

# CASE DIGEST

## CONTRACT: A CONTRACT PROHIBITED BY A STATUTE IS UNENFORCEABLE.

MAZI ANTHONY SUNDAY O. NWANGWU v. FIRST BANK OF NIGERIA PLC.

SUPREME COURT

(MUHAMMAD; NWEZE; OGUNWUNMIJU; ABOKI; ABUBAKAR, JJ.SC)

Mazi Anthony Sunday O. Nwangwu (Appellant) was the sole agent of Horri & Co Ltd, Tokyo. On the 9th of August 1982, he instructed First Bank of Nigeria Plc. (Respondent), his bankers then in their Enugu main branch to open an irrevocable confirmed documentary credit (L.C) for the importation of Horri duplicating machine accessories from Horri & Co. Ltd, Tokyo, Japan. He paid 6,063.00 by cheque to cover the Respondent's charges and commission and 125% of the value of the goods shown in the proforma invoice as Y1,839,000.00 or 7,45.00, whereby the Respondent undertook to pay the Japanese supplier through the chartered Bank of Tokyo upon presentation of the shipping documents for the goods to chartered Bank. The Appellant also duly completed the exchange control Form "M" which is an application, to the Central Bank of Nigeria (CBN) to purchase foreign currency, of which the Respondent signed and stamped. The seller of the machines also fully complied with the terms of the L.C., and informed the Respondent accordingly and demanded payment. The Respondent failed to pay contrary to its undertaking in the L.C. despite repeated demand letters by the Appellant. The Appellant was constrained to write to the Central Bank of Nigeria, but no response was received. He then consulted a lawyer who wrote letters to the Central Bank of Nigeria and received replies that the defendant informed him that the L.C. had been settled contrary to the Appellant's letter. The Appellant alleged that following non-payment by the Respondent, the supplier decided to cut off further supplies to him, after shipment of the goods which was not paid for. He further alleged that if his business had not been interrupted by the Respondent's failure to pay the seller on the L.C., he would have made a profit of 6.7 million between 1983 and 2001. The Appellant also said that the 25% ( 318.00) excess deposit made by him in 1982 had not been refunded to him. On this premise, the Appellant instituted a suit at the High Court of Enugu State (trial Court) against the Respondent. In a considered judgment, the Appellant's claims were dismissed, save for the first relief for which the Appellant was awarded a refund of his excess deposit of 1,318.00 with interest at 19.5% per annum from 1982 till the date of judgment and 5% per annum thereafter, with the cost of 10,000.00. Being dissatisfied with the judgment, the Appellant appealed to the Court of Appeal, who affirmed the decision of the trial Court and dismissed the appeal. Further aggrieved, the Appellant appealed to the Supreme Court. One of the issues for determination was *Did the lower Court not misconstrue the law in holding that the contract created by irrevocable Documentary Credit (L/C) violated the exchange control Act under the Pre-SFEM era?*

Learned Counsel for the Appellant sought to show the distinction between Letters of Credit and Bill of Collection and argued that the lower Court grossly misunderstood and misconstrued the law on irrevocable documentary credit. Referring to the terms as set out in Uniform Custom and Practice for Documentary Credit (1983) Revision, Counsel stated that documentary credit is operative and available in Nigeria and that where the parties agree to be governed by the Uniform Custom & Practice for documentary credit (UCP), four distinct contracts are created in a such international commercial transaction by documentary credit – contracts between the buyer and the seller, between the buyer and the issuing Bank, between the issuing Bank and the confirming Bank, and between the confirming Bank and the seller, and that the foreign supplier complied with the conditions of the credit.

Counsel further contended that under the Exchange Control Act, the operative legislation for the governance of foreign power is to authorize the Respondent to pay the foreign supplier by Letters of Credit, and that the contention of the Respondent that it was violative of the law for the Respondent Bank to settle the Letters of Credit is not to be taken seriously because the Bank had regularly used the instrument. He therefore urged the court to resolve the issue in the Appellant favour.

Learned Counsel for the Respondent in reply stated that the cause of action arose from a pre-SFEM era. During which- foreign exchange (forex) transactions were governed by the law and fiscal policy of Government at the time; and which policy vested CBN with exclusive power to approve, allocate and remit forex for payment of imports into Nigeria, and that the Appellant knew of the fiscal policy regarding foreign exchange at the time which was that upon completion of Form "M" it was only the CBN who could allocate foreign exchange for external commercial transactions. That the Appellant despite this knowledge went ahead to put a contractual obligation on the Respondent to pay or remit funds to Appellant's overseas suppliers other than through the CBN, and that the Respondent was legally powerless in the face of the fiscal policies of government during the pre-SFEM era to unilaterally source and remit forex overseas in payments of the L/C. He urged the Court that the issue be resolved in favour of the Respondent and that the appeal be dismissed.

**In resolving this issue, the Supreme Court held that:**

Both the Appellant and the Respondent at the time the irrevocable letter of credit was opened knew it was the pre-sfem era. With this knowledge, it would be illegal on the part of the Respondent not to act in accordance with the law and the fiscal policy and procedure of the CBN to release or permit any foreign exchange in the execution of any foreign contract without going through the CBN, being the sole regulatory body empowered to do so. The Court stated further that a transaction or a contract, the making or performance of which is expressly or impliedly prohibited by the statute is illegal and unenforceable. The Supreme Court in summary stated that where a contract made by the parties is expressly forbidden by the statute, its illegality is undoubted and no court will enforce it or allow itself to be used for the enforcement of alleged obligations arising thereunder. Thus, a contract, the making or performance of which is prohibited by the Exchange Control Act, 1947 of the was held illegal and unenforceable.

Issue resolved in favour of the Respondent.

DR. AJC Mogbana for the Appellant

A. B. Anachebe SAN with F. C. Anachebe (Mrs), Charles Fibuaku Esq., and B.O. Anachebe Esq., for the Respondent.

This summary is fully reported at (2022) 11 CLRN.

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