

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE LAGOS JUDICIAL DIVISION
HOLDEN AT LAGOS

ON FRIDAY THE 7TH DAY JULY, 2023
BEFORE THE HONOURABLE JUSTICE A. O. FAJI
JUDGE

SUIT NO. FHC/L/CS/1280/2022

BETWEEN:

MR. CHIZELU EMEJULU

----- PLAINTIFF

AND

CORPORATE AFFAIRS COMMISSION

--- DEFENDANT

JUDGMENT

This motion on notice sequel to the order for leave in these proceedings for judicial review was filed on 21st July, 2022.

It seeks the following reliefs:

1 a declaration that by the express provisions of sections 39(1) (2) and 40 of the constitution of the federal republic of Nigeria 1999 (as amended), Articles 9(2) and 10 of the African Charter on human and people's Rights (ratification and Enforcement) Act Cap A9 Laws of the Federation of Nigeria , 2004, and the proposed aims and objectives of the plaintiff's proposed name of an association- 'Minority Watch vis a vis section 852 of the

Companies and Allied Matters Act (CAMA) 2020, the plaintiff's proposed name of an association –Minority Watch-, is not vague.

2 a Declaration that vagueness is not a valid ground for the rejection of the registration/reservation of a proposed name of an association under section 852 of CAMA.

3 A Declaration that the plaintiff is entitled to assemble and associate with others under the name 'Minority Watch' as well as to be registered as an organization under the same name.

4 An order of this Honourable Court setting aside the defendant's 'notice of denial' dated the 08/04/2022 for not being in compliance with Section 852 of CAMA 2020

5 An order of mandamus compelling the defendant to forthwith issue notice of approval for the plaintiff's proposed name of an association- 'Minority Watch' for onward registration with the defendant.

The applicant himself swore to a 14 paragraph affidavit in support. 4 exhibits were attached thereto.

A written address was also filed.

A sole issue was raised for determination to wit:

Whether in the circumstances of this case, the plaintiff is entitled to the reliefs sought?

Counsel submitted that Plaintiff has a right to freedom of expression as guaranteed by the 1999 constitution and the

African Charter of Human and Peoples' Rights the Universal declaration of Human Rights and the International convention on Civil and Political Rights. Counsel referred also to section 852(1) of the Companies and Allied Matters Act 2020 and submitted that based on sections 39 and 40 of the said constitution he has a right to freedom of association. The aims of the proposed association are lawful and the refusal of the defendant to reserve the name 'minority watch' on ground of vagueness is not within the purview of section 852(1) aforesaid.

The refusal by the defendant to register the said proposed name as an association is thus not justifiable by law.

Counsel urged the Court to resolve the sole issue in applicant's favour.

Ikem Christopher swore to a 9 paragraph counter-affidavit on 16th November, 2022. A written address accompanied same wherein counsel raised two issues for determination to wit:

Whether the Plaintiff's application being incompetent ought to be dismissed in its entirety because this Honourable Court lacks the jurisdiction to entertain this matter.

Whether the Plaintiff is entitled to the reliefs sought.

On issue 1, Counsel submitted that having contravened section 851 CAMA, the instant suit ought to be dismissed.

Furthermore, the plaintiff who is the aggrieved party by swearing to the affidavit in support such a process is defective.

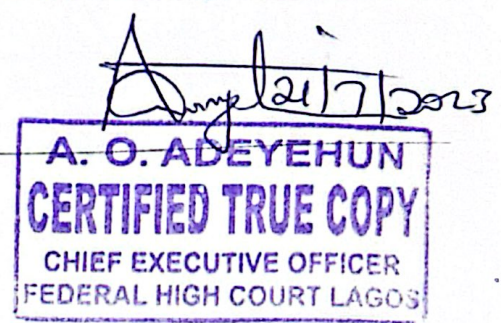
Counsel urged the Court to strike out this suit for lack of jurisdiction.

In the alternative and in line with issue two, Counsel submitted that by virtue of section 852(1)(c) and (f) the defendant can in the interest of the general public and in accordance with the law refuse the availability of a name. the name-Minority watch is capable of misleading the general public as to the aims of the said association. The plaintiff who had the option of suggesting three names chose to suggest only one. The term vague also means unclear. The defendant also has a wide discretion under the said section in line with BERNARD AMASIKE v REGISTRAR-GENERAL CAC (2010) 13 NWLR (Part 1211) 337. Such a discretion can only be interfered with if the criteria in the said section are not complied with.

Counsel relied also on CAC V AIYEDUN (2005) 18 NWLR (Part 957) 391.

The Court was urged to dismiss the suit for being a waste of judicial time.

In his reply on points of law, Plaintiff's counsel submitted that section 851(4)(b) of CAMA was not violated by the Plaintiff but the defendant who decided not to refer Plaintiff's complaint in the letter dated 24th April, 2022 to the administrative committee for onward resolution. Furthermore, the said section is not a condition-precedent to commencing the instant action.



On the point that Plaintiff swore to an affidavit even though he is counsel in the case, counsel submitted that the Plaintiff swore to the said affidavit since he is the Plaintiff herein. The decision of the Supreme Court in BALA v DIKKO(2013) 4 NWLR (Part 1343) 60 is not applicable as counsel therein swore to an affidavit in the support of his client's case. In the instant case, the Plaintiff is the litigant as well as Counsel suing in a personal capacity and not on behalf of his client.

The reason for refusing the name is vagueness and no other reason.

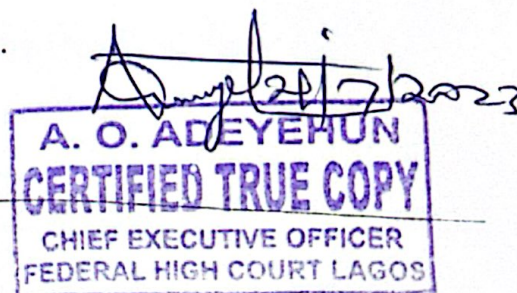
Counsel submitted that the defendant acted ultra vires. There is also no legal requirement for the submission of three names for reservation. The name- Minority watch- is also not vague.

Counsel urged the Court to rule in Plaintiff's favour.

Those were the submissions of Counsel.

The main issue herein is whether the Plaintiff is entitled to the reliefs sought?

The plaintiff contends that the refusal of the defendant to approve the name 'minority watch' on the ground that the said name is vague is not supported by the CAMA and constitutes an infringement of the plaintiffs right to freedom of association.



The defendant contends that the plaintiff's suit is incompetent for none –compliance with section 851(4)(b) of CAMA because the complaint of the plaintiff was not taken before the administrative proceedings committee. In oral arguments however, defence counsel conceded that compliance with the said section is not a condition-precedent to filing the instant action.

This ground therefor fails and is hereby dismissed.

The second ground is that the name 'minority watch' contravenes section 851(1) of CAMA as it is capable of misleading members of the public as to the true nature or extent of its activities, if approved. Furthermore, the reservation of a name is not automatic. The plaintiff also had the option of listing three names for defendants' consideration. The word 'minority' is also confusing.

The defendant also posits that by signing the motion on notice and the affidavit, the plaintiff's counsel created a defect in the suit.

It however seems that it is not every time counsel deposes to an affidavit that there is a defect. Counsel is generally advised not to put themselves in the position of a witness in a suit in which counsel appears as counsel so as to avoid the unsavory prospect of being cross-examined.

In the instant case, that has not arisen as the facts are purely documentary. I do not therefore agree that there is a defect of



that nature sufficient to vitiate the action and the affidavit in support of same.

I agree that the defendant as a public body must act within the confines of its enabling statute.

Thus in AMASIKE V. REGISTRAR-GENERAL, CAC & ANOR (Supra) the Court held at 38-

A public body or authority invested with statutory powers must act within the law and take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and reasonably. See Psychiatric Hospital Management Board v. Ejitagha (2000) 11 NWLR (Pt. 677) 154 at 163 paras. E - G.

Where a person, body or authority claims to have acted pursuant to power granted by a statute, such person, body or authority must justify the act, if challenged, by showing that the statute applied in the circumstances and that he or it was empowered to act under it. See Psychiatric Hospital Management Board v. Ejitagha (supra) at 169 paras. C -D.

It seem to me that the defendant moved away from the reason contained in its notice of rejection of the name by importing another consideration apart from that of vagueness mentioned in the said notice.

The word minority also seems to connote a part of a whole ie a smaller part of a whole. The name of the organization thus

seems to me to be for the purpose of speaking up for a smaller part of the community. The goal sought to be achieved does not therefore, in my view cast any questions as to the true nature and motive of its operations. On the contrary, it seems to me aimed at speaking for the voiceless in a pluralistic society.

I see nothing vague in the words 'minority watch' nor anything to make the true nature of the organization be in some doubt.

The words of section 852(1) are:

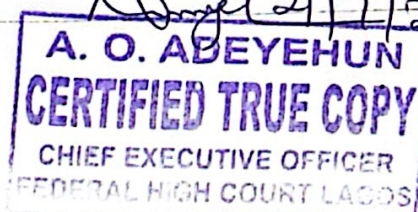
in the opinion of the commission is capable of misleading as to the nature and extent of its activities or is otherwise undesirable, offensive or otherwise contrary to public policy.

There is nothing in the said words that falls within these parameters. There is also no reference to the word 'vague' in the CAMA.

I therefore must hold that the words 'minority watch' do not violate the provisions of section 852(1) of CAMA as to be refused as an available name.

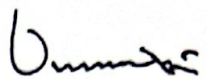
The action of the CAC is an administrative action subject to the writ of mandamus. Mandamus therefore lies in the present circumstances.

See: BERNARD AMASIKE v. THE REGISTRAR-GENERAL
CORPORATE AFFAIRS COMMISSION & ANOR (Supra)



This action therefore has merit.

I grant the declarations and other reliefs sought.


HON. JUSTICE A.O. FAJANA
JUDGE
07/07/2023

COUNSEL:

C. EMEJULU FOR THE PLAINTIFF

Y. OGUNBONA FOR THE DEFENDANT

Gashier
Pls. collect the sum
of ₦270,000 for
CIC - *Angel*
21/7/2023



2208-6900-0526

21/7/23

Angel 21/7/2023
A. O. ADEYEHUN
CERTIFIED TRUE COPY
CHIEF EXECUTIVE OFFICER
FEDERAL HIGH COURT LAGOS