

Hon. Dr. J. Olakunle Orojo in his Book, "Company Law and Practice in Nigeria", Fifth Edition, explained that individuals carry on business under Business Names that may not be in their personal names principally to distinguish and protect such businesses or brand names. Another reason for the common use of Business Names is the protection of members of the public from third-party fraudulent use of such business or brand names.

However, to enjoy the legal protection mentioned above, a Business Name must be registered under Part B of the Companies and Allied Matters Act, 1990.

As Business Names are usually less expensive to register, and also less cumbersome to administer, there are many landed or real property owners who acquire their landed properties or interest in land in their Business Names and not in their personal names. Recent judicial pronouncements have however called into serious question the legal propriety of the latter practice.

Recent Judicial Pronouncements on Business Names and Land Ownership

The Court of Appeal, Abuja Division, in 2014, in the case of Federal Capital Development Authority & Ors v. Unique Future Leaders International Limited, following the decision in Bankole & Ors v. Emi Industries Limited (2012) (C.A.), held that an incorporated body like a registered Business Name is not a Juristic Person and so cannot enter into any contract or transaction, including land or real property transactions, in its Business Name.

The Court of Appeal however further held that a registered Business Name can enter into contracts, including land transactions, through its trustees or in the individual names of the Proprietor or Proprietors of the Business Name.

The Court of Appeal's rationale for its above decision is that while the Companies & Allied Matters Act expressly vests on incorporated Limited Liability Companies the capacity to enter into contracts in the name of the Limited Liability Company; and the capacity to sue and be sued; such capacity is not statutorily vested in Business Names. See also the case of Nigerian Bar Association v. Fawehinmi (No. 2) (1989) 4 S.C. (PT. 1) Page 120 paragraphs 1 - 3 for more judicial

pronouncements on juristic, judicial and juridical entities.

The Supreme Court Decisions on Business Names Capacity
The attention of the Court of Appeal in its above decisions does not appear to have been drawn to the Supreme Court decision in *Ataguba & Co. v. Gura Nigeria Limited* (2005) 2 S.C. (Pt. 1) Page 101 @ 106-108 where the Supreme Court held that though non-legal entities like Business Names cannot sue or be sued in their Business Names, an exemption exist where a statute expressly or impliedly grants to such non-legal entity the capacity to sue or be sued *eo nomine*, which means in its own name. Examples of such exemptions are partnerships, trade unions, registered charities and foreign institutions recognised under Nigerian Laws. Cases like *Agbomagbe Bank Ltd v. General Manager G.B. Ollivant Limited & Anor* (1961) All NLR 116 was referred to in this decision.

Based on the Kaduna State High Court (Civil Procedure) Rules 1987, of which States like Lagos State and the Federal Capital Territory have similar High Court (Civil Procedure) Rules provisions, the Supreme Court held that the Appellant, though not a Juristic Person, was enabled to sue or be sued in its Business Name by virtue of Order 11 Rule 9 and Order 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987.

Business Names and Court Rules

Where a Statute grants to a Non-Juristic Person like a Business Name, the capacity to sue and be sued, the opposite party to the Law Suit can apply to a Judge for the Proprietor or Proprietors of the Business Name to disclose their names and addresses before they can proceed with the hearing of the Law Suit.

Conclusion

It is discernable from the above that Business Names can enter into contracts in their registered names, be sued and sue in such Business Names, where there is a Statute or Law which expressly or impliedly vest on Business Names in that territory, such legal authority or capacity.

Where there is no statute or law expressly or impliedly vesting such legal capacity on Business Names, registered Business Names in such territories can enter into contracts, sue or be sued in their Partners or Proprietors names trading under the name and style of such Business

Names.

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