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IN THE FEDERAL HIGH COURT
HOLDEN AT LAGOS, NIGERIA
ON THURSDAY THE 8TH DAY OF FEBRUARY 2007
BEFORE HONOURABLE JUSTICE P.F. OLAYIWOLA
JUDGE

FHC/L/CS/721/05

BETWEEN:-

ZUMAX NIGERIA LIMITED

PLAINTIFF

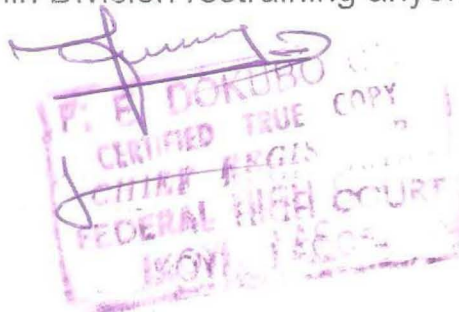
AND

MR. EDWIN OKWUOMA CHINYE & ORS. DEFENDANT

RULING

The main thrust of this preliminary objection by the 1st defendant is that the Counsel Ukpong and Omotoso have no valid authority to institute this action on behalf of the Plaintiff's Company.

Learned Counsel to the applicant Mrs. A. Williams SAN relied on the affidavits and further affidavits in Support and submitted that the Plaintiff is under Receivership and that by virtue of this and sections 206 and 303 of the Companies and Allied Matters Act, it is the Receivers only that can instruct a Counsel to institute an action on behalf of the Company. Learned Counsel also referred to a ruling of the Federal High Court Benin Division restraining anyone apart from



the Receiver from dealing with the assets of the Company. Learned Counsel relied on a plethora of authorities.

Learned Counsel to the Plaintiff/Respondent Mr. A.O. Omotosho opposed the application and relied on the several counter affidavits to that effect.

Learned Counsel submitted that it is only the Plaintiff Company that could complain about the Counsel and not the 1st Defendant. He went on that Mr. Biu lacks the capacity to say that the Receiver did not authorize this suit as he is only one of the two Receivers appointed to run the affairs of the Company.

Counsel also submitted that the Receivers were appointed by the 2nd Defendant and that Receivers had recovered over and above the sums in respect of which they were appointed. He argued further that the Receivers could only act in respect of assets covered by the Receivership and that even where a Receiver has entire jurisdiction over the Company. The Receiver would still need leave of Court to institute an action in the name of the company.

Counsel also argued that directions of the Plaintiff Comapy are not functus officio in the light of the circumstance of this suit.

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Counsel also submitted that the suit in Benin has no bearing on the present action as it was only to protect the Receivers appointed at the time.

In reply of points of law Mrs Williams referred to section 209 (3) Section 393 (3) and section 606 (1) of the CAMA on duties of a receiver as well as Nigeria Company Law by Orojo, 3rd edition on duties and powers of a Receiver.

I have perused the submissions of both Counsel and the avalanche of decided authorities relied upon by them.

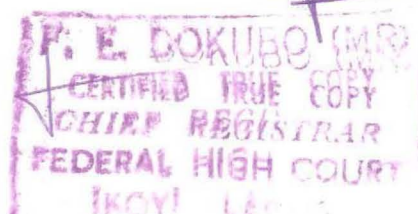
I have looked at sections 206 and 393 of CAMA relied upon by both sides to this application.

Section 206 provides that the appointment of a Receiver shall be registered within 7 days from date of the appointment and notice of that fact shall be given to the corporate Affairs Commission

Section 206 (2) provides that when the appointment of such a Receiver ceases to take effect, notice of the fact must be given to the Commission.

sect 206 (1) & (2)

- (1) If any person obtains an order for the appointment of a receiver or manager of the property of a company, or appoints such a receiver or manager under any powers contained in any instrument, he shall, within seven day from the date of the order or the appointment under the said powers, give notice of the fact to the Commission and the Commission



shall, on payment of such fee as may be specified by regulations made under this Act, enter the fact in the register of charges.

- (2) Where any person appointed receiver or manager of the property of a company under the powers contained in any instrument, ceases to act as such receiver or manager, he shall, on so ceasing, give the Commission notice to that effect, and the Commission shall enter the notice in the register of charges.


Section 393 of CAMA also prescribes the duties, powers of Receivers Managers.

Section 393(1) provides as follows:-

A person appointed a receiver of any property of a company shall, subject to the rights of prior incumbrancers, take possession of and protect the property, receive the rents and profits and discharge all out-goings in respect thereof and realise the security for the benefit of those on whose behalf he is appointed, but unless appointed manager, he shall not have power to carry on any business or undertaking.

From the facts deductible from the affidavits of both sides the fact that the Plaintiff's company was under the receivership of Messrs Biu and Idigbe SAN since 24th January, 2002 is not disputed.

From the authorities cited before me, decided authorities and reference authors it is not disputed that it is the Receiver who has the right to sue and be sued on behalf of the Company.


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The Supreme Court has however laid down the principle that Court would look into the whole circumstances of a case before pronouncing on who can sue and be sued.

In the case of **Intercontractors V. N.P.F.M.B (1988)2 NWLR (part 76) 280 at 293 the Supreme court per Karibi White Justice**

Supreme Court held as follows:-

"The Contention that the Plaintiff/Respondent cannot bring an action against the Defendant's Company for any claim whatsoever is predicated on the assumption that on the appointment of a Receiver/Manager all rights of action by any person against the Company whether or not related to the assets in receivership becomes frozen against all assets of the Company. This I have pointed out is not the law and has never been. As I have stated already, only assets included in the charge are affected by the Receivership --- In the instant case and on general principle although the Directors cannot deal with the assets in receivership they are not functus officio for all purposes. They are still entitled to exercise their normal functions on other cases not included in the charge. The Company still retains its legal personality and can be sued in its own name in respect of all actions which properly lie"

In the matter on hand, the claim of the Plaintiff/Respondent that the debt owed to the 2nd Defendant over which Receivers/Managers were appointed was N465,635,070.16 whereas the Receivers had realized on the account of the Plaintiff the sum of N781,455,166 is uncontroverted.



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It would therefore in my opinion not serve the end of justice to deny the Company to sue in her own name in this matter where the interest of the Receivers and the appointing authority are not jeopardized in any way.

I also draw inspiration from the fact that in the 2nd Reply affidavit of the applicant herein the CAC stated that by 1st June, 2005 a Deed of Discharge had been filed since 1st June, 2005 through the registration of same was not completed till 9th February, 2006.

This suit was filed on 18th July, 2005. My attention has been drawn to the ruling of my learned brother Auta J in an action at the Benin division of the Federal High Court.

I have perused the filing; it only protects the duties of the receivers on board. As I have highlighted above, a deed of discharge has been filed before the commencement of this suit. It has also been shown to Court that the Receivers had in fact realized more than the debt that were appointed for.


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Having regard to all the circumstances that I have enumerated. It is my opinion that this objection cannot be sustained. It is therefore dismissed accordingly.

PFO

Hon. Justice P.F. Olayiwola
Judge.

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