
SINGLE SHAREHOLDING STRUCTURE:

A REVIEW OF THE JUDGMENT OF THE FEDERAL HIGH COURT OF NIGERIA IN THE CASE OF PRIMETECH DESIGN AND ENGINEERING NIGERIA LIMITED AND JULIUS BERGER NIGERIA PLC V CORPORATE AFFAIRS COMMISSION

 LAGOS | ABUJA

The Litigation Process

Pleadings → Discovery → Trial → Appeal



INTRODUCTION

The art and science of the interpretation of statutes is a cornerstone of legal practice. In Nigeria, as in many jurisdictions, the precise application of legislative enactments to factual scenarios is both complex and controversial in light of the Judiciary's desire to play its part in interpreting the law judicially and judiciously.

The instant case is one that calls to the fore the very basis of statutory interpretation and its firm place in the legal space. The suit¹, which was instituted through an Originating Summons by Primetech Design and Engineering Nigeria Limited ("**Primetech**") and Julius Berger Nigeria Plc ("**JB**"), against the Corporate Affairs Commission (the "**Commission**", "**CAC**"), sought to determine whether, upon proper construction, Sections 18(2), 22(1), 118, 869(1) and other related provisions of the Companies and Allied Matters Act 2020 ("**CAMA**", "**the Act**"), excluded private companies incorporated before the commencement date of the Act from being able to register as a private company with a single shareholding structure. This is premised on the position under the Companies and Allied Matters Act Cap. C20, Laws of the Federation of Nigeria, 2004 which provided for a minimum of two shareholders as a requirement for the registration of a private company limited by shares.

Delivering a ruling on 30th July 2024, the Federal High Court of Nigeria (the "**Court**") per Justice Obiora Atuegwu Egwuatu held that the provisions of Section 18(2)² of the Act, which provides that private companies can have a single shareholder, applied to all private companies, regardless of whether same qualifies as an incorporated company before or after the introduction of the CAMA.

This landmark judgment carefully considered the law and arrived at its conclusion through a careful inquiry into the intent of the law maker (which it had identified as the ease of doing business). This represents a departure from the Defendant's application for a literal interpretation of the law.

This legal update seeks to examine the dynamics of the interpretation of statutes and its firm place in the development of substantive law.

FACTS OF THE CASE



By a share transfer instrument dated April 25, 2022, a shareholder of the 1st Plaintiff (a private company limited by shares registered in 2011 with two shareholders) transferred all of his shares to the 2nd Plaintiff making the 2nd Plaintiff the sole shareholder.

¹ Judgement delivered on 30th July 2024 in Suit No: FHC/ABJ/CS/665/2023

² Section 18 (2) CAMA – "Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies."

Following the transfer of shares, the 1st Plaintiff notified the Defendant of the share transfer transaction and applied to register same in the records of the Defendant and the Company Registration Portal.

The Defendant had queried the 1st Plaintiff's application, relying on the provisions of sections 18(1)³ and (2) and 571 (c)⁴ of CAMA and refused to register the share transfer.

PLAINTIFF'S ARGUMENT



By an Amended Originating motion dated and filed on the 31st of January 2024, the Plaintiffs adopted the three questions posited for determination as her issues for determination and proceeded to argue the following:

1. Whether, on a proper construction of the combined provisions of sections 18(2), 22(1), 118, 869 (1) and other related provisions of the Companies and Allied Matters Act 2020 (as amended), the Defendant's position that section 18(2) of CAMA only applies to private companies incorporated and/or registered after CAMA (to the exclusion of companies existing before

the commencement date of CAMA) is correct.

2. Whether, on a proper construction of sections 18(2), 22(1), 118, 869(1) and other related provisions of CAMA, the Defendant can validly rely on section 571(c) of CAMA to refuse to approve and/or accept for filing, share transfer instruments pursuant to which the Plaintiff became the sole shareholder of the 1st Plaintiff.
3. Whether, having regard to the combined provisions of sections 18(2), 22(1), 118, 869(1) and other related provisions of CAMA, the Defendant can validly refuse to approve and/or accept for filing, share transfer instruments pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff.

The Plaintiff submitted that where the meaning of a statute is likely to result in an ambiguity, absurdity or injustice, the court is enjoined to construe the statute in a way that does not defeat the obvious ends of the statute.

Relying on the case of **Ocholi Enajo James, SAN v. INEC (2015) 12 NWLR (Pt.1474) 538 @ 588 D-G**, it submitted that the CAMA recognizes that a single person is entitled to form and incorporate a private company which is a sharp departure from the old regime.

Counsel submitted that having regard to the rationale for the introduction and recognition of a single member/shareholder company, it is inconceivable that the Legislature will, in one breadth, create an opportunity for companies incorporated after the commencement of the CAMA to have a single membership/shareholder while also depriving other private companies desirous of same from doing so simply because they were incorporated before the commencement of the CAMA.

³ Section 18 (1) and (2) provides that (1) As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of the company; (2) Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies.

⁴ Section 571(c) provides that a company may be wound up by the court if the number of members is reduced below two in the case of companies with more than one shareholder

DEFENDANT'S ARGUMENT

Defendant's Counsel submitted that section 18(2) of CAMA applies to companies incorporated after the commencement date of the CAMA. The Defendant contended that section 18 (2) of CAMA qualifies as a proviso, and being plain, unambiguous and direct on the issue of formation and incorporation of private companies in compliance with CAMA, there is nothing necessary for a construction of sections 18(2) and 869(1) CAMA to accord them retrospective effect as the law is trite that provisions of a statute are generally meant to apply to future events unless the provision expressly and unambiguously stated that they are retrospective **Adesanoye & Ors v. Adewole & Anor (2000) LPELR-142(SC)**.

Counsel contended that the Plaintiffs having been formed and incorporated under CAMA 1990, and was indeed formed as a company with two shareholders/members, it does not fall within the circumference of a single member company within the contemplation of section 18(2) the CAMA and any form of juridical construction of section 18(2) and 869(1) CAMA 2020 to include matters of reformation, reincorporation, conversion, reduction and or share transfer of shareholding/membership of existing companies to single shareholder/member shall be contrary to the clear intention of the law maker and indeed repugnant to natural justice and good conscience.

DECISION OF THE COURT

The Court decided in the favor of the plaintiff.

The Court held that it is well settled that where provisions of a statute are clear, plain and unambiguous, the court is bound to accord them their plain, literal and natural meaning without resort to any external aid since the duty of the court is to interpret the words used in the

statute and no more except the result will lead to absurdity or be in conflict with other provisions of the statute⁵.

The Court stated that provisions of CAMA 1990 no longer apply to the operations of companies in Nigeria, particularly those that were incorporated before CAMA 2020 and as such, is trite that when a statute is repealed, it ceases to exist and no longer forms part of the laws of the land.

Finally, the Court held that allowing an existing private company with two or more shareholders to transmute into a single shareholder/ member will not affect or defeat the intention of the legislature or effect the innovation envisaged by the said section 18(2) of CAMA 2020 but rather uphold the intent of the lawmaker.

COMMENTARY

The decision of the court in the instant suit revolves around the interpretation of Section 18(2) of CAMA. While a literal interpretation of Section 18(2) suggests that a single individual can form and incorporate a private company, it contravenes the extant statute under which companies prior to its commencement were registered.

It is interesting to note that parties to the instant suit both aligned on the premise that a single shareholder can register a company. The disparity however arises as to whether private companies registered before the enactment of the CAMA 2020 fall under this umbrella as this would mean that the Act applies retrospectively.

We commend your lordship's reasoning when he opined that where a statute is clear, plain and unambiguous, the court is bound to accord them their plain, literal and natural meaning without resort to any external aid since the duty of the court is to interpret the words used in the

⁵See *N.N.P.C. v. Lutin Investments Ltd (2006) 2 NWLR (pt. 965) Pg. 506*.

statute and no more except the result will lead to absurdity or be in conflict with other provisions of the statute.

The court, in the judicial and judicious application of its discretion employed the mischief rule of interpretation. Originating in Heydon's Case⁶, this rule premeditates a consideration of: the pre-existing law; the identified legal gap; the statutory remedy; and the underlying rationale for the legislation.

The court, in its interpretation of this instant suit underscores the importance of legislative intent in the judicial process by noting the statute's purpose rather than its mere literal meaning, This has helped to foster a more purposive interpretation, where the context of the social, economic, and historical conditions under which the law was enacted is well considered.

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⁶Heydon's Case [1584] EWHC Exch J36