



**POWERS OF THE COURTS TO INTERFERE WITH THE
EXERCISE OF CAC'S DISCRETIONARY POWERS: THE CASE
OF MUSICAL COPYRIGHT SOCIETY NIGERIA (LTD/GTE) V.
COPYRIGHT SOCIETY OF NIGERIA (LTD/GTE) & 2 ORS**

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INTRODUCTION

In a judgment delivered on 25 March 2020 in *Musical Copyright Society Nigeria (Ltd/Gte) v. Copyright Society of Nigeria (Ltd/Gte) & 2 Ors.*, the Lagos Division of the Federal High Court (“the Court”) held, inter alia, that:

- i. although the Corporate Affairs Commission (“CAC/the 2nd Defendant”) has discretionary powers, the Court has the power to intervene where the discretionary powers are not properly exercised;
- ii. it is unlawful for the CAC to approve a name for registration, which is the same as or similar to another reserved name during the approved reservation period; and
- iii. an organisation whose scope of copyright is restricted to musical rights could not be legally permitted to use the name ‘Copyright Society of Nigeria’ which encompasses rights arising from literature, arts, music, drama, cinematography, broadcast, architecture, computer programmes, and so on.

BACKGROUND FACTS

On 4 October 2009, the Plaintiff applied to the 2nd Defendant to reserve the name ‘Copyright

Society of Nigeria’ for registration, and the said name was approved by the 2nd Defendant.

The name was reserved for 60 days, with the reservation set to expire on 4 December 2009.

Thereafter, the Plaintiff decided to add ‘Ltd/Gte’ to the name and submitted another application for availability and reservation of the new name, attaching the earlier approved availability/reservation certificate in respect of ‘Copyright Society of Nigeria’. However, the 2nd Defendant refused reservation of the new name and advised the Plaintiff to apply under Part C of the Companies and Allied Matters Act (“CAMA”) for the registration of the entity. The Plaintiff then decided to revert to registering an entity with the name ‘Copyright Society of Nigeria’ instead of applying for a new name under Part C of CAMA.

However, due to the absence of some of the Plaintiff's trustees who were unavailable to append their signatures to the registration forms, their solicitors were unable to file the registration documents before the expiration of the reservation period on 4 December 2009. The name reservation for 'Copyright Society of Nigeria' in favour of the Plaintiff, therefore, expired on 4 December 2009.

Thereafter, the Plaintiff, through its solicitors, went for re-validation of the name. However, they were told that they could not re-validate the name because the 2nd Defendant had approved 'Copyright Society of Nigeria Ltd/Gte' in favour of the Performing and Mechanical Rights Society of Nigeria ("PMRS/the 1st Defendant") who intended to change its name from PMRS. The approval was granted on 23 November 2009, which was still within the reservation period for the name 'Copyright Society of Nigeria' granted in favour of the Plaintiff. The change of name and registration of PMRS' new name was effected on 9 December 2009.

THE PLAINTIFF'S POSITION

The Plaintiff submitted that by the Regulations of the 2nd Defendant, an applicant is allowed to reserve a name for registration over a period of 60 days. During that period, no other applicant is allowed to use the name. The Plaintiff stated that it had reserved the name 'Copyright Society of Nigeria' for 60 days from 4 October 2009 to 4 December 2009. Therefore, the 2nd Defendant had violated its own Regulations by permitting a change of name from PMRS to the 'Copyright Society of Nigeria Ltd/Gte' at a time that the Plaintiff had duly reserved the name. This is more so because there were pending petitions with the 2nd Defendant and the 3rd Defendant (the Attorney-General of the Federation) dated 13 November 2009 against the use of the name 'Copyright Society of Nigeria'.

The Plaintiff also submitted that there is evidence that it attempted to register the name 'Copyright Society of Nigeria Ltd/Gte' as far back as 1984, but was refused by the 2nd Defendant on the ground that the name was too broad and generic to be incorporated by a private or sectional organisation. As such, it would be a violation of Section 42 of the 1999 Constitution for the 2nd Defendant to permit the change of name from the defunct PMRS to the name 'Copyright Society of Nigeria Ltd/Gte'.

The Plaintiff further submitted that an organisation whose genre of copyright is restricted to musical rights ought not to be permitted to use the name 'Copyright Society of Nigeria', being a term encompassing rights arising from literature, arts, music, drama, cinematography, broadcast, architecture, computer programmes, and so on.

The Plaintiff also argued that changing the name of PMRS to 'Copyright Society of Nigeria Ltd/Gte' amounts to merely dropping the word 'musical' from the Plaintiff's name (Musical Copyright Society Nigeria (Ltd/Gte),

which can be considered as passing off and is capable of causing confusion with the Plaintiff's identity.

On the whole, the Plaintiff urged the Court to hold that the approval and subsequent registration of 'Copyright Society of Nigeria Ltd/Gte' in favour of the 1st Defendant was unlawful, and make orders to reverse the unlawful acts.

THE 1ST DEFENDANT'S POSITION

The 1st Defendant contended that, by the Plaintiff's own admission, the Plaintiff's name reservation expired on 4 December 2009. The 1st Defendant also argued that the Plaintiff was only trying to mislead the Court when it said that it was informed that the 1st Defendant's name was approved on the 23 November 2009 when the Plaintiff's reserved name was valid and subsisting. The 1st Defendant submitted that it was registered as Copyright Society of Nigeria Ltd/Gte on the 9 December 2009, as opposed to 23 November 2009 and that by 9 December 2019, the Plaintiff's name reservation had expired.

The 1st Defendant was, therefore, registered five (5) days after this reservation expired. Thus, the Plaintiff's purported application to revalidate the expired reservation as contained in its letter to the 2nd Defendant, dated 22 December 2009, was after the registration of the 1st Defendant.

The 1st Defendant further submitted that the discretion of deciding whether a name to be registered offends an existing name on the Register of the 2nd Defendant is a discretion to be exercised solely by the 2nd Defendant and the Court does not have the jurisdiction to interfere into such exercise.

On the whole, the 1st Defendant asked the Court to dismiss the Plaintiff's case.

THE JUDGMENT

In its judgment, the Court ruled as follows:

- it is clear from the submissions of parties and the documentary evidence before the Court, that the 2nd Defendant approved the name 'Copyright Society of Nigeria' in favour of the Plaintiff to last for 60 days, between 4 October 2009 and 4 December 2009.

Consequently, it was only after 4 December 2009 that the name would cease to be reserved for the Plaintiff.

Also, according to the provisions of Section 32 (2) of the Companies and Allied Matters Act Chapter C20, Laws of the Federation of Nigeria 2004 (CAMA), no other name which, in the opinion of the CAC, bears too close a resemblance to the reserved name shall be registered for the period of reservation.

It is therefore a misnomer to give the name which the Plaintiff has applied to register, or similar to what the Plaintiff seeks to register, to the 1st Defendant on 23 November 2009 when the time allowed for the Plaintiff to complete their registration had not expired.

- The Court stated that even though CAMA confers the discretionary right to reject or accept a name on the CAC, the Court has the powers to intervene when such discretionary powers are not properly exercised.

- The Court raised the question ‘are the names “Copyright Society of Nigeria” and “Copyright Society of Nigeria Ltd/Gte” not similar and capable of misleading the public as expressed in the opinion of the 2nd Defendant?’. The Court answered the question in the positive, and held that the two names are similar and that the 2nd Defendant ought not to have approved ‘Copyright Society of Nigeria Ltd/Gte’ for the 1st Defendant while the reservation of ‘Copyright Society of Nigeria’ for the Plaintiff had not elapsed.

The Court further stated that the issue of whether the Plaintiff's present name is similar to that of the 1st Defendant is of no moment because the 1st Defendant's present name was illegally approved.

- The Court accepted the Plaintiff's argument that an organisation whose genre of copyright is restricted to musical rights could not legally be permitted to use the name 'Copyright Society of Nigeria', being a term encompassing rights arising from literature, arts, music, drama, cinematography, broadcast, architecture, computer programmes, and so on.

The Court, therefore, declared the approval and registration in favour of the 1st Defendant unlawful, gave injunctive orders against the Defendants on the use of the ‘Copyright Society of Nigeria’ name, and made an order directing the 2nd and 3rd Defendants to take necessary steps to rescind the 1st Defendant's name change and registration as ‘Copyright Society of Nigeria Ltd/Gte’.

TAKEAWAY

The takeaway from the Court's decision is that courts will not hesitate to invoke their supervisory powers over regulatory agencies and other administrative bodies who may have discretionary administrative powers, where it appears that such discretionary powers have not been exercised lawfully or properly.

In the present matter, although the CAC had purportedly exercised its discretion under section 32(2) of the CAMA[2], the Court invoked its supervisory powers, especially in light of the Court's exclusive constitutional powers to entertain all civil causes and matters arising from the operation of the CAMA[3].

[2] 32(2) of CAMA provides that- Such reservation as it is mentioned in subsection (1) of this section shall be for such period as the commission shall think fit not exceeding 60 days and during the period of reservation no other company shall be registered under the reserved name or under any other name which in the opinion of the commission bears too close a resemblance to the reserved name.

[3] Section 251 (1) e) of the Constitution of the Federal Republic of Nigeria, 1999

CONCLUSION

The discretionary powers given to administrative bodies are not boundless and should be exercised within the confines of the relevant legal frameworks. Where there is a departure from the letters of the law, the courts are able to investigate and review such exercise of discretion. As such, the administrative bodies should refrain from inconsistent application of laws and regulations, which are indicators of arbitrariness.

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