

## **TODAY'S COMMERCIAL SOLICITOR IN TOMMOROWS WORLD.**

Time there was, not so long ago, when a lawyer's word was gospel to the client. It was taken hook line and sinker. "My lawyer said" was equivalent of "QED" in mathematical terms or "as the court pleases" in litigation parlance. And indeed no one dared to file a respondent's brief nor did the rules of fair hearing apply when a lawyer spoke in "those days". In today's Nigeria the litigation lawyer thankfully still enjoys "some" of that air which is amplified by the "mystery" of the court room, the attire, the garbs, and the vagaries of civil procedure which even for lawyers is an endless school. Even with the litigator "some" is used advisedly because over the years our legal system has churned out a generation of seasoned litigants who have been in court on a weekly basis for decades - ever before some of us lawyers were born. This crop can lecture many young litigators (and some old ones) on law and procedure in their experientially acquired specialties. Usually land cases, chieftaincy or landlord/tenant disputes. This article focuses on the Nigerian Solicitor (or non court room lawyer if you please) who in greater number and degree seem to have lost that lawyers mystery. For many of us the almost blind following of "my lawyer said and so be it" is ancient history. The new wave is the maze of clients who say: "I shall instruct my lawyers accordingly" and mean it literally. And so it is that many are now simply "instructed" rather than being "consulted". In fairness to some of such clients they may have enough experience in commercial issues and are eminently qualified to instruct "their" lawyer.

The issue for consideration is how the landscape has evolved over the years into this situation. On this matter I can only guess. And so can you! Here are my guesses (and strictly mine) on what has happened. I see three viewpoints: What has happened to: the clients; the solicitor; and the transactions.

### **The clients**

In an increasingly competitive business world the client no longer seeks legal counsel as a perfunctory matter. Rather they seek tangible value added - advice that hits the bottom-line. Today's client wants to see how he can work the law to grow his business, be proactive, reduce risk, mitigate damage, and minimize expense. Yesterday a client was content for the lawyer to look over a contract and say "it is okay". Today's client is interested in the intricacies. So you better get a grasp of them. Today the client is itching to hear that he can save a buck or two if he restructures his transaction a particular way. For example: "If you do a deed of gift instead of a deed of assignment your consent fees are reduced by more than 50%" is the music they want to hear. When you tell them about possibilities for stamp duty exemptions on a particular high value transaction it is not only music to their ears, they want to dance. The question is: How many Solicitors are on this page? We are in an era of ever increasing knowledge with access to information being as fast as the speed of your computer modem. All over the world lawyers are dealing with a more informed clientele in the business world. Clients know from reading and experience about taxes, incentives, exemptions, auditing, accounts, returns, investments, shares, real estate, etc you name it from Apple to Zebra. What do we have to offer them? "Nemo dat quod non habet" - You can only give what you have. This poses a continual hurdle. Also one may ask: How many clients have been ill advised in the past? Very many! The first sign of such people is that they will ask you endless questions and hold onto you with every step. I was livid once when a gentleman (a real estate magnate) for whom I was closing a property deal called me to remind me to make a photocopy of the Bank draft upon which the seller should acknowledge receipt. Sarcastically I said to him "I will not". I thought this is so basic and wondered: Why should he be telling me this? It dawned on me that he may have had problems in the past. You will recognize these clients when they put you on the stand, interrogating you endlessly. They watch your body language with intense

eye to eye contact. Almost like a lie detector test. They want to be assured that you know what you are saying. This is typical with a foreigner who is in the dark on Nigerian law. Today's client would read your document with a fine tooth comb. What are they looking for? You will know if you have had the "good" fortune to face the embarrassment of having a client correct your grammar, spellings or showing you practical inconsistencies in your draft contract? I dare say that we are faced with a new breed of clients in dire need of a new breed of solicitors.

### **The lawyers**

From the lawyers viewpoint a myriad of issues can be fingered. First and foremost, many solicitors have drawn on their residual knowledge for so many years that brook has run dry. We must realise that as the client increases in understanding of legal issues our "learnedness" diminishes if we remain stagnant. Again some solicitors have bluntly refused to learn the basic skills that bring them up to speed, like using the web, emails, word processing, the art of brainstorming, meeting etiquette, note taking, research techniques etc. Another factor is that knowledge management amongst solicitors is almost non-existent. The litigators can cite the decided case and that gets you almost home, but what materials are available for the solicitor to find who has done it before and how it succeeded or even how it failed? Many of the available texts are no longer relevant to the practicalities of our Nigerian context. The fifth point is that some Solicitors fail to admit what they do not know or request time to research and get back to the client. A haphazard guess which goes wrong will not only cost you the client, it puts you in bad light and carries over a wrong impression about the next lawyer. If Solicitors try not to spread themselves thin by being everything to everybody it would be easier and faster to build a firm knowledge base on some areas of core competence. That way you can give more "off the cuff" opinions. Until that time learn to say: "Let me come back to you tomorrow, I like to be certain on one or two things". What's more? Many have failed to move from reworking and adjusting precedents into the new realm of understanding business concepts and seeing their contributions as tools for business growth. Our work should no longer be a treatise delivered in exchange for cash but a value added document for which the client is truly grateful. Do you realise that today the art of listening to understand has been eroded deeply and replaced with the style of listening to reply. There is a paradigm (which needs shifting) that the swiftness of our replies determine our capability. Must we be answer-ready even to the point of interjecting when the client is still talking? Today's lawyer must seek to understand not only the client and the business, but we must gain insight into the long term goals and aspirations, the legal and regulatory issues in that regard and much more. That way our counsel can be full picture and tangible relevance is the inevitable result. If the truth be told this situation is compounded by Nigeria has lost some of the best brains in the profession to the marketplace as hairdressers, contractors etc. This loss centre has diminished the collective prowess of the profession. I am sure you know at least one law school graduate who would have been an excellent lawyer but has chosen to do something totally unrelated. I know several.

### **The transactions**

Without trying to make excuses for the lawyer it is obvious that business methods have become more intricate in the last 10 years and at an incredible pace. The pace is even faster now. As the world becomes a global village, multinational and multiparty cross border transactions have come on board, brandishing words and phrases like due diligence, data room, letters of comfort, confidentiality agreements, non-binding term sheets, and abbreviations like BOT, BOOT and a host of them. These are definitely daunting to the outdated solicitor who has no avenue for update. Furthermore, current worldwide best practice in the contracting industry dictates that the details are never spared. The schedules and attachments to a typical engineering contract will capture even the most complicated formulae. Great! Today's solicitor may be saddled with the task of advising on a particular transaction that has a mix of law, accounting, stock-broking, petroleum engineering, civil construction, letters of credit, arbitration and gas transportation all in one. Talk about understanding the law and the facts! Even if the facts are scientific? Yes! With the influx of direct foreign investment into Nigeria in the recent years our business people have

had to learn fast from their foreign partners/foreign lawyers the new developments in commercial law. A few Nigerian law firms who have the privilege of working on these cross border transactions have gained some proficiency. But majority are still left behind. The news is that it is only going to get worse for the uninformed lawyer. For example with the Electric Power Sector Reform Act, the Pension Reform Act and a host of new laws and new investment activities at our doorsteps we should expect to be inundated with emerging transactions ranging from power purchase agreements, gas supply agreements, pension trust fund deeds, etc. and will have to contend with the megawatts/kilowatts, scf and bcf for gas measurements and the like. At present we have the ongoing bank consolidation exercise as a wonderful opportunity to learn the ropes with M&A'S. It is no secret that it is an all learners curve. Even if your firm is not involved in one, read, discuss, ask and learn. Would we not rather volunteer to work for free with someone who has an M&A brief than to let it pass us by?

To put this in perspective I recall a conversation I once had with a well known gentleman in his 60's - a guru in the petroleum industry who stood astride a business empire spanning various sectors of the economy. He said to me "Ayuli some lawyers are so daft. It is unbelievable!" It pierced me like an arrow to my heart. Could I put up an argument with this experienced man of business who knew his onions? No! He was not being flippant because I knew he had indeed dealt with many lawyers in Nigeria and abroad. As I pondered on this, I saw clearly that many of such lawyers he was referring to did NOT suffer from intellectual deficiencies and some perhaps had first class degrees. Their sin was probably that they were uninformed on the subject matter(s) of the transaction and this impaired their ability to contribute meaningfully. Talk of law and facts again? They fell short under the influence of the erroneous (but rampant) belief system that bringing to the table the residual knowledge of contract (offer, acceptance and consideration) would suffice if shrouded under the "learned" disguise. And that was their only sin. But it seemed a mortal sin in the eyes of the client if his expressed angst was anything to go by. And is the customer not always right?

Did I hear someone say there is a challenge ahead? Are there a few (or many) of us who need to play catch up? On this, kindly let me come back to you tomorrow, I like to be certain on one or two things.

Ayuli Jemide is a Partner with Detail Solicitors.  
Email: [jemide@infoweb.com.ng](mailto:jemide@infoweb.com.ng)