



LEGALITIES & FORMALITIES - FILING COURT PROCESSES WITH EXPIRED SEALS:

A REVIEW OF EMECHEBE V. CETO INT'L (NIG) LTD [2018] 11 NWLR. (PT.1631), 520 CA

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The legal industry in Nigeria has suffered so many ills over the past years. One of the most inimical that continues to attract attention - especially when the culprits are found out - is the impersonation of lawyers by either dropouts from law faculties in Nigerian universities or those who attended the Nigerian Law School but for one reason or the other, were not called to the Bar. These persons masquerade as legal practitioners, and render services to unsuspecting 'clients'; some have even appeared before superior courts of record¹. These unscrupulous acts had created a great dent on the integrity of the legal profession, with much potential for greater damage, if left unchecked.

In order to remedy this situation, in May 2015, Mahmud Mohammed *CJN* (as he then was) issued a Circular, '**Implementation of the Nigerian Bar Association Stamps for All Legal Documents Filed at Court Registries**' (*the Circular*) directing "All Heads of Federal and State Courts to establish procedures for the implementation of the

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¹ See for instance, the arraignment and prosecution of Mr. Itopa Peter Adogun before an Ilorin Magistrate Court for impersonation as a legal practitioner of over ten (10) years standing: Demola Akinyemi, '*Fake Lawyer Caught in Court*' *Vanguard*, 08.07.2017: <<https://www.vanguardngr.com/2017/07/fake-lawyer-sentenced-10-months-prison-impersonation/>>(accessed 19.3.2019). See also, Adebisi Onanuga, '*Impersonation*', *The Nation*, 27 .3.2017 2017: <<http://thenationonline.ng.net/lawyer-jailed-nine-years-impersonation/>> (accessed 20.3.2019), for an account of how an Ikorodu Magistrate Court in Lagos State sentenced a 34 year old Olayinka Soyinka to nine years and six months imprisonment for impersonation as a legal practitioner. He reportedly forged a marriage certificate and collected a fee sum of ₦550,000 from an unsuspecting 'client'.

stamp & seal policy and its full utilization within all jurisdiction." Effective from 1st June 2015, also in order to remedy the issue of impostors in the profession, the Augustine- Alegeh SAN led-administration of the Nigerian Bar Association (NBA) introduced the NBA Stamp and Seal Policy (the Seal Policy). This major initiative was conceived as a means of verifying the authenticity of legal documents prepared by lawyers in a bid to fish out quacks from the profession.

The NBA Seal Policy: How it Works

Under the Seal Policy, lawyers are expected to have personalised adhesive seals/stamps with the type of security features found in the Nigerian currency, including individual lawyer's enrolment number. The process of getting the seal entails lawyer/applicant filling application and data verification forms supported with: a passport photograph; copies of Call to Bar Certificate;² official means of identification such as driver's license, National ID Card or biodata page of

international passport; proof of payment of current Bar practising fee, NBA branch dues, amongst others. As provided under the RPC, the NBA issues the seals whilst ensuring that only qualified lawyers emerge as successful applicants for seals. In this regard, NBA may make further findings on applicants at the SC Registry where the Roll of Legal Practitioners is kept by the Chief Registrar of the SC.³

The stamps are categorised into two different areas of practice (private and in-house), which are represented by green and red colours respectively to be affixed by lawyers in private practice and in-house lawyers in the public and private sectors respectively to their documents. Also, these seal and stamps are subject to an expiry date and when a lawyer neglects to pay his practising fee and which will entitle him to also pay for his seal, he will be subject to sanctions.

These sanctions include, but are not limited to, having his legal processes or documents refused

for filing by court registries; if such processes were inadvertently allowed, the court can strike out such process from its docket for want of irregularity.⁴ Also, a lawyer will not have the right of audience in court.⁵ It would appear that implementation of the Seal Policy has been having a salutary effect in checkmating quackery in the noble profession.⁶

The Supreme Court (SC) and indeed the judiciary, has given its blessing to the Seal Policy not only by judicial notice, but through notable pronouncements in decided cases. For example, in **Nyesom v Peterside**,⁷ the SC held per Kekere-Ekun JSC that: "with regards to the lack of NBA stamp and seal on the petition, failure to affix the approved seal/stamp of the Nigerian Bar Association does not render it nullity and void, such act of omission is an irregularity that can be cured by an Application for extension of time and a deeming order."



² The Call to Bar Certificate issued by the Body of Benchers Nigeria: **section 4(3) Legal Practitioners Act, Cap. L11, Laws of the Federation of Nigeria (LFN) 2004.**

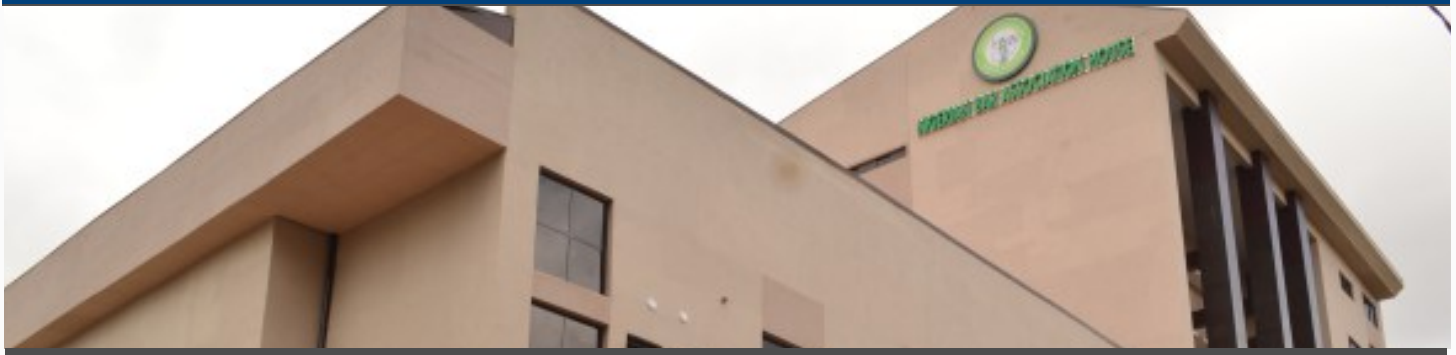
³ See Onyenkachi Umah, 'Procedures for Obtaining NBA Stamp' *Learnnigerialaws*, 27.5.2017: 23.3.2019).

⁴ **Alhaji Tajudeen Babatunde Hamzat & Anor v. Alhaji Saliu Ireymi Sanni & Ors (2015) LPELR-24302(SC)**

⁵ **Federal Republic of Nigeria v. Osahon [2006] 5 NWLR (Pt.973), 361, at 419** where the SC held per Belgore JSC affirmed that a "... whenever any person is called to the Bar and is enrolled to practice then he has the right of audience in Court and unless the Constitution eloquently forbids such a person or the person is in default of payment of his annual practising fees he would not be given audience in any Court of Law in Nigeria."

⁶ See per **Rhodes-Vivour JSC in Mega Progressive Peoples Party v. INEC & Ors [2015] LPELR-25721 665 SC** thus: "... these provisions are designed to check and stop the alarming influx into the profession of fake lawyers masquerading as genuine legal practitioners."

⁷ **Nyesom v. Peterside [2016] 7 NWLR. (Pt.1512), 452 at 512.**



There have however been challenges regarding this innovative idea, and as seen from the SC *obiter* above, one of such relates to *questioning the competence of a document which carries an expired seal and stamp*. This article discusses the issues whilst reviewing ***Emechebe v. Ceto Int'l (Nig.) Limited***⁸(*Emechebe*), a recent Court of Appeal (CA) judgment and apparently, the only one on the subject (compared to failure to affix a seal at all), as at date.

Legal Issues in the Usage of Seals

As previously mentioned, seals have an expiry date of next March after the year for which the annual practicing fee is paid, irrespective of the date the seal itself is obtained. In other words, it is not of a permanent nature. Also, genuine legal practitioners still lends their own seal/stamps to friends, impliedly aiding the improper acts that the Seal Policy is trying to eradicate. This has led to questions as to the legality of a borrowed seal/stamp from a legal practitioner other than the practitioner who signed the document.

In this regard, the SC held that where an objection is raised by another party to the seal/stamp used in the accompanying processes of counsel, all that needs to be done by the erring practitioner is to remove such seal and puts his current seal, but when such is not done, such processes will become incompetent.⁹ The long period it takes for the seal to be delivered to lawyers who applied for same is another significant issue since the inception of the seal policy, The effect of expired seals affixed to court processes of a legal practitioner was one of the issue that came up for consideration in the ***Emechebe*** appellate decision.

Emechebe: The Facts & Decision

The appeal emanated from a decision of the Federal High Court (FHC) Lagos (*Buba, J*) which granted the Respondent's application for a motion *ex parte* and struck out the Appellant's application for discharge of an interim order. Although at the CA, three issues were formulated, this article focuses on the issue pertaining to whether the lower court had jurisdiction to have entertained the suit, when the originating processes filed by the Respondent were (presumably) incompetent *ab initio* as a result of use of an expired seal.¹⁰

The Respondent as Plaintiff/Applicant initiated this suit against the Appellant (Defendant) at the FHC in August 2016. The Respondent filed a motion *ex parte* seeking orders of injunction restraining the Appellant from dealing with goods branded with registered trademark, 'Alize'. After the motion *ex parte* was heard and granted, the Appellant filed a motion seeking to discharge the interim orders, on the grounds amongst others, that the suit was incompetent, given that the originating processes bore counsel's expired NBA seal.

In its ruling, the FHC found in the Respondent's favour and granted the application for interlocutory injunctions. The lower court further held that the Defendant/Appellant's motion seeking to discharge the interim orders was overtaken by events and consequently struck out same. The Appellant, aggrieved by this decision, appealed to the CA.

The CA, per *Abubakar, JCA* (who read the lead judgement) held regarding the above issue that: "*considering that the issue of stamp and seal and the validity of the originating processes goes to the root of the case because if the originating processes are found to be invalid by virtue of the expired*

⁸ [2018] 11 NWLR. (Pt. 1631), 520 CA.

⁹ *Benjamin Wayo v. George & Anors LPELR* (2017) 42415 SC.

¹⁰ Expressed at p. 529 of the Report as: "(a) Whether the lower court had jurisdiction to have entertained [the suit], when the originating process filed by the Respondent failed to disclose a reasonable cause of action and was incompetent *ab initio*;"

seal affixed to the Respondent processes, then there would have been nothing to activate the jurisdiction of the lower court and consequently, the proceedings and whatever decision is reached would amount to a nullity. Jurisdiction is a threshold issue of substantial significance and the moment the issue comes up in any proceedings before the court, it is proper to resolve it first before taking any further step because so doing will obviate the necessity to invest too much in doing an excise in futility if it turns out that the court lacks jurisdiction."¹¹

In the event, the CA decided that the sole purpose of the NBA stamp and seal is to ensure that legal practitioners who file processes in court have their names on the Roll of Legal Practitioners in Nigeria¹² and that quacks, impostors and meddlesome interlopers do not infiltrate the legal profession and present themselves to unsuspecting litigants as legal practitioners.

Referring to its earlier decision in **Rosolu v Federal Republic of Nigeria**,¹³ the CA per Abubakar JCA reiterated: "the requirement and purpose of Rule 10(1) of the Rules of Professional Conduct for Legal Practitioners 2007 [RPC] is that the Legal Practitioner who signed court process must affix his stamp and seal, ... The rationale behind this requirement In my view, is to checkmate quacks in the legal profession and ensure that legal processes are filed by genuine legal practitioners who are registered members of the [NBA] and are truly qualified to practice law."¹⁴

According to the CA in **Emechebe**, to agree with the submissions of the Appellant's counsel that the

use of an expired seal on a court process renders the entire process a nullity, will amount to enthroning technicalities over substantial justice. The CA further held that: "no matter how ornamental, fancy and high sounding submissions of counsel for the Appellant may appear to be, the court must elevate substantial justice over and above technicalities, it is a matter of duty for the court to do."¹⁵

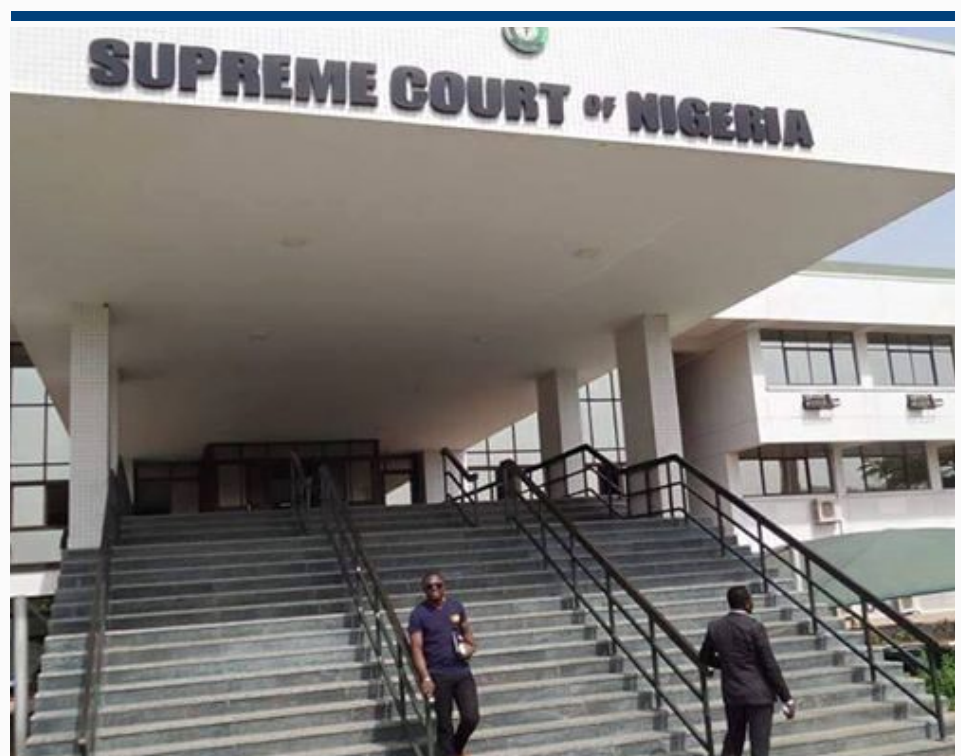
The CA's conclusion was that since the originating processes contain an expired seal but which bears the name and number of counsel, such is at best an irregularity as it is not the case that the Respondent omitted to affix any seal at all. According to the CA, such irregularity can be remedied by an application for extension of time and a deeming order, or by affixing

an unexpired seal and stamp to the processes and not an order to strike out the entire suit solely for the use of an expired seal.

Justification & Criticism of Emechebe on the Seal Policy

The CA decision has somewhat opened up a safe haven for legal practitioners and the litigants in furtherance of the maxim 'Ubi Jus Ibi Remedium' (where there is a right there is a remedy), in order to protect primarily the interest of the litigants.

Part of the justification for introducing the Seal Policy is that it will operate as a check against situations whereby colleagues in salaried employment secretly engage in professional practice which the RPC precludes them



¹¹ *Supra*, at pp. 533-534.

¹² Section 2(1) Legal Practitioners Act, Cap. L11, LFN 2004.

¹³ Unreported Appeal No. CA/L/271/2013; judgment of 24.2.2017 at p. 63.

¹⁴ Rule 10(1) RPC provides that: "A lawyer acting in his capacity as a legal practitioner, legal officer or adviser of any governmental department of ministry or any corporation, shall not sign or file a legal document unless there is affixed on any such document a seal and stamp approved by the Nigerian Bar Association."

¹⁵ *Supra* at p. 534.

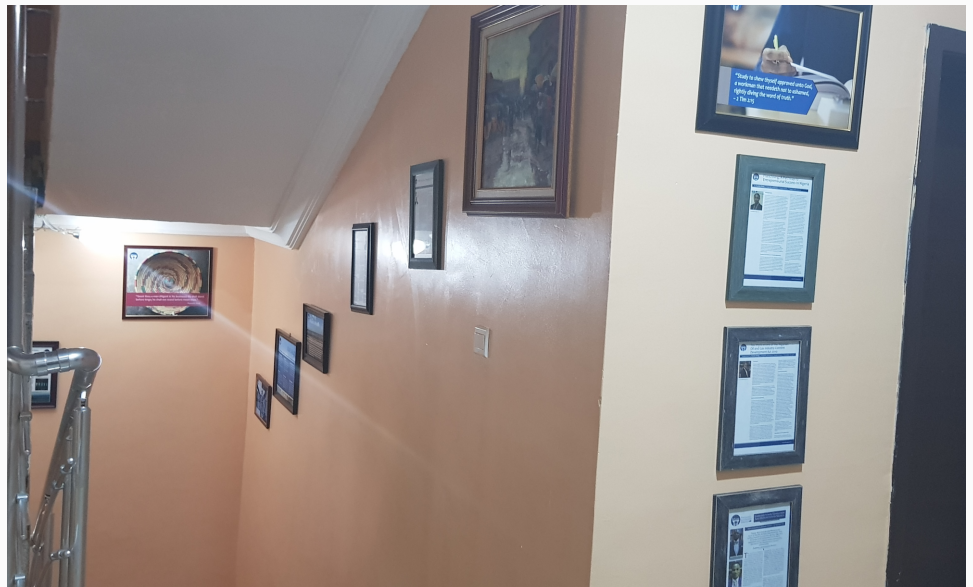
from doing.¹⁶ Consequently, it is difficult, with respect, to align oneself with the overall decision in **Emechibe** as the CA failed to tackle the most pervasive issue of the Seal Policy since its inception: whether or not the seal/ stamp should have an expiry date.

It may appear reasonable to argue whether the seal should not be more of a permanent instrument, given the time lapse between application for seal and its issuance by the NBA. Thus, should the lawyer applicant be hamstrung in the interval?

Another way of answering the question is that since some delay is practically unavoidable, maybe prudence should impel legal practitioners to pay their practising fees and apply for their seals early? It may be worth considering whether the NBA should elongate the validity period and whilst simultaneously entrenching rigid procedures to expose quacks, suspended practitioners, or any practitioner not licenced to practice law in Nigeria, to prevent them from doing so.


Conclusion

Apparently, **Emechibe** aims at protecting the interest of litigants from the errors or inadvertence of counsel, since the litigant would have directly otherwise borne the brunt of such inadvertence. Thus **Emechibe** is to be commended for its pragmatic and purposeful interpretation on the contestable



issue of expired seals used by lawyers in filing processes.

Respectfully, the **Emechibe** Court did not endorse legal practitioners' use of expired seals by foreclosing any challenges thereto. Thus, when an objection is raised by opposing counsel, such objection will not lead to striking out the suit for want of a current seal; it is only an irregularity that can be remedied by affixing an unexpired seal to the said court process.

However, it is time to amend the RPC to extend the limited period validity nature of the seal of legal practitioners to illustrate, some legal practitioners may find it is very disheartening that they would have to consign their unused seals to the dustbin following their expiration. Whilst this could be regarded as a 'loss' it may also be considered as part of the 'cost of doing business' as a legal practitioner 



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¹⁶ According to **Rule 8(1) RPC**: "A lawyer, whilst a servant or in a salaried employment of any kind, shall not appear as advocate in a court or judicial tribunal for his employer except where the lawyer is employed as a legal officer in a Government department."