

CONTEMPORARY APPRAISAL OF THE ROLE AND RESPONSIBILITIES OF A NOTARY PUBLIC IN NIGERIA

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Abstract

This paper undertook a critical analysis of the contemporary role and responsibilities of a notary public in Nigeria under the extant Notaries Public Act, 2023. The paper highlighted that contrary to the old legal order, the Notaries Public Act, 2023 clearly defined the role and responsibilities of a Notary Public as well as made provision for digital and remote notarisation of documents. The paper viewed these developments as welcome and therefore recommended that Notaries Public should discharge their physical and electronic notarial acts and responsibilities with utmost professionalism and fidelity required of appointees of the Chief Justice of Nigeria and designated officers of the Supreme Court of Nigeria.

Keywords: Duty, justice, notary, public, Supreme Court

1. The New legal Regime of Notary Public under the Notaries Public Act, 2023

The current law on Notary Public in Nigeria is the Notaries Public Act, 2023 which repealed the Notaries Public Act, LFN 2004. The extant law was passed in line with technological advancements and it contains significant improvements on the old legal order such as provision for digital and remote notarisation of documents. Against this background, this paper examines the role and responsibilities of a Notary Public and highlights the significant changes under the law in order to elicit or draw attention to these new developments. In subsequent segments, the paper will further address the following questions and issues namely-

2. Who is a Notary/Notary Public in Nigeria?

Section 1 of the Notaries Public Act, 2023 enacts that “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 Public”). Thus, a Notary Public is an appointee of the Chief Justice of Nigeria. He must however be a legal practitioner of many years standing at the Bar. By the provisions of *section 3*, a “Notary Public, before being admitted and commencing the duties of his office shall take and subscribe to the oath as set out in the First Schedule to Notaries Public Act, 2023 before the Chief Justice of Nigeria or before such persons as may be appointed by the Chief Justice of Nigeria”. Under *section 11* of the Notaries Public Act, 2023 “Every Notary shall be deemed to be an officer of the Supreme Court”.

The tenure or duration of appointment of a Notary Public is not limited except to say that the appointment of a Notary Public may be revoked or suspended in terms and following the

procedures duly specified under *sections 12, 13 and 14* respectively of the Notaries Public Act, 2023. Existing Notaries Public before the coming into effect of the Notaries Public Act, 2023 are required to take steps to regularise their appointment in order to have their names to be entered in the physical and electronic register kept by the Chief Registrar of the Supreme Court.¹

Although decided prior to the Notaries Public Act, 2023, in the case of *Enemosah v Executive Chairman of EFCC*,² the Court of Appeal, per Adumein, explained in detail who a notary is when he held as follows

According to, John Proffatt, in his "A Treatise on the Law Relating to the Office and Duties of Notaries Public", "The notary public is an officer long known to the civil law, and designated as *registrarius, actuarius, or scrivarius*"

As far back as 1913, Benjamin F. Rex wrote in his book: "The Notaries Manuel", *inter alia*, as follows:

"The notary public, or notary, is an official known in nearly all civilized countries. The office is of ancient origin. In Rome, during the republic, it existed, the title being *tabelliones forenses, or personae publicae*; and there are records of the Popes as early as the ninth century. They were chiefly employed in drawing up legal documents; as scribes or scriveners they took minutes and made short drafts of writings, either of a public or a private nature. In modern times their more characteristic duty is to attest the genuineness of any deeds or writings, in order to render the same available as evidence of the facts therein contained.

See generally page 1161 of Black's Law Dictionary, Deluxe Ninth Edition, where the learned authors thereof define "notary public" as "A person authorized by a State to administer oaths, certify documents, attest to the authenticity of signatures

Conclusively, "Notary Public" means "an individual commissioned or appointed to perform notarial act by the Chief Justice of Nigeria" as interpreted in *section 28* of the Notaries Public Act, 2023.

3. Duties and Functions of a Notary

The duties and functions of a Notary Public in Nigeria are now expressly and specifically provided under the Notaries Public Act, 2023. This is unlike the erstwhile Notaries Public Act, LFN 2004 which simply states that a Notary Public shall perform the same duties and exercise the same functions as a Notary Public in England. This entailed that recourse had to be made to England to determine a Notary Public's duties and functions. For completeness of information, *section 2* of the Notaries Public Act, 2023 lists the following as the duties and functions of Notary Public

A Notary Public shall –

¹ *Section 15* of the Notaries Public Act, 2023.

² (2021) LPELR-56467(CA) (Pp. 29-30 paras. C-C).

- (a) witness the execution of local and international documents such as (i) sale and purchase agreements, (ii) transfers of land agreements, (iii) assignments of intellectual property, (iv) power of attorney, (v) deeds, (vi) security documentation, (vii) mortgages, (viii) company resolutions, (ix) minutes of meetings, and (x) reports;
- (b) prepare notarial certificate of law and good standing;
- (c) administer oaths for giving evidence;
- (d) take affidavits, declarations and depositions;
- (e) notarise bills of exchange;
- (f) obtain authentication from Ministry responsible for foreign affairs;
- (g) note or certify transactions relating to bills of exchange and other negotiable instruments;
- (h) verify company documents;
- (i) verify identity and signature; and
- (j) perform digital notarisation through electronic means.

The foregoing acts are undertaken in official capacity. Hence, they are recognised internationally as a means of deterring fraud. It must be noted that under *section 5* of the Notaries Public Act, 2023, there is provision for Digital notarization. Thus, Notaries Public shall discharge their duties, where the situation arises, via electronic means subject to satisfying the registration requirements with the Chief Registrar of the Supreme Court.³

4. Condition(s) for a document or process to be seen as having been duly authenticated by a Notary/Notary Public

Section 22 of the Notaries Public Act, 2023 provides as follows

- (1) Every Notary Public before whom any oath or affidavit is taken or made under this Act shall truly state in the jurat of attestation at which place and on what date the oath or affidavit is taken or made.
- (2) Where notarisation is carried out through electronic means as duly provided for in this Act, the Notary Public shall state the technology used to notarise the document.

From the foregoing provisions every notarized document must contain a jurat stating where the oath was taken. In addition, where notarisation is carried out through digital means, it shall state the technology deployed to notarise the document. Though decided on the old law (now reproduced as *section 22* of the Notaries Public Act, 2023) the case of *Enemosah v Executive Chairman of EFCC*⁴

³ *Sections 5 and 6* of the Notaries Public Act, 2023 deal with Digital Notarisation and Performance of electronic notarial acts respectively.

⁴ (2021) LPELR-56467(CA) (Pp. 31-33 paras. B) per Adumein, JCA.

amplified condition(s) for a document or process to be seen as having been duly authenticated by a notary/notary public thus-

... it is quite clear that a notary public has a significant role in authenticating documents or processes; and signatures on such documents or processes. And for a document or process to be seen as having been duly authenticated by a notary public, there must be a jurat of attestation stating the place and date the document or process was attested to, or signed by the parties concerned.

Where the notary public is a legal practitioner appointed under Section 2(1) of the Notaries Public Act, it is expected that such a notary public would sign the document or process as a legal practitioner would ordinarily do but with relevant endorsement of the document or process that he has signed it as a notary public.

Since in practice every notary public has his own seal, after he has been sworn in as such, it is expected that the notary public would also affix his seal to the document so that the attestation or authentication on the document or process in question can be attached, connected or linked to the particular notary public.

The purported attestation on exhibits "J1" and "J2" tendered by the appellant is so deficient, in relevant particulars, that no reasonable Court would accept it as any authentication before the eyes of the law. To be mild in my observations, exhibits "J1" and "J2" are as bad as documents not authenticated at all. In other words, exhibits "J1" and "J2" can be rightly or validly taken and considered as unsigned deed of assignment and power of attorney, respectively.

5.0 Inhibitions against self-interest

A Notary Public is not at liberty to act in all circumstances or notarise every document. He is under inhibition against self-interest. Specifically, *section 23* of the Notaries Public Act, 2023 provides that "A Notary Public shall not exercise any of the powers of his office in any proceeding or matter in which he is interested". This same inhibition existed in *section 19* of the repealed Notaries Public Act, Cap. N141, Laws of the Federation of Nigeria, 2004 as follows: "No notary shall exercise any of his powers as a notary in any proceedings or matter in which he is interested." This prohibition was upheld in the case of *Buhari v INEC & Ors*.⁵ In that case, Tobi, JSC, held that an affidavit sworn to before a notary will be inadmissible where the notary has an interest in the subject matter of the suit. On the facts of that appeal, he held as follows:

Section 83 of the Evidence Act, provides as follows: 'An affidavit shall not be admitted which is proved to have been

⁵ (2008) LPELR-814(SC) (Pp. 99 paras. D).

sworn before a person on whose behalf the same is offered, or before his legal practitioner, or before a partner or clerk of his legal practitioner.' The provision is clear and unambiguous and appears to me that the word "shall" is clearly mandatory. These depositions were made in favour of the petitioner, General Muhammadu Buhari. Mr. Ikeonu is no doubt a Notary Public, but he is also a legal practitioner representing General Muhammadu Buhari in this petition. He is, therefore, precluded from taking depositions which are in fact, affidavit evidence in this petition. Also Section 19 of the Notaries Public Act, Cap. 331, LFN 1996 provides as follows: 'No Notary shall exercise any of his powers as a notary in any proceedings or matter in which he is interested.' The combined effect of these two provisions is that Val. I Ikeonu being a petitioner's counsel lacked the competence to notarise any document used in the petition.

6.0 Conclusion

The scheme of Notary Public in Nigeria has become modernized under the new law to the extent that it now incorporated digital notarisation. This is a welcome legal reform effort. The services of Notary Public in Nigeria can therefore be taken with ease either physically or digitally within Nigeria and overseas. The latter is however the preserve of an “Electronically enabled Notary Public” which means “a Notary Public who has registered with the Chief Registrar of the Supreme Court, his capabilities of performing electronic notarial acts in conformance with the standards outlined under the Notaries Public Act, 2023”. It is therefore recommended that Notaries Public should discharge their physical and electronic notarial acts and solemn responsibilities with utmost professionalism and fidelity required of appointees of the Chief Justice of Nigeria and designated officers of the Supreme Court of Nigeria.

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