

# **CASE DIGEST**

**Company Law: Winding up order;  
Liquidator; Does an appointment  
of a liquidator impair a creditor's  
or a contributor's right to sue for  
the protection of their rights?**

**PEFTI NIGERIA LIMITED  
v. INI OKON UDO UTUK & ANOR.**

**SUPREME COURT OF NIGERIA**

**OKORO; AUGIE; JAURO; ABUBAKAR; AGIM; JJ.SC**

# Case Digest: The Topic

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PEFTI NIGERIA LIMITED v. INI OKON UDO UTUK & ANOR.

SUPREME COURT OF NIGERIA

(OKORO; AUGIE; JAURO; ABUBAKAR; AGIM; JJ.SC)

## Background

Ini Okon Udo Utuk (the 1st Respondent's) father, one Okon Udo Utuk (now late and substituted with the 1st Respondent) filed a suit on 11th February 1993 wherein he petitioned the Federal High Court (trial court) for the winding up of Utuks Construction & Marketing Company Limited. The petition was heard, and the company was wound up by order of the court on 26th June 1995. While the said petition was pending at the trial court some landed properties belonging to the company were sold off by an auctioneer appointed by Mercantile Bank of Nigeria Plc. to Pefti Nigeria Limited (the Appellant) in satisfaction of a Mortgage Deed executed between the company and the bank.

The 2nd Respondent who was appointed the provisional liquidator, to take over and manage the properties of the company in the interest of creditors and contributors, upon becoming aware of the sale of the properties in a public auction, filed a motion on notice seeking an order to void the advertisement and sale of the properties. The motion also sought an order vesting the properties in the custody of the Provisional Liquidator for the purpose of valuation.

On 23rd May 1995, the learned trial Judge validated the sale of those properties except one of the properties which was set aside on the ground that both Union Bank and Mercantile Bank have contending legal charges on the property.

Dissatisfied with the ruling of the trial court, the 1st Respondent appealed to the Court of Appeal (lower court) which in its said judgment allowed the appeal, set aside the ruling of the trial court and ordered that they be vested in the custody of the liquidator in trust for members of the company and creditors.

Aggrieved by the decision of the lower court, the Appellant appealed to the Supreme Court. One of the issues for determination raised on appeal is: Whether the 1st Respondent's appeal at the lower court against the ruling of the trial court is competent having regard to the provisions of section 422(9) of the Companies and Allied Matters Act, 1990 (now section 585(9) of CAMA, 2020)?



## Arguments

Learned Counsel for the Appellant argued that the 1st Respondent failed to seek leave of court to sanction the continuous exercise of his powers as Chairman/Director in Utuks Construction & Marketing Co. Ltd as prescribed by the Act before filing the appeal at the Court of Appeal, his said powers to act for the company as Director having been removed upon the appointment of a provisional liquidator. Arguing further, learned counsel stated that the effect of appointing a provisional liquidator for the company is divestiture of the powers of the directors and investiture of such powers on the liquidator and that if the powers of the directors of the company have been removed, they have become *functus officio*.

Counsel submitted that the 1st Respondent as Appellant lacks the *locus standi* to file a Notice of Appeal at the court below against the ruling of the trial court without first seeking the order of the court to sanction the continuous exercise of his powers as Director including the power to initiate the appeal at the Court of Appeal and urged the Court to so hold.

Arguing in response to the postulations of the Appellant's counsel, the 1st Respondent's counsel stated that the 1st Respondent filed the petition for winding up of the company not as a director acting on behalf of the company but as a contributor to protect his interest in the company. Thus, the ruling of the trial court which validated the sale of the company's properties during the pendency of the winding-up proceeding affected his personal interest as a contributor to the company.

Learned counsel further argued that he had a personal interest that was affected by the ruling of the learned trial Judge for which reason he exercised his right of appeal to the court below. In submission, counsel argued that the fact that the 1st Respondent happened to be a director of the company did not take away his personal rights to take out a proceeding to protect his personal interests in the company as a contributor or creditor or for the protection of the assets of the company and urged the Court to so hold.

# Decision of the Court

In resolving the issue, the Supreme Court held thus:

Section 422(9) of the Companies and Allied Matters Act (CAMA), 1990 (now section 585(9) of CAMA, 2020) only prevents the exercise of the powers of directors of a company upon the appointment of a Liquidator.

*The aforesaid section does not extinguish the powers of a creditor or a contributory for the protection of their rights upon the appointment of a Liquidator. Although the 1st Respondent was the Executive Chairman of Utuks Construction & Marketing Company Limited, he is not precluded from exercising his right as a contributory or creditor to the company.*

In the circumstances, the onus therefore lies on the Appellant who asserts that the 1st Respondent instituted the appeal before the lower court as a director to prove the assertion. The Appellant has been unable to prove that the 1st Respondent acted as a director in maintaining the petition at the trial court and filing the appeal at the court below.

Issue resolved in favour of the Respondents.

G. A. Idiagbonya, Esq., for the Appellant  
Francis Ekanem Esq., for the 1st Respondent  
A. Erhabor Esq., with O. O. Duruaku Esq., for 2nd Respondent

**This summary is fully reported at (2023)  
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[info@clrndirect.com](mailto:info@clrndirect.com)