LANDMARK CASES AND ESSAYS IN HONOUR OF KEHINDE SOFOLA SAN, CON

Edited by
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CHAPTER SEVEN

NATURAL PERSONS *VIS-À-VIS* JURISTIC PERSONS: A CRITICAL LOOK AT THE CASE OF *FAWEHINMI V. THE NIGERIAN BAR ASSOCIATION*[1]

Olagunju Gbadebo Anthony *

Background

ON the 31st of December 1983, the Nigerian democratic government under the civilian regime of Alhaji Shehu Shagari was overthrown by the military, thus putting an end to the Second Republic which was inaugurated on 1st of October, 1979. Among other allegations, the government was accused of ineptitude and mass corruption by public officers. The government of Major Generals Muhammadu Buhari and Tunde Idiagbon, on assumption of office, quickly set up Special Military Tribunals for the recovery of public property acquired through ill-gotten wealth stolen by politicians under that regime from the public treasury. Because of what was considered to be the draconian nature of the decree setting up those tribunals, the Nigerian Bar Association (NBA), at one of its executive meetings held in Jos in April 1984, passed a resolution (the "boycott resolution") that its members must not appear before the Special Military Tribunals. This decision was ratified at the body's Emergency General Meeting on the 5th of May, 1984 in Lagos. While this decision was accepted by some members of the Association, others who although

[1] (1989) ANLR (No. 1), p. 219 and (No. 2) p. 274.

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felt that corrupt politicians deserved whatever punishment was meted out to them by the tribunals, draconian in nature or not, saw the NBA resolution as uncalled for. This group, championed by Chief Gani Fawehinmi, went on to flout the NBA order and continued appearing before those tribunals.

On 2nd and 3rd November, 1984, the National Executive Committee of the Association met and passed a resolution blacklisting those members by creating a "roll of dishonour" on which were entered the names of those members that continued to appear before the tribunals. It was as a result of this resolution that Chief Gani Fawehinmi brought this case against the NBA.

Facts of the Case

On 19th November, 1984, the plaintiff, Chief Gani Fawehinmi (appellant in this appeal), commenced an action against the Nigerian Bar Association and the General Council of the Bar by Originating Summons, claiming the following reliefs:

(1) A DECLARATION that the decision of the Nigerian Bar Association taken at its National Executive Committee Meeting in Jos in April, 1984 and ratified at an Emergency General Meeting on the 5th May, 1984 in Lagos that its members must not appear before the Special Military Tribunals established under Decree No.3 of 1984, Recovery of Public Property (Special Military Tribunals) Decree 1984 is unconstitutional, illegal, null and void and of no effect whatsoever.

(2) A DECLARATION that the decision of the Nigerian Bar Association taken at the meeting of its National Executive Committee held in Lagos on the 2nd and 3rd November, 1984 on the issue of members (of the Nigerian Bar Association) appearing before the Special Military Tribunal, particularly that decision on the plaintiff, is unconstitutional, illegal, null and void and of no effect whatsoever.

The Summons was supported by an affidavit which referred to, and also exhibited the constitution of the 1st Defendant. On the 19th day of February, 1985 when the matter came up for hearing, the plaintiff appeared in person. Benson, SAN with Aloghe, Segun Onakoya, Dan Kukoyi and A. Adeyinka appeared as counsel for the 1st Defendant. Apparently because he had just been briefed the previous weekend, the Senior Advocate could not go on with the matter, and therefore asked the court for adjournment to enable him regularize certain things in the matter. The plaintiff opposed the application, which was nevertheless granted after some adverse comments by the learned trial judge, Candide Ademola Johnson (then Ag. Chief Judge, Lagos State), to the 19th and 20th March, 1995.

On the 19th March,1985, when the matter was called, appearances for the defendant had changed, with the record of proceedings showing the following:

"Parties present Chief Williams, SAN with Messrs. E. A. Molajo, SAN Kehinde Sofola, SAN, Chief B.O. Benson, SAN, Segun Onakoya and S. A. Adewolu for the 1st Defendant"

Chief Williams made a request for the matter to be continued as if it were commenced by writ of summons, and urged the court to order pleadings. The plaintiff replied and maintained that the matter was properly begun by originating summons. The court, after hearing arguments from both parties on this issue, adjourned ruling to 16th April, 1985. On that day, the learned trial judge ruled as follows:

> *...this matter is better proceeded with by the order of pleadings and I now order that pleadings be filed within a period of time to be agreed upon by the parties with the court's concurrence.*[2]

The court then gave 7 days to the plaintiff within which to file his statement of claim and the defendants 30 days from service of the statement of claim in which to file their statement of

2 *Ibid*, (No.1), p. 229.

defence. On the 22nd of April 1985, the plaintiff filed his claim dated same day. On the 29th of the same month, he brought a motion on notice for "an order of interlocutory injunction restraining Chief F.R.A. Williams, SAN, Mr. Kehinde Sofola, SAN and Mr. E. A. Molajo, SAN from acting or continuing to act or from representing or continuing to represent the Nigerian Bar Association on the ground that their appearance or representation for the Association was "improper, unprofessional, dishonourable and dishonest". The motion was brought under the *Inherent Jurisdiction* of the Court and supported by a 26-paragraph affidavit, attached with exhibits. All the defendants were put on notice. On the 10th of May, 1985, Mr. Kehinde Sofola, SAN counsel to, and on behalf of Chief F.R.A. Williams, SAN, filed a Notice of Preliminary Objection to the motion as follows:

NOTICE OF PRELIMINARY OBJECTION

TAKE NOTICE that at the hearing of the Motion on Notice dated 29th April, 1985, the 1st person named in the said Motion on Notice, namely, Chief F.R.A. Williams, will rely on the following preliminary objection, that is to say, that the said Motion on Notice should be dismissed on the ground that the evidence in support of the prayers in the said Motion on Notice and the said Motion constitute a deliberate abuse of the process of the court.

Particulars

1. The entire affidavit evidence in support of the Motion on Notice is inadmissible in view of the provisions of Section 25 of the Evidence Act and the common law rule, including the admission of statement made in the course of negotiating for or exploring the possibility of the settlement of a dispute out of court.
2. This honourable court had on a previous occasion ruled that the evidence of matters now sworn to in the affidavit mentioned in paragraph 1 hereof is inadmissible and the court warned newspaper reporters not to publish

so much of such matters as were divulged in court by the plaintiff herein.

3. Notwithstanding the ruling aforementioned, the plaintiff deliberately sent to the daily newspapers, copies of the Motion dated 29/4/85 together with the affidavit containing matters which the court had warned newspapers not to publish and the said matters have been published in the Daily times, the Punch and the Tribune of 30/4/84 (sic).
4. The motion cannot possibly have been filed in good faith for the purpose of obtaining any genuine relief but has been filed in all probability for the purpose of supplying to the press for publication, matters which the court had warned the newspapers not to publish and which matters are untrue.

AND FURTHER TAKE NOTICE that at the hearing of this application, the objectors will rely on the newspapers mentioned in paragraph 3 of the Grounds of Objection herein.

On the 13th day of May, 1985, Chief F.R.A. Williams, SAN, brought another Motion on Notice for an order striking out the name of the 1st Defendant from the suit and for an order to strike out the whole action. The motions came up for hearing on the 27th of May, 1985 but were adjourned to 30th May, 1985 for hearing. On that day, and the one following it, arguments were taken from the parties on the two applications before the court, and the learned trial judge adjourned the matter to 19th July, 1985 for ruling. Ruling was delivered by the trial judge (now the Chief Judge) on that day. He dismissed the 1st Defendant's application to strike out the name of the 1st Defendant from the suit and to strike out the action. On this, having considered the various arguments before him as to whether or not the 1st Defendant is a juristic person and capable of suing and being sued, he ruled:

> *It is my considered view, having taken account of the implications of different legislations recognising, imposing duties and granting privilege to the Association as a body, that it is meant to give the Association, even though unincorporated, a legal personality and I so hold. I therefore rule on that issue that the 1st Defendant is a juristic person and properly sued by the applicant as a Defendant in this suit*[3]

On the application to restrain the three learned Senior Advocates representing the 1st Defendant, and the Preliminary Objection raised by Mr. Sofola on behalf of Chief Williams, the learned trial judge ruled as follows after a consideration of the arguments before him:

> *On the prevailing facts of the present situation and in the exercise therefore of the court's inherent jurisdiction and in spite of the misconceived basis upon which the applicant founded his motion, the court is able and thus therefore modifies the order prayed for from an interlocutory injunction to an order for an injunction simpliciter. The three learned Senior Advocates of Nigeria, Chief Williams, Mr. Kehinde Sofola and Mr. Molajo are therefore hereby restrained from further appearance for any of the parties in this case as at present constituted.*[4]

Dissatisfied with this ruling, the 1st Defendant and the three Senior Advocates of Nigeria appealed to the Court of Appeal. That Court, coram Nnaemeka-Agu, JCA, (as he then was), Kutigi, Kolawole, JJCA unanimously allowed the appeal of the 1st Defendant and the three Senior Advocates of Nigeria in its judgment delivered on the 13th of March, 1986 at its Lagos Division. As regards the 1st Defendant, the court held that it was not a juristic person capable of suing and being sued. The court accordingly struck that party out of the entire action. As regards the order of injunction against the three Senior Advocates of Nigeria, the court held that the order was wrong and also accordingly discharged it. Dissatisfied with this judgment, the plaintiff brought the present appeal before the Supreme Court. At the hearing of the appeal before the

3 *Ibid*, (No. 1), p. 231; (No. 2), p. 283.
4 *Ibid*, (No. 1), p. 232; (No. 2), p. 285.

Supreme Court, the plaintiff raised an objection to the appearance of 2nd to 4th Respondents (the three learned Senior Advocates of Nigeria) for themselves as parties to the appeal and also for the 1st Respondent (the Nigerian Bar Association). The court had to first deal with this issue before the main appeal. The ruling on that issue is contained in *Fawehinmi v. Nigerian Bar Association (No. 1)*,[5] and this is where the real contributions of Mr. Sofola to Nigerian law in this case are found.

The Contributions of Sofola to Nigerian Law

As counsel to the 2nd Respondent (Chief F.R.A. Williams) in this case, Mr. Sofola, SAN formulated the issues for determination before the Supreme Court as follows:

(a) whether a party to a civil suit who is a legal practitioner can appear for himself and conduct his case from the Bar;
(b) whether such a party can also appear for another person, who is a co-defendant with him and conduct the other party's case from the Bar;
(c) whether, in the latter case, he can also do so at all events from the Bar.

As noted by the court (per Obaseki, JSC), these issues, as formulated by Mr. Sofola, "best expressed the pith of the (appellant's) objection"[6] before the court. Here, the court was making comparison to the same issues as differently formulated by the appellant himself, and also in fact Chief Williams, SAN for the 1st Respondent.

In his submissions, as to the first issue of whether a legal practitioner can appear for himself and conduct his case from the Bar (i.e. in a lawyer's robe), the appellant argued that since 2nd, 3rd and 4th Respondents were parties to the present appeal, they could not act as counsel to themselves or to any other party in the appeal. Being parties, the appellant argued further, the Respondents were only entitled to present their

5 (1989) ANLR at 219.
6 *Ibid*, (No. 1), p. 227. Word in bracket mine.

cases from the well of the court and not from the Bar fully robed, adding that they might retain "counsel" outside their number to whom each of them would have to surrender the conduct of his case. In support of this argument, appellant referred to paragraph 72, page 49, Vol. 3, *Halsbury's Laws of England*, Vol. 3.

The appellant also contended that Chief Williams, SAN and Mr. Kehinde Sofola, SAN, being parties to the present appeal, could not claim the rights and privileges of a legal practitioner but could only be accorded those rights and privileges enjoyed by a member of the public. In support of this, he cited the case of *Queen v. Phillips*,[7] and also referred to paragraph 1117, page 601 of Vol. 3, *Halsbury's Laws of England*, Vol. 4. He argued that a legal practitioner conducting his personal case in court must not be allowed to (a) sit at the Bar; (b) stand in the Bar; (c) speak from the Bar. He must go outside the Bar and remove his wig and gown before he could be heard by the court in the well of that court, he contended.[8]

In support of the above argument, appellant cited the following authorities: the dictum of Edge, CJ. In *the Matter of the West Hopetown Tea Company Ltd*;[9] the dictum of Wilde, C.J. in *Newton v. Chaplin*;[10] the *Practice Note* made by Parker, CJ., Salmon and Winn, JJ. in a criminal matter on 17th of January, 1961;[11] *Neate v. Denman*,[12] where Mr. Neate confessed in an open court in 1974 that:

> *If this had been simply a private case of my own, I should not have appeared in person and in my robes.*[13]

> *Finally on this issue, he referred to the case of New Brunswick and Canada Railway Co. v. Conybeare.*[14]

7 1 Cox C.C. 17.
8 See page 235, *Chief Gani Fawehinmi v. Nigerian Bar Association* (No. 1), supra.
9 1887 Indian Law Report (Allhabad) Vol. 9, p. 180 at 181.
10 (1850) 19 Law Journal Common Pleas 374 at 376.
11 See (1961) 1 All E.R., 319.
12 43 L.J. Ch. 409.
13 Ibid, at p. 414.
14 11 E.R. 907, esp. at 911.

On issue nos. 2 and 3 formulated by the appellant, as to whether a party who is also a legal practitioner can appear for another party in the same suit as a legal practitioner and conduct the other party's case from the Bar; and whether a legal practitioner who is a party in a case can appear in person and as counsel to another party in the case arguing their cases out of the Bar (i.e. in the well of the court), the appellant submitted that it is not proper for a party who is a legal practitioner and who has elected to conduct his own case by himself to conduct another party's case in the same case or matter as that other party's counsel. According to the appellant, this is in order to avoid "a mixture of two characters" – a character (or status) as a legal practitioner in the same case. In support of this argument, he cited the case of *R v. Staff Sub-Committee of London County Council's Education Committee Ex Parte Schonfeld.*[15] He also referred to the statement of Sir William Boulton, CBE in his book on *Conduct and Etiquette at the Bar.*[16] He cited the case of *Ojiegbe v. Ubani,*[17] particularly the dictum of Ademola, CJF where he observed:

> *I think it is undesirable for a barrister to put himself into a situation in which he cannot be counsel in the true sense of the word because he is in substance the party- the petitioner.*[18]

The appellant also referred to the advice of the Supreme Court in *Egbe v. Adefarasin,*[19] where that court advised:

(a) that a counsel should not be too personally involved with the case he is briefed to prosecute;
(b) that counsel should endeavour to brief another counsel when cases concern them personally, otherwise objectivity and detachment can hardly be maintained.[20]

It was the appellant's contention throughout his submissions

15 (1956) 1 All E.R 753.
16 Sixth Edition, at p. 83.
17 (1961) 1 All NLR 277.
18 *Ibid,* at p. 279.
19 (1987) 1 NWLR (Pt 47), 1.
20 *Ibid,* at p. 19.

that Chief Williams, SAN could not appear for the Nigerian Bar Association, and Kehinde Sofola, SAN could not appear for Chief Williams, SAN and Mr. Molajo, SAN. Going further, he argued that the right of a person to defend himself in person or by a legal practitioner of his choice , though guaranteed by the constitution, applies only to criminal cases, not civil. He submitted that no fundamental right to legal representation in civil cases exist. In support of the latter argument, he cited the dictum of Oputa, JSC in *Ajani v. Giwa,*[21] and also the Supreme Court decision in *Awolowo v. Sarki.*[22] He referred to the cases of *I.B.W.A. Ltd. v. Imano (Nig.) Ltd;*[23] *Mohammed v. Kano Native Authority;*[24] *Atano v. AG., Bendel State;*[25] and *Adigun v. Attorney General, Oyo State.*[26]

Finally, the appellant distinguished the position of the Attorney-General who can, as party, conduct his case from the Bar fully robed, because he is operating in his official capacity. He then concluded his submissions by reiterating that:

(a) Chief F.R.A Williams, Mr. Kehinde Sofola and Mr. E.A. Molajo can appear in person but they can only conduct their case from the well of the court and not from the Bar; which in effect means that they must not be robed;
(b) Chief F.R.A. Williams, Mr. Kehinde Sofola and Mr. E. A. Molajo cannot act as legal practitioners for any other party in this appeal and they therefore cannot lead any other legal practitioner;
(c) That the Nigerian Bar Association, the first Respondent, must therefore brief another legal practitioner to argue its case in this appeal.[27]

21 (1986) 3 NWLR (Pt. 32) 796 at 809.
22 (1966) 1 All NLR 178.
23 (1988) 3 NWLR (Pt. 85) 633. Where the Supreme Court in fact allowed counsel (Chief Kehinde Sofola, SAN in that case), who was being alleged disqualified as counsel to appear for respondent to argue the appeal from the Bar on behalf of the respondent.
24 (1968) 1 All NLR 424. Where Ademola, CJN stated on fair trial and fair hearing thus: "We think a fair hearing involves a fair trial and a fair trial consists of the whole hearing. We therefore see no difference between the two." Ibid, at 426.
25 (1988) 2 NWLR (Pt. 75), 201.
26 (1987) 1 NWLR (Pt.53), 678.
27 See *Fawehinmi v. N.B.A.* (No. 1), *supra,* p. 237.

After the appellant's submissions, Chief Williams and Mr. Sofola replied and made their submissions based on their briefs. We are here concerned with the reply of Mr. Sofola. On issue No.1, he submitted in his brief that the appellant's ground of objection was misconceived, and contended that generally, any litigant can conduct his own case if he so chooses, and that a legal practitioner who is a litigant is no exception. He noted that the point in dispute here is whether a legal practitioner has to conduct his defence outside the Bar in the circumstances of the present case,[28] and submitted that a legal practitioner who is a litigant can indeed argue his case from the Bar wearing his robes. The Supreme Court in agreement with this submission stated thus:

> *It cannot be denied that the litigant is still a legal practitioner even though he is not to be so regarded in respect of the case at the Bar. The old cases of Newton v. Ricketts 9 H.L. Cas. 262 and New Brunswick and Canada Railway Co. v. Conybeare (supra) referred to by Mr. Sofola demonstrate that a legal practitioner arguing his case in person could do so from the Bar of the Court wearing his robes.*[29]

Mr. Sofola contended that the case of *Newton v. Chaplin*,[30] and other cases cited by the Appellant are not applicable to the present case being concerned with criminal matters. Agreeing with this submission, Karibi-Whyte JSC, stated:

> *I agree entirely with the submission of Kehinde Sofola, SAN, that the decisions relied upon by Chief Fawehinmi and already stated in this ruling do not support his contention. This is not a criminal case; accordingly the criminal cases are irrelevant.*[31]

Mr. Sofola noted that a legal practitioner charged with the commission of a crime or offence cannot defend himself while remaining at the Bar robed.[32] He argued that there is nothing however embarrassing or contrary to any known canons of

28 See p. 239 *Fawehinmi v. N.B.A.* (No. 1), *supra.*
29 Note 28, p. 260.
30 (1850) 19 LJCP 374 at 376.
31 Note 28, *supra*, at p. 258.
32 P. 239, *supra.*

administration of justice for a legal practitioner to address the court on behalf of himself from the Bar.

Mr. Sofola observed that in England, the legal profession is strictly divided between barristers and solicitors whereas there is no such division in Nigeria. He argued also that the *Practice Note*,[33] cited by the Appellant, dealt with criminal matter and that the case of *New Brunswick and Canada Railway Co*,[34] is irrelevant to the Appellant's case. On the latter case, the court noted:

> *The civil case of New Brunswick & Canada Railway v. Conybear (supra) is not against this case on the facts. This is because, following the appearances announced, none of the senior counsel was appearing both as counsel and as party. There is no mixture of the two characters in appearances. On the facts, there is no evidence of a disability, constitutional or otherwise, why they should not appear for the Nigerian Bar Association. Again, there is no reason why they should not appear for themselves in respect of the objections to their appearance. The two issues and circumstances are separate and separable.*[35]

Mr. Sofola however agreed that the dictum of Edge, CJ. in the *West Hopetown Co. Ltd.* case is relevant, but it only expressed the universal practice in England and Ireland as of 1887, which practice the judge wanted followed in India at that time.[36] He distinguished the present appeal from the case where the legal practitioner is a litigant and submitted that the 2nd, 3rd and 4th Respondents– Chief F.R.A Williams, Messrs. E.A. Molajo and Kehinde Sofola (all Senior Advocates of Nigeria) were not litigants. He maintained and contended that the litigants were the Plaintiff/Appellant – Chief Gani Fawehinmi himself, the 1st Defendant/Respondent – the Nigerian Bar Association, and the 2nd Defendant/Respondent– the General Council of the Bar. He argued that the 2nd, 3rd and 4th Respondents only

33 *Supra.*
34 *Supra.*
35 Note 28 supra, per Karibi-Whyte, at pp. 258-259.
36 i.e. that a litigant who is a barrister and appeared before the court must not address the court from the advocate's table in robes.

appeared as counsel to the 1st Defendant/Respondent and the injunction sought against them was to restrain them as counsel. In other words, they were not parties to the case. Here the Supreme Court noted:

> *Although separable and separate, it is fundamental to determine the crucial issue whether the three learned senior counsel concerned are parties to*
> *(i) The action against the Nigerian Bar Association and the General Council of the Bar.*
> *(ii) The objection against them restraining them from appearing for the Nigerian Bar Association.*
> *Although the two matters were decided against the appellant in the Court below, and are the subject matter of appeal before this Court, there is no finding in any of the courts below that the three senior counsel are parties to the action against the Nigerian Bar Association.*[37]

Justice Karibi-Whyte noted further:

> *Chief Williams, SAN and Kehinde Sofola, SAN, have submitted and I agree with their submissions that since there was neither claim nor relief sought against them in the action, they cannot be parties to it.*[38]

Mr. Sofola observed that in the case of *Neate v. Denman*,[39] the Plaintiff was allowed to address from the Bar in his wig and gown as the question he intended to raise was on behalf of the profession.[40] He cited the case of *Newton v. Ricketts*,[41] and also that of *New Brunswick & Anor v. Conybeare*[42]. In the latter case, a party was allowed to appear as counsel at the Bar of the House of Lords in England. The court noted that the case, as reported in 11 E.R as earlier cited and relied upon by the appellant, does not however bear this out.[43] Mr. Sofola

37 Note 28 *supra*, p. 258, per Karibi-Whyte, JSC.
38 *Ibid*, p. 258.
39 (1874) L.R. 18 Eq. 127 43 L.J. Ch. 409.
40 See p. 240, *Fawehinmi v. N.B.A* (No. 1), supra.
41 9 H.L. Cas. 262 11 E.R. 731.
42 (1962) H.L.C 710 at 719.
43 See p.240 *Chief Gani Fawehinmi v. N.B.A.* (No. 1), supra.

observed that the Supreme Court is in a unique position as the final court of appeal in Nigeria. He noted that its predecessors in that role, the Privy Council, never required barristers to wear wigs and gowns to appear before it. Mr. Sofola also argued that since appellate matters before the Supreme Court in Nigeria do not involve the taking of fresh evidence, counsel addressing the court from the Bar in matters in which he is a party, do not prejudice or breach rules of professional conduct in the legal profession. Finally on this issue, he urged the court to follow its decision in *International Bank for West Africa Ltd. v. Imano (Nigeria) Ltd.*[44]

On issue No. 2, Mr. Sofola submitted that the practice in England cannot be invariably followed in Nigeria unless it is incorporated in the Constitution, Statutes and/or in the Rules of Professional Conduct in the legal profession in Nigeria. He argued that the decision in *R v. Staff Sub-Committee of London County Council Education Committee Ex parte Schonfeld & Ors.*,[45] and the book titled *Boulton Conduct and Etiquette at the Bar*,[46] do not govern the practice in the Nigerian courts. He observed that the appellant gave the dictum of Ademola, CJF in Ojiegbe's case[47] a slant it does not possess, and that the dictum of Oputa, JSC in *Egbe v. Adefarasin*[48] does not support the appellant's submission. That dictum was merely a good judicial advice to the barrister involved in the case. He submitted that a trial court cannot prevent counsel from exercising his full rights over the proceedings, otherwise any decision arrived at may be vitiated.[49] In support of the latter submission, he cited the case of *Barnes & Anor. v. B.P.C. (Business Forms Ltd)*.[50] He observed that the rule of practice which debars a counsel from giving

44 (1988) 3 NWLR (Pt. 85) 633.
45 *Supra*, note 15.
46 *Supra*, note 16.
47 *Supra*.
48 *Supra*.
49 See p. 240 of the report
50 (1975) 1 WLR 1565..

evidence in the case in which he is appearing, is for the protection of his clients not the opposite party, and cited the case of *Iris Winifred Horn v. Robert Rickard*[51] in support of this.

On the 3rd issue raised by the appellant, Mr. Sofola submitted that the obiter dictum of Eso, JSC in *Adigun & Ors. v. Attorney-General of Oyo State & Ors*,[52] on fair hearing had been overstretched. He argued that a legal practitioner respondent appearing for a co-respondent does not breach the rule of fair hearing, and his appearance has no relevance to that concept neither does such appearance amount to dishonourable conduct.[53] He submitted that no rule of ethics or etiquette forbids a litigant who is a legal practitioner from representing as co-respondent even from outside the Bar. Nothing in the practice makes it dishonourable to do so, he argued.[54] The Supreme Court also agreed with this submission when it stated per Karibi-Whyte, JSC:

> *I listened patiently throughout the submission of Chief Fawehinmi to hear the rules of professional etiquette and their duty as counsel to the court which the appearance of learned senior counsel from the Bar in this appeal will be in conflict with. Unfortunately Chief Fawehinmi did not point to any.*[55]

It was immediately after the above observation that the learned Justice of the Supreme Court ruled that he agreed entirely with the submissions of Mr. Sofola that all the decisions relied upon by the appellant did not support his contention.[56]

Conclusion

The conclusion in this case is that the Supreme Court agreed with most of the submissions of Sofola in this appeal. This

51 (1963). W.L.R. 67 or (1963) 2 All N.L.R. 41.
52 Note 26 *supra*.
53 See p. 241 of the report.
54 See p. 257 of the report.
55 See *Fawehinmi v. N.B.A* (No. 1) *supra*, p. 258.
56 See note 30, *supra*.

shows the thoroughness and the in-depth approach the learned Senior Advocate adopts to cases handled by him. Right from the formulation of the issues in the brief, the court cannot but notice the brilliance, elucidation and clarity of Mr. Sofola. Hence, apart from the observation of Obaseki, JSC above,[57] Karibi-Whyte JSC also added:

> *The terse formulation of the issues for determination by Kehinde Sofola, although different from that of Chief Williams, more accurately brings out the issues involved in the objection of Chief Fawehinmi.*[58]

During the argument of the appeal, the Supreme Court, in agreeing with the submission of Mr. Sofola that a legal practitioner who is a litigant can argue his case from the Bar,[59] also further held as by the following observation of Karibi-Whyte, JSC:

> *I therefore agree with the submission of Kehinde Sofola that there is authority for holding that a legal practitioner is entitled to speak from the Bar wearing his robes in civil actions by or against him in person. I do not think a legal practitioner should lose his status because he is a litigant in person.*[60]

He went further:

> *If the privilege arises as a result of litigation, it does not appear to make any difference whether the litigation is conducted in person or on behalf of another.*[61]

And then concluded:

> *The suggestion in Conduct and Etiquette for Legal Practitioners, at page 77 by Orojo that a counsel litigant should not wear his robes or conduct his case from the Bar has no support in our rules of practice or regulations of ethics. The situation is different in criminal cases (not applicable here) where the accused person is answering an allegation of the commission of an offence by the country and must be in the dock to conduct his defence. A legal*

58 *Fawehinmi v. N.B.A.* (No. 1) *supra*, at p. 250.
59 Footnote 29 *supra*.
60 Note 58 *supra*, p. 260.
61 *Ibid.*

practitioner standing trial in such a circumstance is not entitled to any more privileges than any other person accused of an offence...[62]

The last statement of the court also tallies with the earlier submission of Mr. Sofola.[63] In this particular case, there is no doubt that Mr. Sofola contributed immensely to the development of the Nigerian jurisprudence in this area. In fact, this case allowed the Supreme Court to draw a distinction between a legal practitioner who is a party to a case and one who merely appears in a case and, for one reason or another, becomes joined to the case without any prior claim against him, such as it is in the present case.

Writing about Kehinde Sofola, Dr. Olu Onagoruwa, a respected Nigerian legal luminary and a former Minister of Justice and Attorney General of the Federation,[64] said of his legal prowess:

> *Papa Sofola is not an orator. In his swift staccato style, he nonetheless makes his points abundantly and professionally robustly; he never misses the points in issues. To put it in the unbridled words of Justice Story in his book, "Miscellaneous writings" at page 110, Papa Sofola possesses in a remarkable degree the faculty of analyzing a complicated case into its elements and of throwing out at once accidental and unimportant ingredients. He easily separated the gold from the dross and refined and polished the former with an exquisite skill. Indeed Papa Sofola is a great lawyer without being an orator.*[65]

The above comments by Onagoruwa summarizes the type of person Mr. Sofola is when it comes to preparation and presentation of his cases before the courts such as was demonstrated in the present case. One other factor that seems

62 *Ibid.*

63 See footnote 32 *supra.*

64 Mr Sofola was a Minister of Justice and Attorney General of the Federation himself long before Dr. Onagoruwa.

65 See Olu Onagoruwa, *Kehinde Sofola at 80*, The Trumpeter Online (Source: *The Nigerian Guardian*, 10/3/04), available at http://www.bbhs-trumpeter.mcmail.com/page69.htm, last visited 08/04/06.

to stand Mr. Sofola out is his strict sense of discipline. This, no doubt, is also reflected in the presentation of his cases; the case under consideration being no exception. A columnist once wrote about him:

> *Chief Sofola is equally a respected and much-acclaimed trial lawyer. He is known as a strict disciplinarian, one whose remarkable sense of discipline and scholarship perhaps is responsible for the notable cases he has won.*[66]

One cannot but agree with this latter observation by Adeyeye, especially with the testimonies of those several lawyers who have passed through the chambers of Chief Sofola during their years of pupilage and training under him. Most of them are giant legal luminaries in their own right today.[67]

66 Adeyeye, Joseph, 'The Legal Icons' (I), *ThisDay* (16/11/2004), available at http://www.thisdayonline.com/archive/2004/03/13/20040313cov01.html, last visited 08/04/06.

67 See *ThisDay* (16/11/2004), 'Going Down Memory Lane', available at http://www.thisdayonline.com/archive/2004/03/16/20040316law03.html, last visited 08/04/06.