

LITIGATION UPDATE

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CAMA IMPOSES SANCTIONS ON A COMPANY WHO FAILS TO AFFIX ITS NAME IN ITS PLACE OF BUSINESS: [C.A.C v. SEVEN-UP BOTTLING COMPANY: \(2017\) 5 N.W.L.R page 241](#)

Background

The Corporate Affairs Commission (“CAC”) is statutorily empowered under section 7 of the Companies and Allied Matters Act Cap C20 Laws of Federation of Nigeria, 2004 (“CAMA”) to regulate the affairs of a company including but not limited to the formation, incorporation, registration, management, and winding-up of companies. The CAC is also required to undertake such other activities as are necessary or expedient for giving full effect of the provisions of the Act.

In exercising this function and where there has been a violation of the Act, it is expected that the CAC will undertake certain actions such as the imposition of fine on companies and their principal officers or striking out of company names from the company register etc.

It is in keeping with the powers conferred upon it by the CAMA that the CAC in accordance with

Section 548 of the CAMA imposed sanctions on Seven-up Bottling Company for failure to paint and affix its company name at its place of business. Section 548(1)(a) provides that: ***“Every company, after incorporation shall paint or affix, and keep painted or affixed, its name and registration number on the outside of every office or place in which its business is carried on, in a conspicuous position, in letters easily legible”***

The Court of Appeal has once again provided a clear interpretation of the CAMA in the case of **Corporate Affairs Commission V. Seven-Up Bottling Company** by holding that Section 548(2) lawfully imposes a fine on a company that fails to paint or affix, and keep painted or affixed its name in place where the company carried on its business.

Facts

In this case the CAC imposed a fine of N955,000.00 (Nine Hundred and Fifty Five Thousand Naira) on Seven-Up Bottling Company (“Seven-Up”), its eight (8) Directors and the Company Secretary in accordance with Section 631(1) of the CAMA, Laws of the Federation 1990 for failure to paint or affix the name of the company in the place of business in the manner directed by the Act.

Seven-Up in challenging the imposition of the fine, instituted an action at the Federal High Court, (“FHC”) Abuja by way of an Originating summons and prayed for amongst other prayers a declaration that the action of CAC imposing fine on it and its principal officers was unlawful and unconstitutional and sought an order setting aside the fine of N955,000.00. It also prayed the Court for an order of perpetual injunction restraining CAC from harassing it and further imposing any such fine. The FHC in

its judgment and after arguments from both parties, entered judgment in favour of Seven-Up and granted all the prayers sought in the originating summons.

Dissatisfied, the CAC appealed to the Court of Appeal, Abuja Division and upon the hearing of the said Appeal, the Court gave an analysis of the provisions of Section 631(1) of the CAMA, and unanimously allowed the appeal. The major issue for determination before the Court of Appeal was whether the CAC can validly impose a fine on Seven-Up and its principal officers for non-compliance with Section 631(1) and (2) of the CAMA. According to CAC in its submissions, it argued that Section 631(2) which created the sanction for the non-compliance did not contemplate that a defaulting company should be first prosecuted and convicted before the fine can be imposed and that the fine can be imposed in the course of its regulatory and supervisory role. Sections 631(2) provides that ***“If a company fails to paint or affix, and keep painted or affixed its name in the manner directed by this Decree, it shall be liable to a fine of N100 for not so painting or affixing its name, and for every day during which its name is not so kept, painted or affixed; and every Director and Manager of the Company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty”***. However, Seven-Up in its arguments submitted that the provision of the Act requires a conviction before imposition of the fine and also referred the Court to the same Section 631(2) of the CAMA, Cap. 59, Laws of the Federation 1990 which provides that: ***“If a company fails to paint or affix, and keep painted or affixed its name in the manner directed by this Act, it shall be liable on conviction to a fine of N100 for not so painting or affixing its name, and for every day during which its name is not so kept, painted or affixed; and every Director or Manager of the Company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty”***.

The Court in its decision pointed parties to the inconsistencies with the provisions of the CAMA they referred to and noted that whilst CAC relied on the gazetted version of the Act with Gazette No. 2, Volume 77 published on the 9th January, 1990, Seven-Up relied on the CAMA published in the Laws of the Federation Cap. 59, 1990 on the 31st January, 1990. The Court in resolving the issue referred parties to the provisions of Section 548(2) of the CAMA, Cap. C 20 Laws of the Federation Cap., 2004 which is the revised version and prevailing law on the subject which both parties did not avert their minds to. Section 548(2) therefore provides that: ***“If a Company fails to paint or affix, and keep painted or affixed its name in the manner directed by this Act, it shall be liable to a fine of N100 for not so painting or affixing its name, and for every day during which its name is not so kept, painted or affixed, and every director and manager of the company who knowingly and wilfully authorises or permits the default shall be liable to the like penalty”***.

The Court further held in favour of CAC that the provisions of Section 548(2) of the CAMA, Cap. C 20 Laws of the Federation Cap., 2004 which is similarly worded to Section 631(2) of the gazetted version referred to by CAC in its argument is the authentic and prevailing law. The Court then held that the imposition of the fine on Seven-Up was right and lawful. The Court also noted that reference to the word “shall” in the provision connotes that the Act must be obeyed.

Commentary

The decision affirms the regulatory and supervisory role of the CAC in controlling the affairs of companies in Nigeria.

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