

**SUPREME COURT OF NIGERIA**  
FRIDAY 17TH JANUARY, 2014. SC. 96/2003  
**CORAM:- I. T. MUHAMMAD, J. A. FABIYI, M. U. PETER**  
**ODILI, O. ARIWOOLA, M. D. MUHAMMAD, JJSC**

1. OREDOLA OKEYA TRADING CO.  
2. ALHAJI YESUFU ALABI AMOLEGBE ..... APPELLANTS  
AND  
1. BANK OF CREDIT & COMMERCE  
INTERNATIONAL  
2. MR. OLUROTIMI WILLIAMS ..... RESPONDENTS  
IN RE:  
1. MR. SIKIRU AMOLEGBE  
2. NIGERIA DEPOSIT INSURANCE  
CORPORATION

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COMPANY LAW - Company - Winding up - Involves the liquidation of company - So that assets are distributed to those entitled to receive them (H1)

BANKING - Liquidation & Dissolution - Difference - The former may precede or follow the latter - Which is the end of legal existence of a corporation - Thus mere revocation of banking licence - Cannot end juristic life of the bank (H2)

COMPANY LAW - Company - Winding up - Mode of - Three modes of winding up are by court - Voluntarily - Or subject to the supervision of the court (H3)

DOCUMENTS - Public document - Proof - By Evidence Act s. 112 - Certified copies of such documents may be produced in proof of its contents - Or parts of the documents which they purport to be copies (H4)

AFFIDAVITS - Averment - Not challenged - Averment in affidavit which has not been categorically denied - Is deemed to be admitted by the opponent (H5)

COMPANY LAW - Liquidator - Action - Locus standi - By CAMA s. 425 - Liquidator in a winding up by court can bring and defend action - Subject to sanction of the court or committee of inspection (H6)

BANKING - Legal entity - Dissolution - Proof - Applicant ought to aver in his affidavits that AIB has been dissolved - And producing document that has terminated the legal existence of the bank (H7)

### ***FACTS***

Applicant one Mr. Sikiru Amolegbe filed a Motion on Notice before the Supreme Court of Nigeria pursuant to O. r. 28(1), O. 8 rr. 9(1)(2)(11)(12) of the Rules of the court, s. 40 of the NDIC Act, s. 425 of CAMA and under the inherent jurisdiction of the court. Applicant by his application is seeking for order substituting the deceased 2<sup>nd</sup> appellant with applicant and order substituting 1<sup>st</sup> respondent with the Nigeria Deposit Insurance Corporation (NDIC). Applicant based the motion on five grounds and supported it with six paragraphs affidavit. Applicant's contention is that as the living heir of the said deceased 2<sup>nd</sup> appellant, he desires to pursue the appeal and is willing to be substituted for the deceased.

Applicant also maintained that the Central Bank of Nigeria has revoked the banking licence of 1<sup>st</sup> respondent (subsequently known as African International Bank Ltd. - AIB). Applicant argued that by virtue of section 40 of the NDIC Act 2006 and section 425 of CAMA 2004, upon such revocation, NDIC shall be deemed to have been appointed the provisional liquidator of 1<sup>st</sup> respondent with power to defend any legal proceeding on behalf of 1<sup>st</sup> respondent. 1<sup>st</sup> respondent raised no objection to the application, but learned counsel for NDIC filed counter affidavit in opposition, contending inter alia that a company remains in existence until dissolved. His position is that it is the African International Bank (which subsequently replaced 1<sup>st</sup> respondent) that should be sued since it is still in existence. He went further to contend that it is the same AIB that ought to be substituted and not NDIC.

**HELD** (Unanimously dismissing applicant's 2<sup>nd</sup> prayer per **I. T. MUHAMMAD JSC**)

*COMPANY LAW - Company - Winding up*

**1. Now, winding up of a company involves the liquidation of the company/corporation so that assets are distributed to those entitled to receive them.** (p. 223 A)

*BANKING - Liquidation & Dissolution - Difference*

**2. Campell Black, says liquidation is quite distinguishable from dissolution which is the end of the legal existence of a corporation. Liquidation may precede or follow dissolution (p.839 of Black's Law Dictionary 5th ed.) thus, mere revocation of banking licence of a bank, without more, as claimed by the applicant cannot bring to an end the juristic life of a bank or corporation. Likewise where a bank or corporation ceases to operate or closes its business that does not determine the legal existence of such a bank or corporation.** (p. 223 A)

*COMPANY LAW - Company - Winding up - Mode of*

**3. In general, there are (3) three known modes of winding up a company viz: (a) by the court; (b) voluntarily; or (c) subject to the supervision of the court.** (p. 223 C)

*DOCUMENTS - Public document - Proof*

**4. Section 112 of the Evidence Act provides that certified copies of public documents may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies.** (p. 224 E)

*AFFIDAVITS - Averment - Not challenged*

**5. It is trite as well that any averment in an affidavit which has not been categorically denied or controverted is deemed to be admitted by the opponent.** (p. 224 F)

*COMPANY LAW - Liquidator - Action - Locus standi*

**6. In accordance with the provisions of the statutes referred**

**to above, I am in agreement with the learned counsel for the applicant that the NDIC is the body established by law to assume the liability of insured banking institutions and by operation of law it is the provisional liquidator of the 1st respondent. I am even more fortified in my view by the averment in paragraph 4 of the NDIC'S further and better affidavit of 11/10/13 where it is admitted that the Nigeria Deposit Insurance Corporation (NDIC) was appointed the liquidator of African International Bank Limited (AIB) in 2013.**

**By looking soberly, at the provision of Section 425 (1) (a) set out above, one may ask: whether the NDIC as the provisional liquidator of the 1st respondent can bring or defend any action or other legal proceedings in the name and on behalf of the 1st respondent. It is clear from the same provision that a liquidator in a winding up by the court (which the NDIC is by law deemed to have been so appointed) can bring or defend any action or other legal proceedings in the name and on behalf of the 1st respondent (to subrogate AIB) subject only to the condition, i.e. sanction of the court or committee of inspection to conduct such legal proceedings. In other words, where no sanction of either the court or of the committee of inspection is sought and obtained by the liquidator, no legal action or proceedings can be brought or defended by the liquidator. The applicant herein, did not produce any evidence to show that the provisional liquidator has obtained such sanction of the court or of the committee of inspection to bring or defend any action or other legal proceedings in the name and or on behalf of the 1st respondent. There is therefore, no way the applicant can enrobe NDIC as provisional liquidator to conduct any legal proceedings whether for or against the 1st respondent. (p. 225 G)**

*BANKING - Legal entity - Dissolution - Proof*

**7. From the above facts, it is clear to me that AIB is still in existence, a separate legal entity from the NDIC, revocation of its Banking License and seizure of banking operation notwithstanding. (I earlier on commented on these issues). If the applicant had wanted to lead this court to the conclusion that**

***AIB has been dissolved, this fact should have been averred to in applicant's affidavits in support. He would have gone ahead to produce a document that has terminated the legal corporate existence of the AIB. And, as a provisional liquidator again (as I already stated above), the applicant should show that the liquidator is entitled to pursue legal proceedings for or against NDIC, once it is in compliance with the provision of Section 425(1) (a) of the Companies and Allied Matters Act.***

***It is pertinent for me, my lords, to reiterate the position of the law that in our adversarial system of litigation, the law, always places the burden of proof in civil matters on the plaintiff/claimant/petitioner/applicant, as the case may be, to satisfy the court by leading concrete, cogent and valid evidence with a view to establishing his claim.*** (p. 227 B)

### **REPRESENTATION**

Mr. B. B. Lawal with P. U. Abbe; C. Dunkwu, for the appellant/applicant

Mr. Ogechi Ogbonna, for NDIC (2nd party sought to be substituted)

Mr. M. L. Hanafi with S. S. Umoru, for the 2nd respondent

### **CASES REFERRED TO**

A-G Ondo State v. A-G Ekiti State (2001) 17 NWLR (pt. 743) 706

Adegoke v. Adibi (1992) 5 NWLR (pt. 242) 410

Amodu v. Amodu (1990) 5 NWLR (pt. 150) 356

Famuroti v. Agbeke (1991) 5 NWLR (pt. 189) 1

C.C.B. Nig. Plc. v. O'Silva Wax Intr'n'l. Ltd. (1999) 7 NWLR (pt. 609) 97

C.C.B. Nig. Ltd. v. Onwuchekwa (2000) 3 NWLR (pt. 647) 65

### **STATUTES & RULES REFERRED TO**

Nigeria Deposit Insurance Corporation Act 2006, s. 40

Companies & Allied Matters Act Cap C20 LFN 2004, s. 425

Evidence Act, s. 137

Supreme Court Rules, O. 2 r. 28(1); O. 8 rr. 9(1), (2), (11)(12)

### **BOOK REFERRED TO**

Black's Law Dictionary 5th Ed., p. 839

**LEAD JUDGMENT BY I. T. MUHAMMAD JSC**

By a Motion on Notice dated 6th of June, 2013 and filed on same date, the applicant prayed for the following reliefs:

B i. *“AN ORDER of this Honourable Court substituting the deceased 2nd appellant (Alhaji Yesufu Alabi Amolegbe) with the applicant (Alhaji Sikiru Amolegbe) in this appeal.*

C ii. *AN ORDER of this Honourable Court substituting the 1st respondent on record (Bank of Credit & Commerce International), with the Nigeria Deposit Insurance Corporation (the Corporation) in this appeal.”*

The Motion, submitted learned counsel for the applicant, was brought pursuant to Order 2 Rule 28(1); Order 8 Rules 9(1), (2), (11) and (12) of the Supreme Court Rules; Section 40 of the Nigeria D Deposit Insurance Corporation Act 2006; Section 425 of the Companies and Allied Matters Act, Cap. C20 LFN, 2004 and under the inherent jurisdiction of this Honourable Court.

E The motion was supported by five grounds and an affidavit in support of six paragraphs sworn to by one Elizabeth Oludoyin Onatade. There were filed further affidavits in support; counter affidavits and exhibits by the respective parties.

F In moving the motion on Notice, the learned counsel for the applicant, Mr. Lawal, stated that he relied on all the paragraphs of the affidavit and further affidavit in support of the motion. He also relied on all the exhibits annexed to the affidavits.

G Learned counsel submitted that the 2nd appellant in the appeal is deceased and has left behind a living heir, Alhaji Sikiru Amolegbe who is desirous of prosecuting the appeal and willing to be substituted for the 2nd appellant. He further submitted that the banking license of the 1st respondent which subsequently became known as the African International Bank Limited has been revoked by the Central Bank of Nigeria since the commencement of the appeal. By the provisions of Section 40 of the Nigeria Deposit Insurance Corporation Act 2006 and Section 425 of the Companies and Allied Matters Act, Cap. C20 LFN, 2004, upon such revocation, the H Corporation shall be deemed to have been appointed the provisional liquidator of the 1st respondent with power to defend any legal proceeding on behalf of the 1st respondent.

Learned counsel urged that it is essential for the just and proper determination of the pending appeal that these parties be substituted.

Mr. Hanafi for the 1st respondent in the main appeal did not object to the grant of the application.

Mr. Ogbonna, for the Nigeria Deposit Insurance Corporation (the Corporation for short herein), person sought to substitute BCCI, opposed the application. He filed a counter affidavit and further counter affidavits supported by exhibits. He relied on same. In his submissions the learned counsel stated that this application for substitution was filed after 22 years from the date Bank of Credit & Commerce International (BCCI) ceased to exist. It ceased to exist in 1991. An application for substitution was not made at the trial court or Court of Appeal throughout this period and BCCI was represented by a counsel. The position of the law, learned counsel submitted, is that a company remains in existence until dissolved. If any party ought to be substituted, it ought to be the African International Bank Limited and not the NDIC. Learned counsel stated further that NDIC is a liquidator to AIB. AIB is still in existence and it can be sued as a company in liquidation. He cited Section 454 of the Companies and Allied Matters Act, 1990 LFN; Corporative and Commerce Bank Ltd. v. Silver Wax International Ltd. (1999) 7 NWLR (Pt.609) 97 at p. 103 A - H. NDIC, argued learned counsel, has nothing to do with the applicant. He finally urged the court to refuse the application.

Mr. Lawal for the applicant said that he had nothing to say in reply to the submission of Mr. Ogbonna.

Now, the central issue for determination in this application, going by the facts contained in the affidavit evidence is substitution: (a) for Alhaji Sikiru Amolegbe to substitute the 2nd appellant, Alhaji Yesufu Alabi Amolegbe and (b) for Nigeria Deposit Insurance Corporation to substitute Bank of Credit and Commerce International, 1st respondent on record. The first leg of the application i.e. (a) as above, is a harmless one and poses no problem and as none of the parties is opposed to its grant. It is accordingly hereby, granted as prayed. Leave is granted to Alhaji Sikiru Amolegbe to substitute Alhaji Yesufu Alabi Amolegbe, 2nd appellant in the appeal who is now deceased.

For the 2nd leg of the application i.e. (b) as above, there is need to consider the depositions in the affidavit in support, further affidavits filed by the applicant and the counter affidavit and further

counter affidavit filed by the NDIC in opposition to the grant of that leg of the application.

Some of the grounds upon which the applicant premised his application for the substitution in respect of the 2nd leg of the application are as follows:

B iii. The banking license of the 1st respondent - which subsequently became known as African International Bank Limited has since the commencement of this appeal been revoked by the Central Bank of Nigeria.

C iv. Section 40 of the Nigeria Deposit Insurance Corporation Act 2006 and section 425 of the Companies and Allied Matters Act Cap. C20 LFN, 2004, provided that upon the revocation of the license of a failed Institution (1st respondent in this case) the corporation, shall be deemed to have been appointed the provisional liquidator of the 1st respondent with power to defend any legal proceeding on behalf of the 1st respondent.”

In its affidavit in support of the motion on Notice, the applicant through one Elizabeth Oludoyin Onatade, a legal practitioner, swore to the following facts:

E 3(g) The 1st respondent’s banking license has been revoked, and it has since ceased to carry on banking business.

h. The 1st respondent has ceased to be in operation and has closed down its business activities.

F i. The 1st respondent in this appeal was until July 1991 an affiliate of the Bank of Credit and Commerce International (Holdings) Luxembourg S.A.

G j. Upon the liquidation of the parent Bank, the 1st respondent changed its name and became known and described as the African International Bank Limited (AIB).

k. AIB thereon continued banking operations until sometime prior to 2005 when it ceased banking operations.

H l. The Nigeria Deposit Insurance Corporation (Corporation) is the body established by law to assume of insured banking institutions and by operation of law it is the provisional liquidator of the 1st respondent.

m. The 1st respondent is no longer a competent party to the instant appeal, hence it has become expedient to substitute the 1st respondent with the Corporation.”



In his counter affidavit filed on 7/6/13, learned counsel for the 2nd respondent in the application made the following depositions through one Samuel Ani who swore to the counter affidavit:

*“3. Contrary to paragraph 3(j) of the affidavit in support of the Motion, African International Bank Limited (AIB) was formerly known as Universal Bank registered on 17th January, 1990 whose address is 18 Ibrahim Taiwo Road, Kano, Kano State, Nigeria. A search conducted by me on the internet on African International Bank Limited revealed a website [www.aibng.com](http://www.aibng.com) which showed a list of Nigeria Banks and Financial Institutions revealed that it was Universal Bank and not Bank of Credit & Commerce International that changed into AIB. Attached as Exhibit 2 is an internet printout from the website [www.aibno.com](http://www.aibno.com) showing the list and particulars of Nigeria Banks and Financial Institutions?*

*4. Bank of Credit & Commerce International (BCCI) is not known to the Nigeria Deposit Insurance Corporation (NDIC). BCCI is not in the list of banks and/or deposit taking institutions whose license were revoked by the Central Bank of Nigeria and/or ceased to carry on operations and are being liquidated or have been liquidated by the Nigeria Deposit Insurance Corporation (NDIC).*

*5. African International Bank Limited is a legal person who can sue and be sued in its name and capacity. African International Bank Limited has not been dissolved.*

*6. The Nigeria Deposit Insurance Corporation does not have any dealing with the appellant nor the applicant. Neither the appellant nor the applicant has any claim, Neither the appellant nor the applicant has any claim, cause of action against, nor personal dealing with the Nigeria Deposit Insurance Corporation.*

*7. The Appeal against the decision of the Court of Appeal was entered in the Supreme Court in 2003 as Appeal No. SC.96/2003. Neither the appellant nor the applicant applied to substitute African International Bank Limited for Bank of Credit and Commerce International at the time the appeal was entered in 2003, or soon thereafter including before 2005. The appeal was filed solely against Bank of Credit & Commerce International at the time the appeal was entered in 2003, or soon thereafter including before 2005. The appeal was filed solely against Bank of Credit & Commerce International.*

*8. The Appeal against the decision of the High Court to the*

*Court of Appeal was entered at the Registry of the Court of Appeal in 1995 as Appeal No. CA/250/1995. Neither the appellant nor the applicant applied to substitute African International Bank Plc for Bank of Credit and Commerce International at the time the appeal was entered at the Registry of the Court of Appeal in 1995 or soon thereafter. The appellant prosecuted the appeal before the Court of Appeal solely against the Bank of Credit and Commerce International Bank Limited.*

*9. The action before the learned trial court was commenced in 1989 as Suit No. LD/912/1989. The appellant upon the liquidation of the Bank of Credit and Commerce International alluded to in paragraph 30 of the affidavit in support did not apply to substitute African International Bank Limited for Bank of Credit and Commerce International. The appellant prosecuted the matter solely against the Bank of Credit and Commerce International (BCCI).*

*10. The appellant prosecuted the trial before the learned trial judge, and the appeal before the Court of Appeal against the Bank of Credit and Commerce International and not African International Bank Limited nor the Nigerian Deposit Insurance Corporation.*

*11. The appellant and the Bank of Credit and Commerce International (BCCI) each participated at the trial and the appeal before the Court of Appeal were each duly represented by counsel who acted on their behalf.*

*12. The Nigeria Deposit Insurance corporation only administers the affairs of a bank whose license is revoked solely for the purpose of liquidation and for no other purpose. The Nigeria Deposit Insurance Corporation does not assume liability for the affairs of any closed bank and/or bank which has ceased to carry on operations in Nigeria nor responsibility for such a bank.*

*13. The Nigeria Deposit Insurance Corporation is a distinct entity from any bank under liquidation in respect of which it can only sue and be sued as the liquidator of such Bank and not in any other capacity. In any suit in which the Nigeria Deposit Insurance Corporation is suing or being sued as liquidator, the fact that it is being sued or suing as liquidator is stated beside the name of the bank in liquidation or the name of the Nigeria Deposit Insurance Corporation."*

The appellant filed a further affidavit in support on 28/6/13, dated on same date in which he, through the same Elizabeth Oludoyin

Onatade, made a denial to some of the depositions in the counter affidavit, viz:

*“2. Further to my depositions in the aforesaid affidavit in support of the instant notice of motion, I affirm and know for a fact that the 1st respondent in this application became the African International Bank Limited (AIB).”* B

*3. Contrary to paragraphs 3 and 4 of NDIC’S counter affidavit dated 7th June, 2013, I conducted a corporate search on the company file of AIB at the Corporate Affairs Commission (the Commission) wherein it was discovered that by a special resolution dated 11th July, 1991, the 1st respondent changed its corporate name to become AIB.* C

*4. Further to the aforesaid and in compliance with statutory regulations a new certificate was issued by the Commission on 12th July 1991. Attached and marked Exhibit BO 3 is a certified true copy D of the certificate of change of name of the 1st Respondent that I obtained from the commission.*

*5. AIB thereafter continued banking operations until some-time prior to 2005 when it ceased banking operations.*

*6. I therefore verily believe that it is in the interest of justice E that the 1st respondent be substituted with the NDIC.”*

In response, a further and better counter affidavit was filed by the NDIC on 11/10/13. In it the following facts were further deposed to:

*“3. Bank of Credit & Commerce International (BCCI) is not F known to the Nigeria Deposit Insurance Corporation (NDIC).*

*4. The Nigeria Deposit Insurance Corporation (NDIC) was appointed the Liquidator of African International Bank Limited (AIB) only in 2013, although AIB ceased to operate banking services in G Nigeria since December, 2005 when the Bank failed to meet the N25,000,000,000.00 (Twenty Five Billion Naira Only) share capital requirement for banks operating in Nigeria.*

*5. African International Bank Limited (AIB) still exists as a separate and distinct legal entity from the Nigeria Deposit Insurance Corporation. The winding up of AIB has not been concluded and AIB H has not been dissolved.*

*6. African International Bank Limited (AIB) is only undergoing liquidation for which the Nigeria Corporation was appointed Liq-*

uidator by the Central Bank of Nigeria in 2013.

7. *The Nigeria Deposit Insurance Corporation had no dealing with the appellant, and the applicant.*

8 *Neither the appellant nor the applicant has any claim, cause of action against, nor personal dealing with the Nigeria Deposit Insurance Corporation. Both the appellant and the applicant have no claims against African International Bank Limited. (AIB).*

9. *African International Bank Limited (AIB) was not a party and did not participate in any capacity in the entire proceedings between the appellant and Bank of Credit & Commerce International, both at the trial court - the High Court of Lagos State of Nigeria, and at the Court of Appeal which delivered its judgment in 2002, which was about eleven (11) years before the revocation of the banking license of AIB by the Central Bank of Nigeria in 2013."*

Now, without prejudice to the main appeal, I think the central issue in this interlocutory appeal is for this court to determine, primarily, the legal existence of the 1st respondent and whether it is one of those financial institutions in spite of its alleged metamorphosis, which qualify for the supervision of the NDIC and to see whether the latter can substitute the 1st respondent.

In both the grounds and the affidavits supporting the application, it is clearly stated that the 1st respondent's banking license has been revoked and the 1st respondent has ceased to be in operation and has closed down its business activities. 1st respondent remained an affiliate of the Bank of Credit and Commerce International (Holdings) Luxembourg S. A. (BCCI) until 1991. Further, when BCCI was in liquidation, the 1st respondent changed its name to African International Bank Ltd. (AIB). AIB, too, continued banking operations until sometime (prior) to 2005 when it ceased banking operations. (See paragraphs 3(a) - (k) of the affidavit in support set out earlier in this ruling. These facts were deposed to in June, 2013.

In October, 2013, NDIC deposed to some facts such as its appointment by the Central Bank of Nigeria as liquidator to AIB in 2013; AIB ceased to operate banking services in Nigeria since December, 2005 on its failure to meet up the (twenty five billion naira) share capital; AIB still exists as a separate and distinct legal entity from the NDIC; the winding up of AIB has not been concluded and it has not been dissolved. It is only undergoing liquidation for which the

NDIC was appointed as liquidator.

**Now, winding up of a company involves the liquidation of the company/corporation so that assets are distributed to those entitled to receive them. Campell Black, says liquidation is quite distinguishable from dissolution which is the end of the legal existence of a corporation. Liquidation may precede or follow dissolution (p.839 of Black's Law Dictionary 5th ed.) thus, mere revocation of banking licence of a bank, without more, as claimed by the applicant cannot bring to an end the juristic life of a bank or corporation. Likewise where a bank or corporation ceases to operate or closes its business that does not determine the legal existence of such a bank or corporation.**

**In general, there are (3) three known modes of winding up a company viz: (a) by the court; (b) voluntarily; or (c) subject to the supervision of the court.** The applicant did not allude to any of the above modes of winding up. The affidavit evidence shows that up to July, 1991, 1st respondent was an affiliate of the BCCI Luxembourg S. A. upon liquidation of the Parent Bank (BCCI); the 1st respondent changed its name to African International Bank Ltd. "AIB". It is deposed to, further, in the further affidavit in support as follows:

*"2. Further to my depositions in the aforesaid affidavit in support of the instant notice of motion, I affirm and know for a fact that the 1st respondent in this application became the African International Bank Limited (AIB).*

*3. Contrary to paragraphs 3 and 4 of NDIC'S counter affidavit dated 7th June 2013. I conducted a corporate search on the company file of AIB at the Corporate Affairs Commission ("the Commission") wherein it was discovered that by a special resolution dated 11th July, the 1st respondent changed its corporate name to become AIB.*

*4. Further to the aforesaid and in compliance with statutory regulations a new certificate was issued by the Commission on 12th July, 1991. Attached and marked Exhibit BO3 is a certified true copy of the certificate of change of name of the 1st respondent that I obtained from the Commission.*

*5. AIB thereafter continued banking operations until some-*

*time prior to 2005 when it ceased banking operations.”*

Paragraph 4 above exhibited a certified true copy of certificate of incorporation issued by the Corporate Affairs dated 12/7/1991. In this document, it is indicated that the African International Bank Limited (now registered) was previously called “BANK OF  
B CREDIT AND COMMERCE INTERNATIONAL (NIGERIA) LIMITED - which name was changed by Special Resolution with the Authority of the Corporate Affairs Commission on the 11th of July 1991 to African International Bank Ltd. The learned counsel for NDIC did  
C not discredit this piece of evidence. All he attempted to do, per paragraph 3 of his counter affidavit of 7/6/13, was to tender an internet print out showing that African International Bank which was registered since 17/1/1990 and formerly known as Universal Bank. The particulars given in the certificate of incorporation tendered in Evidence as Exhibit BO3 (paragraph 4 of the further affidavit in support)  
D include the date of incorporation of the BCCI under the 1968 Companies Act as a Limited liability company to be the 6th day of August 1979. The date on which the change of name from BCCI to AIB was effected (as shown on the certificate of incorporation) by  
E Special Resolution was 11th day of July, 1991. The two documents, i.e. Exhibit BO3 tendered by the applicant and Exhibit 2 tendered by the 2nd respondent in the application, (NDIC) cannot be referring to the same thing. Exhibit BO3 has some force of the law. **Section 112 of the Evidence Act provides that certified copies of public documents may be produced in proof of the contents of the public documents or parts of the public documents of which they purport to be copies. It is trite as well that any averment in an affidavit which has not been categorically denied or controverted is deemed to be admitted by the opponent.** See: A-G Ondo State v. A-G Ekiti State (2001) 17 NWLR (pt. 743) 706.  
F  
G

I take it that the change of name of the 1st respondent to AIB has lawfully and effectually been sanctioned by the Corporate Affairs  
H Commission. Therefore, from that effective date up to the final completion of the processes of its winding up, AIB is a successor to BCCI. It must, in law, inherit all its credits and debits including all legal proceedings for or against BCCI.

Another thorny issue in the application is the attempt by the

applicant to enrope the NDIC to subrogate the (BCCI) first respondent. As already set out above, the main grounds upon which the applicant relies are two: (a) that the banking license of the AIB has been revoked by the CBN and it ceases to operate its business, (b) that by section 40 of the NDIC Act, and section 425 of the Companies and Allied Matters Act, it is the NDIC that should by law, assume the liabilities of insured banking institutions and by operation of law, it is the provisional liquidator of the 1st respondent. B

Section 40 of the NDIC Act makes provision for the powers of the NDIC to act as liquidator to failed insured institutions. It states, C  
inter alia, as follows:

*“40 (1) Whenever the license of an insured institution is revoked by the Central Bank of Nigeria, the Corporation shall act as liquidator of such failed insured institution with powers conferred on a liquidator under the Companies and Allied Matters Act. 1990 and shall be deemed to have been appointed a provisional liquidator by the Federal High Court for the purpose of that Act.”* D

Section 425 of the Companies and Allied Matters Act, Cap. C20 LFN, 2004 provides, inter alia, for the following:

*“425 (1) The liquidator in a winding up by the court shall have power with the sanction either of the court or of the committee of inspection, to -* E

a) bring or defend any action or other legal proceeding in the name and on behalf of the company.

Section 59 of the NDIC Act gives the interpretation of “insured institution” to be the same with “insured bank” which refers to a licensed bank and other deposit - taking financial institution, the deposits of which are insured in accordance with the provisions of the NDIC Act. A “failed insured institution” is one whose license has been withdrawn. F

***In accordance with the provisions of the statutes referred to above, I am in agreement with the learned counsel for the applicant that the NDIC is the body established by law to assume the liability of insured banking institutions and by operation of law it is the provisional liquidator of the 1st respondent. I am even more fortified in my view by the averment in paragraph 4 of the NDIC’S further and better affidavit of 11/10/13 where it is admitted that the Nigeria Deposit Insurance*** H

**Corporation (NDIC) was appointed the liquidator of African International Bank Limited (AIB) in 2013.**

**By looking soberly, at the provision of Section 425 (1) (a) set out above, one may ask: whether the NDIC as the provisional liquidator of the 1st respondent can bring or defend any action or other legal proceedings in the name and on behalf of the 1st respondent. It is clear from the same provision that a liquidator in a winding up by the court (which the NDIC is by law deemed to have been so appointed) can bring or defend any action or other legal proceedings in the name and on behalf of the 1st respondent (to subrogate AIB) subject only to the condition, i.e. sanction of the court or committee of inspection to conduct such legal proceedings. In other words, where no sanction of either the court or of the committee of inspection is sought and obtained by the liquidator, no legal action or proceedings can be brought or defended by the liquidator. The applicant herein, did not produce any evidence to show that the provisional liquidator has obtained such sanction of the court or of the committee of inspection to bring or defend any action or other legal proceedings in the name and or on behalf of the 1st respondent. There is therefore, no way the applicant can enrope NDIC as provisional liquidator to conduct any legal proceedings whether for or against the 1st respondent.**

Further, it has been deposed to by the NDIC that AIB still exists as a separate and distinct legal entity from the NDIC and that the winding up of AIB has not been concluded and AIB has not been dissolved. In both his main affidavit in support of the motion and the further affidavit in support, the applicant deposed to the following facts:

(j) upon liquidation of the parent bank, the 1st respondent changed its name and became known and described as the African International Bank Limited (AIB).

(k) AIB thereon continued banking operations until sometime prior to 2005 when it ceased banking operations.

From the further affidavit, the applicant deposed to the same facts (as in paragraphs 3 (j) and (k) above) as follows:

*“2. Further to my depositions in the aforesaid affidavit in sup-*



port of the instant notice of motion, I affirm and know for a fact that the 1st respondent in this application became the African International Bank Limited (AIB).

5. AIB thereafter continued banking operations until sometime prior to 2005 when it ceased banking operations.”

**From the above facts, it is clear to me that AIB is still in existence, a separate legal entity from the NDIC, revocation of its Banking License and seizure of banking operation notwithstanding. (I earlier on commented on these issues). If the applicant had wanted to lead this court to the conclusion that AIB has been dissolved, this fact should have been averred to in applicant’s affidavits in support. He would have gone ahead to produce a document that has terminated the legal corporate existence of the AIB. And, as a provisional liquidator again (as I already stated above), the applicant should show that the liquidator is entitled to pursue legal proceedings for or against NDIC, once it is in compliance with the provision of Section 425(1) (a) of the Companies and Allied Matters Act.**

**It is pertinent for me, my lords, to reiterate the position of the law that in our adversarial system of litigation, the law, always places the burden of proof in civil matters on the plaintiff/claimant/petitioner/applicant, as the case may be, to satisfy the court by leading concrete, cogent and valid evidence with a view to establishing his claim.** The Evidence Act is very clear on this and provides as follows:

“135 (1) whoever desires any court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that these facts exist.

136 the burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.”

See also Section 137 of the Evidence Act; Adegoke v. Adibi (1992) 5 NWLR (Pt.242) 410; Amodu v. Amodu (1990) 5 NWLR (pt.150) 356; Famuroti v. Agbeke (1991) 5 NWLR (Pt.189) 1.

It is in evidence on the record that the action before the trial court was commenced in 1989. BCCI was said to have transformed to AIB in July, 1991 and it had been conducting its banking operations until sometime prior to 2005 when it ceased banking operations. The NDIC averred in its further and better counter affidavit (of

11/10/13) as follows:

“9. *African International Bank Limited (AIB) was not a party and did not participate in any capacity in the entire proceedings between the appellant and Bank of Credit & Commerce International, both at the trial court - the High Court of Lagos State of Nigeria, and at the Court of Appeal which delivered its judgment in 2002, which was about eleven (11) years before the revocation of the banking license of AIB by the Central Bank of Nigeria in 2013.*

10. *The Appeal to this Honourable Court was filed against Bank of Credit and Commerce International (BCCI) and not African International Bank Limited.*

11. *Bank of Credit and Commerce International duly participated and were duly represented by counsel in the entire proceedings in this suit both at the learned trial court and before my lord’s justices of the Court of Appeal. The appeal before this Honourable Court was filed, and entered against Bank of Credit and Commerce International (BCCI) in 2003 and not African International Bank Limited.*

12. *African International Bank Limited did not participate in and has nothing to do with this suit which was filed in 1989, and which is about twenty four (24) years old at the time of filing of this application for substitution of the Nigeria Deposit Insurance Corporation for the Bank of Credit and Commerce International (BCCI).”*

Now, as it is my finding earlier on, that the BCCI changed its name to AIB, the latter can subrogate the former as its successor. Further, if not because of the inability of the applicant to show proper compliance of the provisional liquidator with Section 425 (1) (a) of Companies and Allied Matters Act, NDIC would have been enroled in the legal battle between the applicant and the 1st respondent. It is to be noted as well that except where by law a time limit has been prescribed to effect a substitution, length of time as to when substitution is sought to be made cannot defeat merit of the application.

Before I conclude, permit me my lords, to draw some similarities and dissimilarities, if any, between this application and the case cited by the learned counsel for NDIC, i.e. *Corporative & Commerce Bank (Nig) Plc v. O’Silva Wax International Ltd. & Ors (1999) 7 NWLR (Pt.609) 97*. The case cited is that of the Court of Appeal, for extension of time to seek leave to appeal, leave to appeal and extension of

time within which the applicant can appeal against the ex-parte orders of the Federal High Court Enugu made on 12th November, 1996 and 19th March, 1997. The 1st and 2nd respondents filed a preliminary Objection challenging the competence of the orders aforesaid granted by the Court of Appeal and the appeal filed, on the ground that the appellants/applicants, banking license had been revoked by the Central Bank of Nigeria on 16th of January, 1998 and that the Federal High Court had wound - up the appellant on 12th of March, 1998 and that the appellant did not exist at the time the order for extension of time was made. The Preliminary Objection was upheld. The court, per M. D. Muhammad, JCA (as he then was), commented as follows:

*“...This court as stated earlier, on 24th March, 1998, granted the prayers of this ‘dead’ person that is, the 1st respondent/appellant. By his objection, Chief Nwogu of counsel is saying that it is not tenable in law for a dead person to approach a court of law and make any prayers; I also understand the objection to be saying that in law it is not tenable for court to listen to the prayers of such a dead person let alone grant the purported prayers. I further understand applicant’s counsel to be saying that even where prayers of a ‘dead’ person are purportedly listened to and granted, the deceased, because he no longer exists, cannot prosecute his appeal. I hold the same view because that is the position of the law.”*

The similarities are in the existence and the legal effect a corporate entity is presumed to enjoy even though it may suffer some defects. Further, in the application before the Court of Appeal, it was found that there was an existing order of winding up of the 1st respondent. In the application now before this court, there is no winding up order. Thus, this court is not dealing with any ‘dead’ person. The common factor between the two cases is the issue of revocation of the banking license of each of the two respective banks. If there is anything similar to the present application is the effect of revocation of the licence.

*“It is my considered view that revocation of license of the 1st respondent by the Central Bank on 16th January, 1998, did not necessarily remove the “life”, so to say, of the 1st respondent thereby making it incapable of suing or being sued or barring it from becoming an appellant or a respondent in the appeal process. The revoca-*

*tion of the license could have indicated an ill disposition, an acute and serious ailment. It did not go beyond that to herald and or constitute the death of the 1st respondent. The bank remained alive possessing its legal personality as sick as it could have been and as indicated by the revocation of its license. The order of winding up by the Federal High Court on 12/3/98, however, changed not only its effectiveness as a bank, as a body corporate, but also brought about the "death" of the 1st respondent. The appointment of a receiver by the same court can be likened to naming an undertaker who was not only to prepare for but to ensure the burial of the 1st respondent. In essence the legal personality which 1st respondent possessed by virtue of its being a body corporate came to an end with the issuance of the winding up order of 12/3/98."*

That is absolutely the position of the law which I endorse.

The issue of non-compliance with the provision of Companies and Allied Matters Act and the non-establishment of some material facts are what defeated the merit of this leg of the application.

This leg of the application for substitution of 1st respondent by NDIC is hereby dismissed with N50,000.00 costs in favour of the 2nd party sought to be substituted (NDIC) and against the applicant.

### **FABIYI JSC**

I have had a preview of the Ruling just handed out by my learned brother - I. T. Muhammad, JSC. I agree with the reasons therein adumbrated.

Not much fuss was generated by the respondents in respect of prayer 1. A deceased appellant must be substituted so as to keep the appeal alive. The prayer to substitute the applicant for the deceased 2nd appellant, his father is hereby granted without much ado.

The 2nd prayer for substitution of the 1st respondent - Bank of Credit and Commerce International, BCCI for short with the Nigeria Deposit Insurance Corporation - NDIC in this appeal is more dicey. It was established that BCCI transmuted to AIB Limited whose banking licence was revoked. It can sue and still be sued. There is no winding up order by the court. It is alive. The decision of the Court of Appeal in Co-operative & Commerce Bank (Nig.) Plc v. O. Silva Wax International Ltd. & Ors. (1999) 7 NWLR (Pt. 609) 97 at 103 per

M.D. Muhammad, JCA (as he then was) is of moment.

With the prevailing position, the 2nd respondent - NDIC cannot be compelled to take on the functions of BCCI which has since passed on. It goes without saying that prayer 2 must be refused.

For the above reasons and the detailed ones contained in the lead Ruling which I seek leave to adopt, I too hereby grant the 1st prayer and refuse the 2nd prayer. I abide by the consequential orders contained in the lead Ruling inclusive of that relating to costs.

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**PETER-ODILI JSC**

I agree totally with the Ruling just delivered by my learned brother, I. T. Muhammad, JSC and for support make some comments.

The Applicant, Mr. Sikiru Amolegbe prayed this court by Motion filed on 13/5/13 for the following reliefs:-

i) An order of this Court substituting the deceased 2nd Appellant ("Alhaji Yusuf Alabi Amologbe") with the Applicant ("Alhaji Sikiru Amolegbe") in this Appeal.

ii) An order of this Court substituting the 1st Respondent on record ("Bank of Credit & Commerce International") with the National Deposit Insurance Corporation ("the Corporation") in this appeal.

AND for such older or further orders that this Court may deem fit to make in the circumstance of this case.

The Grounds upon which this application is premised are stated hereunder:-

1. The Rules of this Court allow and/or permit that an application can be brought to substitute the name of a deceased party in any proceedings before it.

2. The deceased party, the 2nd Appellant in this appeal is survived by his living heir Alhaji Sikiru Amolegbe who is desirous of prosecuting the instant appeal for and on his behalf and is willing to be substituted for the 2nd Appellant.

3. The banking license of the 1st Respondent has since the commencement of this appeal been revoked by the Central Bank of Nigeria.

4. Section 40 of the Nigerian Deposit Insurance Corporation

Act 2006 and Section 425 of the Companies and Allied Matters Act Cap C20 LFN 2004 provide that upon the revocation of the license (Sic) of a failed institution (1st Respondent in this case) the Corporation, shall be deemed to have been appointed the provisional liquidator of the 1st Respondent with power to defend any legal proceeding on behalf of the 1st Respondent.

5. It is essential for the just and proper determination of this appeal that these parties be substituted.

The application is supported by a 6 paragraphs affidavit and Exhibits BO1 and BO2. Also is a further affidavit filed on 28/6/13 of 8 paragraphs?

For the party sought to be brought in, were filed a Counter - affidavit of 15 paragraphs filed on 7/6/13 and a Further and Better Counter Affidavit on the 11/10/13.

Learned counsel for the Applicant submitted along the lines of the 6 paragraphs supporting affidavit that in respect of the first leg of prayer, that the 2nd Appellant in the appeal is deceased, having passed away on the 3rd day of December, 2009. A copy of the deceased's medical certificate evidencing the cause of death and that the heir to the estate of and successor in title to the 2nd Appellant, Alhaji Sikiru Amolegbe is quite desirous of continuing the prosecution of this appeal, thus the need for the substitution.

On the matter of the second relief, learned counsel for the Applicant posited that the 1st respondent's banking license had been revoked and it had ceased to carry on banking business. That the 1st Respondent had ceased to be in operation and had closed down its business activities and therefore the National Deposit Insurance Corporation or NDIC is the body established by law to assume the liabilities of insured banking institutions and by operation of law, it is the provisional liquidator of the 1st Respondent and so it was appropriate that the NDIC be made to stand in, in substitution for 1st Respondent.

Mr. Hanafi learned counsel for the 2nd Respondent said they had no objection to the grant of the application.

For the party sought to be brought in, Mr. Ogbonna stated that this application was filed over 22 years from the date BCCI ceased to exist. That an application for substitution was not made at the trial court or the Court of Appeal even though BCCI was represented by

counsel all through. That the company is still in existence having not been dissolved and that if any party ought to be substituted it ought to be African International Bank Ltd (AIB) for short and not the Nigerian Deposit Insurance Co Ltd or NDIC.

Learned counsel went on to say that even though NDIC is the liquidator and has the management powers of AIB which is still alive as a company in liquidation. He cited Section 454 of the Companies and Allied Matters Act 1990; Co-operative and Commerce Bank v. O. Sylva Wax Int (1999) 7 NWLR (Pt. 609) 97 at 103.

That NDIC sought to be substituted has nothing to do with the case and so the application should be rejected.

Having heard from counsel on both sides, it is without dispute that the first arm in the reliefs sought in the application that of substituting the dead 2nd Appellant cannot be questioned since there is no controversy thereby. The area of contention has to do with the substitution of 1st Respondent by NDIC and though on the face of it, one could wish to be persuaded to favourably look towards the Applicant to grant the application on the second leg of the prayers, however the operative law in context with the facts hold back the hand to so be enticed.

For clarity, it needs be restated along with the depositions in the Counter Affidavit and the Further and Better Counter - Affidavit to which the Applicant made no response, that BCCI, 1st Respondent is not in the list of banks and/or deposit taking institutions whose licenses were revoked by the Central Bank of Nigeria and are being liquidated or have been liquidated by the NDIC which NDIC has no dealing with the Appellant or the Applicant. On the 1st Respondent running into the difficulty of distress, the Appellant or the Applicant saw nothing for which they would apply to substitute 1st Respondent to African International Bank Limited to which 1st Respondent had translated, with the entry of the Appeal against the decision of the Court of Appeal in 2003. Rather, the appeal was filed against BCCI, Also of interest is that the commencement of the action was in 1989 as Suit NO. LD/912/1989.

Furthermore, African International Bank or AIB was registered in 1990. The fact that the Applicant and the Appellant now allude to the AIB having taken over the BCCI and the AIB now administering the affairs of what was BCCI which AIB functions have

been taken over by the NDIC alone to enable the substitution sought by bringing in the name of NDIC as 1st Respondent.

I earlier stated that what is in issue concerns a tight rope in a technical area which cannot be glossed over. It is interesting to note that the applicant had a lackadaisical attitude exhibited by the appellant or applicant in bringing this application 22 years after the BCCI ceased to, even though that lag of time is not enough to defeat an existing application for substitution. The applicant failed to establish that the company had been dissolved and the matter of African International Bank Ltd taking over and now the NDIC. These are weighty issues that cannot be glossed over especially since the Applicant failed to debunk the very grave assertions in the counter affidavit and the further counter affidavit of the party sought to be brought in contending that the African International Bank (AIB) had died and so running counter of Section 425 of the Companies and Allied Matters Act 1990 and the case of Co-operative and Commerce Bank v O. Sylva Wax Int (1999) 7 NWLR (Pt. 609) 97 at 103.

See Co-operative & Commerce Bank (Nig.) Plc v. O. Silva Wax International Ltd & Ors (1999) 7 NWLR (pt. 609) 97 at 103.

The judgment of my learned brother, M. D. Muhammad, JCA (as he then was) is apt to the present circumstance. He stated and I quote:-

*"It is my considered view that revocation of licence of the 1st respondent by the Central Bank on 166 January, 1998, did not necessarily remove the "life", so to say, of the 1st respondent thereby making it incapable of suing or being sued or barring it from becoming an appellant or a respondent in the appeal process. The revocation of the licence could have indicated an ill-disposition, an acute and serious ailment. It did not go beyond that to herald and or constitute the death of the 1st respondent. The bank remained alive possessing its legal personality as sick as it could have been and as indicated by the revocation of its license."*

What my brother stated above captured has in my humble opinion settled the issue here and underscored the fact that the Applicant or Appellant needed to do more to ensure that the pronouncement of death of the BCCI or the AIB met with the requirement that indeed either of the two banks were dead as death is known, without life. It is therefore to be said herein that the Applicant or the Appel-



lant had not so provided that requirement

It is clear that the necessary names between the NDIC and the appeal or case before this Court is absent. In the light of this and the fuller reasoning in the lead Ruling, I grant the first leg of the prayer that which brings in the successor in title of the 2nd Appellant but the second leg of the prayers in the application is refused. I abide by the consequential orders in the lead Ruling. B

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**ARIWOOLA JSC**

My learned brother, I. T. Muhammad, JSC obliged me with the draft of his lead Ruling just delivered. I am in total agreement with the reasoning and conclusion. They are beautifully couched that I have nothing new to add. I too will allow the prayer in leg one and dismiss leg two of the application. D

I abide by the consequential orders in the said ruling, including that on costs in favour of the 2nd party sought to be substituted but against the applicant.

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**M. D. MUHAMMAD JSC**

I have read in advance the lead ruling of my learned brother I. T. Muhammad, JSC, with whose reasoning and conclusion I entirely agree that the application succeeds in part only. The applicant has not made out a case for the 2nd relief and same must fail. F

It is argued by the applicant that even though the 1st respondent in the appeal, Bank of Credit and Commerce International, has transmuted into the African International Bank Limited, its licence has since the commencement of the appeal been revoked by the Central Bank. The revocation of the licence, submits learned appellants' counsel, by the operation of Section 40 of the Nigeria Deposit Insurance Corporation Act 2006 and Section 425 of the Companies and Allied Matters Act CAP 20 LFN 2004 makes the Nigeria Deposit Insurance Corporation the provisional liquidator of the 1st respondent vested with the power to institute or defend any action for or against the latter. G H

Learned counsel to the NDIC vehemently contests the relationship the applicant asserts exists between the applicant and the

African International Bank Limited. The latter, it is submitted, though having had its banking licence revoked, still exists. It is yet to be finally dissolved. In the absence of any established relationship between BCCI, one of the defendants on record and AIB, learned counsel to NDIC insists, the latter cannot, while still alive, be substituted by NDIC. AIB Ltd must do its battle.

In the lead ruling, my learned brother has meticulously made bare, from the affidavits and counter affidavits of both sides, the extant facts on the basis of which this application must sink or swim. The overriding ones remain that BCCI has transmuted into AIB which, not withstanding the revocation of its licence, still persists. It is yet to be dissolved.

These facts which cease to be in dispute put learned respondents' counsel in good stead. A.I.B Limited which banking licence stands revoked maintains the competence to sue and be sued. It loses this character only on its being finally dissolved. In *C.C.B. (Nig) Ltd v. Onwucheka* (2000) 3 NWLR (part 647) 65 at 73-74 (a Court of Appeal decision which I adopt) I restated the correct position of the law on the point as follows:-

*"This court's decision in C.C.B. (Nig) Plc v. O'Silva wax (supra) stands in clear and violent conflict with the Supreme Court decisions in Tesi Opebiyi v. Shittu Oshoboja (1976) 9 and 10 SC 195 and Nzom v. Jinadu (187) 1 NWLR (Pt. 51) 533 which is sought to apply. In Nzom v. Jinadu (supra) Oputa, JSC as he then was reiterated thus: 'The dissolution of Legal person is analogous to the death of an ordinary person. Now dead men are no longer persons in the eye of the law as they have laid down their legal personality with their lives at death. Being destitute of rights or interest they can neither sue nor be sued'.*

*Secondly, section 454 (1) and (2) of the Companies and Allied Matters Act CAP 59 which is hereunder reproduced, company ceases to be from the date the court ordered its dissolution.*

*S.454 (1)*

*'If the affairs of company have been fully wound up and the liquidator makes an application in that behalf, the court shall order the dissolution of the Company and the company shall be dissolved accordingly from the date of the order.*

*(2) A copy of the order shall within fourteen days from the*

*date when made; be forwarded by the liquidator to the Co mission who shall make in its books a minute of the dissolution of the Company.'*

*It is clear from the principle enunciated in Tesi Opebiyi v. Shittu Oshoboja & Anor (1976) and 10 SC 195 and Nzom v. Jinadu (supra) and by virtue of the S. 454(1) and (2) reproduced above a company dies on its dissolution. The revocation of the licence of that company where it is a bank, and the further order of court winding same up may indicate the acute disposition and extreme position of ineffectiveness of the company but not so the fact of its 'death'. The liquidator who may be likened to an undertaker, by virtue of the company's total indisposition goes into preparation for the "burial" of the company but the actual burial of the company takes place on its death at its dissolution.*

*The facts of the instant application consideration of which determines the fate of applicant's motion, makes the reproduction hereunder of S. 417 of the Companies and Allied Matters Act Cap. 59 desirable.*

#### *S. 417*

*'If a winding-up order is made or a provisional liquidator is appointed no action or proceeding shall be proceeded with or commenced against the company except by leave of the court given on such terms as the court may impose.'*

*My understanding of this section is that the fact of winding-up of a Company or the appointment of a liquidator does not by itself result in the death of a corporate body thereby removing its legal personality. In fact quite to the contrary, the section clearly provides that action or proceedings against a wound-up company and/or for whom a liquidator has been appointed, is maintainable with the leave of court.*

*In the instant application, the fact of dissolution of the defendant/appellant/Respondent had not been established by the Applicant Furthermore, the NDIC, as required by S. 417 had not been shown to have obtained leave of court to conduct legal proceedings against the Bank that had been wound-up."*

In the case at hand, both sides are one that BCCI had by special resolution and authority of the Corporate Affairs Commission, effective from 11th July, 1991 changed its name to African In-

ternational Bank Ltd. Learned counsel for the NDIC does not dispute the fact that the NDIC following the revocation of the licence of the A.I.B. Ltd has by operation of Section 40(1) become the latter's liquidator. The subsection provides:-

B *"40 (1) Whenever the license of an insured institution is re-*  
*voked by the Central Bank of Nigeria, the Corporation shall act as*  
*liquidator of such failed insured institution with powers conferred on*  
*a liquidator under the Companies and Allied Matters Act, 1990 and*  
*shall be deemed to have been appointed a provisional liquidator by*  
 C *the Federal High Court for the purpose of that Act"* (underlining  
 supplied for emphasis).

The power of the NDIC as a liquidator following the operation of the foregoing is as provided for under Sections 417 and 425(1) of the Companies and Allied Matters Act.

D Section 417 provides:-

*"If a winding up order is made or a provisional liquidator is*  
*appointed, no action or proceeding shall be proceeded with or com-*  
*menced against the company except by leave of the court given on*  
*such terms as the court may impose."* (Underlining supplied for em-  
 E phasis).

Section 425(1) reads:-

*"425 (1) The liquidator in a winding up by the court shall*  
*have power with the sanction either of the court or of the committee*  
 F *of inspection, to -*  
*a) bring or defend any action or other legal proceeding in*  
*the name and on behalf of the company."*

The intriguing question that yearns for an answer that has not been provided by the applicant is whether the NDIC, given the  
 G foregoing provisions, can commence or defend any action on behalf of the BCCI or AIB Ltd which is still alive and, having not been dissolved, capable of maintaining any action by or against itself?

The success of the 2nd limb of this application seems to have been negated by the absence of two facts. Firstly, the action to which  
 H the application relates has been against BCCI which has transmitted unto AIB Ltd. AIB Ltd is yet to be made a party to the action as presently constituted.

Even if AIB Ltd were to be a party, in spite of the operation of Section 40 (1) of the NDIC Act, the applicant can only "bring or

defend any action or other legal proceeding in the name and on behalf of” AIB Ltd “with the sanction of either of the court or of the committee of Inspection.” The sanction of either the Federal High Court or of the Committee of Inspection has not been established by the applicant herein.

The grant of the 1st relief on the motion paper has not been contested by any of the respondents to the application. It is ordered as prayed. For the reasons provided and more so the fuller reasons articulated in the lead ruling, the 2nd relief on the motion paper being unmeritorious is resultantly, hereby, dismissed.

I abide by the consequential orders contained in the lead ruling.

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