

MAGISTRATES AND LOWER COURT JUDGES AS NOTARIES PUBLIC FOR NIGERIA: AN EXPOSÉ OF THE LAW AND PRACTICE

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1. Introduction

A popular perception in Nigeria is that the only mode of becoming a Notary Public (also called notary) for Nigeria is by appointment of senior members of Nigerian Bar Association (NBA) by the Chief Justice of Nigeria (CJN) after such lawyers have met some laid down conditions. In this regard, for instance, according to the Editors of This Day Newspaper, “In Nigeria, only a legal practitioner can become a notary public: Section 2(1) of the Notaries Public Act (“NPA”). They are appointed by the Chief Justice of Nigeria, and are deemed to be officers of the Supreme Court” (Underlining supplied for emphasis) (Can a Judge Become a Notary? Available at www.thisdaylive.com)

Over the years therefore, in practice, it is common to see practicing lawyers in Nigeria apply to the Chief Justice, who after due consideration may appoint such applicants who have satisfied the requisite conditions and have been considered, “fit and proper”. Successful candidates are eventually sworn in as Notaries either personally by the Chief Justice of Nigeria or more commonly by the Chief Judge of the State of the applicant by virtue of delegated powers contained in section 3 of the Act. Thereafter, the name of the appointee after having been duly sworn-in is entered into the register as prescribed by law (Section 4 of the Notaries Public Act). In practice also, hardly are the powers, duties, privileges and functions of a Notary exercised by any other category of persons. Indeed, this popular perception and practice has now institutionalized the practice whereby notarization of documents and other functions of Notaries are carried out mainly by the aforesaid private legal practitioners duly appointed and sworn in by the Chief Justice of Nigeria.

The question may however now be asked; Are there other ways that one can become a Notary Public for Nigeria or otherwise entitled to exercise the powers and duties of a Notary under the Law? The crux of this paper is to critically examine relevant extant laws with a view to determine whether and to what extent other category of persons, in

particular, Magistrates, and by extension Judges of lower Courts, such as Area and Customary Courts are also Notaries Public for Nigeria under the law. An interrogation of this issue shows clearly that under extant laws, there are other categories of persons recognized by law as Notaries or entitled under the law to carry out the functions of a Notary public. Magistrates and Judges of similar lower courts for instance, constitute a separate and special category of persons recognized and authorized by law as Notaries to exercise the powers of Notaries for all intents and purpose. In addition, other categories of officers are also entitled to do so. Let us begin this discourse with the question: Who is a Notary public?

2. Notary Public

According to Black's Law Dictionary, 9th Edition at p.1161, Notary Public often shortened as Notary, "is a person authorized by a State to administer oaths, certify documents, attest to the authenticity of signatures and perform official acts in commercial matters, such as protesting negotiable instruments."

3. Functions and Duties of Notary

When a Notary Public is appointed, he is deemed to be an officer of the Supreme Court of Nigeria and has the power to attest to the authenticity of a document and such document will be recognized internationally for any purpose it is meant for. The functions and duties of a Notary are vaguely set out in Section 2 of the Notary Public Act. This section was given Judicial interpretation in *Buhari v INEC & Ors* (2008) LPELR-814(SC) where the Supreme Court held that:

Although the Notaries Public Act does not specifically state the duties or functions of a Notary as Section 2(2) of the Act vaguely and lazily provides that a Notary appointed by the Chief Justice of Nigeria shall perform the same duties and exercise the same functions as a Notary in England, a Notary in England performs the function of administering oaths and attest and certify by his hand and official seal some categories or classes of documents. As a matter of practice, Notaries in Nigeria perform such functions." Per Niki Tobi JSC (at P. 99, paras. D-G)

This attitude of relying on England to the specification of the functions of a Notary which has been described as "lazy" above drew further criticism from Niki Tobi JSC when His Lordship also stated that:

I must pause here to say that the wording of Section 19 is not consistent with Republican Nigeria. It is disturbing that in the 21st century, after Nigeria attained Republic status some forty-five years ago; our Statutes are still relying on English Acts for salvation. It is hoped that the National Assembly will remove the provision and spell out the duties and functions of a Notary Public in Nigeria. It will not take the National Assembly so much effort and time to do so.

However it is imperative to state that some enactments are more specific in terms of some functions of a Notary. For instance, section 10 (1) of the Oaths Act Cap 01 Laws of Federation of Nigeria 2004 provides that:

It shall be lawful for the Chief Justice of Nigeria, a Justice of the Supreme Court, The President and Justices of the Court of Appeal, and any judge of the Federal High Court, a notary public, and any commissioner for oaths, to administer any lawful oath or to take any lawful affirmation or affidavit which may be required to be taken or made for the purpose of complying with the requirements of any law for the time being in force throughout Nigeria or elsewhere, except where such procedure is expressly or by necessary implication manifestly excluded by the terms of such law as aforesaid and the presumption shall be against any such exclusion. (Underlining supplied for emphasis).

Section 10(2) provides further that, "It shall be lawful for any of the persons mentioned in subsection 1 of this section to take any declaration made in the form prescribed in the First Schedule to this Act, in cases where an oath is or has been abolished by any enactment."

Judicial officers that may lawfully administer oaths under section 10 (1) of the Oaths Act above has been expanded by section 2 of the Oaths (Amendment) Act, 2016 to include the Heads and Judges of all superior Courts (Federal and State) established after the original enactment came into force in 1963 among the list of courts authorized by the Act to administer oaths or affirmation.

4. How to Become a Notary Public in Nigeria.

The appointment, duties and responsibilities of a Notary Public in Nigeria is regulated by Statute; more specifically, The Notaries Public Act 1936 (Cap. N141 Laws of Federation of Nigeria 2004) (hereinafter referred to as "the Act"). Under the said Act, there are basically 4 (four) ways to become a Notary Public for Nigeria or to act as such. These are:

- (a) by appointment of a legal practitioner by the Chief Justice of Nigeria (section 2 of the Notaries Act)
- (b) as an Ex-officio (Section 17)
- (c) By virtue of an exemption created by the Master of Faculties in England (section 20)
- (d) Nigeria Official in a Nigerian Embassy or Legation (section 12 of the Oaths Act Cap 01 Laws of Federation of Nigeria 2004)

We shall now examine these various modes:

4.1 By Appointment

Section 2(1) of the Act provides, *“The Chief Justice of Nigeria may appoint any fit and proper person being a legal practitioner to be a Notary Public for Nigeria (in this Act referred to as a "Notary" or as a "Notary public”*

i. Requirements For Appointment as Notary Public

As can be gleaned from above, the basic statutory requirement for this category of Notary is that he shall be a legal practitioner. Some additional requirements to be met by applicants and to be taken into consideration in the process of appointment have been stipulated by the Supreme Court. (See: The Supreme Court of Nigeria, *“The Requirements for Application of Notary Public”* available at www.supremecourt.gov.ng). They are as follows:

1. Submission of three (3) copies of formal written application on the letterhead of law firm of an applicant, addressed to the Chief Registrar of the Supreme Court of Nigeria.
2. *Curriculum vitae* of an applicant duly dated and signed on the last page. Applicants from Lagos State are expected to submit twenty three (23) copies while applicants practicing in other states, including the Federal Capital Territory, are to submit only fifteen (15) copies.
3. Photocopies of Annual Bar Practicing fee receipt for seven (7) consecutive years preceding the date of the application. Each payment must be fully paid as at when due. Each payment must have been made as at when due on or before 31st of March of each year.
4. Three (3) copies of Certificate of Call to Bar.

5. Three (3) photocopies of Applicant's Incorporation Certificate with the Corporate Affairs Commission.

The Chief Registrar of the Supreme Court is enjoined under the Act to keep a register in which he shall enter the name and address of every person who shall be appointed to the office of notary and the date of his appointment and admission (Section 4(1) of the Notaries Act).

4.2 Notary Public *Ex-Officio*

By the provisions of section 17 (1) of the Act, all Magistrates and also the Collectors of customs and excise at the ports in Nigeria *shall ex officio be notaries public*.

What is meant by Ex-officio?

According to Black's Law Dictionary, 9th Edition at P. 657, Ex- officio means, "By virtue or because of an office; by virtue of the authority implied by office."

In relation to collectors of customs and excise, there is however a proviso to the effect that a collector of customs and excise shall only exercise the duties of a notary in respect of minuting or noting or extending ships' protests, and such collectors shall not exercise any of these duties at any part at which a notary appointed by the Chief Justice of Nigeria is available. This restricting proviso is only tied to customs and excise. There is no provision whatsoever either under the said section or anywhere else under the Act, where the powers and duties of a Magistrate to act as a Notary is restricted.

The clear interpretation of the above is that under the Act, appointment by the Chief Justice of Nigeria is not the only way of becoming a notary public in Nigeria. One can also become a notary by virtue of holding office as a Magistrate or Collector of Customs.

Although, the Act only made specific mention of "Magistrates" as *Ex-officio Notaries*, it is submitted that the definition of Magistrates under the Notaries Act also include Judges or Presiding officers of such similar lower courts such as District, Area, Customary, Sharia courts etc. The legal authority for this submission is predicated on the fact that Notaries public are actually deemed to be officers of the Supreme Court (Section 6 of the Act). Section 2 of the Supreme Court Act, stipulates that Magistrates' Court (which Magistrates

preside over) shall include, “any district or similar court establish by State law,” underlining supplied for emphasis).

A community reading of the Notaries Act read together with the Supreme Court Act, impliedly incorporates all presiding officers of courts similar to Magistrates Courts established by States Laws in Nigeria. They include Judges of lower courts such as President, Chairman etc. (howsoever named) of Area, Customary Courts and Sharia Courts etc of States of Nigeria. They, together with Magistrates are also Notaries Public and are empowered, like legal practitioners appointed Notaries to notarize documents under the Law. The similarity requirement of the above argument is underscored in the law creating these courts in many States. For instance in Edo State, Section 4(2) Customary Courts Law 1984 (similar to the Delta State Customary Courts Law) makes the status, terms and conditions of service of a President of an Area Customary Court, “...similar to and not less favourable as a Chief Magistrate Grade II employed in the service of the State.”

Under section 17(2) All ex-officio Notaries shall use a seal bearing thereon the name of their offices and in addition the words "**Notary ex officio**" What this clearly mean is that Magistrates as well as Judges presiding over similar lower or inferior courts are entitled to affix a seal bearing the name of their offices, "*Notary ex officio*" to all documents notarized by them.

There is however, a significant distinction worthy of note between the above ex-officio Notaries and private legal practitioners appointed as Notaries under section 2 of the Act. This is in the area of remuneration. Whilst section 5 of the Act generally allows a Notary to charge a fee provided it is not in excess of the fees set out in the second schedule to the Act, Section 5(2) makes it mandatory for any such fees received by a Government officer for the discharge of notarial duties to be paid by such officer into government treasury and shall form part of the Consolidated Revenue Fund of the Federation. What this clearly means is that fees received by a Magistrate etc. being government officers cannot be deployed for personal benefits but shall form part of government revenue.

4.3 Persons Authorised by Virtue of a Faculty Granted by the Master of Faculties

This is the last category of persons permitted under the law to act as notaries by virtue of section 20 of the Notaries Act. The section provides that, “Any person who by virtue of a faculty granted by the Master of Faculties is authorized to act as a notary public in Nigeria

may act as a notary in any part of Nigeria and section 2 to 12 and 16 inclusive shall not apply to any such person.”

The Chief Registrar of the Supreme Court shall enter in a separate part of the Register kept by him the names of such persons in accordance with the section. Any person who desires to be so enrolled shall make an application in writing to the said Chief Registrar.

This last category is obviously a relic of the colonial heritage of Nigeria and in practice, is hardly still active. In the United Kingdom, an applicant may petition the Court of Faculties for a ‘Faculty’ - a formal warrant under the seal of the Archbishop of Canterbury confirming their appointment as a Notary Public and enabling them to practice as a Notary Public subject to supervision by an experienced Notary for the first two years.

4.4 Nigeria Official in a Nigerian Embassy or Legation

By the provisions of section 12 of the Oaths Act, every Nigerian official of the rank of secretary or above in a Nigerian Embassy or legation may in any country where he exercises his functions, administer any oath and take any affidavit and also do any notarial act which a notary public can do within Nigeria.

Any oath, affidavit and notarial act administered, sworn or done by or before any such person shall be as effectual as if duly administered, sworn by or before any lawful authority in any part of Nigeria.

5. Conclusion

This paper has critically examined the provisions of relevant laws relating to the various modes of conferment, functions/ duties of a Notary Public for Nigeria. In particular, some provisions of the Notaries Public Act in relation to the mode of creation of the office of Notary. The product of this exercise has been to expose the fact that contrary to popular opinion and perception, in addition to appointment by the Chief Justice of Nigeria of lawyers who are considered fit and proper, two other categories of officials i.e. Magistrates and other Judicial officers such as Presidents of Area and District Courts, being courts of similar status, as well as Collectors of customs and excise at the ports in Nigeria are statutorily recognized as, “*Notaries ex-officio.*” They, together with those granted faculty by the Master of faculties to practice as notary in Nigeria as well as Nigerian

officials of the rank of secretary or above in a Nigerian Embassy or legation legally entitled to perform the duties of Notaries under the law.

In conclusion, in the light of the above, it is crystal clear that the law has not in any way restricted the notarization of documents and other functions of Notaries to private legal practitioners in Nigeria.