

# **REGULATION OF THE LEGAL PROFESSION AND COVID EMERGENCE MEASURES -PITFALLS AND LESSONS (NIGERIAN PERSPECTIVE) AT THE 23<sup>RD</sup> COMMONWEALTH LAW CONFERENCE CLC 2023. PAPER PRESENTED BY JOYCE ODUAH, FICMC.**

## **1.0. INTRODUCTION**

The only constant thing in life is change; while some changes are gradual, giving all involved the opportunity to adjust; some changes are drastic giving less time to plan and leaving no choice but to find effective means to adapt or cope. The latter was the case of the Covid 19 pandemic about 3 years ago; one minute we were able to move around freely and conduct our business; the next we were holed up in a place; wondering, what was happening and scared as to what next.

The pandemic affected all areas of human life as we knew it including all aspects of the social and economic fabric of society. The legal profession was not left unscathed. All facets of the profession and all categories of practitioners were affected including; the judiciary, law firms, the public sector and corporate practice. Legal Practice was no longer business as usual. It was either adapt or drown. In Nigeria, the impact was hard felt because of the pre-pandemic economic recession. Law firms and corporate organizations were shut down; courts and public institutions activities were put on hold. This led to a number of issues; law firms could no longer make money from legal practice as they could neither go to court nor service their corporate and individual clients. To cope, many employers owed salaries, retrenched workers, put compensations and benefits on hold. Lawyers faced a number of challenges during that period including loss of opportunities and access to work; Reduction of Income, Mental Health Issues, Adaptation to Technology as the new normal, for lawyers, health emergencies among lawyers and their dependants and of course rising responsibilities and increased financial burdens.

To survive, there was a need for introspection and innovation not only on the part of individual lawyers and businesses, but also the regulatory authorities at the national and the transnational levels. Their efforts to ameliorate the prevalent hardship culminated into various innovative policies with varying degrees of success. It is against this background that I set out to attempt a critical appraisal of the regulation of the legal profession and covid emergence measures, pitfalls and lessons. My discussion is structured thus; first to understand the regulatory bodies in the legal profession and their functions; second, to find out the innovative measures taken by these regulatory bodies to cushion the effects of the pandemic on legal practitioners; third, to undertake a critical analysis of these policies and efforts by the regulatory bodies to determine the pitfalls, lessons and the way forward.

## **2.0. THE REGULATORY BODIES IN NIGERIA AND HOW THEY REGULATE THE LEGAL PROFESSION IN NIGERIA**

There are a number of regulatory bodies governing different facets of the legal profession; they include; The Body of Benchers which is responsible for the call to bar of practitioners and discipline of erring members (Section 3 Legal Practitioners Act - LPA), the Legal Practitioners Disciplinary Committee (Section 10 LPA), the General Council of the Bar (Section 1 LPA), The Legal Practitioners Privileges Committee (Section 5 LPA) and The Nigerian Bar Association (Rules 9 to 13 Rules of Professional Conduct 2007 – RPC and Constitution of the NBA 2015 as amended in 2021 - NBA Constitution). In this presentation, the Judiciary is also regarded as a regulatory mechanism. There are no international bodies for the regulation of the legal profession in Nigeria; what we have are membership organizations like the

Commonwealth Lawyers' Association, International Bar Associations (IBA), Pan African Lawyers Union (PALU), among others. The focus of this presentation will be the Nigerian Bar Association (at the National and Branch Levels).

I will speak briefly about the functions of the NBA where I have been a part of the leadership from the Branch to the National levels. The NBA is the body responsible for ensuring the highest standards of professional conduct, maintaining the integrity and independence of the Bar in its relations with the judiciary, and promoting good relations among members of the association. It is responsible for ensuring the general welfare, development and security of members of the Association. Section 3 (13) of the NBA Constitution provides for the establishment of schemes for the promotion of the welfare, security and economic advancement of members of the Legal Profession. Other functions include issuance of annual practicing license upon payment of Bar Practicing Fees, issuance of stamp and seal which must be affixed to all legal documents in Nigeria, ensuring the continuing legal education of members, supervising and regulating establishment and dissolution of law firms by lawyers in Nigeria (as contained in the RPC made pursuant to the LPA). The NBA is also accorded with representative status on the boards and governing council of various statutory bodies and committees within the legal profession (Section 1, 3, 10 LPA) and the Nigerian macro-economy; for example, in Section 2 Companies and Allied Matters Act 2020, the NBA must be represented in the Governing Board of the Corporate Affairs Commission. It is the key regulatory mechanism with direct, one on one interface with all legal practitioners in Nigeria. All persons called to the Nigerian Bar are automatic members of the Association.

### **3.0. IMPACT OF THE PANDEMIC ON LEGAL PRACTITIONERS AND INNOVATIVE MEASURES BY REGULATORY BODIES TO CUSHION THE EFFECT OF THE PANDEMIC**

I will discuss the impacts of the pandemic on two levels; first; the impacts on individual practitioners and second, impacts on corporate/institutional bodies including; law firms and courts. To save time, we will consider the impacts alongside the measures by the regulatory bodies to ameliorate the challenges.

#### **3.1. INDIVIDUAL PRACTITIONERS**

The impact of the Covid 19 lock down and restriction of movement on practitioners was threefold; economic impact, career impact and socio-psychological impact.

**Economic Impact:** Economically, there were situations of pay cuts, loss of employment; clients were unwilling to pay up legal fees; salaries, compensations and benefits from employers were delayed. Some lawyers had to rely on their savings while others had little or nothing to fund their daily expenses. There was no Government palliatives to cater for the needs of the members. The NBA at the national and branch levels implemented welfare schemes to help alleviate the challenges. The national body of the NBA, through the NBA Welfare Committee raised the sum of N101.793 million naira in its Covid19 Pandemic Relief Fund for distribution of N10,000 each to 10,126 young lawyers of 1 to 4 years post call who had paid their Bar Practicing Fees as at 31<sup>st</sup> March, 2020. The Branches of the NBA also followed suit; for example, the NBA Lagos Branch set up the Covid 19 Welfare Package Committee in which I was a member, we were able to raise funds for the provision of food packs for 1,350 members who requested for assistance. The Ikeja Branch raised funds to assist 254 young lawyers of the branch; Abuja, Okehi, Badagry, Maiduguri and other Branches of the NBA also made funds available to cater for their young lawyers. Health insurance at

affordable rates were made available for lawyers and their dependents by some of the NBA Branches like Lagos Branch. The National Body of the NBA in 2022 made available insurance for 1,000 members of the Association. Life Insurance was available for dependents of members of the association who had paid their bar dues. These were the main economic policies to assuage the economic challenges among the legal practitioners.

**Career Impact:** During the lockdown, there was a halt in the career development of most members. Practitioners were unable to attend court; promotions by employers were put on hold and it was impossible to partake in seminars and conferences necessary for continuous legal development. The NBA whose responsibility it was to ensure the continuous education of members through its Institute of Continuing Legal Education, deployed technological means to organize free virtual seminars and conferences involving training on novel areas of law and how to succeed despite the disruption. The Bar, by doing this, prepared members for the future of legal practice. The NBA also provided a one-year free electronic law report subscription for all young lawyers in the country. Individuals, law firms and other regulatory bodies had to be innovative in deploying virtual conferencing and meeting software to service their clients. With time, the heads of courts created practice directions to enable electronic filing and service of court processes as well as virtual proceedings. The NBA held conferences and seminars online. In fact, it was during the Covid year that I was elected as the General Secretary of the National Body of the Bar, the NBA. The electoral process was purely electronic.

**Socio-Psychological Impact:** The mental health and well-being of many lawyers was at its lowest during the pandemic. According to World Health Organisation (WHO) report in 2022, mental health issues such as anxiety disorder increased by 25% as a result covid19 (<https://www.who.int/news/item/02-03-2022-covid-19-pandemic-triggers-25-increase-in-prevalence-of-anxiety-and-depression-worldwide>). Practitioners had to deal with isolation from and loss of loved ones and colleagues; fear of death and anxiety for their health. Also, the work from home policy instituted by many organizations led to difficulties in maintaining work life balance as emails requiring urgent attention could come in as late as 11pm at night. The NBA organized various mental health sessions and seminars inviting mental health experts; I participated as a speaker in some of them. The Law firm leaderships were also sensitized on the need to ensure mental balance of their employees.

### ***3.2. CORPORATE AND INSTITUTIONAL BODIES***

Here I will be discussing the impact of the pandemic on law firms, courts and the Nigerian Bar Association.

**Law Firms:** The businesses of law firms were put on hold during the covid period. Law firms were quicker to recover from and adapt to the changes imposed by the pandemic as they were able to adopt digital tools to cater to the needs of their clients. Law firms began to specialize in novel areas of law to meet up with client demands, work from home practice was initiated by the firms and engagement among employees was through digital communication channels and platforms. For instance, in my own law firm, Joyce Oduah LP, we introduced online meetings for staff and client communications via virtual conferencing software in order to assuage the harsh effects of the covid19 pandemic.

**The Judiciary:** Judicial proceedings in Nigeria were suspended in March 2020 except for cases that were considered urgent and time-bound. This led to a delay in the administration of justice. Before this time only two courts in Nigeria; the National Industrial Court for labour and industrial related dispute and the Federal High Court had provisions in their rules for virtual

filing, service and hearing of matters. There was thus a need to develop an effective remote justice system. The National Judicial Council, a body with oversight functions over the judiciary headed by the Chief Justice of Nigeria issued the **Guidelines for Court Sittings and related matters in the Covid period** in April, 2020 to all courts across the federation to guide the courts in implementing remote justice systems. In compliance with this directive, the various courts issued practice directions like the Lags State Judiciary (Remote Hearing of Cases) Covid 19 Pandemic Period Practice Directions and the Federal High Court of Nigeria Practice Direction 2020 for the Covid 19 period. This led to a development of remote justice system across the three spectrums of the judiciary; including, filing of court processes, service of court processes and conducting of court proceeding through virtual platforms like Zoom, Teams and Meet. Some of the courts like Rivers State High Court and High Court of Lagos State developed designated platforms for e-filing of processes.

**The Nigerian Bar Association:** My core agenda as the General Secretary of the NBA and indeed the general leadership of the NBA during this period was the digitization of the NBA Secretariat to make it more responsive, robust and vibrant as well as for effective service delivery to members of the Association. I dedicated my time to the creation of an NBA APP which was to serve as a one stop platform for every member of the Association. This was launched at the tail end of my administration. Conferences, Seminars, AGM, Exco & NEC meetings were conducted both physically and virtually (hybrid), Bar Practicing Fees were payable online to reduce the need for physical presence in banks and to ensure that members were able to receive their stamp and seal, and annual practicing license despite the covid restrictions. Members were able to engage directly with the Association through social platforms like WhatsApp, Telegram and Facebook.

#### **4.0. PITFALLS AND LESSONS: ANALYSIS OF THE EFFORTS BY THE REGULATORY BODIES TO AMELIORATE THE EFFECT OF THE PANDEMIC**

From the forgoing, the major innovation of the regulatory bodies were the Digitalization of all aspects of Legal Practice and Relations; and Welfare of Legal Practitioners; the ultimate question, however, is; how did they fair and what lessons can we draw from them going forward.

**Welfare of Legal Practitioners:** First, a major policy was the *Covid 19 pandemic relief fund* of N10,000 each for 10,126 lawyers of 1 – 4 years post call. This measure was commendable as it helped to assuage the negative effect of the pandemic on the beneficiaries and also showed members that the NBA was concerned about their wellbeing. However, there were some pitfalls with this policy. One, N10,000 was a paltry sum as same could not purchase even a quarter bag of rice due to the high rate of inflation. Two, the sharing formula was inequitable as funds were distributed to individuals who had the capacity to pay up their bar practicing fees while those who could not pay were left out. Three, young lawyers of 5 – 7 years post-call and impecunious aged lawyers were neglected in the relief sum. Four, the palliatives were distributed rather late in August. It is recommended that in the future, more funds be set aside annually capable of catering for the welfare of more practitioners. Also, funds from the National should be distributed among members in branches unable to implement their own welfare scheme. Another policy was the *Health Insurance Scheme* by some the NBA Branches. I was a member of the Implementation committee of the Health Insurance Scheme by the Lagos Branch of the NBA. Many lawyers and their dependents were able to benefit from the scheme as it ensured affordable insurance packages and free health care for them. Unfortunately, only a few branches were able to replicate this scheme.

**Digitalization of all aspects of Legal Practice:** The value and utility of information communications technology was highlighted in all facets of legal practice. Individuals, Law firms, courts and the NBA adapted technological apparatus into the functioning of their activities. The courts adopted virtual modes of filing/service of processes and conducting of court proceedings which ensured that the administration and dispensation of Justice was not stalled and helped to reduce backlog of cases. Law firm adopted use of tele and video conferencing platforms to conduct their businesses; adopted hybrid work models for employees and strove to constantly provide value added support to their clientele. These innovations helped to ensure business ease, continuity and even expansion. The Nigerian Bar Association introduced online/hybrid trainings, seminars and conferences; introduced free subscription to an electronic law report, for a year; fully online payment for bar practicing fees and stamp & seal was introduced; digital communication channels between members and leaders; the elections into the NBA leadership were conducted virtually. The NBA was through these successful in deploying innovative means to provide value to members.

However, there were several pitfalls; whilst law firms were able to adapt quickly to the changes, the regulatory mechanisms i.e. the NBA and the Judiciary adjusted to the disruptions at a slow pace. The Law firms that were hard hit were those whose practice focus were litigation as the courts were slow in adopting the virtual mode of conducting cases. Only matters considered necessary or essential or time bound were accommodated for virtual hearing like bail hearings, fundamental human right matters, rulings and judgements. The personnel of the judiciary lacked proper training to implement the tools and software for virtual proceedings; there was inadequate fund allocated to the purchasing and maintaining of tech facilities and software; courts and litigants were reluctant to utilise novel technological means in conducting cases especially as a result of scepticism as to the validity of virtual proceedings in Nigeria in lieu of constitutional provisions that provided for proceedings to be conducted in open court. The Supreme Court of Nigeria resolved this dispute in two rulings in favour of remote proceedings (*Attorney General of Lagos State v Attorney General of the Federation* Unreported suit no SC/CV/260/2020 and *Attorney General of Ekiti State v Attorney General of Federation* Unreported suit no SC/CV/261/2020).

A major challenge in relation to digitalization of the legal profession for the regulatory bodies was poor ICT and power infrastructure in Nigeria especially in remote areas; including poor network connection from service providers and unstable power supply to utilize technological facilities. Various complaints were raised by NBA members on their inability to participate in trainings and conferences virtually or utilize the e-payment platforms as a result of slow internet speed. It is recommended that proper sensitization be carried out to educate practitioners and judiciary on the operation and effectiveness of utilizing digital infrastructure within the legal profession. The Regulatory bodies within the profession should be more proactive in responding to challenges and changes within the legal profession.

## **5.0. CONCLUSION**

Truly, the Covid Pandemic took the world including the legal profession in Nigeria by surprise. However, the regulatory bodies have shown resilience in the face of the challenges through the adoption of creative and innovative measures to mitigate the harsh effect of the pandemic on practitioners. I have in this paper discussed these innovations in two categories; welfare packages and digitization efforts which helped to mitigate the negative economic, career and socio-psychological impact of the pandemic on lawyers in Nigeria. While I commend the efforts of the regulatory bodies for the successes recorded, I have also discussed the challenges faced in the implementation of these polices and given recommendations on how to address

these challenges in the future summarised as ‘be prepared’. God forbid such pandemic happens again. I hope these recommendations are implemented not only by the legal regulatory bodies in Nigeria, but also the entire body of legal regulators within the Commonwealth.

Thank you all for listening.

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