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RIGHT OF A COMMUNITY CITIZEN TO PRACTICE HIS OFFICE AS NOTARY PUBLIC IN NIGERIAUNDER THE FREEDOM OF ESTABLISHMENT CLAUSE OF THE ECOWAS TREATY*

Abstract

In this paper, we examined discrimination against migrants in admission to general notarial office and practice in Nigeria. We established that a primary jurisdictional requirement in admission to general notarial practice in Nigeria is membership of the bar. However, there is statutory provision for the granting of a warrant to a non-citizen entitling him to restricted practice of law in Nigeria for the purpose of particular proceedings. There is also provision permitting granting of reciprocal facilities and the privilege of unrestricted practice of law locally to citizens of countries where Nigerians enjoy similar privileges. Definition of legal practitioner encompasses these two categories who are permitted to practice law in Nigeria by virtue of high grace. They are thus eligible for appointment to the office of notary. From this context of regulatory discrimination between citizens and non-citizens, we examined the provisions of the ECOWAS Treaty and the applicable protocols. We established that the ECOWAS right of establishment provides a comprehensive legal basis for community citizens residing in Nigeria to be admitted to practice the notarial office on the same basis as Nigerian citizens. We then brought out that contrary to the projected timeline for implementation of the ECOWAS right of establishment, till date, the right of establishment in the sub-region has not been realized or been

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meaningfully implemented. This leads us to the conclusion that until the full implementation of the complete right of establishment protocol, ECOWAS community citizens, just like other migrants, will continue to suffer the discrimination of being prohibited, as of right, to practice the notarial office in Nigeria.

Keywords
Citizenship; Discrimination; ECOWAS; Law Practice; Notarial Office, Notary Public

1. Introduction

On May 28, 1975, sixteen West African nations signed a treaty to establish the Economic Community of West African States (ECOWAS). The purpose of the treaty was amongst other, strengthening of regional economic integration through freer movement of goods, capital and people. In 1979, the High Contracting Parties adopted a Protocol for the Free Movement of Persons, Residence and Establishment. This protocol, provided for *inter alia*, a right for community citizens to enter, reside and establish economic activities in the territory of member states. A Revised Treaty was signed on July, 24 1993 in which pursuant to its article 59, the High Contracting Parties reconfirmed the right of community citizens to enter, reside and establish in member states. Full implementation of the provisions of the ECOWAS Treaty would have entitled migrants, as community citizens to take up residence in Nigeria and under the establishment clause, pursue professional practice and business on the same grounds as Nigerian citizens. In this short note, we intend to explore the rights of migrants to practice the notarial office in Nigeria. In the section next, we will highlight the definition and history of the office of notary public. Thereafter, we will take a look at the classification of notaries in Nigeria, and leading from that, we will explain the procedure and requirements for appointment of notaries in Nigeria. This will take us to examination of the procedure by which migrant notaries may be permitted to practice their office in Nigeria. Leading from that, we will

examine in detail, the right of a community citizen to practice the notarial office in Nigeria. We will then conclude.

2. Definition and History of Notarial Office

Most common law systems have what is called the office of a notary public (also called 'notaries' or 'public notaries'), a public official who notarizes legal documents and who can also administer and take oaths and affirmations, among other tasks.[1] In this regard, and from this perspective, a notary is a public officer whose function is to attest and certify by his hand and official seal, certain classes of documents in order to give them credit and authenticity in foreign divisions, to take acknowledgements of, and certify deeds and other conveyances, and to perform certain official acts, chiefly in commercial matters such as the protesting of notes and bills, the noting of foreign drafts and marine protests in cases of loss or damages.[2] In England and Wales, the notarial profession is best understood from a historical perspective. Until 1533 notaries were appointed on papal authority by the Archbishop of Canterbury. After the break from Rome, on enactment of the Ecclesiastical Licences Act 1533, appointments continued to be made by the Archbishop of Canterbury - but on the authority of the Crown. The Archbishop's jurisdiction was, and is, exercised through the Court of

[1] Alfred E. Piombino, *Notary Public Handbook: Principles, Practices & Cases*, (East Coast Pub.: 1st edn. 2011)

[2] *Kip v. People's Bank & Trust Co.,* 66 CJS 609*; Black's Law Dictionary*, (St. Pauls: West Publishing, 6th ed. 1990); in *Halsbury's Laws of the England*, (4th edition), vol. 34, para 201, it is stated that he is a duly appointed officer whose public office it is, amongst other matters to draw, attest or certify, usually under his official seal, deeds and other documents, including conveyances of real and personal property, and powers of attorney relating to real and personal property situate locally or overseas, to note or certify transactions relating to negotiable instruments, to prepare wills or other testamentary documents, to draw up protests or other formal papers relating to occurrences on the voyages of ships and their navigation as well as carriage of cargo in ships.

Faculties. The Court is presided over by the Master of the Faculties who is the most senior ecclesiastical judge and commonly (and currently) also a judge of the Supreme Court. Since 1801 the appointment and regulation of notaries has been underpinned by statutes enacted by Parliament.[3]In conclusion, a notary, *registrarius, actuarius, scrinarius,* was anciently a scribe who only took notes or minutes, and made short drafts of writings and other instruments, both public and private, but is at this day a public officer of the civil and canon law. The tradition of Notaries which goes back over 2000 years has imbued the notary with a reputation for trustworthiness.[4] Thus, though the office of the notary was at one time merely that of a scribe or scrivener, it has today in most jurisdictions become a public office and though generally regarded as ministerial has been held in some jurisdictions with respect to particular acts to be judicial.[5]

3. Classification of Notaries in Nigeria

The Notaries Public Act creates two classes of notaries public. S. 2 of the Notaries Public Act creates the first class of notaries public. These are general notaries public. S. 2(1) of the Notaries Public Act grants them powers to perform the same duties, and exercise the same functions as a notary in England. S. 17 of the Notaries Public Act, creates the second class of notaries public in Nigeria. These are the notaries public *ex-officio*. There is yet a bifurcation in the class of notaries public *ex-officio*. The first group of notaries public *ex-officio* comprises magistrates. S. 17(1) of the Notaries Public Act, empowers and authorizes all magistrates to act as notaries public *virtuteofficii*. It is not provided that a magistrate who by virtue of this statutory provision is constituted a notary public is entitled to perform the same duties and exercise the same functions as a

[3]http://www.thenotariessociety.org.uk/public_statement.asp
[4]Maurice Megrah & FR Ryder, *Byles on Bills of Exchange*, (Sweet & Maxwell, 23rd ed.)
[5]*Halsbury's Laws of the England*, op. cit.

notary in England, which s. 2(2) of the Notaries Public Act, has reserved only for those notaries public who are so appointed by the Chief Justice of Nigeria. Generally, magistrates exercise jurisdiction subject to the statutes creating their office. Such jurisdiction and its exercise are normally limited to the territory of each local state. In addition to the general civil and criminal jurisdiction granted magistrates by statute, they are also granted the authority and jurisdiction to take solemn affirmations and statutory declarations,[6] administer any oaths which may be required to be taken before them in the exercise of any of the jurisdiction and powers conferred upon them by law,[7] and witnessing the due execution of land instruments by illiterate grantors.[8] Although it is not explicitly stated, it may be implied that the powers of a Magistrate to act as notary public *ex-officio* do not extend to private affairs, but are exercisable only within the public ramifications of his office as a magistrate and with respect to official, governmental and public matters. The second group of notaries public *ex-officio* is created under s. 17(1) of the Notaries Public Act, and these are the collectors of customs and excise duties. They are appointed notaries public and strictly limited to exercise their powers and duties in respect of minuting or noting or extending ships' protests. Two further limitations are that these powers shall only be exercised at the ports, and only at ports where a general notary public appointed by the Chief Justice of Nigeria is not available. S. 12 of the Oaths Act, 1963 creates a third class of notaries public *ex-officio*. This section authorizes any Nigerian official of the rank of Secretary or above in a Nigeria Embassy or Legation to, in the country where he exercises his functions, do any notarial act which a notary public can do within Nigeria, and that the same shall be as effectual as if duly sworn or done

[6] For example, *see* ss. 8 & 13(a)(v) of Magistrates Courts Law of Lagos State
[7] s. 13(a)(vi) of Magistrates Courts Law of Lagos State; *see* generally s. 20 &s. 21 of Magistrates Courts Law of Lagos State
[8] S. 8(1) Land Instruments Registration Law of Lagos State

by or before any lawful authority in any part of Nigeria.[9]One distinction of fundamental importance to the competence of the notary is the jurisdictional limitations of their powers. The general notary is competent to act everywhere within the political boundary of his appointment as a notary public. He has jurisdiction throughout the entire country. His power and authority to act as a notary public is with respect to all matters customarily dealt with by notaries public. A magistrate can act as a notary only within the political boundary of his appointment as a magistrate. In other words, he is competent only within the local state wherein he is appointed. Unless if expressly authorized by statute, he may exercise his powers as a notary only with respect to acts and actions pertaining to government departments and related to running the instrument of state and administration of justice. The collector of customs and excise can act as notary only at a port. He is further limited that it must be only at a port where there is no general notary. He is further limited that he can only notarize with respect to minuting or noting or extending ships' protests. The consular officer can only perform the functions of a notary in the country of his posting, and he must be of the rank of Secretary or above.

[9] Under s. 6 of [English] Commissioners for Oaths Act, 1889, which is a statute of general application in Nigeria: *Every British ambassador, envoy, minister, chargé d'affaires, and secretary of embassy or legation exercising his functions in any foreign country, and every British consul-general, consul, vice-consul, acting consul, pro-consul, and consular agent exercising his functions in any foreign place may, in that country or place, administer any oath and take any affidavit, and also do any notarial act which any notary public can do within the United Kingdom; and every oath, affidavit, and notarial act administered, sworn, or done by or before any such person shall be as effectual as if duly administered, sworn, or done by or before any lawful authority in any part of the United Kingdom. Any document purporting to have affixed, impressed, or subscribed thereon or thereto the seal and signature of any person authorised by this section to administer an oath in testimony of any oath, affidavit, or act being administered, taken, or done by or before him, shall be admitted in evidence without proof of the seal or signature being the seal or signature of that person, or of the official character of that person.*

The Consular officer, until he is posted and has resumed duty in the country of his posting is not competent to act as a notary. Any notarial function undertaken while in the home country, or *en-route* the country of his posting is void.

4. Appointment of Notaries in Nigeria

In Nigeria, the office of the notary public is a creation of statute.[10] The Chief Justice of the Federation is authorized to appoint any fit and proper person being a legal practitioner to be a notary public for Nigeria. A notary public for Nigeria appointed by the Chief Justice of Nigeria is empowered to perform the same duties and exercise the same functions as a notary public in England. The laws regulating the appointment, functions, revocation, discipline, remuneration and other matters relating to the office of notary public are contained in the Notaries Public Act.[11] There has not been any subsidiary legislation to the principal legislation. Regulation of Notaries Public falls within item 49 of the Exclusive Legislative List of the 1999 Constitution (CFRN). The powers of the National Assembly to make laws for the peace, order and good government of the Federation with respect to any matter in the Exclusive Legislative List is to the exclusion of the State legislatures.[12]The burden is on any one asserting the authority of a notary public, to show that he was legally appointed.[13] This burden may be discharged by producing the Certificate of Appointment to the office of notary public issued by the Chief Justice of Nigeria pursuant to s. 4(2) of the Notaries Public Act; or by producing the Certificate issued under the hand of the Chief Registrar

[10] Notaries Public Act, Act number 41 of October 1, 1936; its short title is: *An Ordinance to provide for the appointment of Notaries Public, for the registration of Notaries authorized to act as such by the Master of Faculties and to regulate the duties of the office of Notary Public*.
[11] Legal Notice number 107 of 1955
[12] s. 4 of CFRN
[13] s. 140 of Evidence Act

of the Supreme Court confirming the registration of the person as a notary. The burden may also be discharged by producing a certified true copy[14] of the extract from the Register of Notaries Public maintained by the Chief Registrar of the Supreme Court pursuant to s. 4(1) of the Notaries Public Act. The production of any of these documents would be conclusive proof of the appointment, and the authority of the appointee.[15] When properly appointed under the laws of the State or country in which he acts, a notary is everywhere and to all intents and purposes to be regarded as such an officer.

The Chief Justice of the Federation makes the appointment. There is no requirement for him to seek the consent of any Council or body. There is no provision in the Notaries Public Act authorizing the Chief Justice to delegate either to anybody or any group of persons, the power of appointing a notary public, though he may delegate the function of administering the oath of office. In the absence of any such authorization, the power of appointment cannot be delegated and cannot be exercised conjunctively with any council or body of persons but must be exercised personally by the Chief Justice. When power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally, unless he has been expressly empowered to delegate it to another.[16] Accordingly, where there is no express clause in a law, which enables a person to delegate authority given to him no such delegation could be done or permitted.[17] The Chief Justice is required to satisfy

[14] See *s*. 102, s. 89(e), and s. 90(1)c (ibid.).

[15] s. 168(1) & (2) (ibid.)

[16]de Smith's *Judicial Review of Administrative Action*, 298

[17]*Onyeukwu v. State*, [2000] 12 NWLR Part 681, 256, here appellant was convicted by a General Court Martial (GCM) convened by a certain Air Commodore F. O. Njobena. About fourteen days after the GCM was convened the Chief of Air Staff had in writing confirmed that he had authorized the said Air Commodore to convene the said GCM and sign all the necessary papers. S. 131(2) of the Armed Forces Decree No 105 of 1993

himself that, any candidate for appointment is a fit and proper person.[16] The method he will employ in satisfying himself on the fitness of any candidate is not stated. It is discretionary as to the person who shall be appointed, no matter how meritorious the application may be.[17] The discretion is entirely that of the Chief Justice, and is unfettered. This though, does not empower the Chief Justice, to do what he likes, because he is minded so to do. He must in the exercise of this discretion, do not what he likes, but what he ought to do. A proper exercise of discretion should be according to law. It is not arbitrary, vague or fanciful, but legal and regular.[18] S. 2 of the Notaries Public Act confers the power of appointment on the Chief Justice in the following words - *"the Chief Justice of Nigeria may appoint…."*. Without doubt the Chief Justice of Nigeria has full statutory discretion whether or not to make an appointment. This discretion to appoint or refuse to appoint is however a discretion to be exercised within the law. In this context, '*may'* does not mean '*must',* and that use of the word '*may'* gives discretion – *discretio legalis decernere per legem quid sit justum* meaning legal discretion to do what is just, what is judicious, and what is judicial. Discretion does

pursuant to which the GCM was convened provides that a court martial may be convened by:- The President, or Chief of Defence Staff, or Service Chiefs, or a GOC or corresponding commands, or a Brigade Commander or corresponding commands. On appeal, the Court of Appeal held that in the absence of an express clause permitting the delegation of authority, such delegation was not permissible. *See alsoAwobotu v. State* (1976) 5 SC 49. However in *NAF v. James*, [2003] FWLR Part 143, 257 the Supreme Court, faced with facts similar to the Onyeukwu case, held that the statute had provided for delegation of the powers of the Chief of Air Staff, and that the letter written by him, confirming his verbal authority to Air Commodore Njobena to convene the said GCM, constituted a valid instrument of delegation so as to confirm and preserve what was done earlier. The court thus held the convening order issued by the said Air Commodore F. O. Njobena and the subsequent proceedings as valid.

[16] s. 2(1) of Notaries Public Act.

[17]*Harding v. Pinchet*, 66 CJS 611.

[18]*Egbuo v. Chukwu*, [1998] 10 NWLR Part 570, 499

not empower a man to do what he likes, because he is minded to do so, he must in the exercise of his discretion, do not what he likes, but what he must.[19] Clearly, in exercise of his powers of appointment, the Chief Justice must of necessity exercise his discretion, to refrain from appointing unqualified persons, the same way, he must exercise discretion to assure appointment of qualified persons.

To qualify for appointment as a general notary public in Nigeria, the applicant must be a legal practitioner.[20] The term *Legal Practitioner* is defined in s. 18 of the Interpretation Act as having the same meaning given it by the Legal Practitioners Act. S. 24 of the Legal Practitioners Act defines *'Legal Practitioner'* to mean a person entitled in accordance with the provisions of the Act to practice as a barrister or as a barrister and solicitor, either generally, of for the purposes of any particular office or proceedings.[21] To be entitled to be called to the Bar, and have his name entered on the Roll of Legal Practitioners, the person shall be a Nigerian citizen, and must produce a qualifying certificate to the Body of Benchers, and must satisfy them, he is of good character.[22] The person who does not satisfy the requirements of being called to the Bar, may still be permitted to practice as a barrister and solicitor where, upon an application made by him, or on his behalf to the Chief Justice, he establishes to the satisfaction of the Chief Justice, that he comes from a country where the legal system is similar to that of Nigeria, and that he is entitled in his country to practice as an advocate. Upon the Chief Justice being satisfied on these, he issues a warrant under this hand authorizing that person, upon payment of any fees specified in that warrant, to practice as a barrister, for the purposes of particular

[19] *Ohanaka v. Achugwo*, [1998] 9 NWLR Part 564, 37
[20] s. 2(1) (n 16)
[21] s. 23(1) of Legal Practitioners Act, 1975
[22] s. 4(1) (ibid.)

proceedings, and in connection with any appeal brought in connection with those proceedings.[23]A person who does not fall into any of the two categories above, may also be authorized by virtue of grace and permission to practice locally as a barrister and solicitor. In this regard, the Attorney-General of the Federation may, after consultation with the Bar Council, by regulations provide for the enrolment of the names of persons who are authorized by law to practice as members of the legal profession in any country where, in his opinion, persons whose names are on the roll are afforded special facilities for practising as members of that profession. Without prejudice to the generality of the power conferred by this provision, the regulations may: require persons seeking enrolment by virtue of the regulations to pass such examinations and to pay such fees as may be specified by or under the regulations; and provide for the cancellation of enrolments having effect by virtue of the regulations where, in the opinion of the Attorney-General of the Federation, the facilities aforesaid are altered or withdrawn. [24] The statutory provision permits the admission with or without examination, of persons who are licensed to practice as counsel in any country or jurisdiction where members of the Nigerian bar are granted special dispensation to practice as counsel. The operative factor in this instance appears to be reciprocity of privileges. As we pointed out previously, the primary requirement for appointment as a general notary public in Nigeria is that the applicant must be a legal practitioner.[25]In this regard, the definition of *legal practitioner*is not limited to persons entitled to practice generally as a barrister or as a barrister and solicitor, but includes persons entitled in accordance with the provisions of the Act to practice as a barrister or as a barrister and solicitor, for the purposes of any

[23] s. 2(1) (ibid.)
[24]s. 7(2) (ibid.)
[25] s. 2(1) (n 16)

particular proceedings.[26] Consequently, any persons authorised by the warrant of the Chief Justice to practice in Nigeria as a barrister or as a barrister and solicitor, for purposes of particular proceedings; or any person admitted to practice of law in Nigeria pursuant to any exemption or facility granted by the Attorney-General may competently apply for appointment as a notary public for Nigeria.

5. When a Migrant Notary may be Generally be Permitted to Practise his Office in Nigeria

Any person who by virtue of a faculty granted by the Master of Faculties of England is authorised to act a notary public in Nigeria may act as a notary public in any part of Nigeria[27]. To be thus entitled to act, he must first make an application in writing to the Chief Registrar of the Supreme Court of Nigeria. His application must either be accompanied by, or he will subsequently produce to the Chief Registrar, his notarial faculty granted by the Master of Faculties of England and duly registered and subscribed by the Clerk of the Crown in Chancery. Upon being satisfied as to these, the Chief Registrar, shall enter his name in a separate part of the Register of Notaries Public maintained by him pursuant to s. 4 of the Notaries Public Act. S. 20 (1) of the Notaries Public Act exempts such a notary practicing in Nigeria by virtue of a faculty from the Master of Faculties of England from the provisions of ss. 2 to 12 and 16 to 19 of the Act. These sections deal with appointment, oath of office, fees, revocation, suspension, discipline, offences, conflicting interest, etc.[28]

[26] s. 23(1) (n 21)
[27] s. 20 (n 16)
[28] s. 3 of the Australian Notaries Public Act, 1984 contains a similar provision. It provides that: (i) A person who, immediately before the commencement of this Act, held an appointment by the Court of Faculties of His Grace, the Lord Archbishop of Canterbury to act as a notary public in the Australian Commonwealth Territory may, at any time during the period of 6 months beginning on the date of commencement of this Act, apply in writing to the registrar for enrolment as a notary public for the Australian

This provision which permits persons granted a faculty to act as notaries public in Nigeria by the Master of Faculties of England to so act, etc has become redundant. At the time when the current Notaries Public Act was enacted in 1936, Nigeria was still a colony of Great Britain, and the Master of Faculties of England had powers to issue a faculty to any person to practice as a notary in the British Dominions or Colonies, Any faculty thus issued, was effectual both in England and the colonies. With independence, the Master of Faculties ceased granting faculties to notaries to practice as notaries in Nigeria. However, this provision may still find application in respect of Nigerian citizens granted faculties by the Master of Faculties of England to practice as notaries in England. Pursuant to this provision, they may be authorised to act as notary public in Nigeria.

6. Right of Community Citizen to Practice his Notarial Office Pursuant to ECOWAS Treaty

The Community aims of ECOWAS are to promote co-operation and integration, leading to the establishment of an economic union in West Africa.[29] In order to achieve these aims, the Community shall, amongst

Commonwealth Territory. (i) If, on an application made in accordance with subsection (1) the registrar is satisfied that the Applicant held, immediately before the commencement of this Act, an appointment by the Court of Faculties of His Grace, the Lord Archbishop of Canterbury to act as a notary public in the Australian Commonwealth Territory, the registrar shall enter on the roll the name of the applicant and the date when the entry is made. (iii) A person whose name is entered on the roll under subsection (2) shall be deemed to have been appointed under this Act as a notary public for the Australian Commonwealth Territory on the date when the entry was made. The fact the Australian legislation was made in 1984 while the analogous section of the Nigerian legislation was made in 1938 as an amendment to the 1936 Nigerian Notaries Public Act is probably the reason why the Australian provision accords more with common sense than the Nigerian provision.

[29] Article 1 of ECOWAS Revised Treaty, <http://www.ecowas.int>Accessed on June 18, 2021

other things, by stages, ensure the removal, between Member States, of obstacles to the free movement of persons, goods, services and capital, and to the right of residence and establishment.[30]Article 2(1)) of the 1979 Protocol A/P.1/5/79 relating to Free Movement of Persons, Residence and Establishment highlights the right of Community citizens to enter, reside and establish in territory of member states.[31]Article 2 of the 1986 Supplementary Protocol A/SP.1/7/86 on the Second Phase (Right of Residence) obliges states to grant right of residence in its territory for purpose of seeking and carrying out income earning employment to Community citizens who are nationals of other member states; while article 23 demands equal treatment with nationals for migrant workers complying with the rules and regulations governing their residence in certain areas of economic, social and cultural life. Articles 2-4 of the 1989 Supplementary Protocol A/SP.2/5/90 on the Implementation of the Third Phase (Right to Establishment) underlines non-discriminatory treatment of nationals and companies of other member states except as justified by

[30] Article 2(d)(iii) (ibid.)

[31]*See generally*, Bola A. Akinterinwa, 'ECOWAS Protocols and Regional Insecurity: Right of Establishment versus Armed Banditry in Nigeria' <https://www.thisdaylive.com/index.php/2021/02/28/ecowas-protocols-and-regional-insecurity-right-of-establishment-versus-armed-banditry-in-nigeria/> Accessed on June 18, 2021 [Protocol A/P.1/5/79 Relating to Free Movement of Persons, Residence and Establishment, in consonance with paragraph 1 of Article 27 of ECOWAS Treaty that confers the status of Community citizenship on the citizens of Member States and which also enjoins Member States to abolish all obstacles to freedom of movement and residence within the Community, has it in its Article 2 that 'the Community citizens have the right to enter, reside and establish in the territory of Member States]; Michael Okom & Rose Ugbe, 'The right of Establishment under the ECOWAS Protocol', (2016) 2(5) *International Journal of Law,* [40-46] [The Right of Establishment as enshrined in the 1990 Supplementary Protocol on the implementation of the Third Phase of the ECOWAS Protocol on Free Movement of Persons, Goods and Services, entitles nationals of member states to settle or establish in ECOWAS states and carry out business activities under the same conditions that apply to nationals of the host state.]

exigencies of public order, security or health; while article 7 forbids discriminatory confiscation or expropriation of assets or capital and stipulates fair and equitable compensation upon confiscation or expropriation.In these regards, "*Right of Residence*" means the right of a citizen who is a national of one Member State to reside in a Member State other than this State of origin which issues him with a residence card or permit that may or may not allow him to hold employment; while "*Right of Establishment*" meansthe right granted to a citizen who is a national of the Member State to settle or establish in another Member State other than his State of Origin, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, and in particular companies, under the same conditions as defined by the legislation of the host Member State for its own nationals.[32]The second phase of the Community integration was outlined in the Supplementary Protocol of 1985. Under this phase, it was projected that residency, together with the right to income-earning employment would be available to Community citizens in host ECOWAS states. This phase was expected to last for five years. Establishment of businesses vide right of Community citizens to establish enterprises in member states other than their states of origin comprised the third phase of the community integration timetable. This was to be attained in the final five-year period. Unfortunately, up to the current, of the three phases projected by the Protocol, the only one that has been fully realised by all the members of the Community is visa-free entry for up to 90 days. Neither complete freedom of movement in the sub-region nor the right of establishment has been realized or been meaningfully implemented in the

[32] Economic Community of West African States (ECOWAS), *Supplementary Protocol on the Implementation of the Third Phase (Right of Establishment) of the Protocol on Free Movement of Persons, the Right of Residence and Establishment*, 29 May 1990, A/SP 2/5/90, <https://www.refworld.org/docid/49219d5b2.html> Accessed June,18 2021

Community.[33]Consequently, the right of establishment envisioned by the Treaty and Protocols for Community citizens has not yet been attained. They are still treated as foreigners across the entire divide of the community.[34] In effect, the envisaged national treatment of community citizens remains chimerical. With respect to both the taking up of employment or establishment of businesses, institutional discrimination continues to subsist in the treatment meted community citizens as opposed to national. This discrimination is both regulatory and structural, and spans both Nigeria and every other State member of the community. If the right of establishment, as envisaged under the applicable protocol had been attained, a notary public, member of any of the ECOWAS states, would, as a community citizen, be entitled as of right, to take up residence in Nigeria, and practice the office of a notary with the same rights, privileges and obligations as a Nigeria-appointed notary. However, in the absence of attainment of the Community right of establishment, the procedure for a legal practitioner or notary public from an ECOWAS country to practice the office of a notary in Nigeria is rather complicated. There are two alternative courses for him take. The first one is for him to seek a warrant under the hand of the Chief Justice authorisinghim to practice as a barrister for the purposes of particular proceedings and of any appeal brought in connection with those proceedings.[35]Ordinarily, under the Notaries Public Act, to qualify for appointment as a general notary public in Nigeria, the applicant must be

[33] Aderanti Adepoju, Alistair Boulton and Mariah Levin, 'Promoting integration through mobility: Free movement under ECOWAS', <https://www.unhcr.org/49e479c811.pdf> Accessed June 9, 2021*; see also*John Agyei & Ezekiel Clottey, 'Operationalizing ECOWAS Protocol on Free Movement of People among the Member States: Issues of Convergence, Divergence and Prospects for Sub-Regional Integration' <https://www.migrationinstitute.org/files/events/clottey.pdf> Accessed June 9, 2021

[34] Michael Okom & Rose Ugbe, (n 31)

[35] s. 2(2) (n 21)

a legal practitioner.[36]In this regard, under the Legal Practitioners Actthe definition of *'legal practitioner'*includes a person entitled in accordance with the provisions of the Act to practice as a Barrister or as a Barrister and Solicitor, for the purposes of particular proceedings.[37] The warrant issued by the Chief Justice of the Federation to a community citizen authorising him to practise as a barrister for the purposes of particular proceedings provides sufficient validation for an application by the community citizen to apply for appointment as a notary public. The same situation is also replicated where upon an application by a community citizen to the Attorney-General of the federation, the Attorney-General, after consultation with the Bar Council, permits his enrolment to practice as a member of the legal profession in Nigeria, provided Nigerians legal practitioners are afforded reciprocal facilities for practising as members of that profession in his country.[38] This enrolment admits the community citizen into all the rights and privileges of a Nigeria attorney, and this includes the privilege, upon an appropriate application, of being appointed a notary public for Nigeria.

7. Conclusion

In Nigeria, in order to be appointed into the office of a general notary public, the candidate is required to be a legal practitioner. Citizenship is acrucial requirement for admission to legal practice in Nigeria. There is however, a window of privilege for non-citizens to be permitted to practice law locally. The first is pursuant to a special dispensation granted by the Chief Justice to a non-citizen legal practitioner to practice as a barrister for the purposes of particular proceedings and of any appeal brought in connection with those proceedings, provided his native country shares a similar law background with Nigeria. The second is

[36] s. 2(1) (n 16)
[37] s. 24 (n 21)
[38] s. 7(2) (ibid.)

pursuant to a permission granted by the Attorney-General, after consultation with the Bar Council, to permits the enrolment of a non-citizen legal practitioner to practice as a member of the legal profession in Nigeria, provided Nigerian legal practitioners are afforded reciprocal facilities for practising as members of that profession in his country. Since the definition of legal practitioner includes persons authorised to practice pursuant to the warrant of the Chief Justice or pursuant to the facility of the Attorney-General, such persons qualify for appointment as notaries public.Nevertheless, the effect of the ECOWAS right of establishment protocol which grants to community citizens the right to settle or establish in another Member State, and to have access to economic activities, to carry out these activities as well as to set up and manage enterprises, under the same conditions as defined by the legislation of the host Member State for its own nationals is to render redundant,admission to the Nigerian (local) bar requirement in appointment as a notary public for Nigeria. Full implementation of the establishment clause would have entitled community citizens in Nigeria to be appointed notaries public in Nigeria, based on their membership of the bar in their countries of origin. However, up till the present, the right of establishment has not been implemented or realized. Consequently, Community citizens are still treated as foreigners and subject to regulatory and structural discrimination in the different countries of the ECOWAS community. Accordingly, with respect to the subject area of performing the notarial office, other than the two windows of privilege available to both community citizens and non-community citizens, migrants and non-citizens of Nigeria remain prohibited from practicing the office of a notary public in Nigeria.