

Can a Foreign Company that is not registered in Nigeria maintain an action in Nigerian Courts (Part 2)?

This is an update on my previous blog post [here](#)

Capacity to sue and be sued is an important aspect of conflict of laws. It connects very well with the issue of access to justice. For example if a foreign company that does business with a Nigerian company cannot sue in Nigeria it can result in injustice, and lead to loss of confidence in doing transactions with parties located in the Nigerian legal system.

Why is the above topic important? Having undertaken further research, it can be said that Nigerian court decisions are not consistent on the issue of capacity of a foreign company to sue and be sued in Nigeria. The latest reported authoritative source from the Nigerian Supreme Court is that by virtue of Section 54 and 55 of the Companies and Allied Matters Act 2004 Cap C20 (now Section 78 and 79 of the Companies and Allied Matters Act 2020), a foreign company that carries on business in Nigeria without being registered as a Nigerian company carries out an illegal and void transaction, and thus such a contract cannot be enforced in Nigerian courts.[1] In effect, the provision of Section 60(b) of the Companies and Allied Matters Act 2004 Cap C20 (now Section 84(b) of the Companies and Allied Matters Act 2020) cannot avail the foreign company in granting it the capacity to sue in Nigeria to enforce a contract where it *carries on business* in Nigeria without registering as a foreign company.[2] It is only where the foreign company that is not registered in Nigeria enters into a contract with a Nigerian company, *while not doing business in Nigeria*, will such a contract be enforceable in Nigeria.[3] The key word is thus *doing business in Nigeria* in determining whether a foreign company that is not registered in Nigeria can sue or be sued in Nigeria. This decision has now been confirmed by a very recent Court of Appeal decision, though in the instant case it was held that the foreign company was not carrying out business in Nigeria (it was a single transaction), so the contract was enforceable in Nigeria.[4]

Yet this current position of Nigerian law is strange and appears to contrast with

the law in other common law countries including common law African countries. The recent position of the Nigerian Supreme Court also appears to contrast with previous decisions of Nigerian appellate courts that held that foreign companies could sue and be sued in Nigeria irrespective of whether they are carrying on business in Nigeria.[5]

This aspect of law requires further reflection as it is now an important and controversial aspect of Nigerian law. Dr Abubakri Yekini and I plan to write a full blown article on this interesting subject. Please stay tuned!

[1] *Citec Intl Estates Ltd. v. E. Intl Inc. and Associates* (2018) 3 NWLR (Pt. 1606) 332, 357 - 364 (Eko JSC)

[2] *Ibid.*

[3] *Ibid.*

[4] *Mocoh SA & Anor v. Shield Energy Ltd & Anor* (2021) LPELR-54559(CA).

[5] *INFAZ v COBEC (Nig) Ltd* (2018) 12 NWLR Pt. 1632) 127; *Bank of Baroda v Iyalabani Company Ltd* (2002) 13 NWLR 551. See also *Watanmal (Singapore) Pte Ltd v. Liz Olofin and Company Plc* (1997) LPELR-6224(CA) 13 (Musdapher JCA as he then was); *NU Metro Retail (Nig) Ltd v. Tradex S.R.L & Another* (2017) LPELR-42329(CA) 41-2 (Garba JCA as he then was).