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A VALID SHARE SALE IS INCOMPLETE WITHOUT EXECUTION OF THE SHARE TRANSFER INSTRUMENT AND REGISTRATION OF THE TRANSFEREE

BINEZ HOTELS LIMITED v. BUREAU OF PUBLIC ENTERPRISES & ANOR

SUPREME COURT OF NIGERIA

(OGUNWUMIJU; JAURO; SANKEY; OGBUINYA; UMAR: JJ.SC)

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Background Facts

Binez Hotels Limited *("the Appellant")* acting through Future View Securities Limited *("the 2nd Respondent")* entered into an agreement to purchase 13,000,000 ordinary shares in Nigerian Cement Company Nkalagu Plc, representing 10% of the company's issued share capital, for the sum of ₦7,020,000.00. The shares were owned by the Federal Government of Nigeria and were listed on the Nigerian Stock Exchange. Following the Appellant's payment by cheque, Bureau of Public Enterprises *("the 1st Respondent")* conveyed the approval of the transaction by the National Council on Privatisation, indicating that the sale had received the requisite governmental approval.

Before the transaction could be perfected, however, the necessary share transfer forms required to effect the transfer of the shares were never executed. The National Council on Privatisation subsequently cancelled the ongoing negotiations for the sale pursuant to its statutory powers. Thereafter, the shares were sold to the Ebonyi State Government in accordance with the applicable privatisation framework, and the Appellant's cheque was promptly returned through the 2nd Respondent without value. Dissatisfied with the cancellation of the transaction and the subsequent sale of the shares, the Appellant commenced an action by originating summons seeking declarations that it had acquired a valid interest in the shares and challenging the Respondents' actions.

The trial Court in a well-considered ruled in favour of the 1st Respondent and dismissed the suit in its entirety. Aggrieved by the decision of the trial court, the Appellant appeal to the Court of Appeal which likewise dismissed and affirmed the decision of the trial Court. Further aggrieved by the concurrent decision of the Court of Appeal, the Appellant appealed to the Supreme Court for a final determination of the dispute.

One of the issues for determination was: *Whether by the provision of section 151 of the Companies & Allied Matters Act, 1990, the sale of the shares in issue was validly concluded to vest in the appellant legal or equitable right over the said shares.*

Arguments

Learned Senior Counsel for the Appellant contends that a valid and binding contract for the purchase of the shares was concluded once the Appellant paid the agreed purchase price and the transaction received the requisite governmental approval. He argues that the subsequent execution and registration of the share transfer documents were merely procedural steps required to perfect the transfer and did not affect the existence or validity of the underlying contract. According to Senior Counsel, once the agreement was concluded and the purchase price paid, it acquired an equitable interest in the shares which the Respondents were bound to recognise and protect.

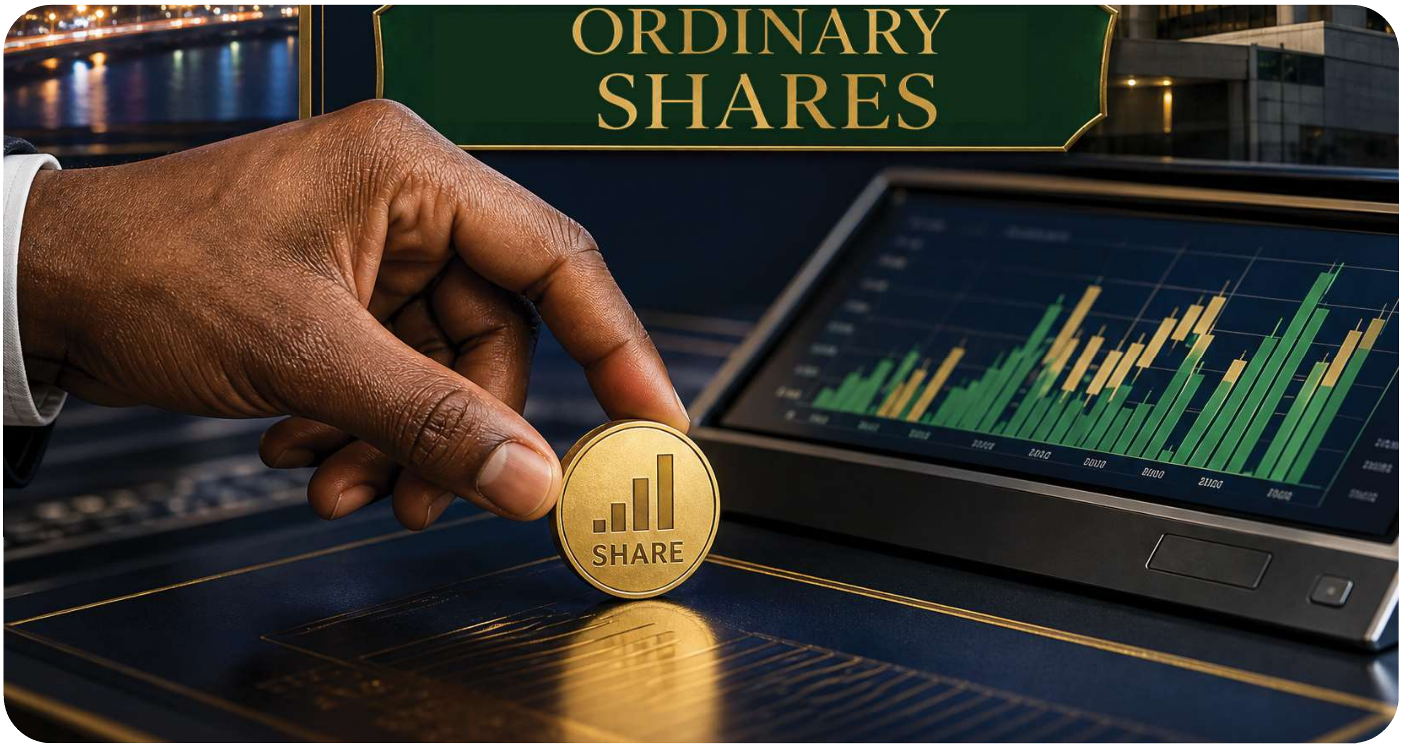
Learned Senior Counsel further submits that, upon the conclusion of the transaction, the 1st Respondent held the shares on its behalf and was under an obligation to complete the transfer. He maintained that the 1st Respondent assumed the position of a constructive trustee and was therefore precluded from dealing with the shares in a manner inconsistent with the Appellant's equitable interest. Senior counsel finally submitted that the subsequent cancellation of the transaction and sale of the shares to the Ebonyi State Government amounted to a wrongful breach of that obligation and finally urged the Court to hold that the cancellation could not extinguish the rights which had already accrued in its favour.

In response, learned counsel for 1st Respondent argues that no concluded sale ever came into existence. He maintained that the transaction never progressed beyond negotiations and remained an agreement to sell, which was lawfully terminated before completion. According counsel, the cancellation effectively brought the negotiations to an end and prevented any proprietary interest from passing to the Appellant. He further submits that because the necessary steps required to complete the transfer of the shares were never fulfilled, ownership remained with the Federal Government, which was consequently entitled to dispose of the shares to the Ebonyi State Government and finally submits that no trust or fiduciary obligation could arise from an incomplete and unperfected transaction.

Learned counsel for the 2nd Respondent similarly submits that although negotiations had progressed and the essential elements of a contract may have been present, the transaction was never completed in the manner required for the transfer of shares. Counsel relied on the fact that the Appellant's cheque was returned without being presented for payment as evidence that the consideration was never received and the transaction was never consummated. Counsel also argued that the Appellant acquired no ownership or equitable interest in the shares. It was his submission that if the Appellant suffered any loss, its remedy lies only in a claim for damages or refund and not in an assertion of title to the shares and urges the Court to dismiss the appeal.

DECISION OF THE COURT

In resolving the issue, the Supreme Court held that: **A mere agreement for the sale of shares, without**



more, does not vest legal title in the purchaser. For a share transfer to be complete and effective, the requisite instrument of transfer must be duly executed and the transferee's name entered in the company's register of members. Until these steps are taken, the transferor remains the registered holder of the shares.

In the instant case, the Supreme Court held that the Appellant acquired no legal or proprietary interest in the 13,000,000 shares of Nigercem Plc. Since the 1st Respondent did not execute the Share Transfer Forms and the transfer was never registered, ownership remained with the registered holder. Consequently, the Appellant could not assert title to the shares or challenge the subsequent disposal of the shares on the basis of an unperfected transaction.

Issue resolved in favour of the 1st Respondent.

Chief Chijioke Okoli, SAN (with him, Chief Isaac Anumudu,Esq.; Lawrence Unumudu, Esq.; Kingsley Ezengwoke, Esq. and A. Nosagba, Esq.) – for the Appellant

Ayo Olanrewaju, Esq. (with him, Tolani Layi-Babatunde, Esq.;Kehinde Salimon, Esq. and Abdulrahman M. Sani, Esq.) – for the 1st Respondent

Uwaifo L. Ogedengbe, Esq. – for the 2nd Respondent

This summary is fully reported at (2026) 7 CLRN in association with ALP NG & Co.

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