

SUPREME COURT OF NIGERIA

29TH APRIL, 2005. SC. 330/2001

**CORAM:- M. L. UWAIS CJN, S. M. A. BELGORE, I. L. KUTIGI,
A. I. KATSINA-ALU, D. MUSDAPHER, JJSC**

MR. ADEOYE MAGBAGBEOLA APPELLANT
AND
MR. TEMITOPE SANNI RESPONDENT

COMPANY LAW - Incorporation - Proof of - Is by production of certificate of incorporation - Mere appendage of Ltd or Plc - Is not evidence of incorporation (H1)

COMPANY LAW - Business name - Partnership relationship - Under a registered business name - Is governed by parties partnership agreement (H2)

ARBITRATION - Constitutional law - Appointment of an Arbitrator - Is not governed by CAMA or S. 251(1)(e) 1999 Constitution - But by Arbitration and Conciliation Act (H3)

ARBITRATION - Jurisdiction - Arbitrator - Appointment of - Both State and Federal High Courts have jurisdiction (H4)

ARBITRATION - Arbitrator - Duty of - As it does not include running the company - State High Court has jurisdiction to appoint an arbitrator (H5)

FACTS

Before the Lagos State High Court, the Respondent/Claimant brought an application under Section 7(2)(b) of the Arbitration and Conciliation Act Cap 19 LFN 1990 for the appointment of a Sole Arbitrator. This was pursuant to Clause 17 of the parties partnership agreement which states that "All dispute between the parties shall be referred to an Arbitrator". The appellant/respondent filed a notice of preliminary objection challenging the jurisdiction of the Court to entertain the matter. Appellant felt that the

partnership is a limited liability company and as such the Company and Allied Matters Act (CAMA) and the 1999 Constitution confers jurisdiction only on the Federal High Court. The learned trial Judge dismissed the preliminary objection and upheld the submission that the Court has jurisdiction. The appellant's appeal to the Court of Appeal was dismissed. He has further appealed to the Supreme Court.

ISSUE FOR DETERMINATION

“Whether the learned Justices of the Court of Appeal were right in holding that Section 251 of the 1999 Constitution which vests exclusive jurisdiction on the Federal High Court is not applicable to this case?”

HELD (Unanimously dismissing the appeal per **KATSINA-ALU JSC**)

Incorporation - Proof of

1. The question is, was the firm duly incorporated under CAM A? The contention of the appellant that the Partnership Agreement crystallized into a limited liability company without more is clearly not evidence of incorporation under CAM A. The best evidence of incorporation is the production of the certificate of incorporation. The appellant, in this case, has a duty to establish his claim that COMMERCE LORDS NIGERIA LIMITED was incorporated under CAMA thus assuming the status of a juristic person - See *Fawehinmi v. N.B.A. (No. 2)* (supra). The appellant failed to prove the incorporation by the production of the certificate of incorporation. This failure, no doubt, was fatal to the appellant's case - See *J. K. Randle v. Kwara Breweries Ltd.* (supra). I must add, in agreement with the submission of the respondent, that the addition of “Ltd” or “Plc” to the name of the firm COMMERCE LORDS NIGERIA LIMITED would not necessarily mean that it had been incorporated under CAMA. (p. 844 A)

Business name - Partnership relationship

2. Clearly, the registration of a business name, as was the case here, being distinct from the incorporation of a limited liability company, does not fall within the ambit of Section 3, Partnership Law of Lagos State. It means that the nature of the relationship between the appellant and the respondent

is still a partnership and therefore governed by the Partnership Agreement dated 7th November, 1999. (p. 844 D)

Constitutional law - Appointment of an Arbitrator

3. It is to be noted that the appointment of an arbitrator is not governed by or provided for in CAMA but by the Arbitration and Conciliation Act Cap. 19 Laws of the Federal Republic of Nigeria 1990. It will therefore be seen clearly that the appointment of an arbitrator falls outside the ambit of Section 251(1)(e) of 1999 Constitution which provides as follows:

“251(1) Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters:

(e) Arising from the operation of the CAMA or any other enactment replacing that Act or regulating the operation of companies incorporated under the CAMA.” (p. 844 F)

ARBITRATION - Jurisdiction

4. Section 57 of the Arbitration and Conciliation Act is the interpretation section. It defines the words “court” and “judge” to mean:

“Court” means the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court; and

“Judge” means a judge of the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court”

As it is clear by now the respondent’s claim before the court of trial sought the appointment of an arbitrator. I have no doubt in my mind that this is a matter governed by the Arbitration and Conciliation Act. By virtue of Section 57 thereof, which is the interpretation section, it is very plain to me that both the State High Court and the Federal High Court have jurisdiction to appoint an arbitrator. (p. 845 E)

Arbitrator - Duty of

5. It will be seen that the duty of an arbitrator chosen by agreement of the parties is to settle any dispute between the parties. A Receiver on the other hand is appointed to administer, run the company or property in question.

It is clear to me that the duty of the arbitrator appointed in the instant case was merely to settle the dispute between the appellant and the respondent. That duty clearly did not include the running of the company. The Court of Appeal rightly so held. In the light of the foregoing, the learned trial Judge of the Lagos High Court has the jurisdiction to appoint an arbitrator. (p. 846 B)

REPRESENTATION

Kunle Ogunba Esq., (with him, G. C. Duru and D. F. Efonkoma), for the Appellant.

Respondent absent and unrepresented.

CASES REFERRED TO

Fawehinmi v. N.B.A. (No. 2), (1989) 4 S.C. (Pt.I) 63; (1989) 2 NWLR (Pt. 105) 558 at 632

Bank of Baroda v. Iyalabani (2002) 7 S.C. (Pt. II) 21; (2002) Vol. 40 WRN (1-160) 13

J. K. Randle v. Kwara Breweries Ltd. (1986) 6 S.C. 1

ACB Plc v. Emostrate Ltd. (2002) 4 S.C. (Pt. II) 1; (2002) 8 NWLR 503

STATUTES REFERRED TO

Arbitration and Conciliation Act Cap. 19 Laws of the Federation of Nigeria 1990 ss. 7(2)(b), 57

Partnership Law, Laws of Lagos State s. 3

Constitution of the Federal Republic of Nigeria 1999 s. 251(1)(e), 272(1)

Companies and Allied Matters Act, Cap. 59, Laws of the Federation of Nigeria 1990

LEAD JUDGMENT BY KATSINA-ALU JSC

The respondent, Temitope Sanni, who was the claimant in the Lagos State High Court had on 28th March, 2000, brought an application pursuant to Section 7(2)(b) of the Arbitration and Conciliation Act, Cap.

19 Laws of the Federation of Nigeria 1990, for the appointment of a sole arbitrator pursuant to clause 17 of the Partnership Agreement dated 7th November, 1999, which is in the following terms:

“All disputes between the partners in relationship to any matter whatsoever touching the partnership affairs or the construction of this agreement whether before or after the determination of the partnership shall be referred to an arbitrator.” B

The appellant, Adeoye Magbagbeola, who was the respondent in that court filed a Notice of Preliminary Objection on 22nd May, 2000, challenging the jurisdiction of the High Court of Lagos State to entertain the matter on the following grounds: C

“(i) The originating summons is to appoint an arbitrator over a dispute purportedly concerning the running of COMMERCE LORDS NIGERIA LTD. A company incorporated under the Companies and Allied Matters Act, 1990. D

(ii) This Honourable Court has no jurisdiction to entertain matters touching and concerning the running and sharing of profits of COMPANIES incorporated under the Companies and Allied Matters Act, 1990.” E

On the 14th of July, 2000, the learned trial Judge, in a considered ruling dismissed the preliminary objection and upheld the contention of the claimant/respondent that the court has jurisdiction to hear and determine the claim. In the course of his ruling, the learned trial Judge held as follows: F

“In this preliminary objection arguments of counsel call for the examination of the provisions of Sections 251(1)(e) and 272(1) of the Constitution of the Federal Republic of Nigeria, 1999. G

In the substantive suit, the applicant seeks by way of originating summons an order of this court that some fit and proper person be appointed to act as sole Arbitrator pursuant to Section 17 of the agreement between the parties dated 7/11/99. H

.....
Now Section 251 (e) of the Constitution states that -

‘Notwithstanding anything to the contrary contained in this Constitution and in addition to such other jurisdiction as may be conferred

upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil courses (sic) or matters arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that Act or regulating the operations of companies incorporated under the Companies and Allied Matters Act.

While Section 272(1) *supra* states that:-

‘Subject to the provisions of Section 252 and other provisions of the Constitution the High Court of a State shall have jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue..... there is nothing in the above or any legislation which says that the Federal High Court has exclusive jurisdiction to appoint an Arbitrator. The substantive claim seeks the appointment of Arbitrator and a State High Court or Federal High Court has jurisdiction to appoint an Arbitrator; see Arbitration and Conciliation Act. Cap. 19 Laws of the Federation of Nigeria, 1990, particularly its interpretation section.

Section 57 with reference to the appointment of an Arbitrator, “court” means the High Court of a State or the Federal High Court while “Judge” means Judge of the High Court of a State or a Judge of the Federal High Court.

In the light of the above this court has jurisdiction to hear and determine the applicant’s claim. Accordingly, the preliminary objection is hereby dismissed.”

The appellant’s appeal to the Court of Appeal was dismissed. In the course of its judgment, the Court of Appeal held:

“I stop here and say that the appointment of a receiver is a prelude to putting an end to the life of the incorporated body. That involves the running of the company and under CAMA the court that is seised with the jurisdictional power to entertain the suit is Federal High Court. In the instant case, it is determination of what the right of each of the two partners (the appellant and respondent) in the partnership business that has led to the bringing of the originating summons. Put simply, the dispute

is inter se the appellant and the respondent. It entails the determination of what each is entitled to in the business of Commerce Lords Nigeria Ltd., of which both are partners. Strictly speaking, it does not relate to the running of Commerce Lords Nigeria Ltd., so as to bring it under the watchful eyes of CAMA. I have had a deep study of the provisions of Sections 251(1) and 272(1) of the Constitution of the Federal Republic, 1999, cited by the appellant, it is my view that they are not applicable to this case. The breach complained of is as to the partnership agreement; the sharing of the proceeds therefrom.”

The appellant has further appealed to this court upon three grounds of appeal.

Based upon the grounds of appeal filed, the appellant has submitted three issues for determination in this appeal. These are:

“(a) Whether the learned Justices of the Court of Appeal would not have come to a different decision/conclusion had they considered the import and intendments of Section 3 of the Partnership Law, Laws of Lagos State, 1994?”

(b) Whether the learned Justices of the Court of Appeal were right to hold that there is nothing in the provision of Sections 251(e) and 272(i) of the 1999 Constitution ousting the jurisdiction of the Lagos High Court?

(c) Whether the learned Justices of the Court of Appeal were right to hold that ‘There is nothing in the Arbitration and Conciliation Act which puts beyond the High Court of Lagos State the entertainment of an originating summons praying for the appointment of an Arbitrator in the circumstances of this case?’”

For his part, the respondent submitted a lone issue for determination which reads:

“Whether the learned Justices of the Court of Appeal were right in holding that Section 251 of the 1999 Constitution which vests exclusive jurisdiction on the Federal High Court is not applicable to this case?”

The lone issue submitted by the respondent, in my view, encompasses the appellant’s three issues. I shall therefore treat the appeal on the basis of the respondent’s solitary issue.

The appellant's argument in this appeal is hinged on Section 3 of the Partnership Law, Laws of Lagos State, which provides thus:

"3(1) Partnership is the relationship which subsists between persons carrying on a business in common with a view to profit.

B (2) Notwithstanding the foregoing provision the relationship between members of any company or association which is -

(a) registered as a company under the Companies and Allied Matters Act or any other written law for the time being in force and relating to the incorporation of Trading Companies and other Associations; or

C (b) formed or incorporated by or in pursuance of any other written Law or any Act of Parliament or letters patent or Royal Charter is not a partnership within the meaning of this Law."

It was the contention of the appellant that once a partnership becomes registered as a limited liability company, it ceases to be a partnership by the operation of Law. This contention was based on the provision of clause 3 of the Partnership Agreement between the parties dated 7th November, 1999 which provides that:

E "3. The name of the firm shall be COMMERCE LORDS NIGERIA LIMITED which shall be registered pursuant to the Companies and Allied Matters Act, Cap. 59, Laws of the Federation of Nigeria 1990."

For the respondent, it was said that the appellant wrongly assumed, based on clause 3 of the Partnership Agreement, that a limited liability company had been incorporated. It was the submission of the respondent that it is settled law that the corporate status of a body is established by the production of its certificate of incorporation. It was further submitted that the addition of "*Ltd*" or "*Plc*" to the name of a company would not necessarily mean that such a company has been incorporated under the Companies and Allied Matters Act. Learned counsel for the respondent relied on the following authorities in support of his submissions - *Fawehinmi v. N.B.A.* (No. 2), (1989) 4 S.C. (Pt. I) 63; (1989) 2 NWLR (Pt. 105) 558 at 632; *Bank of Baroda v. Iyalabani* (2002) 7 S.C. (Pt. II) 21; (2002) Vol. 40 WRN (1-160) 13; *J. K. Randle v. Kwara Breweries Ltd.* (1986) 6 S.C. 1; *ACB Plc v. Emostrate Ltd.* (2002) 4 S.C. (Pt. II) 1; (2002) 8 NWLR 503.

It was the respondent's further contention that the appellant did not adduced any evidence in the court of trial showing the existence of a company duly incorporated under Part A of the Companies and Allied Matters Act. It was pointed out that what was done in the present case was the registration of a business name under Part B of the Companies and Allied Matters Act. B

It was finally submitted that the appointment of an arbitrator is not governed by or provided for in CAMA, Cap. 59 Laws of the Federation of Nigeria, 1990. It was said that in the circumstances, the appointment of an arbitrator falls outside the ambit of Section 251(1)(e) of the 1999 Constitution. C

The Notice of Preliminary Objection to the jurisdiction of the Lagos State High Court lists two grounds. These are:

(i) The originating summons is to appoint an Arbitrator over a dispute purportedly concerning the running of COMMERCE LORDS NIGERIA LTD., a company incorporated under the Companies and Allied Matters Act, 1990. D

(ii) This Honourable Court has no jurisdiction to entertain matters touching and concerning the running and sharing of profits of COMPANIES incorporated under the Companies and Allied Matters, Act, 1990. E

The respondent on the other hand maintained that the matter did not come under Section 251(1)(e) of the 1999 Constitution. In other words, that COMMERCE LORDS NIGERIA LTD., was not a company incorporated under the Companies and Allied Matters Act, 1990. Rather, it was a partnership registered as a business name. F

The first question to be resolved is whether the firm of COMMERCE LORDS NIGERIA LIMITED was registered as a limited liability company under Part A of the Companies and Allied Matters Act. The contention of the appellant is that by virtue of Section 3 of the Partnership Law, Laws of Lagos State which I have earlier on in this judgment reproduced, the Partnership Agreement crystallized into a limited liability company to wit: COMMERCE LORDS NIGERIA LIMITED. Section 3 provides that *"the name of the firm shall be COMMERCE LORDS NIGERIA LIMITED which shall be registered pursuant to Companies and Allied Matters Act,* G H

Cap. 59, *Laws of the Federation of Nigeria 1990*.” **The question is, was the firm duly incorporated under CAM A? The contention of the appellant that the Partnership Agreement crystallized into a limited liability company without more is clearly not evidence of incorporation under CAM A. The best evidence of incorporation is the production of the certificate of incorporation. The appellant, in this case, has a duty to establish his claim that COMMERCE LORDS NIGERIA LIMITED was incorporated under CAMA thus assuming the status of a juristic person - See Fawehinmi v. N.B.A. (No. 2) (supra). The appellant failed to prove the incorporation by the production of the certificate of incorporation. This failure, no doubt, was fatal to the appellant’s case - See J. K. Ran die v. Kwara Breweries Ltd. (supra). I must add, in agreement with the submission of the respondent, that the addition of “Ltd” or “Plc” to the name of the firm COMMERCE LORDS NIGERIA LIMITED would not necessarily mean that it had been incorporated under CAMA.**

Clearly, the registration of a business name, as was the case here, being distinct from the incorporation of a limited liability company, does not fall within the ambit of Section 3, Partnership Law of Lagos State. It means that the nature of the relationship between the appellant and the respondent is still a partnership and therefore governed by the Partnership Agreement dated 7th November, 1999.

It is to be noted that the appointment of an arbitrator is not governed by or provided for in CAMA but by the Arbitration and Conciliation Act Cap. 19 Laws of the Federal Republic of Nigeria 1990. It will therefore be seen clearly that the appointment of an arbitrator falls outside the ambit of Section 251(1)(e) of 1999 Constitution which provides as follows:

“251(1) Notwithstanding anything to the contrary contained in this constitution and in addition to such other jurisdiction as may be conferred upon it by an Act of the National Assembly, the Federal High Court shall have and exercise jurisdiction to the exclusion of any other court in civil causes and matters:

(e) Arising from the operation of the CAMA or any other enactment replacing that Act or regulating the operation of companies

Now, Clause 17 of the Partnership Agreement, at page 8 of the Record reads thus:

“All disputes between the parties in relation to any matter whatsoever touching the partnership affairs or the construction of this Agreement whether before or after the determination of the Partnership shall be referred to an arbitrator.” B

As I have already stated, the appointment of an arbitrator is governed by the Arbitration and Conciliation Act Section 7(2)(b) thereof provides as follows: C

“(2) Where no procedure is specified under sub-section (12) of this section -

(b) In the case of an Arbitration with one Arbitrator where the parties fail to agree on the Arbitrator, the appointment shall be made by the court on the application of any party to the arbitration agreement made within thirty days of such disagreement.” D

Section 57 of the Arbitration and Conciliation Act is the interpretation section. It defines the words “court” and “judge” to mean: E

“Court” means the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court; and

“Judge” means a judge of the High Court of a State, the High Court of the Federal Capital Territory, Abuja or the Federal High Court” F

As it is clear by now the respondent’s claim before the court of trial sought the appointment of an arbitrator. I have no doubt in my mind that this is a matter governed by the Arbitration and Conciliation Act. By virtue of Section 57 thereof, which is the interpretation section, it is very plain to me that both the State High Court and the Federal High Court have jurisdiction to appoint an arbitrator. G

One last point. Webster’s New Twentieth Dictionary unabridged Second Edition defines “arbitrator” and “Receiver” to mean:

“Arbitrator” A person who is chosen by agreement of parties in a controversy, to settle the dispute or one of two or more persons so chosen. H

“Receiver” in law is a person appointed by a court to administer or hold in trust property in bankruptcy or in a law suit.

It will be seen that the duty of an arbitrator chosen by agreement

of the parties is to settle any dispute between the parties. A Receiver on the other hand is appointed to administer, run the company or property in question.

It is clear to me that the duty of the arbitrator appointed in the instant case was merely to settle the dispute between the appellant and the respondent. That duty clearly did not include the running of the company. The Court of Appeal rightly so held. In the light of the foregoing, the learned trial Judge of the Lagos High Court has the jurisdiction to appoint an arbitrator.

In the result, this appeal is without merit. Accordingly, I dismiss it and affirm the decision of the Court of Appeal. There shall be costs of N10,000.00 in favour of the respondent, Temitope Sanni.

D

UWAIS CJN

I have had the advantage of reading in draft the judgment read by my learned brother, Katsina-Alu, JSC. I entirely agree with his reasoning and conclusion.

Accordingly, I too hold that there is no merit in the appeal and it is hereby dismissed with N10,000.00 costs to the respondent against the appellant.

F

BELGORE JSC

G I have read in draft the judgment of my learned brother, Katsina-Alu, JSC., which is based on the unanimous opinion at conference after hearing. I agree that this appeal has no merit and I also dismiss it for the full reasons in the said judgment. I award N10,000.00 as costs in favour of respondent against the appellant.

H

KUTIGI JSC

I read in advance the judgment just delivered by my learned brother, Katsina-Alu, JSC. I agree with him that the appeal has no merit whatsoever. It is hereby dismissed with costs as assessed.

B

MUSDAPHER JSC

I have had the honour to read before now the judgment just delivered by my Lord, A. I. Katsina-Alu, JSC., with which I entirely agree and for the same reasons so eloquently set out in the aforesaid judgment, which I respectfully adopt as mine, I too, dismiss this appeal as unmeritorious. I also abide by the order for costs proposed in the lead judgment.

D

E

F

G

H