

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

COMPLAINT NO.: BB/LPDC/290/2020

BETWEEN

PETER OKOYE NWANKWOAPPLICANT

AND

C. O. I AGWUNA, ESQ RESPONDENT

CORAM:

1. AHMED MUSTAPHA GONIRI, ESQ. (LIFE BENCHER) PRESIDING
2. HON. JUSTICE AISHA BASHIR ALIYU (C.J NASSARAWA) ... MEMBER
3. HON. JUSTICE HALIMA I. ABDULMALIK (C.J NIGER) MEMBER
4. CHIEF UMEH KALU, SAN (LIFE BENCHER) MEMBER
5. MR. EBENEZER OBEYA, ESQ (LIFE BENCHER) MEMBER

FINAL DIRECTION

DELIVERED BY CHIEF UMEH KALU, SAN, LIFE BENCHER ON THE
20th DAY OF FEBRUARY, 2024

PROCEEDINGS:

This matter was commenced by an Originating Application dated the 2nd day of October 2020 and filed at the Registry of this Committee on the 28th day of October, 2020.

The Originating Application was accompanied by a Statement of Facts of three (3) pages dated 2nd October, 2020, and, an Affidavit of Facts of fifteen (15) paragraphs deposed to by Peter Okoye Nwankwo and sworn to at the High Court Registry, Enugu on the 2nd day of October, 2020.

The said Affidavit of Facts has some attachments labelled "ATTACH A" and "ATTACH B". "Attach A" is an Application for Transfer of Suit made by the Respondent to the Honourable Chief Judge of Anambra State in respect of Charge No.: MNJ/33C/2014: Commissioner of Police V. Nwabueze Nwankwo & Ors., dated 31st January, 2020.



On the other hand, "**Attach B**" is an Application for Adjournment made by the Respondent herein in Charge No.: MNJ/33C/14: Commissioner of Police v. Nwabueze Nwankwo & Ors. dated 10th August, 2020 and addressed to the Registrar, Magistrate Court 2, Ekwuluobia.

The Respondent when served with the Originating Application and the accompanying Processes filed his response dated 19th March, 2021 at the Registry of this Committee on 8th September, 2021. Accompanying the Respondent's Reply is an Affidavit of Facts in relation to the Petition, deposed to by the Respondent on 31st August, 2021 at the High Court of Justice, Onitsha.

Following the re – composition of the previous Committee to which this matter was assigned, it became necessary that the past hearings be discarded and hearing commenced *de novo*. It is important to note that apart from the processes filed by the Respondent as earlier indicated in this Direction, the Respondent from the Records never put up appearance in any of the sittings, and, had at no time been represented by Counsel.

Available records indicate that the Hearing Notices of the proceedings of the Committee were served on the Respondent by substituted means, and, none of those services elicited the Respondent's attendance to any of the sittings.

A Motion Ex Parte dated 26th day of November, 2022 and filed on the 28th day of November, 2022 by Counsel to the Applicant was moved on the 30th day of November, 2022 and an Order was made directing service of the Hearing Notices on the Respondent by substituted means.

Records equally reveal Orders made by this Committee directing the service of Hearing Notices of the proceedings of this Committee on the Respondent through the Onitsha branch of the Nigerian Bar Association.

The last attempt at notifying the Respondent of the hearing of this matter is as contained in the Affidavit of Service filed on the 3rd day of October, 2023 by David Duru, Esq., Counsel to the Applicant, to the effect that the Hearing Notice for the Committee's hearing of 3rd October, 2023 was served on the Respondent by substituted means via his Google mail address – cyprianagwuna@gmail.com.

We are satisfied that all these attempts at notifying the Respondent of the hearing of this matter are sufficient in drawing the Respondent's attention to the pendency of this matter and in fulfilment of the requirements for fair hearing on parties.

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The summary of this matter as garnered from the Originating Application and accompanying processes and also the Respondent's processes are as follows:

- i. The Applicant is the nominal complainant in a pending criminal trial in Charge No.: MNJ/33C/2014: Commissioner of Police V. Nwabueze Nwankwo & Ors., pending before His Worship S.I Anigbogu presently sitting at Ekwuluobia Magisterial District in Anambra State;
- ii. The Respondent herein is the Counsel for the Defendants in the said criminal trial and has been defending the said criminal trial for his clients since the inception of the trial in 2014;
- iii. Proceedings in the said criminal trial led to a no case submission by the Respondent, as defence Counsel, which no case submission was overruled by the Court, resulting to an Appeal on the no case submission Ruling;
- iv. The Respondent further filed an Application to the Chief Judge of Anambra State for the transfer of the criminal trial to another Court;
- v. The action of the Respondent in the criminal trial by allegedly frustrating the speedy trial of the criminal Charge, slandering the Complainant and the presiding Magistrate are actions which the Applicant considers unethical and unprofessional, for which he desires disciplinary sanctions against the Respondent.

Specifically, the Applicant seeks the following from this Committee:

- a. That the Committee applies appropriate remedies in penalizing the Respondent for his wayward allegation against the Applicant
- b. Appropriate penalties for one Peter Onwuakpa Esq. whom the Respondent often procures to endorse documents or processes whenever there is need to affix legal seals
- c. The Applicant prayerfully desires that the Committee uses its offices to redeem the image of the law profession from undesirable practitioners and to render some sense of belonging to the society whose only hope is on the judiciary.

The Committee having been satisfied that the Hearing Notice of the trial was duly served on the Respondent by substituted means as directed, proceeded under Rule 13 of the LPDC Rules to hear the matter.

Applicant's Counsel identified his Originating Application, affidavit in support and adopted same in urging the Committee to grant the reliefs in their Originating Application. Applicant's Counsel further urged the Committee to deem the Respondent's reply filed on the 8th day of September, 2020 as duly adopted as provided by Rule 13 of the LPDC Rules.

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The Committee having acceded to all the prayers of the Applicant's Counsel adjourned the matter to the 29th day of November, 2023 for parties to file their respective final written addresses within specific periods allotted to each of them.

On resumption of sitting by the Committee on 29th November, 2023 and the Committee having been satisfied of the service of fresh Hearing Notice on the Respondent as Ordered at the last hearing, proceeded to allow the Applicant's Counsel adopt his final written address filed on 6th November, 2023. Counsel urged the Committee to grant the prayers of the Applicant as contained in the Originating Application.

Counsel equally urged the Committee to foreclose the right of the Respondent to file his final written address, having failed to file same within the time provided by the Committee. The Committee agreed with all the submissions of the Applicant's Counsel and adjourned the matter for Final Direction following the conclusion of hearing.

ISSUES FOR DETERMINATION

It is clear from the facts hereinbefore stated, that the Respondent did not file any written address, and, as such we are left to consider only the written address of the Applicant.

In the Applicant's final written address, he formulated two (2) issues for consideration in the determination of this matter, as follows:

- a. Whether the Applicant has led credible and substantial evidence in proof of his case; and*
- b. Whether in the circumstances of the case, the Applicant is entitled to the reliefs sought and the damages claimed.*

On issue "a" as formulated by the Applicant's Counsel, he canvassed the legal issue of proof which he submits rests squarely on the shoulder of the party making an allegation as provided by Section 131 of the Evidence Act, 2011. Applicant's Counsel admits that the burden of proving the various allegations against the Respondent rests on the Applicant.

He further posits that it is the duty of the Applicant to place before the Committee credible and substantial evidence in proof of the allegations against the Respondent. Counsel cited the case of **Emeka v. Chuba Ikpeazu & Ors. (2017) LPELR – 41920 (SC)** in support of his submission and concluded his submission on the issue by positing that Applicant has satisfactorily provided enough documentary and affidavit evidence in proof of their allegation against the Respondent, and, urged the Committee to so hold.

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Arguing issue "b" as formulated in his final written address, the Applicant's Counsel stated that the Applicant is entitled to the reliefs sought, as the Respondent has failed to disprove the allegations against him. He delved into the issue of award of damages as a panacea to compensate a party that has suffered loss or injury. Counsel cited the case of **NBC Plc. V. Edward (2015) 2 NWLR (Pt. 1443) 201 at 234 [Paras. G – F]** and **MTN Nig. Comms. Ltd. V. ACFS Ltd. (2016) 1 NWLR (Pt. 1493) 339**.

Applicant's Counsel further proffered legal arguments on the conditions for the grant of reliefs sought by a party in a proceedings and referred the Committee to the case of **ATIVIE v. KABEL METAL NIG. LTD. (2008) 5 – 6 SC Pg. 56**. He particularly sought support for his proposition in the dictum of Tabai, JSC at page 56 of the law report.

Applicant's Counsel equally cited the case of **UBN Plc. V. Chiamaeze (2014) LPELR 22699 (SC)** in support of his submission of wrongdoing to the Applicant and the need for corresponding settlement in damages. He concluded by urging the Committee to enter judgment in favour of the Applicant.

As earlier stated in the course of this Direction, the Respondent made nil attendance to the entire proceedings of this Committee. They equally did not respond to the Order or directive for filing of final written addresses. We will therefore make resort to the Respondent's reply to the Originating Application on facts and his reply affidavit in arriving at decision of having heard from the Respondent.

FINDINGS

We find the two (2) issues as formulated by the Applicant's Counsel unhelpful in trying to resolve the legal issues thrown up for determination from these proceedings.

The role of formulating issues for determination is to act as a guide in arriving at the justice of a matter. Issues are formulated from the germane issues that throw themselves up in the course of the proceedings that will act as searchlight in identifying the core contending issues amongst parties. See **U.B.N Plc V. Abasiakan – Ektim (2021) 4 NWLR (Pt. 1765) 1**.

We are unable to find assistance or guidance from the two (2) issues formulated by the Applicant's Counsel towards resolving the contending issues in this matter and will therefore formulate our own issue, viz:

- i. Whether from the entirety of the facts presented before this Committee and the evidence adduced, the Applicant has established a case of professional misconduct against the Respondent***

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Having formulated a sole issue which we consider will assist us in arriving at a just determination of this matter, it is important we identify our findings from the entirety of the processes filed and the evidence adduced. The following facts are established from these processes:

- i. That the Petition evolved out of the proceedings in criminal Charge No.: MNJ/33C/2014: Commissioner of Police V. Nwabueze Nwankwo & Ors which Charge;
- ii. That the Applicant herein is the nominal Complainant in the Charge No.: MNJ/33C/2014: Commissioner of Police V. Nwabueze Nwankwo & Ors while the Respondent herein is the Counsel to the Defendants in the said trial;
- iii. That the Applicant herein is dissatisfied with the alleged dilatory tactics employed by the Respondent in prolonging the hearing and determination of the criminal trial which he considers unethical and unprofessional;
- iv. That the Respondent through his Application for stay of proceedings pending Appeal and yet another Application to the Chief Judge of Anambra State for the transfer of the hearing of the criminal Charge to another Court irked the Applicant in concluding that those acts were unethical and unprofessional;
- v. That further to the unethical and unprofessional acts of the Respondent as cited in "iv" above, is the allegation by the Respondent of the Magistrate being compromised monetarily by the Applicant in the course of the criminal proceedings.

RESOLUTION OF THE ISSUE

The sole issue formulated by us, deals with the conduct of the Respondent in the entire gamut of his handling of the prosecution of the defence of his clients in the criminal trial. Applicant's grouse can be clearly seen in paragraphs 4, 5 and 6 of the Applicant's Statement of Facts and paragraphs 2, 3, 4, 5, 6, 7, 10 and 11 of the Affidavit of Facts.

The complaint of delay against the Respondent is that he made several applications for adjournment and equally filed a Motion for Stay of Proceedings pending Appeal, and, a further application for the transfer of the matter to another Court. These, in the main, are the issues or facts that have irked the Applicant.

This Committee holds the view that Counsel engaged to handle a matter is at liberty to handle the matter in the best interest of his client, to whom he owes a duty, albeit professionally. Filing an Application for stay of proceedings pending appeal after the dismissal of Counsel's no case

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submission, is within acceptable standards and practice in criminal proceedings, where the Rules of Court provide for same.

This Committee is equally of the view that Counsel who is engaged in matter, more so a criminal trial at that, also has the liberty to apply for the transfer of a matter from a Court, if he reasonably believes that such transfer will serve the interests of justice.

These two (2) Applications by the Respondent for stay of proceedings pending appeal and for the transfer of a matter to another Court, in our view, are acceptable practice in criminal proceedings and cannot on their own, without more, amount to unprofessional conduct.

The Applicant mentioned in his statement of facts, that the prosecutor complained of delay in the trial occasioned by the alleged unethical conduct of the Respondent through several unnecessary applications for adjournment, but failed to produce a Certified True Copy (CTC) of the Records of the trial Court to show the dates and the reasons for the applications for adjournment.

The Applicant equally failed to obtain or exhibit a sworn affidavit of facts from the prosecutor nor produce him to give evidence in support of his assertions on the delays occasioned by the alleged unethical and unprofessional conduct of the Respondent. It is trite law that whoever asserts has the onus of proof. See **OYOVBIARE V. OMAMURHOMU (1999) 10 NWLR (PT.621) 23**; **Tewogbade v. Akande (1968) NMLR 404 @ 408**; **EWO v. ANI (2004) 3 NWLR (PT. 861) 611**.

The onus of proving undue delay in the prosecution of the criminal trial lies squarely on the shoulder of the Applicant. The only evidence of unethical delay against the Respondent is as stated in the Statement of Facts which has no support either from the affidavit of facts or any other documentary evidence.

Let us state straight away that the three (3) reliefs being sought by the Applicant as identified earlier in this Direction are such that cannot be granted by this Committee as they appear.

The relief that demands "appropriate remedies in penalizing one Peter Onwuakpa, Esq. whom the Respondent often procures to endorse documents or processes whenever there is need to affix legal seals" cannot be granted because the said Peter Onwuakpa, Esq. is not before us. We cannot make Orders against a party who has not been duly brought before us, nor given an opportunity to defend the allegation against him. Doing so will offend the rule of fair hearing. See **Muhammed v. Abu Zaria (2014) 7**

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This Committee can equally not award damages for slander as these are matters for the regular Courts. The alleged wayward allegation by the Respondent against the Applicant, for which the Applicant desires appropriate remedies against the Respondent is another misplaced relief.

Issues of defamation, slander and blackmail by the Respondent against the Applicant are in the realm of tortious liability. The remedy open to the Applicant in such matters is to approach the regular Courts for redress. This Committee is handicapped by the relevant laws establishing it, to inquire into such matters.

Having said these, the other arm of unethical and unprofessional conduct allegation against the Respondent can be gleaned from the contents of the accompanying documents to the Originating Application. We will not close our eyes to the two attachments accompanying the Originating Application referred to as "**Attach A**" and "**Attach B**".

These documents are both called upon in our aid for the determination of the conduct of the Respondent, vis a viz the provisions of the Rules of Professional Conduct for Legal Practitioners, 2007.

Attach A is a letter of an Application for Transfer of a Suit from the Respondent to the Chief Judge of Anambra State. This letter on its face was copied to the presiding Magistrate, His Worship Mrs. S. I. Anigbogu. **Attach B** is an Application for adjournment addressed to the Court Registrar of Magistrate Court 2, Ekwulobia and signed by one Peter U. Onwuakpa, Esq.

We have carefully gone through Attach A and are alarmed at the effrontery of Counsel in describing a sitting Magistrate in the manner that the Respondent did in that Application. The Application did not only contain allegation of financial inducement by the Applicant herein on the magistrate, but equally accused the Magistrate of shamelessly telling lies, ranting and shouting at Counsel, and, not being able to appreciate legal issues before the Court.

Attach B though not signed and sealed by the Respondent equally addresses and describes the learned presiding Magistrate in derogatory terms. The Magistrate's Orders were described as useless and unwarranted. His worship was equally referred to as a very junior Magistrate who had no experience at the Bar before being appointed, and, obviously does not understand the implication or what entry of an Appeal portends in law.

As if all these were not enough tantrums and insults on the Magistrate, the Application went further in paragraph 4 to state "Finally, let it be drummed into your head that on the strength of the authority of" Haba? How far can one go in showing disdain and disrespect to the Bench by a member of the Bar.

While all the documents emanate from the Law Firm of the Respondent, we observe that "Attach A" was signed by the Respondent himself and "Attach B" was signed by one Peter Onwuakpa, Esq. These two (2) attachments raise very disturbing ethical issues which this Committee cannot overlook or pretend not to observe. We will choose for purposes of fair hearing not to interrogate "Attach B" though from the Law Firm of the Respondent.

The Respondent in his response to the allegations as contained in the Originating Application, did not deny any of these documents as having emanated from his office, in the course of the prosecution of the defence of his clients in the referenced criminal trial. The Law is trite that facts once admitted by a party to a proceedings need no further proof, and, will be taken as established. This is in accordance with **Section 123 of the Evidence Act, 2011** which provides that:

"No fact needs to be proved in any civil proceedings which the parties to the proceedings or their agents agree to admit at the hearing, or which before the hearing, they agree to admit by writing under their hands, or which by any rule or pleading in force at the time they are deemed to have admitted by their pleadings".

See also **Agbanebo v. U.B.N Ltd. (2000) 7 NWLR (Pt. 666) 534; Adusei & Anor v. Adebayo (2012) LPELR – 7844 (SC)**

"Attach A" which was authored by the Respondent himself and addressed to the Chief Judge of Anambra State and copied to the presiding Magistrate, described the Magistrate in some of these derogatory words:

1. "The reasons for the application is that the learned Magistrate has numerously exhibited symptoms of one who has been heavily compromised financially by the complainant."
2. "The Magistrate has further shamelessly told lies in the matter, which she cleverly refused to record as she knew it would expose her"
3. "As it would appear that the learned Magistrate Mrs. Anigboqu, does not appreciate the full legal implication of when an Appeal is entered in law."

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4. "At the end of her rantings/shoutings which she is generally known for, she fixed the ..."

All the above quoted words as contained in the Respondent's application letter (Attach A) are to say the least demeaning of the person of the presiding Magistrate. These words were intended and actually did cajole and ridicule the presiding Magistrate.

We are not only shocked by the aforementioned excerpts as contained in this attachment, but feel embarrassed and surprised that the Magistrate who has all the powers to cite and try the two (2) authors of these obviously contemptuous letters did not find it necessary to initiate the process of contempt of Court.

It is regrettable, and, we condemn in very strong terms the language employed by the Respondent in his application to the Chief Judge. A lawyer called to the Bar in 1983, as contained in the Respondent's averments, is expected to conduct himself more responsibly, no matter how dissatisfied and disappointed he may feel with the judex.

It is elementary for every legal practitioner appearing before a Court of law to know that the Bar must at all times accord due respect to the Bench. This explains the common act of echoing "as the Court pleases" to every word, Order or Ruling uttered in Court by the judex by members of the Bar.

It does not matter how a lawyer feels about a Ruling or Order, or whether he agrees or disagrees with the Order or Ruling, the Bar is enjoined to hold its peace and decorum. A disagreement with a Ruling or Order can only elicit an Appeal and no more. Lawyers are not expected to abuse or insult the judex in any circumstance.

It is clear from the wordings of "Attach A" authored by the Respondent that he insulted and abused the judex. The words contained in the letter are to say the least demeaning of the judex and in gross violation of Rule 31 of the Rules of Professional Conduct for Legal Practitioners, 2007.

Rule 31(1) of the Rules of Professional Conduct for Legal Practitioners, 2007, provides as follows:

"A lawyer shall always treat the Court with respect, dignity and honour"

Rule 31 (1) (2) equally provides as follows:

"Where the lawyer has a proper ground for complaint against a judicial officer, he shall make his complaint to the appropriate authorities".

It is obvious from the evidence before us that the Respondent has a grouse with the presiding Magistrate or is uncomfortable with the Magistrate's

conduct of the subject proceedings in the criminal trial. Such complaints like inducement, bias e.t.c as alleged by the Respondent in his letter can be made before the Anambra State Judicial Service Commission – which is the statutory body empowered to inquire into the conduct of the State's Magistrates.

There is no doubt from the evidence that the Respondent was unsettled with the conduct of the criminal proceedings, but that does not avail him the opportunity to insult and disrespect the judicial officer in the manner he did. Writing insulting, abusive and disrespectful letters against a Magistrate like the Respondent did is obviously in breach of the aforementioned Rules of Professional Conduct for Legal practitioners.

A Petition to the State Judicial Service Commission, over an alleged misconduct in the conduct of the criminal trial is the only option available to the Respondent to mitigate his ill feelings towards the presiding Magistrate, and not pouring insults on him as he did.

It is surprising that a lawyer of nearly forty (40) years post – call experience will throw caution to the wind and address a Magistrate in the manner that the Respondent did. We find the Respondent guilty of violating Rule 31 of the Rules of Professional Conduct for Legal Practitioners, 2007 and we so hold.

The issue of slander as alleged in the complaint against the Respondent is outside the purview of this Committee and cannot be considered due to want of jurisdiction.

In all, we find the Respondent guilty of breaching the provisions of Rule 31 of the Rules of Professional Conduct for Legal Practitioners, 2007, in that he did not treat the presiding Magistrate with respect, as per the contents of "Attach A" which he authored.

DIRECTION

We, the legal Practitioners Disciplinary Committee, hereby find the Respondent, **CYPRIAN OBIORA IFEANYI AGWUNA, ESQ.** a lawyer called to the Bar in 1983, with enrolment number SCN005675, guilty of infamous conduct in the course of performance of his duty as a legal practitioner **contrary to Rules 1 and 31(1) of the Rules of Professional Conduct for Legal Practitioners** and punishable under Section 12 of the Legal Practitioners Act, Cap L11, LFN 2004 (as amended).

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We are satisfied that the proper Order to make in the circumstances is to DIRECT as follows:

1. That the Respondent **CYPRIAN OBIORA IFEANYI AGWUNA, ESQ.**, be and is hereby suspended from the Roll of Legal Practitioners and from engaging in the business of practicing law for a period of 24 months from the date of this DIRECTION.

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 **CYPRIAN OBIORA IFEANYI AGWUNA, ESQ.** 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 proceedings 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 be served on the President of the Nigerian Bar Association who shall take steps to notify the General Council of the Bar, National Executive Committee of the Nigerian Bar Association, and other organs of the Nigerian Bar Association.

We also DIRECT that the entire judgment encompassing this DIRECTION shall be brought to the attention of their Lordships, the Chief Justice of Nigeria, the President of the Court of Appeal, President of the National Industrial Court, the Honourable Chief Judge of the High Court of FCT, Federal High Court and the High Courts of all other States of the Federation, the Grand Kadis and Presidents of the Customary Courts of Appeal of all States of the Federation and FCT, Sharia and Customary Courts of all the States of the Federation and heads of all other Courts wherein a legal practitioner is entitled to audience by virtue of his office as 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, 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 20TH DAY OF FEBRUARY, 2024

SIGNED:

1. AHMED MUSTAPHA GONIRI, ESQ. (LIFE BENCHER)PRESIDING
2. HON. JUSTICE AISHA BASHIR ALIYU (C.J NASARAWA).....MEMBER
3. HON. JUSTICE HALIMA I. ABDULMALIK (C.J NIGER)MEMBER
4. CHIEF UMEH KALU, SAN (LIFE BENCHER) MEMBER
5. MR. EBENEZER OBEYA, ESQ (LIFE BENCHER) MEMBER

APPEARANCES

Davidson Duru, Esq for the Applicant

