

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ILORIN JUDICIAL DIVISION
HOLDEN AT ILORIN
ON FRIDAY THE 4TH DAY OF DECEMBER, 2015
BEFORE THE HONOURABLE JUSTICE A.O. FAJI

SUIT NO. FHC/IL/CS/61/2015

BETWEEN:-

- | | | |
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| <ol style="list-style-type: none">1. COMRADE ABDULLAHI
OLADAPO2. COMRADE IBRAHIM
ASHAOLU3. ELDER OLUBAYO ADESINA4. COMRADE RASHEED
GANIYU | } | PLAINTIFFS/RESPONDENTS |
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AND

- | | | |
|--|---|-----------------------|
| <ol style="list-style-type: none">1. COMRADE ALHAJI AYO
SEKONI
(Chairman NATA –Kwara State
Chapter)2. COMRADE THOMAS AYOOLA
(Deputy Chairman, NATA –Kwara
State Chapter)3. COMRADE LAWAL
MUSLIHUDEEN (General Secretary,
NATA-Kwara State
Chapter
(Suing for themselves and on behalf
of the Members of NATA –Kwara
State chapter) | } | DEFENDANTS/APPLICANTS |
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RULING

In the Statement of Claim filed on 2/10/15, the Plaintiffs claim as follows:

1. **A DECLARATION** that the Defendants and their supporters have no right whatsoever to claim the leadership of Association, NATA, while duly elected executive members term of office has not lapsed, and to illegally enter and occupy the Association Secretariat at No. 101 AbdulAzeez Attah Road, Ilorin, Kwara State.
2. **AN ORDER** for immediate release of the Association Secretariat at No. 101, AbdulAzeez Attah Road, Ilorin, Kwara State with all office equipment including furniture and fittings.
3. **PERPETUAL INJUNCTION** restraining the defendants and their supporters from parading themselves as duly elected members of the Association in Kwara State.
4. **AN ORDER** of the Honourable Court declaring the act or acts of the Defendants, while claiming to be executive members of the Association in Kwara. Illegal void and unconstitutional.

5. **AN ORDER** of the Honourable Court mandating the Defendants and their supporters to withdraw the announcement/ publication made on the Radio claiming to be executive members of the Association in Kwara State in the same public media that broad cast the misleading information forthwith.

On 12/10/15, the Defendants filed a Motion on Notice seeking the following reliefs:-

1. To raise a preliminary objection against the suit of the Plaintiff/Respondents filed on 2/10/2015 that this Honourable Court lacks jurisdiction to hear and determine this suit.
2. To strike out the suit of the Plaintiffs in its entirety on the ground that this Honourable Court lacks jurisdiction to hear and determine the suit.
3. And for such order or other orders that this Honourable Court may determine in the circumstances.

The grounds for the application are:-

1. The averments in the endorsement on the writ of summons which are also on the statement of claim and the reliefs being claimed by the Plaintiffs have no any (sic) connection with or pertaining to the operation of the Companies Act and any other common law action regulating the operation of companies but rather an action founded on the election or non-election of the executive members of Nigeria Automobile Technicians of Nigeria Association (NATA) Kwara State Chapter as stipulated in NATA constitution (2nd edition).
2. None of the claims or the reliefs of the Plaintiffs relate to matters succinctly and specifically stated under Section 7 (1) (a)-(r) of the Federal High Court Act or section 251 (1)-(a)-(r) of the 1999 Constitution of Nigeria (as amended).

An affidavit in support was filed, as well as a written address. Counsel referred to relief 1 and submitted that the Association NATA was registered under part C Incorporated Trustees Corporate Affairs

Commission 1987 and reconstituted on 31/2/2013 with an objective of uniting all practising automobile technicians in Nigeria as a single body. The instant action is however founded on election or non-election and is not connected or pertaining to the operations of companies or regulating the operation of companies.

Counsel refused to E.N. NWAKWA –V- SPDC OTHERS (2003) 13 NSCQLR 121 @131 where the Court held that an employee/employer matter does not pertain to the operations of companies. That NATA was incorporated under part C of CAMA does not therefore vest jurisdiction in the Federal High Court. It is the Plaintiffs' claims that determine jurisdiction.

A Counter-affidavit was filed on behalf of the Defendants with exhibits attached. A written address was also filed.

I must state that in an application of this nature no discussion of facts is allowed. The only facts considered are those in the Plaintiffs' claim in this instance, the Statement of Claim. Both the Defendants'

affidavit and Plaintiff's Counter-Affidavit are therefore hereby struck out.

Plaintiffs' Counsel submitted that the objection is a misconception of what Plaintiffs' claim is. It is to determine the rightful owner of the certificate registered under part C of CAMA. The instant suit is to determine who the authentic NATA in Kwara State is. Plaintiffs are recognised by the National Body. How Defendants were chosen relates to the operation of NATA Certificate of incorporation. Counsel referred to a decision of this Court in **INCORPORATED TRUSTEES OF UNITED YAM FLOUR SELLERS ASSOCIATION OF NIGERIA & 2 OTHERS –V- THE INCORPORATED TRUSTEES OF BOLUYO YAM FLOUR AND FOOD STUFF SELLERS ACCOCIATION OF NIGERIA** an unreported Judgment of this Court delivered on 9th July, 2015 in suit number FHC/IL/CS/38/2014. Counsel however conceded that the issue of jurisdiction was not raised in that matter. The instructive part of the decision

however is that the symbolic vehicle created by incorporation invests Federal High Court with jurisdiction to determine the difference between the parties as to achieving the objectives of the association.

Each party is claiming to be the NATA Kwara State chapter and thus ownership of the certificate of incorporation. Federal High Court can determine who is entitled to the rights and privileges of NATA's incorporation. Counsel referred to section 251(i) (e) of the constitution which vests Federal High Court with jurisdiction to determine matters arising from the operation of the Companies and Allied Matters Act or any other enactment replacing the Act or regulating the operation of companies incorporated under the Companies and Allied Matters Act. Counsel referred also to section 7(i) (e) Federal High Court Act and submitted that the dispute is as to who is entitled to the use of NATA certificate of registration. The Court is to consider the statement of claim which shows in paragraphs 13, 14 and 16 that Defendants constituted

themselves as executive of NATA in contravention of the constitution of NATA; forcefully took over the secretariat and Plaintiffs complained to the National Body. Plaintiff are thus contesting the posture of Defendants as authentic NATA Kwara State chapter. There is also no contest as to the election of Defendants' officials but only as to who is the authentic NATA in Kwara State. Counsel also cited the case of **BARRISTER SOLA FAGBOLA & ANOR -V- KOGI STATE CHAMBER OF COMMERCE & INDUSTRY & ANOR (2006) ALL FWLR (part 324) 1911 @ 1924-1925.**

Defendant's Counsel in his reply on points of law submitted that there is no issue as regards ownership of the certificate of incorporation as it does not form part of Plaintiffs' reliefs.

Counsel submitted that the jurisdiction of Federal High Court under section 251(i) (e) is concerned with regulation, running, management or control of companies; the administration of the company or any

matter the determination of which involves recourse to the provisions of CAMA. Mere registration under CAMA is not sufficient. The Court should consider the reliefs rather than the statement of the parties. The Court should consider whether the cause of action is triable before it.

Counsel relied for these propositions on TANAREWA (NIG) LIMITED –V- PLASTIFARM LTD (2003) 14 NWLR (part 840) 355 @ 372-376 and ITAMA & ORS –V- OSARO – LAI (2003) 4 FR 38.

Those were the submissions of Counsel.

The instant objection is a challenge to the Court's jurisdiction. I have already reproduced the reliefs. It is however pertinent to consider what facts need to be proved for the reliefs to be granted. Plaintiffs posit that the actions of the Defendants are in contravention of the association's association. I do not think the suit is about the validity or otherwise of the election of the

Defendants but that the association's constitution is being violated.

The Defendants purportedly declared themselves as executive members and forcefully took over the association's secretariat.


I do not therefore agree that this is a matter of election. In ITAMA –v- OSARO – LAI (Supra) the issue was the suspension and removal of the 1st respondent.

TANAREWA NIGERIA LTD –V- PLASTIFARM LIMITED (supra) dealt with contracts entered into by a company before the appointment of a receiver and the jurisdiction of the Federal High Court. The Court of Appeal held that it is not every matter involving a limited liability company that falls within the jurisdiction of the Federal High Court. FAGBOLA –V- KOGI CHAMBER OF COMMERCE, INDUSTRY MINES & AGRICULTURE (supra) involved a company limited by guarantee. The tussle was whether or not the election of certain officers was

in compliance with the Company's memorandum of association. That involved an interpretation of an operative document of the company.

In the instant case, Plaintiffs posit that since Defendants, in contravention of the association's constitution, declared themselves as executive members not recognised by the National body and in contravention of the association's constitution they have no right to claim leadership of the association. I think that falls squarely within the phrase 'arising from the operation of the companies and allied matters Act'.

The preliminary objection therefore fails and is hereby dismissed.


A. O. FAJI
Judge
4/12/15

Counsel:

A.B. Jimoh Esq. for the Plaintiffs.

O.J. Adeseko Esq. with

J.O. Adeyemi Esq. for the Defendants.