



**OALP**  
**DISPUTE**  
**PRACTICE**  
NEWSLETTER

1<sup>st</sup> Quarter 2024

# INTRODUCTION

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The roll up of 2023 and 1<sup>st</sup> quarter of the year 2024 was quite eventful as we witnessed several notable and landmark decisions of Superior Courts of Record. The period was also accompanied by some fascinating and relevant colloquies within the dispute resolution space in Nigeria and other countries. As per our tradition, we examine judicial decisions with the capacity to alter the jurisprudential landscape and unravel the complexities of recent enactments.

We trust that you will find this edition an enriching read.



## PART A – RECONDITE CASES

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In this part, we examine some notable decisions of both Nigerian and foreign Courts including that of the Supreme Court of Nigeria, where the Court held that any law enacted to steal a match against a litigant will be declared null and void. We also examine the decision of the Nigerian Court of Appeal where the Court held that the Sheriffs and Civil Process Act will not apply to matrimonial proceedings; the Federal High Court's decision setting aside NITDA's whitelist and holding that NITDA and the Attorney General must comply with NDPR and other laws. On the foreign scene, we examine the landmark decisions of the UK Supreme Court on maritime law and medical negligence.

## PART B – RECENT ENACTMENTS AND LEGISLATION

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In this part, we review the Notaries Public Act 2023 which repealed the Notaries Public Act, Cap N141 LFN 2004 and analyse how the new Act reflects the digital realities of present times.

We unpack for you these interesting developments in Nigeria and other jurisdictions, and trust that you find this an enriching read.

# OUTLINE

## RECONDITE CASES

1. **Nigeria Police Force & Ors v. Police Service Commission & Anor** [2023] LPELR-60782 (SC)– *“any legislation made during litigation which is enacted to steal a match against a litigant and is in contravention of the Constitution must be declared null and void”*.
2. **Incorporated Trustees of Nigerian Bar Association v. Charles Ezeagu** [2024] 4 NWLR (Pt. 1927) 126 - *“Lawyers are not Estate Agents and Property Managers neither can they act as Commission Agents”*.
3. **Peter Oboh Egbodo & Anor v. All Progressive Congress & Ors** [2024] 1 NWLR (Pt. 1920) 59 *“The Court may have recourse to the pleadings of the defendant where an objection to the Court’s jurisdiction is determined at the conclusion of the case along with the substantive matter”*.
4. **Samuel v. APC** [2023] 10 NWLR (Pt. 1892) 192 (SC)– *“Failure to endorse an Originating Process for service out of the State as required by Section 97 of the SCPA does not invalidate the said Originating Process”*.
5. **Alli v. Okoloko** [2023] LPELR-60700 (CA): *“Sheriffs and Civil Process Act does not apply to matrimonial proceedings”*.
6. **Incorporated Trustees of Ikigai Innovation Initiative v. NITDA** [2023] Unreported FHC/ABJ/CS/1246/2022, Judgment Delivered by Hon. Justice Egwuatu on 28.11.2023 -*“Both NITDA and the Attorney General must comply with NDPR and other laws and failure to ensure this in making the whitelist of countries further to the Data Protection Implementation Framework and the Binding Corporate Rules and Standard Contractual Clauses renders them null and void”*.
7. **Quek Tai Tech Oliver v. Udo** [2024] 4 NWLR (Pt. 1927) 187 - *“Lawyers relating with foreign clients must be good ambassadors of Nigeria and it is conduct unbecoming of a legal practitioner to use dishonourable language in relating with clients or other professional colleagues. A lawyer should also keep the client informed of the progress and important developments in any matter being handled”*.
8. **Government of Delta State & Ors v. Olukunle Ogheneovo Edun** [2024] 1 NWLR (Pt. 1919) 267 – *“Excluded in respect of the particulars for which a private motor vehicle may be impounded, is the Road Worthiness Certificate”*.
9. **Herculito Maritime Ltd & Ors v. Gunvor International BV & Ors** [2024] UKSC 2: *“The United Kingdom Supreme Court holds that a shipowner is not precluded from claiming against the charter in respect of losses arising out of risks for which additional insurance had been obtained pursuant to war risk clauses”*.
10. **Paul and another (Appellants) v. Royal Wolverhampton NHS Trust (Respondent); Polmear and another (Appellants) v. Royal Cornwall Hospitals NHS Trust (Respondent); Purchase (Appellant) v. Ahmed (Respondent)** [2024] UKSC 1: *“The United Kingdom Supreme Court holds that a doctor’s duty of care does not extend to protect patient’s close family against the risk of illness from the experience of witnessing the death or medical crisis of their relative from a condition which the doctor has negligently failed to diagnose or treat”*.

## REVIEW OF THE NOTARIES PUBLIC ACT 2023



PART A –  
**RECONDITE CASES**

## Nigeria Police Force & Ors v. Police Service Commission & Anor [2023] LPELR-60782 (SC) 123-125 Paras B-A – *“any legislation made during litigation which is enacted to steal a match against a litigant and is in contravention of the Constitution must be declared null and void”*.



### Brief Facts

Further to the approval by the President of the Federal Republic of Nigeria of the enlistment of 10,000 recruit constables or lower cadre police officers by the Nigeria Police Force (the **1<sup>st</sup> Appellant**), the **1<sup>st</sup> Appellant** and the Inspector General of Police (**2<sup>nd</sup> Appellant**) (both **Appellants**) commenced the recruitment and enlistment process. Aggrieved with the acts of the **1<sup>st</sup>** and **2<sup>nd</sup>** Appellants in commencing the recruitment process without recourse to it, the Police Service Commission (the **1<sup>st</sup> Respondent**) challenged the recruitment exercise on the basis that it is the lawful body recognised under the law to conduct the recruitment exercise.

In view of the dispute between the parties as to who is legally empowered to enlist and recruit constables into the Nigeria Police Force, the **1<sup>st</sup> Respondent**, as Plaintiff instituted the action at the High Court of the Federal Capital Territory (**trial Court**), via Originating Summons seeking inter alia declarative and restraining orders.

At the trial Court, the **1<sup>st</sup> Respondent's** contention was that it reserves the power to appoint persons to offices in the **1<sup>st</sup> Appellant** (inclusive of the position of a constable) except the office of the Inspector-General of Police. The **1<sup>st</sup> Respondent** predicated this contention on the provisions of sections 153(2), 215(1)(b) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (**Constitution**) and Paragraph 30 of Part 1 of the Third Schedule to the Constitution as well as sections 6 and 24 of the Police Service Commission (Establishment) Act 2001 (**PSCA 2001**).

In opposing the submissions of the **1<sup>st</sup> Respondent**, the Appellants contended that the **1<sup>st</sup> Respondent** had no power to recruit constables into the **1<sup>st</sup> Appellant**, while only conceding that the **1<sup>st</sup> Respondent** had the power to appoint police officers, except the Inspector General of Police, as recognized by the Constitution. Further, the Appellants argued that in line with Regulation 71 of the Nigeria Police Regulations 1968, the **2<sup>nd</sup> Appellant** is imbued with the exclusive right to deal with the recruitment of constables into the **1<sup>st</sup> Appellant**. It was also the argument of the Appellants that the **1<sup>st</sup> Respondent's** power over constables was only exercisable after the Appellants had recruited the constables or completed the process of enlistment of recruit constables, and their names or list had been sent to the **1<sup>st</sup> Respondent** for formal appointment. Also, that the words “recruitment” and “appointment” are not the same.

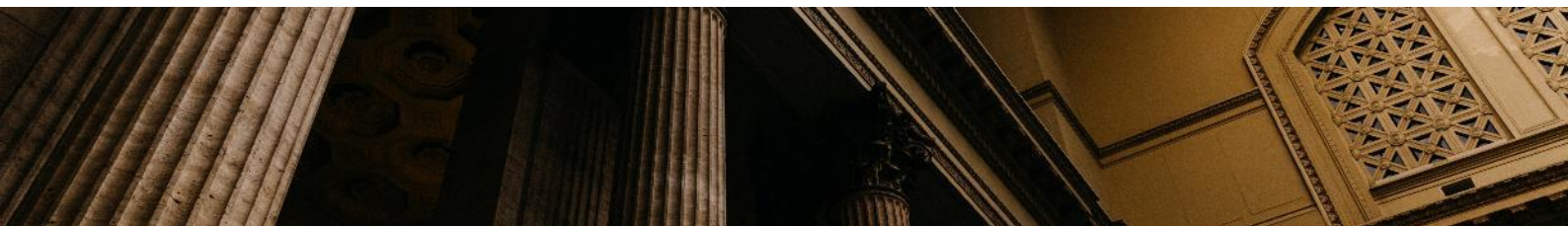
Upon adoption of the processes by the parties, the trial Court delivered its judgment and dismissed the case of the Respondent. In dismissing the case, the trial Court stated that by virtue of Regulation 71 of the Nigeria Police Regulations 1968, the power to recruit constables is vested on the Appellants. The trial Court further held that the 1<sup>st</sup> Respondent's powers to appoint police officers are distinct from the 2<sup>nd</sup> Appellant's power to recruit police constables. More so, the trial Court agreed with the submissions of the Appellants that the 1<sup>st</sup> Respondent's statutory powers to appoint officers into the 1<sup>st</sup> Appellant are only exercisable in respect of constables after the 2<sup>nd</sup> Appellant had exercised the power to recruit the constables. In sum, the trial court agreed with the submissions of the Appellants and held that the 1<sup>st</sup> Respondent's powers to appoint officers into the 1<sup>st</sup> Appellant does not include the power to recruit constables.

Dissatisfied with the judgment of the trial Court, the 1<sup>st</sup> Respondent filed an appeal to the Court of Appeal. During the pendency of the appeal before the Court of Appeal, the National Assembly enacted the Police Act 2020 which contains some provisions on the issues implicated in the appeal. Particularly, section 18 of the Police Act 2020 confers on the 2<sup>nd</sup> Appellant the power and the responsibility for the recruitment of constables into the Nigeria Police Force.

In determining the appeal, the Court of Appeal disagreed with the conclusion of the trial Court. In its judgment, the Court of Appeal held that the provisions of Regulation 71 of the Nigeria Police Regulations 1968 are in direct conflict with the provisions of Paragraph 30 of Part 1 of Third Schedule to the Constitution and section 6 of the PSCA 2001 on the body that is legally empowered to recruit constables into the 1<sup>st</sup> Appellant. The Court of Appeal, thus, rendered the provisions of the Police Regulations 1968, in conflict with Constitution to be null and void to the extent of their inconsistency.

The Court of Appeal also held that the power to appoint police officers vested in the 1<sup>st</sup> Respondent by the Constitution and the Police Service Commission (Establishment) Act 2001, is not limited and extends to power to recruit constables into the Nigeria Police Force and the power does not become exercisable post-enlistment alone. Further, the Court of Appeal held that the word "appointment" employed in the statute forms part of the larger process of "recruitment" and "enlistment" and that the words "appointment" and "recruitment" mean one and the same thing.

Based on the foregoing, the Court of Appeal allowed the 1<sup>st</sup> Respondent's appeal, set aside the judgment of the trial Court, and granted the reliefs sought by the 1<sup>st</sup> Respondent as contained in the Originating Summons. Dissatisfied, the Appellants further appealed to the Supreme Court.



## Issue

The parties formulated three issues each for determination, but the Supreme Court in resolving the matter, considered the issue of *who, between the 2<sup>nd</sup> Appellant and the 1<sup>st</sup> Respondent, is empowered by law to enlist recruit constables into the Nigeria Police Force.*



The Supreme Court therefore upheld the decision of the Court of Appeal which rendered the provisions of Regulation 71 of the Nigeria Police Regulations 1968 null and void.

## Decision

By a unanimous decision of the five-member panel of the Supreme Court, the judgment of the Court of Appeal was upheld, and the Appellants' appeal was dismissed. In determining the body saddled with the responsibility of recruiting constables, the Supreme Court placed reliance on the provisions of sections 1(3) and 153(1)(m) and (2) of the Constitution and Paragraph 30 of Part 1 of the Third Schedule to the Constitution, in holding that the 1<sup>st</sup> Respondent is vested with the power to appoint all officers into the 1<sup>st</sup> Appellant (other than the office of the Inspector General of Police). Thus, the Supreme Court adopted the literal rule of interpretation of Constitution to hold that the provisions of the Constitution are clear on the powers of the 1<sup>st</sup> Respondent to appoint officers except the 2<sup>nd</sup> Appellant.

On the Appellants' argument that recruitment of officers is different from appointment, the Supreme Court stated that appointment includes the recruitment processes which involves advertising vacancies, receiving applications, conducting aptitude tests, physical examinations and interviews to assess the suitability of candidates. The Court held that part of the 1<sup>st</sup> Respondent's mandate is to ensure that recruitment into the 1<sup>st</sup> Appellant is conducted in accordance with established guidelines, and that by relevant provisions of the law, appointment of constables comes before their enlistment contrary to the proposition of the Appellants.

In specifically considering the provision of section 71 of the Nigeria Police Regulation 1968 which seems to

empower the 2<sup>nd</sup> Appellant to recruit constables, the Supreme Court disagreed with the interpretation of the Appellants and stated that the said provisions conferred the power to appoint constables on the commandant of the respective Police Colleges and not the 2<sup>nd</sup> Appellant, although under the control of the 2<sup>nd</sup> Appellant. In any event, the Supreme Court held that by virtue of Paragraph 30 (a) of Part 1 of the Third Schedule to the Constitution and Section 6 (1) (a) of the PSCA 2001, such power is now vested on the 1<sup>st</sup> Respondent. The Court stated that the provisions of the Nigeria Police Regulations 1968 must be construed in such a manner as to bring them into conformity with the Constitution, and where this becomes impossible, the only option will be to declare the relevant Regulations, null and void to the extent of their inconsistency, in line with the clear provisions of section 1(3) of the Constitution. The Supreme Court therefore upheld the decision of the Court of Appeal which rendered the provisions of Regulation 71 of the Nigeria Police Regulations 1968 null and void.

Before drawing the curtain, his Lordship, Justice Abubakar J.S.C. who delivered the leading judgment made comments on the provision of section 18(1) of the new Police Act 2020 which confers power to appoint constables on the 2<sup>nd</sup> Appellant. This Act was enacted during the pendency of the appeal at the Court of Appeal. Section 18(1) of the Police Act 2020 provides that: *"The Responsibility for the recruitment of constables into the Nigeria Police Force and recruit cadets shall be duty of the Inspector General of Police"*.

This provision, according to the Supreme, is at variance with the provisions of section 153 and Paragraph 30 (a) of Part 1 of the Third Schedule to the Constitution, and to the extent of its inconsistency, is null and void. The Court held further that section 18 of the Police Act 2020 was mischievously enacted to confer powers of the 1<sup>st</sup> Respondent on the 2<sup>nd</sup> Appellant while the action was pending in court. Thus, the Court in pronouncing on the unconstitutionality of section 18 of the Police Act 2020 and treatment of statute enacted to favour a party during litigation on an issue, held instructively that:

*“The National Assembly made futile effort in enacting the Police Act, 2020 during the pendency of this appeal by specifically enacting sections 18(1), (2), and all in an effort to vest the power of recruitment in the second appellant in this appeal. This is another attempt at strangulating the respondents in this appeal. While it is within the powers of the National Assembly to make laws for the order and good Government in Nigeria, a legislation during litigation purposely made to meet the demands of power gourmets in flagrant disregard to the provisions of the Constitution. Any legislation made during litigation in contravention of the Constitution and enacted to steal a match against a litigant will be condemned and declared null and void. Section 18 of the Police Act 2020 is obviously unconstitutional and must be declared null and void, it is so declared”.<sup>1</sup>*

In all, the Supreme Court dismissed the appeal as being unmeritorious.



## Brief Comment on the Decision

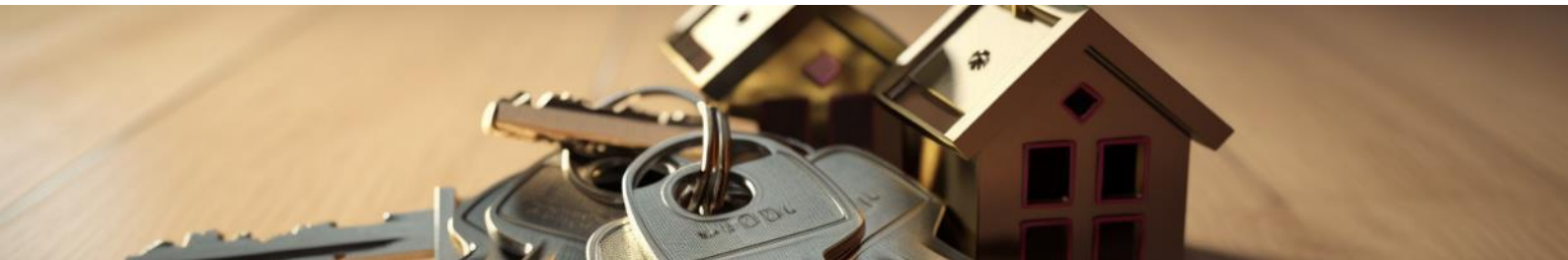
This is a noteworthy decision by the Supreme Court which will no doubt enrich the Nigerian jurisprudence on the implicated issues in the appeal as well as other issues pronounced upon by the Court. Besides putting an end to the prolonged issue between the Nigerian Police Force and the Police Service Commission, of particular interest is the pronouncement of the Supreme Court on the unconstitutionality of section 18 of the Police Act 2020 and statute enacted to favour a party during the pendency of an action.

A consideration of the pronouncement of the Supreme Court on section 18 of the Police Act 2020 suggests two implications. The first being the restatement of the general position of the law that any statute that is inconsistent with the provisions of the Constitution will be declared null and void. The second is that any statute enacted during a pendency of an action to steal a match against a party to the action will be declared null and void.

While the first implication is well settled, an application of the second is on a case-by-case basis as the Court must be convinced that the statute it seeks to invalidate was certainly enacted to steal a match and compromise an action pending in Court.

1. At pages 304-305, paras. H-B:

## Incorporated Trustees of Nigerian Bar Association v. Charles Ezeagu [2024] 4 NWLR (Pt. 1927) 126 - *“Lawyers are not Estate Agents and Property Managers neither can they act as Commission Agents”.*



### Brief Facts

It is the Complainant’s case that it retained the services of the Respondent as a Legal Practitioner to manage his properties and collect rents on the Complainant’s properties over a period of 9 years from 2006 to 2015. However, the Respondent failed to honestly discharge his duties and as such, the Complainant reported the Respondent to the Nigeria Police Force.

The Respondent was arrested, reported to the Nigerian Bar Association and prosecuted on a three count complaint, to wit: (x) the Respondent refused to render accounts of the sum of N16,000,000 (sixteen million Naira) being rent monies for the properties managed on behalf of the Complainant; (y) the Respondent misappropriated and converted for his personal use, rent monies in the sum of N16,000,000 (sixteen million Naira) belonging to the Complainant; and (z) the Respondent managed the Complainant’s property and collected 10% (ten percent) as fees for managing the Complainant’s property as a legal practitioner.

It was alleged that the Respondent, as a Legal Practitioner, conducted himself in an infamous manner contrary to rules 1,7(2)(b)(c), 18(2), 23(2), and 55 of the Rules of Professional Conduct for Legal Practitioners and punishable under section 12 of the Legal Practitioners Act, Cap.L.11, LFN, 2004. The Respondent, on his part, stated that he was merely acting as a brother to the Complainant and not in a professional capacity as a Legal Practitioner as alleged by the Complainant. He denied all the allegations made against him by the Complainant. He asserted that he maintained records and promptly remitted the rent monies to the Complainant. The Respondent also stated that he deducted expenses and 10% (ten percent) from the rent monies as his fees.

### Issue

The Legal Practitioners Disciplinary Committee (**LPDC** or the **Committee**) adopted this sole issue for determination, to wit: *“Whether the Complainant has proved its allegation of infamous conduct in a professional respect against the Respondent”.*



## Decision

The Committee considered the issue of whether there was a client/lawyer relationship between the primary Complainant and the Respondent. The Committee reiterated the trite principle of law that he who asserts must prove and held that the Complainant had adduced evidence showing that the Respondent acted as a Property Manager in a professional capacity as a Legal Practitioner. Reliance was placed on the Respondent's statement made to the Nigeria Police Force where the Respondent stated that the Complainant debriefed him as Property Manager of the Complainant's properties. The Committee posited that it was explicit from the Respondent's statement that the Respondent regarded his relationship with the Complainant as that of a client/lawyer relationship.

Furthermore, the Committee rejected the Respondent's submission that there must be evidence of payment of professional fees to prove the existence of client/lawyer relationship as lawyers can render legal services on a pro bono basis. In any event, the Committee held that there was evidence of professional fees in this matter as the Respondent admitted in his statement to the Police that he collected 10% of the rent monies before remitting the balance to the Complainant. Based on this, the Committee found that there was the existence of a client/lawyer relationship between the Complainant and the Respondent.

Having found that there was a client/lawyer relationship between the Complainant and the Respondent, the Committee considered the issue of whether the Respondent, who was a Legal Practitioner, could also act as a Property Manager on behalf of the Complainant in his normal course of business as a lawyer. The Committee's response to the question was in the negative as it held that Lawyers are not Estate Agents, Property Managers or Commission Agents. The Committee held that the services mentioned are incompatible with the legal profession and therefore prohibited.

The Committee found that the Respondent was not guilty of failure to render accounts and misappropriation of rent monies belonging to the primary Complainant as the Complainant had failed to lead sufficient evidence in proof of same. It found the Respondent culpable for infamous conduct as the Respondent accepted a 'brief' as Property Manager on behalf of the Complainant contrary to rule Rules 7(2) of Rules of Professional Conduct for Legal Practitioners 2007 and punishable under section 12 (1) of the Legal Practitioners Act, Cap. L. 11, LFN, 2004. The Respondent was accordingly suspended for a period of 2 (two) years.



## Brief Comment on the Decision

The LPDC has consistently maintained that a Legal Practitioner shall not practice as a Lawyer and engage in any trade or business at the same time except those expressly spelt out in section 7 (3) of the Rules of Professional Conduct for Legal Practitioners, 2023 (RPC) which include: (x) being a non-executive director; (y) secretary of a company; and (z) shareholder of a company.

We believe that the suspension of Charles Ezeagu for a period of two (2) years will deter Legal Practitioners who covertly or overtly engage in businesses that are incompatible with legal practice. Further, the Direction of the Committee reiterates the provision of section 7(2) (b) of the RPC and emphasises that a Legal Practitioner cannot in his professional capacity act as a Property Manager, Estate Manager or Commission Agent.

**Peter Oboh Egbodo & Anor v. All Progressive Congress & Ors [2024] 1 NWLR (Pt. 1920) 59 at 584 – 584** *“The Court may have recourse to the pleadings of the defendant where an objection to the Court’s jurisdiction is determined at the conclusion of the case along with the substantive matter”.*



## Brief Facts

This appeal was filed against the judgment of the Court of Appeal, Makurdi Judicial Division, delivered on 23.01.2023 where the Court of Appeal set aside the judgment of the trial Court on the ground that the Appellant’s suit before the trial Court was statute barred. According to the Appellant, he was screened and cleared to participate in the primary elections of the 1<sup>st</sup> Respondent slated for 28.05.2022 to nominate a candidate for the office of the House of Representatives, Obi/Oju Federal Constituency of Benue State in respect of the general elections. The primary election took place in all the 23 wards of Obi/Oju Federal Constituency and was duly monitored by the 3<sup>rd</sup> Respondent. The Appellant claimed that the results were announced on the following day 29.05.2022 where he was declared the winner having scored 11,781 votes while the 2<sup>nd</sup> Respondent got 652 votes. However, while waiting to be issued with the appropriate INEC form, he became aware of a plot to remove his name as the winner and substitute it with the 2<sup>nd</sup> Respondent’s name. In reaction to this information, the Appellant made a written protest by a letter to the 1<sup>st</sup> Respondent Appeal Committee on 31.05.2022. The letter was received by the 1<sup>st</sup> Respondent on 3<sup>rd</sup> June 2022 but there was no response to same. On 17.06.2022, the 2<sup>nd</sup> Respondent’s name was submitted by the 1<sup>st</sup> Respondent (**APC**) to the 3<sup>rd</sup> Respondent (**INEC**), who published same on 24.06.2022.

The Appellant was aggrieved by this act and filed an action by way of Originating Summons (OS) on 30.06.2022 to reclaim his mandate. The 1<sup>st</sup> and 2<sup>nd</sup> Respondents filed Counter Affidavits in opposition to the Appellant’s OS as well as preliminary objections against the competence of the suit. The grounds for the preliminary objections were that the Appellant lacked the locus standi to institute the action because he had been disqualified from the primary election by the 1<sup>st</sup> Respondent’s screening committee and thus did not qualify as an aspirant within the meaning of Section 84 (14) of the Electoral Act 2022. The second ground was that the cause of action arose on 29.05.2022 when the election results were announced and that the filing of the suit on 30.06.2022 was well outside the 14 days prescribed in Section 285(9) of the Constitution of the Federal Republic of Nigeria 1999 as amended (the **Constitution**) within which to file a pre-election matter.

The trial Court resolved the preliminary objections against the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. It held that the cause of action accrued on 24.06.2022 when the 3<sup>rd</sup> Respondent published the 2<sup>nd</sup> Respondent's name and therefore the suit filed on 30.06.2022 was within the time prescribed by the Electoral Act. It further held that there was no evidence that the Appellant was disqualified as alleged by the 1<sup>st</sup> and 2<sup>nd</sup> Respondents. The trial Judge entered judgment in the Appellant's favour granting his reliefs.

The 1<sup>st</sup> Respondent was dissatisfied with the judgment of the trial Court and appealed to the Court of Appeal. In its judgment, the Court of Appeal upheld the decision of the trial Court that there was no evidence that the Appellant was disqualified, as the 1<sup>st</sup> Respondent did not issue him with a certificate of disqualification. The Court however held that the Appellant was statute barred, as the cause of action arose on 31.05.2022 when the Appellant wrote his petition to the 1<sup>st</sup> Respondent's Appeal Committee. The Court therefore allowed the appeal of the 1<sup>st</sup> Respondent.

Aggrieved by the decision that his action was statute barred, the Appellant appealed to the Supreme Court.



## Issues

One of the issues considered was whether the Court of Appeal was right in holding that the Appellant's suit at the trial Court was statute barred and could consider the Respondent's processes in reaching this determination.




## Decision

By a unanimous decision of the Supreme Court, the appeal was dismissed. In resolving the sole issue for determination, recourse was made to Section 285 (9) of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 as amended which provides that *“Notwithstanding anything to the contrary in this constitution, every pre-election matter shall be filed not later than 14 days from the occurrence of the event, decision or action complained of in the suit”*. More so, in defining what constitutes pre-election matter, sub-section 14 was examined. The sub-section defines pre-election matters as *“any suit by which an aspirant who complains that any of the provisions of the Electoral Act or any Act of the National Assembly regulating the conduct of primaries of political parties and the provisions of the guidelines of a political party for conduct of party primaries has not been complied with by a political party in respect of the section or nomination of candidates for an election”*.

The Court noted that the duration as provided in Section 285(9) of the Constitution is of the nature of limitation law and the effect is that a litigant who would otherwise have had a competent cause of action, loses the right to enforce it if he fails to file his action within the stipulated time.

As regards the argument on whether the cause of action is statute barred, although the general principle of law is that it is the Plaintiff's originating processes that are examined to determine whether an action is statute-barred or not, the Court held that in some instances, the Court may have recourse to the pleadings of the defendants where an objection to the Court's jurisdiction is determined at the conclusion of the case along with the substantive matter. On this point, the Court agreed with the decision of the lower Court and held that from a read of all the processes, the Appellant's cause of action arose on 31.05.,2022 and the filing of the OS on 30<sup>th</sup> June 2022 was well outside the 14 days provided by Section 285(9) of the CFRN 1999. The suit was therefore statute- barred.



## Brief Comment on the Decision

It is important to bear this principle in mind that although the general principle is that the Court will only consider the Plaintiff's Originating Process and claim in determining whether an action is statute barred, where the objection is considered at the conclusion of the substantive matter and not at the preliminary stage, the Court is at liberty to have recourse to the pleadings of the Defendant in determining whether a matter is statute barred or not. Also, where parties have joined issues on when cause of action arose, the law is that the issue must be proved by evidence.<sup>2</sup>

In essence, counsel must consider all these in litigating matters especially when the originating processes are such that can be easily heard alongside any objections like originating summons or originating motion.



2. *Aba v The Board of Directors, NIPOST & Anor* [2013] LPELR-22751(CA) Pp 28-29, Paras D-A

**Samuel v. APC** [2023] 10 NWLR (Pt. 1892) 192 at 223 (SC) Pp 24-30 –  
*“Failure to endorse an Originating Process for service out of the State as required by Section 97 of the SCPA does not invalidate the said Originating Process”.*



## Brief Facts

Prior to the 2023 general elections, the All Progressive Congress (the **1<sup>st</sup> Respondent**) conducted a primary election on 27.05.2023, to nominate its candidate for the post of House of Representatives member representing the Kabba-Bunu/Ijumu Federal Constituency in Kogi State. In the said election, the Appellant, 3<sup>rd</sup> Respondent, and other candidates took part. At the conclusion of the primary election, the 3<sup>rd</sup> Respondent had 69 votes, the Appellant had 29 votes, while the other two candidates had 17 and 1 votes, respectively.

The Appellant contended that the 3<sup>rd</sup> Respondent provided fraudulent information in the affidavit and documents submitted in relation to his constitutional requirements to contest in the election and filed an Originating Summons (OS) action on 01.07.2022, at the Federal High Court in Lokoja (trial Court), seeking declaration that the 3<sup>rd</sup> Respondent submitted false information to INEC and that the 3<sup>rd</sup> Respondent was disqualified from contesting in the election.

Following service of the Appellant's OS and accompanying affidavit, the 1<sup>st</sup> and 3<sup>rd</sup> Respondents filed their responses to the substantive action together with preliminary objections contesting the trial Court's jurisdiction to hear the case. Among the reasons given were that: (a) the court lacked jurisdiction to hear the case because the relief sought was statute-barred by the provisions of Section 285(9) of the Constitution; (b) the Appellant lacked the necessary standing to bring the case; (c) the Appellant lacked a cause of action; (d) the suit was speculative and predicated on assumptions; and (e) the OS was incurably defective and void for failure to be endorsed in accordance with the provisions of section 97 of the Sheriffs and Civil Process Act. The Appellant filed his response to the 1<sup>st</sup> and 3<sup>rd</sup> Respondents' processes.

After hearing the parties, the trial Court on 08.09.2022 upheld the 1<sup>st</sup> Respondent's objection on the ground that the failure to endorse the OS as mandated by section 97 of the Sheriffs and Civil Process Act rendered the OS incompetent and therefore dismissed the suit.

Dissatisfied with the judgment of the trial Court, the Appellant appealed to the Court of Appeal which dismissed the appeal. In dismissing the appeal, the Court held that the Appellant’s failure to endorse the OS for service outside jurisdiction rendered it fundamentally defective. Still dissatisfied, the Appellant appealed to the Supreme Court.

”  
**In this case, the Supreme Court held that the provisions of Section 97 of the SCPA does not apply to suits filed at the Federal High Court.**

## Issue

One of the issues submitted for the Court’s determination inter-alia was whether the Sheriffs and Civil Processes Act is applicable to the Federal High Court.

## Decision

In resolving this issue, the Supreme Court had to interpret the provision of Section 97 of the Sheriffs and Civil Process Act (**SCPA or the Act**). The Court in its decision held that although the section only mentions “writ of summons”, the provision applies to all originating processes and cited section 95 (under Part VI of the Act, just as section 97) of the Act in support which defines “writ of summons” thus: *“In this part, unless the context otherwise requires -“writ of summons” includes any writ or process by which a suit is commenced or of which the object is to require the appearance of any person against whom relief is sought in a suit or who is interested in resisting such relief.”*

Going forward, the Court held that the Federal High Court was not within the contemplation of the lawmakers when the SCPA was enacted and that when sections 2 and 19 of the Act are considered together with parts VI and VII of the SCPA, this conclusion becomes evident. The Court further stated that the requirement for leave to issue a writ for service outside jurisdiction has been removed by the extant Rules of the Federal High Court being the Federal High Court (Civil Procedure) Rules 2019 which only provides for leave to serve a writ or notice out of jurisdiction and that out of jurisdiction here is out of the Federal Republic of Nigeria.

In sum, the Court held that failure to endorse the OS for service outside Kogi State as provided in Section 97 of the SCPA does not invalidate the OS and resolved the issue in favour of the Appellant.

On the substantive suit, the Supreme Court held that it does not have the jurisdiction to consider the matter as the trial Court had itself lost the jurisdiction to consider the matter having become statute barred and struck out the appeal.



## Brief Comment on the Decision

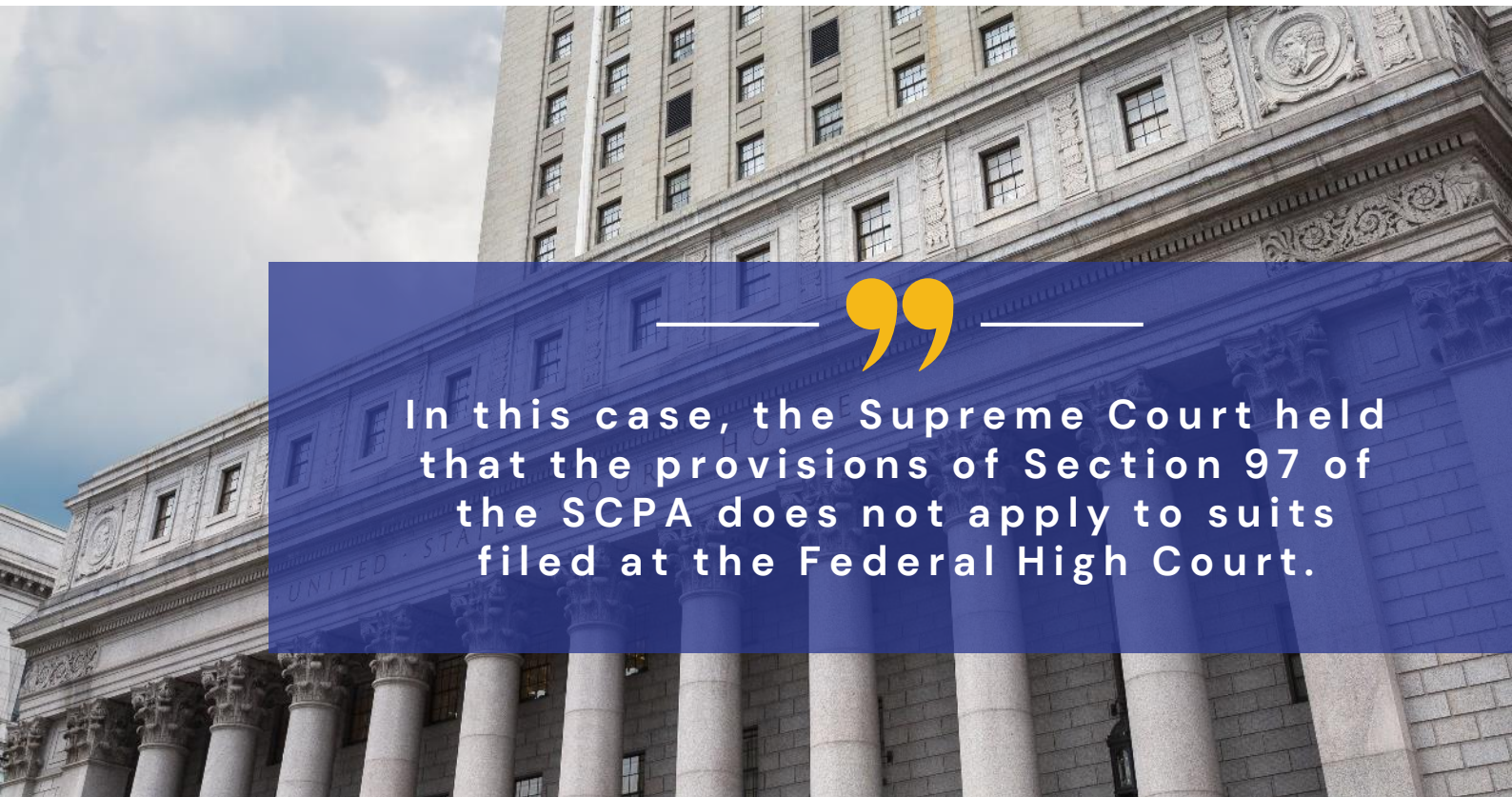
It is important to first mention that the issue in this case bothered on endorsement on an Originating Process for service outside jurisdiction rather than just seeking leave to issue and serve an Originating Process outside jurisdiction, which has received pronouncements and is well settled in our jurisprudence. In this case, the Supreme Court held that the provisions of Section 97 of the SCPA does not apply to suits filed at the Federal High Court.

Instructively, the Court also settled the point that ‘writ of summons’ as used in the SCPA should not be given a narrow interpretation to apply only to writ of summons but must include any writ or process by which a suit is commenced or which the object is to require the appearance of a person against whom relief is sought in a suit. Hence, parties who institute actions in Courts other than the Federal High Court must bear in mind that the provisions of the SCPA to apply to all modes of commencement of an action asides writ of summons.



The Court also settled the point that ‘writ of summons’ as used in the SCPA should not be given a narrow interpretation to apply only to writ of summons but must include any writ or process by which a suit is commenced or which the object is to require the appearance of a person against whom relief is sought in a suit.

**Alli v. Okoloko [2023] LPELR-60700 (CA):**  
*“Sheriffs and Civil Process Act does not apply to matrimonial proceedings”.*



In this case, the Supreme Court held that the provisions of Section 97 of the SCPA does not apply to suits filed at the Federal High Court.

## Brief Facts

The Respondent, as Petitioner, commenced the suit which culminated in this appeal at the High Court of Lagos State (**the trial Court**) seeking the dissolution of the marriage between himself and the Appellant who was domiciled with the children of the marriage in the United States of America. Upon the commencement of the proceedings, the Appellant filed an answer under protest as well as a motion on notice on the same grounds of objection raised in the answer under protest that the Petition of the Respondent was fundamentally defective for failure to comply with the provisions of Section 97 of the Sheriffs and Civil Process Act (**SCPA or the Act**). The motion on notice was heard by the trial Court and dismissed in its ruling on 04.01.2022. Dissatisfied with the ruling, the Appellant appealed to the Court of Appeal.

## Issue

Among other issues considered by the Court of Appeal, the issue under consideration here is whether the SCPA applies to matrimonial proceedings.



## Decision

The contention of the Appellant under this issue is that the Petition was incompetent for failure to comply with the provisions of section 97 of the SCPA, being endorsement for service outside jurisdiction, when serving the Petition on the Appellant at 11701 Centurion Way, Potomac, Maryland, 20854, United States of America outside Nigeria. Also argued by the Appellants is that the finding of the trial Court that the SCPA is not applicable to matrimonial proceedings was inconsistent with the appellate court's decision in **Touton S.A. VS. G.C.D.N.Z. SPA**.<sup>3</sup>

In resolving the issue, the Court of Appeal held that The Matrimonial Causes Act (**MCA**) is the substantive procedural statute enacted by the National Assembly to govern any matrimonial cause instituted before any High Court in Nigeria and same is the statute that pursuant to the 1999 Constitution of the Federal Republic of Nigeria (As Amended) (the **Constitution**) conferred jurisdiction on the trial Court to entertain the Respondent's Petition.

Also, the Court of Appeal relied on section 8 of the MCA which provides as follows: *"The Jurisdiction conferred on a Court by this Act shall be exercised in accordance with this Act, and any law in force immediately before the commencement of this Act which confers Jurisdiction in*

*divorce or Matrimonial Causes on the High Court of a State or provides for the law and practice to be applied in the exercise of that Jurisdiction, shall to the extent that it does so cease to have effect"*, and held that the SCPA is not applicable to matrimonial proceedings.

The Court also held that there was the Matrimonial Causes Rules to complement the MCA. The said Matrimonial Causes Rules is a complete code of rules of procedure regulating the issuance and service of a petition pursuant to the MCA and there is nowhere in the Matrimonial Causes Rules that required the endorsement of Petition in the manner required by Section 97 of the SCPA.

The Court of Appeal further reiterated its decision in **Ibrahim v Balogun**<sup>4</sup> that a court process meant to be served outside Nigeria is not required to be endorsed as stipulated by Section 97 of the SCPA and held that the decision in **Touton S.A v. G.C.D.Z SPA**<sup>5</sup> relied upon by the Appellant was decided per incuriam because the decision in – **Ibrahim v. Balogun**<sup>6</sup> was not brought to the attention of the court in **Touton's** case.



## Brief Comment on the Decision

We are of the view that until there is a decision of the Supreme Court that speaks conclusively to the point, the position of the law as stated in the **Ibrahim v Balogun's** case and in the instant case remains that the provisions of the SCPA do not apply to matrimonial proceedings given the provisions of the MCA and the Matrimonial Causes Rules.

3. [2011] 4 NWLR (Pt. 1236) 1.

4. [1999] 7 NWLR (Pt. 610) 254 at 273 paras C – G.

5. [Supra].

6. [Supra].

## Incorporated Trustees of Ikigai Innovation Initiative v. NITDA [2023] Unreported FHC/ABJ/CS/1246/2022, Judgment Delivered by Hon. Justice Egwuatu on 28.11.2023

*“Both NITDA and the Attorney General must comply with NDPR and other laws and failure to ensure this in making the whitelist of countries further to the Data Protection Implementation Framework and the Binding Corporate Rules and Standard Contractual Clauses renders them null and void.”*



### Brief Facts

On November 28, 2023, the Federal High Court in Abuja (**FHC**) issued a judgment in the case of the Incorporated Trustees of Ikigai Innovation Institute v. National Information Technology Development Agency (**NITDA**), marking a significant shift in the legal landscape for cross border data transfer in Nigeria.

Ikigai, a non-profit organisation focused on technology policy and legal frameworks in Africa challenged the "Whitelist" included in the data protection regulation framework issued by the National Information Technology Development Agency (**NITDA**).

The crux of the matter was the appropriacy of the "Whitelist" included in the NITDA's Data Protection Regulation Implementation Framework (the **Framework**). The Framework, in Annexure C, lists countries which are considered to have sufficient data protection laws for international data transfers.

Ikigai's major objection was that some countries included on the Whitelist did not meet the necessary data protection standards. Ikigai's first recourse was to bring a complaint to NITDA to review its Whitelist. Dissatisfied with the lack of response to their concerns, Ikigai decided to pursue legal action against NITDA. Ikigai proceeded to file an action in Court to compel NITDA to review and update the Whitelist to ensure that only countries which are compliant with data protection regulations were included on the list. Ikigai also challenged the inclusion of Binding Corporate Rules (**BCRs**) and Standard Contractual Clauses (**SCCs**) in the data protection regulation framework, arguing that these mechanisms were not envisioned by the regulations.

The Defendant, NITDA did not file a defence to Ikigai's processes. Hence, the Court's decision was based solely on arguments presented by the Plaintiffs.



## Issues

The issue considered by the Court was whether the Whitelist was regular, appropriate and in accordance with the provisions of the Nigeria Data Protection Regulation (NDPR).



## Decision

In its decision, the Court ruled in favour of Ikigai. The Court held that the Whitelist violated Article 2.11 of the Nigeria Data Protection Regulation (**NDPR**) by giving certain countries lacking adequate data protection legislation or appropriate supervisory authority Whitelist status.

The Court also agreed with Ikigai's argument that the Framework's inclusion of Binding Corporate Rules (**BCRs**) and Standard Contractual Clauses (**SCCs**) lacked legal basis under the NDPR. The Court concluded that NITDA had overstepped its authority by whitelisting certain countries and introducing Binding Corporate Rules and Standard Contractual Clauses that were not supported by the NDPR.

Consequently, the Court granted all the reliefs sought by the Plaintiff which included an order setting aside the Whitelist and deleting the names of some countries from the Whitelist.



## Brief Comment on the Decision

The Court's decision in this case is a call to action for the National Data Protection Commission (**NDPC**) to undertake an overhaul of the Whitelist. It emphasises the importance of establishing a standard cross-border data protection framework through the inclusion of only those countries that have robust data protection laws and independent supervisory bodies overseeing data protection. Until this revision is completed, data controllers are strongly advised to exercise caution when transferring personal data to countries that are identified as lacking adequate data protection frameworks. This caution is crucial to ensure compliance with data protection regulations and protect the privacy rights of individuals.

## Quek Tai Tech Oliver v. Udo [2024] 4 NWLR Pt. 1927

*“Lawyers relating with foreign clients must be good ambassadors of Nigeria and it is conduct unbecoming of a Legal Practitioner to use dishonourable language in relating with clients or other professional colleagues. A Lawyer should also keep the client informed of the progress and important developments in any matter being handled”.*



### Brief Facts

The Applicant, a Singaporean law firm, engaged the Respondent's Nigerian law firm, Lex Artifex, LLP to assist with trademark registration for a Singapore company. The Respondent was the chairman of Lex Artifex LLP.

While the matter was ongoing and when the Applicant requested for update from the Respondent, the Respondent replied in an unprofessional manner where the Respondent said that the queries were unnecessary, excessive and disrupted their work.

The Applicant, disappointed by the Respondent's unprofessional conduct, filed a complaint of professional misconduct before the Legal Practitioner's Disciplinary Committee (LPDC) in January 2021. They argued that as foreign lawyers, their interaction with Nigerian legal professionals was rare and the Respondent's behaviour tarnished their impression of the Nigerian legal community. They accused the Respondent of failing to provide adequate communication and show professionalism.

In response, the Respondent stated that the Applicant, being Lawyers in trademark practice, should have understood the trademark registration process rather than inundating him with excessive inquiries. The Respondent claimed that the Applicant's behaviour amounted to stalking and disrupted his work.

### Issues


The main issue before the LPDC was whether Mr. Udo's actions amounted to unprofessional misconduct.



## The Decision

The LPDC, in holding that Mr. Udo was not a fit and proper person to continue as a member of the Nigeria Bar Association and in suspending him from practice for two years, emphasised the provisions of Rules 14, 17 and 26 of the RPC which deals with the standards that a counsel should uphold in the discharge of his duties and the need to act professionally with colleagues and clients by showing them respect, fairness and human decency.

It was held that the statement of the Respondent was disgraceful and dishonourable and he did not hold himself to the high standard of professional conduct. It was held that he had the responsibility of responding to client's inquiry and his failure to conduct himself in a professional manner made him unfit to continue as a member of the NBA and he was suspended from law practice for two years.



“  
It was held that the statement of the Respondent was disgraceful and dishonourable and he did not hold himself to the high standard of professional conduct.



## Brief Comment

This case again brings to fore the need for Legal Practitioners to remain professional in the discharge of their duties whether to clients or fellow colleagues. Further, a counsel is under the obligation to give his client updates on an ongoing matter especially where the client makes a request; and this update must be communicated in a courteous and professional manner.

**Government of Delta State & Ors v. Olukunle Ogheneovo Edun [2024] 1 NWLR (Pt. 1919) 267 – “Excluded in respect of the particulars for which a private motor vehicle may be impounded, is the Road Worthiness Certificate”.**



## Brief Facts

The Respondent, a Legal Practitioner based in Warri, Nigeria was driving his car, a Toyota Camry on 05.08.2014. During his journey, he came across a roadblock of steel, wood, buckets, gallon and heavy stones mounted by a Vehicle Inspector Officer (VIO), who was also wielding a big piece of wood. The VIO suddenly jumped into the middle of the road and the Respondent had to apply his brakes and confronted the VIO who had no name tag and who menacingly demanded for the Respondent’s road worthiness certificate.

The Respondent replied that he did not have any and did not need it for his vehicle as his vehicle was not for commercial transportation. This attracted other VIOs and motorists to the Respondent’s car. On seeing the riotous situation, the VIOs removed the roadblock and allowed the Respondent pass. After the incident, the Respondent checked his vehicle particulars and discovered that while applying for his vehicle licence, a certificate of road worthiness was processed alongside and he paid N2,800 to the Delta State Government. He then brought an action against the Appellants claiming that there is no provision in the law that empowers the Appellants to collect money or issue certificate of road worthiness in respect of vehicles used for private purpose or any law authorising blockade of public highways with dangerous instruments.

After trial, the trial Court entered judgment in favour of the Respondent that the Appellants do not have the power under the Road Traffic Law of Delta State to set up roadblocks or demand, collect fees and issue a certificate or road worthiness in respect of vehicles used for private purposes.

Dissatisfied with the decision, the Appellants appealed the decision of the trial Court to the Court of Appeal.



## Issue before the Court of Appeal

Among other issues considered by the Court of Appeal, the Court considered whether upon an examination of the relevant laws, the certificate of road worthiness has no application to private motor vehicles.



## Decision of the Court of Appeal

The Court of Appeal considered the relevant provisions of the Road Traffic Law of Delta State and held that Section 43(1) gives the Executive Council of the State the power to make Regulations and pursuant to this, the Executive Council made the Road Traffic Regulations (**the Regulations**) which sets out the 12 categories for the registration of motor vehicles. The Court stated that the requirement for certificate of road worthiness applies only to commercial passenger carrying vehicles and trailers.

The Court further held that paragraphs 5 and 58(1) of the Regulations are silent in respect of private motor vehicles and that the express and unambiguous mention of a thing, automatically excludes things not mentioned. The Court further held that certificate of road worthiness was excluded from the particulars for which a private motor vehicle may be impounded and that the implication of holding otherwise was that a private motor vehicle can be impounded for not having hackney and stage carrier licence. The Court stated that a private motor vehicle is a vehicle that belongs to a particular person, or which is used for carrying of personal effects and not for public use or for hire or reward, hence, it would be absurd and completely illegal to impound a private motor vehicle for not having or carrying hackney licence or stage carriage licence because it is provided as two of the particulars for which any vehicle may be impounded for not having.

The Court held that a statute must be read as a whole and a whole read of the Law and Regulations is that a certificate of road worthiness is not a document required for a private vehicle in Delta State. The Court also held that the VIO was wrong in mounting a roadblock and conducting himself in the manner that he did. The Court on the whole dismissed the appeal.



## Brief Comment on the Decision

This decision of the Court of Appeal is instructive for public officers that they must not exceed the extent of powers donated on them by law and must keep within the confines of statutory provisions to prevent arbitrariness or abuse of power. The Court deprecated the habit of traffic officials in using menacing tactics in the course of their duty and the point must be taken that in conducting their legal duties, public officers must keep within the bounds of the law.

Also instructive is the fact that the Court held, on interpretation of the relevant laws in Delta State, that certificate of road worthiness is not a pre-requisite for private vehicles. This decision will also apply to other States that have same or similar laws with Delta State and it is important that VIO and other traffic officials take note of this decision and conduct themselves accordingly.

## Herculito Maritime Ltd & Ors v. Gunvor International BV & Ors [2024] UKSC 2

*“The United Kingdom Supreme Court holds that a shipowner is not precluded from claiming against the charter in respect of losses arising out of risks for which additional insurance had been obtained pursuant to war risk clauses”.*



### Brief Facts

Herculito Maritime Ltd (the **“Shipowner”**) of MT Polar (the **“Vessel”**) by a voyage charterparty dated 20.09.2010, chartered the Vessel to Clearlake Shipping Ltd (the **“Charterer”**) for a voyage from St. Petersburg to Fujairah or in the Charterer’s option to Singapore (the **“Voyage”**). The voyage charterparty contained additional war clauses and the Gulf of Aden clause - the Gulf of Aden was a high-risk area in marine insurance which was prone to piracy and seizure for ransom, (together **“War Risk Clauses”**). According to the War Risk Clauses, any additional premium payable in relation of war risks including piracy, incurred by the reason of the Vessel trading in excluded areas not covered by the Shipowner’s basic war risk insurance – such as the Gulf of Aden, were to be for the Charterer’s account subject to a US40,000 (Forty Thousand Dollars) limit.

The master of the Vessel issued six bills of lading dated between 29.09.2010, 30.09.2010, and 02.10.2010 to the shippers (**Warley International Ltd**) and receivers of the cargo - Gunvor International BV (**“Appellants”**), which recorded the shipment of entire cargo of 69,493.28 metric tons (**“Mts”**) of fuel oil (the **“Cargo”**). The voyage from St. Petersburg to Fujairah and Singapore required the Vessel to voyage via Suez and the Gulf of Aden and prior to the Vessel’s entry into the Gulf of Aden, the Shipowner took out a Kidnap and Ransom insurance not exceeding 14 days from 25.10.2010 to cover the increased risk of entry into the high-risk area. The Shipowner also paid an additional premium to extend their Hull & Machinery and War Risk insurance to cover the vessel’s contemplated voyage through the Gulf of Aden for a period not exceeding 14 days in total.

The Vessel was seized by Somali pirates on 30.10.2010 during its voyage from St. Petersburg to Singapore while transiting the high-risk area in the Gulf of Aden and the Vessel was held for ransom till the eventual release on 26.08.2011 following the payment of \$7,700,000 (Seven Million, Seven Hundred Thousand Dollars) by or on behalf of the Shipowner. Following the release, the Vessel continued her voyage and delivered the remaining cargo at Singapore in October 2011.

The Shipowner subsequently declared general average<sup>7</sup> and prior to the discharge of the cargo at Singapore, a general average guarantee dated 16.09.2010<sup>8</sup> and general average bond<sup>9</sup> dated 28.09.2010 was provided to the cargo underwriters and the Cargo interests<sup>10</sup> respectively. A general average adjustment<sup>11</sup> was subsequently issued which provided that \$4,829,393.22 (Four Million, Eight Hundred and Twenty-Nine Thousand, Three Hundred and Ninety-Three Dollars, Twenty-Two Cents) was due to the Shipowner from the Cargo interests. The Cargo interests refused liability to contribute to the general average contribution due to the Shipowner.

Consequently, the Shipowner - 1<sup>st</sup> Respondent, commenced Arbitration in London under the London Maritime Arbitrators Association Terms (**LMAA terms**) against the Cargo interests - the Appellants for the

general average contribution. The Appellants rejected the claim for contribution on the ground that the 1<sup>st</sup> Respondent's only remedy was to recover the loss under the terms of the insurance policies taken out by the Appellants. The Cargo interests also argued that the charterparty contained an insurance fund or code<sup>12</sup> which prevented the Shipowner from recovering from the Cargo interests in general average for losses caused by a covered risk under an additional war risk insurance.

The Arbitral Tribunal was faced with two preliminary issues, a) whether the terms of the charterparty were incorporated into the bills of lading and b) whether the 1<sup>st</sup> Respondent under the bills of lading agreed to only approach their insurance policy and not the Cargo interests under the bills of lading in the event that the loss covered by the insurance policy is incurred. The Arbitral Tribunal upheld the Appellants' case and aggrieved by the decision of the Arbitral Tribunal; the Respondents appealed to the High Court which allowed the Respondents Appeal by agreeing with the Arbitral Tribunal solely on the first issue. Dissatisfied by the High Court's decision, the Appellant further appealed to the Court of Appeal which also upheld the decision of the lower court. The Appellants subsequently appealed to the Supreme Court.



## Issue before the Supreme Court of the United Kingdom

The issue before the Supreme Court was whether on the proper interpretation of the voyage charterparty, the Shipowner was precluded from claiming against the Charter in respect of losses arising out of risks covered by additional insurance.

7. A principle in maritime law where all stakeholders in a maritime voyage proportionally share losses resulting from the preservation of ship and cargo.

8. A statement that the insurers will guarantee the due payment to the shipowner of a general average contribution.

9. A cargo owner's bond issued by a shipowner to ensure that the cargo owner pays the general average contribution.

10. This refers to anyone who would suffer a loss by the damage, loss, or destruction of the goods in carriage of goods or would benefit from the safe arrival of the goods.

11. A principle in maritime law which ascertains liability upon investigation and deals with the fair compensation for and contribution to losses and expenses in a maritime voyage. This is usually carried out by an average adjuster appointed by the shipowner.

12. This is the insurance policy issued by underwriters in respect to risks covered in a contract.



## Decision of the Supreme Court of the United Kingdom

The Supreme Court considered the following in reaching a decision in the Appeal, a) that general average is a common law right controlled by the terms of a contract and in relation to kidnap and ransom risks, there is a requirement for a clear agreement to the effect that the Shipowner has given up a valuable right of a contribution in general average, b) in order to show that parties agreed to an insurance code or fund, it has to be demonstrated that this is a necessary consequence of the charterparty agreed – of which is a high threshold that the Appellants failed to satisfy, c) where parties have agreed to take out insurance in joint names, a waiver of subrogation is implied and the Appeal was not a case of joint names insurance, d) there exists no principle which exempts charterers from liability for their breaches of a charterparty or from contributing in general average solely on the ground that charterers have directly or indirectly provided the funds which the shipowners insured themselves against the relevant loss of damage.

The Supreme Court held that the English commercial law recognises the importance of certainty and if the parties wished to agree that there can be no right of recovery or subrogation in respect of loss or damage covered by insurance, same ought to be stated in the charterparty. Thus, the Supreme Court in dismissing the appeal held that there was no insurance code or fund agreed in the charterparty which could be incorporated into the bill of lading contracts and therefore, the Cargo interests were liable to contribute to the general average contribution arising from the loss covered by the additional war risk clauses.



## Brief Comment on the Decision

This action is a landmark case which considered whether there can be no right of recovery or subrogation in respect of loss or damage covered by insurance, where same was not stated in charterparty as it is an accepted principle in marine insurance for shipowners to declare general average to charterers to reimburse additional war risk premiums paid for transiting high risk areas.

The Supreme Court's decision is commendable because it will prevent counterparties to a voyage charterparty from relying on an implied waiver of subrogation to evade liability for general average contribution. Thus, by the Supreme Court's decision, parties to a charterparty will be meticulous in drafting terms as there will be no presumption as to waivers. Therefore, charterparty terms as they relate to insurance and risk allocation should be unambiguously set out to show the intention of the parties.

Although it is noted that the issue contemplated in *the Polar* case has not been addressed within the Nigerian maritime legal space, the *Polar* decision has set a laudable track by requiring parties to charterparties who have not entered a joint insurance policy, to indicate express terms which would exclude a counterparty from liability for breach of contract – contribution to general average as in *the Polar* case, or same will not be presumed. This accords with the principle under Nigerian law that the Courts will not draw up a contract or term of contract for parties where the parties have not expressly drawn up or made provision for same.

**Paul and another (Appellants) v. Royal Wolverhampton NHS Trust (Respondent); Polmear and another (Appellants) v. Royal Cornwall Hospitals NHS Trust (Respondent); Purchase (Appellant) v. Ahmed (Respondent) [2024] UKSC 1.**  
*“a doctor’s duty of care does not extend to protect patient’s close family against the risk of illness from the experience of witnessing the death or medical crisis of their relative from a condition which the doctor has negligently failed to diagnose or treat”.*



## Brief Facts

The Claimants in these three cases claimed compensation in the tort of negligence for psychiatric illness caused by the experience of witnessing the death of a close family member in distressing circumstances. In each case, the death was allegedly caused by the negligence of the Defendant doctor or health authority in failing to diagnose and treat a life-threatening medical condition. In Paul, the Claimants are two young daughters who were present when their father died suddenly from such a condition in a public street. In Polmear, the Claimants are parents who witnessed the tragic death of their young daughter. In Purchase, the Claimant came upon her daughter in shocking circumstances a few minutes after her death. In each case, the Defendant applied to have the claim for compensation for psychiatric illness summarily dismissed, arguing that, assuming all the facts alleged are true, as a matter of law the claim cannot succeed. By different routes, this issue in each case reached the Court of Appeal, which heard the appeals together. The Court of Appeal dismissed all three claims. The Claimants then appealed to the Supreme Court.



## Issues

At the Supreme Court, the question that came up for determination was whether an individual can make a claim for psychiatric injury caused by witnessing the death or other horrifying event of a close relative because of earlier medical negligence.



## Decision of the Court

By a majority of six to one, the Supreme Court dismissed the appeals. The Court held that, while doctors owe a duty of care to protect the health of their patients, they do not owe a duty of care to members of the patient's close family to protect them against the risk of illness from the experience of witnessing the death or medical crisis of their relative from a condition which the doctor has negligently failed to diagnose or treat.



It is noteworthy that a decision of the UK Supreme Court although not forming a binding but persuasive precedent on Nigerian Courts, it will be interesting to see how the Nigerian Courts will decide this issue where it is posed to it.



## Brief Comment on the Decision

The Supreme Court by this decision clarified the law on secondary victims and held that a doctor's duty of care does not extend to protect patient's close family against the risk of illness from the experience of witnessing the death or medical crisis of their relative from a condition which the doctor has negligently failed to diagnose or treat.

Under Nigerian law, there is a dearth of judicial authorities that speak to whether a doctor's duty of care extends to protect patient's close family against the risk of illness from the experience of witnessing the death or medical crisis of their relative from a condition which the doctor has negligently failed to diagnose or treat; and the Nigerian cases speak to instances where the primary victims sue for breach of duty of care that the medical practitioner owed them. It is noteworthy that a decision of the UK Supreme Court although not forming a binding but persuasive precedent on Nigerian Courts, it will be interesting to see how the Nigerian Courts will decide this issue where it is posed to it.



**PART B**

**REVIEW OF  
THE NOTARIES PUBLIC  
ACT, 2023**

# REVIEW OF THE NOTARIES PUBLIC ACT, 2023

On 12 June 2023, the Notaries Public Act, 2023 (the **NPA** or the **Act**) came into force in Nigeria, replacing the Notaries Public Act, Cap N141 LFN 2004 (the **Old Act**). Much like the Old Act, the NPA regulates the appointment, registration, and duties of Notary Publics in Nigeria, but goes further to make novel and progressive innovations, one of which includes the introduction of digital notarisation.

We will now proceed to highlight some of the notable provisions of the NPA:

## Electronic Register

The NPA provides that the Chief Registrar of the Supreme Court (**Chief Registrar**) shall keep a Register of Notaries Publics (**Register**) in electronic form<sup>13</sup> in addition to a physical register. This is a progression from the provisions of the Old Act which only provides for a physical Register. The Act also mandates the existing Notary Publics to be entered into the physical and electronic Register<sup>14</sup>.

## Introduction of Electronic Notarisation

In line with the ever-expanding landscape of the interface between law and technology and in similar spirit with section 84B of the Evidence Act 2011<sup>15</sup>; a pertinent innovation of the NPA is the introduction of digital notarisation, the recognition of same, and for electronic seals to be used by Notary Publics.<sup>16</sup> Section 5(2) of the NPA provides that “notary publics shall discharge their duties, where the situation arises via electronic means”. As a prerequisite to the exercise of such electronic notarisation, notary publics must register their intention and capability to do so with Chief Registrar.<sup>17</sup> Notaries Public are also mandated to register their official digital signature<sup>18</sup> with the Chief Registrar.<sup>19</sup>

The registration with the Registrar and the electronic seal will undoubtedly go a long way in curbing illicit practices by imposters; the electronic record makes the verification of the acts done by legitimate Notary publics seamless and leaves no room for impersonators.

13. Section 4 of the NPA

14. Section 15 of the NPA

15. Section 84B of the Evidence Act provides for the admissibility of electronic records in evidence

16. Section 5(5) of the NPA

17. Section 5(2) of the NPA

18. This can be an electronic sound or symbol or process attached to or logically associated with an electronic document and executed or adopted by a person with the intention to sign the electronic document or record. See section 28 NPA and section 84D of the Evidence Act 2011 (2023 as amended)

19. Section 5(3)



## Introduction of Electronic Notarial Acts

The NPA also introduced performance of electronic notarial acts via audio-visual communication; these acts may be performed for persons in the same state as the Notary Public, outside the state and both within Nigeria and outside Nigeria<sup>20</sup> provided that the electronic system so used complies with the requirements and an electronic notarial certificate<sup>21</sup> is prepared by the Notary Public<sup>22</sup>.

The performance of virtual notarisation comes with conditions which seek to ensure the proper functioning of the electronic medium utilised for such virtual notarisation. The audio-visual means of communication must sufficiently provide audio clarity and video resolution, include a means of authentication, enable the Notary Public to confirm the identity of the individual through two-factor identification methods and be capable of recording, storing and accessing electronic recordings of documents on the audio-visual communication. The Notary Public utilising virtual notarisation has the responsibility of taking reasonable steps to verify electronic records<sup>23</sup> and submit copies of the digitally notarised process to the Chief Registrar for record keeping<sup>24</sup>.



The audio-visual means of communication must sufficiently provide audio clarity and video resolution, include a means of authentication.



## Recognition and Validity of Electronically Notarised Documents

In addition to creating a regime of electronic notarisation in Nigeria, the NPA provides that electronically notarised documents are valid in judicial proceedings as though signed in-person<sup>25</sup>. The NPA goes further to provide that the digital seal and signature of the Notary Public serve as prima facie evidence in any court of the genuineness of the notarisation of such a document<sup>26</sup>.

20. Section 6(1)

21. Under section 28 of the NPA electronic notarial certificate is defined as "any portion of notarised document carrying the that is completed by the Notary Public, bears the Notary Public's electronic signature and official seal, official title, any information concerning the date and place of the electronic notarisation, and states the facts attested to or certified by the Notary Public"

22. Section 6 (4) of the NPA

23. Section 6(3)(c) of the NPA

24. Section 6(5) of the NPA

25. Section 8 of the NPA

26. Section 9(1) of the NPA



## Documents which may be notarised

Unlike the old Act, the NPA specifically lists out what documents may be notarised<sup>27</sup>, these documents include:



## Updated fees

The NPA updated the minimum amount to be charged for notarisation of documents<sup>28</sup> and punishes failure to comply with a fine of N50,000 or suspension for two months. This amendment was necessary in line with current economic realities. The Act also provides that the Chief Justice of the Supreme Court may by an order published in the Federal Government Gazette alter or revoke the fees specified in the second schedule to the NPA or provide for the amount to be charged for act not specified therein.<sup>29</sup>

27. Section 7 of the NPA

28. Section 10 of the NPA, Second Schedule to the NPA

29. Section 10(3) of the NPA

## Offences

Unlike the Old Act which had a punishment for unlawful practice as a Notary Public by way of fine in the sum of N100 per day for every default and an imprisonment for a period of four months; the NPA increased the fine from N100 to N1000 per day, but the term of imprisonment remains unchanged.



“  
The NPA replaces the outdated provisions of the Old Act and provides a framework for the operations of Notary Publics that is contemporaneous with 21<sup>st</sup> Century realities.

## Conclusion

The innovations of the NPA are laudable, specifically the provision for electronic notarisation and electronic notarisation acts, as they eliminate innate difficulties associated with physical notarisation of documents. The NPA replaces the outdated provisions of the Old Act and provides a framework for the operations of Notary Publics that is contemporaneous with 21<sup>st</sup> Century realities.

With virtual notarisation, a myriad of challenges associated with physical notarisation of documents such as scheduling, proximity and cost are eliminated. The NPA also facilitates transparency and efficiency through the electronic seal and official electronic signature which are easily verifiable, even more so that notarised documents are to be submitted to the Chief Registrar for recording of same. The updated fees and penalties also reflect current financial realities.

In all, the introduction of digital notarisation is a welcomed development and accords with the new provisions of the Evidence Act to usher in a new era of digital notarisation. It lays a much-needed legal framework for efficient and transparent operation of Notary Publics in and outside of Nigeria.

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