IN THE FEDERAL HIGH COURT OF NIGERIA

IN THE ABUJA JUDICIAL DIVISION

HOLDEN AT ABUJA

ON TUESDAY THE 30TH DAY OF JULY, 2024

BEFORE HIS LORDSHIP HON. JUSTICE OBIORA ATUEGWU EGWUATU

SUIT NO: FHC/ABJ/CS/665/2023

IN THE MATTER OF PRIMETECH DESIGN AND ENGINEERING NIGERIA LIMITED AND JULIUS BERGER NIGERIA PLC

AND

IN THE MATTER OF THE COMPANIES AND ALLIED MATTERS ACT, 2020 (AS AMENDED)

FEDERAL HIGH COURT
ABUJA
30 JUL 2024
PAID
Sign:..........
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BETWEEN:

1. PRIMETECH DESIGN AND ENGINEERING NIGERIA LIMITED
2. JULIUS BERGER NIGERIA PLC

} PLAINTIFFS

AND

CORPORATE AFFAIRS COMMISSION..........................DEFENDANT

JUDGMENT

By an Amended Originating Summons dated and filed on the 31st of January, 2024, the Plaintiffs sought the determination of the following three (3) questions namely;

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Questions:

1. 'Whether, on a proper construction of the combined provisions of sections 18(2), 22(1), 118, 869 (1) and other related provisions of the Companies and Allied Matters Act 2020 (as amended) ("**CAMA**"), the Defendant's position that section 18(2) of CAMA only applies to private companies incorporated and/or registered after CAMA (to the exclusion of companies existing before the commencement date of CAMA) is correct.
2. Whether, on a proper construction of sections 18(2), 22(1), 118, 869(1) and other related provisions of CAMA, the Defendant can validly rely on section 571(c) of CAMA to refuse to approve and/or accept for filing, share transfer instruments pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff.
3. Whether, having regard to the combined provisions of sections 18(2), 22(1), 118, 869(1) and other related provisions of CAMA, the Defendant can validly refuse to approve and/or accept for filing, share transfer instruments pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff.'

Further to, and consequent upon, the Honourable Court's determination of the above questions, the Plaintiffs sought the following reliefs:

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Reliefs:

1. *A* ***DECLARATION*** *that the provision of section 18(2) of CAMA applies to* ***all*** *private companies, whether incorporated* ***before*** *and/or* ***after*** *the commencement date of CAMA.*
2. *A* ***DECLARATION*** *that upon a proper construction of section 18(2) of CAMA and other relevant provisions of CAMA, the 2nd Plaintiff is entitled to be the sole shareholder/member of the 1st Plaintiff.*
3. *A* ***DECLARATION*** *that the Defendant's refusal to approve and/or accept for filing, share transfer instruments pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff is ultra vires, unlawful and contrary to the provisions of CAMA.*
4. *An* ***ORDER*** *directing the Defendant to approve and/or accept for filing, the share transfer instrument pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff.*
5. *A* ***CONSEQUENTIAL ORDER*** *directing the Defendant to update its records, including the Companies Registration Portal (****CRP****), to reflect the 2nd Plaintiff as the sole shareholder in the 1st Plaintiff.'*

The application is supported by an affidavit of 26 paragraphs deposed to by one Eunice Adaora Ode attached with exhibits respectively marked 'A' to 'H'. In compliance with the Rules of this Court, a written address was filed alongside the summons.

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Upon service, the Defendant filed an amended counter affidavit of 7 paragraphs deposed to by Lawal Michael Ozovehe on the 22nd of February, 2024 attached with a written address.

To the amended counter affidavit of the Defendant, the Plaintiffs filed a reply on points of law on the 24th of April, 2024.

The summary of the material facts underlying this suit as can be gleaned from the Plaintiffs' affidavit in support are that by a share transfer instrument, dated April 25, 2022 (Exhibit "**A**"), the 1st Plaintiff's second shareholder - Martin Brack - transferred all of his shares in the 1st Plaintiff to the 2nd Plaintiff. Thus, the 2nd Plaintiff became the only member/shareholder of the 1st Plaintiff. The aforesaid share transfer instrument was approved by the 1st Plaintiff's Board of Directors as shown in **Exhibit B.**

Following the transfer of shares from Martin Brack to the 2nd Plaintiff, the 1st Plaintiff notified the Defendant via **exhibit "C"** of the share transfer transaction. The essence of the notification was for the Defendant to update its ***Company Registration Portal*** ("**CRP**") to reflect the share transfer and the fact that the 2nd Plaintiff was now the sole shareholder of the 1st Plaintiff.

When the 1st Plaintiff did not receive any response from the Defendant, it sent a follow-up letter to the Defendant (**exhibit "D"**).

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The 1st Plaintiff instructed its Solicitors, the firm of Messrs Ekhato & Co to formally request the Defendant to acknowledge the share transfer transaction and update its CRP accordingly.

The Defendant however queried the 1st Plaintiff's application, relying on the provisions of sections 18 (1) and (2) and 571 (c) of CAMA.

The 1st Plaintiff, through a letter issued by Messrs Ekhato & Co, (exhibit G) responded to the Defendant and explained in sufficient detail, why the Defendant's position was untenable and inconsistent with the overriding policy objectives and legislative intent underpinning the enactment of CAMA.

All attempts by the Plaintiffs and their solicitors to persuade the Defendant to change its position proved abortive. Accordingly, the Plaintiffs were constrained to institute this action.

The Defendant on her part, while not denying the facts as deposed to by the Plaintiffs leading to the institution of this suit, deposed that the 2nd Plaintiff and Mr. Martin Brack are the two shareholders of the 1st Plaintiff since its formation by virtue of which the 1st Plaintiff has been a two member company. That by CAMA 2020 two or more shareholders/members companies as the 1st Plaintiff herein cannot reduce their membership to less than two or re-registered from two members into a single-member company and that CAMA 2020 did not make provision for the reduction of membership of

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companies in existence before its enactment, or re-registration or conversion of such companies to a single member. Further that one of the conditions for compulsory winding up of companies is when membership of a company is reduced below two and that all companies formed and incorporated in Nigeria with more than one shareholder/member prior and post enactment of CAMA 2020 cannot subsequently reduce their shareholding/membership to below two pursuant to CAMA 2020. That under CAMA 2020, the 1st Plaintiff having formed and incorporated with two shareholders/members under the repealed CAMA 1990, it is deemed as a company formed and incorporated with more than one shareholder/member.

That exhibit A1 attached to the Plaintiffs' affidavit in support is incompetent for transferring the entire shares of the 1st Plaintiff to the 2nd Plaintiff, the 1st Plaintiff not being a single member company from the day of its formation and incorporation and that the purported share transfer of the 1st Plaintiff from Mr. Martin Brack to the 2nd Plaintiff and the consequent amendment of the Articles of Association of the 1st Plaintiff as exhibit A1 to reflect the 2nd Plaintiff as its sole shareholder is inconsistent with the provisions of CAMA 2020.

Further that exhibits A and A1 being acts and conducts inconsistent with the provisions of CAMA, 2020 are ultra vires, null and void to the

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extent of the inconsistency and the Defendant is bound to discountenance same and withhold its approval of same.

Finally, that the purported approval of the share transaction between the 2nd Plaintiff and Mr. Martin Brack as in exhibit B is ultra vires and void *ab initio*.

Written Addresses:

The Plaintiffs adopted the three questions posited for determination as her issues for determination and proceeded to argue the issues.

The Defendant on her part responded to the three questions. He lumped her responses together without a clear distinction between the three questions.

On question 1, the Plaintiffs' Counsel after setting out the provisions of section 18 (2), 118 and 869 (1) of *CAMA* 2020 and the general rules of interpretation of statutes, submitted that where the literal meaning of a statute is likely to result in an ambiguity, absurdity or injustice, (employing the literal interpretation to section 18(2) will result to such), the court is enjoined to construe the statute in a way that does not defeat the obvious ends of the statute, relying on the case of ***Ocholi Enojo James, SAN v. INEC (2015) 12 NWLR (Pt. 1474) 538 @ 588 D-G.***

It was submitted that *CAMA* 2020 now recognizes and permits one person to form and incorporate a private company which is a sharp

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departure from the old regime (i.e. section 18 CAMA 1990 which requires a minimum of two persons to form and incorporate a company). This provision applies strictly to ***private companies*** as at least two shareholders continues to apply to public companies. Counsel submitted that having regard to the rationale for the introduction and recognition of a single member/shareholder company, it is inconceivable that the Legislature will, in one breadth, create an opportunity for companies incorporated after the commencement of CAMA 2020 to have a single membership/shareholder while also depriving other private companies (like the 1st Plaintiff incorporated before CAMA 2020) who would want to progress their business with a single membership/shareholder the opportunity to do so simply because they were incorporated before the commencement of CAMA 2020. Counsel contended that this is highly unlikely, as it would effectively mean that the mandatory requirement for private companies to have two or more shareholders under the repealed CAMA 1990, would still be perpetuated, yet the effect of a repealed statute is to render the repealed statute dead and non-existent in law.

Counsel further submitted that there are other provisions in CAMA 2020 which when read as a whole, reveal that the legislature intended to have a single member/shareholder private companies irrespective of when they were formed citing the amendment section 93 CAMA

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1990 by section 118 CAMA 2020 as an example. Counsel contended that the deliberate qualification of the companies to be affected by the section shows the intention of the legislature in excluding private companies from the mandatory requirement of having two members or more either at formation/incorporation or in carrying on business. Counsel finally contented on this issue, that from her submissions, the Defendant's position that section 18(2) of CAMA 2020 applies only to private companies incorporated and/or registered after the commencement date (7/8/2020) of CAMA 2020, to the exclusion of companies existing before the commencement date of CAMA 2020 is untenable and unjustifiable. The Court was urged to so hold.

In response, Defendant's Counsel submitted that section 18(2) of CAMA 2020 applies to companies incorporated after the commencement date of CAMA 2020.

After reproducing sections 18(2) and 869(1) of CAMA 2020, Counsel submitted that under the repealed CAMA 1990, not less than two persons of full legal capacity are mandatorily required to form and incorporate a company. However, under CAMA 2020, a single person of full legal capacity can form and incorporate a private company. Counsel contended that section 18 (2) of CAMA 2020 qualifies as a proviso, and being plain, unambiguous and direct on the issue of formation and incorporation of private companies in compliance with CAMA 2020, there is nothing necessary for a construction of sections

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18(2) and 869(1) CAMA 2020 to accord them retrospective effect. That the law is trite that provisions of a statue are generally meant to apply to future events unless the provision expressly and unambiguously stated that they are retrospective-***Adesanoye & Ors v. Adewole & Anor (2000) LPELR-142(SC).***

Counsel contended that the Plaintiffs having been formed and incorporated under CAMA 1990, and was indeed formed as a company with two shareholders/members, it does not fall within the circumference of a single member company within the contemplation of section 18(2) CAMA 2020 and that a holistic consideration of section 18 (1) and (2) CAMA 2020, it is not farfetched that the previous position of the law is retained with respect to the requirement of not less than two shareholders/members for the formation and registration of companies in Nigeria and that this position is retained in the proviso as in section 18 (2) CAMA 2020.

Counsel contended that any form of juridical construction of section 18(2) and 869(1) CAMA 2020 to include matters of reformation, reincorporation, conversion, reduction and or share transfer of shareholding/membership of existing companies to single shareholder/member shall be contrary to the clear intention of the law maker and indeed repugnant to natural justice and good conscience. Counsel placed reliance on the cases of ***Buhari & Anor v. Yusuf (2003) LPELR-812(SC); Ogbunyiya v. Okudo (1976) 6-9 SC***

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32; Udoh v. Orthopaedic Hospital Management Board (1993) 7 NWLR (Pt. 304) Pg. 139.

It was further submitted by Counsel that by the retention of section 18 and 408 (c) of the repealed CAMA 1990 as seen in section 18(1) and 571(c) CAMA 2020, it is apparent that it is the clear and firm intention of legislature that private companies formed and incorporated with less than two shareholders/members prior to the enactment of CAMA, 2020 cannot return to single shareholder/member structure and that this position also extends to private companies registered with more than one shareholder/member post CAMA 2020.

The Court was finally urged to resolve this issue in favour of the Defendant.

Resolution:

Before proceeding to resolve the three questions posited by the Plaintiffs, let me first of all resolve the challenge posed by the Plaintiffs to some paragraphs of the Defendant's counter affidavit.

It was submitted by the Plaintiffs' Counsel that paragraphs 6 (c), (g), (i), (j), (l), (m) and (n) of the Defendant's counter affidavit are argumentative and contain legal conclusions and thus offends section 115 (2) of the *Evidence Act, 2011.*

Section 115 (2) of the *Evidence Act, 2011* provides that;

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'An affidavit shall not contain extraneous matter by way of objection, or prayer, or legal arguments or conclusion.'

I have taken a compassionate reading of the paragraphs complained of by the Plaintiffs and I easily agree with the Plaintiffs' Counsel that the said paragraphs 6 (c), (g), (i), (j), (l), (m) and (n)) without any exception are all legal arguments contrary to the provisions of section 115 (2) of the *Evidence Act, 2011.*

The law is and has always been that affidavit must not contain any legal argument if it has to be competent and to be countenanced. An affidavit is a statement of fact. It is evidence, not legal argument and that is why in the litigation process it primarily belongs to the litigants, while the legal arguments on them belong to the lawyers. Thus any legal argument, which a lawyer would make, should not and must not be found in an affidavit, and where such legal arguments find their way into an affidavit, they are liable, if so urged upon the Court by the adverse party, be expunged by way of a striking out of such offending paragraphs of the affidavit. See ***APC v. Ifeanyi & Ors (2023) LPELR-61389(CA) Pp. 56-57, Paras C-B.***

Relying on the above authority, I strike out paragraphs 6 (c), (g), (i), (j), (l), (m) and (n) of the Defendant's counter affidavit.

I now proceed to the resolution of the substantive suit.

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In the resolution of this issue it shall be necessary to reproduce the sections of CAMA 2020 in contention.

Section 18 (1) and (2) of CAMA 2020 provide thus;

> *18(1) As from the commencement of this Act, any two or more persons may form and incorporate a company by complying with the requirements of this Act in respect of registration of the company.*
>
> *(2) Notwithstanding subsection (1), one person may form and incorporate a private company by complying with the requirements of this Act in respect of private companies.'*

Section 118 provides as follows;

> *'If a public company or a company limited by guarantee carries on business or its objects, without having at least two members and does so for more than six months, every director or officer of the company, during the time that it so carries on business with only one or no member, is liable jointly and severally with the company for the debts of the company contracted during that period.'*

Section 869 (1) provides thus;

> *'Subject to the provisions of this section, the Companies and Allied Matters Act, 1990, the Companies and Allied Matters*

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(Amendment) Act, 1991, the Companies and Allied Matters (Amendment) Act, 1992, and the Companies and Allied Matters (Amendment) Act, 1998 are, on the commencement of this Act, repealed.'

Reading the above section 18 (1), it is clear that the provisions commences *'as from the commencement of this Act'*-7th August, 2020. Section 18 (2) of the Act (the provision allowing one person forming or incorporating a private company) is without prejudice to section 18 (1) of the Act.

The section is plain, clear and unambiguous. The law is well settled that where provisions of a statute are clear, plain and unambiguous, the court is bound to accord them their plain, literal and natural meaning without resort to any external aid since the duty of the court is to interpret the words used in the statute and no more except the result will lead to absurdity or be in conflict with other provisions of the statute. See ***N.N.P.C. v. Lutin Investments Ltd (2006) 2 NWLR (pt. 965) Pg. 506.***

By the use of clear and unequivocal language capable of only one meaning, anything enacted by the legislature must be enforced, even if the result may be hash or contrary to common sense. See ***Jegede v. I.N.E.C. (2021) 1 NWLR (Pt. 1757) 279 S.C.***

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The Plaintiffs concede that the wordings of section 18 (2) are plain, clear and unambiguous and that any interpretation short of the literal interpretation will be contrary to the well-established principles of statutory interpretation but however contends where the literal interpretation is likely to result in an ambiguity, absurdity or injustice, the Court is enjoined to construe the statute *'in a way that does not defeat the obvious ends of the statute.'* The Plaintiffs position is that the statutes should be construed as a whole and should be given an interpretation that is consistent with the objectives and the general context of the entire statute, which according to Counsel, is the ease of doing business in Nigeria and that a private company can operate with a single shareholder-pre or post CAMA 2020.

I agree with the parties in their respective submissions that the new provision in section 18 (2) of CAMA 2020 permitting one person to form and incorporate a company applies strictly to private companies (defined in section 21 (1) CAMA 2020 as *one which is stated in its memorandum of association to be a private company*) and that the requirement to have at least two shareholders continues to apply to public companies-defined in section 24 of CAMA 2020 as *'any company other than a private company'*.

The effect of a literal interpretation of section 18(2) of CAMA 2020 is that one person may form and incorporate a private company.

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The point of disagreement between the Plaintiffs on the one hand and the Defendant on the other hand, is the Defendant's contention that the provisions of section 18 (2) of CAMA 2020 apply only to *private companies* incorporated on or after August 7, 2020, i.e., the commencement date of CAMA 2020.

The recognition and permission of one person to form and incorporate a private company is a sharp departure from the old regime (i.e. section 18 of CAMA 1990), pursuant to which a minimum of two persons were required to form and incorporate a company-whether private or public company.

Now, if CAMA 1990 only permits the minimum of at least two persons to form and incorporate a company-private and or public companies- and CAMA 2020 now permits a single person to form and incorporate a *private company*, would it then be conceivable to differentiate between a ***private*** company formed and incorporated prior to CAMA 2020 and the one formed and incorporated post CAMA 2020 as contended by the Defendant?

The contention of the Defendant is that the literal meaning must be accorded to section 18 (2) CAMA 2020 thus precluding the Plaintiffs from benefitting from the said section 18 (2) CAMA 2020 relying on the said section and section 571 (c) of CAMA 2020. The Plaintiffs contend otherwise insisting that such an interpretation will result in absurdity and injustice.

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Section 869 (1) of CAMA 2020 repealed CAMA 1990 thus making CAMA 2020 the extant principal legislation that regulates the operations of all companies in Nigeria (whether incorporated before or after the enactment of CAMA 2020). In other words, the provisions of CAMA 1990 no longer apply to the operations of companies in Nigeria, particularly those that were incorporated before CAMA 2020. It is trite that when a statute is repealed, it ceases to exist and no longer forms part of the laws of the land, though the new legislation also have a saving provision for acts or things done under the repealed law. In this instance section 869 (2) to (7) of CAMA 2020 are the saving provisions of CAMA 2020.

The effect of the repeal of a statute is to render the repealed statute dead and non-existent in law. In ***Madumere v. Onouha (1999) LPELR-66658(CA),*** a case referred to and relied upon by the Plaintiffs' Counsel, the Court of Appeal held that;

> *'The effect of repealing a statute is to obliterate it completely from the records of the Parliament as if it had never been passed; and it must be considered as a law that never existed for the purpose of those actions which were commenced, prosecuted and concluded whilst it was an existing law.'*

I am inclined to agree with the Plaintiffs' Counsel in her submission that having regard to the rationale for the introduction and recognition of a single member/shareholder company, it is

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inconceivable that the legislature will, in one breadth, create an opportunity for companies incorporated after the commencement of CAMA 2020 to have a single member/shareholder while also depriving other private companies (like the 1st Plaintiff) incorporated before CAMA 2020) who would want to progress their business with a single member/shareholder the opportunity to do so simply because they were incorporated before the commencement of CAMA 2020. This approach will be discriminatory against private companies incorporated under CAMA 1990 and it will be inconsistent with the reforms introduced by CAMA 2020. Otherwise it would effectively mean that the mandatory requirement for private companies to have two or more shareholders under the repealed CAMA 1990, would still be perpetuated, yet CAMA 1990 had been repealed by section 869 (1) of CAMA 2020.

The above position is supported if one reads section 118 of CAMA 2020 which excluded reference to *private companies* contained in section 93 of the repealed CAMA 1990.

Section 93 of CAMA 1990 provides as follows;

> '93. *If a **company** carries on business without having at least two members and does so for more than 6 months, every director or officer of the company during the time that it so carries on business with only one or no member shall be*

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liable jointly and severally with the company for the debts of the company contracted during that period.'

On the other hand section 118 of CAMA 2020, provides thus;

> *'118. If a* ***public company*** *or a* ***company limited by guarantee*** *carries on business or its objects, without having at least two members and does so for more than six months, every director or officer of the company, during the time that it so carries on business with only one or no member, is liable jointly and severally with the company for the debts of the company contracted during that period.'*

Reference to ***'company'*** in section 93 of CAMA 1990 refers to both ***private*** and ***public companies*** while in section 118 of CAMA 2020, ***public company*** was specifically referred to. What the above translates into is that the legislature are well aware that that after the coming into effect of CAMA 2020, there would still be *private companies* with two or more members/shareholders. The deliberate qualification of the companies to be affected by section 118 CAMA 2020 shows the intention of the legislature in excluding ***private companies*** from the mandatory requirement of having two members or more either at formation/incorporation or in carrying on business. The phrase *'carries on business'* used in section 118 CAMA 2020 can only mean or imply the conduct of business. See ***Edicomsa Int'l Inc.***

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& Associates v. CITEC Int'l estates Limited (2006) 4 NWLR (Pt. 969) Pg. 114.

The contention of the Defendant that the provision of section 18 (2) of CAMA 2020 will not apply to an existing company is akin to saying that the 1st Plaintiff, being an existing company, will be guided in its operations by the provisions of the repealed CAMA 1990.

This position will not accord with common sense. This is so because the words 'form' and 'incorporate' used in section 18 (2) CAMA 2020 is not restricted to only pre-formation or pre-incorporation of private companies but include post-formation and post-incorporation of private companies. Secondly, going by the position of the Defendant, the provisions of section 22 (2) of CAMA 2020 will not apply to private company incorporated prior to the coming into effect of CAMA 2020. The section 22 (2) (b) of CAMA 2020 (with reference to a private company), provides that *'a member shall not sell that member's shares in the company to a non-member, without first offering those shares to existing members.'* Effectively, if the position of the Defendant were to be correct, then a member/shareholder of a private company with two shareholders will not be permitted to sell her shares to an only remaining member of the private company.

I agree with the Plaintiffs' submission that the argument of the Defendant to the effect that it will amount to giving a retrospective effect if section 18 (2) of CAMA 2020 is made to apply to private

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companies that were in existence before the coming into effect of CAMA 2020, did not take into account the saving provision in section 869 of CAMA 2020. The said provision preserved actions undertaken under CAMA 1990. Specifically section 869 (6) of CAMA 2020 provides that '*nothing in this Act shall affect the incorporation of any company registered under any enactment repealed.*'

With regard to section 571 (c) of CAMA 2020, the submission of the Defendant is that the said section supports her position that 1st Plaintiff cannot be formed as a single-shareholder company.

I have noted the reply of the Plaintiffs' Counsel in their reply address which is to the effect that contrary to the Defendant's submission, section 571 (c) of CAMA 2020 recognizes that while some companies have more than one shareholder, there are other companies that have only one shareholder and that it was for this reason that the provision is limited only to '*...companies with more than one shareholder.*'

Section 571 (c) provides that '*A company may be wound up by the court if (c) the number of members is reduced below two in the case of companies with more than one shareholder.*'

Invariably, the section recognizes that while some companies, including *private companies*, may have more than one shareholders, there are others with only one member. Section 571 (c) thus recognizes the existence of companies with one shareholder under

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section 18 (2) of *CAMA* 2020, hence its exclusion of such companies from winding up proceedings on account of only one shareholder.

I do not see any conflict in section 571 (c) and section 18 (2) of *CAMA* 2020. There is also nothing in section 571 (c) of *CAMA* 2020 that limits the said provision to only companies incorporated after the effective date of *CAMA* 2020. The section applies to Companies *pre* and *post CAMA* 2020.

The Defendant Counsel had also argued that on a comparative analysis, that it is fundamental to note that section 408 (c) of *CAMA* 1990 which provided for the reduction of members of a company to one as a ground for winding up by the Court, was retained under section 571 (c) of *CAMA* 2020. Counsel argued that such provision was relevant then given that under *CAMA* 1990, companies were mandatorily required to be incorporated with at least two shareholders/members, the retention of this ground for winding up under *CAMA* 2020 and the inclusion of the phrase '*...in the case of companies with more than one shareholder*' according to counsel, invariably suggests that the intendment of the legislature was to preclude multi-members companies as the 1st Plaintiff herein from converting/reregistering and or reducing their membership to single-shareholder/member companies.

In response, Plaintiffs' Counsel argued to the contrary contending that the Defendant missed the implication of the distinction in the

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two provisions. Counsel submitted that section 408 (c) of CAMA 1990 provides that a company may be wound up where the number of members falls below two, without more. It is not difficult, according to Counsel, to see that the reason for this is because, under the repealed CAMA 1990, the minimum number of shareholders in a private company is two members. However, with the introduction of single-member companies under section 18 (2) of CAMA 2020, the inclusion of the phrase '*...in the case of companies with more than one shareholder*' was to section 571 (c) of CAMA 2020 to give effect to and accommodate the innovation under section 18 (2) of CAMA 2020.

Having read the two provisions, I agree with the position of the Plaintiffs. To interpret section 571 (c) of CAMA 2020 as prohibiting the formation of companies with one shareholder whether registered before or after the effective date of CAMA 2020, will amount to defeating the entire purpose of the innovation in section 18 (2) of CAMA 2020. In taking this view, I am aligning with the settled position of the law that the Courts in the interpretation of statute are to ensure that the intention of the legislature is not defeated, in this instance, allowing a single person to form, incorporate and run a *private company*. A statute is to be interpreted in such a manner that preserves and upholds the legislative intention behind the statute and to avoid making nonsense of the statute. Taking this position is not in any way akin to law making as contended by the Defendant.

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In ***Elabanjo & Anor v. Dawodu (2006) LPELR-1106-SC,*** the Supreme Court held that;

> *'It is even settled that a judicial interpretation must construe a provision to save it and should by interpretation, avoid making nonsense of the statute (and I will add Rule) so as not to defeat the manifestation of the law. See Nabhan v. Nabhan (1967) 1 ANLR 47. In the case of Barnes v. Jarius (1953) 1 WLR 649, Lord Goddad, CJ., stated that in certain amount, commonsense must be applied in constructing statute (and I will add rules of court) and the object of the statute has to be considered.'*

Allowing an existing private company with two or more members/shareholders to transmute into a single member/shareholder company, cannot in any way affect or defeat the intention of the legislature in enacting section 18 (2) of CAMA 2020 but rather it will enhance and promote the intention of the legislature in effecting the innovation envisaged by the said section 18 (2) of CAMA 2020.

The totality of what I have been saying above is that question one is answered in favour of the Plaintiffs.

Question 2:

> *Whether, on a proper construction of section 18(2), 22(1), 869(1), 118 and other related provisions of CAMA, the*

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Defendant can validly rely on section 571 (c) of CAMA to refuse to approve and/or accept for filing, share transfer instruments filing, share transfer instruments pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff.

The contention of the Plaintiffs under this issue is that the Defendant's position that section 571 (c) of CAMA 2020 provides sufficient support for its position that private companies incorporated before the commencement of CAMA 2020 cannot have a single member/shareholder does not accord with the intention of the legislature and if the literal interpretation applied by the Defendant is allowed to persist, it will create absurdity and injustice.

After taking a historical voyage of the innovations in CAMA 2020 vis-à-vis CAMA 1990 and the amendments in sections 408 (c), 410 (2) (a) (i) of CAMA 1990 by sections 571 (c) and 573 (2) (a) (i) of CAMA 2020, Counsel submitted that the utilitarian value of both amendments is that they reveal a clear legislative intent to exclude private companies, who are now permitted by CAMA 2020 to have one member/shareholder and further that the rational for section 408 (c) of CAMA 1990, now section 573 (2) (a) (i) of CAMA 2020, is to prevent a company (mandatorily required to have 2 members/shareholder) from falling below the legal minimum of having two members/shareholders.

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In response, Defendant's Counsel submitted that the provision of section 18(2) did not create right for private companies formed and incorporated with more than one shareholder/member but it is rather a legal right to the promoter(s) of a private company to either opt to form and incorporate same as a company with only one shareholder/member notwithstanding the provision of section 18 (2) of the Act. Counsel contended that section 18 (1) of *CAMA* 2020 is a general provision that sets the minimum requirement of two shareholders/members to form and incorporate a company in Nigeria and that the Articles of Association of the 1st Plaintiff do not have the force of law and cannot override the provision of *CAMA* 2020.

I have, under question 1 taken a position on section 18 (2) of *CAMA* 2020 and concluded that the sub-section does not apply to only *private companies* formed or incorporated post *CAMA* 2020. I shall not repeat what I have said earlier but may just add that the provisions of sections 571 (c) and 573 (2) (a) (i) of *CAMA* 2020 amended sections 408 (c) and 571 (c) of *CAMA* 1990 which amendments brought some changes.

These sections are as follows;

Section 408 of CAMA 1990

"408. A company may be wound up by the Court if-

(c) ***the number of members is reduced below two"***

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571 (c) of CAMA 2020

571. A company may be wound up by the court if-

(c) ***the number of members is reduced below two <u>in the case of companies with more than one shareholder;</u>"***

<u>410 (2) (a) (i) of CAMA 1990</u>

Notwithstanding anything in subsection (1) of this section-

(i) *a contributory shall not be entitled to present a petition for winding up a company unless (i)* ***<u>the number of members is reduced below two;</u>***

<u>573 (2)(a) (i) of CAMA 2020</u>

'Notwithstanding anything in subsection (1) of this section-

(a) a contributory shall not be entitled to present a petition for winding up a company unless -

(i) the number of members is reduced below two ***<u>in the case of companies with more than one shareholder.'</u>***

I agree with the Plaintiffs' Counsel in his submission that the rationale for section 408 (c) of CAMA 1990, now section 571 (c) of CAMA 2020, and section 410 (2) (a) (i) of CAMA 1990, now section 573 (2) (a) (i) CAMA 2020, is to prevent a company (mandatorily required to have 2 members/shareholders) **<u>from falling below the legal minimum of having two members/shareholders</u>**. A private company by virtue of

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section 18 (1) CAMA 2020 is not mandatorily required to have two members/shareholders.

By section 18 (2) of CAMA 2020, a private company with one member/shareholder is legally permitted to carry on business but a company (public companies) which is allowed to conduct business even when the membership falls below the legal minimum, is essentially a nullity and must not be allowed to continue to carry on business. This is why the legislature expressly prescribes that directors or officers of a company who have allowed such to happen, will bear a personal liability. This intention is espoused by the legislature through section 93 of CAMA 1990 now section 118 CAMA 2020 but however, Section 118 of CAMA 2020 do not apply to private companies but only to public companies and companies limited by guarantee.

Also the amendments to sections 408 (c) and 410 (2) (a) (i) of CAMA 1990 by sections 571 (c) and 573(2) (a) (i) of CAMA 2020 inserted the phrase *'in the case of companies with more than one shareholder'.* The insertion of the above phrase clearly delineate the companies sought to be captured by the respective provisions. Thus a private company cannot be caught by the provision of section 571 (c) of CAMA 2020 if the private company has chosen to take advantage of the opportunity presented by section 18 (2) of CAMA 2020 in having a single member/shareholder which is the legal minimum of a private company under CAMA 2020, unless of course, there is a restriction in

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the private company's Memorandum and Articles of Association which requires it to have more than one member/shareholder.

This question is also resolved in favour of the Plaintiffs.

Question3:

> ***Whether, having regard to the combined provisions of sections 18(2), 22(1), 869(1) and other related provisions of CAMA, the Defendant can validly refuse to approve and/or accept for filing, share transfer instruments pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff.***

The Plaintiffs reiterated the arguments contained in her question one (1) but however added that despite the fact that the 1st Plaintiff was incorporated under the repealed CAMA 1990, it does not lose its incorporation status merely because CAMA 1990 has been repealed relying on the saving provisions in section 869 (1) of CAMA 2020.

Having resolved questions one and two in favour of the Plaintiffs, naturally, relying on my reasoning on questions 1 and 2 above, this question 3 is easily resolved in favour of the Plaintiffs.

I say this because the 1st Plaintiff is an existing company deemed by section 868 of CAMA 2020 as having been incorporated pursuant to CAMA 2020. The section defined a *'company'* as *'...a company formed and registered under this Act or, as the case may be, formed and registered in Nigeria before and in existence on the commencement of this Act.'* An existing company like the 1st Plaintiff can take benefit

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of the provisions of CAMA 2020 without any restriction(s) including section 18 (2) of CAMA 2020 more so when section 869 (1) preserved actions taken under CAMA 1990 including companies incorporated thereunder.

It thus follow that the Defendant cannot validly refuse to approve and or accept for filing, share transfer instruments pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff provided the provisions in effecting the changes as stipulated in CAMA 2020 are adhered to by the Plaintiffs.

Finally, I find the Plaintiffs' case meritorious and it ought to succeed and it succeeds.

Having answered the three questions in favour of the Plaintiffs, I grant all the prayers sought by the Plaintiffs, that is to say;

1. A **declaration is made** that the provision of section 18(2) of CAMA 2020 applies to **all** private companies, whether incorporated **before** and/or **after** the commencement date of CAMA 2020.
2. A **declaration is made** that upon a proper construction of section 18(2) of CAMA and other relevant provisions of CAMA, the 2nd Plaintiff is entitled to be the sole shareholder/member of the 1st Plaintiff.
3. A **declaration is made** that the Defendant's refusal to approve and/or accept for filing, share transfer instruments pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st

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Plaintiff is ultra vires, unlawful and contrary to the provisions of CAMA 2020.

4. An **order is made** directing the Defendant to approve and/or accept for filing, the share transfer instrument pursuant to which the 2nd Plaintiff became the sole shareholder of the 1st Plaintiff.
5. A **consequential order** is made directing the Defendant to update its records, including the Companies Registration Portal (**CRP**), to reflect the 2nd Plaintiff as the sole shareholder in the 1st Plaintiff.

Hon. Justice Obiora Atuegwu Egwuatu

Judge

July 30, 2024

APPEARANCES:

Parties are absent

1. **Kigai Zontong** with **C. H. Aluma** for the Plaintiffs
2. **Ojonimi S. Apeh** with **Naomi Osezele Aitomu, Faith Nwini** and **Arnold D. Ubua** for the Defendant

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