GUIDING PRINCIPLES ON THE ROLE OF A LEGAL PRACTITIONER IN THE FORMATION OF CONTRACT- A CONTEMPORARY OVERVIEW*

Abstract

It is hornbook law that formation of contract is the exclusive business of parties to the contract. Not even the courts can make contract for the parties. Coincidentally, every agreement does not result to a valid or enforceable contract as some of the essential ingredients of a contract may be missing. Where either the offeror or offeree or both parties retain the services of lawyers in the formation of a contract, the expectation is elevated although the outstanding concerns remain what roles the lawyers should play and what principles should guide them. To answer these questions, the paper deployed the doctrinal research method to analyse judicial decisions and requisite statutory provisions that outline the meaning and ingredients of a contract plus the role of a lawyer engaged in the formation of a contract. The paper found that the five ingredients of a contract are offer, acceptance, consideration, intention to create legal relationship and capacity to contract notwithstanding the countless circumstances where mere invitations to treat which do not qualify as contract were presented to Court for adjudication. The paper further established that lawyers are legally obligated to diligently ensure that essential ingredients necessary for the formation of a valid contract are satisfied failing which they may be sued by their clients for professional negligence. It was therefore recommended that lawyers should master the rudiments of contract law in order to successfully guide their clients to enter into valid contracts as well as reduce rampant filing of frivolous cases including appeals.

Keywords: Legal Practitioner, Role, Guiding Principles, Formation of Contract

1. Introduction

The aim of this paper is to discuss and establish the key ingredients for the formation of a contract and the role a legal practitioner, acting for either the offeror or offeree, is expected to play in the formation of a contract. This has become necessary because of the rampant number of times and unmeritorious circumstances where agreements that do not qualify as contracts are presented to Courts for adjudication with attendant wastage of precious time of the Courts. It is important to enlighten that, under Nigerian jurisprudence, mere expressions of interest or willingness to negotiate cannot create binding legal obligations. It is therefore essential that in the exercise of commercial freedom, contracting parties should be protected from premature contractual commitments. To achieve this objective therefore, through the body of decided cases and consideration of relevant statutory provisions, this paper will extrapolate the meaning of contract, its key ingredients and what legal principles and irreducible minimum professional considerations a lawyer should take into account in order to successfully guide a client[1] to negotiate a binding contract. Further discussions in this paper are divided into the following segments namely: Meaning and ingredients of a valid contract; Role of legal practitioner in the formation of a contract; and Conclusion and recommendations.

2. Meaning and Ingredients of a Valid Contract

As a prelude to the discussion of the role of a legal practitioner or lawyer in the formation of a contract, it is important to ascribe meaning to the term or phrase 'contract' and what will constitute a valid contact in the eyes of the law. Simply stated, 'contract' may be defined as an agreement between two or more persons which creates an obligation to do or not to do a particular thing. There are five ingredients that must be present in a valid or enforceable contract which is the focal point of this paper. These are offer, acceptance, consideration, intention to create legal relationship and capacity to contract.[2] All these five ingredients are essential, and a valid contract cannot be formed if any of them is absent. This principle has been applied in many Nigerian cases like *Dangote Gen. Textile Products Ltd. & Ors v Hascon Associates Nig Ltd. & Anor*[3] and *Akinyemi v Odu'a Investment Co. Ltd.*[4] In *Alfotrin Ltd v A-G Federation & Ors*.[5] Iguh, JSC, held that to constitute a binding contract, there must be an agreement in that the parties must be in *consensus ad idem* (meeting of the minds) with regard to the essential terms and conditions thereof; the parties must intend to create legal relations and the promise of each party, in a simple contract, not under seal, must be supported by consideration. There must be a concluded bargain which has settled all essential conditions that are necessary to be settled and leaves no vital term or condition unsettled. In *Bilante International Ltd v NDIC,*[6] the Supreme Court restated the position of the law regarding what constitutes a valid and enforceable contract thus:

> To constitute a binding contract between parties, there must be a meeting of the mind often referred to as *consensus ad idem.* The mutual consent relates to offer and acceptance. An offer is the expression by a party of readiness to contract on the terms specified by him, which, if accepted by the offeree gives rise to a binding contract. The offer matures to a contract where the offeree signifies a clear and unequivocal intention to accept the offer. See: *Okugule & Anor v Oyagbola & Ors.* (1990) 4 NWLR (Pt.147) 723. It should be reiterated that in order to establish that parties have formed a contract, there must be evidence

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[1] In section 19 of the Legal Practitioners Act a "client" means the person or any of the persons alleged to be liable to pay the charges of a legal practitioner.

[2] Sagay, I. E., *Nigerian Law of Contract* (2nd ed.) (Ibadan: Spectrum Books Ltd, 1993), Guest, A. G., *Chitty on Contracts* (25th ed: Volumes 1 & 2) (UK, Sweet & Maxwell Ltd, 1983).

[3] (2013) 12 SCNJ 456.

[4] (2012) 1 SCNJ 127.

[5] (1996) 9 NWLR (Pt.475) 634 @ 656 H.

[6] (2011) 15 NWLR (Pt.1270) 407 @ 423 C – F.

of consensus ad idem between them. Then if there is a stipulated mode for acceptance of the offer, the offeree has a duty to comply with same. See: *Afolabi v Polymera Industries Ltd*. (1967) 1 All NLR 144, (1967) SCNLR 256.

The basic elements of binding contract are therefore offer, acceptance, consideration, capacity to contract and intention to create a legal relationship. Extensive discussion of each and every one of these concepts will be impossible n this paper because of space constraint. Suffice it to say, however, that consideration under the law of contract was aptly defined by the Supreme Court, per Kekere-Ekun, JSC, in *Eyiboh v Mujaddadi & Ors*[7] as some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. Parties to a contract are free to conclude their bargain on whatever terms are deemed to be appropriate. Unless an agreement is under seal it cannot be enforceable by a party that has not furnished some consideration in support of it. Hence the dictum, 'consideration must move from the promise.' There must be an exchange, either of promises or of a promise for an act. The basic feature of the doctrine is reciprocity. Something of value in the eye of the law must be given for a promise in order to make it enforceable as a contract. On the other hand, privity of contract represents the sanctity of contract between the parties to it. It does not extend to others from outside. In *UBA Plc & Anor v Jargaba,*[8] it was held by the Supreme Court, per Muhammad, JSC, that the doctrine will not apply to a non-party to the contract who may have, unwittingly, been dragged into the contract with a view to becoming a shield or scape-goat against the non-performance by one of the parties. In *Rector, Kwarapoly & Ors v Adefila & Ors*[9] it was reiterated by the Supreme Court that the doctrine of privity of contract is all about the sanctity of contract between the parties to it. Put differently, a contract cannot confer any rights or impose any obligations on any person except on those who are parties to the contract. Thus, only parties to a contract can sue or be sued for any breach of the contract.[10] As held in *Sapara v UCH Board of Management*,[11] in commercial agreements, it will be presumed that the parties intended to create legal relations and make a contract. But the presumption may be rebutted but the burden is very heavy.

Nevertheless, the importance of the presence of these ingredients in the formation of a valid contract were fully demonstrated in the case of *BPS Construction & Engineering Company Limited* v *Federal Capital Development Authority,*[12] where the appeal before the Supreme Court which bordered on contract was an appeal against the judgment of the Court of Appeal. The Court of Appeal had dismissed the appellants appeal and allowed the respondent's cross-appeal against the judgment of the High Court of the Federal Capital Territory. The facts of the case were that the appellant had approached the respondent with a proposal for the provision of infrastructural facilities at Mabushi and Katampe Districts of the FCT. At a meeting held on 6th day of July 2004 between the parties, the appellant's proposal was approved. A memorandum of understanding (MOU) was drawn up and signed by the parties on 13th day of July 2004. The MOU was subject to the signing of a formal agreement by the parties. By the agreement, the appellant, as infrastructural developer, would raise funds for the project. It would recoup its costs from the collection of development levies payable by allottees of plots and from the sale of vacant plots in the two districts. By the terms of the MOU, the respondent was to provide the appellant with the engineering design, drawings and Bill of Quantities (BOQ) and any other documents that would enable the appellant complete its cost analysis of the project. The MOU also provided that within 14 days of its execution, the parties shall enter into a formal agreement on terms to be mutually agreed between the parties. It was also agreed that all documents, materials, discussions, etcetera would be treated with the utmost confidentiality and neither party to the MOU shall disclose any. information to a third party. In compliance with the MOU, the respondent submitted the required documents to the appellant. The appellant in return, submitted its Infrastructural Development Agreement to the respondent for execution, as well as evidence of its financial capacity to execute the contract. However, notwithstanding repeated reminders, the respondent refused to sign the agreement. Meanwhile, the appellant had proceeded to incur costs in terms of manpower and resources in the execution of the project based on 'reliance on the promises, assurances and representations of the respondent that a formal agreement will be executed in line with the MOU'.

As a result of the respondent's failure to sign the formal agreement, the appellant instituted an action before the High Court of the Federal Capital Territory vide a writ of summons and statement of claim seeking declarations and reliefs in the nature of specific performance, damages and refund of the total sum committed to the project as quantum meruit pursuant to the MOU and subsequent assurances of the Respondent from 2004-2008. There was also a relief of N10,500,000 00 as loss of anticipated profit. The respondent, as defendant, filed a statement of defence wherein it denied the appellant's claims. At the conclusion of the trial, the learned trial Chief Judge held that the defendant was in breach of the MOU to enter into a formal agreement with the plaintiff for the provision of infrastructural facilities in Mabushi and Katanpe Districts of the FCT. The Court thereby ordered various damages against the defendant in favour of the plaintiff for a breach of contract and for cost and legal expenses in this action. The appellant was dissatisfied with the judgment and filed an appeal against it at the Court of Appeal. The respondent was also dissatisfied with an aspect of the judgment and accordingly filed a notice of cross appeal. In a considered judgment the Court of Appeal dismissed the main appeal and allowed the cross appeal. The decision of the High Court in which the MOU was held to amount to a contract capable of being breached was thereby set aside. The Court of Appeal also set aside

[7] (2021) LPELR-57110(SC) (Pp. 19-20 paras. F) citing in support the case of *BFI Group Corporation v B.P.E.* (2012) 18 NWLR (Pt. 1322) 209, per Adekeye, JSC.
[8] (2007) LPELR-3399(SC) (Pp. 19 paras. D).
[9] (2022) LPELR-60890(SC) (Pp. 18-20 paras. E-E).
[10] See *Ezeafulukwe v John Holt Ltd* (1996) LPELR - 1196 (SC), *BASINCO Motors Ltd v Woermann - Line & Anor* (2009) LPELR - 756 (SC), *Rebold Industries Ltd v Magreola & Ors* (2015) LPELR - 24612 (SC), *Reichie v Nigeria Bank for Commerce & Industry* (2016) LPELR - 40051 (SC) and *Akauve Moses Osoh & Ors v Unity Bank Plc* (2013) LPELR-1968 (SC).
[11] (1988) LPELR-3014(SC) (Pp. 19 paras. F-F).
[12] (2017) LPELR-42516(SC).

the award of damages respectively. The appellant still dissatisfied further appealed to the Supreme Court. On the whole, the Supreme Court found no merit in the appeal and it was accordingly dismissed. The Supreme Court held *inter alia* that-

> (a) The elements of a binding and enforceable contract are offer, acceptance, intention to create a legal relationship, consideration and capacity to contract. For there to be an enforceable contract, there must be a concluded bargain which has settled all essential conditions that are necessary to be settled and leaves no vital term or condition unsettled. An invitation to treat is not an offer that can be accepted to lead to an agreement or contract.
> (b) A letter of intent is a written statement detailing the preliminary understanding of parties who plan to enter into a contract or some other agreement. A letter of intent is not meant to be binding and does not hinder the parties from bargaining with a third party. Business people typically mean not to be bound by a letter of intent and Courts ordinarily do not enforce one; but Courts occasionally find that a commitment has been made. Thus, a memorandum of understanding or letter of intent, merely sets down in writing what the parties intend will eventually form the basis of a formal contract between them. It speaks to the future happening of a more formal relationship between the parties and the steps each party needs to take to bring that intention to reality. Notwithstanding the signing of a memorandum of understanding, the parties thereto are not precluded from entering into negotiations with a third party on the same subject matter.
> (c) The general principle of law is that where a contract is made subject to the fulfillment of certain terms and conditions, the contract is inchoate and not binding until those terms and conditions are fulfilled.[13]
> (d) In order to decide whether parties have reached agreement, it is usual to inquire whether there has been a definite offer by one party and unqualified acceptance of that offer by another. An offer is a definite undertaking made with the intention that it shall become binding on the person making it as soon as it is accepted by the person to whom it is addressed. It therefore follows as a matter of course to the happening of a contingency that contract only become enforceable provided the event has occurred of the contingency has happened. In other words, where the contract is made subject to the fulfillment of certain specific terms and conditions, the contract is not formed or becomes binding unless and until those terms and conditions are complied with or fulfilled.[14] Acceptance must be the 'final and unqualified expression of assent to the terms of the offer.'
> (e) Specific performance cannot be ordered for an inchoate agreement which can be properly described as an Intent for a future reaching of an agreement. The MOU was just a process in the journey to a contract and so the contract had not happened and so no specific performance can be ordered and the issue of a quantum meruit of damages cannot be ordered for a non-existent contract not to talk of a breach thereof.[15]

It may not be out of place at this juncture to accentuate that in law of contract, an offer is different from an invitation to treat. While an offer is capable of being accepted unconditionally, an invitation to treat is incapable of acceptance. Besides, a conditional acceptance of an offer leads to cancellation of the original offer. The fundamental importance of these complex principles of offer, counter offer, invitation to treat, acceptance in the formation of a contract were amply demonstrated in the very recent case of *Col. M. Dixon Dikio (Rtd) & Ors v Nigerian Social Insurance Trust Fund Management Board & Ors*.[16] In that appeal, the Appellants were tenants of the 1st and 2nd Respondents in properties located at the National Social Insurance Trust Fund (NSITF) Housing Estate, Gudu District, Apo, Abuja. The 1st and 2nd Respondents were the owners of the properties, while the 3rd Respondent was the authorized managing agent. The 1st and 2nd Respondents decided to sell the houses in the Housing Estate and through the 3rd Respondent (their managing agent), sent letters dated 20th of June, 2006 to the 1st to 7th and 9th to 14th Appellants inviting them to indicate interest in purchasing the houses they occupied as tenants. The letter stated that a prerequisite for consideration was timely payment of rent with no record of default in rent, service charges and other bills. The 8th Appellant was not formally a tenant and received no such letter. The invited Appellants (1st to 7th and 9th to 14th) filled and returned acceptance forms expressing interest in purchasing their respective houses. However, the Respondents discovered that the 1st, 5th, 10th and 11th Appellants had records of default in payment of service charges, rents and utilities, and consequently excluded them from further purchase discussions. The Respondents then sent offer letters dated 26th of September 2006 to the remaining Appellants (2nd 3rd, 4th, 6th, 7th, 9th, 12th, 13th and 14th) requesting initial payment of 20% of the offer price, with default resulting in forfeiture. These Appellants requested a reduction to 10% initial payment with a more convenient payment plan, which the Respondents agreed to through revised offer letters dated 10th of November 2006. Instead of accepting the revised offer and making the required 10% payment, these Appellants requested clarification on delineation, demarcation, beaconing, plot numbers, partitioning and certificate procedures. The Respondents treated this as unwillingness to purchase, forfeited the offers, and sold the properties to other persons who accepted the terms. The Appellants were informed of the sales and subsequently commenced legal action seeking declarations that binding contracts existed and orders compelling completion of the transactions.

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[13] The following cases were cited in support- *Tsokwa Marketing Co. v BON. Ltd* (2002) 11 NWLR (Pt. 777) 153 @ 196 - 197 H - A & 199 - 200 G - A; *UBA Ltd v Tejumola & Sons Ltd* (1998) 2 NWLR (Pt. 79) 652 @ 685 C - D: *Okechukwu v Onuorah* (2000) 15 NWLR (Pt. 691) 597 @ 614 - 615 H - A; *Best (Nig) Ltd v Blackwood Hodge (Nig.) Ltd* (2011) 5 NWLR (Pt. 1239) 95 @ 126 C - D.
[14] *Omega Bank Plc v O.B.C. Ltd* (2005) 8 NWLR (Pt. 928) 541 at 575; *Nwagwu v F.B.N* (2009) 2 NWLR (Pt. 1125) 203; *UBA Ltd v Tejumola & Sons Ltd* (1988) 2 NWLR (Pt. 79) 662 at 688; *Tsokwa Marketing Co. Ltd v BON. Ltd* (2002) 11 NWLR (Pt. 777) 163 at 200.
[15] *Ezenwa v Oko* (2008) 3 NWLR (Pt. 1075) 610 at 628 and *Savannah Bank of Nigeria Plc v Oladipo Opanubi* (2004) 1 NWLR (Pt. 896) 437 at 453-454 cited in support.
[16] (2025-05) Legalpedia 62590 (SC).

Two germane issues for determination relevant to this paper were (1) Whether the learned Justices of the Court of Appeal were right in affirming the decision of the trial Court that the letters of 22nd of June 2006 from the Respondents to the Appellants were merely expression of interest by the Respondents to enter into negotiations with the Appellants and so was not an offer capable of being accepted? (2) Whether the learned Justices of the Court of Appeal were right when they held that the Appellants failed to meet up with the terms of the offer given to them by the Respondents when the case of the Appellants was that the offer made to them by the Respondents was inchoate? The Supreme Court dismissed the appeal as completely frivolous and vexatious and devoid of any iota of merit. The Supreme Court held that the letters of expression of interest dated 20th June 2006 were invitations to treat and not offers capable of acceptance. The apex Court concluded that the letters sent by the Respondents' agents were clearly invitations to treat rather than binding offers. The reasoning centered on the preliminary nature of the communication, which invited the Appellants to express interest and enter negotiations rather than presenting definitive terms for acceptance. The court found that such communications are inherently non-binding and cannot create contractual obligations regardless of the recipient's response. The Court found that none of the Appellants had executed lease/tenancy agreements, and therefore no contractual right of first refusal existed. The apex Court ruled that the actions of the 2nd 3rd, 4th, 6th, 7th, 9th, 12th, 13th and 14th Appellants in requesting clarifications instead of accepting the offer constituted a counter-offer, which discharged the original offer. The judgment of the Court of Appeal was affirmed, and the Respondents were awarded costs of N2 Million each against the Appellants jointly and severally. The following principles that are revenant to a proper understanding of the key elements in the formation of a contract were therefore established in the judgment delivered by the Supreme Court namely:

(a) Invitation to treat is not offer that can be accepted. the judgment restated elementary principles of contract law by affording the distinction between invitation to treat and offer. an invitation to treat is defined as a mere preliminary move in negotiations which may result into a contract. It is a communication to the other party to come to negotiations to discuss the possible terms of a contract. It is a phenomenon that is incapable of an acceptance that will lead to a contract. It is a forerunner to the formation of a valid contract which is usually ushered in by an offer. Being an initial contractual step, it is not amenable to acceptance by another party. It cannot form the basis of a cause of action. The filing and the submission of the Acceptance Forms by the Appellants was merely an expression of their willingness to enter into negotiations over the terms for the sale of the houses.[17]
(b) An acceptance is the reciprocal act or action of the offeree to an offer in which he indicates his agreement to the terms of the offer as conveyed to him by the offeror. By acceptance, the offeree indicates his intention and willingness to be bound by the terms of the offer. For the acceptance to be valid it must be unqualified. It must correspond with the offer. Acceptance is therefore the final and unqualified expression of assent to the terms of the offer. In order to constitute an acceptance, the assent to the terms of an offer must be absolute and unqualified. If the acceptance is conditional, or any fresh term is introduced by the person to whom the offer is made, his expression of assent amounts to a counter-offer which in turn requires to be accepted by the person who made the original offer. For an acceptance to be operative it must be plain, unequivocal, unconditional and without variance of any sort between it and the offer.
(c) The effect of counter-offer is an outright rejection of the original offer by the offeror to the offeree. It indeed destroys that offer, making it non-existent, as it were, and not capable, anymore, of any acceptance. It is, in fact, tantamount to a new offer, by the new offeror which may or may not be acceptable to the new offeree. A. valid acceptance must be unconditional, as any addition, subtraction or modification of the terms of the original offer constitutes a counter-offer which legally amounts to a rejection of the initial offer.
(d) Offer coupled with valid acceptance equates to *consensus ad idem*, meaning meeting of the minds. In this appeal, the parties were not *ad idem* on the specific terms of the sale as the Appellants expressly averred in paragraph 12 of their Statement of claim, that 'the plaintiffs individually indicated that they will be interested in buying the properties and would want certain fundamental issues such as delineation, demarcation and beaconing sorted out.
(e) It is settled law that an unsigned document does not have any efficacy in law. Such a document is worthless and commands no legal or judicial value. It is incapable of conferring any legal rights.
(f) A right of first refusal is a contractual or statutory provision that gives a specific party the priority to purchase a property or investment before it is offered to anyone else. Essentially, if the owner of the property decides to sell, they must first offer it to the party holding the right of first refusal on the same terms such as price, *etcetera*. It is a mechanism in a contract or statute that affords the holder of such right the preference to buy a particular property, should the owner ever choose to sell it.

3. Role of Legal Practitioner in the Formation of a Contract

Having extensively discussed the meaning and ingredients of a valid contract in the preceding segment of this paper, it is compelling to discuss the outstanding aspect of the topic of the paper dealing with the role of a legal practitioner or lawyer in the formation of a contract. The primary duty of a lawyer towards a client is the duty to devote his attention, energy and expertise to the service of his client and, subject to any rule of law, to act in a manner consistent with the best interest of his client. In Nigeria, every legal practitioner or lawyer is bound by the nascent Rules of Professional Conduct, 2023 made pursuant to *section 12(4)* of the Legal Practitioners Act, 1975.[18] Significantly, both the Legal Legal Practitioners Act, 1975 and the Rules of Professional Conduct, 2023 contain copious provisions for liability for negligence of a legal practitioner. *Section 9* of the Legal Practitioners Act 1975 provides as follows-

[17] *Neka B.B.B. Manufacturing Co. Ltd v ACB* (2004) LPELR-1982(SC) (Pp. 53-54 paras. F) citing the English case of *Harvey v Facey* (1893) AC 552 and *Clifton v Palunbo* (1944) 2 All ER 497 in support. See also *BFI Group Corporation v BPE* (2012) 18 NWLR (Pt. 1332) 209 @ 246 G – H.
[18] CAP. L11 LFN, 2004.

> (1) Subject to the provisions of this section, a person shall not be immune from liability for damage attributable to his negligence while acting in his capacity as a legal practitioner, and any provision purporting to exclude or limit that liability in any contract shall be void.
> (2) Nothing in subsection (1) of this section shall be construed as preventing the exclusion or limitation of the liability aforesaid in any case where a legal practitioner gives his services without reward either by way of fees, disbursements or otherwise.
> (3) Nothing in subsection (1) of this section shall affect the application to a legal practitioner of the rule of law exempting barristers from the liability aforesaid in so far as that rule applies to the conduct of proceedings in the face of any court, tribunal or other body.

On the other hand, specifically, *Rule 14* of the Rules of Professional Conduct for Legal Practitioners, 2023 provides for the relation between a lawyer and a client thus-

> 1 (1) A lawyer shall devote his attention, energy and expertise to the service of his client and, subject to any rule of law, act in a manner consistent with the best interest of his client.
> (2) Without prejudice to the generality of paragraph (1) of this rule, lawyer shall-
> (a) consult with his client in all questions of doubt which do not fall within his discretion;
> (b) keep the client informed of the progress and any important development in the cause or matter as may be reasonably necessary;
> (c) warn his client against any particular risk which is likely to occur in the course of the matter;
> (d) respond as promptly as reasonably possible to request for information by the client; and
> (e) where he considers the client's claim or defence to be hopeless, inform him accordingly.
> (3) When representing a client, a lawyer may, where permissible, exercise his independent professional judgment to waive or fail to assert a right or position of his client.
> (4) A lawyer employed in respect of a court case shall be personally present or be properly represented throughout the proceedings in court.
> (5) Any negligence by a lawyer in handling a client's affairs may amount to professional misconduct.

Relying on the foregoing provisions of section 9 of the Legal Practitioners Act, Rule 14 of the Rules of Professional Conduct, 2023 and the general principles of formation of a valid contract already enunciated, therefore, the ensuing discussion will be in two parts namely: (a) the role of a lawyer or lawyers engaged by either the offeror or offeree during formation of contract stage and (b) the role of a lawyer or lawyers in the filing of an action or defence of any litigation arising from or involving allegation of breach or non-performance of a contract.

(a) Where Counsel is retained on any or all the sides during the formation of contract stage, the following should be noted-

(i) The five key ingredients of a valid contract are offer, acceptance, consideration, intention to create legal relationship and capacity to contract. There is no contract where all or any of them is missing.
(ii) The lawyer must have a firm grasp of fundamental contract law concepts. Hence, advise should be placed at the disposal of the Client of the importance of completing all formal requirements for legal documents.
(iii) Communications to clients and opposing parties should be cautiously drafted or worded in order to ensure that preliminary discussions are clearly identified as invitations to treat rather than binding offers. An invitation to treat cannot be accepted.
(iv) Precise language should be deployed to avoid unintended contractual obligations. All preliminary communications should clearly indicate their non-binding nature and include appropriate disclaimers, repudiations, conditions, qualifications and caveats.
(v) Clients should be advised or guided to accept offers completely and without qualification if they intend to create binding contracts. Any requests for modifications should be clearly identified as counter-offers rather than acceptances. Clients should be advised to carefully consider their responses to offers and understand the consequences of introducing new terms.
(vi) Tied to (e) above, clients should be advised about the irreversible consequences of making counter-offers. Parties who wish to preserve their right to accept original offers should avoid any response that could be construed as a counter-offer. The importance of strategic thinking in contractual negotiations cannot be overemphasised.
(vii) When representing clients in property transactions, Legal practitioners must distinguish between expressions of interest and formal offers, ensuring clients understand the legal implications of each communication type.
(viii) Memorandum of Understanding (popularly called 'MOU') is just a process in the journey to a contract. It is an inchoate agreement which can be properly described as an intent for a future reaching of an agreement. MOU is not a valid contract. There can be no breach of contract that is predicated on MOU, no specific performance can be ordered and the issue of a quantum meruit of damages cannot be ordered for a non-existent contract.
(ix) Remember that under *Rule 14(5)* of the RPC, 2023 any negligence by a lawyer in handling a client's affairs may amount to professional misconduct.

(b) On the other hand, where Counsel is retained in litigation involving contract, it is desirable, if not imperative to do the following-

(i) Ensure through document review procedures and due diligence that all contractual agreements were properly executed before commencement of legal proceedings. Where this is not met, there is no point proceeding to litigation.
(ii) Note the consistent decisions of superior Courts and especially the apex Court that invitation to treat is not an offer that can be accepted. Only offers can be accepted unconditionally. Acceptance must be the final and unqualified expression of assent to the terms of the offer.

(iii) Know that it will amount to waste of precious time of Court to either present a case for adjudication or pursue frivolous appeal where the elementary legal principles of the formation of a contract are absent.
(iv) Remember that where the contract was made subject to the fulfillment of certain specific terms and conditions, the contract is not formed or becomes binding unless and until those terms and conditions are complied with or fulfilled.[19]
(v) Law firms should implement quality control measures to prevent frivolous cases being presented in Court or from proceeding to appellate courts.[20] Engaging the scarce judicial time of the Courts with mundane and humdrum cases will attract scathing remarks from the Bench as was the fate of Counsel *Col. M. Dixon Dikio (Rtd) & Ors v Nigerian Social Insurance Trust Fund Management Board & Ors* (supra).

4. Conclusion and Recommendations

Granted that parties make their agreements themselves and are bound by such contracts or agreements, this paper demonstrated the crucial role lawyers should play for their clients in the formation of a valid contract. Thus, a legal practitioner, where retained, should exhibit competence in fundamental legal principles by ensuring that ingredients of a valid contract are met. Lawyers are fixed with knowledge of the law. Both the Legal Practitioners Act and the Rules of Professional Conduct are replete with the professional standards governing the relationship between a legal practitioner and his client. Lawyers should realise that other than amounting to professional misconduct, they may also be sued for professional negligence where they fail to provide services to the expected standard, causing financial loss to the client. It is therefore recommended that legal practitioners retained in the formation of a contract should do so with utmost diligence bearing in mind the legal requirements for formation of a valid contract. It is further recommended that legal practitioners should devise quality control measures to prevent frivolous filing of cases including appeals.

[19] *Omega Bank Plc v O.B.C. Ltd* (2005) 8 NWLR (Pt. 928) 541 at 575; *Nwagwu v F.B.N* (2009) 2 NWLR (Pt. 1125) 203; *UBA Ltd v Tejumola & Sons Ltd* (1988) 2 NWLR (Pt. 79) 662 at 688; *Tsokwa Marketing Co. Ltd v BON. Ltd* (2002) 11 NWLR (Pt. 777) 163 at 200.
[20] Legalpedia, "Latest Judgments- *Col. M. Dixon Dikio (Rtd) & Ors v Nigerian Social Insurance Trust Fund Management Board & Ors* (2025-05) Legalpedia 62590 (SC).