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INTRODUCTION

Welcome to our Q3 newsletter! This quarter has seen a series of impactful decisions that solidify legislative changes and introduce new principles on nuanced legal issues.

Notably, the latest judicial trends have emphasised the protection of an individual's right to privacy especially pertaining to personal information shared on social media.

This newsletter further contains novel decisions on corporate and commercial law, data protection law, family law, maritime law and more.



Suit No: FHC/ABJ/CS/665/2023 – Primetech Design and Engineering Nigeria Limited & Anor v. Corporate Affairs Commission – Companies incorporated before the enactment of the Companies and Allied Matters Act (CAMA) 2020 can transition to a single shareholding structure

Summary of Facts

Primetech Design and Engineering Nigeria Limited (Primetech), a company incorporated in 2011 originally had two shareholders: Martin Brack and Julius Berger Nigeria Plc (Julius Berger). Primetech to Julius Berger, making Julius Berger the sole shareholder of Primetech. Primetech notified the Corporate Affairs Commission (CAC) of the share transfer, seeking to register Julius Berger as the sole shareholder of Primetech. When CAC failed to respond to the notification, a letter was sent to CAC requesting that the commission update Primetech's information on the commission's Company Registration Portal.

CAC informed Primetech that its application has been queried on the basis that the company had two shareholders and that the share transfer would be contrary to the provision of the Companies and Allied Matters Act, 2020 (CAMA 2020) which lists a company's shareholding falling to less than two (2) as one of the grounds for a winding up of a company. The commission argued that although section 18(2) of CAMA 2020 permits a private company to be formed and incorporated by one person (which was not possible under CAMA 1990), the company had been incorporated before CAMA 2020 was enacted. As such, the purported share transfer was in contravention of section 571(c) of CAMA 2020 which states that a company may be wound up by the court if the number of members is reduced below two in the case of companies with more than one shareholder.

In response Primetech wrote to CAC explaining why its position is inconsistent with the overriding policy objectives and the intention of the legislators in drafting CAMA 2020. The company stated that the introduction of section 18(2) was to also have effect on companies in existence before the enactment of CAMA 2020 and the law was intended to allow private companies to reduce their shareholders to one (1) in line with section 18(2) of CAMA 2020.

CAC did not respond to the Primetech's reply nor did it update its Company Registration Portal. Primetech and Julius Berger subsequently instituted an action via originating summons against CAC at the Federal High Court, Abuja Division.

Notable Issue for Determination

One of the issues considered for determination was: Whether, on proper construction of sections 18(2), 22(1), 118, 869 (1) and other related provisions of CAMA 2020, the CAC can validly rely on 571(c) to refuse registration of share transfer pursuant to which the Julius Berger became the sole shareholder of Primetech.

Arguments

The counsel for the Primetech and Julius Berger argued that a purposive interpretation of sections 18 (2), 22(1), 118, 571(c) and 869(1) of CAMA 2020 clearly shows that the legislature intended for section 18(2) to be applicable to all private companies, irrespective of whether such companies were incorporated before the enactment of CAMA 2020 and/or irrespective of their shareholding structure at the time of incorporation; and it will be discriminatory to assert otherwise. The counsel also argued that the provision of Section 571(c) of CAMA 2020 is inconsistent with Section 18 (2) as it prevents the operation of private companies that undergo restructuring to a single shareholding structure and ultimately defeating the intention of the legislature which is to improve the ease of doing business.

In response, counsel for CAC argued that section 18 (2) is not applicable to the Primetech as it was incorporated under CAMA 1990 which does not provide for a single shareholding structure. CAC further argued that the purported share transfer leading to Primetech having a single shareholder is inconsistent with the provisions of CAMA 2020 and as such, is void ab initio. In view of this, CAC argued that the transition by a pre-CAMA 2020 two-shareholder company to a single shareholder company creates grounds for winding up of the company and this was the reason why it rejected the application of Primetech.

Decision of the court

In resolving this issue, the Court held that:
Section 18(2) of CAMA 2020 is not limited to only private companies incorporated after the commencement date of CAMA 2020. The Court further held that to adopt a contrary interpretation will defeat a literal interpretation of section 18(2) of CAMA 2020 and the intention of the legislature to promote the ease of doing business which is manifest in section 18(2) of CAMA 2020. In relation to section 571(c) of CAMA 2020, which states that a company may be wound up by the court if '…the number of members is reduced below two in the case of companies with more than one shareholder…", the FHC noted that the legislature took

into account, the fact that some companies are allowed to have only one shareholder, that is, private companies pursuant to section 18(2) of CAMA 2020.

Consequently, the Court held that CAC was wrong when it relied on section 571(c) of CAMA 2020 as the basis for its refusal to register and record the change in Primetech's shareholding structure. The Court ordered CAC to immediately accept for filing, the share transfer instrument pursuant to which Julius Berger became the sole shareholder of Primetech. Accordingly, CAC should update Primetech's corporate records in the Company Registration Portal to reflect its new shareholding structure.

Comments

The court's decision represents a significant victory for private companies seeking to transition to a single-shareholder structure, particularly those whose applications have been consistently denied by the CAC. The intention of the legislature in promoting ease of doing business has been upheld by the court in line with accepted global practice in jurisdictions with thriving economies.

Suit No: CA/C/132/2021- Nigeria Deposit Insurance Corporation and Peak Merchant Bank v. Sir O. D. Abia – A liquidator is an agent of a company undergoing winding up and is liable where it fails to settle the company's liabilities

Summary of Facts

Sir O.D. Abia entered into a two-year lease agreement with Peak Merchant Bank (Peak Merchant) in respect of a property known as No. 16, Eketi Oron Road in Akwa Ibom State. Prior to the termination of the lease agreement, Peak Merchant became distressed and could not perform its financial obligations after which its banking license was revoked by the Central Bank of Nigeria. Nigeria Deposit Insurance Commission (NDIC) was appointed as Peak Merchant's provisional liquidator, and the process of winding up was commenced.

Sir Abia wrote to Peak Merchant reminding it that the rent will become due on 30 June 2003. Sir Abia was however notified by NDIC of the pending winding-up proceeding and was asked to exercise some patience. Sir Abia waited from 2003 to 2005 to no avail and then instituted an action against NDIC and Peak Merchant at the High Court of Akwa Ibom State, claiming possession, arrears of rent, mesne profit and costs of repairs.

NDIC and Peak Merchant filed a notice of preliminary objection challenging the jurisdiction of the High Court, however, this was dismissed. They appealed against the ruling before the Court of Appeal and the same was struck out with costs. At the close of proceedings, the trial Court delivered judgment in favour of Sir Abia and granted the reliefs for arrears of rent, mesne profit and cost of repairs.

NDIC and Peak Merchant appealed against the final judgment and this appeal was allowed with the matter remitted to the High Court, to be heard afresh. The Appellants again raised a preliminary objection challenging the competence of the suit and the jurisdiction of the Court. The same was dismissed and upon conclusion of trial, judgment was entered in favour of Sir Abia. NDIC and Peak Merchant thus filed an appeal at the Court of Appeal, Calabar.

Notable Issue for Determination

One of the issues considered for determination was: Whether the trial court was right to have held NDIC liable under the lease agreement that it was not privy to on the basis that NDIC was appointed as the provisional liquidator to Peak Merchant.

Arguments

The learned counsel for NDIC and Peak Merchant argued that by the doctrine of privity of contract, only parties who have entered into a contract can be bound by its terms and obligations, thus NDIC not being a party to the lease agreement cannot be bound by it. The learned counsel further argued that it is against the principles of fairness and justice to hold NDIC personally liable for a breach of the lease agreement to which it was not a party. She urged the court to resolve the appeal in favour of the Appellants and allow the appeal.

In response, counsel to Sir Abia argued that NDIC had admitted to being the liquidator of Peak Merchant thus it cannot claim to be unaware of the lease agreement between Sir O.D. Abia and Peak Merchant Bank. He urged the court to dismiss the appeal.

In response, counsel to the Respondent argued that the 1st Appellant had admitted to being the liquidator of the 2nd Appellant thus it cannot claim to be unaware of the lease agreement between the Respondent and the 2nd Appeal. He urged the court to dismiss the appeal.

Decision of the court

In resolving the appeal, the Court of Appeal held that:
The relationship between NDIC and Peak Merchant is an agency relationship between a party to the contract as the principal and a third party as an agent and as such, an exception to the principle of privity of contract.

The court relied on section 425(1)(d) of CAMA 2020, which states that a liquidator is obligated to pay any classes of creditors in full. The court submitted that since the liquidator is obligated to pay any class of creditors of the company being wound up, the liquidator is also authorized to act in the capacity of an agent, to do that which the company itself could have done had it not been distressed. Thus, by the doctrine of privity of contract, the liquidator is bound by the terms of any agreement entered into between Peak Merchant and a third party.

The court posited that since a liquidator can proceed after the assets of a company, he must as a matter of necessity proceed after its liabilities with the same strength. The court thus dismissed the appeal and resolved the issue in favour of the Respondent.

Comments

The decision of the court is commendable as it is in line with the duties of a liquidator as provided by section 588 of the CAMA 2020. The law includes the settling of the liabilities of a company that is undergoing a winding-up process as part of the duties of the liquidator and this duty extends to the privity of contract as, in the instance where a liquidator is appointed to oversee the winding-up process of a company. The liquidator is an agent of the company and is expected to perform the company's contractual duties. The judgment of the court is well founded as it serves as a reminder to liquidators of their duty to offset the liabilities of the companies undergoing winding-up.

Suit No: FHC/ABJ/CS/275/2021- Sesugh Akume v. Attorney-General of the Federation and Economic and Financial Crimes Commission - The wilful destruction of goods that VAT is imposed upon amounts to economic sabotage

Summary of Facts

The suit was filed following the destruction of alcoholic beverages by Hisbah Board officials in Kano State. Sesugh Akume a public analyst, filed an action at the Federal High Court, Abuja against the Attorney General of the Federation and the Economic and Financial Crimes Commission on March 4 2021 wherein he asked the court to interpret sections 4(5), 162(3), and 163 of the 1999 Constitution of the Federal Republic of Nigeria (as amended), as well as section 6(1) of the Economic and Financial Crimes Commission Act 2004.

He asked the court to determine whether the manufacturing, distribution, sale, consumption or possession of alcoholic beverages is unlawful in Nigeria and whether it is contradictory to destroy alcoholic beverage bottles and waste the contents while benefiting from the value-added tax from alcoholic beverages.

Notable Issue for Determination

One of the issues considered for determination was: Whether the wilful destruction of alcoholic beverage bottles and wasting the content constitutes economic sabotage.

Argument

The learned counsel for Sesugh Akume argued that the breaking of alcoholic bottles and wasting of their contents by the Hisbah Board of the Kano State Government constitutes economic sabotage and whether such acts fall within the purview of the Economic and Financial Crimes Commission (EFCC) to investigate. He further argued that alcoholic beverages are not illegal, and the Value Added Tax (VAT) obtained from the alcoholic beverages benefits the Kano State Government in terms of the allocation being paid to the state thus it is hypocritical to destroy the beverages.

In response, the counsel to the EFCC argued that the actions of the Kano State Government in respect of destroying alcoholic beverages does not fall under the duty of the EFCC. In other words, it does not fall within the EFCC's powers to prevent Hisbah from destroying alcoholic beverages nor to regulate the Hisbah Board.

Decision of the court

The court in delivering the judgment held that:
The act of Kano State Government in seizing, breaking and extravagantly pouring away the liquid contents of the alcoholic beverages which forms part of the VAT being shared by the Federal Government among itself, States of the Federation and the Local Governments inclusive of Kano State was tantamount to economic sabotage. The court stated that Nigeria as a nation must not tolerate economic sabotage, and it must be frowned upon. The court held that the EFCC is duty bound to put a check and stop any act of economic sabotage within the nation.

Comments

The judgment of the court is a groundbreaking decision as it is the first time where the court will establish that the destruction of alcoholic beverages and wasting their contents is economic sabotage. This is a good development as the act of destroying alcoholic beverages as punishment for selling and consuming alcoholic drinks in some states in Nigeria is detrimental to the economy. This is because companies that produce these drinks pay VAT and contribute to the growth of the economy, but they are denied of making profit and conducting their business in an enabling environment. The finding that preventing economic sabotage in this case is part of EFCC's duties because the Value Added Tax paid by companies forms part of the allocation paid to State Governments in Nigeria will likely be tested in the future. However, it is worthy of note that the application of the court's judgment is not restricted to the destruction of alcoholic beverages alone but to all goods on which VAT is imposed in Nigeria.

Suit No: FHC/ABJ/CS/1432/2019 Olumide Babalola LP & Anor v. True Software Scandinavia AB and Anor. – Consent to Use a Telephone Directory Application will not violate a person's right to privacy

This case was instituted by an originating summons at the Federal High Court Abuja, by Olasunkami Bello and Olumide Babalola LP, a Data Protection Compliance Organisation (DPCO) registered for protection of data privacy and compliance services in line with the provisions of the Nigerian Data Protection Regulation 2019 (NDPR). The suit was filed against True Software Scandinavia AB (True Software) and National Information Technology Development Agency (NITDA). Olumide Babalola LP and Olasukanmi Belllo alleged that Mr Bello's personal data (phone number) had been harvested and processed by True Software through its mobile software application called "True Caller" without his consent. He further alleged that the harvesting of his phone number, along with details of other users of the application was an invasion of privacy contrary to section 37 of the Constitution of the Federal Republic of Nigeria, 1999 (as Amended).

Notable Issue for Determination

One of the issues raised for determination was: Whether the fundamental right to privacy of Olasukanmi Bello was breached by True Caller?

Argument

Olumide Babalola LP and Olasukanmi Bello argued that True Software through its True Caller application, collects and controls telephone numbers from users globally, including that of the Mr Bello, and makes this data accessible to others using the application. This in turn has led to disruptions in telephone conversations and unwanted phone calls from unknown persons. They further stated that their phone numbers were taken without their consent by the 1st Respondent and made available to third parties across the world and that this practice constitutes an infringement on the fundamental right to privacy under Nigerian law while relying on provisions of the NDPR.

True Caller, by a preliminary objection, challenged the court's jurisdiction to preside over the matter on the ground that True Caller International LLP, based in India, is responsible for the application's operations, not True Software. It denied harvesting or publicly sharing phone contacts of users or non-users. It stated that True Caller only accesses a user's contacts if granted permission as a dialler app and that the versions on Google Play store and Apple Appstore do not have enhanced search features for retrieving phone numbers by name. True Software also argued that access to phone contacts is not possible without the user's consent and that True Caller's function is to help users identify unknown numbers rather than search for numbers by name, and as such it does not constitute a breach of privacy.
The company also argued that there was no proper endorsement on the court papers used in commencing the suit to state "for service outside jurisdiction" as required under Nigerian law. Additionally, they questioned the propriety and locus standi of Olumide Babalola LP to institute the suit.

Decision of the Court

In resolving the issue, the court held that:
The right to privacy extends beyond constitutional definitions and encompasses personal data as per the NDPR. However, it concluded that the Applicants had not demonstrated that their phone numbers were searchable or revealed by True Caller. The court weighed True Caller' denial against Olumide Babalola LP and Olasukanmi Bello' claims and found in favour of the Respondents, stating that True Caller's role was limited to tracing unknown callers rather than harvesting data indiscriminately. The court in examining the definitions of 'data controller' and 'data processing' under the NDPR, determined that the True Caller was not directly responsible for collecting or processing the Olasukanmi Bello's phone numbers. Instead, the data controllers were the users who provided consent for their contact information to be used.

The court concluded that the alleged infringement of privacy, if any, was attributable to the users who consented to share their contact information, rather than True Caller.

Comments

The decision of the court in determining that True Software was not a data controller as it only processed the subscriber's phone contacts details is grounded in law. However, it appears that the court did not consider or make any decision on whether sharing contact details with someone makes the receiver the data subject in relation to the personal data. True Software is meant to observe a reasonable duty of care by informing individuals whose contacts were traced of the option to opt themselves out from its registry upon being notified.

Suit No. FHC/L/CS/1295/2023: Havells India Limited v. Corporate Affairs Commission & MDC Havels Products Limited – A company can be deregistered where its name infringes on an existing trademark

Summary of Facts

Havells India Limited (the Plaintiff), a well-known and world-renowned electrical and electronics manufacturer and owner of global brands like Havells, Lloyd, Reo, Crabtree and Standard, commenced a suit via originating motion before the Federal High Court. The action was brought against Corporate Affairs Commission (CAC), and MDC Havells Products Limited (MDC). Prior to commencing this suit, the Plaintiff had formally written to the CAC to request MDC to change its name due to the fact the MDC's name conflicts with Havells' registered name and its well-known trademark.

This request was not granted, leading the Plaintiff to seek redress through the court where it alleged that MDC's use of the name "Havells" in its company name, constituted trademark infringement and was in violation of copyright law.

Notable Issue for Determination

One of the issues raised for determination was: Whether MDC's name should be de-registered by the Corporate Affairs Commission for trademark infringement.

Argument

The Plaintiff argued that the unauthorized use of its well-known trademark 'Havells' in the company name 'MDC Havels Products Limited' by MDC was an infringement on its existing trademark.

It was contended that the name "Havells" was a well-known brand name exclusive to the Plaintiff and also a registered trademark. It urged the court to compel the CAC to strike off the MDC's name from the register of companies for infringing on its trademarks. It further argued that MDC used the brand name to commercialize, advertise, promote and sell counterfeit products to consumers under the guise that they were goods made by or belonging to Plaintiff.

Decision of the Court

In resolving this issue, the Court affirmed the well-known status of Havell's trademarks and unequivocally declared the use of the name "MDC Havels Products Limited" by MDC as an infringement on the Plaintiff's "HAVELLS" trademark, in violation of sections 30(4) and 852 of the Companies and Allied Matters Act 2020 (CAMA). It ordered the CAC to expunge and strike off MDC name, from the register of companies. The court also awarded damages to the Plaintiff in the sum of 50,000,000 (Fifty Million Naira) against MDC and by injunction further restrained MDC from using the trademark. Furthermore, the court ordered the CAC to deliver up for destruction all infringing products or goods that MDC may have commercialized or branded under a name or mark confusingly similar to the Plaintiff's brand. The court in giving its decision emphasized that the court's role was not only to dissolve an existing entity but also to determine the infringement and protect the affected party's intellectual property rights.

Comments

The decision of the court, in this case, emphasizes the Nigerian court's commitment to safeguarding the intellectual property and trademarks of businesses, thereby protecting both the companies' businesses and consumers from counterfeit and imitation products in various industries and sectors, as seen in this case which is particular to products in the electrical goods industry.

This suit is significant as it brings to light the shortfalls of the Corporate Affairs Commission (CAC), being the agency charged with the responsibility of registering companies in Nigeria and ensuring that companies with conflicting names are not registered and where this is inadvertently done, it has a duty to order that such names be changed.

The CAC failed to fulfil its obligation in this regard, however, the court was able to step in and enforce this duty. The decision of the court in this suit is commendable as it is grounded on the protection of consumers from misleading products, which pose significant safety risks. Considering that the Plaintiff manufactures life-saving electrical devices, the presence of counterfeit products in the market could lead to severe consequences, including fire, explosion, and danger to human life and safety.

Suit No. CA/L/555/2017: Topher Zhang Investment Ltd. & Anor v. Masters Energy Oil & Gas Ltd -The Federal High Court's jurisdiction extends to maritime contract disputes

Summary of Facts

In a recent legal dispute, a case before the Federal High Court examined the scope of its jurisdiction over maritime contract disputes. Topher Zhang Investment Ltd (Topher), a company specializing in the repair of marine vessels, entered into a service contract with Masters Energy Oil & Gas Ltd (Masters Energy) in 2012. The Agreement required the Topher to repair and refurbish four (4) accident-damaged aluminium boats owned by Masters Energy, with the work scheduled to be completed within sixteen (16) weeks. Masters Energy made payments to Topher as agreed, including for any variations in the scope of work. However, the Topher failed to fulfil its contractual obligations, prompting Masters Energy to seek legal redress.

Masters Energy filed a writ of summons seeking relief from the court for the recovery of the sum paid for repairs and the additional funds necessary to complete the work on the four boats. In response, Topher filed a preliminary objection asking that the suit be struck out and that proceedings in the suit be stayed pending arbitration . The lower court dismissed the preliminary objection and held that it has jurisdiction to preside over the suit. Topher, being aggrieved with the decision of the lower court, appealed to the Court of Appeal.

Notable Issue for Determination

A notable issue raised for determination was: Whether the Federal High Court had jurisdiction over maritime contract disputes.

Arguments

Topher contended that the suit was within the jurisdiction of the High Court as provided by sections 157 and 272 of the 1999 Constitution of the Federal Republic of Nigeria, as amended (the Constitution), and that the Admiralty Jurisdiction Act (AJA) was not applicable to the suit.

Masters Energy, relying on the provisions of sections 251(1)(g) of the Constitution and section 2(3)(m) of the AJA, argued that the Federal High Court was the court of competent jurisdiction in the suit. It stated that the subject matter of the suit was on admiralty, and the lower court has jurisdiction over admiralty matters. It was further argued that the contract in question was not a simple service agreement but a maritime contract involving the repair of boats, which falls under the court's admiralty jurisdiction.

Decision of the Court

In resolving this issue, the Court of Appeal held that:
A boat qualifies as a ship under admiralty law, and the core of the contract was the repair of these boats and therefore constitutes a maritime claim. The Court determined that the dispute indeed fell within the admiralty jurisdiction as defined by sections 251(1)(g) of the Constitution and relevant provisions of the AJA. Ultimately, the Court held that the matter was not simply a contract dispute but a maritime issue within the purview of the Federal High Court's admiralty jurisdiction. Consequently, Topher's appeal was dismissed, affirming the lower court's jurisdiction over the case.

Comments

The decision in this case is commendable for its clear and effective handling of jurisdictional issues. By affirming that the Federal High Court has jurisdiction over a maritime dispute concerning the repair of boats, the court provided essential clarity on the application of admiralty law in relation to the jurisdiction of courts in Nigeria as provided under the Constitution.

The decision of the court reinforces the proper use of specialized courts for maritime matters, ensuring that contractual obligations within this sector are fairly enforced. The court's adherence to constitutional and statutory provisions not only upholds legal standards but also sets a valuable precedent for future maritime cases, promoting judicial efficiency and consistency.

SUIT NO: FHC/ABJ/CS/1246/2022 Incorporated Trustees of Ikigai Innovation Initiative National Information Technology Development Agency (NITDA) – Countries on the NDPR Whitelist must have sufficient data protection laws and a data protection authority

Summary of Facts

The Incorporated Trustees of Ikigai Innovation Institute (the "Institute"), a non-profit organisation, challenged some provisions in the Nigerian Data Protection Regulation Implementation Framework (NDPRIF) as well as the Whitelist attached as Annexure C. The key issue was whether the "Whitelist" included in the National Information Technology Development Agency (NITDA) Framework was appropriate. Annexure C of the Framework specifies the countries deemed to have adequate data protection laws for international data transfers.

The Institute was primarily concerned that some countries on the Whitelist did not meet the required data protection standards. Initially, it sought to address this issue by filing a complaint with NITDA, requesting a review of the Whitelist. When NITDA failed to respond adequately, the Institute chose to take legal action. They filed a lawsuit demanding that NITDA revise and update the Whitelist to include only countries that comply with data protection regulations. Additionally, the Institute contested the inclusion of the Binding Corporate Rules (BCRs) and Standard Contractual Clauses (SCCs) in the data protection framework, arguing that these mechanisms were not anticipated by the data protection regulations in Nigeria.

Notable Issue for Determination

An issue raised for determination was: Whether the Whitelist was regular, appropriate and in accordance with the provisions of the Nigeria Data Protection Regulation (NDPR).

Arguments

The Institute contested the inclusion of Binding Corporate Rules (BCRs) and Standard Contractual Clauses (SCCs) in the data protection framework, arguing that these mechanisms were not anticipated by the regulations, and further demanded that NITDA revise and update the Whitelist to include only countries that comply with data protection regulations.

NITDA, did not submit a defence in response to the claims. As a result, the Court's decision was based entirely on the arguments put forth by the Institute.

Decision of the Court

In resolving this issue, the Court held that:
Granting Whitelist status to certain countries that did not have sufficient data protection laws or adequate supervisory authority constituted a violation of the NDPR.

The Court also concurred with the Institute's claim that the NDPRIF's incorporation of BCRs and SCCs was not legally justified under the NDPR. It ruled that NITDA had exceeded its authority by including certain countries on the Whitelist and introducing BCRs and SCCs that were not sanctioned by the NDPR.

As a result, the Court granted all the reliefs sought by the Institute, including ordering the removal of BCRs and SCCs and the exclusion of specific countries from the Whitelist.

Comment

The Court's decision in this case emphasizes the urgent need for the National Data Protection Commission (NDPC) to update the Whitelist. It stresses the importance of establishing a consistent cross-border data protection framework by including only those countries with robust data protection laws and independent oversight.

Until this update is completed, data controllers are advised to exercise caution when transferring personal data to countries with insufficient data protection measures. This caution is crucial for complying with data protection regulations and protecting individuals' privacy rights.

It is noteworthy to mention that the decision of the Court herein while not shutting out cross-border transfer of personal data beyond Nigeria, has created an additional responsibility on businesses and organizations who would have to take the extra measure of relying on specific data transfer mechanisms in the transfer of data outside the shores of Nigeria since there is in effect no whitelist in operation at the moment. The probability of this judgment being appealed or upturned is very slim as the decision of the court aligns with the provision of the NDPR.



AFRICAN CASES



CIVIL APPEAL NO. 978 2024 - SAFARI AUTOMOBILE LIMITED V GODWIN DANDA – Posting a video of an individual without his/her consent is a violation of their right to privacy

Summary of Facts

Godwin Danda is a customer of Safari Automobile Limited (Safari), a company involved in the interior and exterior designing of motor vehicles. Godwin Danda engaged the services of Safari to mend the seat cover, dashboard, 5D carpets and clean the motor vehicle. Upon the completion of the adjustments to the vehicle's design, staff of Safari recorded a video of Godwin Danda with his motor vehicle and subsequently posted it on its Instagram page.

Godwin Danda claimed that his right to privacy was violated and that due to the publication, he and his family suffered a disruption of peace and harmony. Accordingly, he instituted an action against Safari for the unauthorized use of his image in marketing and promoting their services and products. Safari argued that Godwin Danda consented to the video which was taken for educational purposes, not for marketing and promotion. They added that the video only existed online for ten (10) days.

The trial court ruled against Safari, agreeing with Godwin Danda that the posting of the video without Godwin Danda's consent amounted to a violation of his right to private and family life. Safari Automobile Limited dissatisfied with the trial court's decision appealed before the High Court of the United Republic of Tanzania, Dar Es Salaam.

Notable Issue for Determination

An issue that was distilled for determination was: Whether Godwin Danda consented to the videos being posted on Safari's Instagram page and whether the videos were used for commercial purposes?

Arguments

Safari argued that the video was posted with the Godwin Danda's consent, noting that Godwin Danda was cooperative with the interview. They further argued that the video was posted on their Instagram page for the purpose of educating members of the public.

Godwin Danda in opposing this point argued that Safari recorded and posted his video without his consent and for commercial purposes.

Decision of the Court

In resolving this issue, the Court held that:
Godwin Danda consented to being recorded and was in fact very cooperative to Safari's employees who interviewed and recorded him. However, he could not have foreseen how the video would be used and there is no evidence that suggested that he consented to the videos being uploaded and posted on Safari's social media page. Furthermore, the Court highlighted that the consent given to be recorded does not extend to consent to posting the recorded video on Instagram.

On the decision as to whether the video was used for commercial purposes, the court considered the nature of the video, and the evidence adduced before the Court to determine the reason the video was posted. The Court highlighted that it was difficult to put a line between educating members of the public and commercial gain.

However, the video clip cannot be distanced from advertisements because "its content is about the quality of work done by Safari to the motor vehicle of the Godwin Danda." The Court further stated that viewers on the Instagram page will be persuaded to engage the services of Safari based on the video. The Court also considered what Safari would achieve from educating the public about their services. The Court ultimately held that the video was for commercial purposes because "…the conversation aimed to narrate the style and quality of the services offered to customers by Safari" which constitutes advertising as it persuades the minds of the public to engage the services of Safari.

Comments

Judging from the facts of the case and the issues of determination, one could wonder whether it could be reasonable to assume that Godwin Danda ought to have had an idea that the video was going to be used for promotional and marketing purposes. Although the Court rightly decided that this does not amount to consent for the video to be used for commercial purposes, it emphasizes the importance of organisations and individuals obtaining consent from third parties for their images to be taken and further their consent to use their images for whatever purpose especially marketing and promotional purposes and on whatever platform before going ahead to use the third parties' images.



FINANCIAL SERVICES TRIBUNAL CASE NO: JSE2/2023 – Murray Hector Munro v Johannesburg Stock Exchange Limited - A director has a duty to ensure compliance with Listing Requirements

Summary of Facts

Murray Hector Munro, former CFO (Chief Financial Officer) and other senior executives of the Tongaat Hulett were accused of financial impropriety such as engaging in practices that amounted to inflated profits as well as inflated value of assets as a result of an investigation carried out by Price Waterhouse Coopers (PWC). Subsequently, the Johannesburg Stock Exchange (JSE) found that Mr Munro had contravened paragraphs 8.5.7(a), 8.6.2 (B) and General Principles (v) and (vii) of the Listing Requirements and had thereby failed to comply with the listing requirements and the International Financial Reporting Standards (IFRS).

Mr Munro was subsequently fined R6,000,000.00 and disqualified from holding office of director in listed companies for ten years. He brought an application before the Financial Services tribunal for the reconsideration of the JSE's ruling.

Notable Issue for Determination

An issue raised for determination was: Whether the evidence presented before the JSE was sufficient to find Murray Hector Munro guilty of contravening the JSE listing requirements.

Argument

Mr Munro argued that mere evidence of financial misstatements was not sufficient to establish that he had breached the listing requirements, he further relied on the dictum in an earlier case, Democratic Alliance v ANC 2015 (2) SA 23 (CC) at paragraph 154 (ANC case), where it was contended that a penal prohibition must include a requirement of fault as opposed to strict liability. He stated that there was a failure to provide evidence to establish that he caused or contributed to the need to restate the company's financial accounts.

Decision of the Tribunal

In resolving the issue, the Tribunal rejected the argument of Mr Munro, relying on the principle established in Jooste v JSE (Case Number JSE4/2022) that directors of a company have the responsibility to ensure that the financial information of listed companies are accurate representations of the companies' financial information.

The Tribunal further emphasized the importance of the provision of accurate financial statements in the interest of potential investors by referring to the case of Trustco Group Holdings Ltd v Financial Services Tribunal and another [2024] ZASCA 100 at para. 33 Smith AJA (as he then was) which stated that "where financial statements do not accurately reflect the nature of financial transactions in accordance with international accounting standards, the JSE must be entitled to direct restatement of the financial statements to ensure that the full and correct position is stated."

The Tribunal further established that there was no question as to whether the financial statements were accurate as the board resorted to such a surgical operation to restate the financial statements to the detriment of the company.

The Tribunal continued by highlighting that Murray Hector Munro as the CFO was a prominent part of how the financial records were prepared, and the said statements were intended to reflect the nature of the financial transactions of the company in line with the international accounting standards. Furthermore, the Tribunal established based on the provisions of section 76(5) Companies Act 71 of 2008 and Schedule 13 of the JSE Limited Listings Requirements that the said provisions show that the director is not absolved from his/her duties to listings requirements of the company.

In conclusion, the Tribunal upheld the ruling of the JSE on the grounds that Mr Munro had failed to adduce convincing evidence to adopt a contrary approach to the decision of the JSE.

Comments

This case showcases the importance and significance of the directors' duties and responsibilities in a company. Murray Hector Munro tried to evade the liability by implying that he was not responsible for the inaccuracies realised in the financial statements.

However, the Tribunal has unequivocally indicated that with regard to the director's duties and responsibilities regarding the listing of companies is to be interpreted strictly clearly establishing that a director owes a strict duty to ensure that the financial statements of its company is on par with the international financial standards.

(16255/2024) [2024] ZAWCHC 209 - Munetsi v Madhuyu – Beware of posting an individual's personal information on social media

Summary of Facts

Social media influencers Better Kudakwashe Madhuyu and wife Kylie Tonsani, also known as Tytie and Kiki conducted a live broadcast on their social media platform (Facebook) in which they made defamatory remarks and further included a screenshot displaying the picture of Moreboys Munetsi and his private phone number.

Tytie and Kiki subsequently posted Moreboys Munetsi's private phone number on their social media platform requesting their followers to contact him. Aggrieved by this, Moreboys Munetsi instituted an action against them before the High Court of South Africa, Cape Town claiming that the publication of his private phone number on Tytie and Kiki's' social media platform amounts to a breach of his right to privacy according to the Protection of Personal Information Act 4 of 2013 (POPIA). Moreboys Munetsi sought an order from the Court demanding the removal of the video displaying his personal information, punitive costs and an apology from Tytie and Kiki.

Notable Issue for Determination

An issue raised for determination was: Whether Tytie and Kiki should be prohibited from broadcasting Moreboys Munetsi's private information and whether Tytie and Kiki should remove the live broadcast from their social media platforms.

Arguments

Moreboys Munetsi argued that Tytie and Kiki had violated his right to privacy by posting his personal information on their social media platform, Tytie and Kiki did not address Moreboys Munetsi's averments however, they sought to justify the said post by claiming that Moreboys Munetsi undermined their business.

Decision of the Court

The Court in resolving this issue, highlighted the fact that Tytie and Kiki had failed to address Moreboy Munetsi's case recalling that Tytie and Kiki were advised to bring a separate suit before the Court to address their claims.

The Court went further to agree with Moreboys Munetsi on the ground that personal information may only be processed in certain circumstances, none of which were applicable in the instant case. The Court further held that posting a person's phone number regardless of whether it was available on other social media platforms, is a violation of the person's common law right to privacy. The Court granted an order directing Tytie and Kiki to remove the video and any posts showing the Moreboys Munetsi's personal information without his consent.

The Court further held that to call Moreboys Mnuetsi a "liar" and "evil" on a live broadcast was sufficient to establish a claim for defamation. It found that there was a sufficient apprehension of irreparable harm to Moreboys Munetsi's reputation which justified him seeking an interdictory remedy to remove the video as any alternative relief would be insufficient.

The Court stated that a public apology is not an appropriate remedy for defamatory statements however, the Court recognised that damages or an interdict would be more suitable.

Comments

The Court's decision in favour of Moreboys Munetsi was not in contention as Tytie and Kiki sought to justify their actions rather than dispute it. This judgement establishes that in the case of a defamatory statement made on a video posted on social media and the unlawful display of a person's personal information, the Court will be inclined to grant interdictory reliefs such as an order compelling the other party to remove the video or an order granting damages to the aggrieved person.



AfCFTA

AFRICAN CONTINENTAL FREE TRADE AREA

Liberia Becomes the 48th Member-State to Ratify the AfCFTA Agreement

The African Continental Free Trade Area (AfCFTA) Agreement created the world's largest free trade single market, with the primary aim of enabling the free flow of goods and service across the continent; consequently, enhancing Africa's overall trade position on the global market. Liberia ratified the AfCFTA agreement, which was generally considered to be "remarkable" because, not only did it become the 48th member state to submit its instruments of ratification to the AfCFTA, it also brought the vision of an Africa-wide single market closer to reality.

Expansion of Liberia's industrial capacity and industrial base are considered essential for value addition in important sectors like agriculture and mining; and the AfCFTA presents a much-needed opportunity for the support and capacity building initiatives in the areas of technology transfer, industrial programmes, and the establishment of special economic zones.

This ratification further justifies the promotion of trade finance, especially for small and medium-sized enterprises (SMEs) as a means towards supplementing the present trade facilitation infrastructure. The Liberian Government, through its Minister for Trade and Commerce alluded to the need for new financial products for trade finance and the improvement of trade facilitation infrastructure, such as the adoption of a single-window system.

Furthermore, the crucial role of private sector implementation of the AfCFTA and its increased collaboration with private businesses were brought to the fore; hence the need to establish monitoring and evaluation systems to track progress and measure the impact of AfCFTA on Liberia's economy was emphasised at the announcement ceremony.



Nigeria Launches Inaugural Shipment Under Phase II Of The GTI

Nigeria has officially commenced trade under the Guided Trade Initiatives (GTI) through its inaugural shipment on 16 July 2024. This signifies an important step towards Nigeria's full participation in trade under the African Continental Free Trade Area Agreement. Through this shipment, 10 (ten) Nigerian companies were able to export products to Central, East, and North African countries.

Some of the products exported included Shea butter, native starch, black soap, clinkers, SIM and bank cards, alcoholic bitters, water closets, and sanitary sets among others to different locations in Kenya, Cameroon, Egypt, Uganda, and Algeria.

CONTACT US:

Lagos
15 Military Street, Onikan, Lagos

+234 201 700 2570-9

Abuja
3 Lobito Crescent, Wuse 2, Abuja

+234 209 700 2570-9

www.alp.company

alp@alp.company

ALP NG & Co

alpng.co

ALPNigeria

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