DUALE, OVIA & ALEX-ADEDIPE

Reflections on the Federal High Court judgment in Suit No. FHC/ABJ/CS/1094/2020 between Olusola Adeyulu v. Medical and Dental Council of Nigeria and Anor delivered on the 6th May 2024

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Introduction

In the case under review, Mr. Olusola Adeyulu **("Dr. Adeyulu")** instituted the action as the Plaintiff/Applicant against the Medical and Dental Council of Nigeria **(the "MDCN")** and the Incorporated Trustees of the Nigerian Medical Association **(the "NMA"**), as the Defendants/Respondents **(the "Respondents").**

Brief Summary of Facts

Dr. Adeyulu, a medical practitioner and a specialist respiratory physician in Nigeria, had taken out an Originating Summons on 3rd September 2020 to query the Respondents' insistence on his payment of the building levy of the Nigeria Medical Association before his practicing license can be renewed despite his disassociation from the NMA. Prior to instituting the action, Dr. Adeyulu had, via a letter dated April 19, 2019, denounced his membership of the NMA following certain decisions of the Association he was not in agreement with. His denunciation of membership was acknowledged and approved by the NMA, thus engendering his logical expectation that he would become free of every financial obligation of the NMA.

This short-lived expectation was, however, dashed when Dr. Adeyulu tried renewing his practicing license on the MDCN's portal but was redirected to NMA's portal for payment of the Association's building levy.

Provoked by this development, Dr. Adeyulu instituted the suit before the FHC, asking the Court to determine ten questions, two of which are of utmost importance to this newsletter, namely:

- Whether the membership of NMA, an association registered under the Companies and Allied Matters Act as incorporated trustees, is in any way mandatory under law.

- Whether, by Section 40 of the Constitution of the Federal Republic of Nigeria, 1999[1] (as amended) **(the "Constitution"**), he is not entitled to freely and voluntarily associate with or disassociate with the NMA.

Position of the Court

In its Judgment, the Court resolved the first issue in favor of Dr. Adeyulu, stating clearly and unambiguously that it is not mandatory under the law for him to be a member of the NMA. The Court went further to buttress this fact in its Judgment by stating that "the right to assemble freely and associate with other persons entrenched in Section 40 of the 1999 Constitution gives every citizen a right to choose the association to which he chooses to belong, and he cannot be mandated to belong to any association against his choice. This right cannot be derogated from anyone."

In deciding the second issue above, the Court declared that under Section 40 of the Constitution, Dr. Adeyulu is entitled to freely and voluntarily associate with or disassociate from the NMA.

For clarity, Section 40 of the Constitution provides thus:

''Every person shall be entitled to assemble freely and associate with other persons, and in particular, he may form or belong to any political party, trade union, or other association for the protection of his interests. Provided that the provisions of this section shall not derogate from the powers conferred by

[1] Constitution of the Federal Republic of Nigeria 1999 as Amended

this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition".

Our reflections on the position of the Federal High Court and Judicial Precedents

The position of the FHC with reference to the right to peaceful assembly and association is well founded and in line with the popular decision of the Court in the ageless case of **Elesie Agbai & Ors. v. Samuel I. Okogbue**[2], which facts relate to the compulsory membership of the Umunkalu age grade, giving rise to the invasion and seizure of the Respondent's property for failing to pay a levy imposed on members of the age grade.

In the referenced case, the Apex court frowned at the compulsory membership of the Umunkalu age grade and the seizure of the Respondent's sewing machine.

The decision of the Apex court in Elsie Agbai's case supra and that of the FHC in the case forming the focus of this newsletter (Dr. Adeyulu v. MDCN) go a long way in bolstering the right to peaceful assembly and association as provided for in S. 40 of the 1999 Constitution.[3] is one that is well protected under our laws.

It is contended, and generally so, that where the membership of a body is made compulsory, the provision that establishes such compulsory membership contravenes section 40 of the Constitution and necessarily becomes null and void to the extent of the inconsistency as encapsulated in the Constitution.[4].

It cements the position of the law that the constitution is supreme and that any other legislation, such as the Medical and Dental Practitioners Act, is subject to it. See **Governing Board, Rufus Giwa Polytechnic Owo, Ondo State & Anor v. Ola & Ors**[5]

It bears noting, however, that the above legal analysis is not cast in stone, as there are peculiar circumstances in which membership of specific associations would be of extreme importance, such that nonmembership may make it impossible to practice the trade or profession. The reference here is necessarily made to the membership of the Nigerian Bar Association, where Legal practitioners require incidents of membership such as the NBA seal (which must be engrossed in every pleading and instrument prepared by a lawyer) to practice as legal practitioners seamlessly and effectively, or the payment of the annual bar practicing fees and branch dues as and when due as part of the prerequisites for appointment as a notary public, elevation to the rank of Senior Advocate of Nigeria (SAN) or the bench as a judge. Therefore, a legal practitioner who denounces his membership in the NBA cannot privately manufacture his seal to frank legal documents and practice. The foregoing position is further bolstered by the provision of section 45 of the Constitution, which readily highlights the exceptions to the provision of section 40 of the Constitution in the following words:

"Nothing in sections 37, 38, 39, 40 and 41[6] of this constitution shall invalidate any law that is reasonably justifiable in a democratic society;

a) In the interest of defence, public safety, public order, public morality, or public health; or

b) For the purpose of protecting the rights and freedom of other persons.

[2] (1991) LLJR - SC
[3] S. 40 Constitution of the Federal Republic of Nigeria, 1999 as amended.
[4] S.1(3) Constitution of the Federal Republic of Nigeria, 1999 as amended.
[5] (2015) LPELR – 41826 (CA)
[6] *ibid*

Flowing from the foregoing, it is parenthetically noted that where membership of an association is necessary for the satisfaction of any of the vital objectives listed in section 45 (a) and (b) above, any individual whose endeavor, practice, or profession falls within those critical objectives, such that he is required to subscribe to the membership of such association for proper regulation, his membership of such associations may be validly considered as being compulsory.

Conclusion

a) Inasmuch as both the FHC and the Apex Courts have beamed the spotlight on section 40 of the Constitution and the FHC has further declared the right of Dr. Adeyulu regarding his membership and allegiance to the NMA, this pronoun ncement, it appears, is most applicable to professional bodies that are of less importance and play no pivotal or intertwining role towards the development of that professional. When a professional body or association is vital in developing a profession and plays a crucial role in promoting the ideals of defence, public safety, public order, public morality, or public health, membership in such an association may be deemed mandatory.

b) The metrics used to determine whether a professional body is of extreme importance or not are traceable to its functions, status, and the role it has to play in the development of its members, viz-a-viz its significance to the broader society. Thus, as instructive as the FHC's decision in Adeyulu v. Medical and Dental Council of Nigeria and Anor is, it is not Uhuru for the right to freedom of Association in Nigeria, especially for professional associations, as no two cases are entirely identical or on all fours.

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