

SUPREME COURT OF NIGERIA
9TH JULY, 2010, SC. 204/2005
CORAM:- A. M. MUKHTAR, M. MOHAMMED,
I. F. OGBUAGU, C. M. CHUKWUMA-ENEH,
O. O. ADEKEYE, JJSC

BERNARD AMASIKE APPELLANT
AND

1. THE REGISTRAR GENERAL

CORPORATE AFFAIRS COMMISSION RESPONDENTS

2. CORPORATE AFFAIRS COMMISSION

APPEALS - Issues - Issue of mandamus - Whether raised suo motu - Contrary to allegation of appellants - It was at the front burner - During the proceedings at High Court - As well as before Court of Appeal (H1)

JUDGMENTS - Appeals - Basis of dismissal - Whether commencement procedure - Court of Appeal did not dismiss appellant's appeal - Solely because it was brought by way of originating summons (H2)

JUDGMENTS - Mistakes - Effect on appeal - It does not result in reversal - Unless it is fatal - In the sense that it occasioned substantial miscarriage of justice (H3)

ACTIONS - Commencement procedure - Originating summons - Propriety - It is proper where the principal question is question of law - Or there is no substantial dispute of fact - Neither of which is the case herein (H4)

JUDGMENTS - Use of words - Liberty of judges - Extent - They are at liberty to use any words they like - Provided they do not go outside the issue before them (H5)

COMPANY LAW - Registration - Part C of CAMA - Requirements - An application for registration under part C - Must comply with the provisions of part C - Which the instant applications failed to do (H6)

COMPANY LAW - Reservation of names - S. 32 of CAMA - Nature

of powers of CAC - The provision does not connote automatic reservation - But vests discretionary powers on CAC - To accept or reject the name applied for (H7)

FACTS

The plaintiff/appellant sued defendants/respondents by way of originating summons before the Federal High Court, Abuja, challenging the rejection of his various applications for name availability under part C of the Companies and Allied Matters Act 1990 (CAMA). Appellant's case was that he had filed three successive applications for the names "Institute of Corporate Governance," "Bureau of Corporate Governance" and "Institute of Competition Policy & Corporate Governance" respectively. But each application was rejected by merely marking on it "not registrable," without giving the reason for the decision that it was not registrable despite appellant's repeated demand for such reason. The respondents however posited that the 2nd respondent had earlier informed appellant on why the names were not registrable.

Among the reliefs claimed by appellant as plaintiff was one for an injunction restraining respondents from rejecting the said names and another for an order directing respondents to immediately process and approve the names as applied for. After hearing, the trial court dismissed appellant's action as having no merit. The trial court held that the names proposed by appellant were offensive and contrary to public policy and so their rejection was justified. Aggrieved, appellant appealed to Court of Appeal which court dismissed the appeal. However, in dismissing the appeal the court had erroneously cited the trial court as having dismissed the appellant's action on the ground that it was brought by way of originating summons instead of by way of application for mandamus. Dissatisfied, appellant has brought this appeal against the judgment of Court of Appeal contending that the court raised issues *suo motu* and relied on them without hearing the parties. Appellant also challenges trial court's use of the words "offensive" and "contrary to public policy" as amounting to issues raised and resolved *suo motu*.

ISSUES FOR DETERMINATION

1. *Whether the Lower Court was right to have raised, considered and relied on new issues that were neither contained nor*

distilled from the grounds of appeal and on that basis dismissed the appeal.

2. Whether the lower court was right in dismissing the appeal on the basis that the substantive suit was commenced by originating summons instead of judicial review.

3. Whether the lower court was right in not reversing the decision of the trial court on the ground that the trial court, suo motu, raised and considered material issues in dismissing the substantive suit without affording the appellant the opportunity of being heard.

4. Whether the lower court was right in upholding the decision of the trial court that the respondents were justified in their decision that the corporate names proposed by the appellant are unregistrable by virtue of the provisions of the companies and Allied Matters Act, 1990.

HELD (Dismissing the appeal by a majority decision per **MUKHTAR JSC**, Chukwuma-Eneh JSC dissenting)

Issue of mandamus - Whether raised suo motu

1. The pertinent question that begs for answer is, was the issue of mandamus raised suo motu by the learned court below, in view of all the materials before it, which I have reproduced supra? I think not, for a careful perusal of the whole proceedings from the High Court of Justice to the Court of Appeal reveal that it was an issue that was in the front burner that required to be resolved, and there was no way it could have been resolved without reference to the procedure through which the litigation was instituted. (p. 2147 G)

Basis of dismissal - Whether commencement procedure

2. I refuse to agree that the lower court dismissed the appeal on the basis of this finding upon which the appellant is making heavy weather. It seems what the learned counsel is wont to do is to shut their eyes to the painstaking treatment of the argument proffered, the application of the relevant laws and findings on them, and to blindfold this court on the other basis on which the lower court dismissed the appeal. It definitely did not dismiss the appeal solely on the basis that it was brought by way of originating summons.

Assuming that it did, which I do not agree that it did, could that singular aspect of the judgment be correctly said to have occasioned

miscarriage of justice? I think not. (p. 2148 A/C)

JUDGMENTS - Mistakes - Effect on appeal

3. It is not every error or mistake that results in a reversal of a judgment and the appellate court must be wary of this position of the law.

B In the case of Medical and Dental Practitioners Disciplinary Tribunal v. Dr. John Emewulu Nicholas Okonkwo (2001) 7 NWLR page 206, Ayoola JSC dealt with the subject of slip, mistake, and error in judgments, citing some authorities when he posited thus:-

C *In Ajuwon v. Akanni (1993) 9 NWLR (Part 316) 182 at ratio 18 this court held inter alia that it is not every slip committed by a Judge in his judgment that will amount to a misdirection which will result in the appeal being allowed. The misdirection, to be fatal, must have occasioned a substantial miscarriage of justice.* (p. 2148 D/G)

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Originating summons - Propriety

4. The learned counsel for the appellant took the argument to a further height, by referring to rules of the Federal High Court, specifically Order 2, Rule 2 applicable then, which states thus:-

E *“Proceedings may be begun by originating summons where:*

(a) the sole or principal question in issue is, or is likely to be, one of the construction of a written law or of any instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or

F

(b) there is unlikely, to be any substantial dispute of fact”.

Perusing the questions sought to be determined, the reliefs sought and the provisions governing the commencement of the suit at hand, I am not convinced that it was a suit that deserved to be initiated vide G that procedure. In the first place, it does not meet the requirement of 2 (a) supra, as the sole or principal question in issue was not likely to be one of construction of any written law simpliciter, it has with it reliefs that are outside the purport of the said provision (a).

H I have already reproduced the salient depositions in the counter-affidavit earlier, and as can be seen from the depositions there is substantial dispute of fact which negates the provision of the said sub section (b) supra, that will necessitate the adducing of evidence in proof. (pp. 2149 C/2150 A/2151 B)

Use of words - Liberty of judges - Extent

5. Another grouse of the appellant is the use of the words offensive to describe the names and that they are contrary to public policy. The latter forms part of the argument of the learned counsel for the appellant in his address, and it has been reproduced above. As for the use of the word ‘offensive’, surely, a trial judge is at liberty to use whatever word he or she wishes to use, as long as he or she does not go outside the ambit of an issue formulated before him, and in this case the learned trial judge confined herself to the issue before her. A learned judge is not restricted or put in a straight jacket on the words or terms to use in order to explore the avenue to arrive at a just determination of a matter in controversy. Further more a judgment will not be reversed merely because certain words have been used by a learned judge or justice. (p. 2154 E)

Registration - Part C of CAMA - Requirements

6. It is clear from the above reproduced depositions and the provisions of the laws (when both are read together) that the appellant applied under part C, but the purport or objective of the association as set out in paragraph (i) supra does not correlate with the purport in section 673 of CAMA supra. The correct position therefore is that if the appellant was applying for registration under part ‘C’ then the provision in part ‘C’ has to be complied with. One must also not overlook the fact that the proposed corporate body’s name is contained in the forms exhibited to the supporting affidavit, even though the words ‘Incorporated Trustees’ was not added to the proposed names, thus the provision in 674(1)(a) supra was not complied with. (p. 2157 G)

S. 32 of CAMA - Nature of powers of CAC

7. I will now go to section 32 of CAMA which the learned counsel for the appellant emphasized he adhered to and complied with. The said section 32 provides the following:-

“32(1) The Commission may, on written application and on payment of the prescribed fee, reserve a name pending registration of a company or a change of name by a company”.

Agreed that the documents exhibited talks about reservation and availability of names. That does not however debar the respon-

dents from rejecting the proposed names as they did. The provision does not connote automatic reservation of proposed names by the respondent. It vests a discretionary power on the commission, and the power being discretionary can be exercised by the commission either in favour of the appellant or against him, as it has actually
B done in this case. (p. 2158 B)

NOTABLE POINTS OF INTEREST

OGBUAGU JSC

C *1. Once a decision is right wrongness of reason is immaterial*
It is now settled that mistake or error in a Judgment, is immaterial. What an appeal has to decide, is whether the final decision of the court below was/is right and not what its reasons were. The judgment of a court once correct, is not liable to reversal merely because it was
D anchored on a wrong reason.

In other words, it is not every mistake or error in a judgment that necessarily determines an appeal in favour of an appellant or automatically, results in the appeal being allowed. It is only when the error is so substantial (and I see none from the Records) that it has
E occasioned a miscarriage of justice (and I see none from the Records), that an Appellate Court or this Court, is bound to interfere.
(p. 2162 D)

F *2. Specific procedures govern registration under various parts of CAMA*

There are, as found as a fact by the trial court at page 41 of the Records, that there are specific, peculiar and distinct procedure for registration under the Parts of CAMA - (i.e. Corporate Affairs Matters
G Act). They are as follows:

- (a) Part A - Companies Limited by Shares.
- (b) Part B - Business names.
- (c) Part C - Incorporated Trustees.
- (d) Part D - Merely a citation part not an operational Part.

H Under Part C, the provisions of Sections 673 (1) and 674 (1) (a) of CAMA, must be complied with. Thus, a party applying under Part C, must be made up of one or more Trustees appointed by a community of persons bound together by custom, religion, kinship or nationality. Such an application also, must be made by an associa-

tion of persons established for any religious, educational, literary, scientific, social development, cultural, charitable purpose. Section 673 (1), refers to such a body, as “the Association” (p. 2163 A)

CHUKWUMA-ENEH JSC (DISSENTING)

3. Competence of originating summons not before Court of Appeal ^B

The main bone of contention in this matter giving rise to issues one and two which being interrelated have been taken together, is encapsulated in the pronouncement of Peter-Odili JCA holding at p. 159 lines 7- 9 of the record thus:-

“In the instant case, the trial court was right in striking out the appellant’s case after realizing that it ought not to have been brought by way of originating summons.” (underlining supplied *[sic]*). ^C

I must say at once that there is no basis for so holding. Having perused the record in this case there is no where in the record the trial court has made such pronouncements or findings in that regard. ^D With respect, it looks like a bolt from the blues as holding that the instant originating summons, in the circumstance as otherwise incompetent has in any case to be well founded as flowing logically from the cases presented by the parties. (p. 2176 H) ^E

4. Mandamus is a residuary remedy

There is no doubt that from the respective effects of invoking of mandamus or mandatory injunction that both injunctive reliefs have some common purpose to serve, that is, for instance, directing a donee of power where he has improperly declined to exercise his absolute discretion in a situation vis-a-vis a party’s legal rights; in such cases the court has to compel the donee by mandamus to act according to law. The same end is achievable by mandatory injunction. Nonetheless, mandamus as a coercive order although prompt and precise is a residuary remedy in the sense that it is a discretionary relief and has to be sort *(sic sought)* for and indeed granted where there is no other efficient remedy to enforce a legal right. (p. 2180 B) ^F

5. Originating summons is not inappropriate

Seeking redress by declaratory reliefs and mandatory injunction since the decision in *Dyson v. Attorney-General* (1911) K.B. 410 has become easily preferred in enforcing legal rights particularly as the plaintiff ^H

has not got to engage in any preliminary enquiry (i.e. technicalities) as in the case of invoking an order of mandamus. Also this is so since the inception of Order 47 of the Federal High Court Rules specifically recognizing the remedy by way of declarations and injunctions.

B Contemporary judicial opinion in this country prefers declaratory actions and injunctions as they are free from technicalities as against invoking an order of mandamus.

C In the light of the above reasons I cannot see that attacking the mode/method by which this action has been commenced i.e. by originating summons and thus for claiming therein a number of declaratory and two injunctive reliefs can be justified, having no basis. (pp. 2180 F/H/2181 B)

6. Respondents have waived their right to complain

D The respondents without equivocation have entered appearance in the matter as well as filed a counter-affidavit in challenge of the merits of the plaintiff's case and thus have taken steps in the proceedings with the alleged defects of having initiated the action by incompetent process, as they have alleged, if I may repeat, staring them in the face. E

It is settled law that a breach of a rule of practice can only render a proceeding irregular and not a nullity. Such irregular proceedings can only be set aside if the party affected acted timeously and before taking fresh steps since discovering the irregularity. F

Even where an action has been commenced by a procedure which is irregular; the defendant who has taken fresh steps since becoming aware of the irregularity in the proceedings without raising a preliminary objection to the irregularity cannot be heard subsequently to seek to set aside the action on grounds of irregularity having acquiesced in it by waiver. (p. 2182 D/G) G

7. Originating Summons - Parties are bound by their affidavits

H The appellant has rightly in my view contended that the respondents have not averred as to any facts in their affidavit to sustain the trial court's findings on the provisions of Section 30 (1) (c) , 30(2) (a) and Section 32 of CAMA that is, as to the proposed corporate names and so that they go to no issue. Just as in an action conducted by pleadings a party is not allowed to lead evidence outside his pleadings so

also a party in an action as here cannot go outside the facts and evidence in a party's affidavit which serves both as pleadings and affidavit and so "affidavit/pleading". By the nature and extent of originating summons the supporting affidavit performs the dual functions of affidavit and pleadings. (p. 2184 A)

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8. Appellant was denied fair hearing by the lower courts

I can find no evidence to support the findings of the two lower courts on the foregoing questions. Meaning that the trial court having raised this issue suo motu and decided the same, respectfully, is in grave contempt of the principle of giving the appellant the opportunity of having a say on the crucial matter. Besides, this is a fundamental right. The principle has been expounded in *Ajao v. Ashiru* (supra). I also have reached the same conclusion with regard to Section 32 of CAMA, that is to say that the appellant has not been heard on that question. It must be recalled that so far as per the record the plaintiff has only filed and paid as per the forms for "name availability" for the proposed Companies. The appellant, to my mind has established his case of denial of fair hearing. (p. 2185 D)

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9. Respondents had the burden of proving non-registrability

The other crucial point is to determine on whom lies the onus of proof on the question of the proposed corporate names being misleading, offensive and against public policy as well as tending to mislead the public as to their activities and having links with governments and/or their agencies. Ordinarily, the burden of proof lies on the party who asserts a fact as per Sections 135, 137, 138(2) and 139 of the Evidence Act. On the background of the facts of this case, the burden of proof on the questions raised in regard to Section 30, 32, 673, and 674 of CAMA lies on the respondents as they are to be seen as asserting those facts; and so the party that would otherwise lose in the event of no evidence having been led on the particular issue. (p. 2186 E)

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10. S. 32 of CAMA applies to all parts of CAMA

A careful reading of Section 32 of CAMA shows that it is applicable to all parts of CAMA that is to say as a threshold process not only to the registration of Companies limited by shares under Part A but also

the registration of Business Names under Part B and to a body or Associations of Incorporated Trustees under Part C. A similar provision under the registration of Trade Marks has been captured by Section 17(1) and 22(1) of Trade Marks Act Cap. T.13 of Laws of the Federation of Nigeria and they apply to all parts of that Act. The two lower courts have therefore wrongly excluded the application of Section 32 of CAMA to Part C of CAMA on the basis again, of misconceiving the principle of statutory interpretation governing enactments divided into parts as in CAMA. (p. 2190 F)

C *11. Registrar-General has to act judicially*

As regards the provisions of Section 30(c) and (d) as well as 677 of CAMA and other similar provisions of CAMA dealing with donating power to the Registrar-General to act in a particular manner as in the case of doing so “in the opinion of the Commission” and “if the Commission is satisfied” the Registrar-General has to act judicially; in other words, acting in accordance with rules of Natural Justice. And it is now settled since the decision in *Ridge v. Baldwin* (1963) 2 AER 661 and followed with approval in the case of *Olatunbosun v. NISER* (1988) 1 NSCC (Vol.19) (Pt.17) 1525 per Oputa JSC that any person exercising statutory or ministerial acts according to his opinion and similar phrases for example, “if it appears to him” or “if he is satisfied” is subject to the rules of natural justice. (p. 2192 F)

F *12. Discretionary power is subject to review by courts*

So far it is clear that in the event of any misuse of the discretionary power donated to the Registrar-General, the courts have the jurisdiction to review and reverse the same in the interest of justice. Aniagolu JSC on this subject has put that point beyond doubt by saying that,
 G “..... *The discretionary power of a Minister is clearly within the jurisdiction of the courts, whether the minister is to exercise the discretion or refuse to exercise his discretion or misused the discretionary power, and whether he gave reasons for the exercise of his power, or failed to give reasons for the exercise, it being a principle established by the courts that once a prima facie misuse of power has been established it would be open to the courts to infer that the minister acted unlawfully even if he declined to supply a justification at all or supplied a justification which is untenable in law. The prin-*

ciple basic in all common law countries including Nigeria, is that under the universally accepted rule of law, the Minister must act fairly and not to the prejudice of the citizen.” (p. 2193 F)

ADEKEYE JSC

13. *Statutes to be given their simple meaning when unambiguous* B
This appeal borders on the interpretation of the relevant sections of the Companies and Allied Matters Act (CAMA). It must be called to mind that statutes are to be given their simple, clear and unambiguous meaning. The court must in the discharge of its duties of interpretation avoid going beyond the meaning and intendment of the C
legislators. The legislature is to be presumed not to have put a special meaning on words in the statute (p. 2202 A)

REPRESENTATION

Mr. Okey Uzoho, with Susan Okorie, & Jude Okpe for the Appellant. D
Mr. K.C. Nwifo, with Moses Adagunsu, & Miss Anuli I. Onwuteaka for the Respondents.

CASES REFERRED TO

Amaroti v. Agbeke (1991) 6 SCNJ. 54 @ 64
Osugwu v. Emezi (1998) 12 NWLR (Pt.579) 64
Ezeoke v. Nwogbo (1988) 1 NWLR (part 72) 616
Igbino v. Igbino (2003) 2 NWLR (Pt.803) 39
Adeleke v. Asani (2002) 10 NWLR (Pt.1) 498 at 492 F
Adegoke v. Adibi 1992 5 NWLR part 242 page 410
Nwadike v. Ibekwe 1987 4 NWLR part 67 page 718
Fawehinmi v. I.G.P 2002 7 NWLR part 767 page 606
Ejowhomu v. Edoketer Ltd 1986 5 NWLR part 39 page 1 G
Oshodi v. Eyifunmi (2003) 13 NWLR (Pt.684) 298 at 352

STATUTE & RULES REFERRED TO

Companies and Allied Matters Act, 1990 Cap 59, L.F.N., 1990, ss. H
30, 32, 673, 674, 677 and 679
Federal High Court Rules, O. 47 and O. 2 r. 2

BOOK REFERRED TO

Blacks Law Dictionary, Seventh Edn., page 973

LEAD JUDGMENT BY MUKHTAR JSC

This is an appeal against the decision of the Court of Appeal, Abuja Division, which affirmed the decision of the Federal High Court, Abuja. The plaintiff/applicant who is now the appellant in the appeal
 B before this court initiated the action by way of Originating Summons seeking the following issues to be resolved:-

“1. *Whether having regard to Part C of the Companies and Allied Matters Act 1990, it was proper for the defendants to reject as*
 C *“Not Registrable” the following names proposed by the plaintiffs, to wit: “INSTITUTE OF CORPORATE GOVERNANCE,” “BUREAU OF CORPORATE GOVERNANCE” and/or “INSTITUTE OF COMPETITION POLICY & CORPORATE GOVERNANCE”.*

2. *Whether the defendants have a discretion to reject the*
 D *Plaintiff’s application for ‘name availability’ applied for by the plaintiff and if the answer is in the affirmative, whether in relation to the rejection of the corporate names proposed by the plaintiff, the defendants’ discretion was exercised judicially and/or judiciously.*

3. *Whether the rejection by the defendants of the Plaintiff’s*
 E *application for “name availability” was proper and in accordance with the law.*

4. *Whether the defendants response in rejecting the “name availability” of the applicant was vague, ambiguous and/or imprecise, to wit: “Not Registrable” and if the answer is in the affirmative,*
 F *whether the defendants are justified to give such vague responses.*

5. *Whether under Part C of the Companies and Allied Matters Act 1990, the names “INSTITUTE” and/or “BUREAU” are prohibited as a matter of law and if the answer is in the negative*
 G *whether the defendants were justified in refusing the names as “Not Registrable”.*

6. *Whether the defendants can as a matter of corporate policy reject the proposed corporate names embodying “Institute” and/or “Bureau” and if the answer is in the negative, whether the defendants are justified under the circumstances of this case and based on*
 H *their corporate policy to reject the corporate names proposed by the plaintiff.”*

Thereafter, the plaintiff sought the following reliefs:-

“(i) *A declaration that the defendants’ rejection of the plaintiff’s*

proposed corporate name - "Institute of Corporate Governance", by designating same as "Not Registrable" under Part C of CAMA is improper, ultra vires and not in accordance with CAMA provisions.

(ii) A declaration that the defendants' rejection of the plaintiff's proposed corporate name - "Bureau of Corporate Governance" by designating same as "Not Registrable" under Part C of CAMA is improper, ultra vires and not in accordance with CAMA provisions. B

(iii) A declaration that the defendants' rejection of the plaintiff's proposed corporate name - "Institute of Competition Policy & Corporate Governance" by designating same as "Not Registrable" under Part C of CAMA is improper, ultra vires and not in accordance with CAMA provisions. C

(iv) A declaration that the defendants' exercise of its discretion by rejection of the plaintiff's proposed corporate names, to wit: "INSTITUTE OF CORPORATE GOVERNANCE" "BUREAU OF CORPORATE GOVERNANCE" and/or INSTITUTE OF COMPETITION POLICY & CORPORATE GOVERNANCE" is invalid in that the said discretion was not judiciously and/or judicially exercised.

(v) A declaration that the rejection by the defendants of the plaintiff's applications for "name availability" with respect to the proposed corporate names, was improper and not in accordance with the provisions of CAMA 1990. E

(vi) A declaration that the defendants' response in rejecting the Plaintiff's application for "name availability" by making same "Not Registrable" was vague and ambiguous and thus an abuse of discretion. F

(vii) A declaration that the names "INSTITUTE" and/or "BUREAU" are not prohibited names under the Act and that the defendants were not justified in refusing same as "Not Registrable". G

(viii) An order of perpetual injunction restraining the defendants from rejecting the plaintiff's proposed corporate names, to wit: "INSTITUTE OF CORPORATE GOVERNANCE" "BUREAU OF CORPORATE GOVERNANCE" and/or "INSTITUTE OF COMPETITION POLICY & CORPORATE GOVERNANCE". H

(ix) An order directing the defendants to immediately process and approve the names as available and registrable under Part C and to proceed to register and incorporate the same, to wit: "INSTITUTE OF CORPORATE GOVERNANCE," "BUREAU OF CORPO-

RATE GOVERNANCE” and/or “INSTITUTE OF COMPETITION POLICY & CORPORATE GOVERNANCE”.

The appellant had filed three successive applications for the approval of the above corporate names by the respondents, who processed the appellant’s applications for name availability and rejected them by merely writing ‘not registrable’. According to the appellant the respondents did not give grounds for their decision that the proposed names were not registrable, in spite of several demands by the appellant. Consequent upon this and the dissatisfaction of the appellant, he instituted this suit by way of Originating Summons. The respondents however posited that the 2nd respondent did earlier inform the appellant on the types of organizations that are registrable.

An affidavit in support of the originating summons was sworn to by a Mr. Promise Onyegbula, and a counter affidavit to counter the said affidavit was sworn to by one Mukasa Onoja. The supporting affidavit has attached therewith some documents. Both learned counsel addressed the court on the originating summons and the documents exhibited before the court, and at the end of her consideration of all materials before her, the then Chief Judge of the Federal High Court Ukeje J. dismissed the application and pronounced that the reliefs fail. Dissatisfied, the plaintiff appealed to the Court of Appeal, which found no merit in the appeal, and dismissed it. Again the plaintiff was dissatisfied and has appealed to this court on five grounds of appeal, from which he distilled four issues for determination in his brief of argument. As is the practice in this court both learned counsel exchanged briefs of argument, which were adopted at the hearing of the appeal. The four issues raised for determination in the appellant’s brief of argument are:-

1. *Whether the Lower Court was right to have raised, considered and relied on new issues that were neither contained nor distilled from the grounds of appeal and on that basis dismissed the appeal.*

2. *Whether the lower court was right in dismissing the appeal on the basis that the substantive suit was commenced by originating summons instead of judicial review.*

3. *Whether the lower court was right in not reversing the decision of the trial court on the ground that the trial court, suo motu, raised and considered material issues in dismissing the substantive*

suit without affording the appellant the opportunity of being heard.

4. *Whether the lower court was right in upholding the decision of the trial court that the respondents were justified in their decision that the corporate names proposed by the appellant are unregistrable by virtue of the provisions of the companies and Allied Matters Act, 1990.* B

In their own brief of argument the respondents raised the following two issues:-

“1. Whether the lower court was right in affirming the decision of the trial court that the “names i.e. “INSTITUTE OF CORPORATE GOVERNANCE”, “BUREAU OF CORPORATE GOVERNANCE” and “INSTITUTE OF COMPETITIVE POLICY AND CORPORATE GOVERNANCE” were not registrable under Part C of the CAMA. C

2. Whether the lower court was right in holding that the trial judge did not raise any issue and rule on any issue suo motu which occasioned miscarriage of justice to the case of the Appellant.” D

I will adopt the issues formulated by the learned counsel for the appellant for the treatment of this appeal, commencing with issue (1) supra. The gravamen of the appellant’s complaint under this issue is that the lower Court raised, considered and relied on new issues that were neither contained nor distilled from the grounds of appeal and on that basis dismissed the appeal. The learned counsel for the appellant attacked the lower court’s pronouncement which reads:- E F

“In the instant case, the trial court was right in striking out the appellant’s case after realizing that it ought not to have been brought by way of originating summons.”

The contention of the learned counsel is that the trial court G did not dismiss the appellant’s suit on the basis that the same was commenced by “way of originating summons” and as such could not have “realised that it ought not to have been brought by way of originating summons”. The learned counsel further argued that as the trial court did not strike out the suit because of the alleged incompetence of the originating summons, the lower court erred in dismissing the appeal on that basis. He argued that where a court raises a point H suo motu, due process requires that parties be given an opportunity of a hearing on the new points. He placed reliance on the cases of

Ajao v. Ashiru 1973 11 SC 23, Kutu v. Balogun 1978 1 SC 53, Ejowhomu v. Edoketer Ltd 1986 5 NWLR part 39 page 1, Adegoke v. Adibi 1992 5 NWLR part 242 page 410, and Oshodi v. Eyifunmi 2000 13 NWLR part 684 page.

The learned counsel for the respondents has not deemed it necessary to respond to the above argument in their brief of argument, may be because he did not consider the issue to be apposite. This is apparent from the content of the issues learned counsel formulated in his brief of argument. Nevertheless, the appellant considers this issue and argument to be important to the treatment of his appeal for which he has a ground of appeal. Hence in the interest of justice I will consider the argument canvassed supra. Moreso as I have opted to adopt the appellant's issues. I think it is important that I consider what may have led the lower court to making the pronouncement attacked by the appellant. In her judgment, Odili J.C.A. referred to the content of the document initiating the proceedings in the Federal High Court, and particularly in respect of the relief no. (IX) reproduced in the earlier part of the judgment, and which the learned trial judge mentioned on page 51 of the printed record of proceedings, and which she dismissed on page 52 of the said record. Towards this, I will reproduce issue (2) and the related ground of appeal in the court below, hereunder. It reads:-

Issue (2) "Whether the lower court was right in holding that the Respondents were justified in their decision that the corporate names proposed by the Appellant are unregistrable by virtue of the Provisions of the Companies and Allied Matters Act 1990."

Related to the above issue (as far as this discussion is concerned) is ground (v) of appeal in the lower court which reads as follows:-

"The learned Trial Judge erred in law when her lordship held, "In particular, the plaintiff seeks and (sic) order of mandamus to compel the Defendants to register his company. I should advert in that regard to the provision of section 677(1), it is provided that "if the Commission is satisfied, to my mind, that gives the Commission the absolute discretion as to its satisfaction, subject of course to the circumscribing words in section 674 which states that the "purpose must be lawful""

Accordingly, where the Commission has exercised that dis-

cretion in accordance to law, the court cannot reverse the discretion'

"PARTICULARS

i. The Commission does not have an absolute discretion to refuse approving a name as available for registration under CAMA, 1990.

ii. Even if the Commission has a discretion the same is still ^B
subject to substantive standards under CAMA, 1990."

Now, with the above being before the learned Justice of the Court of Appeal, she was constrained to advert her mind to the originating summons and the reliefs therein, when she posited thus in her ^C
lead judgment on page 156 of the printed record of proceedings.

"The learned counsel for the Appellant in his quest to get his way had asked for so many reliefs including those, whose procedures are difficult to relate with the proceeding he adopted or what he is in fact asking for. I mean precisely the matter of mandamus". ^D

The learned justice thereafter proceeded to consider the principles governing mandamus as was expounded in the case of Fawehinmi v. I.G.P 2002 7 NWLR part 767 page 606 and after that in the judgment said thus:- "The Court can strike out any process not filed in accordance or in compliance with the relevant rules," before ^E
the finding attacked by the learned appellant which is the crux of this issue.

Perhaps, it will be helpful if I reproduce the definition of 'mandamus' at this juncture. In Blacks Law Dictionary Seventh Edition at ^F
page 973 it is defined thus:-

"A writ issued by a superior court to compel a lower court or a government officer to perform mandatory or purely ministerial duties correctly."

Relief No (ix) supra corresponds with the above definition ^G
and definitely comes within it.

The pertinent question that begs for answer is, was the issue of mandamus raised suo motu by the learned court below, in view of all the materials before it, which I have reproduced supra? I think not, for a careful perusal of the whole ^H
proceedings from the High Court of Justice to the Court of Appeal reveal that it was an issue that was in the front burner that required to be resolved, and there was no way it could have been resolved without reference to the procedure through

which the litigation was instituted.

I refuse to agree that the lower court dismissed the appeal on the basis of this finding upon which the appellant is making heavy weather. It seems what the learned counsel is wont to do is to shut their eyes to the painstaking treatment of the argument proffered, the application of the relevant laws and findings on them, and to blindfold this court on the other basis on which the lower court dismissed the appeal. It definitely did not dismiss the appeal solely on the basis that it was brought by way of originating summons.

It is my view that the pronouncement attacked by the appellant did not lead to any miscarriage of justice. **Assuming that it did, which I do not agree that it did, could that singular aspect of the judgment be correctly said to have occasioned miscarriage of justice? I think not. It is not every error or mistake that results in a reversal of a judgment and the appellate court must be wary of this position of the law. In the case of Medical and Dental Practitioners Disciplinary Tribunal v. Dr. John Emewulu Nicholas Okonkwo 2001 7 NWLR page 206, Ayoola JSC dealt with the subject of slip, mistake, and error in judgments, citing some authorities when he posited thus:-**

“The end result therefore, is that these erroneous references do not affect the correctness of the conclusions reached by the court below. See the case of Fadlallah v. Arewa Textiles Ltd 1997 8 NWLR (pt.518) 546 at 550, ratio 6 in which this court held that it is not every slip committed by a court that will result in an appeal against the judgment being allowed. An error or slip that may have the result of the appeal being allowed must be fatal in the sense that it must occasion a substantial miscarriage of justice vide Ezeoke v. Nwogbo (1988) 1 NWLR (part 72) 616. Similarly, in Ajuwon v. Akanni (1993) 9 NWLR (Part 316) 182 at ratio 18 this court held inter alia that it is not every slip committed by a Judge in his judgment that will amount to a misdirection which will result in the appeal being allowed. The misdirection, to be fatal, must have occasioned a substantial miscarriage of justice. The mistake must have affected or influenced the decision appealed against before it can result in the reversal of the decision”.

I am fortified by the above.

In the instant case, I fail to see that even if there was any miscarriage of justice it is substantial to warrant the interference of this court, moreso as I have expressed that the court below did not raise the issue of the procedure of originating summons adopted not being right in the case suo motu, but that it formed part of the complaint in one of the grounds of appeal in the lower court. It was from that one ground of appeal that issue (2) in the appellant's brief of argument sprung. In light of the above I resolve issue (1) supra in the appellant's brief of argument in this court in favour of the respondents, and so dismiss ground (3) of appeal, to which it is married for it fails. B C

Issue (2) in the appellant's brief of argument has substantially been dealt with under issue (1) supra, for the argument are in essence the same as those under issue (1), but ***the learned counsel for the appellant took the argument to a further height, by referring to rules of the Federal High Court, specifically Order 2, Rule 2 applicable then, which states thus:-*** D

"Proceedings may be begun by originating summons where:

(a) the sole or principal question in issue is, or is likely to be, one of the construction of a written law or of any instrument made under any written law, or of any deed, will, contract or other document or some other question of law; or E

(b) there is unlikely, to be any substantial dispute of fact". F

Invoking the above provision, the learned counsel for the appellant has submitted that the suit was competent as the originating summons sought in this suit was the trial court's interpretation of certain provisions of the Companies and Allied Matters Act, 1990, and there was no substantial dispute of fact. He referred to *Famfa Oil Ltd v. A. G., Federation* 2003 18 NWLR part 852 page 453. G

The learned counsel further contended that the appellant was not bound to institute the action solely through the process prescribed under Order 47 of the Federal High Court Rules supra. H

Again, like the first issue for determination above, the learned counsel for the respondent did not consider it necessary to respond to the argument under this issue. As with the said issue (1) I will deal with the argument, albeit rather briefly, as I don't attach much pre-

mium to it either and I have already touched on the salient points. At this juncture I deem it necessary to peruse the content of the originating summons vis a viz the provisions of Order 2 Rule 2 supra. **Perusing the questions sought to be determined, the reliefs sought and the provisions governing the commencement of the suit** B **at hand, I am not convinced that it was a suit that deserved to be initiated vide that procedure. In the first place, it does not meet the requirement of 2 (a) supra, as the sole or principal question in issue was not likely to be one of construction of** C **any written law simpliciter, it has with it reliefs that are outside the purport of the said provision (a).** In a situation like this, it is incumbent on the court to read the entire content of the originating summons i.e. the reliefs sought et al, to determine whether in fact a suit qualifies to be instituted under this process. Reliefs (viii) and (ix) D supra are those that call to question the desirability or propriety of commencing the suit by way of an originating summons. Then sub rule (b) of order 2 Rule (2) supra which talks of an alternative situation when a litigant can come to court by way of originating summons. To determine if there is any unlikelihood of any substantial E dispute of fact, the depositions in the supporting affidavit, and counter-affidavit is of material importance in this exercise. In the supporting affidavit, Mr. Promise Onyegbula inter alia deposed as follows:-

“(j) *That the plaintiff/applicant through his counsel on the* F *10th day of September 2003 and the 2nd day of October 2003 respectively wrote the defendants/respondents complaining about the improper and unlawful rejection of the availability of the proposed names. Attached and marked EXHIBITS 4 and 5 respectively are copies of letters written by the plaintiff/applicant’s counsel to the de-* G *fendants/respondents.*

(m) *That one of the plaintiffs/applicant’s counsel, Mr. Vigillus C. Akalazu informed me in chambers and I verily believed him that when the defendants/respondents failed to respond to the aforesaid letters, he went to the defendants’/respondents’ office where he traced* H *the letters from the 1st defendant’s/respondent’s office to the Director (Incorporated Trustees) office to the desk of one Mr. Hillary at the ‘Incorporated Trustees Department and discovered that the said letters were not attended to with regard to the plaintiff’s complaints. Instead, the said Mr. Hillary informed the plaintiff’s/applicant’s coun-*

sel that it was the corporate policy of the 2nd defendant/respondent to reject corporate names embodying “INSTITUTE” and/or “BUREAU”.

(n) That the plaintiff/applicant’s counsel further informed me and I verily believed him that the words underlined and marked ‘NOT REGISTRABLE’ in the names sent in for processing of the application for “availability of name” were not prohibited nor restricted under Part C nor any other part of CAMA, or any law whatsoever applicable in Nigeria.” B

I have already reproduced the salient depositions in the counter-affidavit earlier, and as can be seen from the depositions there is substantial dispute of fact which negates the provision of the said sub section (b) supra, that will necessitate the adducing of evidence in proof. The materials exhibited before the court are not enough to dispose of the suit in the interest of justice, most especially in view of some of the reliefs sought. The position of the law in proceedings by way of originating summons are propounded by this court in so many cases. See N.B.N. Ltd v. Alakija 1978 9 and 10 SC. 59, Oloyo v. Alegbe 1983 2 SCNLR 35, and Shoboyede v. M.I. H. (W.H.) 1974 SC. 13. See also In Re Power, Lindsell v. Phillips (1985). 30 Ch. D 291. D E

For the foregoing reasoning I resolve this issue in favour of the respondents, and dismiss ground (4) of appeal to which it is married.

The submission of the learned counsel for the appellant under issue (3) supra is that the lower court should have reversed the decision of the trial court on the ground that the trial court, suo motu, raised and considered material issues in dismissing the substantive suit without affording the appellant the opportunity of being heard. He argued that where a court raises a point suo-motu due process requires that parties be given the opportunity of a hearing on the new points. See Kutu v. Balogun, Ejouhomu v. Edok-Eter Ltd, Adejoke v. Adibi and Oshodi v. Eyifunmi supra. The learned counsel first argued that in the instant case the trial court based its judgment on an issue it raised suo-motu, (without affording the parties the opportunity to be heard) particularly when it raised and considered the public policy implication of the proposed names and held as follows:- F G H

“I am of the firm view, that on a calm and collected construction of the words making up the two alternative names proposed by

the plaintiff, those two names are not registrable because -

(a) By section 30(1)(c) of CAMA, the names respectively - Are capable of misleading as to the nature or extent of the proposed company's activities, and in addition, the names are offensive and are contrary to public policy; and

B *(b) By section 30(20)(a), the proposed name by the employment of the words making up the name suggests and is calculated to suggest that the company enjoys or would enjoy the patronage of the Government of the Federation or any of the states.*

C *On that score, I find for the reasons adduced, supra, that the commission or the Registrar-General was justified in its or his decision that the Company is 'unregistrable' as per EXH 5 to the Originating Summons, "in the two (sic) names which the plaintiff suggested, that is:-*

(a) Bureau of Corporate Governance, or

D *(b) Institute of Corporate Governance; or*

(c) Institute of Competition Policy and Corporate Governance."

The learned counsel for the respondents in their brief of argument replied that section 30 CAMA was first raised by the appellant in his argument at the trial court on 18th day of February, 2003, as is reflected on pages 24 - 26 of the printed record of proceedings. I will in the treatment of this issue refer to and reproduce some salient depositions in the supporting and counter-affidavits of the parties.

They are:-

F *"(a) That the plaintiffs/applicant's counsel after reviewing the computer printouts attached to the rejected application forms sought to ascertain the reason why the applications were rejected by the defendants/respondents.*

G *(n) That the plaintiff/applicant's counsel further informed me and I verily believe him that the words underlined and marked 'NOT REGISTRABLE' in the names sent in for processing of the application for "availability of name" were not prohibited nor restricted under Part C nor any other part of CAMA, or any law whatsoever applicable in Nigeria."*

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In the counter-affidavit, the following:-

"5. That the 2nd Defendant in the rejection took into account the provisions of Part of CAMA, legislation which it has the statutory duty to implement.

6. *That none of the names proposed by the Plaintiff is acceptable under Part C CAMA.*

7. *That Mr. Hillary Ekpo informed me and I verily believe him that the applicant had been informed early on the types of organization registrable under Part C of CAMA. ”*

Then in his address in court, the appellant’s learned counsel B said inter alia:-

“We submit that the Defendants have not complied with the Act by refusing to register the proposal (sic) names that are not in conflict because, under section 30(1) certain names are prohibited by the law. We submit that the proposed names are not prohibited or restricted under the said section in or any section whatsoever under the Act. I further submit that the onus is on the Defendant to show the statutory basis on which it refused to register the proposed name. To discharge that onus, we submit that the Defendants right (sic) show D that the names are restricted, prohibited or in conflict with the names of an existing corporation..... The issue then is whether ‘inter alia’ whether the Defendant has complied with this ministerial duty under section 30(1)(a)-(d); and section 30(2)(a)- (d) and section 673 (section 673)..... We have complied with the law, to E the extent that we have complied with section 32 and the Defendant’s policy..... ” At this juncture it is imperative that I look at the provision of the said repeatedly referred section (30) of the Companies and Allied Matters Act Cap. 59, 1990 Laws of the Federation of Ni- F geria which reads thus:-

“30(1) No company shall be registered under this Act by a name which -

(a) is identical with that by which a company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the Commission requires; or G

(b) contains the words “Chamber of Commerce” unless it is a company limited by guarantee; or H

(c) in the opinion of the Commission is capable of misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy; or

(d) in the opinion of the Commission would violate any ex-

isting trade mark or business name registered in Nigeria unless the consent of the owner of the trade mark or business name has been obtained.”

A thorough examination of all the above materials before the learned trial court is bound to sway any court in favour of the respondents. In the first place, the affidavits brought into fore, the fact that the names proposed by the appellant were subject to requirement of the said company law. The non compliance of which may lead to the names being prohibited also came to fore in the affidavits and issues were joined, on the registrability or other wise of the proposed name as is evidenced in the reproduced paragraphs of the two affidavits. In this respect I can not fathom why the learned counsel for the appellant is making so much heavy weather of this aspect of the case, as if the question of the prohibition of the names just emerged out of the blues to spring into the learned trial judge’s mind to describe the proposed names the way she did. The learned counsel is clutching a straw in his agitation that the matter of the reason for the rejection of the proposed names was not existent, and that the trial judge suo-motu raised the issue in a bid to succeed in his appeal. Otherwise how can he consistently hammer on the fact that the issue did not form part of the suit before the trial judge. ***Another grouse of the appellant is the use of the words offensive to describe the names and that they are contrary to public policy. The latter forms part of the argument of the learned counsel for the appellant in his address, and it has been reproduced above. As for the use of the word ‘offensive’, surely, a trial judge is at liberty to use whatever word he or she wishes to use, as long as he or she does not go outside the ambit of an issue formulated before him, and in this case the learned trial judge confined herself to the issue before her. A learned judge is not restricted or put in a straight jacket on the words or terms to use in order to explore the avenue to arrive at a just determination of a matter in controversy. Further more a judgment will not be reversed merely because certain words have been used by a learned judge or justice. See Selimonu v. The State 1972 2 SC. 13.***

In addition, when one peruses carefully the definitions of the words “Bureau”, and “Institute” as provided by learned counsel for

the respondent in his address, (to be found in page 28 of the printed record) should convince any reasonable person that the learned trial judge did not go off course, or on a wild goose chase (so to say). Furthermore, the learned trial judge did not invoke the provision of section 30 of CAMA into the matter herself. That provision repeatedly came up in the counsel's addresses in court. B

After the arguments canvassed by the learned counsel for the appellant on the complaint and issue of the learned trial judge raising issues suo-motu had been painstakingly considered by the learned trial judge (*sic*), the court below made the following finding:- C

"I would posit here and now that the learned trial judge was at liberty to conduct the trial in her own style with due regard to the issues at stake and the related laws including procedural ones. I see nothing in that process for which I would want to interfere with either her findings or decision since no miscarriage of justice occurred or there being even a suspicion that the evidence was not properly evaluated." D

I fully subscribe to the above finding and I disagree that the court erred in that respect. In the circumstance I resolve the issue in favour of the respondents, and I dismiss ground (1) of appeal. E

Now to the last issue. Again, the argument covering this issue is interwoven with the argument proffered in respect of the above issues. The quarrel of learned counsel for the appellant here is that the respondents did not adduce evidence on the reason for their decision to reject the names proposed by the appellant, and he referred to the depositions in the counter-affidavit. The learned counsel further attacked the learned trial court's findings (which the lower court refused to reverse) that the appellant employed the wrong procedure by filing an application for name reservation instead of simply applying for registration under section 674 of CAMA. It is learned counsel's submission that the trial court misconceived the issues, as the procedure undertaken by the appellant is proper and indeed provided by section 32 of CAMA. The learned counsel further submitted that under Part C in particular and the act generally, the respondents' rejection of the appellant's 'name availability' as not registrable was improper and accordingly, the trial court erred in upholding that decision. F G H

According to the learned counsel for the respondents in their

brief of argument, the appellant sought to register the three names already reproduced supra, pursuant to Part C of CAMA, particularly section 673(1) which provides as follows:

“Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship, or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting, or charitable purpose, he or they may, if so authorized by the community, body or association (hereinafter in this Act referred to as “the association”) apply to the commission in the manner, hereafter provided for registration under this PART of this Act as a Corporate body.”

It is on record that the appellant in paragraphs (o) and (p) of his supporting affidavit deposed thus:-

“(o) That given the privatization policy of the present Government which is aimed at transiting the Nigerian economy from its present economy, there is need for the incorporation under Part C of CAMA of an association under any of the corporate names proposed by the plaintiff/applicant to articulate and nurture optimal rules relating to corporate governance and competition policy.

(p) That this agenda can only be achieved through the approval of the same availability relating to the proposed names.”

The learned counsel for the respondents has argued that section 673(1) CAMA does not articulate or prescribe registration of anybody, community or association for economic policy matter to articulate and nurture optimal rules relating to corporate governance and competition policy. He argued that the operative words for the proposed names as ‘Bureau’ and “Institute” in their ordinary meanings are not synonymous or co-terminus with the words ‘community of persons bound together by custom, religion, kinship or nationality etc: as envisaged by the said section 673 supra. According to learned counsel the words ‘Bureau’ and ‘Institute’ are defined by the Black’s Law Dictionary 6th Edition as follows:-

“Bureau” - An office for transaction of business. A name given to the several departments of the executive or administrative branch of government or their divisions.

“Institute” - An act of instituting, something that is instituted.”

Indeed, paragraph (i) of the supporting affidavit confirms that

the proposed registration would be under Part C of CAMA as is so reflected. For better understanding. I will reproduce the deposition here below. It reads:-

(i) That the incorporation under Part C of CAMA of an association or body knowledgeable in corporate governance and related issues will not only serve as an avenue for articulating, collecting and collating diverse input in corporate governance policy issues but will also serve as a platform for constructive intellectual debates concerning the transition of the Nigerian economy from a public enterprise - dominated to a market oriented economy. ”

At this juncture I will reproduce the salient provisions of Part C mentioned in the above deposition. They are:-

‘673(1) Where one or more trustees are appointed by a community of persons bound together by custom, religious, kinship or nationality or any body or association of persons established for religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorized by the community, body or association (hereinafter in this PART of this Act referred to as "the association") apply to the Commission in the manner herein after provided for registration under this PART of this Act as a corporate body.

(2) Upon being registered by the Commission the trustees shall become a corporate body in accordance with the provisions of section 679 of this Part of this Act.

674(1) Application under section 673 of this Act shall be in the form prescribed by the commission and shall state -

(a) the name of the proposed corporate body which must contain the words Incorporated Trustees of.

(b) the aims and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, and must be lawful”.

It is clear from the above reproduced depositions and the provisions of the laws (when both are read together) that the appellant applied under part C, but the purport or objective of the association as set out in paragraph (i) supra does not correlate with the purport in section 673 of CAMA supra. The correct position therefore is that if the appellant was ap-

plying for registration under part ‘C’ then the provision in part ‘C’ has to be complied with. One must also not over look the fact that the proposed corporate body’s name is contained in the forms exhibited to the supporting affidavit, even though the words ‘Incorporated Trustees’ was not added to the proposed names, thus the provision in 674(1)(a) supra was not complied with. I will also state categorically here that Part C does not contain any provision for the requirement of the submission of availability of name. Having made the above revelations **I will now go to section 32 of CAMA which the learned counsel for the appellant emphasized he adhered to and complied with. The said section 32 provides the following:-**

“32(1) The Commission may, on written application and on payment of the prescribed fee, reserve a name pending registration of a company or a change of name by a company”.

Agreed that the documents exhibited talks about reservation and availability of names. That does not however debar the respondents from rejecting the proposed names as they did. The provision does not connote automatic reservation of proposed names by the respondent. It vests a discretionary power on the commission, and the power being discretionary can be exercised by the commission either in favour of the appellant or against him, as it has actually done in this case. The heavy weather made by the learned appellant’s counsel on the various findings made by the trial judge (which he has consistently attacked) are not of substance materially to be worthy of reversing the judgment of the Court by the Court of Appeal. It is not every mistake or slip that will warrant the disturbance of a judgment. In this vein, I resolve this last issue in favour of the respondents, and so dismiss ground (2) of appeal related to it.

In this appeal there are concurrent findings by two lower courts, and the law is trite that such concurrent findings of fact by two lower courts will not ordinarily be interfered with by this court, unless the findings are perverse, not supported by credible evidence, and they have resulted in miscarriage of justice or violation of some principles of procedural and substantive law. See *Nwadike v. Ibekwe* 1987 4 NWLR part 67 page 718; *Onwugbufo v. Okoye* 1996 SCNJ 1,

and Enang v. Adu 1981 11 - 12 SC. 25.

In the light of the above discussions I find no merit whatsoever in this appeal, and I dismiss it in its entirety. I affirm the judgment of the lower court, and I assess costs at N50,000.00 in favour of the respondents against the appellant.

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MOHAMMED JSC

The judgment just delivered by my learned brother Mukhtar JSC was read by me before today. I share his/her view that there is no merit whatsoever in this appeal. Although the Appellant's application for the reservation of three names proposed for registration as Companies under Part C of the Companies and Allied Matters Act, 1990 were duly submitted to the Respondents for consideration and approval under the law, the Respondents have discretion under the law in dealing with the application as clearly spelled out under Section 30(1) of the Companies and Allied Matters Act CAP 59 Laws of the Federation of Nigeria, 1990 which states -

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"30(1) No company shall be registered under this Act by a name which:-

(a) is identical with that by which a Company in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the Company in existence is in the course of being dissolved and signifies its consent in such manner as the Commission requires; or

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(b) contains the word 'Chamber of Commerce' unless it is a Company Limited by Guarantee; or

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(c) in the opinion of the Commission is capable of misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy; or

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(d) in the opinion of the Commission would violate any existing trade mark or business name registered in Nigeria unless the consent of the owner of the trade mark or business name has been obtained."

These provisions of sub-section (1) of Section 30 of the Act specified above, particularly the phrase "in the opinion of the Commission" contained in paragraphs (c) and (d) thereof, have given the respondents very wide discretion to decide on whether or not the proposed name for the registration of any Company submitted for

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consideration by the Commission, is registrable under the Act. Therefore in my view, there is no doubt at all that from the record of this appeal, especially the affidavit in support of the Originating Summons, the counter-affidavit opposing the same and proceedings at the hearing of the Appellant's action at the trial Court, the action taken by the Respondents in the Appellant's application was quite in order under the Act.

For the foregoing reasons and the fuller reasons contained in the lead judgment of my learned brother Mukhtar JSC with which I entirely agree, I also find no merit in this appeal which is hereby dismissed by me. I abide by the orders made in the lead judgment including the order on costs.

OGBUAGU JSC

This is an appeal against the Judgment of the Court of Appeal, Abuja Division (hereinafter called "the court below") delivered on 22nd June, 2005, dismissing the appeal to it and affirming the decision of the Federal High Court, Abuja - per Ukeje, C. J. delivered on 5th July, 2004 striking out in its entirety, the Appellant's action.

Dissatisfied with the said Judgment, the Appellant has further appealed to this Court on four (4) grounds of appeal. He has formulated four (4) issues for determination, namely,

"1. Whether the lower court was right to have raised, considered and relied on new issues that were neither contained nor distilled from the grounds of appeal and on that basis dismissed the appeal (Ground III).

2. Whether the lower court was right in dismissing the Appeal on the basis that the substantive suit was commenced by Originating Summons instead of Judicial Review (Ground IV, erroneously designated V).

3. Whether the lower court was right in not reversing the decision of the trial court on the ground that the trial court, suo motu, raised and considered material issues in dismissing the substantive suit without affording the Appellant the opportunity of being heard (Ground I).

4. Whether the lower court was right in upholding the decision of the trial court that the Respondents were justified in their decision that the corporate names proposed by the Appellant are

unregistrable by virtue of the provisions of the Companies and Allied Matters Act, 1990 (Ground II)".

On their part, the Respondents formulated two (2) issues for determination. They read as follows:

"1. Whether the lower court was right in affirming the decision of the trial court that the names i.e. "INSTITUTE OF CORPORATE GOVERNANCE", "BUREAU OF CORPORATE GOVERNANCE", and "INSTITUTE OF COMPETITIVE POLICY AND CORPORATE GOVERNANCE" were not registrable under part C of the CAMA".

2. Whether the lower court was right in holding that the trial Judge did not raise any issue and rule on any issue suo motu which occasioned miscarriage of justice to the case of the Appellant".

I note that the Respondents in raising the above issues, stated at page 5 paragraph 3.01 of their Brief as follows:

"Upon the grounds of appeal formulated by the Appellant, the Respondents have formulated two issues for determination".

In my respectful view, the above means that the two issues of the Respondents, are formulated from the said grounds of appeal of the Appellant specifically, their Issue 1 at page 6 paragraph 4.01 thereof, is stated to be distilled from Ground 2 of the Notice of Appeal. I note that, the four (4) Issues of the Appellant, are formulated or distilled from his grounds 1, 2, 3 and 4 of his grounds of appeal.

The Appellant commenced the action leading to me instant appeal, by an Originating Summons seeking declaratory and injunctive reliefs against the Respondents for refusing to register or approve the corporate names of "INSTITUTE OF CORPORATE GOVERNANCE", "BUREAU OF CORPORATE GOVERNANCE" and "INSTITUTE OF COMPETITIVE POLICY AND CORPORATE GOVERNANCE" proposed by the Appellant. The Originating Summons, was/is supported by an affidavit. The Respondents filed a counter-affidavit in opposition.

In my respectful and firm view, this appeal relates to the discretion of the Respondents, to register the name of a proposed Applicant. I will therefore, take Issue '4 of the Appellant and Issue 1 of the Respondents which in substance, are the same although differently couched. A determination of the said issues, will in my humble view, be enough to dispose this appeal as there will be no need or any useful purpose, considering the other issues. I have support in

the case of *Anyaduba v. N.R.T.C. Ltd* (1992) 5 NWLR (Pt.243) 535; (1992) 6 SCNJ. 204 (No. 2).

Touching on or dealing briefly with Issue 2 of the Appellant, it is no longer in dispute that generally, an action by an Originating Summons is used when the facts of a case or matter, is not likely to be B or in fact, are not in dispute - i.e. it is used for non-contentious actions. In other words, it is not used in hostile proceedings. See the cases of *Osuagwu v. Emezi* (1998) 12 NWLR (Pt.579) 640 and *Director of SSS & anor. v. Agbokoba* (1999) 3 NWLR (Pt.595) 425; C (1999) SCNJ. 1. From the affidavit in support of the suit/claim and the counter-affidavit in opposition, it is beyond any controversy or any doubt that serious issues had been joined by the parties. See also the case of *Famfa Oil Ltd. v. Attorney-General of the Federation & anor.* (2003) 18 NWLR (Pt.852) 453.

D My quick answer is that it is now settled that mistake or error in a Judgment, is immaterial. What an appeal has to decide, is whether the final decision of the court below was/is right and not what its reasons were. The judgment of a court once correct, is not liable to reversal merely because it was anchored on a wrong reason. (See E the cases of *Ukejianya v. Uchendu* (1950) 13 WACA 45 @ 46; *Ayeni & 3 ors. v. Sowemimo* (1982) 5 S.C. @ 73 74 ; (1982) 5 S.C. 9 (Reprint) 29 and *Odukwe v. Mrs. Ogunbiyi* (1998) 8 NWLR (Pt.561) 339 @ 350 -51; (1998) 6 SCNJ. 102 @113.

F In other words, it is not every mistake or error in a judgment that necessarily determines an appeal in favour of an appellant or automatically, results in the appeal being allowed. It is only when the error is so substantial (and I see none from the Records) that it has occasioned a miscarriage of justice (and I see none from the Records), G that an Appellate Court or this Court, is bound to interfere. There are too many decided authorities in this regard. But see the cases of *Onajobi v. Olanipekun* (1985) 4 S.C. (Pt.2) 156 @ 163; (1985) 1 NSCC 611 *Chief Oje & ors. v. Chief Babalola & 2 ors.* (1991) 4 NWLR (Pt. 185) 267 @ 282 (1991) 5 SCNJ. 110 *Amaroti v. Agbeke* H (1991) 6 SCNJ. 54 @ 64 *Anyanwu v. Mbara & anor.* (1992) 5 NWLR (Pt. 24 2) 386 @ 400; (1992) 6 SCNJ. 22, and *Alli & anor. v. Chief Alesinloye & 8 ors.* (2000) 6 NWLR (Pt. 660) 177 @ 213 (2000) 4 SCNJ. 264 just to mention but a few. Therefore, the said issue in my respectful view is of no moment.

Now to the said issues. It is not in doubt as found as a fact by the trial court that the Appellant applied for registration under Part C of CAMA. See also Exhibits 1, 2 and 3; There are, as found as a fact by the trial court at page 41 of the Records, that there are specific, peculiar and distinct procedure for registration under the Parts of CAMA - (i.e. Corporate Affairs Matters Act). They are as follows: B

(a) Part A - Companies Limited by Shares.

(b) Part B - Business names.

(c) Part C - Incorporated Trustees.

(d) Part D - Merely a citation part not an operational Part. C

Under Part C, the provisions of Sections 673 (1) and 674 (1) (a) of CAMA, must be complied with. Thus, a party applying under Part C, must be made up of one or more Trustees appointed by a community of persons bound together by custom, religion, kinship or nationality. Such an application also, must be made by an association of persons established for any religious, educational, literary, scientific, social development, cultural, charitable purpose. Section 673 (1), refers to such a body, as “the Association”. As found as a fact and held by the trial court, the Appellant applied for registration as evidenced by Exhibit I in the name of “Bureau for Corporate Governance”. It held that Section 673 (1), does not envisage the registration of a “Bureau” in whatever guise and that the word “Bureau”, is not synonymous or coterminous with the word “Association” as used in Section 673 (1) of CAMA. E

It could be seen that the three proposed names, do not in any way, indicate or suggest that the said names, were to be registered as Associations for which Trustees could be appointed pursuant to Section 673 (1) of CAMA. These issues were also considered by the trial court in its issue I at pages 45 to 51 of the Records. The court below in answering Issue 2 of the Appellant which substantially, is partly a repetition in Issue 4 of the Appellant and Issue 1 of the Respondent in this Court, stated at page 159 of the Records inter alia, as follows: F

“In view of the foregoing I answer Issue I positively as the Respondents indeed acted rightly in rejecting the names put forward by the Appellant for registration by declaring them non registrable. I see no reason not to agree and affirm the decision of the learned trial judge. I must make the point that what I have seen from what tran- H

spired at the Lower Court and in this appeal is learned counsel for the Appellant on an academic exploration and the quest to propound a hypothesis. These are not areas for our adjudication and it is therefore my conclusion that this appeal lacks merit in the extreme and I dismiss it....."

B I agree. This is because, I note that the Appellant had in the two lower courts, referred to and relied on Section 32 (1) of CAMA as to the procedure undertaken by the Appellant which he claims, is proper, liven this said Section, gives the Respondents, a discretion just as under Section 30(1) and (2) of CAMA. For purposes of emphasis and for the avoidance of any doubt, the above sections provide as follows: Section 30(1):

"No Company shall be registered under this Act by a name which:

D (a), (b) and (d) - not applicable in this case or appeal.

(c) In the opinion of the Commission is capable of misleading as to the nature and extent of its activities or is indescribably offensive or otherwise contrary to public policy.

(2) Except with the consent of the Commission, no Company shall be registered by a name which -

E *(a) include the word "federal" "Regional" "State" "Government" or any other word which in the opinion of the Commission suggests or is calculated to suggest that it enjoys the patronage of the Government of the Federation or of a Slate, as the case may be*
 F *or any Ministry or Department of Government'.*
[the underlining mine]

Even under Section 32(1) of CAMA which the Appellant relies on and even unfairly and erroneously stated that the trial court misconceived the issues insisting that the procedure undertaken by the Appellant, is proper, provides as follows:

G *"The Commission may, on written application mid on payment of the prescribed fee, reserve a name pending registration of a company or a change of name by a company". [the underlining mine]*

H The above is clear and unambiguous, it did not say or use the word must. In effect, the Respondents have or had a discretion in such a circumstance. All the above sections or provisions, are clear and unambiguous. In the interpretation of a Statute, it is now firmly settled and this Court has been consistent in holding that where the words

used, are plain and unambiguous (as in the above provisions), they must be given their plain, ordinary, literal or natural meanings. There are too many authorities in this regard. But see the cases of *Berliet Nig. Ltd. v. Alhaji M. Kachalla* (1995) 12 SCNJ. 147; *National Bank of Nigeria Ltd. v. Weide & Co. Nig. Ltd. & ors.* (1996) 9 - 10 SCNJ. 147; *Owena Bank (Me.) PLC. v. Nigerian Stock Exchange Ltd.* (1997) 8 NWLR (Pt.315) 15; (1997) 7 SCNJ. 160; *Okotie-Eboh v. Chief James Ebiowo Manager & ors.* (2004) 12 SCNJ. 139 and recently, *Babatunde v. Pan Atlantic Shipping and Transport Agencies Ltd. & ors.* (2007) 4 SCNJ. 140 just to mention but a few.

The trial court at pages 50-51 of the Records, stated inter alia, as follows:

“On that score, I find for the reasons adduced, supra, that the commission or the Registrar-General was justified in its or his decision that the Company is “Unregistrable” as per Exhibit 5 to the “Originating Summons” in the two names which the Plaintiff suggested, (sic) that is

(a) Bureau of Corporate Governance, or

(b) Institute of Corporate Governance, or

(c) Institute of Competition Policy and Corporate Governance”.

I have already reproduced in this Judgment, the holding of the court below, from the said holding, the Appellant will not be in any doubt that he is battling with the brick wall of concurrent findings of facts and holdings by the two lower courts. The attitude of this Court has remained, not to disturb or interfere with such findings except in certain circumstances. See the cases of *Ayanwale & ors. v. Atanda & anor.* (1988) 1 NWLR (Pt.68) 22; (1988) 9 SCNJ. 1. *Onwuka & 4 ors. v. Ediala & anor.* (1989) 1 S.C. (Pt.2) 1 (1989) 1 SCNJ. 102; *Oba Abidoye & 4 ors. v. Oba Alawode & 4 ors.* (2001) 3 S.C. 1 @ 8,9; (2001) 3 SCNJ. 40 and *Layinka & anor. v. Makinde & ors.* (2002) 5 S.C. (Pt.1) 109@ 111; (2002) 5 SCNJ. 77 and many others. The Appellant has not shown and has been unable to show from the Records, why this Court should interfere or disturb the said findings of facts and holdings. Instead, he has been repeating his arguments at the trial court, both in the court below and in this Court. It is now firmly settled that repetition of argument or arguments, does or do not improve its efficacy. Mere repetition of an argument, does

not improve an earlier *arid weak or completely unacceptable argument*. See the cases of *Calabar East Cooperative Thrifty & Credit Society Ltd. & 3 ors. v. Etim E. Ikot (1994) 14 NWLR (Pt.638) 225; (1999) 12 SCNJ. 321 @ 339* and *FSB International Bank Ltd, v. Imano Nig. Ltd, & anor. (2000) 7 SCNJ. 65 @ 74*. Frankly speaking,

B I see no merit in this appeal which fails.

It is from the foregoing and the fuller lead Judgment of my learned brother, Mukhtar, JSC just delivered and which I had the privilege of reading before now and which I agree with the reasoning and conclusion, that I too, dismiss the appeal in its entirety. I also hereby and accordingly affirm the Judgment of the court below affirming the decision of the trial court. I also award N50,000.00 (fifty thousand naira) costs against the Appellant payable by him to the Respondents.

D

CHUKWUMA-ENEH JSC (DISSENTING)

In this matter commenced by way of originating summons and supported by an affidavit of ten paragraphs sworn to on 13/11/2001 by one Promise Onyegbula the plaintiff has claimed against the defendants a total of 7 declaratory reliefs and two Orders of perpetual and mandatory injunctions as follows:

E

(i) A declaration that the defendants' rejection of the plain proposed corporate name - "*Institute of Corporate Governance*" by designating same as "*not Registrable*" under Part C of CAMA is improper ultra vires and not in accordance with CAMA provisions.

F

(ii) A declaration that the defendants' rejection of the plaintiff's proposed corporate name - "*Bureau of Corporate Governance*" by designating same as "*Not Registrable*" under Part C of CAMA is improper, ultra vires and not in accordance with CAMA provisions.

G

(iii) A declaration that the defendants' rejection of the plaintiff's proposed corporate name - "*Institute of Competition Policy & Corporate Governance*" by designating same as "*Not Registrable*" under Part C of CAMA is improper, ultra vires and not in accordance with CAMA provisions.

H

(iv) A declaration that defendants' exercise of its discretion by 'rejecting the plaintiffs proposed corporate names, to wit: "*INSTITUTE OF CORPORATE GOVERNANCE*", "*BUREAU OF CORPORATE GOVERNANCE*" and/or "*INSTITUTE OF COMPETITION*

POLICY & CORPORATE GOVERNANCE” is invalid in that the said discretion was not judiciously and/or judicially exercised.

(v) A declaration that the rejection by the defendants of the plaintiff’s applications for “name availability” with respect to the proposed corporate names, was improper and not in accordance with the provisions of CAMA 1990. B

(vi) A declaration that the defendants’ response in rejecting the plaintiff’s application for “name availability” by marking same “not Registrable” was vague and ambiguous and thus an abuse of discretion. C

(vii) A declaration that the names “INSTITUTE” and/or “BUREAU” are not prohibited names under the Act and that the defendants were not justified in refusing same as “Not Registrable.”

(viii) An order of perpetual injunction restraining the defendants from rejecting the plaintiff’s proposed corporate names, to wit: *“INSTITUTE OF CORPORATE GOVERNANCE” “BUREAU OF CORPORATE GOVERNANCE”* and/or *“INSTITUTE OF COMPETITION POLICY & CORPORATE GOVERNANCE.”* D

(ix) An order directing the defendants to immediately process and approve the names as available and registrable under Part C and to proceed to register and incorporate the same, to wit: *“INSTITUTE OF CORPORATE GOVERNANCE”*, *“BUREAU OF CORPORATE GOVERNANCE”* and/or *“INSTITUTE OF COMPETITION POLICY & CORPORATE GOVERNANCE.”* E F

In sum, on the facts, the plaintiff by three separate applications annexed to the instant supporting affidavit and marked severally as exhibits 1, 2 and 3, has each applied for “name availability” for each of the following proposed corporate names of “Institute of Corporate Governance” “Bureau of Corporate Governance” and “Institute of Competition Policy and Corporate Governance” respectively to be registered pursuant to part C of the Companies and Allied Matters Act 1990 (i.e. CAMA). The defendants have severally rejected each of the names so proposed as “Not Registrable” under Part C of CAMA and have severally so marked same on each of the three applications. Apart from challenging the exercise of the defendants’ discretion in that regard as improper, ultra vires and not in accordance with the provisions of CAMA in that the proposed names G H

embodying the words i.e. “Institute” and “Bureau” are not prohibited nor misleading or offensive (i.e. undesirable names under the Act), the plaintiff also has alleged that the remarks are not only vague and ambiguous but are also an abuse of process. The defendants have filed a Counter-affidavit of 12 paragraphs sworn to on 13/12/2003 by one Mukosa Onoja countering the allegations in the supporting affidavit and thus have joined issues in the matter with the plaintiff.

The trial court having taken arguments in the matter during which the plaintiff has urged that in the event of refusing to register the Association under Part C of CAMA to consider doing so under Pail A of CAMA. In a reserved ruling as per page 50 lines 16 to 29 through pages 51 and 52 of the record the trial court held as follows:

“I am of the firm view, that on a calm and collected construction of the words making up the two alternative names proposed by the plaintiff, those two names are not registrable because -

(a) By Section 30(1) (c) of CAMA, the names respectively- Are capable of misleading as to the nature or extent, of the proposed company’s activities; and in addition, the names are offensive and are contrary to public policy; and

(b) By Section 30(2) (a), the proposed name (sic) each by the employment of the words making up the name suggests and is calculated to suggest that the Company enjoys or would enjoy the patronage of the Government of the Federation or any of the states.

On that score, I find for the reasons adduced, supra, that the Commission or the Registrar-General was justified in its or his discretion that the Company is “Unregistrable” as per Exhibit 5 to the “Originating Summons” in the two names which the plaintiff suggested that is: -

- (a) Bureau of Corporate Governance; or
- (b) Institute of Corporate Governance; or
- (c) Institute of Competition Policy and Corporate Governance.

Further, and equally important, is the method adopted by the plaintiff in forwarding or commencing his Application. In paragraph 4(b) of the Affidavit in support of the Originating Summons, thus -

(b) that on the 4th of September 2003, the Plaintiff/Applicant, through his Counsel applied to the Defendants/Respondents

for the name availability of *“Institute of Corporate Governance”* for incorporation under Part C of the Companies and Allied Matters Act 1990.

It is a trite point of law that when a statute dictates a certain mode of doing something, then that method and no other must be employed in the performance of that act. There is no where under Part C that the plaintiff was required to submit for availability of name. B

For registration under Part C, an Applicant for the registration of an Incorporated Trustee, must comply with Section 674; and the Applicant for such registration must be authorized by the “association” he seeks to represent; and must submit all the documents listed in section 674. C

In totality, the Originating Summons fails and is dismissed.

In particular, the Plaintiff seeks an Order of Mandamus to compel the Defendants to register his company. D

I should advert in that regard to the provision of section 677(1), it is provided that “If the Commission is satisfied” to my mind, that gives the Commission the absolute discretion as to its satisfaction, subject of course to the circumscribing words in section 674 which states that the - E

“Purpose must be lawful”

Accordingly, where the Commission has exercised that discretion in accordance to law, the court cannot reverse the discretion.

Consequential Order

The plaintiffs Application herein has failed and been dismissed. F
The plaintiff in paragraph (1) - (IX) of the reliefs has asked for certain declaratory and injunctive reliefs.

The Application having failed, the reliefs also fail.

Finally, the plaintiff asks that the Defendant be compelled to G immediately process and approve the names - as available and to register and incorporate the same.

For the reasons earlier adduced, the relief also fails, as the plaintiff has not complied with the presented (sic) provisions of Part C to entitle him to that relief. H

That relief also fails and the Plaintiff’s action herein is struck out in its entirety, And I so Order.”

It has become necessary to go the whole hog of setting forth in extenso the foregoing abstract of the said ruling in order to high-

light the misapprehension if indeed, the misconception as I shall show later on of the trial court's findings and conclusions by the lower court in this matter. The trial court's decision has been predicated upon its construction of the provisions of Section 30(1) and (2) of CAMA leading it to conclude that nowhere under Part C of CAMA is the plaintiff required to apply for "name availability" that is to say, notwithstanding in my respectful view of the express provisions as per Section 32 of CAMA.

Articulating such objects of the proposed corporate bodies the applicant has deposed in paragraph "O" and "P" of the supporting affidavit as follows:

"O" That given the privatization policy of the present government which is aimed at transiting the Nigerian, economy from its public sector dominance to a private sector driven economy, there is need for the incorporation under Part C of CAMA of an association under any of then corporate names proposed by the plaintiff applicant to articulate and nurture optimal rules relating to corporate governance and competition policy. "P" That this agenda can only be achieved through the approval of the name availability relating to the proposed names."

The plaintiff being totally dissatisfied with the decision has appealed the same to the Court of Appeal i.e. (Lower Court) which in a considered judgment dismissed the appeal, and affirmed the decision of the trial court, in this regard I agree with the appellant, on an entirely new and uncanvassed ground before the trial court to the effect in this respect I quote the lower court that;

"the trial court was right in striking out the appellants' case after realizing that it ought not to have been brought by way of Originating Summons" (underlining supplied); even when the trial court neither struck out nor dismissed the suit on any of those bases. The abstracts of the trial court's judgment as set above stands to confirm this point.

The plaintiff being totally dissatisfied with the decision of the lower court has again appealed the same to this court on a Notice of Appeal filed on 1/7/2005 containing 4 (four) grounds of appeal. In his brief of argument filed in this matter the plaintiff/appellant has distilled 4 (four) issues for determination as follows:

"1. Whether the lower court was right to have raised, consid-

ered and relied on new issues that were neither contained nor distilled from the Grounds of Appeal and on that basis dismissed the appeal (Ground III)

2. Whether the lower court was right in dismissing the appeal on the basis that the substantive suit was commenced by Originating Summons instead of judicial review (Ground IV, erroneously designated V). B

3. Whether the lower court was right in not reversing the decision of the trial court on the ground that the trial court, suo motu, raised and considered material issues in dismissing the substantive suit without affording the appellant the opportunity of being heard. (Ground 1). C

4. Whether the lower court was right in upholding the decision of the trial court that the respondents were justified in their decision that the corporate names proposed by the appellant are unregistrable by virtue of the provisions of the Companies and Allied Matters Act, 1990 (Ground II)."

The respondents in their brief of argument have distilled 2 (two) issues for determination as follows:

"1. Whether the lower court was right to have considered legal and factual issues raised suo motu by the court in striking out the suit without affording the Appellant the opportunity of being heard. E

2. Whether the lower court was right in holding that the respondents were justified in their decision that the corporate names proposed by the Appellant are unregistrable by virtue of the provisions of the Companies and Allied Matters Act, 1990. (see page 66 of the records)." F

The plaintiff and the respondents in this court are respectively the appellant and respondents in the appeal. G

Arguing issue one that is, on whether the lower court is right to have suo motu raised, considered and relied on the new issues of initiating the instant suit by an incompetent process that is to say, by way of the Originating Summons instead of initiating it by way of judicial review of mandamus; it is submitted that the new issues are not distilled from the grounds of appeal not having been pronounced upon by the trial court in dismissing the instant suit before it; that the lower court has totally misapprehended the bases of the trial court's decision. The appellant has also canvassed a clear case of H

denial of fair hearing as he has not been given the opportunity to address the lower court on both questions before reaching its decision; that the issues have been raised suo motu as they are not the respondents' case before the lower court. And so the respondents' argument of having circumvented the rigours of judicial review by
 B opting for the instant procedure goes to no issue, as not having arisen from their counter-affidavit. See: Igbinoba v. Igbinoba (2003) 2 NWLR (Pt.803) 39. The appellant therefore has urged that the lower court's decision be reversed as per the principles expounded in the case of
 C Oshodi v. Eyifunmi (2003) 13 NWLR (Pt.684) 298 at 352; and also on Kutu v. Balogun (1978) 1 S.C. 53, Ejowhomu v. Edok-Eter Ltd. (1986) 5 NWLR (Pt.39) 1, Adegoke v. Adibi (1992) 5 NWLR (Pt.242) 410.

On issue two, in my view an affiliate to issue one i.e. on
 D whether the lower court is right in dismissing the appeal on the basis that the suit has been commenced by originating summons instead of judicial review. The appellant has taken serious exception to the lower court's pronouncement that,

*"the Learned Counsel for the appellant in his quest to get his
 E way had asked for so many reliefs including those, whose procedures are difficult to relate with the procedure he adopted or what he is in fact asking for. I mean precisely the matter of mandamus and continuing that having stated my views on the remedy of mandamus which the appellant had unwittingly brought in without due pro-
 F cess."*(underlining supplied).

The appellant has contended that the view is misconceived as he has not specifically sought for an order of mandamus nor has the suit been struck out because he has sought declaratory and in-
 G junctive reliefs by way of the instant originating summons instead of coming by way of judicial review. He relies on Order 2 Rule 2 and Order 40 Rule 2 of the Federal High Court Rules and the case of Famfa Oil Ltd. V. Attorney-General of the Federation (2003) 18 NWLR (Pt.852) 453 to support the competency of the instant initiating
 H process as there is no substantial dispute of facts. Even then, that none of the grounds of appeal nor the issues so raised therefrom have raised any questions on mandamus nor the incompetence of the originating summons. And being new issues that the respondents have not sought and obtained leave of court to raise and argue them.

The appellant makes the point that he is not bound to come by way of judicial review only as the instant procedure is competent and has met his requirements. And that the lower court's decision clearly cannot stand on the above grounds.

On issue three i.e. on whether without giving the appellant the opportunity of being heard the lower court is right in not reversing the trial court's decision on the ground that the trial court suo motu has raised and considered material issues of misleading and offensive nature of the proposed corporate names as well as their being against public policy and capable of misleading as to their objects under Sections 30 and 32 of CAMA without hearing the appellant. He relies on *Ajao v. Ashiru* (1973) 11 S.C. 23, *Kutu v. Balogun* (supra), *Ejowhomu v. Edok-Eter Ltd.* (supra), *Adegoke v. Adibi* (supra) and *Oshodi v. Eyifunmi* (supra) for so contending. The point is made that no evidence has been provided by the respondents in their Counter-affidavit in support of these findings which have occasioned a miscarriage of justice and should therefore, be set aside.

On issue four i.e. on whether the lower court is right in upholding the decision of the trial court that the respondents are justified in deciding that the proposed corporate names are unregistrable by virtue of the provisions of CAMA; the appellant has protested misconceiving the combined effects of the provisions of Sections 30(1), 30(2) (a), 32, 673, 674(1) and (2) and 677(1) of CAMA particularly as the proposed corporate names have not been prohibited nor restricted expressly by Section 30 of CAMA and so, are not misleading, offensive, against public policy nor calculated to suggest government patronage. See: *Tell Communications Ltd Vs. SSS* (2000) HRLRA (vol.3) 104 (a High Court decision). Even moreso with regard to the provisions of Sections 30(1) (c) and 30(2) (a) that by the express mention of the corporate names not registrable under the Act that the proposed corporate names not having been otherwise specifically so mentioned therein are not prohibited nor restricted by CAMA. Having examined the dictionary meanings of the words of the proposed corporate names i.e. "Bureau" and "Institute" in particular he has submitted that they do not justify rejecting the proposed corporate names wholesale vis-a-vis the objects of the Associations and that Section 32 of CAMA has to be construed against the background

of the entire gamut of CAMA hence the trial court has erred by holding that nowhere under Part C is the plaintiff required to apply for “name availability” for registration of corporate names under Section 673 of CAMA. See: *Osondu v. FRN* (2000) 12 NWLR (Pt.682) 483 at 498. In that regard he posits that the provisions of Section 30 and B 32 of CAMA should be given their literary meaning being plain and unambiguous. It is submitted that the applications for names availability have been made under that Section 32 of CAMA which deals with name reservation, while Section 674 pertains to the real application for registration. Construing Section 677 of CAMA that by the C words, “if the commission is satisfied” the respondents are required to operate under CAMA and must comply with the provisions such as Sections 30 and 32 and 674 of CAMA in registering corporate names notwithstanding having been given absolute discretion thereof. D See: *Olaniyan v: University of Lagos* (1985) 2 NWLR (Pt.9) 599 at 623. He refers to Section 7(a) of CAMA to show that the respondents’ duty to administer the Act includes the regulation and supervision of the formation, incorporation, registration, management and winding-up of Companies. See: *P.H.M.B. vs. Ejitagha* (2000) 11 E NWLR (Pt.677) 154 at 169.

It is further submitted that under Part C and the provisions of CAMA generally the rejection of the appellant’s applications for “name availability” as not registrable is improper, ultra vires and wrongful and thus the trial court has erred by rejecting the proposed corporate names. The court is urged to uphold the foregoing submissions and to allow the appeal. F

As stated and outlined above, the respondents have formulated two issues. Arguing issue one i.e. whether the lower court is G right in affirming the decision of the trial court, it is submitted that the proposed corporate names for registration i.e. “Institute of Corporate Governance”, “Bureau of Corporate Governance”, and “Institute of Competitive Policy and Corporate Governance” are not registrable under Part C of CAMA. The respondents have submitted that H Section 673(1) of CAMA is the most relevant section in resolving the issue here as it covers that type of Associations for registration under Part C of CAMA that is, of clearly defined bodies and Associations that are otherwise knit together by custom, religion, kingship or nationality besides having been established for religious, educational,

literary, scientific, social development, cultural, sporting of charitable purpose only and that the bodies or associations as per the foregoing provisions of Section 673 of CAMA do not articulate registration of a body or bodies as posited and deposed to in paragraphs “O” and “P” of the appellant’s supporting affidavit. And that the proposed corporate names embodying the words as per “bureau” and “Institute” cannot be accommodated, however construed under the term of Association or Community of persons bound together by custom, religion, kinship or nationality so as to warrant their being registered under Part C of CAM A.

Furthermore relying on the Black’s Law Dictionary they have scrutinized the meaning of “Bureau” and “Institute” vis-a-vis the appellant’s definitions of the same words as per the Webster’s Dictionary, again to opine that the provisions of Section 673(1) of CAMA cannot accommodate by any expansive definitions of the proposed corporate names of the words “bureau” and “Institute” as a body or a community nor as an association of persons. They have relied on the principle of interpretation as in the cases of *Adisa v. Oyinwola* (2000) 25 CNQR 1264 at 1311 per *Iguh JSC*, *Bronik Motors v. Wema Bank* (1983) 1 SCNLR 296, *Nicon v. Power and Industries Engr. Co. Ltd.* (1986) 1 SC. I and a host of other cases in the circumstances albeit however “harsh” or “absurd” to common sense the result may be in the circumstances. The respondents also have invoked the principle of concurrent findings of law by the two lower courts to argue as per the case of *Adeleke v. Asani* (2002) 10 NWLR (Pt.I) 498 at 492 that the appellant has not discharged the burden, on him to warrant this court’s intervention to upset the findings as to the construction put on the provisions of Sections 32 and 673 of CAMA in this matter by the lower courts.

On issue two of the respondents’ brief of argument, it has been submitted that the lower court is right in holding that the trial court has not raised any issue nor ruled on any issue suo motu, which has occasioned a miscarriage of justice to the case of the appellant. In that regard, it has been pointed out that since this action has commenced by way of originating summons and a supporting affidavit that the appellant has had every opportunity to expatiate on the same. They allude to and debunked the appellant’s submissions on the provisions of Section 30(1) (a) - (d) and Section 30(2) (a) of

CAMA Vis-a-vis the respondents' default in their ministerial duties in the context of whether the proposed corporate names for registration are expressly not prohibited or restricted names as provided under Section 30 of CAMA. They contend that the appellant has had fair hearing and even then that the two lower courts have based there findings and conclusions on the briefs and arguments proffered in this matter to the court by the parties and so, that the issue of fair hearing is baseless.

The court is urged to resolve the issues in their favour and to dismiss the appeal in its entirety.

I must however note that the respondents have volunteered no responses to issues 1 and 2 raised by the appellant, all the same they have however not been conceded. Nonetheless issues 1, 2 and 3 of the appellant's issues for determination must be duly considered in this judgment. The appellant's issues 1, 2 and 3 are interrelated and have to be discussed along side issue 2 of the respondents' brief while issue 4 of the appellant has to be considered alongside issue 1 of the respondents.

The court has been invited to note that before now this court has made no previous pronouncements on the nutty issues for determination in this matter particularly as they touch on Sections 30, 32, 673 and 674 and their combined reading as here as to the registration of corporate names and are therefore, otherwise recondite points of law. Therefore, I should not make any apologies for the length and details of the foregoing reviews of the cases of the appellant and the respondents in this matter.

I have taken great pains to go into details of this matter in order to situate a number of crucial questions for resolution within their proper contexts and for ease of treatment thereof. Again, it is perhaps for the first time this court is opportuned to examine Sections 30 and 32 of CAMA in regard to the registration of proposed corporate names of Companies under Part C of CAMA on the backdrop of Sections 673, 674 and 677 of Part C of CAMA.

The main bone of contention in this matter giving rise to issues one and two which being interrelated have been taken together, is encapsulated in the pronouncement of Peter-Odili JCA holding at p. 159 lines 7- 9 of the record thus:-

"In the instant case, the trial court was right in striking out the

appellant's case after realizing that it ought not to have been brought by way of originating summons.”(underlining supplied).

I must say at once that there is no basis for so holding. Having perused the record in this case there is no where in the record the trial court has made such pronouncements or findings in that regard. With respect, it looks like a bolt from the blues as holding that the instant originating summons, in the circumstance as otherwise incompetent has in any case to be well founded as flowing logically from the cases presented by the parties. This is not to be in this case. The finding appears to be hanging in the air as I will show anon; as what the lower court has done here amounts to digging into the records to fish out issues and without hearing the parties particularly the appellant to use the material so dug out to decide the issues in controversy between the parties to the appeal. See *Eholor v. Osayande* (1992) 6 NWLR (Pt.249) 524 at 543. This is a grave error of judgment. In *Oshodi v. Eyifumni* (supra) whose facts and circumstances are similar as in this case, *Achike JSC* (of blessed memory) condemned in very strong terms a similar pronouncement as here, describing it as “unsolicited meddlesomeness” of an appellate court without being invited so to do has reopened questions of findings by a lower court i.e. the trial court as here. In this case what has happened is more serious, that is to say, raising of an important issue of incompetence of the originating summons, the initiating process suo motu in the judgment and deciding the same without affording the appellant the opportunity of fair hearing on the issue and even as the issue has not arisen from the grounds of appeal filed and the issues raised therefrom in the case. The respondents have neither at the trial court nor in the lower court challenged this suit on grounds of want of due process i.e. on the incompetency of the initiating process. Ordinarily, an appellate court will not allow a party on appeal to raise a question not raised in the court below, in this case, the court of trial nor is he granted leave to argue new issues not canvassed in the courts below; except where the new issues have involved substantial points of law that have to be allowed to avoid a miscarriage of justice. The respondents’ case here therefore does not fall to be considered against the background of the foregoing principle not having met the pre-conditions as a matter of sine-quo-non; see *Oredoyin v. Arowolo* (supra). Even moreso, the said pronouncement having been made

in vacuo thereby has introduced a new issue albeit raised suo motu in the appeal without being founded on a respondents' notice so as to have the trial court's judgment affirmed on other grounds. See: Igbinoba v. Igbinoba (supra). Equally so the respondents have not filed a cross-appeal on this question. Respectfully, the said pronouncement from whatever angle it is viewed has no basis and must be discountenanced. On the peculiar facts of this matter I find no basis to articulate and expound on (*sic expound*) the principles in the case of Oredoyin v. Arowolo (supra) on raising of fresh points and that an appellate court will not allow a party on appeal to raise a question not raised in the trial court or even grant leave to canvass such a question unless it involves a substantial point of law, excepting to say that allowing in the circumstance the new point raised suo motu by the trial court will amount to a variation of admitted facts as per the parties' cases as contained and circumscribed in their affidavits before the court. It begs the question whether it has occasioned a miscarriage of justice to make allowing the instant appeal imperative. There can no misgiving that it has occasioned a miscarriage of justice. I will advert to this point later.

Furthermore, against the backdrop of the said two issues, the respondents have not found it fit to render any response to them, i.e. issues 1 and 2 in the respondents' brief of argument. They have to count themselves lucky if the gamble pays off. As laid down in Olujinle v. Adeagbo (1988) 1 NSCC (Vol.19) 624; where like an uncontested case, the evidence in a case goes one way, no evidence on the issue from the respondents side, the trial court should have no alternative but to accept the evidence given (only on a minimum of proof) by the appellant. All the same, I must deal with those issues as the respondents have not conceded the issues. Firstly, I advert to the principle in Oredoyin v. Arowolo (supra) to the effect that a party ought to be consistent in the case he pursues from one stage to another so as not to spring a surprise on the opposite party and in that an appeal is not the inception of a new case but the continuation of the original suit and in that vein it is considered by way of rehearing, that is to say, covering as it were, the original case as contained in the record of appeal from the court below and so, no new issues are to be raised in the appellate court. The parties in an appeal are normally confined to their respective cases as pleaded in the trial court as in Jumbo v.

Benjamko International Ltd. (1995) 6 NWLR (Pt.403) 545 at 533-6 and also *Ogamioba v. Oghene* (1961) 1 ANLR 39, excepting with leave of court first having been sought and obtained on well-settled principles of law. And in all occasions for that matter, the party to be disadvantaged is entitled to be heard on the new issues before the court could properly pronounce on them. The respondents I must remark have not raised these questions before the lower court neither by a respondents' notice nor by a cross-appeal. For all this, the lower court is to be seen as deciding an issue not properly placed before it for adjudication, and the court as an unbiased umpire is not to be seen to be doing a party's case for him. It negates our principle of natural justice; the parties are entitled to the same level playing ground in our adjudicative system of justice. Any infraction of this principle has to be struck down in order to keep pure the flow of fountain of justice at all material times.

Now, this brings me to consider whether the initiating process here, that is, the originating summons is a competent process ab initio. Originating summons, an initiating process as established by a long line of cases and also as prescribed in Order 2 Rule 2 of the Federal High Court Rules is properly used where it is so provided by Statute as in CAMA in matters relating to winding-up proceedings otherwise it is commonly and indeed traditionally employed where the sole or principal question in issue is one of construing of any Acts, instruments, deeds or the provisions of a contract or where some questions of law are in issue and where there is little likelihood of disputing of the facts of the case. See: *Lewis v. Green* (1905) 2 App Cas. 340 at 344 and *Deleke v. Williams* 10 WACA 164. The instant originating summons has met these conditions I dare say, as I shall come to show later on in this judgment.

However, it must be stated that it is of no moment that the appellant has sought declaratory reliefs and injunctions as against coming by way of judicial review of mandamus. As I will show anon where a party has an alternative approach to enforcing his claim against a defendant his opting for one as against the other should not be seen as trying to circumvent the rules of court. There is no 'law proscribing such right nor any law restricting a person to a single remedy. See: *Re: Taylor* (1912) AC-347 and also *Olujinle v. Adeagbo* (1988) 1 NSCC (Vol.19) 624. The lower court has dwelt heavily on

this point to the effect that the appropriate remedy should have been by way of mandamus. Indeed, it is a turning point in its decision. The order of mandamus may be an effective and effectual remedy where applicable but it is not the only available remedy albeit appropriate one in the circumstances considering the nature of this case as there
 B are alternative reliefs of declaration and mandatory injunction by way of originating summons or where appropriate by writ of summons. There is no doubt that from the respective effects of invoking of mandamus or mandatory injunction that both injunctive reliefs have some
 C common purpose to serve, that is, for instance, directing a donee of power where he has improperly declined to exercise his absolute discretion in a situation vis-a-vis a party's legal rights; in such cases the court has to compel the donee by mandamus to act according to law. The same end is achievable by mandatory injunction. Nonethe-
 D less, mandamus as a coercive order although prompt and precise is a residuary remedy in the sense that it is a discretionary relief and has to be sort (*sic sought*) for and indeed granted where there is no other efficient remedy to enforce a legal right. Sometimes, an enactment may grant power to be exercised by the donee of the power where
 E certain conditions exist in his mind. This is so where absolute discretion is given (as here with regard to Sections 30(1) © and (d) and 677 of CAMA) for example to a Minister directing a situation and he improperly declines to do so, an order of mandamus is issued to compel him to react to the situation. See: Padfield & Ors. V. Minister
 F of Agriculture, Fisheries and Food and Ors. (1968) A/C. 997. On the other hand seeking redress by declaratory reliefs and mandatory injunction since the decision in Dyson v. Attorney-General (1911) K.B. 410 has become easily preferred in enforcing legal rights particularly as the plaintiff has not got to engage in any preliminary enquiry (i.e. technicalities) as in the case of invoking an order of mandamus. Also this is so since the inception of Order 47 of the Federal High Court Rules specifically recognizing the remedy by way of declarations and injunctions. The House of Lords in Pyx Granite Co.
 H Ltd. V. Ministry of Housing and Local Government (1960) A.C. 200 has put at bay any doubts as to granting of declarations and injunctions in appropriate cases and in my view as in the instant case as I shall show anon. Contemporary judicial opinion in this country prefers declaratory actions and injunctions as they are free from techni-

calities as against invoking an order of mandamus. This view is further reinforced by the dictum per Denning L.J. (as he then was) in *Healey v Minister of Health* (1955)1 Q.B. 221 to the effect that it is now “clear law that the Queen’s Court’ can grant declarations by which they pronounce on the validity or invalidity of proceedings of statutory tribunals.” This also so where the official is performing a ministerial duty as in these respects. B

In the light of the above reasons I cannot see that attacking the mode/method by which this action has been commenced i.e. by originating summons and thus for claiming therein a number of declaratory and two injunctive reliefs can be justified, having no basis. It is a grave error to rely on it to dismiss this case. To raise this question suo motu and decided the same as crucial as it has been in the decision without hearing the plaintiff/appellant has further compounded the issue of denial of fair hearing in this matter. More importantly, this matter being one commenced by “affidavit/pleadings” no party should be taken by surprise as to the other party’s case as there is enough room to file further affidavits in the case on facts to support the allegations under Section 30 of CAMA, that is in exposing of a party’s case with leave of court, if need be. C D E

The facts of this matter are not in issue rather the nature and extent of the reliefs being sought, as questions of law here have put in issue the combined effects of Sections 30, and 32 of CAMA in relation to Sections 673, 674, and 677 of CAMA vis-a-vis the proposed corporate names for registration under Part C of CAMA as applied for by the appellant so that from the commencement of the suit the critical issue for resolution pertains to the construction of the aforesaid provisions. F

The lower court again on its own promptings has in castigating the instant originating summons in this matter at p. 156 lines 14-16 of the record said: G

“The Learned Counsel for the Appellant in his quest to get his way had asked for so many reliefs including those, whose procedures are difficult to relate with the procedures he adopted or what he is in fact asking for. I mean precisely the matter of mandamus.” H

There can be no doubt as to the different procedures for claiming declarations and injunctive reliefs as per writ of summons or originating summons (as here) vis-a-vis seeking an order of manda-

mus by judicial review (via originating motion). It must be noted as I said earlier that an order of mandamus is discretionary and will not be granted where there is another remedy equally effective. See *R. v. Inland Revenue Commissioner Nathan* (1884) 12 Q.B.D; although my research has yielded no case where mandatory injunction is preferred to mandamus.

I hold that the instant action has complied with due process. And so initiating it by the originating summons is competent; the same goes for the reliefs of declarations and injunctions as claimed by it. The appellant in my view has the unfettered right of enforcing his legal rights by way of originating summons or any other effective forms of action, if any, as against enforcing his reliefs only by means of judicial review of mandamus. And so, a party should not be disadvantaged for exercising his legal right of choosing of an effective form of action. In my view the appellant has complied with the requirements of the law of initiating the instant action by way of originating summons by verifying the facts of the case as per the supporting affidavit. See *Famfa Oil Ltd. Attorney-General of the Federation* (supra). The respondents without equivocation have entered appearance in the matter as well as filed a counter-affidavit in challenge of the merits of the plaintiff's case and thus have taken steps in the proceedings with the alleged defects of having initiated the action by incompetent process, as they have alleged, if I may repeat, staring them in the face. In this type of proceedings the supporting affidavit and counter affidavits stand in the place of pleadings as is the case in a normal suit commenced by writ of summons. The issue of non-compliance has always been taken by preliminary objection. See *National Bank of Nigeria Ltd. V. Shoyaye, Sekondu Ukey Ezomo v. Oyakhire* (1985) 1 NSCC (Vol.16) 280. It is settled law that a breach of a rule of practice can only render a proceeding irregular and not a nullity. Such irregular proceedings can only be set aside if the party affected acted timeously and before taking fresh steps since discovering the irregularity. See *Niger-Benue Transport Co. Ltd. V. Narumal & Sons Ltd.* (1986) 4 NWLR (Pt.33) 117.

However, the rules of court have made provisions for non-compliance with the rules under Order 2 Rule 2 of the Federal High Court Rules by which non-compliance is now treated as an irregularity. Even where an action has been commenced by a procedure which

is irregular; the defendant who has taken fresh steps since becoming aware of the irregularity in the proceedings without raising a preliminary objection to the irregularity cannot be heard subsequently to seek to set aside the action on grounds of irregularity having acquiesced in it by waiver. See *Noibi v. Fikolati* (1987) 1 NWLR (Pt.52) 619. B

The defendants/respondents as can be seen from the record have taken steps by filing their appearance and counter-affidavit as well as taking active part in the proceedings at the trial court. The irregularity not having been timeously challenged the respondents C must be taken as having condoned and waived the same. Meaning that this complaint cannot now avail the respondents in the circumstances and it is even worse where it is an appellate court that is suo motu raising and deciding on the point in its judgment. I have delved into these contending questions of the respondents to show D that they have been so flawed as to be discountenanced by the lower court and this court. They have also with respect distracted the focus of the lower court from the substantial issues in the matter.

On issue three although it has some affiliation with issues one and two which I have discussed above in extenso I have decided to E deal separately with issue three in that it has formally raised denial of fair hearing i.e. as an issue. I think it is the case of the respondents that the appellant has been accorded fair hearing in respect of the issues raised before the trial court on Sections 30 and 32 of CAMA. F And I must say that the legal consequence of denial of fair hearing is trite. The denial of fair hearing in this case is sufficiently borne out by the record.

It is not in any doubt from the extract of the trial court's judgment quoted above that the questions relating to section 30(1) G (c) of CAMA and Section 30(2) (a) of CAMA and Section 32 of CAMA in regard to the proposed corporate names being capable of misleading as to the nature and extent of the proposed company's activities and for otherwise being offensive and contrary to public policy and the issue arising from Section 32 of CAMA on name avail- H ability, all that have been dealt with exhaustively by the trial court although they have been raised suo motu without hearing the appellant on those questions. And so, also, in regard to the proposed corporate names for registration being calculated to suggest that the com-

pany would enjoy government patronage. These findings as borne out of the record have formed the grounds of the trial court's decision. The appellant has rightly in my view contended that the respondents have not averred as to any facts in their affidavit to sustain the trial court's findings on the provisions of Section 30 (1) (c) , 30(2) (a) and Section 32 of CAMA that is, as to the proposed corporate names and so that they go to no issue. Just as in an action conducted by pleadings a party is not allowed to lead evidence outside his pleadings so also a party in an action as here cannot go outside the facts and evidence in a party's affidavit which serves both as pleadings and affidavit and so "affidavit/pleading". By the nature and extent of originating summons the supporting affidavit performs the dual functions of affidavit and pleadings. The respondents in paragraphs 4b, and 4d of the counter affidavit deposed simply to their rejecting each of the proposed corporate names "as not registrable as a society". And in paragraph 6 of the counter affidavit they have reiterated that the proposed corporate names are not acceptable under Part C of CAMA. What must be said here is that although the parties are not by rules of pleading and affidavit required or allowed to depose as to law or engage in legal arguments, they are however required to raise issues of law by deposing to facts that will support legal arguments on the issues. The respondents here have the onus of deposing to facts showing that the proposed corporate names are misleading, offensive and against public policy and also calculated to mislead the public as to links with governments and their agencies. See P.N. Udoh Trading Co. Ltd. V. Sunday Abere & Anon (2001) 11 NWLR (Pt.723) 114 and Peenock Investments Ltd. V. Hotel Presidential Ltd (1982) 12 SC. l. What I am trying to say here is that although a party by the rule of pleading is required to plead material facts only and not law, he is allowed to raise points of law as by that the facts of a case are made manifest. Absence of the facts in support of these allegation are not something that can be overridden by exercise of absolute discretion. After all, absolute discretion in the context is so when exercised as circumscribed by CAMA, and subject to the court's supervision.

Having gone through the counter affidavit I agree with the appellant that the counter affidavit contains no facts nor evidence as to the proposed corporate names tending to their being misleading, offensive and against public policy indeed, undesirable and also cal-

culated to mislead the public as to the nature of the activities of the proposed companies and also to suggest that the proposed Companies will enjoy the patronage of governments and their agencies. Obviously, the trial court has made its findings from extraneous facts totally outside the affidavit evidence before it and thus has committed a grave error. It is settled law that a party to a suit is bound by his pleadings and that any evidence on facts not pleaded goes to no issue, such evidence should be discarded and discountenanced by the court even then should be expunged from the record. And this duty is no less here that the parties rely on “affidavit/pleadings” to establish their respective cases; a party therefore cannot momentarily depart from his pleadings. See *Aderemi v. Adedire* (1966) NMLR 398, *A.C.B. Ltd. V. A.G. (North)* (1967) NMLR 231, *Adenuga v. L.T.C.* (13 WACA) 125. This principle applies a fortiori to cases as here in which the affidavits exchanged between the parties serve as affidavit and pleadings.

I can find no evidence to support the findings of the two lower courts on the foregoing questions. Meaning that the trial court having raised this issue suo motu and decided the same, respectfully, is in grave contempt of the principle of giving the appellant the opportunity of having a say on the crucial matter. Besides, this is a fundamental right. The principle has been expounded in *Ajao v. Ashiru* (supra) *Kutu v. Balogun* (supra), *Ejowhomu v. Edo-Eter Ltd.* (supra), *Adegoke v. Adibi* (supra) and *Oshodi v. Eyifunmi* (supra). I also have reached the same conclusion with regard to Section 32 of CAMA, that is to say that the appellant has not been heard on that question. It must be recalled that so far as per the record the plaintiff has only filed and paid as per the forms for “name availability” for the proposed Companies. The appellant, to my mind has established his case of denial of fair hearing. Even then, the respondents have not offered any cogent reasons for their action; to my mind as “hot registrable” is too vague and ambiguous and no reason at all. I will come to the consequence anon.

On the fourth issue it has raised the question whether the respondents are justified in their decision that the proposed company names are unregistrable by virtue of the provisions of CAMA.

I think that the justice of this matter can better be served by

examining it from the twin grounds of firstly, that the Registrar-General has the discretion to register corporate names. (See: Sections 30 and 677 of CAMA); this has been expressed in CAMA in one form or the other of the finality clauses such as “in the opinion of the Commission” and “if the Commission is satisfied”. And it begs the question whether the absolute discretion so exercisable is subject to court’s control. Secondly, again, it must be noted that CAMA itself contains specific prohibitions and restrictions upon registration of corporate names with some statutory exceptions. On this premise I go ahead to examine the second question first. The two lower courts have found that the respondents rightly have rejected the proposed corporate names as not registrable grounding their findings on express implications of the provisions of Sections 30(1) (c), 30(2) (a), 674(1) and (2) and 677 (1) of CAMA. In the circumstances I see no reason not agreeing with the appellant, also following upon my reasoning above that the averments in the supporting affidavit to the originating summons not having been challenged in any material particular should be accepted as admitted and acted Upon by the court in resolving the question.

The other crucial point is to determine on whom lies the onus of proof on the question of the proposed corporate names being misleading, offensive and against public policy as well as tending to mislead the public as to their activities and having links with governments and/or their agencies. Ordinarily, the burden of proof lies on the party who asserts a fact as per Sections 135, 137, 138(2) and 139 of the Evidence Act. On the background of the facts of this case, the burden of proof on the questions raised in regard to Section 30, 32, 673, and 674 of CAMA lies on the respondents as they are to be seen as asserting those facts; and so the party that would otherwise lose in the event of no evidence having been led on the particular issue. This principle is aptly captured in the case of *Jack v. Whyte* (2001) 6 NWLR (Pt.709) 266, 1 quote:

“In civil cases, the burden of proof rests upon the party, whether plaintiff or defendant; who substantially asserts the affirmative of the issue. It is fixed at the beginning of the trial by the state of the pleadings, and it is settled as a question of law, remaining unchanged throughout the trial exactly where the pleadings place it, and never shifting to in any circumstances whatsoever. If when all the

evidence by whatsoever introduced, is in, the party who has the burden has not discharged it, the decision must be against him. It is an ancient rule founded on consideration of good sense, and it should not be departed from without reasons.”

By implication of the above quote against the backdrop of the respondents’ counter-affidavit as set out above, the onus of producing credible evidence to prove that the proposed corporate names for registration of the Companies are otherwise misleading, offensive and against public policy and calculated to mislead the public rests squarely on the respondents and it has not been discharged and the respondents stand to lose on the particular issue. The respondents’ case here not having been proved has been greatly flawed as baseless. It cannot stand on nothing.

Coming to the definitions of the words of the proposed corporate names, that is to say, of “Bureau”, “Institute”, “Policy” and “Competition”; again, I agree with the appellant that considering the respective meanings of those words as have been elicited as per the Black’s Law and Webster’s Dictionaries the trial court’s findings (has dealt with Bureau and Institute only) that the proposed corporate names for registration are not registrable as they are misleading, offensive and against public policy is perverse. Having examined the dictionary meanings of the words in contention here, that is, “Bureau”, “Institute”, “Policy” and “Competition”, I do not find any of them misleading as used in the proposed corporate names for registration. Besides, as between the terms of “Bureau” and “Institute,” particularly there are many contrasts, thus, they are not interchangeable terms. I say so here as one can be granted as against the other being refused in the discretion of the Registrar-General where rightly exercised. To mislead in the context will become meaningful where any of those words of the proposed corporate names in both their legal and technical meaning is similarly close to another body or Association already registered or misleading as to the objects of such body or Association to make its registration misleading as in the case of Niger Chemist v. Nigeria Chemist (supra) where the defendant has been restrained from using its corporate name for being identical to plaintiff’s company name or misleading as having links with governments or agencies of governments as suggested in the case of Lagos Chamber of Commerce v. Nigeria Chamber of Commerce (supra).

On whether the proposed corporate bodies are offensive - again it has not been shown to be undesirable as being offensive to race, religion or could be misused in committing crime. Besides, none of the proposed corporate names has been challenged on grounds of public policy; nor does any of the proposed corporate names touch on the community sense and common conscience in regard to public morals, health and Welfare or has any of them offended public morals. From my findings it is clear that in the absence of factual basis to sustain the trial court's findings hereof they, respectfully, are founded on speculation and therefore unacceptable. From my resume of the meaning, and the associated meaning of these words they are not deceptive as to having government patronage.

The case of the respondents becomes all the more calculated to embarrass and arbitrary as I must here advert to the computer printout attached to the returned "Form C AC IT NAME" for the proposed corporate names for "name availability;" as it is after reviewing the printouts that the appellant has been fortified in asking for the reasons for rejecting the proposed corporate names. Under the heading captioned thus; "Similar Fully Registered name (s)" there are registered the following Companies to wit:

- (a) Certificate No.9290C - Airport Bureau Dechange Operators Association of Nigeria Lagos - Registered on 27/3/1996.
- (b) Certificate No. 12473C - Bureau for Educational Studies Registered on 12/11/1999.
- (c) Certificate No.6487M - Bureau for Islamic Education Registered on 21/11/1991.
- (d) Certificate No.4697M - Development Research Bureau Registered on 4/11/1987.
- (e) Certificate No. 13999C - international Bureau for Women Activities - Registered on 1/2/2002.
- (f) Certificate No'. 11717C - Open Opportunities and Action Bureau - Registered on 22/12/1998.
- (g) Certificate No. 11578C - The Bureau Ministry Registered on 29/10/1998.
- (h) Certificate No.l2222C - Women Advisory Bureaux Registered on 17/8/1999.
- (i) Certificate No.7671C - Human Empowerment Bureau Association.

I think it should be said that Bureau De Change outfits are a common sight in our environment that it would be naive respectfully, to suggest any links with governments or their agencies; and no reasonable person has otherwise been so misled. And so the word “Bureau” cannot be said to have been appropriated exclusively for governments or their agencies. B

The above named registered companies and Associations with corporate names embodying the word “Bureau” have thus been duly registered by the commission. The word “Bureau” has formed an important, integral part of the above registered corporate names of these Companies and Associations,. These registered corporate names of the Companies and Associations when juxtaposed respectively side “by side” the proposed corporate names for “name availability” in this matter speak for themselves. The word “Institute” I must also add has been embodied in the corporate name such as “Association of Chartered Institute of Arbitrators.”, a non governmental Association. By so embodying the word “Institute” has not suggested of having access to government patronage or that in the context in which the term “Institute” has been deployed therein that it is misleading, offensive or calculated to deceive as to the nature of its activities and/or their objects. The registration of the “Association of Chartered Institute of Arbitrators” for example belies the trial court’s findings that the terms “Bureau” and “Institute” as introduced in the proposed corporate names are capable of being misleading, offensive and calculated to deceive the public of links for patronage from governments or their agencies. C D E F

It must be said that if the above; registered ,Companies and Associations are registrable at all under any parts of CAMA in spite of their respective names embodying the words “Bureau” and “Institute” then the trial court’s findings that the terms “Bureau” and “Institute” connote offensive, misleading impression and are calculated to deceive and mislead the public to believing of their links with governments or their agencies cannot be correct. To my mind, it makes no sense as the defendants cannot be seen to approve and reprobate at the same time on this issue in that the said terms as deployed with regard to the above registered Companies and Associations have not severally contravened the provisions of section 30 of CAMA for being capable of misleading, offensive, against G H

public policy nor convey the impression that any of the said corporate bodies or Associations are either a department of Government or suggest enjoying the patronage of Governments or their agencies i.e. in defiance of Section 30(2) of CAMA as held by the two lower courts. The other related contention to the above is with regard to

B Section 32 vis-a-vis its relationship to sections 673 and 674 of CAMA. It provides as follows:

“32(1) The Commission may, on written application and on payment of the prescribed fee, reserve a name pending registration of a company or a change of name by a company.

C *(2) Such reservation as is mentioned is subsection (1) of this section shall be for such period as the Commission shall think fit not exceeding sixty days and during the period of reservation no other company shall be registered under the reserved name or under any*
D *other name which in the opinion of the Commission bears too close a resemblance to the reserved name.”*

The provision is not ambiguous and so is subject to literary interpretation. From the appellant’s submissions on Section 32 of CAMA and I agree with him that the lower courts have totally mis-
E conceived the purport of applying for “name availability” by the appellant under Section 32 of CAMA and this clearly is so from the trial court’s finding as follows:

“There is nowhere Under Part C that the plaintiff was required to submit for availability of name. For registration under Part C an ap-
F *plicant for the registration of an incorporated Trustees, must comply with Section 674.”*

Respectfully, this finding on Section 32 (supra) cannot be correct. A careful reading of Section 32 of CAMA shows that it is
G applicable to all parts of CAMA that is to say as a threshold process not only to the registration of Companies limited by shares under Part A but also the registration of Business Names under Part B and to a body or Associations of Incorporated Trustees under Part C. A similar provision Under the registration of Trade Marks has been cap-
H tured by Section 17(1) and 22(1) of Trade Marks Act Cap. T.13 of Laws of the Federation of Nigeria and they apply to all parts of that Act. The two lower courts have therefore wrongly excluded the application of Section 32 of CAMA to Part C of CAMA on the basis again, of misconceiving the principle of statutory interpretation

governing enactments divided into parts as in CAMA. This principle as in *Osondu v. FRN* (2002) 12 NWLR (Pt.682) 483 at 498 has made it clear that headings *or* parts which are given to a section or groups of sections of an enactment are irrelevant in construing the words of the section or sections unless there is ambiguity. See also *Ondo State University vs. Folayan* (1994) 7 NWLR (Pt. 354) 1 at 23. B It is therefore erroneous to hold by the trial court that each of the several parts of CAMA has to be construed separately against the settled principle of construing statutory provisions notwithstanding that it is codified.

In this matter the appellant has completed three forms of "Form CAC IT Name" for each of the three proposed corporate names and paid the fees for the same for names availability. It must be noted that Section 16(b) of CAMA has given the Commission power to prescribe how to obtain information from the Commission. And Section 32 of CAMA is one of procedure of ascertaining corporate names availability under CAMA. C D

A combined reading of Sections 32, 673 and 674 of CAMA shows severally that to register a body of Incorporated Trustees under Part C of CAMA an applicant has firstly to apply on "Form CAC IT Name" on paying the fees for "Name Availability." By this threshold process, the proposed corporate name is reserved pending registration for 6 months; or it lapses within six months of filing where registration is not followed up. It cannot be otherwise in this case at the discretion of the Commission and no other similar proposed corporate name will be countenanced during the period. E F

Again, a careful reading of Sections 32 vis-a-vis Section 674(1) of CAMA brings it out ever more clearly that the two sections contemplate different applications. Section 32 deals with applications for "Name availability" simpliciter, while Section 674(1) of CAMA deals with the real applications for the registration of a body of Incorporated Trustees, that is to say, where the Commission has found the proposed corporate names as having complied with the provisions of Section 30 of CAMA. In the final analysis, the trial court's findings as upheld by the lower court cannot in the face of the above reasons and reasoning stand. G H

Finally, I must on the background of the above poser as to

whether the Registrar-General has rightly exercised his discretion that the proposed companies are not registrable, answer the poser clearly in the negative. Up next, I have to deal with the absolute discretion excisable by the Registrar-General as it affects Section's 30 and 677 of CAMA.

B By Section 30(1) and 677 of CAMA the Registrar-General exercises the discretion as to the registration of Companies; particularly as regards Section 30(1) (c) and (d) and not under Section 30(1) (a) and (c) while under Section 30(2) (a), (b), (c) and (d) of
C CAMA the consent of the Commission is required for the registration of any corporate names. By the phrase, "in the opinion of the Commission", it is clear that the statutory discretion given to the Registrar-General in that regard is circumscribed as prescribed by CAMA, see Section 30(c) and (d). Pursuant to Section 30(1) (a) and (c) of CAMA
D once it is found that the names of any corporate bodies or Associations are similar of identical or resemble one another the proposed corporate name is not registrable and where already registered the defendant must be restrained from using the name as in the case of *Niger Chemists Ltd. v. Nigeria Chemist* (supra), and as has been
E refused in *Lagos Chamber of Commerce v. Nigeria Chamber of Commerce* (supra) as the words "Chamber of Commerce" under Section 30(1) (b) are deployable only where the Company is limited by guarantee. Again, Section 677 has also given the Registrar-General wide discretionary powers (in the words "if the Commission is satisfied") to exercise in the registration of bodies or
F Associations of Incorporated Trustees under Sections 674, 675 and 676 of CAMA.

As regards the provisions of Section 30(c) and (d) as well as
G 677 of CAMA and other similar provisions of CAMA dealing with donating power to the Registrar-General to act in a particular manner as in the case of doing so "in the opinion of the Commission" and "if the Commission is satisfied" the Registrar-General has to act judicially; in other words, acting in accordance with rules of Natural Justice. And it is now settled since the decision in *Ridge v. Baldwin* (1963) 2 AER 661 and followed with approval in the case of *Olatunbosun v. NISER* (1988) 1 NSCC (Vol.19) (Pt.17) 1525 per Oputa JSC that any person exercising statutory or ministerial acts according to his opinion and similar phrases for example, "if it appears to him" or "if

he is satisfied” is subject to the rules of natural justice. The same goes for the exercise of the wide discretion conferred on him under Section 677 of CAMA. The court notwithstanding such wide discretionary powers still has the power to exercise its supervisory jurisdiction to determine as here whether in the circumstances the donee has acted within the limits of the jurisdiction conferred on him by law, in this instance by CAMA. I hold the view respectfully, that the wide discretionary powers conferred on the Registrar-General pursuant to Sections 30 and 677 of CAMA have to be exercised within the umbrella of natural justice howbeit as the Registrar-General has to exercise his discretionary power judicially and fairly. And so, in this matter he must be seen to act fairly in dealing with the instant application and one way of so doing is to consider the application fairly and against the fact that from the said computer printout some Companies with similar corporate names have been registered and by hearing the applicant in the circumstances and responding to the appellants’ request for fuller and frank reasons for holding that each of the proposed corporate names severally is not registrable. Simply to mark respectively on each of the three Forms of “Form CAC IT Names” the words “not registrable” without more is not acting fairly or exercising of his discretionary power judicially as the words are vague, capricious and arbitrary. B C D E

The other side of the coin in this case is that the discretionary power given to the Registrar-General under Sections 30(1) (c) and (d) and 677 of CAMA to act according to “his opinion” or “if satisfied” comes within the jurisdiction of the court. So far it is clear that in the event of any misuse of the discretionary power donated to the Registrar-General, the courts have the jurisdiction to review and reverse the same in the interest of justice. Aniagolu JSC on this subject has put that point beyond doubt by saying that, F G

“..... The discretionary power of a Minister is clearly within the jurisdiction of the courts, whether the minister is to exercise the discretion or refuse to exercise his discretion or misused the discretionary power; and’ whether he gave reasons for the exercise of his power, or failed to give reasons for the exercise, it being a principle established by the courts that once a prima facie misuse of power has been established it would be open to the courts to infer that the minister acted unlawfully even if he declined to supply a justification H

at all or supplied a justification which is untenable in law. The principle basic in all common law countries including Nigeria, is that under the universally accepted rule of law, the Minister must act fairly and not to the prejudice of the citizen. (underlining mine). ”

In an analogous set of circumstances, by the provisions of the 1999 Constitution, INEC has the wide discretionary powers inter alia to recognize, register and regulate or refuse to recognize any political party. As wide as these powers are on the authorities they are subject to scrutiny of the courts. See: *Iwuju v. Federal Commissioner for Establishments* (1985) 1 NWLR (pt.3) 497 at 517 per Karibi Whyte JSC and *Stitch v. Attorney-General of the Federation* 5 NWLR (Pt.46) 1007 at 1025.

It is clear that Sections 30(1) and 677 of CAMA deal with the registration of corporate names not otherwise proscribed therein. The defendants/respondents must not misuse the discretionary power which has to be exercised judicially pursuant to the letters and spirit of CAMA. The above cases further make it abundantly clear that the donee of a power as the Registrar-General has to act fairly and not to the prejudice of the citizens as the courts in the circumstances have the power to checkmate arbitrary misuse of the power of reviewing the exercise of discretionary powers however wide and absolute and that is to say, in spite of the finality of the wide discretionary power to be exercised by the donee.

Construing Section 30(1) (a) (b) (c) and (d) has brought to the fore the trial court’s erroneous findings in that regard for not having the facts at all to support them and so the conclusions the trial court has reached on the said provisions of Section 30(1) and 30(2) of CAMA vis-a-vis the Registration of the proposed corporate names are therefore perverse. There is evidently a clear misuse of the discretionary power here meaning that the defendants have not only acted wrongfully in declining to deal with the application for name availability and eventual registration of the proposed corporate name; they have exercised their Wide discretion in these respects whimsically and against natural justice leading to a miscarriage of justice. And this court must therefore intervene to avert a clear miscarriage of justice.

What must be noted here is that where a donee in discharging a ministerial duty which does not involve any personal opinion as

here the question of bias will not be an issue. However, applying for name availability on the appropriate forms for proposed corporate names for registration whether under Section 30 of CAMA on the one hand or 673(1) and 674 of CAMA on the other, in my view, should not degenerate to a game of hide and seek or one in which one party is out to entrap the other. Such scenarios as characterized the acts herein are defunct of the proper exercise of judicial discretion. After all, the Commission by the provisions of CAMA has the power to prescribe proper procedures of accessing information from CAC. See Section 16(b) of CAMA as well as Section 32 of CAMA. On the peculiar facts of this case, the words “Bureau” and “Institute” having been found to be misleading, offensive, offending of public policy and calculated to deceive as having links with governments and their agencies by the two lower courts cannot cease to represent or bear those meanings wherever any of those words has been used as embodied in the corporate names of the said registered Companies under CAMA, otherwise it will run contrary to the presumption of statutory interpretation that the same words are used in the same meaning in the same enactment unless a contrary intention is showed.

It is clearly indisputable that the defendants/respondents have defaulted in the exercise of their judicial discretion conferred by Section 30 of CAMA which as I have demonstrated in every segment of this judgment has occasioned a miscarriage of justice. An appellate court as this court even moreso as the last court is justified to intervene in the interest of justice. It is a settled principle of law that judicial discretion must be exercised according to common sense and according to justice; it has not been the case here; in that respect, it is within the competence of appellate court as this court to

have it reviewed and reversed. See *Odutola v. Kayode* (1994) 2 NWLR (Pt.324) 1.

In the final analysis I find merit in this appeal and I allow it and acting pursuant to Section 22 of the Supreme Court Act decree as sought as per Reliefs (i), (ii), (iii), (iv), (v), (vi), (vii) and (viii). As regards relief (ix) it is further decreed that the defendants process and approve the names availability as hereafter designated as registrable under the appropriate part of CAMA and to proceed to register and incorporate the same to wit “Institute of Corporate Governance” or “Bureau of Corporate Governance” with costs of N50,000

to the appellant.

ADEKEYE JSC

I had read in draft the judgment just delivered by my learned brother, A.M. Mukhtar JSC. I agree with her reasoning and conclusion. I shall only add a few points by way of emphasis. The legal issues and reliefs are as stated in the leading judgment. It is apparent from the Record of Appeal that the bone of contention of the appellant at the trial court was that the defendants - The Registrar-General Corporate Affairs Commission and the Corporate Affairs Commission itself, now respondents, refused to approve the three names proposed by the appellant for registration. The appellant swore to an affidavit in support of the Originating Summons, and tendered six documentary Exhibits as follows -

(1) Exhibit 1 - Reservation and Availability of name, dated 29th September 2003.

(2) Exhibit 2 - Form CAC IT suggesting the name “Institute of Corporate Governance.”

(3) Exhibit 3 - Same Form CAC IT dated 14th October 2003 suggesting the name “Institute of Competition Policy and Corporate Governance.”

(4) Exhibits 4, 5 and 6 - Diverse correspondence relating to the objection of plaintiff's proposed names.

The enabling law directing the respondents in the discharge of their ministerial duties in the registration of names is the Companies and Allied Matters Act [CAMA] and the relevant sections are 30-31, 32 and 673 (1) (a) and 674 (1) (a). The duties of the respondents are as specifically defined in sections 30 (1) (a) - (d) and Section 30 (2) (a) - (d) and Section 673 of the Companies and Allied Matters Act. While the appellant applying for registration of a particular name must comply with Section 32 of CAMA. The specific and distinct procedure for registration of names are categorised by CAMA depending on the purpose and suitability of the names. Such classifications are -

1) Part A - which names are meant for Companies limited by shares.

(2) Part B - Business names.

(3) Part C - Incorporated Trustees.

(4) Part D - Merely A citation Part.

The appellant specified in their reliefs before the court, particularly - whether it was right for the trial court, affirmed by the lower court to refuse to register the three names which the appellants suggested. The proposed names are -

- (1) Institute of Corporate Governance. B
- (2) Bureau of Corporate Governance.
- (3) Institute of Competitive Policy and Corporate Governance.

The respondents were supposed to have rejected the first name - Institute of Corporate Governance by merely stating “Not Registrable”, while there was no reason for refusing to register the two subsequent names suggested by the appellants. In view of the fact that the names are not in conflict with those of any existing corporation, the respondents have failed to comply with their enabling law. D The court is to interpret the provisions of CAMA in the context of the respondents’ refusal to register the names and to determine whether they are not bound by the procedure highlighted by CAMA. The plaintiff/appellant is tenacious about the fact that the respondents have a ministerial duty to register a corporation in the event of failure E to discharge such duty the respondents must have reasons to back up the refusal like the proposed names being restricted, prohibited or in conflict with established names already given out to other applicants. In essence, the respondents must adduce statutory reasons for F their refusal to register the suggested names and not merely indicating Not Registrable.

The appellant is also of the view that if there was no room to register under Part C of the Act - their registration under Parts A and B could have been a proper option. The reliefs of the appellant in G Paragraphs 6 (i), (ii), (iii) and (ix) of the supporting affidavit and the exhibits tendered - Exhibits 1, 2 and 3 show that the appellant applied for registration under Part C. Part C of CAMA relates to Incorporated Trustees.

The relevant sections of CAMA relating to Part C are sections H 673 (1) and 674 (i) (a). The name by which the plaintiff/appellant first applied to be registered going by exhibit 1 is “Bureau for Corporate Governance.” If that was the request of the appellant, the respondents could not have construed the application under any other

heads recognised by CAMA.

The enabling law for Part C Incorporated Trustees is as follows -

Section 673 of CAMA stipulates that -

B *"Incorporation of certain communities, bodies and associations.*

C *(1) Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorized by the community, body or association - apply to the Commission in the manner hereafter provided for registration under this Act as a corporate body."*

D Section 674 (1) provides that: -

"Application under Section 673 shall be in the form prescribed by the Commission and shall state -

(a) The name of the proposed corporate body which must contain the words "Incorporated Trustees of".

E *b) The aims and objects of the association which must be for the advancement of any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose and must be lawful.*

F *(c) The names, addresses and occupations of the Secretary of the Association."*

Three salient points emerge from the above sections as follows -

(1) Any persons or group of persons wishing to register an Incorporated Trustee must do so under Part C of CAMA.

G (2) Registration must be applied for as a corporate body.

(3) The aims and objectives of the Trusteeship must be lawful.

Section 676 of CAMA relates to the Constitution of the association.

The section stipulates that -

H *"The Constitution of the association shall, in addition to any other matter*

(a) State the name or the title of the association which shall not conflict with that of a company or with a business name or trade mark registered in Nigeria."

In effect the Commission must ensure that the proposed name to be registered does not conflict with an existing name or be a prohibited name.

In the determination of the names that are eligible to be registered under the Company and Allied Matters Act, Section 30 of CAMA provides that –

Section 30 - Prohibited and Restricted Names.

“30 (1) - No Company shall be registered under this Act by a name which: -

(a) Is identical with that by which a Company in existence is already registered.

(b) Contains the words “Chamber of Commerce.

(c) In the opinion of the Commission is capable of misleading as to the nature and extent of its activities or is indescribably offensive or otherwise contrary to public policy.

(d) In the opinion of the Commission would violate any existing trade mark.

(2) Except with the consent of the Commission, no Company shall be registered by a name which –

(a) includes the word “Federal” “Regional” ”State” “Government” or any other word which in the opinion of the Commission suggests or is calculated to suggest that it enjoys the patronage of the Government of the Federation or of a State, as the case may be or any Ministry or Department of Government.”

In examining the meaning of the words constituting the suggested names of the appellant’s company;

(a) Bureau of Corporate Governance.

(b) Institute of Corporate Governance

(c) Institute of Competition Policy and Corporate Governance.

I intend to adopt the Black’s Law Dictionary Sixth Edition meaning of these words -

Bureau - is defined as an office for the transaction of business. A name given to the several departments of the executive or administrative branch of government or their divisions. A specialised administrative unit. Business establishment for exchanging information, making contracts, co-ordinating activities etc.

Policy means the general principles by which a government

is guided in its management of public affairs or by the legislative in its measures.

Institute means an organization devoted to the study and improvement of the law.

B Governance - The art of controlling the structure of principles and rules determining how a state or organization is regulated - or the art of controlling the machinery by which sovereign power is expressed.

C On the whole, going by the provisions of Section 30 (1) and (2) (a) of CAMA and the fair, unambiguous and literary construction of Section 673 (1) would not admit the registration of a “Bureau” - because it would mean registering a body that is neither a community nor association of persons. The same applies to the application of word “Institute.” The two words Bureau of Corporate Governance D connote that the company proposed to be registered is either a department of government or enjoys the patronage of some government contrary to Section 30(2) (a) of CAMA.

E In the circumstance of the alternative name proposed - “Institute of Competition Policy and Corporate Governance” - the two names are not registrable standing on the provision of Section 30 (1) (c) of CAMA as they are capable of misleading the public as to the nature or extent of the proposed company activities and in addition, the names are offensive and are contrary to public policy.

F Moreover by the interpretation of Section 30 (2) (a), the words in each of the proposed name is calculated to suggest that the company enjoys or would enjoy the patronage of government of the Federation or any of the States. The respondents were justified based on the foregoing reasons in their decision to regard the name proposed by the appellant unregistrable as per Exhibit 5 attached to the Originating Summons. The appellant also submitted for availability of name whereas there is no provision for such under Part C of CAMA. G Section 32 (1) of CAMA provides that -

H Section 32 (1) *“The Commission may, on written application and on payment of the prescribed fee, reserve a name pending registration of a company or a change of name.”*

Section 677 (1) of CAMA provides that -

“If the Commission is satisfied that the application has complied with the provisions of Sections 674, 675 and 676 of this Act, it

shall cause the application to be published in a prescribed form in two daily newspapers circulating in the area where the corporation is to be situated and at least one of the newspapers shall be a national newspaper.”

A public body or authority vested with statutory powers must act within the law and take care not to exceed or abuse its powers. It must keep within the limits of the authority given to it. It must act in good faith and reasonably. Where a person or public body or authority claims to have acted pursuant to a power granted by a statute, such person, body or authority must justify the act, if challenged, by showing that the statute applied in the circumstances and that he or it was empowered to act under it.

Psychiatric Hospital Management Board v. Ejitapha (2000) 11 NWLR pt. 677 pg. 154.

I have shown sufficient evidence to demonstrate that the respondents have sufficiently complied with the provisions of their empowering statute in Sections 30, 31 and 32, 673 and 674 of CAMA in rejecting the names submitted by the appellant for registration by the Commission thereby underlining and declaring them not registrable. In the performance of their duties, section 677 (1) of CAMA gave the respondents absolute discretion - which they exercised in the prevailing circumstance. The operative words in the section are “If the Commission is satisfied” and in section 32 (1) “The Commission may.” The word may when used in a statute may be interpreted as directory or permissive or may be interpreted as imperative depending on the context in which it is used. The context in which the word may appear in a statute must be looked into because it is the controlling factor whether the word is mandatory or directory,

Ifezue v. Mbadugha (1984) 1 SCNLR pg. 427.

Ijebu-Ode Local Government v. Adedeji Balogun & Co. Ltd. (1991) 1 NWLR pt. 166 pg. 136.

Rimi v. INEC (2005) 6 NWLR pt. 620 pg. 56.

The community reading of Section 32 (1) and 677 (1) confirm the absolute discretion given to the Commission in the Registration of proposed names. The trial court concluded that matching the relevant provisions of the relevant sections of CAMA with the facts available to the respondents, they have exercised their discretion judiciously and to that extent rightly refused the application for man-

damus. This appeal borders on the interpretation of the relevant sections of the Companies and Allied Matters Act (CAMA). It must be called to mind that statutes are to be given their simple, clear and unambiguous meaning. The court must in the discharge of its duties of interpretation avoid going beyond the meaning and intendment of the legislators. The legislature is to be presumed not to have put a special meaning on words in the statute. Where a party to a suit has however complained that the provisions of a statute has been breached against him or that the mandatory provision of a statute was not complied with, thus making the interpretation of a statutory provision an issue, it then becomes the duty of the court to examine the act or acts complained of and compare it or them with the relevant statutory provision and resolve appropriately whether there was breach, non-compliance or substantial compliance with the law in question.

Aqua Ltd. v. Ondo State Sports Council (1988) 4 NWLR pt. 91 pg. 622.

Fawehinmi v. I.G.P. (2000) 7 NWLR pt. 665 pg. 481.

Awolowo v. Shagari (1979) 6-9 SC pg. 51.

Alamieseigha v. F.R.N. (2006) 16 NWLR pt. 1004 pg. 1.

The trial court struck out the reliefs of the plaintiff/appellant, while the lower court dismissed the appeal. We now have before us impeccable concurrent findings of the two lower courts, which from the over-whelming evidence are not perverse, and not reached as a result of wrong approach to evidence or miscarriage of justice or a violation of some principles of substantive and procedural law. This court therefore upholds these judgments - while the findings of facts remain valid and intact.

Akinsanya v. U.B.A. (1986) 4 NWLR pt. 35 pg. 273.

Odenigi v. Oyeleke (2001) 6 NWLR pt. 708 pg. 12.

Onwuama v. Ezeokoli (2002) 5 NWLR pt. 760 pg. 333.

Amusa v. The State (2003) 4 NWLR pt. 811 pg. 595.

Ojo v. Anibire (2004) 10 NWLR pt. 822 pg. 571.

With the full reasons ably given by my Lord A.M. Mukhtar, JSC in the leading judgment, I also dismiss the appeal as lacking in merit. I adopt the consequential orders made in the leading judgment as mine.