



NIGERIAN BAR ASSOCIATION

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16 February 2024

The Honourable Chief Judge of Enugu State

Enugu State High Court Complex

Three Arms Zone

Independence Layout. Enugu

My Lord, the Honourable Chief Judge,

RE: THE NEED TO INTRODUCE THE PRODUCTION OF TAX CLEARANCE CERTIFICATE (TCC) AS A REQUIREMENT FOR FILING OF COURT PROCESSES IN COURTS IN ENUGU STATE

My attention was drawn to a letter dated 7 February 2024 with reference number J/S.193/VOL.XIII/76, issued under the hand of the Chief Registrar of the High Court of Enugu State, Kingsly O. Eze. As indicated in the said letter under reference, it was issued on Your Lordship's instruction, at the behest of the Executive Chairman of the Enugu State Internal Revenue Service (ESIRS), vide the letter dated 1 February 2024, which was attached to the Chief Registrar's letter under reference.

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Let me quickly state that, we have recently observed an emerging disturbing trend, where tax authorities are frantically seeking to use the Bar as a tool for discharging or performing their statutory duties of collecting and enforcing the payment of taxes. Only about a month ago, I had cause to advise a tax authority from one of the states, which requested NBA to ensure that practice licenses are not issued to legal practitioners without proof of payment of Personal Income Tax, that we are unable to do so. We informed the state tax authority that:

“The issuance of practice licence to legal practitioners is without prejudice to their tax obligation, and it is not in any way subject to the provision of Section 80(4) of the Personal Income Tax Act. We believe that with proper notices served on taxpayers who are our members, they will fulfil their tax obligations as required under the relevant laws.”

The present scenario, where all legal practitioners are mandated to attach their Tax Clearance Certificate (TCC) to all processes filed in court, seems worse than what we had to deal with in the case mentioned above. What is even more worrisome in the case at hand, is the brazenness with which the Chairman of ESIRS approached the Enugu State Judiciary on this issue and, the speed with which he succeeded in turning the head of the Judiciary of the State; an arm of government equal to the Executive under which he (ESIRS Chairman) serves, into an enforcement unit of the ESIRS. The request by the Chairman, ESIRS for Your Lordship, the Honourable Chief Judge to “help in ensuring that Lawyers in Enugu State comply with this constitutional provision by a mandatory attachment of their Tax Clearance Certificate (TCC) to all processes filed in court” is not only demeaning of the Judiciary, but also an attempt to use the revered office of the Chief Judge as an impediment to the constitutionally guaranteed right of access to court. What is most annoying is the use of a cheap blackmail

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Yakubu Chonoko Maikyau, OON, SAN President

Adesina Adegbite, FICMC, General Secretary; Linda R. Bala (Mrs), 1st Vice President; Chukwuemeka Clement Ugo, 2nd Vice President; Amanda Ego Demechi-Asagba, 3rd Vice President;

Caroline Ladidi Anze-Bishop, Treasurer; Chinyere Gladys Obasi, Welfare Secretary; Akorede Habeeb Lawal, Publicity Secretary;

Daniel K. Kip, Assistant Secretary; Charles Ajiboye, FICMC, FCAI, ACIS Assistant Publicity Secretary

that, by doing the bidding of the Chairman ESIRS, the Chief Judge “*will boost transparency and show the image of the judiciary as law abiding*” What an insult! It is ridiculous to say the least and would have been laughable if it were not so pathetic, that the honourable Chief Judge has fallen for this blackmail, which led to the issuance of the letter of 7 February 2024 under reference. In what way will the use of Judiciary as an enforcement unit of ESIRS “*boost transparency and show the image of the judiciary as law abiding*”, if one may ask?

The directive of Your Lordship goes to the fundamental question as to the very existence of the courts, and if allowed to stand, has the potential of negating the very essence for which the courts were created under the Constitution, with a corresponding unhindered access to all persons without any discrimination whatsoever. As your lordship already knows, the right of access to court is a guaranteed right under the Constitution of the Federal Republic of Nigeria. Consequently, no other law can derogate or detract from it, and the court should not allow the provision of any enactment to be read in such a way as to deny or curtail the access to court by any citizen or person. In other words, the right of access to Court my Lord, is too fundamental and of grave importance to be trivialised in the manner done by the said directive.

Access to court is not just a right conferred on citizens, it is a basic necessity in any organised society for civilised existence. I must add that even tax-defaulters are entitled to their day in court; their tax liability or otherwise, could be the subject for which they wish to approach the court. I imagine that a person whose fundamental right is breached or likely to be breached, would not have an application for the enforcement of his/her fundamental right filed until his Counsel attaches his TCC. Similarly, bail applications or other processes necessary for the defence of a Defendant in a criminal trial would not be countenanced without the TCC of the Counsel filing the process. Also, aggrieved as the NBA may be by this directive, the Incorporated Trustees of the NBA would not have its process filed without the TCC of its Counsel, should it decide to seek redress in court.

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In issuing the said directive, aside from all that I have already observed, Your Lordship seems to have lost sight of the fact that processes of court are filed by legal practitioners on behalf of persons they represent in the exercise of yet another constitutional right to brief a counsel of one’s choice. To make filing of processes on behalf of clients subject to proof of payment of Personal Income Tax (PIT) by his or her lawyer, is a breach of their constitutional right and constitutes a hinderance to access to justice. It is also in a way punishing the clients for the inability of their Counsel to attach TCC to the processes. Making tax payment or exhibition of the proof of payment thereof as a pre-condition for filing of court processes would certainly cause more harm than the mischief the directive seeks to remedy. And as noted earlier, the right to be heard in court, either as a litigant or as a lawyer, was at no time made subject to payment of PIT under any law.

It appears necessary to refer Your Lordship to Section 2(1) of the Legal Practitioners Act, CAP L11, Laws of the Federation of Nigeria, 2004, which provides that “***Subject to the provisions of this Act, a person shall be entitled to practice as a barrister and solicitor if, and only if, his name is on the roll.***” Section 8 of the same Act, on the right of audience in court, provides:

(1) Subject to the provisions of the next following subsection and of any enactment in force in any part of Nigeria prohibiting or restricting the right of any person to be represented by a legal practitioner in proceedings before the Supreme Court or the Sharia Court of

Appeal or any area or customary court, a legal practitioner shall have the right of audience in all courts of law sitting in Nigeria.

(2) No Legal Practitioner (other than such a person as mentioned in subsection (3) of section 2 of this Act) shall be accorded the right of audience in any court in Nigeria in any year unless he has paid to the registrar in respect of that year such practicing fee as may be prescribed from time to time in accordance with the provisions of this section.

Further to the above provisions, Rule 12(1) of the Rules of Professional Conduct for Legal Practitioners, 2023, made pursuant to Section 12(4) of the Legal Practitioners Act, provides:

(1) Not later than a date in every year specified by it, the Nigerian Bar Association shall

(a) publish a list of legal practitioners who have complied with the requirements of the Continuing Professional Development Programme and have paid their practicing fees and are, therefore entitled to practice as legal practitioners in that year (hereinafter referred to as the Annual Practicing List); and

(b) issue a practicing certificate to a legal practitioner whose name is on the said Annual Practicing List, certifying that he has paid his practicing fee for the specified year and that he has also fulfilled the requirement of the Continuing Professional Development Programme for the year under the rules made for that purpose by the Nigerian Bar Association.

The effect of a community reading of the above provisions of the Legal Practitioners Act and the Rules of Professional Conduct is that:

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1) A person whose name is on the roll of legal practitioners kept at the Supreme Court of Nigeria is entitled to practice law in Nigeria.

2) Such person, provided he has paid his practicing fees, has the right of audience before any court in Nigeria and is entitled to be issued with Annual Practicing Certificate (or licence).

The issuance of practice licence to legal practitioners or Counsel's right of audience in court, is without prejudice to their tax obligation, and it is not in any way subject to the provision of the Personal Income Tax Act.

While we acknowledge the duty on lawyers to fulfil their statutory tax obligations to the State, and we believe that with proper notices served on taxpayers who are our members, they will discharge their respective tax obligations as required under the relevant laws, we find this directive obnoxious and a derogation from the constitutional and statutory rights of both counsel and their clients.

Consequently, the Nigerian Bar Association, wholly rejects the directive based on the request by the Chairman of ESBIR, on the ground that it is unconstitutional for all the reasons stated above.

We, therefore, most respectfully, request Your Lordship to withdraw the directive as contained in the Chief Registrar's letter of 7 February 2024 and advise the ESIRS to resort to

the enforcement mechanism under the Personal Income Tax Act to ensure that all citizens of Enugu State, including lawyers, comply with their tax obligations.

Finally, My Lord, we do not take lightly the action of the Chairman of the ESIRS, which to a large extent borders on contempt for the Judiciary and the letter of 1 February 2024 was an affront – an assault on the integrity of the Judiciary. The NBA takes exception to that conduct and shall take appropriate steps to address same.

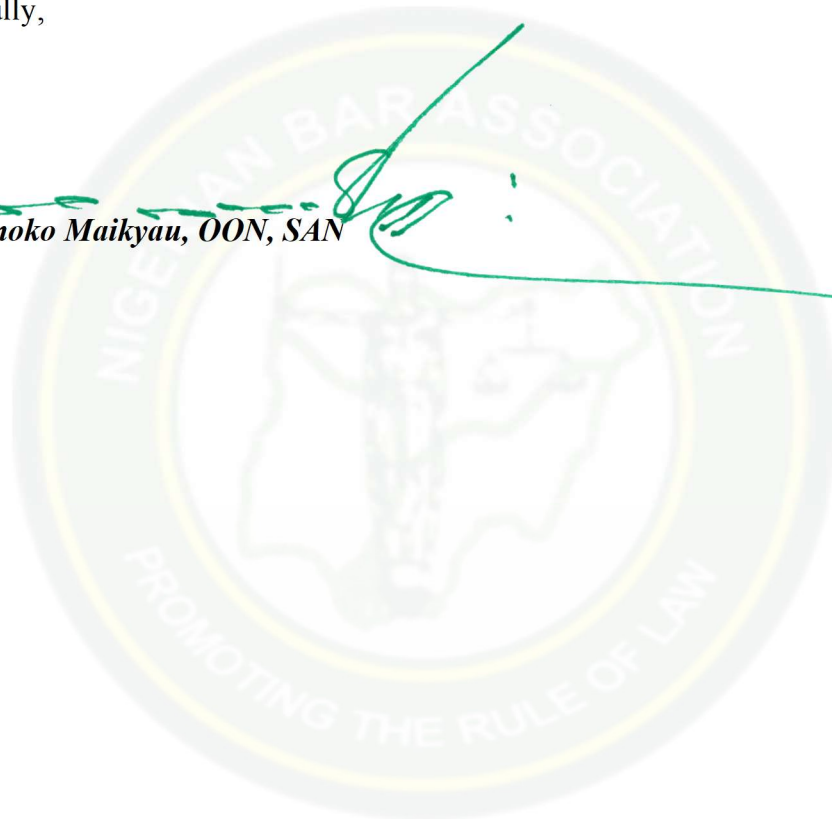
We most respectfully await your Lordship’s action as requested herein.

Please accept My Lord, the Honourable Chief Judge, the assurances of my esteemed professional regards.

Yours faithfully,


Yakubu Chonoko Maikyau, OON, SAN
PRESIDENT

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Cc:

**The Honourable Attorney General and
Commissioner for Justice, Enugu State**
Ministry of Justice, Enugu

Honourable Attorney General,

Above, for your information and necessary action.

Please accept, as always, the assurances of my esteemed professional regards.

Yours faithfully,


Yakubu Chonoko Maikyau, OON, SAN
PRESIDENT

TheNigeriaLawyer



Cc:

The Chairman

Nigerian Bar Association, Enugu Branch

The Chairman

Nigerian Bar Association, Nsukka Branch

The Chairman

Nigerian Bar Association, Oji River Branch

The Chairman

Nigerian Bar Association, Obollo-afor Branch

The Chairman

Nigerian Bar Association, Ezeagu Branch

Mr Chairman,

Above, for your information and necessary action.

Please accept, as always, the assurances of my esteemed professional regards.

The Nigerian Lawyer Yours faithfully,


Yakubu Chonoko Maikyau, OON, SAN
PRESIDENT