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CASE DIGEST

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THE LAW DOES NOT RECOGNISE LIFE TENURE FOR MANAGING DIRECTORS OR BOARD CHAIRMEN

U.O.O. (NIG.) PLC v. OKAFOR & ORS.

SUPREME COURT OF NIGERIA

(RHODES-VIVOUR; PERTER-ODILI; NWEZE; AUGIE; EKO, JJ.SC)

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Background Facts

U.O.O. (Nig.) Plc (the Appellant) was founded by the late Nze Uche Okafor who had seven wives and fifty-five children. Prior to his death, he formally resigned his position as Chairman, Managing Director, and Chief Executive Officer of the company through a written letter addressed to the Board of Directors, and nominated his son, Edozie Uche Okafor, as his successor to those offices.

Subsequently, at a General Meeting of the company, it was resolved that the late Nze Uche Okafor be retired from his positions on the grounds of old age, and that Mr. Edozie Uche Okafor be appointed in his stead as Chairman, Managing Director, and Chief Executive Officer of the company. This appointment was stated in paragraph 80(d) of the company's Articles of Association.

In February 2005, some directors and shareholders of the company expressed their intention to disinvest from the company. Consequently, at an Extraordinary General Meeting, a ten-man Asset Valuation Committee was constituted to determine the value of the company's assets and shares. The Committee engaged professional valuation firms and arrived at a recommended unit share price of ₦1.50, which was however, rejected. Following further negotiations among the parties, an agreement was eventually reached fixing the value of each share at ₦2.65. At the Annual General Meeting of the company held in Aba on 9th March 2007, the special business on the agenda was to receive and adopt ₦2.65k as the value

of each share of U.O.O. Nigeria Plc, as agreed by the Members of the Revaluation Committee. However, during the meeting, as the Chairman, Nze Edozie Uche Okafor, was reading his address and referring to the agreed unit price of ₦2.65k, the proceedings degenerated into commotion, and the meeting became highly rowdy.

Amidst the disorder, the Chairman left the venue of the meeting. Subsequently, Mr. Maribe Okafor (the 1st Respondent) moved a motion for his removal as Chairman of the company. Thereafter, the Chairman was informed that the directors and shareholders who remained at the meeting purportedly voted to remove him from office and appointed the 1st Respondent as the new Chairman of the company.

Aggrieved by this development, Nze Edozie Okafor instituted an action against the Respondents at the Federal High Court, Lagos, in the name of the Appellant company, challenging his removal from office. The trial court dismissed the Appellant's claim. Dissatisfied with the decision, the Appellant appealed to the Court of Appeal, which affirmed the judgment of the trial court and dismissed the appeal.

Still dissatisfied with the concurrent findings of the lower courts, the Appellant further appealed to the Supreme Court.

One of the issues for determination was: *Whether the lower court was right when it affirmed the judgment of the trial court, holding that Mr. Edozie Okafor was validly*

removed as Chairman of the appellant, that the offices of the Chairman, Chief Executive Officer and Managing Director of the appellant are intertwined/inseparable in the organogram of the company.

Arguments

The Learned Silk for the Appellant contended that Clause 80(d) of the Articles of Association of the Appellant made Nze Edozie Okafor a life Director and Chairman, Managing Director, and Chief Executive Officer of the Appellant, effectively entitling him to remain Chairman for life. He submitted that until the said Articles of Association are duly amended, their provisions remain sacrosanct and have the force of law, binding on the company and its members. Counsel further argued that the purported removal of Nze Edozie Okafor as Chairman of the Appellant was therefore null, void, and of no legal effect, the relevant provisions conferring life tenure having not been amended, altered, or revoked in accordance with due process.

In response, learned counsel for the Respondent argued that any clause in the Memorandum and Articles of Association which purports to confer life tenure as Managing Director for life or Board Chairman for life is contrary to the express provisions of the law,

and therefore constitutes an illegal contract, which is unenforceable. He submitted that such provisions are void to the extent of their inconsistency with statutory principles governing corporate governance and removal of directors.

Learned counsel further contended that the lower court was right in affirming the decision of the trial court, which dismissed the Appellant's claims. He maintained that Nze Edozie Okafor was validly removed as Chairman of the Appellant's Board of Directors, and that Mr. Maribe Okafor was lawfully elected as the new Chairman of the Appellant in accordance with the applicable legal and corporate procedures.

DECISION OF THE COURT

In resolving the issue, the Supreme Court held that:

Any clause in the Memorandum and Articles of Association which purports to make a person a Managing Director for Life or Board Chairman for Life contrary to the express provisions of the law is an illegal contract and therefore unenforceable. Such clause in the contract is illegal at face value and does not require a formal amendment to deprive it of the force of law.



The Supreme Court explained that the positions of Board Chairman for life and Managing Director for life are not recognised under, and are inconsistent with, the provisions of the Companies and Allied Matters Act (CAMA), and are therefore void, ineffective, and unlawful as these offices are elective in nature and cannot be held in perpetuity. A Life Chairman of the Board of Directors or a Managing Director for life is not contemplated by law, as the power to elect a chairman or managing director, and to determine the duration of their tenure, is statutorily vested in the board of directors or the members in a general meeting. Any such appointment is illegal, and the positions remain subject to all legal requirements governing the appointment and removal of directors.

Issue resolved in favour of the Respondents.

Emeka Ngige, SAN, Onyeka Obiajulu, for the Appellant.

Dickson Anieh for the Respondents.

This summary is fully reported at (2020) 8 CLRN in association with ALP NG & Co.

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