

ENSURING COMPLIANCE WITH MODERN BUSINESS PRACTICES: FHC UPHOLDS SINGLE-SHAREHOLDER TRANSITION FOR PRE-CAMA 2020 COMPANIES



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On Tuesday, July 31, 2024, the Federal High Court (FHC) sitting in Abuja delivered a judgment affirming that the Corporate Affairs Commission (CAC) lacks the authority to prevent companies incorporated prior to the enactment of the Companies and Allied Matters Act (CAMA) 2020 from transitioning to single-shareholder statuses. The FHC determined that section 18(2) of the CAMA 2020 applies to all private companies, including those incorporated before the enactment of CAMA 2020.

This pronouncement was made in Suit No: FHC/ABJ/CS/665/2023, filed by Primetech Design and Engineering Nigeria Limited ("Primetech") and Julius Berger Nigeria Plc ("JBN") collectively referred to as "the Plaintiffs" against the CAC, the Defendant. The Plaintiffs initiated the case to contest the CAC's decision to refuse the application of Primetech to update and record the change in Primetech's shareholding structure on the Company Registration Portal (CRP).

Background Facts

On April 25, 2022, Martin Brack, the second shareholder of Primetech, transferred all his shares to JBN, making JBN the sole shareholder of Primetech. This transfer was approved by Primetech's Board of Directors. Primetech then notified the CAC to update its Company Registration Portal (CRP) to reflect this change. When no response was received, a follow-up letter was sent.

Primetech instructed its solicitors to formally request the CAC to acknowledge the share transfer and update the CRP. However, the CAC queried the application based on sections 18(1) and (2), and 571(c) of the CAMA 2020. Primetech and JBN, through their solicitors, argued that the CAC's stance was inconsistent with CAMA's policy objectives. Despite these efforts, the CAC maintained its position, leading the plaintiffs to file a lawsuit.

The CAC acknowledged the facts but argued that Primetech had always been a two-member company and could not reduce its membership to one under CAMA 2020. The CAC stated that companies with more than one shareholder, formed before CAMA 2020, cannot reduce their membership to below two without compulsory winding up. It contended that the share transfer instrument was incompetent since Primetech was not a single-member company from its inception. Additionally, the CAC asserted that the share transfer and the amendment of the Articles of Association to reflect JBN as the sole shareholder were inconsistent with CAMA 2020, rendering them ultra vires, null, and void. Consequently, the CAC deemed the approval of the share transaction ultra vires and void ab initio.

The Judgment

The FHC analyzed the pertinent sections of the CAMA 2020 referenced by the Parties, chiefly sections 18, 118, and 571 of the CAMA 2020. The FHC relied on the well-established legal principle which posits that where the language of a statute is plain and unequivocal, the courts must give effect to its literal meaning without recourse to external aids unless such interpretation leads to absurdity or conflicts with other provisions of the statute.

The FHC also determined that section 18(2) of CAMA 2020 applies to all private companies, regardless of their incorporation date. It relied on the literal interpretation of this section which permits one person to form and incorporate a private company, without restriction to companies formed before or after the enactment of the CAMA, 2020, and that the CAC's contention that section 18(2) of CAMA 2020 should only apply to companies incorporated after its commencement date is unfounded as it would create an unjust distinction between companies based solely on their incorporation date.

It further held that section 118 of CAMA 2020, which does not reference private companies in its requirements for a minimum of two members, reinforces the exclusion of private companies from this mandate, supporting the legislature's intention to allow for single-member private companies.

In resolving the contention raised by the CAC's reliance on section 571(c) of CAMA 2020, the FHC was of the view that although the section aims to prevent companies from falling below the legal minimum of two members/shareholders, section 18(2) of CAMA 2020 exempts private companies from this requirement, allowing them to operate with a single member/shareholder, unless otherwise specified in their Memorandum and Articles of Association.

In concluding, the FHC decided the case in favour of the Plaintiffs (Primetech and JBN), noting that the CAMA 2020 is designed to permit the formation and operation of single-member private companies, including those incorporated before this legislation. It opined that this interpretation aligns with the legislative intent and promotes the ease of doing business in Nigeria.

Commentary

The Federal High Court's decision is commendable. This ruling clarifies that the CAC cannot prevent companies, including those incorporated before the enactment of the CAMA 2020, from transitioning to a single-shareholder status. Historically, the CAC has rejected applications to update the CRP information of private companies with two (or more) members seeking to adopt single-shareholder structures. This practice has compelled businesses to maintain shareholding arrangements that may not be practical for their operational needs.

With this judicial intervention, companies (particularly group holdings) can now streamline their shareholding structures to align with their corporate goals. This decision emphasizes the change introduced by the CAMA 2020 aimed at eliminating the need to cede shares to nominal shareholders, reducing associated risks. The judgment underscores that CAMA 2020's provisions are intended to offer flexibility in company structures, reflecting a forward-thinking approach to business ease and modernization of company law in Nigeria, thus, aligning with legislative intent and enhancing the corporate environment in Nigeria.

To access a certified copy of the judgment, please click [here](#).

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