uphold and observe the rule of law, promote and foster the cause of justice, maintain a high standard of professional conduct, and shall not engage in any conduct unbecoming of a legal practitioner.’

Furthermore, **Rule 23 of the Rules of Professional Conduct for Legal Practitioners, 2007** provides that –

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

The purpose of giving account is not just for confirming that the funds or property are or were in your custody, but, to ascertain that you did not take advantage of your client by virtue of the trust placed in you as a legal practitioner. In this particular case, the Respondent has repeatedly admitted that he took the amount of **N1,947,043.70k** as a loan from the judgment debt meant for their client. He also averred in his Affidavit as highlighted earlier in this Direction that he disbursed the sum of **N500,000.00** to two individuals who

were not part of his client/judgment creditors. That money was not meant for Marina Law Chambers. It was not for the running of the office. It was paid into his account for the purpose of disbursement to the client as the Respondent was not a signatory to the firm's account. A client's account should have been opened for this purpose. He also claimed that the Applicant subsequently ratified the amount he took for himself into a loan. The Applicant has strenuously denied this. Respondent has not furnished any evidence to prove that any such ratification took place. In any case, the Applicant would have acted contrary to the Rules if he had approved such as the money was not his money, but for a client. The fact that Applicant admitted that Respondent informed him of that fact does not amount to endorsement. Applicant denied ever giving him any condition for the so-called endorsement and the Respondent never produced any evidence that he met any such conditions. The Respondent claimed that he forwarded a Spreadsheet to the Applicant's wife by a way of WhatsApp message in a bid to render account as demanded by the Applicant. No evidence of such Spreadsheet was placed before this Committee. The Committee holds that the Respondent did not account for the money that was placed in his custody. The Committee therefore finds that the Respondent converted part of the judgment debt kept in his custody to his personal and other uses in breach of **Rule 23 of the Rules of Professional Conduct** and we so hold.

In representing a client in a professional capacity the Rules provide under **Rule 14(1), (3) and (5)** that –

“14(1) It is the duty of a lawyer to devote his attention, energy and expertise to the services of his client and, subject to any rule of law, to act in a manner consistent with the best interest of the client;

(3) When representing a client, a lawyer may, where permissible, exercise his independent professional judgment to waive or fail to assert a right or position of his client; and

(5) Negligence in handling of a client's affairs may be of such a nature as to amount to professional misconduct.”

As earlier stated above, parties are not in dispute that Applicant was in detention and out of reach when the Terms of Settlement was executed, filed and entered in Court in Suit No. FHC/L/CS/1139/2009. There was also no final position taken to compromise the case before Applicant went out of circulation. The Respondent has vigorously stated that he did not forge the signature of the Applicant on the Terms of Settlement. Ordinarily a Counsel has complete control of a case that he is handling. However, in this particular case, his client, the Applicant, was in detention and the Respondent, by his own admission could not reach him. It is therefore strange that as Counsel, he could sign a document that has a column for his client, who was in detention, to sign without first ascertaining that the client had signed. This is against the backdrop of the chamber meeting in which it was never agreed that the case be compromised. There was no evidence that his client, the Applicant asked that the document be brought to him in detention or that it was actually taken to him there to sign. Every lawyer in such a situation should have ensured that he confirmed the position of his client. It cannot be an excuse that he was in Court but had no time to state his reservation. He was in complete control of his client's case. He decided to utilize this professional control he had for his own benefit and to the detriment of both his client and the law firm he worked for. The Respondent did not conduct himself in a manner expected of a legal practitioner toward a client. Now that his client has come out openly to disown the document and the actions he took with regards to the judgment debt that was in his custody, the Respondent has to bear full responsibility for this extreme act of professional betrayal and be ready to bear the consequences. The Committee does not wish to delve into the issue of forgery as that is an entirely different matter. The fact that Counsel did not take steps to protect the interest of his client is what the Committee is looking into in this matter. We find that the Respondent did not comply with Rule 14 of the Rules of Professional Conduct and we so hold.

What the Respondent has tried to do generally in this case is to try to exonerate himself contrary to **Rule 16(1)(d)** which provides that counsel shall not –

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“attempt to exonerate himself from or limit his liability to his client for his personal malpractice or professional misconduct.”

The cases cited by the Respondent to defend himself are not helpful as they relate to criminal allegations. The situation here is different as the allegations though referred to by the Applicant in criminal terms are purely transgressions of the Rules of Professional Conduct and he is being tried for such only.

The Committee finds that the conducts of the Respondent are in breach of **Rules 1, 14(1), (3) and (5) and 23(1) and (2) of the Rules of Professional Conduct for Legal Practitioners, 2007**, and punishable under S. 12(1) of the Legal Practitioners Act Cap. L Vol. 11 Laws of the Federation of Nigeria 2004 as amended.

DIRECTION

We, the Legal Practitioners Disciplinary Committee hereby find the Respondent **JONATHAN CHINEDU NWAGWU, ESQ** with Enrollment **No. SCN052392**, a Legal Practitioner whose name is on the Roll of Legal Practitioners liable for Infamous Conduct as deposed in the Affidavit in Support of the Originating Application filed by the Applicant on 7th December, 2020 contrary to Rules 1, 14(1), (3) and (5) and 23(1) and (2) of the Rules of Professional Conduct for Legal Practitioners, 2007, and punishable under S. 12(1) of the Legal Practitioners Act Cap. L Vol. 11 Laws of the Federation of Nigeria 2004 as amended.

We direct that he be and he is hereby suspended forthwith from carrying on the trade or business of legal practice or as a Legal Practitioner for a period of three (3) years from the date of this **DIRECTION**. Accordingly, he is not to act as, or to parade himself or allow himself to be paraded as a Legal Practitioner within the period and he is not to engage in or participate in the practice of law in any manner whatsoever within the period.

We further DIRECT that the Respondent shall fully refund to the Applicant the sums of **₦1,947,043.70k (One Million, Nine Hundred and Forty – Seven**

Thousand, Forty – Three Naira, Seventy Kobo) and **₦500,000.00 (Five Hundred Thousand Naira)** only within 28 days of this **DIRECTION** in compliance with Section 12(9) of the Legal Practitioners Act, CAP L11, Laws of the Federation of Nigeria, 2004. Compliance with this Directive shall be taken into consideration in the event of an application to restore the Respondent's name on the Roll.




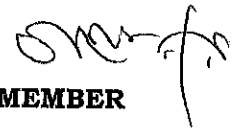

The Chief Registrar of the Supreme Court is hereby **DIRECTED** to effect the above Order and to make a notation of this **DIRECTION** against the name of the Respondent, **JONATHAN CHINEDU NWAGWU** on the Roll of Legal Practitioners. This Order shall forthwith be brought to the attention of the Chief Registrar of the Supreme Court. We further order that NOTICE of this **DIRECTION** be immediately given and brought to the attention of the Respondent, (the presence of the Respondent at the proceeding of this Committee where this **DIRECTION** is read shall be deemed to be sufficient personal service), by publication in any edition of the PUNCH Newspaper and also by publication in the Federal Gazette as required by law. Copies of this Direction must also be served on the President of the Nigerian Bar Association who will take steps to notify the General Council of the Bar, National Executive Committee of the NBA, and, other organs of the NBA. We also Direct that the entire Judgment encompassing this Direction shall be brought to the attention of their lordships, the Chief Justice of Nigeria, President of the Court of Appeal, the Honourable Chief Judges of the High Court of the FCT, Federal High Court and the High Courts of all other States of the Federation, Presidents of the Customary Courts of Appeal of all States of the Federation and the FCT, the Customary Courts of all the States of the Federation and the heads of all other Courts wherein a legal practitioner is entitled to audience by virtue of his office as a legal practitioner in Nigeria, the Attorney-General of the Federation and the entire Attorneys General of the remaining 36 States of the Federation. The order shall also be served on the Inspector-General of Police, the Commissioner of Police of Niger State and the respective Commissioners of Police in the other States of the Federation.

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This shall be the Direction of the Committee.

Dated at Abuja this 24th day of April, 2024.

Signed

1. **AHMED MUSTAHPA - GONIRI, ESQ, LIFE BENCHER** == 
PRESIDING MEMBER
2. **HON. JUSTICE AISHA BASHIR ALIYU, CJ NASARAWA, BENCHER** == 
MEMBER
3. **HON. JUSTICE HALIMA IBRAHIM ABDULMALIK, CJ NIGER, BENCHER** == 
MEMBER
4. **MR. UMEH KALU, SAN, LIFE BENCHER** == 
MEMBER
5. **EBENEZER OBEYA, ESQ, LIFE BENCHER** == 
MEMBER

E. U. Chinedum, Esq with **Adekunle Olanipekun, Esq** for the Applicant.
Respondent in person.

