

## **A REVIEW OF THE FEDERAL HIGH COURT DECISION IN FH-C/L/CS/982/2020 – MEGAWATTS NIGERIA LIMITED V. THE REGISTERED TRUSTEES OF GBAGADA PHASE 2 RESIDENTS' ASSOCIATION & 3 ORS**

### **1. INTRODUCTION**

1.1. On 25th September 2020, it became news that the Federal High Court held that 'a person cannot be compelled to associate himself with the residents association of the housing estate where he resides and thus cannot be coerced to pay estate dues, against his will.' This is following the decision of Honourable Justice Onweibo of the Federal High Court in the case of Megawatts Nigeria Limited (Applicant) v. The Registered Trustees of Gbagada Phase 2 Residents' Association & 3 Ors (Respondents).

1.2. This has stirred a lot of conversations and questions as to the rationale behind the decision of the court. In order to understand the decision of the court, in that case, this NewsLetter seeks to analyse the judgment of the court.

### **2. Summary of Facts**

2.1. The case was commenced under the Fundamental Rights (Enforcement Procedure) Rules by Originating Motion.

2.2. The basis of the suit was the alleged continuous acts of harassment, intimidation, extortion, and coercion perpetrated by the Respondents and the restriction of the free movement of the Applicant and its agents from gaining entrance into the Estate. The Applicant sought Declaratory reliefs against the Respondents to the effect that the grotesque acts were a violation of the Applicant's fundamental rights pursuant to sections 40 and 41 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The Applicant also sought injunctive reliefs restraining the Respondents from harassing them and coercing them to join the Association, as well as from restricting their movement into the estate

2.3. The Applicant asked the court for the sum of N50 Million as damages allegedly caused to and suffered by the Applicant due to the illegal restriction of the movement of the Applicant by the Respondents.

2.4. The Respondents filed a Preliminary Objection challenging the competence of the application and the jurisdiction of the court to hear the matter.

## **The Preliminary Objection**

2.5. The Respondent argued that the court lacked the jurisdiction to entertain the matter, that the Applicant was not a person known to law and the suit was speculative and no rights had been infringed.

2.6. The Respondent argued further that the rights under the constitution are rights that only a natural person could enjoy. The Applicant in opposition, relied on section 18 of the Interpretation Act to state that a person under Nigerian law, includes a company.

2.7. In resolving the issue, the court stated that where a Company is incorporated, it is vested with the status of a legal entity and is regarded as a person. The court posited that since an artificial person can only act through its agents and servants who are humans, then when the rights of the person are infringed in the course of duty, then the company's rights are also infringed on. On that basis, the court overruled the preliminary objection.

## **The Substantive Suit**

### **The Applicant's Case**

2.8. It is the Applicant's case that since it moved its head office to the Gbagada Phase 2 Housing Estate, the Respondents have been coercing the Applicant to join its association and pay the exorbitant membership dues, to which it refused. The Applicant alleges that the 1st Respondent through its agents refused the Applicant access to the estate unless they paid a toll and this continued on several occasions, with money being collected in hundreds of thousands.

2.9. The Applicant further stated that the coercion of the Applicant to join the Association and the restriction of their movement breaches its right to freedom of association and its right to freedom of movement, thus entitling it to the reliefs sought.

### **The Respondents' Case**

2.10. On the contrary, the Respondents argue that the Applicant is a member of the Association by virtue of its residency in the Estate and also being a recipient of notices of general meetings from 2016 till the date of the institution of the action. Consequently, the Respondents hold that the Applicant cannot deny that it is a member of the Association. The Respondent further stated that the Applicant, being an artificial person did not have the fundamental rights sought to be protected and that the Applicant has not proven that it is a juristic person, by exhibiting its Certificate of Incorporation.

## **The Judgment**

2.11. The court held that it was wrong for the Respondents to contend that by virtue of the Applicant having a business premises in the Estate, it is a member of the association. The court, relying on the Supreme Court decision in *Agbai & Ors v. Okogbue* (1991) LPELR-225 (SC) P 64 held that where a person voluntarily becomes a member of an association, the member cannot complain against the custom of the association.



However, where a person is presumably a member of an association by operation of an alleged custom, he cannot be compelled to abide by the customs of the association against his will, as that would be unconstitutional.

2.12. The court went further to state that the constitution of the association restricted the membership of the association to male and female adults and that only adult persons who reside or carry on business in the Estate qualify as members. The Applicant, not being an adult being and having not volunteered to be a member, cannot be coerced or compelled to be a member.

2.13. The court granted the Applicant's claim in part and restrained the Respondents from coercing the Applicant to be a member of the Association. No orders were made as to damages.

### **Our Analysis**

2.14. The crux of this suit is the right to freedom of association and the right to freedom of movement of the Applicant being allegedly infringed by the Respondents and not just the payment of estate dues.

2.15. The court was right to overrule the Preliminary Objection of the Respondents that a corporate entity is not entitled to protection under the Constitution. The Constitution does not define a person, neither does the Constitution restrict it to natural persons, hence the need to make recourse to the Interpretation Act. Section 18 of the Interpretation Act, Cap 192. LFN 2004 defines a person thus:  
"person" includes any body of persons corporate or unincorporated.

2.16. Having held that the company is a person whose rights under the constitution can be infringed upon, the court was right to hold that the Company's right to freedom of association guaranteed under section 40 of the Constitution was infringed upon. However, it would have been best to leave it at this.

2.17. The Court's reliance on the Constitution of the 1st Respondent is unwarranted. Granted that the Constitution restricts its membership to adult male and female human beings, it does not entirely exclude the membership of companies, because as rightly held by the Court, the Company operates through the humans in the company. Thus, while the court's decision was right, part of the ratio decidendi was flawed.

2.18. The court cannot rely on the Constitution of the 1st Respondent, above the Constitution of the country to hold that the company is not a human being. This would be a direct contrast to the decision with respect to the Preliminary Objection, that a company can also be a person.

2.19. In any case, the point to take from the case is that a person has the freedom to choose the association to belong in, and when a person voluntarily joins an association, such a person cannot complain about the custom of the association. However, where a person 'has' to join an association, by reason of that being the custom in the place the person resides, that would be involuntary and the person cannot be compelled to abide by the rules of the association.



2.20. Thus, the court has not held strictly that a person cannot be mandated to pay dues in an estate, but that where a person is not a voluntary member of the association in an estate, the person cannot be compelled to pay dues.

2.21. Finally, we believe that the decision of the court re-emphasises the provision of the Constitution for the protection of the fundamental rights of a person to freely associate.

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