Law Practice/Professional Conduct
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DO LEGAL PRACTITIONERS IN NIGERIA HAVE A DUTY TO CONFIRM A CLIENT'S SOURCE OF FUNDS?

1. INTRODUCTION

There is some uncertainty as to whether legal practitioners in Nigeria are under a duty to investigate and confirm the source of funds with which their clients transact business requiring the services of the legal practitioner and from which the legal practitioner's fees are paid. Whilst some believe that legal practitioners do not have any business investigating or confirming their clients' source of funds, others believe that it is a necessary and vital duty for legal practitioners or any professional to investigate and verify their clients' source of funds, to help curb corruption and money laundering.

2. THE CONTENDING POSITIONS

2.1 Case Law

The ambiguous position of Nigerian law on this issue is borne out by the decision in **Federal Republic of Nigeria v. Chief Mike Ozekhome**[3] In this case, the Economic and Financial Crimes Commission ("EFCC") applied to freeze the account of the respondent, a legal practitioner on the ground that he had received the sum of N75 million as professional fees from Mr. Ayo Fayose, then Governor of Ekiti State. The EFCC contended that the respondent ought to have known that the money Mr. Ayo Fayose transferred to the account of his chambers as professional fees was sourced from illicit acts or was the proceeds of unlawful activities.

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3 (2021) 9 NWLR (Pt 1782) 452-453.

The matter came up before the Court of Appeal and with respect to this issue, the court unanimously held as follows:

> A legal practitioner is entitled to his fees for professional services rendered and such fees cannot be rightly labelled as proceeds of crime. Further, it is not a requirement of the law that a legal practitioner would go into inquiry before receiving his fees from his client, to find out the source of the fund from which he would be paid. In this case, there was no evidence on record at the time the money was paid to the respondent's chambers to show that the money was from the proceeds of unlawful activities and the lower court was right not to have agreed that the money was from unlawful activities.

This issue was therefore resolved against the appellant.

2.2 The Rules of Professional Conduct

However, the *Rules of Professional Conduct* 2023 ("RPC"), regulating legal practitioners in Nigeria recently established the Nigerian Bar Association Anti-Money Laundering Committee (NBAAMLC) charged with the responsibility of ensuring compliance with the provisions of the RPC on anti-money laundering and client-due diligence.[4] The RPC provides that a legal practitioner shall identify, assess and understand the money laundering, terrorism financing and proliferation financing risks they may be exposed to on a given transaction, and take reasonable and proportionate measures effectively and efficiently to mitigate and manage such risks.[5] A legal practitioner or law firm is thus required as far as reasonable to identify and verify the identity of their clients, whether natural or artificial, their addresses whether permanent or temporary, as well as their beneficial owners, and ascertain the true beneficiaries of the transaction they are instructed to carry out.[6] A legal practitioner is also required to obtain information as to the source of funds and source of wealth of the client and the purpose of the transaction. There are a number of similar responsibilities placed on legal practitioners and law firms in assessing their clients or any transaction that may require their services.[7]

2.3 The Current Position in Nigeria

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4 Rule 59(1), 73 *Rules of Professional Conduct* Nigeria 2023, available at <https://archive.gazettes.africa/archive/ng/2023/ng-government-gazette-dated-2023-06-06-no-103.pdf>, accessed on 11/10/24.

5 *Ibid* Rule 61 (1).

6 *Ibid* Rule 61 (5)(a) (i).

7 See, Rule 60-72.

Thus, it is obvious that there are two conflicting positions in Nigeria regarding the duty of a legal practitioner to investigate the source of a client's funds; the Court of Appeal decision in 2021 and the provisions of the RPC 2023. The provisions of the RPC are more recent and subject to a contrary judicial interpretation of their provisions, appear to be what obtains in Nigeria. This is more so following the constitution of the NBAAMLC, co-chaired by Prof. Ernest Ojukwu, SAN and Mr. Babajide Oladipo Ogundipe, charged with the duty of overseeing compliance with AML/CFT measures. This was followed by a notice issued to all lawyers in Nigeria on compliance with the Anti-Money Laundering and Terrorism Financing Provisions of the RPC 2023 by the President of the Nigerian Bar Association, Mazi Afam Osigwe, SAN on Friday, 11th October 2024. By this notice, legal practitioners are required to perform risk assessments at the firm, client, and transactional levels; conduct appropriate risk-based Client Due Diligence ("CDD"); implement internal controls and report suspicious transactions; complete continuing legal education on AML/CFT topics; document all AML-related decisions and processes; ensure confidentiality and adhere to all legal requirements in reporting suspicious transactions.

Though conducting CDD or filing of Suspicious Transaction Reporting (STR) is not a new development in Nigeria particularly in the financial sector, it has not been applicable to legal practitioners as is evident from the tenor of the Court of Appeal's decision in **Federal Republic of Nigeria v. Chief Mike Ozekhome**. This is unlike the position in countries like England and Wales,[8] Australia,[9] Canada,[10] the United States of America,[11] New Zealand, United Arab Emirates,[12] etc. where legal practitioners have long been under a duty to conduct due diligence on their clients.

3. CONCLUSION

Globally, lawyers are regarded as gatekeepers who have the ability to either block or facilitate the entry of illegitimate money into the financial system. The Financial Action

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8 Verify 365, "Comparison of AML Regulations for Law Firms in England, Australia, Canada and USA", available at <https://verify365.app/comparison-of-aml-regulations-for-law-firms-in-uk-australia-canada-and-usa/#:~:text=AML%20Regulations%20in%20England%20&%20Wales,detect%20and%20report%20suspicious%20activity.>, accessed on 14/10/24.

9 *Ibid*.

10 *Ibid*.

11 *Ibid*.

12 AML UAE, "AML/CFT Requirement for Lawyers, Notaries and Legal Professionals in the UAE", available at <https://amluae.com/a-detailed-analysis-of-the-aml-cft-requirements-for-lawyers-notaries-and-legal-professionals-in-the-uae/#:~:text=To%20save%20the%20legal%20professionals,to%20reduce%20money%20laundering%20risks>, accessed on 14/10/24.

Task Force's ("FATF") 40 Recommendations cover legal professionals as gatekeepers; and the FATF has issued a report highlighting red flag indicators of money laundering in the legal profession.[13]

It goes without saying that a country such as Nigeria which is presently working towards becoming a member of the FATF and also working at being removed from the list of countries under increased monitoring, (popularly known as the "Grey List") must tighten its grip on professionals who are regarded as gatekeepers in the fight against money laundering and terrorist financing.

The Organisation for Economic Co-operation and Development ("OECD") issued a publication, entitled "Ending the Shell Game: Cracking Down on the Professionals Who Enable Tax and White-Collar Crimes", which underscores that, "*White collar crimes like tax evasion, bribery, and corruption are often concealed through complex legal structures and financial transactions facilitated by lawyers, accountants, financial institutions and other 'professional enablers' of such crimes*."[14]

Considering the worldwide stance on the role of legal professionals in the fight against money laundering; Nigeria has taken a cue from countries, experts and international agencies who have moved towards this direction.

Finally, *ignorantia juris non excusat*, ignorance of the law is not an excuse. The Court of Appeal decision in **Federal Republic of Nigeria v. Chief Mike Ozekhome** is no longer the extant position of the law as the RPC 2023 now requires legal practitioners to conduct due diligence on their clients and also confirm the source of their client's funds.

Legal Practitioners should visit this link for a comprehensive resource on AML reporting in Nigeria.

[13] FATF Report, "Money Laundering and Terrorist Financing Vulnerabilities of Legal Professionals" available at <https://www.fatf-gafi.org/content/dam/fatf-gafi/reports/ML%20and%20TF%20vulnerabilities%20legal%20professionals.pdf>, accessed on 03/07/25.

[14] OECD (2021), "Ending the Shell Game: Cracking down on the Professionals who enable Tax and White-Collar Crimes, OECD publishing, Paris", available at <https://doi.org/10.1787/79e22c41-en>, accessed on 16/10/24. See, FATF's Report on "Horizontal Review of Gatekeepers' Technical Compliance Related to Corruption", July 2024, available at <https://www.fatf-gafi.org>.

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