

# CASE DIGEST

COMPANY LAW: INCORPORATED TRUSTEE; IS THE RIGHT TO FREE ASSOCIATION AND PEACEFUL ASSEMBLY VIOLATED BY THE CORPORATE AFFAIRS COMMISSION'S POWER TO REGULATE THE AFFAIRS OF AN INCORPORATED TRUSTEE?

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EMMANUEL EKPENYONG ESQ. v. THE NATIONAL ASSEMBLY & ORS.

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*(J. K. OMOTOSHO, J)*

### Background Facts

Emmanuel Ekpenyong Esq. (Plaintiff) by an Originating Summons stated that according to section 839 of the new Companies Allied Matters Act, the Corporate Affairs Commission (2nd Defendant) is given unilateral powers to suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where the 2nd Defendant believes there is any misconduct or mismanagement in the administration of the association without a Court order. Also, Sections 842 -848 of the new Companies and Allied Matters Act 2020 gives the 2nd Defendant too much control over registered association which infringes on his right to freedom of thought, conscience and religion enshrined in section 38 of the Constitution. In addition, Section 839, 842, 844 – 848 of the new Companies and Allied Matters Act infringes on his right to freedom of peaceful assembly and association enshrined in section 40 of the Constitution. The Plaintiff also stated that Section 851 establishes an Administrative Proceedings Committee which shall determine matters arising from the operation of the CAMA 2020 which breaches his constitutional right to access to Court inconsistent with the provisions of section 6 (6)(b), section 36(1) and section 251(1)(e) of the Constitution.





The Plaintiff also stated that Section 851 establishes an Administrative Proceedings Committee which shall determine matters arising from the operation of the CAMA 2020 which breaches his constitutional right to access to Court inconsistent with the provisions of section 6 (6)(b), section 36(1) and section 251(1)(e) of the Constitution. The Plaintiff stated that the said sections should be expunged from the Act as they will affect his livelihood and survival. The Defendants in contention filed their counter affidavits, denying all the allegations and reliefs sought by the Plaintiff. One of the issues formulated for determination was: *Whether the provisions of section 839, sections 842 - 848 of CAMA 2020 infringes on any of the Plaintiff's right.*

## Arguments

Emmanuel Ekpenyong Esq. (Plaintiff) by an Originating Summons stated that according to section 839 of the new Companies Allied Matters Act, the Corporate Affairs Commission (2nd Defendant) is given unilateral powers to suspend the trustees of an association and appoint an interim manager or managers to manage the affairs of an association where the 2nd Defendant believes there is any misconduct or mismanagement in the administration of the association without a Court order. Also, Sections 842 -848 of the new Companies and Allied Matters Act 2020 gives the 2nd Defendant too much control over registered association which infringes on his right to freedom of thought, conscience and religion enshrined in section 38 of the Constitution. In addition, Section 839, 842, 844 – 848 of the new Companies and Allied Matters Act infringes on his right to freedom of peaceful assembly and association enshrined in section 40 of the Constitution. Learned counsel for the Plaintiff argued that that the Plaintiff has the constitutional right to access the Court to ventilate his grievance. He stated further that the Plaintiff is entitled to his right to freedom of thought, conscience and religion enshrined in section 38 of the Constitution and right to freedom of peaceful assembly and association under section 40 of the Constitution. He submitted further that the sections 839, 842 - 848 and 851 of the Companies and Allied Matters Act 2020 infringe on his fundamental rights as it gives the Corporate Affairs Commission too much control over organizations registered as Incorporated Trustees such as religious bodies and charitable organizations, and he urged the Court to so hold.

In response, the Learned Silk for the 2nd Defendant stated that none of the sections of the Companies and Allied Matters Act 2020 challenged by the Plaintiff, relate to him (Plaintiff) personally. That is, he is not a trustee who is affected by these said provisions. That the case of the Plaintiff is frivolous, and he is merely a busybody who has failed to provide credible proof to warrant the grant of this suit. The learned silk further stated that the CAMA 2020 is not inconsistent with the provisions of the 1999 Constitution of the Federal Republic of Nigeria, 1999 (as amended), as postulated by the Plaintiff. The Court was urged to dismiss the suit.

Counsel to the Plaintiff in reply on point of law submitted inter-alia that the Plaintiff's locus standi to institute the action is established by section 46 of the Constitution and Article 3 (e) of the Preamble to the Fundamental Rights (Enforcement Procedure) Rules, thus a fundamental human rights enforcement suit, and that the Plaintiffs locus standi is also strengthened being a constitutional matter. He urged the Court to dismiss the submissions of the 2nd Defendant.

## Decision of the Court

In resolving this issue, the Court held that:

The provisions of Sections 839, 842 - 848 give the Corporate Affairs Commission too much power over the affairs of an incorporated trustee. **The powers of the Commission to appoint interim managers over the affairs of an association where in its opinion there is a mismanagement of the association is a violation of the tenets of freedom of association and peaceful assembly.**

In a case where the association is a registered trustee of a church or a community association, and the Commission in appointing an interim manager appoints someone who is not a member of that church or from that community, the rights of members of such association will have been grossly violated. They would be forced to abide under the direction of someone who has no affinity to them. The opinion of this Court is that the enjoyment of the right to freedom of association will invariably be subject to the whims of the Commission. This cannot be the aim of the right to freedom to associate and peaceful assembly. Arrogating such powers to the Corporate Affairs Commission to micromanage associations is not justifiable and is a gross breach of fundamental rights to freedom of association and freedom of thought, conscience and religion.

Issue resolved in favour of the Plaintiff.

Emmanuel Ekpenyong Esq., for the Plaintiff

O.O. Olowolafe SAN; I.T Momoh Esq., and Belinda Frank Esq., for the 2nd Defendant

Memuna Lami Shiru Esq.; Esther Udo Esq., for the 3rd Defendant

This summary is fully reported at (2023) 5 CLRN.

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