FEDERAL HIGH COURT DETERMINES JURISDICTION TO HEAR A SUIT THAT SEEKS TO INTERROGATE THE "OPERATIONS" OF A FOREIGN COMPANY

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On February 2, 2021, the Federal High Court (FHC) handed down its judgment in a high-profile jurisdictional challenge concerning whether, and to what extent, it can interrogate the "operations" of a foreign company - **Suit No. FHC/L/CS/1946/2019 - Ifidon-Ola and Exoro Energy Holding Limited v Seven Energy International Limited & 13 Ors.**

The decision will be of great interest to foreign companies with proprietary interests in Nigeria, as well as legal and financial advisers who routinely advise on corporate structures and set-ups involving foreign holding companies with Nigerian subsidiaries.

Background

Without obtaining leave of court, the Applicant, an indirect shareholder of the 1st Defendant (a Mauritian company) purported to commence a derivative action on behalf of one of the 1st Defendant's shareholders. The Applicant alleged that the decision of the 1st Defendant's directors to proceed with a restructuring transaction was illegal and ultra vires because the approval of the 1st Defendant's shareholders and security holders was not sought and obtained, before consummating the transaction.

The Defendants challenged the jurisdiction of the FHC and the propriety of the suit, on the basis that the suit was procedurally defective, because, the Applicant failed to obtain requisite leave of the FHC before initiating the suit. More importantly, the Defendants contended that the FHC lacks the powers to interrogate the propriety of the allegations against the 1st Defendant (being a foreign company), and its directors, because the jurisdiction of the FHC by the provisions of section 251 (1) (e) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (the Constitution), is limited to disputes concerning the "operations" of companies incorporated under the Companies and Allied Matters Act (CAMA).

Decision

In a well-considered and landmark judgment, Honourable Justice **Prof. C.A Obiozor,** relying on the Supreme Court's decision in **UBN Plc v. Sogunro,**[1] held that the suit which purports to be a derivative action was incompetent because the Applicant failed to seek leave of court before filing the suit. The judge particularly noted that the Applicant's attempt to apply for leave after commencing the suit is tantamount "to putting the cart before the horse", as leave of court cannot be retrospectively sought in derivative actions.

Although the above finding was sufficient to dispose of the suit, the FHC went a step further to decide the important question of the jurisdictional remit of the FHC over a foreign company, finding that:

(i) While a foreign company can sue and be sued in Nigeria pursuant to section 60 of CAMA, the jurisdiction of the FHC in relation to disputes

[1] (2006) 16 NWLR (Pt. 1006) 504 (SC)

touching on the regulation, running or management of the affairs of a company, or its control, is limited to companies that are incorporated under CAMA. In other words, the jurisdiction of the FHC in relation to the management and control of companies, is limited to disputes which can only be decided by having recourse to CAMA.

(ii) The action essentially interrogates the "running", "management" and "operations" of a foreign company, incorporated under the laws of Mauritius, and is therefore outside the FHC's jurisdictional remit.

(iii) To the extent that the 1st Defendant is a foreign company, its regulation and operations do not qualify as "operations" of companies under CAMA, as envisaged by the Constitution.

This historic decision is a welcome development, as it reflects the legislative intent underpinning the scope and extent of the jurisdiction of the FHC, in so far as it relates to jurisdiction to entertain questions arising from the "operations" of companies incorporated under CAMA. The decision also clarifies the point that questions relating to the "operations" of foreign companies, should not be subject to the jurisdiction of the FHC, even when such foreign companies have Nigerian subsidiaries, or have proprietary interests in Nigerian assets.

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