

**Foreign Entities Providing Services to Nigerian Customers: When Does the Transaction Become Illegal and Void?
CA/PH/313/2024 - Tilone Subsea Limited v. Seatronics Limited (Unreported)**

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Nigerian law prohibits foreign companies from carrying on business in Nigeria without first registering under the Companies and Allied Matters Act 2020. Contracts made whilst illegally doing business are void and incapable of creating legally enforceable rights, releasing Nigerian counterparties from all payment obligations. This means that foreign companies dealing with Nigerian customers face a significant risk. If their activities constitute "doing business" in Nigeria without local incorporation, the entire transaction may be construed to be illegal and void.

In ***Tilone Subsea Limited v. Seatronics Limited*** (CA/PH/313/2024) [2024] (unreported)—a case in which our firm represented Seatronics (the foreign service provider)—a Nigerian company attempted to void its debt by arguing that the foreign service provider was illegally doing business in Nigeria without local incorporation (which meant that the entire transaction was illegal and void). The Court of Appeal rejected this argument, but the case demonstrates the potential for foreign companies to lose their contractual rights by unwittingly agreeing to work or supply in a way that is construed to be "doing business" in Nigeria without local incorporation.

THE CASE



Seatronics Limited, a Scottish company, provided equipment hire services to Tilone Subsea Limited,

a Nigerian company. Tilone failed to pay, and the debt was admitted and acknowledged. Seatronics sued under the Undeclared List Procedure to recover the debt. Tilone countered that Seatronics was illegally doing business in Nigeria without registration, rendering the contract void. The High Court rejected Tilone's challenge and granted judgment for Seatronics. Tilone appealed.

THE COURT OF APPEAL'S DECISION



The Court of Appeal rejected the appeal on all issues.

The Court of Appeal acknowledged the basic principle from ***Citec International Estates v. Ediscomsa International Incorporated & Associates*** [2018] 3 NWLR (Pt.1606) 332 (cited by Tilone) that foreign companies cannot carry on business in Nigeria without registration and contracts made or performed in a manner that breaches this law may be declared illegal and void. However, it noted that in ***Citec*** the foreign company was performing a long-term project and had established an operational base in Nigeria. By contrast, Seatronics maintained no offices, staff, or operations in Nigeria and its services were performed outside Nigeria. The transaction was a one-off arrangement. It was not a continuing business relationship or established pattern of commercial activity.

The Court of Appeal concluded that Seatronics' one-off transaction performed in Scotland did not constitute "carrying on business" in Nigeria. The contract remained valid and enforceable.

PRACTICAL INSIGHTS

The Critical Factors

The *Tilone* decision clarifies some of the factors courts consider when determining whether a foreign company is doing business in Nigeria. If the contract involves services that are performed outside Nigeria, this will weigh heavily against a finding of "doing business". Seatronics provided equipment hire services entirely in Scotland, which was central to the Court's conclusion. The Court distinguished between isolated arrangements and continuing projects. Single one-off transactions do not constitute "doing business" even if performance is within Nigeria because "doing business" requires an element of permanence or continuity. The Courts examine the totality of circumstances rather than deciding based on isolated facts. The relative weighting of various factors depends on the specific case.

Indicators of "Doing Business"

Physical offices or facilities in Nigeria provide strong evidence of local operations. Employing staff based in Nigeria similarly indicates established business presence. Long term projects involving physical operations over time rather than isolated deals suggest doing business locally.

Factors Requiring Careful Assessment

Multiple transactions with different Nigerian customers could constitute either several isolated deals or a pattern of business operations depending on their frequency and nature. Service contracts involving physical secondment of staff (eg equipment and operator hire or software installation and licence contracts) need to be carefully drafted and structured. Furthermore, providing ongoing services or support after an initial transaction may transform a one-off arrangement into doing business. If there is a mixture of part performance in Nigeria combined with part performance elsewhere it is important to assess where primary activities take place.

Guidance for Foreign Service Providers

Foreign entities contracting with Nigerian customers should structure transactions to avoid characterisation as doing business in Nigeria. Perform services outside Nigeria where commercially feasible. Avoid maintaining physical presence in Nigeria or employing Nigeria-based staff for service delivery.

Documentation matters significantly. Contracts should specify where services will be performed. Maintain records demonstrating where services were performed.

Foreign companies contemplating ongoing Nigerian operations should consider registration strategically. The cost and administrative burden may be preferable to the risk of having contracts declared void. Where in doubt, unless there is a regulatory or severe tax impediment incorporate a Nigerian subsidiary (it is cheap and fast).

Guidance for Nigerian Customers

Nigerian entities should conduct due diligence on foreign service providers' registration status where operations suggest the provider may be doing business locally. Verify registration if the foreign provider maintains Nigerian facilities, employs local staff, or undertakes performance within Nigeria.

Understand that illegality operates as a double-edged sword. Successfully arguing that a contract is illegal voids payment obligations but simultaneously voids all contractual protections including warranties, indemnities, and service level commitments. Assess whether the value of escaping payment obligations exceeds the value of losing contractual protections.

Successfully establishing illegality requires proving specific facts about the foreign company's Nigerian activities, transaction frequency, performance location, physical presence, and staffing. General allegations unsupported by evidence will fail, as *Tilone* demonstrates.

The Capacity to Sue

Foreign companies can sue in Nigerian courts without registration under common law

principles recognising foreign corporations duly created under recognised foreign law. However, this procedural capacity becomes irrelevant if the underlying contract is void. The critical question is not whether foreign companies can access Nigerian courts, but whether they have valid, enforceable contracts providing rights that courts can recognise.

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