

IN THE COURT OF APPEAL OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS
THIS MONDAY THE 11TH DAY OF DECEMBER, 2017

BEFORE THEIR LORDSHIPS

MOHAMMED LAWAL GARBA YARGATA BYENCHIT NIMPAR ABIMBOLA OSARUGUE OBASEKI ADEJUMO	JUSTICE, COURT OF APPEAL JUSTICE, COURT OF APPEAL JUSTICE, COURT OF APPEAL
CA/L/803/2011	

BETWEEN

MRS NORMA IGHOFOSE
[suing by her Lawful Attorney Idowu Fadairo]

APPELLANT

AND

- 1. SIPOL AGRICULTURE AND FISHING INDUSTRIES LIMITED**
- 2. MR. PETER SIMON IGHOFOSE**
- 3. CORPORATE AFFAIRS COMMISSION**

RESPONDENTS

JUDGMENT
(DELIVERED BY YARGATA BYENCHIT NIMPAR)

This appeal is against the Ruling of the Federal High Court sitting in Lagos and delivered on the 13/06/2011 in favour of the Respondents. Dissatisfied, the Appellant filed a Notice of Appeal dated the 15th July, 2011 setting out 3 grounds of appeal.

The ruling was premised on an Amended Originating summons supported by an Affidavit, annexure marked as Exhibits and a written address in support. It prayed for the following orders:

- i A Declaration that by virtue of Section 42 of the Companies and Allied Matters Act CAP C20 Laws of the Federation of Nigeria 2004, the 1st Defendant is statutorily obligated to give to the Plaintiff a copy of its Memorandum and Articles of Association.*
- ii A Declaration that the 1st defendant failed to file yearly, since 1997, its annual returns with the 3^d Defendant contrary to Section 307 of the Companies and Allied Matters Act CAP C20 Laws of the Federation 2004.*
- iii A Declaration that the Plaintiff and the late Dr. Peter Ighofose are the only shareholders of the 1st Defendant and that the following persons, late Dr. Peter Ighofose, Norma Ighofose, Paul Ighofose and Simon Ighofose named in the Particulars of Directors Form CO7 dated 31st July, 1996 and filed with the 3^d defendant are the known Directors of the 1st Defendant.*
- iv An ORDER that the 1st defendant should give to the Plaintiff, a copy of the 1st Defendant's Memorandum and Articles of Association within seven days of the judgment of this Honourable court.*
- v An ORDER that the substituted 2nd Defendant should hand over possession of any of the 1st defendant's Assets and documents, including its*

CERTIFIED TRUE COPY

certificate of incorporation, memorandum and Articles of association, company books, cheques, account books etc in his custody to the Plaintiff within seven days of the judgment of this Honourable Court.

- vi An ORDER pursuant to power of the Court under Section 565(1) of the Companies and Allied Matters Act CAP C20 laws of the Federation of Nigeria 2004 directing that the Particulars of Directors and Particulars of Shareholding of the 1st defendant be filed with the 3rd Defendant by the 1st Defendant in compliance with Section 292 (4) of the Companies and Allied Matters Act CAP C20 Laws of the Federation of Nigeria 2004 within 14 days of the delivery of the judgment of this court.*
- vii Alternatively, An ORDER that the Plaintiff alongside the other known directors of the 1st defendant should file fresh Particulars of Directors and Particulars of Shareholders to reflect the information contained in the Annual Return form CAC10 dated 31/7/96 filed by the 1st defendant with the 3rd Defendant and thereafter convene a general meeting of the 1st Defendant.*
- viii In further Alternative, AN ORDER that the 3rd Defendant order an investigation into the affairs of*

CERTIFIED TRUE COPY

the 1st defendant in accordance with sections 314 and 315 of the Companies and Allied Matters Act CAP C20 Laws of the Federation of Nigeria 2004.

The Respondents (defendants) filed responses and the 1st and 2nd Respondent also filed a process strangely tagged reply on points of law (by a defendant) challenging the application. Upon a careful consideration by the court below, the judge in his Ruling entered judgment partly for the Respondents dismissing the application, thus this appeal.

The Appellant is an estranged wife of one late Dr. Peter Ighofose. She and her husband, the late Dr. Peter Ighofose were the two share holders of the 1st Respondent and she was also a director of the 1st Respondent upon its incorporation. Sometime in the year 2006, the Appellant through her Solicitors requested for a copy of the Memorandum and Articles of Association but was refused. She was also unable to get the documents from the 3rd Respondent because her search at the office of the 3rd Respondent revealed only the annual return of the 1st Respondent filed on 31/7/1996. This prompted the Appellant to institute the suit at the lower court.

Upon adoption of written address and hearing of oral arguments presented by the parties, the trial court awarded the claims of the Appellant with respect only to prayers 1, 2, 3 and 4 and dismissed the other claims. Being dissatisfied with the decision, the Appellant brought this appeal.

CERTIFIED TRUE COPY

The Appellant's Brief settled by O.E. Olawore Esq., dated 19th September, 2011 filed on the same day distilled 3 issues for determination as follows:

- a. Whether the trial court came to a correct decision that a non shareholder and a non director of a company can regularize the affairs of the company by filing with the Corporate Affairs Commission, the annual returns, reports and the particulars of directors and shareholders of the company?*
- b. Whether or not a shareholder and director of a company can have no say in the affairs of a company?*
- c. Whether the 1st Respondent could validly allot its shares without a meeting of the company with valid notices to members and directors?*

The Respondents were duly served with the Record of appeal, Appellant's brief, and hearing notices but failed to take a step and did not appear at the hearing of this appeal. The Appellant was granted leave to have the appeal determined on the Appellant's Brief alone.

After a careful consideration of the Notice of Appeal, the Record of Appeal and the Appellant's Brief, the Court is of the view that the appeal can conveniently be resolved under a sole issue which the court shall now reformulate. The issues set out by the Appellant are intertwined and it will be expedient to resolve all at once for expediency.

The sole issue shall be:

CERTIFIED TRUE COPY

"Whether the judgment of the lower court was not perverse or unreasonable as to warrant the interference of the Court of Appeal"

The Appellant submitted that since the 1st Respondent is an artificial creation working through the acts of its directors and management, it is only the directors of the 1st Respondent that are authorized to file statutory reports with the 3rd Respondent, referred to **TRENCO NIGERIA LTD V AFRICAN CONTINENTAL BANK LTD (1978) NSCC 220 @ 228, DELTA STEEL NIG LTD V AMERICAN COMPUTER TECHNOLOGY INC (1999) 4 NWLR (PT 597) 53 @ 66** and Section 244 (1) of the Companies and Allied Matters Act (CAMA). The Appellant therefore submitted that there was no legal or factual basis for the lower court to have ordered the 2nd Respondent through its solicitor to file statutory returns for the 1st Respondent since the 2nd Respondent is neither a Director nor Shareholder involved in the running of the 1st Respondent. She submitted that the lower court's decision is in conflict with Section 565(1) of CAMA and also referred to the cases of **CCB V AG ANAMBRA STATE (1992) NSCC PT 111 270 @ 288** in support.

In addition, the Appellant submitted that having declared the Appellant a shareholder in the 1st Respondent, the lower court erred in finding that the Appellant had no say in the running of the company as this runs contrary to the provisions in CAMA, she referred to Section 41 (1) and 81 of the Companies and Allied Matters Act as well as the cases of **CALABAR CENTRAL CO-OPERATIVE THRIFT & CREDIT SOCIETY**

CERTIFIED TRUE COPY

LTD & ORS V BASSEY EBONG EKPO (2008) 6 NWLR (PT 1083) 362 @ 398, SUN INSURANCE NIGERIA PLC & ANOR V LMB STOCKBROKERS LTD & ORS (2005) 12 NWLR (PT 940) 608 @ 631.

The Appellant submitted that it is only during a general meeting of a company that shares of a company can be validly issued out. Thus, the Appellant contended any decision to remove her as a director and increase the share capital of the company was invalid since there was a failure to give her notice of the meeting and no quorum could have been formed in her absence, with just two (2) shareholders. The Appellant further attacked the genuineness of the return of allotment form relied upon by the lower court. She referred to Sections 167, 219 (1a), 221 (1), 262 (2) and 266 (1) (3) of the Companies and Allied Matters Act and **BERNARD LONGE V FBN PLC (2010) 6 NWLR (PT 1189) 1 @ 30** in urging this Court to allow the appeal.

CERTIFIED TRUE COPY

RESOLUTION

The Company and Allied Matters Act regulates the affairs of a registered company particularly how it should file its statutory annual returns and how management and changes should be carried out and all these must conform with the provisions of the Act. The Act made detailed provisions on who does what and at what time. First and foremost, it must be stated that being an artificial personality, the company conducts its affairs through human agents, i.e. its directors and management officers. See **STB LTD V INTERDRILL NIG LTD & ANOR (2006) LPELR – 9848 (CA).**

Section 372 of the Act requires the filing of Annual Returns every year by a small company and on the matters specified in Part 1 of Schedule 9 to the Act. The form the Returns should take is set out in Part II. The Act is awash with provisions on the Director and Secretary to authenticate returns and to file the certificate accompanying the returns. It can therefore be safely concluded that the Annual returns of a small company must be signed by a director and secretary of the company. If a director and secretary have to file returns for a small company, it therefore follows that a non director or secretary of the company cannot file annual returns or any of the statutory returns prescribed by the Act. A stranger has no place in such statutory duties since he is not a shareholder neither a Director nor a Secretary of the company.

Now, it was established that the 2nd Respondent is neither a director nor a shareholder of the 1st Respondent and therefore could not have taken any step that would be legitimate concerning the 1st Respondent. The 2nd Respondent did not dispute that deposition by the Appellant. So it means that he is an interloper who has no business with the affairs of the 1st Respondent. In taking the details of returns made and shown at pages 66-73, the 2nd Respondent is duty bound to show how and when he came into the company to grant him the competence to file returns behind the back of the surviving shareholder, Secretary and Director of the 1st Respondent. In fact by his own showing, the 2nd Respondent denied being in possession of company documents, see page 85, paragraph 9 of the counter affidavit sworn to by his solicitor. In what capacity did he then file returns in respect of the 1st Respondent? I agree with the Appellant that

CERTIFIED TRUE COPY

the order directing the 2nd Respondent to file necessary returns is perverse and has no legal basis, it cannot be supported by statutory provisions. The court cannot give a directive that is contrary to the express provisions of a law duly enacted by the legislature. Section 565 of CAMA is also relevant here. See also the case of **CALABAR CENTRAL COOPERATIVE THRIF & CREDIT SOCIETY LTD & ORS V BASSEY EBONG EKPO (2008) 6 NWLR (PT. 1083) 362 AT 398** where the apex court held as follows:

"A court of law cannot ignore provisions of a statute which are mandatory or obligatory and toe the line of justice in the event that the statute has not done justice. Courts of law can only do so in the absence of a mandatory or obligatory provision of a statute. In other words, where the provisions of a statute are mandatory or obligatory, courts of law cannot legitimately brush the provisions aside just because it wants to do justice in the matter."

It is settled that a company with its artificial personality directs its affairs through its human agents and pursuant to its Articles and Memorandum of Association as guided by the CAMA. The Act also gives certain rights to members that the Articles cannot wish away, some of these are the members or shareholders right to attend and participate in meetings of the company upon due notice given. See **SUN INSURANCE NIGERIA PLC & ANOR V LMB STOCKBROKERS LIMITED & ORS (2005) 12 NWLR (PT. 94) 608 AT 631** which held that some of the rights of a shareholder statutorily provided include the right to attend meetings and vote.

CERTIFIED TRUE COPY

The Appellant is indisputably a shareholder of the company and this fact was reaffirmed by the trial court, she enjoys the rights preserved by the Act and if so, the trial court erred in holding that she should have no say in the company, see pages 153 of the record of appeal where the court stated thus:

"That the Plaintiff is not entitled to any control or say in the affairs of the 1st Defendant Company. She is not entitled to any compensation for failure to notify her of meetings of a Company in which she did not and could not have shown any interest in for over thirty (30) years."

The court has no business determining such issues when the issue before him did not disclose so. A court cannot give what was not sought for and justified by the parties, see **THE NIGERIAN AIR FORCE V WING COMMANDER T.I.A. SHEKETE (2002) 18 NWLR (PT 798)N 129**. The court is also not allowed to make a case different from what is joined in the pleadings. Any of such digression will make the outcome perverse as neither the claim nor the evidence before the court would support such a decision. I agree with the Appellant that the court below erred in arriving at such a finding that the Appellant has no say in the company in which she is a member. There was evidence before the trial court that she was not invited to any meeting, that statutory returns were not duly filed and her right granted by law cannot be wished away.

The trial judge in a most un-judicious manner said thus:

"This does not represent an opportunity for the plaintiff to make a play for the assets of the company from which

CERTIFIED TRUE COPY

she has been estranged, principally but not solely, due to her marital separation from the principal promoter of the company in question, since the mid- 1970's..... she did not give any value. She did not provide any service; she made no contribution and her nominal equity has been greatly diluted and effectively marginalized by her late husband during his life time."

It is indeed strange and shocking that a court of law in this 21st century would delve into the issue of separation or marital problems as basis to rule contrary to clear evidence before it. The Appellant is a member of the company who holds shares in the company. How could the equity interest of the Appellant have been diluted without a statutory meeting? And with the evidence on record that no such meeting held, could any act done in a surreptitious and clandestine manner, receive the approval of the court? It was established that no meeting was called so how could the allocation or devolution of shares be legitimate? Such activities of a company are not a day to day management decision. Furthermore, how could the husband devolve shares as a sole shareholder and without other directors and the Appellant who is the other shareholder? In ascertaining rights ascribed to a member of a company the law does not require marital status and therefore the trial judge was absolutely wrong to deny the Appellant her due because she was an estranged wife. The trial judge digressed and fell into serious error thereby failed to do justice in the circumstances. The notion that the Appellant was an estranged wife overshadowed his reasoning as a judge. The judge

CERTIFIED TRUE COPY

should not have gone into issues of Appellant's contribution to the life of the promoter of the company. Even if she tries to claim assets of the company as a wife or home maker, the lower court should have first dismissed the claim and not go into extraneous matters. She is eminently qualified to do so having rendered social services to the other shareholder as a wife. Even as a home maker, she has contributed in unquantifiable terms to the company and the life of the deceased promoter of the company. In any case, so far as she remains listed as a shareholder of the company the fact that she failed to contribute or was estranged, does not take away her rights to the company's affairs as a shareholder and director. The world has moved away from such sentiments which one might say are misogynistic and such have no place on the bench. The findings that the Appellant is not entitled to any control or say in the affairs of the company nor is she entitled to compensation are perverse and are hereby set aside.

The Appellant's interest of 832 shares of 1 (One) Naira can sustain a claim for notice of meetings of the company. Until she is duly bought over and or compensated, she must be given her rights as a shareholder of the company. Shares cannot be increased and allocated outside the annual general meeting and upon proper documentation. It was not so in this case and therefore, any purported act of diluting or increasing shares done outside the annual general meeting is null and void, see Section 124 of CAMA. The purported allocation of shares to the 2nd Respondent outside the General Meeting duly called is null and void. A majority will always

CERTIFIED TRUE COPY

have their way but the minority must also be allowed to have its say before being over ruled. That is in conformity with the right to fair hearing.

The Annual General meeting and Board of Directors meeting are all regulated by Section 232 and 264 of CAMA. They both require a quorum before a meeting is considered as legitimate, it is a minimum of 2 members or directors for the class of the 1st Respondent. The 1st Respondent had 2 share holders and 4 directors at inception and the trial court having found that the Appellant is a shareholder, it then means there is only one other shareholder, the deceased promoter. There is no way a sole shareholder could legitimately hold a meeting and increase or allocate more shares to warrant the finding that the Appellant's shares have been watered down so as to deny her a say. How could the 2nd Respondent be appointed a director without the Appellant?

Furthermore, the Appellant could not have been removed as director without a notice to her and a meeting duly held, see Section 266 (3) CAMA which is relevant and in mandatory terms, it says:

"(3) failure to give notice in accordance with subsection (2) of this section shall invalidate the meeting".

Subsection 2 of the Section 266 requires 14 days notice in writing to all directors entitled to receive notice unless otherwise provided in the Articles. It was not shown that the Articles of Association dispensed with the required period of notice. There is no discretion in the matter of notice of meeting.

It was purported that there was a meeting on the 14/5/1977 after the Appellant had left Dr. Peter Ighofose, the primary promoter of the

CERTIFIED TRUE COPY

company. Since there was no notice, the purported meeting could not have been a valid meeting when no notice was given to the only other shareholder. It is also not true that she could have signed any statutory form as a secretary of the company having been separated from Dr. Ighofose moved to UK long before the so called meeting took place. No doubt, the process of bringing in the 2nd Respondent was without due process and cannot stand.

A stranger cannot be authorized to regularize the affairs of the company as directed by the trial court. It is the surviving director and secretary of the company that is authorized by the Act to take any legal step. Therefore, I find that the order directing the 2nd Respondent to regularize the position of the company with the Corporate Affairs Commission is perverse and is hereby set aside.

Consequently, the appeal is meritorious and is hereby allowed; the judgment of the trial court delivered on the 13th June, 2011 by **HON. JUSTICE C.E. ARCHIBONG** is hereby set aside. I hereby enter judgment for the Appellant as Claimant in the following terms:


- i. A declaration is hereby made that the Appellant is entitled to a copy of the 1st Respondent's Memorandum and Articles of Association as required by Section 42 of CAMA within 30days from the date of this judgment.
- ii. A declaration that the Appellant and late Dr. Peter Ighofose are the only shareholders of the 1st Respondent and late Dr. Peter Ighofose, Norma Ighofose, Paul Ighofose, and Simon Ighofose are the listed directors


CERTIFIED TRUE COPY

until due process is followed in effecting any change in accordance with the Company and Allied Matters Act.

- iii. The 2nd Respondent is hereby directed to handover to the Appellant, a sole surviving shareholder the assets of the 1st Respondent's assets including the Certificate of Incorporation, Memorandum and Articles of Association, company books, cheques, account books etc in his custody forth with.
- iv. The 1st Respondent is directed to regularize its position with Corporate Affairs Corporation in view of statutory requirement that a company cannot have a sole shareholder.
- v. The Appellant and other directors of the company to take steps to file all necessary statutory returns with the 3rd Respondent forth with.

Cost of N100,000.00 to the Appellant against the 1st and 2nd Respondents.


MRS OKORIE E. C.
PRINCIPAL EXECUTIVE OFFICER
CERTIFIED TRUE COPY
COURT OF APPEAL
LAGOS
22/12/17


YARGATA BYENCHIT NIMPAR
JUSTICE, COURT OF APPEAL

APPEARANCE COUNSEL:

O.E. OLAWORE with O. ABIMBOLA - FOR APPELLANT

RESPONDENT - NIL

CERTIFIED TRUE COPY

CA/L/803/2011

HON. JUSTICE MOHAMMED LAWAL GARBA, JCA

After reading a draft of the lead judgement written by my learned brother *Yargata Byenchit Nimpar, JCA* in this appeal, I agree that the appeal deserves to succeed in the terms set out therein. As an only surviving founding share holder, member and Director of the 1st Respondent, whose interest and holding was not shown to have been validly divested, the Appellant was entitled to the reliefs granted in the lead judgement under the provisions of the Companies and Allied Matters Act (CAMA), see *Golden Guinea Brew, Plc v. Nwanosike* (2001) 12 NWLR (726) 1; *Baffa v. Odili* (2001) 15 NWLR (737) 709; *Sun Ins. Nig. Plc. v. LMBS Ltd* (2005) 12 NWLR (940) 608; *Longe v. FBN* (2010) 6 NWLR (1189) 1; *Wilson v. Okeke* (2011) 3 NWLR (1235) 456.

I join in allowing the appeal in terms of the lead judgement.




MOHAMMED LAWAL GARBA
JUSTICE, COURT OF APPEAL

CA/L/803/2011

Abimbola Osarugue Obaseki-Adejumo, JCA

I had the privilege of reading in draft the leading judgment of my learned brother, **YARGATA BYENCHIT NIMPAR, JCA** just delivered. In the aforesaid judgment his lordship has adequately dealt with the relevant sole issue apt for the determination of the appeal.

Having made a clear finding of fact *vis-à-vis* the relevant provision of Companies and Allied Matters Act, *inter alia* that the 2nd Respondent, a meddlesome interloper has no business in conducting the affairs of the 1st Respondent. From the facts on record, it is obvious that the Appellant's interest in the 1st Respondent is hinged on the shares she holds in the company. She is thus entitled by law to notice of the relevant meeting of the 1st Respondent's company and by section 266(3) of the Companies and Allied Matters, she is entitled to be 14 days notice before she can be removed as a director in the 1st Respondent, failure of which, the meeting held to remove her will held to be invalid.

CERTIFIED TRUE COPY

To this extent, I have no hesitation in holding that the learned trial judge erred when he applied the wrong principle, and was blinded by obvious irrelevant sentiments, when he held that the

Appellant is not entitled to any control or say in the affairs of the 1st Respondent Company. For the same reasons and conclusion contained in the leading judgment, which I adopt as mine, I find the appeal to be meritorious and it is hereby allowed. I abide by the consequential orders contained in the leading judgment.



ABIMBOLA OSARUGUE OBASEKI-ADEJUMO
JUSTICE, COURT OF APPEAL



22/12/17

cf - of Judgment
= 101,000



Z 11018666 Pd