

**IN THE FEDERAL HIGH COURT
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA**

SUIT NO: *PHC/ABJ/CS/1035/2020*

BETWEEN:

BARRISTER LAYI ADEMOKOYA

.....**PLAINTIFF**

AND

- 1. NATIONAL ASSEMBLY OF NIGERIA**
- 2. CORPORATE AFFAIRS COMMISSION**
- 3. MINISTER OF TRADE AND INVESTMENT**

.....**DEFENDANTS**

ORIGINATING SUMMONS

Let the **NATIONAL ASSEMBLY OF NIGERIA** of Three Arms Zone, Central Business District, FCT-Abuja and the **Corporate Affairs Commission** of Plot 420 Tigris Crescent Maitama, Abuja - FCT and **Minster of Trade and Investment** of Ministry of Trade and Investment, Old Secretariat, Garki, Abuja within **FOURTEEN (14) DAYS** after service of this Originating Summons on them inclusive of the day of such service cause an appearance to be entered for them to this Originating Summons which is issued upon the application by the Plaintiff for the determination of the following questions:

- i. Whether the provisions of Section 839 particularly subsection 2 of the Companies and Allied Matters Act 2019 signed into Law is not in contravention of the combined provisions of **Sections 6 and 36 of the Constitution of the Federal Republic of Nigeria 1999 (As amended)** and **Section 7(e) of the Federal High Court Act Cap F12, LFN 2004.**
- ii. Whether the use of the word **"SHALL"** in Section 839(2) of the Companies and Allied Matters Act, 2019 which purports to oust the jurisdiction of the court is not in contravention of the provision of **Section 4(8) of the Constitution of the Federal Republic of Nigeria.**
- iii. Whether the Minister of Trade and investment by virtue of Section 839 subsection 11 of the Companies and Allied Matters Act can give approval for the actions of the 2nd Defendant.

IN THE EVENT THAT the above questions are resolved in favour of the Plaintiff, the Plaintiff hereby seeks the following reliefs:



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- i. **A DECLARATION** of this Honourable Court declaring as illegal, unlawful, unconstitutional and therefore null, void, wanton, ineffective and ineffectual the provisions of Section 839 subsections 1 to 3 of the Companies and Allied Matters Act 2019 with relevant amendments
- ii. **A DECLARATION** of this Honourable Court declaring that the provisions of section 839 subsections 1 to 3 of Companies and Allied Matters Act 2019 should be amended or expunged with immediate effect.
- iii. **A DECLARATION** of this Honourable Court declaring the provisions of Section 839 particularly subsections 1 to 3 of the Companies and Allied Matters Act 2019 as inconsistent with the combined provisions of **Section 6 and 36 Constitution of the Federal Republic of Nigeria 1999 (as amended) and Section 7(e) the Federal High court Act Cap F12, LFN 2004.**
- iv. **A DECLARATION** of this honourable court declaring that is only the courts that can make final decisions on matters arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that act or regulating the operation of companies incorporated under the Companies and Allied Matters Act.
- v. **A DECLARATION** of this court interpreting the word "**SHALL**" as used in the provisions of section 839 particularly subsection 2 of the Companies and Allied Matters Act, 2019, declaring that the court is not bound to grant any relief or order to the 2nd defendant.
- vi. **A DECLARATION** of this honourable court declaring that the 3rd Defendant does not have the powers to give approval to the 2nd Defendant to exercise the provisions of Section 839 subsections 1 to 3.
- vii. **A DECLARATION** of this honourable court declaring that the provisions of Section 839 particularly Sections 1 to 3 and 11 of the Companies and Allied Matters Act, 2019 is a denial of a Nigerian Citizens right to fair hearing

AND FOR SUCH FURTHER or other orders as the Honourable Court may deem fit to make in the circumstances.

DATED THIS 26th DAY OF AUGUST, 2020



B.S AKINWUMI

G.B OGUNMOLA

D.O ADEMOLA

B. OMONIWA

ALEX FASEMORE

BABS AKINWUMI & CO

APPLICANT'S COUNSEL,

NO 12, OBOSI STREET,

GARKI 2, ABUJA

08034458921, 07033035586

FOR SERVICE ON:

1. 1st Defendant

National Assembly of Nigeria
Three Arms Zone, Central Business District
FCT-Abuja.

2. 2nd Defendant,

Corporate Affairs Commission
Plot 420, Tigris Crescent,
Maitama
FCT-Abuja.

3. 3rd Defendant

Ministry of Trade and Investment
Old secretariat, Garki
Abuja-Fct

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AFFIDAVIT IN SUPPORT OF ORIGINATING SUMMONS

I, Barrister Layi Ademokoya Adult, Male, Christian and a Legal practitioner with his practise office situated at Plot 12, Obosi Street, Area 2, Garki, Abuja do hereby make oath and state as follows, THAT:

1. I am the applicant in this instant case and by virtue of my position I am conversant with the facts leading to this suit and deposed in this affidavit, which facts, except where expressly stated, are within my personal knowledge.
2. I am also a citizen of the Federal Republic of Nigeria and a senior member of the Nigeria Bar Association by virtue of my active Legal practice.
3. I am aware that a new Company and Allied Matters Act 2019 had been signed into law and I have read the provisions of this new Companies and Allied Matters Act 2019.
4. I believe that the operation of Section 839 (2) and (11) of the Companies and Allied Matters Act 2019 usurp the discretionary powers of the Judiciary.
5. The provisions of Section 839 subsection 2 of the Company and Allied Matters Act states that **"the trustees shall be suspended by an order of court upon the petition of the Commission or members consisting one-fifth of the association and the petitioners shall present all reasonable evidence or such evidence as requested by the Court in respect of the petition"**. That this said section of the Act

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WRITTEN ADDRESS IN SUPPORT OF ORIGINATING SUMMONS

1.0 INTRODUCTION:

1.1 My Lord this suit which the Plaintiff brings seeking the resolution by this Honourable Court of the questions and seeking the reliefs as set out on the face of the Originating Summons.

1.2 The suit is supported with an affidavit of 13 paragraphs deposed by the Plaintiff himself with one exhibit attached, and of course this written address. We humbly rely on all the paragraphs of the affidavit in support of this suit and the exhibits attached thereto in support of this suit.

2.0 FACTS OF THE SUIT:

2.1 We humbly submit that the facts heralding this suit have succinctly been captured in the affidavit in support thereof and we do not intend to belabour my Lord with a repetition thereof.

3.0 ISSUES FOR DETERMINATION:

We humbly submit that having regard to the questions set out for resolution in this suit and the overall facts and circumstances of this suit, the following issues call for determination in this suit:

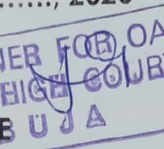
Whether the Courts in the instant case and circumstances has the powers to interpret the Law and clear any form of ambiguity denying the court his exercise of powers as enshrined in SECTION 6 of the Constitution of the Federal Republic of Nigeria

13. I depose to this affidavit in good faith believing the content to be true to the best of my knowledge and in accordance with the Oaths Act.


DEPONENT

SWORN AT THE REGISTRY, FEDERAL HIGH COURT,
ABUJA

THIS 26th DAY OF Aug, 2020


COMMISSIONER FOR OATHS
FEDERAL HIGH COURT
BEFORE MB UJA

COMMISSIONER FOR OATHS

the right to defend himself or literally say his own part of the story, these are the Hallmarks and pillars of Justice, without fair hearing their cannot be Justice.

- 5.0 The provisions of **Section 839 subsections 1 to 3 and 11** has denied fair hearing in its entirety as no recourse was given to the other party in which a petition was or is raised to defend him or herself, this aforesaid provisions of the **Companies and Allied Matters Act, 2019** totally negates the provision of **Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (As amended)**
- 5.1 My Lord it is pertinent to submit that the 1st Defendant does not have the powers to make Laws that will suggest to oust the exclusive decision making powers of the Courts as provided for in **Section 4(8) of the Constitution of the Federal Republic of Nigeria 1999 (As amended)** and it states thus " **Save as otherwise provided by the constitution, the exercise of legislative powers by the National Assembly or by a House of Assembly shall be subject to the jurisdiction of courts of law and of judicial tribunals established by law, and accordingly, the National Assembly or a House of Assembly shall not enact any law, that ousts or purports to oust the jurisdiction of a court of law of a judicial tribunal established by law**".
- 5.2 **SECTION 1(3) of the Constitution of the Federal Republic of Nigeria** clearly states that "If any other law is inconsistent with the provisions of the Constitution, this constitution shall prevail, and the other law shall to the extent of the inconsistency be void". We urge your Lordship to so hold that **Section 839 particularly subsections 1 to 3 and 11** is inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria
- 5.3 We do not wish to write much, my Lord, as we are convinced that that circumstances of this suit and the provisions of the Law are clear enough for an easy decision by this Honourable Court.

mandated the court to give an order without recourse to the discretionary powers of the court or right of fair hearing for the other party that can be affected by the decisions of the Commission.

6. I believe the provisions of Section 839 subsection 1-3 of the Companies and Allied Matters Act, 2019 do not give fair hearing to a responding party to the Commission's petition as the defendant's rights to defend, cross petition or counterclaim were not captured in the Act.
7. I believe that the provisions of Section 839 sub section 1-3 is in contravention of the Constitution of the Federal Republic of Nigeria 1999 (as amended) and the Federal High Court Act LFN 2004.
8. That I believe it is only the Judiciary through the courts that can interpret Laws and not the Minister of Trade and Investment or Corporate Affairs commission.
9. That I believe if this is not challenged it will rob the courts of his exercise of discretionary powers and its powers to adjudicate over Companies Related Matters without fear or favour.
10. I believe that provisions of Section 839 of the Companies and Allied Matters 2019 contravenes the Constitution of the Federal Republic of Nigeria.
11. I believe that the Minister of Trade and Investment does not have the powers to give an approval to the Corporate Affairs Commission for an Act inconsistent with the Constitutional provisions, thereby making Sections 839 subsection 11 of the Companies and Allied Matters Act contrary to the supreme Law of the Land.
12. I have approached this Honourable Court for an order this Court deem fit will help to clear the ambiguity and defectiveness of the provisions of Section 839 subsections 1 to 3 and 11 of the Companies and Allied Matters Act, 2019.

4.6 We submit that the 1st Defendant erred by vesting an arrogant power on the 2nd and 3rd Defendant by the provisions of **Section 839 subsection 2 of the Companies and Allied Matters Act, 2019** and I quote "trustees shall be suspended by an order of court upon the petition of the Commission". And Section 839 subsection 11 further states that "The Commission shall only exercise its powers under this section in respect of any association with the approval of the Minister".

4.7 My Lord, the practical explanation for the above preposterous provisions of **Section 839 (2) and 11 the Company and Allied Matters Act 2019** is that the 2nd Defendant will raise a petition against an association and still in the same vein get a mandatory court order without right to fair hearing from the party alleged of infraction; this in our humble submission is unconstitutional and an exercise of this aforesaid powers by the 2nd and 3rd Defendant is them being a Judge in their own case.

4.8 **Section 7(e) of the Federal High Court Act, Cap F12, LFN 2004** vests all decisive powers on the Federal High court in relation to Companies and Allied Matters Act so the 2nd and 3rd Defendant cant share in the jurisdiction of the courts. The adjudicatory powers on Laws is an exclusive power vested on the court as stated thus "(1) The court shall to the exclusion of any other court have original jurisdiction to try civil cause and matters- (e) arising from the operation of the Companies and Allied Matters Act or any other enactment replacing that act or regulating the operation of companies incorporated under the Companies and Allied Matters Act;".

4.9 My Lord on the second issue of fair hearing as enshrined under **Section 36(1) of the Constitution of the Federal Republic of Nigeria 1999 (As amended)** states thus "In the determination of the civil rights and obligations including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality". We won't argue on this provisions of the law too much as it is a law visible to the blind and audible to the deaf in Nigeria that a party who is sued has

CONCLUSION

- 5.4 We conclude that this suit is meritorious and urge my Lord to grant same.

DATED THIS 26TH DAY OF AUGUST, 2020



· B.S AKINWUMI
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