**U.O.O. NIGERIA PLC**

**V.**

**MR. MARIBE OKAFOR & ORS**

IN THE SUPREME COURT OF NIGERIA

ON FRIDAY, THE 13TH DAY OF MARCH, 2020

SC.713/2016

**LEX (2020) – SC. 713/2016**

**OTHER CITATIONS**

3PLR/2020/48 (SC)

(2020) LPELR-49570 (SC)

**BEFORE THEIR LORDSHIPS**

OLABODE RHODES-VIVOUR, JSC

MARY UKAEGO PETER-ODILI, JSC

CHIMA CENTUS NWEZE, JSC

AMINA ADAMU AUGIE, JSC

EJEMBI EKO, JSC

**BETWEEN**

U.O.O. NIGERIA PLC - Appellant(s)

AND

1. MR. MARIBE OKAFOR

2. BARR. NNAEMEKA AKUNETO

3. OBIMMA OZOEMENA

4. UDEWULU NZEDINMA

5. OKEZIE OKAFOR

6. AMUZIE OKAFOR

7. CHUKWUMA NNAJI

8. EMEKA EZE

9. NDUBUEZE EZE

10. UGWUMBA OKAFOR

11. NWANZE IBE

12. CHUKWUMA ANABUIKE

13. CHIGOZIE EZE

14. MOUNEKE AKPUDUMOGO

(For themselves and on behalf of all Shareholders of U.O.O. Nigeria Plc., excluding Edozie Okafor, Abalunnye Okafor, Igpoabianomagba Okafor, Nwokedike Okafor, Mrs. Mgborie Okafor, Nsobundu Okafor, Nwaorah Okafor, Otoh Okafor, Chukwudinka Okafor, Mrs. Ukaegbu Okafor, Nzekunie Nduaguba, Ugwunnwa Okafor, Anosike Okafor, and any other Shareholder, who supports them) - Respondent(s)

**ORIGINATING COURT(S)**

1. COURT OF APPEAL

2. FEDERAL HIGH COURT, LAGOS [Okeke, J., Presiding]

**REPRESENTATION**

Emeka Ngige, SAN, with him, Onyeka Obiajulu, Esq. - For Appellant

AND

Dickson Anieh, Esq. - For Respondent

**ISSUES FROM THE CAUSE(S) OF ACTION**

COMPANY LAW - MEETING(S): Whether a chairman removed by the shareholders of a company has the locus standi to preside over subsequent meetings of the board as chairman

COMPANY LAW - MEETING(S):- Combined reading of Sections 214 and 218 of CAMA - Sufficient notice for meeting of company – What constitutes – Statement that "the purpose is to transact the ordinary business of an AGM” - Whether the removal, election, appointment of director constitute one of the ordinary businesses of an annual general meeting

COMPANY LAW - MANAGING DIRECTOR:- "Life Chairman of the Board of Directors or Managing Director for Life" – Appointment of a person thereto – Whether consistent with the provisions of the companies and Allied Matters Act, CAMA - Sections 255, 248, 262 and Section 263 in review

COMPANY LAW –MEMORANDUM AND ARTICLES OF ASSOCIATION:- Illegal and unenforceable provision contained in the Memorandum and Articles of Association of a company - Whether does not require a formal amendment to deprive it of the force of law – Basis of

COMPANY LAW - MEETING(S):- Election of Chairman of a Company – When an ordinary member who was not at the time a Director is elected thereto - Section 240 (2) of CAMA – Where there is no evidence that a director was present when majority of the Shareholders elected that person – Legal validity of

COMPANY LAW - MANAGING DIRECTOR: Ground(s) for removing a chairman of the Board of Directors or the Managing Director of a company – Necessity to comply with Section 262 of CAMA and for the existence of a special notice - Whether the chairman of the Board of Director or the Managing Director can be removed summarily for serious misconduct or when there is crisis of confidence between him and the shareholders

COMPANY LAW - INSTITUTING AN ACTION IN THE NAME OF A COMPANY:- Action instituted in the name of a company – Where its essence does not disclose injury or harm to the company but ventilates private grievances of current/former officer/member – Propriety of instituting such an election in the name of the company

COMPANY LAW - INSTITUTING AN ACTION IN THE NAME OF A COMPANY:- Action taken by the Annual General Meeting, AGM pursuant to Section 65 of CAMA - Company law principle that the AGM represents the source of ultimate authority within the corporate governance – Removal and replacement of the chairman of a company through the instrumentality of the shareholders/members in a validly convened AGM – Whether can be challenged in the name of the company without an extra ordinary general meeting summoned pursuant to Section 215 of CAMA either to review or set aside the proceedings of the last AGM

COMPANY LAW – ANNUAL GENERAL MEETING, AGM:- Meaning and purpose of - Powers of – Resolutions arising therefrom – Legality of – How cannot be challenged – Conditions precedent before it can be set aside – Individual member(s) who feels adversely affected by the decision of AGM – Whether cannot rightly use the name of the company to sue the shareholders for taking the decision

COMPANY LAW - MEETING(S):- Chairman of a company removed by the shareholders of a company – Whether lacks the capacity or locus standi to summon and preside over any subsequent meeting of the Board as chairman until he had successfully challenged that removal

COMMERCIAL LAW –CONTRACT – ILLEGAL CONTRACT:- Clause in the Memorandum and Articles of Association of a company which purported to make a person a "Managing Director for Life" or "Board Chairman for Life" contrary to the express provisions of the law – Whether constitutes an illegal contract which unenforceable

CONSTITUTIONAL LAW – JUDICIARY – RIGHT OF ACCESS:- Right of a litigant to the direct and "easy accessibility" to a Court secured and maintained by Section 17(2)(e) of the 1999 Constitution, so as to invoke the judicial powers of the Court of law in relation "to all matters" under Section 6(6)(b) of the Constitution - Whether is only available to the persons in whom the right to enforce the cause of action is legally vested

**PRACTICE AND PROCEDURE ISSUES**

ACTION - PARTIES:- Proper parties and implication for the jurisdiction of the Court – Duty of court to ensure that proper Parties to whom rights and obligations arising from the cause of action can attach are before it

ACTION - LOCUS STANDI:- Locus standi and competency of suit – Legal effect of a suit initiated by a party without the requisite locus standi – Justification of

JUDGMENT AND ORDER - CONSEQUENTIAL ORDER:- Nature and basis of – Powers of court to grant same

**CASE SUMMARY**

ORIGINATING FACTS AND CLAIMS

The Appellant Company was founded by one late Nze Uche Okafor, who had seven wives, and fifty-five Children. Before his death in January 2007, the late Uche Okafor, had by a letter dated 27/1/2004, tendered his resignation as the Chairman/Managing Director/Chief Executive of the Company, to the Board of Directors, and appointed his son, "Edozie Uche Okafor", as his nominee for the said positions. At its General Meeting held on 6/8/2004, the compamy took steps to implement those request including the insertion into the Articles of Association of the Company lodged with the Corporate Affairs Commission, the following Paragraph 80(d) viz:

“Mr. Edozie Uche Okafor, having been nominated by Chief Uche Okafor to succeed him as Chairman, Managing Director/Chief Executive (MD/CEO) of the Company is hereby made a life Director of the Company and the Chairman, Managing Director and Chief Executive of the Company for life. The said Edozie Uche Okafor is hereby made the Chairman of the Board of Directors for life. Any contrary provisions to this effect on this Articles of Association is to be interpreted subject to the provision of this Clause.”

In February 2005, some of the Directors and Shareholders indicated their desire to disinvest from the Company, and at an Extra Ordinary General Meeting of the Company held on 9/2/2005, a 10-man Asset Valuation Committee was set up to inter alia value its assets/shares. The Committee worked with some professional companies and came up with a unit price of N1.50 Naira per share which was rejected, but after further negotiations, the Parties agreed to N2.65 Naira per share. At the Annual General Meeting (AGM) of the Company held at Aba on 9/3/2007, the SPECIAL BUSINESS on the AGM's Agenda was:

To receive and adopt N2.65k as the value of each share of U.O.O. Nigeria Plc., as agreed by the Members of the Revaluation Committee.

But, as the Chairman, Nze Edozie Okafor, was reading his Address, and mentioned the said unit price of N2.65k, there was commotion, and the Meeting became very rowdy. The said Chairman left the venue of the Meeting when the first Respondent moved a Motion for his removal as Chairman of the Company. He was later informed that the Directors and Shareholders, who stayed behind, voted to remove him as the Chairman and that the first Respondent, who moved the said Motion, was appointed the new Chairman.

On 21/3/2007, Nze Edozie Okafor took out an action against the Respondents at the Federal High Court, Lagos in the name of the Appellant Company. On 13/7/2007, he summoned a Meeting of the Board of Directors to ratify his action, and the Board resolved that:

The action taken by the Chairman to go to Court to challenge the alleged removal of the Chairman was in order and thereby gave its authority to the effect that the matter should be diligently pursued.

The Statement of Claim (as later amended) claimed among others:-

“a. A Declaration that the purported removal of the Chairman of the Board of Directors, Nze Edozie Uche Okafor, from office at the Annual General Meeting of 9/3/2007 is unlawful, illegal, null and void, the proceedings if any, not having been conducted in compliance with the Articles of Association of the Company and the Companies and Allied Matters Act (CAMA).

c. A Declaration that the purported appointment of 1st Defendant as the Chairman/Managing Director by the Defendants in whatever capacities in pretentious running of the plaintiff's affairs are illegal, null, void and of no effect whatsoever.”

The Respondents/Defendants also counter-claimed, among others, for the following:-

“1. A Declaration that the Defendants, as shareholders of U.O.O Nigeria Plc, have the legal right to disinvest in the Company and take away whatever belongs to them by way of cash, shares, dividends, benefits, profits and other entitlements.

2. An order of Court compelling the plaintiff to allow the Defendants to disinvest in the Company and take away whatever they are entitled to by way of cash, shares, dividends, profits, benefits and all entitlements that accrued to them as investors/ shareholders in the Company.

5. An Order of Injunction restraining the Plaintiff and any person(s) claiming to be its agents or representatives, particularly Edozie Okafor and Abalonye Okafor, from selling, mortgaging and in any other way howsoever disposing of the Company's assets for any other purpose whatsoever until (they) are fully settled.”

At the trial itself, it was argued for the Respondents that the action cannot be maintained in the name of the Company because evidence led at the trial shows that this is a personal action on the part of PW1 (the purportedly removed Chairman). In his Judgment, the learned trial Judge, Okeke, J., held:-

(a) on the question of who should sue that “since (PW1) is the alter ego of the Plaintiff, he actually has no locus standi to sue the Plaintiff for his purported removal as Chairman of the Plaintiff's Board since the said removal did not affect his position as the MD/CEO of the Plaintiff; rather it is the Board of the Plaintiff that has the right to sue in the name of the Plaintiff, as it has done in this instance.

(b) after considering the main case, that “PW1, Nze Edozie Okafor, was validly removed as the Chairman of the Plaintiff Company and Mr. Amaribe (sic) Okafor, validly elected the new Chairman - PW1 having been validly removed as Chairman of the Plaintiff Company, lacked the locus to preside over a Meeting of the Board of Directors on the Plaintiff Company to authorize the commencement of this Suit in the name of the Company.”

In relation to the Defendant/Respondents' Counter-Claim, the Court held that “both the Plaintiff and the Defendants agree that the Defendants are Shareholders in U.O.O. Nigeria Plc. The Parties are in agreement that the Defendants and other Shareholders are entitled to disinvest in the Plaintiff Company. The dispute is the value of the unit share of the Plaintiff. In the interest of justice, it is ordered as follows -

1. That Mr. Amaribe Okafor, as the Chairman - in collaboration with the management constitutes a 12- man Committee to work out modalities for the disinvestment/settlement of the Defendants and other shareholders on the true and current value of the Company.

2. That the Plaintiff Company, its former Chairman, the Directors and Officers are restrained from selling, further mortgaging and in any other way howsoever from disposing of the Company' s assets for any other purpose until the full settlement of the Defendants and other Shareholders, who wish to disinvest.”

Dissatisfied with the Trial Court's decision, the Appellant appealed to the Court of Appeal which held that "on both the evidence of the facts disclosed and the Law, the Appeal lacks merit". It therefore dismissed the Appeal and affirmed the decision of the trial Court.

DECISION(S) APPEALED AGAINST

The Court of Appeal delivered its Judgment on 18/5/2016, wherein it held as follows on the issue of competency:

It is trite law that where a Company suffers any injuries done to it, actions in respect of such injuries can be brought only in the name of the Company. There is no injury suffered by the Appellant Company. However, there is an allegation of injury suffered by a person named Nze Uche Okafor (sic), whose name in not a synonym or substitution for or an alias also known as U.O.O. Nigeria Plc., by any stretch of imagination … What is involved in this Appeal is not directly about assets of the Appellant Company but the self-serving interest of Nze Edozie Okafor... Within the conceptual framework of "alter ego" and "liability", therefore, it is patently unconscionable for Nze Edozie Okafor to arrogate to himself through the use of the Company on 13/7/2007 the capacity and the competence as Chairman/MD/CEO to institute the action in the name of the Appellant Company after the AGM of 9/3/2007… In the context of this Appeal, therefore, which on the face of it is a struggle for power between two organs of the Appellant Company, that is the AGM and the Board of Directors, it is dysfunctional for any Meeting of the Board of the Directors after the AGM of 9/3/2007 of the Appellant Company to be chaired by Nze Edozie Uche Okafor on the 13/7/2007.

ISSUE(S) FOR DETERMINATION ON APPEAL

*BY APPELLANT:*

1) WHETHER the Court below was right when it held that the "majority shareholders" did not breach Article 80 of the Articles of Association of the Appellant or any provisions of CAMA in the purported removal of the Appellant's Chairman?

2) WHETHER the Court below was right when it held that the offices of the Chairman, Chief Executive Officer and Managing Director of the Appellant are "intertwined and inseparable in the organogram of the Appellant Company"?

3) WHETHER the Court below was right when it held that the reliefs granted to the Respondents were not in excess of the reliefs claimed by the Respondent in their Counter Claim at the trial Court?

4) WHETHER the Court below was right when it held that the institution of this Suit at the trial Court was not authorized by the proper organ of the Appellant?

5) WHETHER the Court below was right when after finding as a fact at pages 1 - 2 of the Judgment (pages 1068 - 1069 of the Record) of the bedlam that afflicted the ALGM resulting in the presiding Chairman of the Appellant being chased away from the Meeting, still went ahead and endorsed the election of the 1st Respondent as the Chairman of the Appellant?

*BY RESPONDENTS*

The Respondents adopted the Issues formulated by the Appellant in their Brief of Argument, "with slight modifications"

1. WHETHER the facts of the Appellant's case as narrated by the Court of Appeal in its Judgment at pages 1068 to 1069 of the Record of Appeal, Vol. 111, constitute findings of fact, to vitiate the Lower Court's affirmation of the trial Court's Judgment with respect to the election of the 1st Respondent as Chairman of the Appellant.

2. WHETHER the Lower Court was right when it affirmed the Judgment of the trial Court, holding that Mr. Edozie Okafor was validly removed as Chairman of the Appellant, that the offices of the Chairman, Chief Executive Officer and Managing Director of the Appellant are intertwined/inseparable in the organogram of the Company.

3. WHETHER the Lower Court was right when it held that Mr. Edozie Uche Okafor, having been removed from office by the Shareholders of the Appellant as its Chairman at the last Annual General Meeting (AGM), had no authority to summon and preside over as the same Chairman, the Meeting that authorized the institution of the action at the trial Court

4. WHETHER the Lower Court was right when it held that the reliefs granted by the trial Court in favour of the Respondents were not in excess of the reliefs sought in the Counter Claim.

*AS ADOPTED BY COURT*

The Issues formulated by both Parties raise same questions but it is clear that the issue of whether this action filed in the name of the Appellant Company is competent or not, must take center stage.

DECISION OF SUPREME COURT

1. As I said, a matter cannot be heard on its merits unless there is a cause of action, and the Plaintiff has the right to bring the action -Utih V. Onoyivwe (supra). In this case, the Appellant Company has no cause of complaint; it did not suffer any injury when the said Edozie Okafor was removed as its Chairman by its Shareholders; and the action was wrongly instituted in its name at the trial Court. So, without a cause of action, it is not a proper Party before the Court.

2. At the time the action in this Appeal was taken out in the Lower Court, it was not authorized by the proper organ of the Appellant Company to do so, and in effect, therefore, it vitiates the competence of the action and the jurisdiction of the Lower Court and the Court of Appeal to adjudicate.

**MAIN JUDGMENT**

ADAMU AMINA AUGIE, J.S.C. (Delivering the Leading Judgment):

The Appellant Company was founded by one late Nze Uche Okafor, who had seven wives, and fifty-five Children. Before his death in January 2007, the late Uche Okafor, had by a letter dated 27/1/2004, tendered his resignation as the Chairman/Managing Director/Chief Executive of the Company, to the Board of Directors, and appointed his son, "Edozie Uche Okafor", as his nominee for the said positions.

At its General Meeting held on 6/8/2004, it was resolved as follows:

1. That Chief Uche Okafor, Chairman/Managing Director/Chief Executive of the Company be and is hereby retired as the Chairman/Managing Director/Chief Executive of the Company, on grounds of old age.

2. That in his place, Mr. Edozie Uche Okafor, be and is hereby appointed the Chairman/Managing Director/Chief Executive of the Company.

3. That steps should be taken to reflect this position at the Corporate Affair s Commission, Abuja.

Paragraph 80(d) of its Articles of Association dated 4/8/2004 reads:

Mr. Edozie Uche Okafor, having been nominated by Chief Uche Okafor to succeed him as Chairman, Managing Director/Chief Executive (MD/CEO) of the Company is hereby made a life Director of the Company and the Chairman, Managing Director and Chief Executive of the Company for life. The said Edozie Uche Okafor is hereby made the Chairman of the Board of Directors for life. Any contrary provisions to this effect on this Articles of Association is to be interpreted subject to the provision of this Clause.

In February 2005, some of the Directors and Shareholders indicated their desire to disinvest from the Company, and at an Extra Ordinary General Meeting of the Company held on 9/2/2005, a 10-man Asset Valuation Committee was set up to inter alia value its assets/shares. The said Committee worked with some professional companies and came up with a unit price of N1.50 Naira per share that was rejected, and after negotiations, the Parties agreed to N2.65 Naira per share.

At the Annual General Meeting (AGM) of the Company held at Aba on 9/3/2007, the SPECIAL BUSINESS on the AGM's Agenda was:

To receive and adopt N2.65k as the value of each share of U.O.O. Nigeria Plc., as agreed by the Members of the Revaluation Committee.

But, as the Chairman, Nze Edozie Okafor, was reading his Address, and mentioned the said unit price of N2.65k, there was commotion, and the Meeting became very rowdy. The said Nze Edozie Okafor left the venue of the Meeting when the first Respondent moved a Motion for his removal as Chairman of the Company. He was later informed that the Directors and Shareholders, who stayed behind, voted to remove him as the Chairman and that the first Respondent, who moved the said Motion, was appointed the new Chairman.

On 21/3/2007, Nze Edozie Okafor took out an action against the Respondents at the Federal High Court, Lagos in the name of the Appellant Company. On 13/7/2007, he summoned a Meeting of the Board of Directors to ratify his action, and the Board resolved that:

The action taken by the Chairman to go to Court to challenge the alleged removal of the Chairman was in order and thereby gave its authority to the effect that the matter should be diligently pursued.

The Statement of Claim was later amended. The Appellant Company claimed the following reliefs in the Amended Statement of claim -

a. A Declaration that the purported removal of the Chairman of the Board of Directors, Nze Edozie Uche Okafor, from office at the Annual General Meeting of 9/3/2007 is unlawful, illegal, null and void, the proceedings if any, not having been conducted in compliance with the Articles of Association of the Company and the Companies and Allied Matters Act (CAMA).

b. A Declaration that the offices of the Chairman and other members of (its) Board of Directors prior to the AGM of 9/3/2007 are still subsisting until otherwise determined in accordance with (its) Memorandum and Articles of Association.

c. A Declaration that the purported appointment of 1st Defendant as the Chairman/Managing Director by the Defendants in whatever capacities in pretentious running of the plaintiff's affairs are illegal, null, void and of no effect whatsoever.

d. A Declaration that all acts done and/or duties performed purportedly by the 1st to 9th Defendants in whatever capacities in pretentious running of the Plaintiff's affairs are illegal, null, void and of no effect whatsoever.

e. A mandatory Order directing the Defendants jointly and severally to hand over all the Plaintiff's properties unlawfully removed by them and to account for and refund all monies, remunerations, dividends and other financial or other benefits derived or received by them in their purported pretended and/or illegal operation of the plaintiff Company.

f. An order against the Defendants jointly and severally to render Account of all their dealings in the name of the plaintiff Company from 13th day of March 2006 till Judgment in this Suit.

The Respondents, who were the Defendants at the trial Court, also amended their Statement of Defence and Counter Claim, and they counter-claimed for the following in their Amended Counter-Claim:

1. A Declaration that the Defendants, as shareholders of U.O.O Nigeria Plc, have the legal right to dis invest in the Company and take away whatever belongs to them by way of cash, shares, dividends, benefits, profits and other entitlements.

2. An order of Court compelling the plaintiff to allow the Defendants to dis invest in the Company and take away whatever they are entitled to by way of cash, shares, dividends, profits, benefits and all entitlements that accrued to them as investors/ shareholders in the Company.

3. An Order of Court compelling the Plaintiff to settle and pay to (them) the total cash value of their investments/share holdings, dividends, profits and other entitlements which accrued to them jointly and severally as investors/shareholders in the Company.

4. An Order of Court constituting or directing the Plaintiff to constitute a 10-man committee made up of nominees of both Parties to work out modalities for the disinvestment/settlement of the Defendants within 14 days from the date of Judgment.

5. An Order of Injunction restraining the Plaintiff and any person(s) claiming to be its agents or representatives, particularly Edozie Okafor and Abalonye Okafor, from selling, mortgaging and in any other way howsoever disposing of the Company's assets for any other purpose whatsoever until (they) are fully settled.

6. An Order of Court directing that all title documents of landed properties belonging to the Plaintiff be deposited with and custody thereof retained by the Deputy Chief Registrar of this Court until the Defendants are fully settled.

At the trial itself, the Appellant called seven witnesses, including Edozie Okafor as PW1, while the Respondents called one witness; and thereafter learned Counsel adopted their Written Addresses.

It was argued for the Respondents that the action cannot be maintained in the name of the Company because evidence led at the trial shows that this is a personal action on the part of PW1.

In his Judgment delivered on 27/3/2013, the learned trial Judge, Okeke, J., disagreed with the Respondents "that PW1 ought to be the one suing" and held as follows on the issue of who should sue:

Since (PW1) is the alter ego of the Plaintiff, he actually has no locus standi to sue the Plaintiff for his purported removal as Chairman of the Plaintiff's Board since the said removal did not affect his position as the MD/CEO of the Plaintiff; rather it is the Board of the Plaintiff that has the right to sue in the name of the Plaintiff, as it has done in this instance.

However, after considering the main case, he concluded as follows:

I therefore hold that PW1, Nze Edozie Okafor, was validly removed as the Chairman of the Plaintiff Company and Mr. Amaribe (sic) Okafor, validly elected the new Chairman - PW1 having been validly removed as Chairman of the Plaintiff Company, lacked the locus to preside over a Meeting of the Board of Directors on the Plaintiff Company to authorize the commencement of this Suit in the name of the Company. All the reliefs claimed by the Plaintiff fail and are accordingly dismissed.

He thereafter held as follows on the Respondents' Counter-Claim:

Both the Plaintiff and the Defendants agree that the Defendants are Shareholders in U.O.O. Nigeria Plc. The Parties are in agreement that the Defendants and other Shareholders are entitled to disinvest in the Plaintiff Company. The dispute is the value of the unit share of the Plaintiff. In the interest of justice, it is ordered as follows -

1. That Mr. Amaribe Okafor, as the Chairman - in collaboration with the management constitutes a 12- man Committee to work out modalities for the disinvestment/settlement of the Defendants and other shareholders on the true and current value of the Company.

2. That the Plaintiff Company, its former Chairman, the Directors and Officers are restrained from selling, further mortgaging and in any other way howsoever from disposing of the Company' s assets for any other purpose until the full settlement of the Defendants and other Shareholders, who wish to disinvest.

Dissatisfied with the Trial Court's decision, the Appellant appealed to the Court of Appeal. The Court of Appeal delivered its Judgment on 18/5/2016, wherein it held as follows on the issue of competency:

It is trite law that where a Company suffers any injuries done to it, actions in respect of such injuries can be brought only in the name of the Company. There is no injury suffered by the Appellant Company. However, there is an allegation of injury suffered by a person named Nze Uche Okafor (sic), whose name in not a synonym or substitution for or an alias also known as U.O.O. Nigeria Plc., by any stretch of imagination. Section 63(3) of CAMA provides that the critical elements in the exercise of the powers of the Company "...are to protect the "business of the Company "as explicitly set out in the object clauses in the Memorandum of Association". In the evidence on the Record, there is nothing that shows that it is the corporate object of the U.O.O. Nigeria plc., to manage the style of life of Nze Okafor as a business of the Company within the framework of Section 63(3) or Section 279(3) of CAMA 2004. What is involved in this Appeal is not directly about assets of the Appellant Company but the self-serving interest of Nze Edozie Okafor... So far as the enterprise in this action is not one authorized by the Memorandum of the Company, the people who authorized it are binding the Company to a liability, which the Company cannot escape; and by the syntax of logic, the only liability that can be incurred by the Appellant Company is if Nze Okafor were to sue for breach of contract created in his favour by the Memorandum and Afticles of Association; it is only in this context can emerge any capacity or competence for the Appellant Company to incur any liability in its own name in respect of any injuries suffered by Nze Okafor transliterated by trans positioning into the competence and capacity of the Appellant Company to have suffered any injuries for which it is now seeking remedy or redress... Within the conceptual framework of "alter ego" and "liability", therefore, it is patently unconscionable for Nze Edozie Okafor to arrogate to himself through the use of the Company on 13/7/2007 the capacity and the competence as Chairman/MD/CEO to institute the action in the name of the Appellant Company after the AGM of 9/3/2007. It is an unmitigated pre-supposition founded on misguided and false presumption that Nze Edozie Uche Okafor can by this Appeal be re-instated through the back-door of corporate governance Section 263(4) of CAMA provides that the Board of Directors of a Company elects, who is to be the Chairman. This election is, however, in practice pursuant to the decision of the Members at the AGM that "constituted the Board" for the purposes of running the authorized business of the Company in accordance with the Memorandum of Association and in respect of which Management, Members as Shareholders of the Company are liable to the extent of their shareholding and it is to this extent and within this context that the MD/CEO of any Company is its alter ego or directing mind. In the context of this Appeal, therefore, which on the face of it is a struggle for power between two organs of the Appellant Company, that is the AGM and the Board of Directors, it is dysfunctional for any Meeting of the Board of the Directors after the AGM of 9/3/2007 of the Appellant Company to be chaired by Nze Edozie Uche Okafor on the 13/7/2007. The entire testimony of Nze Edozie Uche Okafor as PW1, was as a Witness not for the Appellant Company but for himself.

At the end of the day, the Court of Appeal held that "on both the evidence of the facts disclosed and the Law, the Appeal lacks merit"; it dismissed the Appeal and affirmed the decision of the trial Court.

Further aggrieved, the Appellant filed two Notices of Appeal in this Court. It withdrew the first one, and its Brief of Argument is based on the Notice of Appeal filed on 27/6/2016, which contains six Grounds of Appeal, and it formulated five Issues for Determination:

1) WHETHER the Court below was right when it held that the "majority shareholders" did not breach Article 80 of the Articles of Association of the Appellant or any provisions of CAMA in the purported removal of the Appellant's Chairman?

2) WHETHER the Court below was right when it held that the offices of the Chairman, Chief Executive Officer and Managing Director of the Appellant are "intertwined and inseparable in the organogram of the Appellant Company"?

3) WHETHER the Court below was right when it held that the reliefs granted to the Respondents were not in excess of the reliefs claimed by the Respondent in their Counter Claim at the trial Court?

4) WHETHER the Court below was right when it held that the institution of this Suit at the trial Court was not authorized by the proper organ of the Appellant?

5) WHETHER the Court below was right when after finding as a fact at pages 1 - 2 of the Judgment (pages 1068 - 1069 of the Record) of the bedlam that afflicted the ALGM resulting in the presiding Chairman of the Appellant being chased away from the Meeting, still went ahead and endorsed the election of the 1st Respondent as the Chairman of the Appellant?

The Respondents adopted the Issues formulated by the Appellant in their Brief of Argument, "with slight modifications", as follows:

1. WHETHER the facts of the Appellant's case as narrated by the Court of Appeal in its Judgment at pages 1068 to 1069 of the Record of Appeal, Vol. 111, constitute findings of fact, to vitiate the Lower Court's affirmation of the trial Court's Judgment with respect to the election of the 1st Respondent as Chairman of the Appellant.

2. WHETHER the Lower Court was right when it affirmed the Judgment of the trial Court, holding that Mr. Edozie Okafor was validly removed as Chairman of the Appellant, that the offices of the Chairman, Chief Executive Officer and Managing Director of the Appellant are intertwined/inseparable in the organogram of the Company.

3. WHETHER the Lower Court was right when it held that Mr. Edozie Uche Okafor, having been removed from office by the Shareholders of the Appellant as its Chairman at the last Annual General Meeting (AGM), had no authority to summon and preside over as the same Chairman, the Meeting that authorized the institution of the action at the trial Court

4. WHETHER the Lower Court was right when it held that the reliefs granted by the trial Court in favour of the Respondents were not in excess of the reliefs sought in the Counter Claim.

The Issues formulated by both Parties raise same questions but it is clear that the issue of whether this action filed in the name of the Appellant Company is competent or not, must take center stage.

The Appellant has however, argued that the Trial Court did not make any finding on the said issue; that the Respondents did not file a Cross Appeal or Respondent's Notice to raise the issue, so they are estopped from raising the issue; and that Nze Edozie Okafor had locus to chair the said meeting of the Board of Directors wherein the decision to institute this action at the Trial Court, had been taken.

The Respondents contend that Nze Edozie Okafor lacked locus to preside over the Meeting of 13/7/2007; that the incompetence of a suit intrinsically raises the issue of jurisdiction, therefore, the Court can raise it suo motu based on facts and evidence before it; and that "whether (they had) raised it at the trial or not, whether there was a Cross Appeal or Respondent's Notice, is of no moment and the absence of that does not preclude the Court from raising it."

Furthermore, that Parties cannot by consent or acquiescence confer jurisdiction on the Court where there is a feature in the case, which affects the jurisdiction of the Court; and that jurisdiction and competence of Parties are issues of law, therefore, the Court below did not require a Cross Appeal or Respondent's Notice to rule on it.

The Respondents are right; the question of proper Parties is a very important issue, which would affect the jurisdiction of the Court, since it goes to the foundation of the Suit in limine. In effect, where the proper Parties are not before the Court then the Court lacks jurisdiction to entertain or hear the Suit - See Cotecna Int. Ltd. V. Churchgate (Nig.) Ltd. & Anor (2010) 18 NWLR (pt. 1225) 346 SC.

See also Utih V. Onoyivwe (1991) 1 NWLR (pt. 166) 166 SC, wherein this Court per Karibi-Whyte, JSC, explained as follows -

It is a well settled principle for the administration of justice in our judicial system that a matter cannot be heard on its merits unless there is a cause of action, and the Plaintiff has the right to bring the action... The Court in which the action has been brought can only validly exercise jurisdiction to hear and determine the matter in such circumstances.

So, before an action can succeed, the Parties must be shown to be the proper Parties to whom rights and obligations arising from the cause of action can attach - see Ehidimhen V. Musa (2000) 8 NWLR (Pt. 669) 540 SC, Peenok Ltd. V. Hotel Presidential (1983) NCLR 122.

It is also well settled that to determine whether a plaintiff is a proper Party or not, all that the Court is required to do is to examine his claim(s), which gives him the right to initiate the action for the alleged wrongful act - see Bello V. INEC (2010) 8 NWLR (pt. 1196) 342.

A cause of action consists of the Defendant's wrongful act that gives the Plaintiff his cause of complaint - see Adesokan V. Adegorolu (1997) 3 NWLR (Pt. 493) 261, Agbanelo V. UBN (2000) 4 SC (Pt. 1) 2333, Oduntan V. Akibu (2000) 7 SC (pt. II) 106, A.G. Fed. V. ANPP (2003) 12 SCNJ 67. The factual situation on which the plaintiff relied to support his claim must be recognized by law as giving rise to a substantive right capable of enforcement or being claimed against the Defendant - see Cookey V. Fombo (2005) 15 NWLR (pt. 947) 182.

In this case, Nze Edozie Okafor was removed as the Chairman of the Appellant's Board of Directors at the AGM held on 9/3/2007. The issue at this point is not whether he was validly removed as the Chairman by the Respondents, but whether he was right to institute the action at the trial Court in the name of the Appellant Company. He did not hide the fact that he had filed the action at the trial Court.

In the Minutes of the Board Meeting of 13/7/2007, which is at pages 236-241 of the Record, it was stated under post AGM that -

The Chairman informed the Board of the fall-out of the AGM held at Aba on 9/3/2007. He said that the Members at the General Meeting rejected the share price of N1.50k reached by the professionals... He said he had to declare the Meeting closed because the Meeting became uncontrollable. He further informed the Board that he learnt that after he left, some Members purportedly elected a new Chairman and Secretary and that he had challenged the action at the Federal High Court, Lagos. The case was still pending... The Chairman said that because of the urgency of the matter, he consulted a Lawyer to challenge the alleged removal and hereby sought the Board to ratify his action. The Board resolved that the action taken by the Chairman to go to Court to challenge the alleged removal of the chairman was in order and thereby gave its authority to the effect that the matter should be diligently pursued.

The contention in this Appeal is that the said Nze Edozie Okafor was denied fair hearing in his purported removal as the Chairman by the Respondents. It was submitted that Nze Edozie Okafor was not at the said Meeting when the Motion for his removal was moved, therefore, he was not given the opportunity to defend himself; and that the consequence thereof is that the proceedings are null and void, citing Dingyadi V. INEC (No. 1) (2010) 18 NWLR (pt. 1224) 1 SC.

It was also argued that it was the Company's Memorandum and Articles of Association that was violated by the Respondents, and it is the Company that is wronged, therefore, it has locus standi to challenge such act by instituting an action to remedy the wrong.

The Respondents argued that the decision taken at the AGM is a decision of the Company, and an individual member cannot use its name to sue the Shareholders for taking the said decision; and that any such action is misconceived and unsustainable in law.

They also contend that initiating a personal action against the Company was the only remedy open to Nze Edozie Okafor, and if his argument that he was not given fair hearing is anything to go by, then he is the proper plaintiff ''and not the Appellant, who allegedly denied him the fair hearing through the shareholders"; and that -

The complaint in the Appellant's Brief - is that Edozie Okafor was not given fair hearing by the Shareholders before his removal and not that the Company - was not given fair hearing. This further supports the submission that the action was wrongly initiated in the name of the Appellant Company.

Once again, I agree with the Respondents. The question in this case boils down to whether the Appellant Company itself was denied fair hearing when the said Edozie Okafor was removed as its Chairman? The Court of Appeal made two potent findings that provide answers to this question - "there is no injury suffered by the Company"; and - "what is involved in this Appeal is not directly about assets of the Company but the self-serving interest of the said Nze Edozie Okofor."

What could be clearer? As the Respondents rightly submitted, the first relief sought in the Amended Statement of Claim filed at the Trial Court shows clearly that the person actually aggrieved by what they did is Nze Edozie Okafor and not the Appellant Company.

The said Nze Edozie Okafor, who replaced the founder of the Appellant Company, was removed as the Chairman of the Company, by the Respondents, who are Shareholders of the same Company.

The Appellant Company is therefore the umbrella that covers both the Chairman/MD/CEO of the Company and the Shareholders. How can the quarrel between the Parties under the said umbrella, constitute an injury to the Appellant Company, and in what way did the removal of Nze Edozie Okafor as Chairman by the Respondents, amount to denial of fair hearing to the Appellant Company itself?

These are questions looking for answers that cannot be found because there is nothing to connect the Appellant Company to the wrongful act complained of by Nze Edozie Okafor, which led to the Suit filed at the trial Court, in the name of the Appellant Company.

As I said, a matter cannot be heard on its merits unless there is a cause of action, and the Plaintiff has the right to bring the action -Utih V. Onoyivwe (supra). In this case, the Appellant Company has no cause of complaint; it did not suffer any injury when the said Edozie Okafor was removed as its Chairman by its Shareholders; and the action was wrongly instituted in its name at the trial Court. So, without a cause of action, it is not a proper Party before the Court.

It goes without saying that without the proper Party before it, the Trial Court had no jurisdiction to entertain the action taken out by Nze Edozie Okafor in the name of the Appellant Company and the Court of Appeal was right to hold as follows in its Judgment -

At the time the action in this Appeal was taken out in the Lower Court, it was not authorized by the proper organ of the Appellant Company to do so, and in effect, therefore, it vitiates the competence of the action and the jurisdiction of the Lower Court and the Court of Appeal to adjudicate.

The end result of the foregoing is that this Appeal totally lacks merit and it is hereby dismissed. There will be no order as to costs.

**OLABODE RHODES-VIVOUR, J.S.C.:**

I read in draft the leading judgment just delivered by my learned brother AUGIE JSC and I agree that the Appeal totally lacks merit. Appeal dismissed.

**MARY UKAEGO PETER-ODILI, J.S.C.:**

I agree with the judgment just delivered by my learned brother, Amina Adamu Augie JSC and to register the support I have in the reasoning from which the decision emanated, I shall make some remarks.

This is an appeal against the judgment of the Court of Appeal, Lagos Division or Court below or Lower Court, Coram: Sidi Dauda Bage JCA (as he then was), Samuel Chukwudumebi Oseji and Abimbola Osarugie Obaseki- Adejumo JJCA, delivered on the 18th day of May, 2016 dismissing the appeal hence the recourse of the appellant to the Supreme Court.

The appellant as plaintiff at the Trial Court took out a writ of summons dated and filed on the 21st day of March, 2007 to challenge the removal of its Chairman, Nze Edozie Uche Okafor and sought reliefs, viz:-

a. "A declaration that the offices of the Chairman and other members of the plaintiff's Board of Directors prior to the Annual General Meeting of March 9, 2007 are still subsisting until otherwise determined in accordance with the Memorandum and Articles of Association of the plaintiff.

b. A declaration that the purported appointment of the 2nd Defendant as Chairman or Managing Director of the plaintiffs company is illegal, null and void and of no effect whatsoever.

c. A declaration that all acts done and/or duties performed purportedly by the 1st to 9th defendants in whatever capacities in pretentious running of the plaintiff's affairs are illegal null and void and of no effect whatsoever.

d. A mandatory order directing the defendants jointly and severally to hand over all the plaintiff's properties wrongly removed by them including monies, remunerations, dividends and other benefits received by them in their purported, pretended and illegal operation of the plaintiffs company.

e. An order against the defendants jointly and severally to render accounts of all their dealings in the name of the plaintiff from the 13th day of March 2006 till judgment in this suit."

By an order of the trial Court (per Okeke J.) made on the 11th day of November 2008, the appellant filed an Amended statement of claim dated 11th day of November, 2008 on the 12th day of November, 2008. In the amended statement of claim the appellant sought the following reliefs:-

"a. A declaration that the purported removal of the Chairman of the Board of Directors, Nze Edozie Uche Okafor from office at the Annual General Meeting of 9th March, 2007 is unlawful, illegal, null and void the proceedings if any, not having been conducted in compliance with the Articles of Association of the Company and the Companies and Allied Matters Act.

b. A declaration that the offices of the Chairman and other members of the plaintiffs Board of Directors prior to the annual General Meeting of March 9, 2007 are still subsisting until otherwise determined in accordance with the Memorandum and Articles of Association of the plaintiff's company.

c. A declaration that the purported appointment of the 1st defendant as the Chairman/Managing Director by the defendants in whatever capacities in pretentious running of the plaintiff's affairs are illegal null, void and of no effect whatsoever.

d. A declaration that all acts done and/or duties performed purportedly by the 1st to 9th defendants in whatever capacities in pretentious running of the plaintiff's affairs are illegal, null, void and of no effect whatsoever.

e. A mandatory order directing the defendants jointly and severally to hand over all the plaintiff's properties unlawfully removed by them and to account for and refund all monies remunerations dividends other financial or other benefits derived or received by them in their purported pretended and/or illegal operation of the plaintiffs company.

f. An order against the defendants jointly and severally to render account of all their dealings in the name of the plaintiff's company from 13th day of March, 2006 till judgment in this suit."

In response to the Amended statement of claim, the respondents filed an Amended statement of Defence and counter claim dated 24th day of March, 2009 but filed on the 24th day of March, 2010. In the said amended counter claim, the respondents counter claimed as follows:-

"1. A declaration that the defendants, as shareholders of U. O. O. Nigeria Plc, have the legal right to disinvest in the company and take away whatever belongs to them by way of cash, shares, dividends, benefits, profits and other entitlements.

2. An order of Court compelling the plaintiff to allow the defendants to disinvest in the company and take away whatever they are entitled to by way of cash, shares, dividends, profits, benefits and all entitlements that accrued to them as investors/shareholders in the company.

3. An order of Court compelling the plaintiff to settle and pay to the defendants the total cash value of their investments/share holdings dividends, profits and other entitlements which accrued to them jointly and severally as investors/shares in the company.

4. An order of Court constituting or directing the plaintiff to constitute a 10 man committee made up of nominees of both parties to work out modalities for the disinvestment/settlement of the defendants within 14 days from the date of judgment.

5. An order of injunction restraining the plaintiff and any person(s) claiming to be its agents or representatives, particularly Edozie Okafor and Abalonye Okafor, from selling, mortgaging and in any other way howsoever disposing of the company's assets for any other purpose whatsoever until the defendants are fully settled.

6. That the plaintiff's company, its former Chairman, the Director and officers are restrained from selling, further mortgaging, and in any other way howsoever, from disposing of the Company's assets for any other purpose until the full settlement of the defendants and other shareholders who wish to disinvest."

The background facts leading to this appeal are well set out in the lead judgment and I shall not repeat them unless circumstances warrant a reference to any part thereof.

On the 16th day of December, 2019 date of hearing, learned counsel for the Appellant, Chief Emeka Ngige SAN, adopted the brief of the appellant filed on 22/9/16 in which were raised five questions as follows:-

1) Whether the Court below was right when it held that the majority shareholders did not breach article 80 of the Articles of Association of the appellant or any provisions of CAMA in the purported removal of the appellant's Chairman? (Distilled from Ground 1).

2) Whether the Court below was right when it held that the offices of the Chairman, Chief Executive Officer and Managing Director of the Appellant are intertwined and inseparable in the organogram of the appellant's company? (Distilled from Ground 2).

3) Whether the Court below was right when it held that the reliefs granted to the respondents were not in excess of the reliefs claimed by the respondent in their counter claim at the trial Court? (Distilled from Ground 3).

4) Whether the Court below was right when it held that the institution of this suit at the Trial Court was not authorized by the proper organ of the appellant? (Distilled from Ground 4).

5) Whether the Court below was right when after finding as a fact at pages 1 - 2 of the judgment (pages 1068 to 1069 of the Record) of the bedlam that afflicted the Annual General Meeting of the appellant resulting in the presiding chairman of the appellant being chased away from the meeting still went ahead and endorsed the purported election of 1st respondent as the Chairman of the appellant? (Distilled from Ground 5).

Learned counsel for the respondent, Dickon Anieh Esq., adopted the brief of argument filed on 27/3/17 and deemed filed on 30/5/17 which had been settled by Chief C. C. Azara. In the brief were identified four issues for determination as follows:-

ISSUE NO. 1:

Whether the facts of the appellant's case as narrated by the Court of Appeal in its judgment at pages 1068 to 1059 of the Record of Appeal, Vol. III, constitute findings of fact to vitiate the Lower Court's affirmation of the Trial Court's judgment with respect to the election of the 1st respondent as Chairman of the appellant (culled from appellant's Issue No. 5, distilled from Ground 5).

ISSUE NO. 2:

Whether the Lower Court was right when it affirmed the judgment of the trial Court, holding that Mr. Edozie Okafor was validly removed as Chairman of the appellant, that the offices of the Chairman, Chief Executive Officer and Managing Director of the appellant are intertwined/inseparable in the organogram of the company. (Distilled from Grounds 1 and 2).

ISSUE NO.3:

Whether the Lower Court was right when it held that Mr. Edozie Uche Okafor, having been removed from office by the share holders of the appellant as its chairman at the last Annual General Meeting, had no authority to summon and preside over as the same chairman, the meeting that authorized the institution of the action at the Trial Court (related to appellant's Issue No. 4. (Distilled from Ground 4).

ISSUE NO. 4:

Whether the Lower Court was right when it held that the reliefs granted by the trial Court in favour of the respondents were not in excess of the reliefs sought in the counter claim. (Distilled from Ground 3).

The Issue 2 of the respondent is enough for use in the determination of this appeal and I shall use it as a sole issue for my purpose.

SOLE ISSUE:

Whether the Lower Court was right when it affirmed the judgment of the trial Court, holding that Mr. Edozie Okafor was validly removed as Chairman of the appellant, that the offices of the Chairman, Chief Executive Officer and Managing Director of the appellant are intertwined/inseparable in the organogram of the company.

Learned counsel for the appellant contended that Clause 80 (d) of the Articles of Association of the appellant made Nze Edozie Okafor a life Director and Chairman, Managing Director and Chief Executive of the appellant for life, same as chairman of the appellant for life. That until an amendment to the said articles of association the provisions remain sacrosanct and have the effect of a legislation. He cited Orji V. Dorji Textites Mills (Nig.) Ltd & Ors (2009) 18 NWLR (pt.1173) 467.

That the purported removal of Nze Edozie Uche Okafor as the chairman of the appellant is null, void and of no legal consequence, the Articles of Association of the appellant making the said Nze Edozie Uche Okafor Chairman of the appellant for life having not been amended, altered or changed. He cited Obikoya V. Ezenwa (1964) 2 ALL NLR 135.

Also that the meeting at which the purported removal took place breached Nze Edozie Uche Okafor's right to fair hearing as he was not notified of such a meeting and not heard. He relied on Section 36 of the Constitution of the Federal Republic of Nigeria 1999 (as amended);FRN V. Akubueze (2010) 17 NWLR (Pt.12223) 525 etc.

Chief Ngige SAN for the appellant further submitted that the two Courts below erred when they granted in favour of the respondent amounts in excess in the counter claim and also granted a prayer not sought by the respondents and so outside the jurisdiction of the Courts below. He cited Ezeobi V. Daily Times (Nig.) Plc. (2013) 17 NWLR (pt.1382) 200 (CA) etc.

It was submitted for the appellant that Nze Edozie Uche Okafor has the locus standi to chair the meeting of the Board of Directors of the appellant wherein the decision to institute this action at the Lower Court was taken. He relied on Spasco Vehicle & Plant Hire Co. V. Alraine (Nig.) (1995) 8 NWLR (Pt.416) 655 at 873.

Learned counsel for the respondent contended that the Court below was right to have affirmed the judgment of the Trial Court dismissing the claims of the appellant and holding that PW1, Nze Edozie Okafor was validly removed as the chairman of the appellant's board of director and that Mr. Maribe Okafor elected as new Chairman of the appellant.

That any clause in the Memorandum and Articles of Association which purported to make a person a "Managing Director for life" or "Board chairman for life" contrary to the express provisions of the Law, is an illegal contract and therefore unenforceable. He cited UAC V. Mcfoy (1962) AC 152.

That there was evidence to show that Nze Edozie Okafor was not denied fair hearing and had the opportunity to present his side of the story at the meeting at which he was removed and so he kept away at his own option and cost. He cited FRN V. Akubueze (supra).

For the respondents, it was further stated that PW1, Nze Edozie Okafor having been properly removed by the appellant's shareholders as Chairman of the Board of Directors at its Annual General Meeting on 9/3/2007, lacked the capacity or locus to summon and preside over any subsequent meeting of the Board as chairman until his removal is set aside. He cited Longe V. FBN Plc. (2006) All FWLR (pt. 313) 46 at 71.

That the Lower Court was perfectly right when it raised the issue of incompetence of the suit in the absence of a cross-appeal or respondent's notice as jurisdiction and competence of parties are issues of law.

For the respondents, it was contended that the orders made by the Trial Court and affirmed by the Lower Court came from the major complaints of the appellant's counsel under the issue and so not outside what was before the Court or in excess of the reliefs sought as the orders were consequential and so proper. He cited Akapo V. Hakeem-Habeeb (1992) 6 NWLR (Pt.247) 296 at 297, Ogbahon V. Registered Trustees of Christ's Chosen Church of God (2002) 1 NWLR (Pt.749) 675 at 701; Ilona V. Idakwo (2003) 11 NWLR (Pt.830) 53 at 87.

In summary, the angle taken by the appellant's Senior Counsel in urging the Court to allow the appeal are founded on the following reasons:-

i. The PW1, Nze Edozie Uche Okafor, being a life Director, Managing Director/Chief Executive and Chairman of the Appellant for life, was not legally removed as the Chairman of the appellant. The purported removal was not in accordance with the memorandum and Articles of Association of the Appellant.

ii. The PW1 was denied fair hearing in his purported removal as chairman of the appellant by the respondents.

iii. The provisions of the Articles of association of the appellant and the provisions of CAMA were breached in the purported removal of the appellant's chairman.

iv. The meeting of the Board of the appellant authorizing the institution of this suit at the Lower Court was properly constituted; Nze Edozie Uche Okafor who presided over the said meeting is the Managing Director/Chief Executive of the Appellant.

v. Clause 80 (g) authorized the PW1 to preside over the meeting and it authorized him to even take decisions binding the appellant.

vi. The Trial Court granted to the Respondents reliefs not claimed or granted more than what was claimed which reliefs were affirmed by the Court below.

vii. The appellant proved its case at the Court below.

The respondent taking a contrary position urge the Court not to interfere with the concurrent findings of fact and conclusion reached by the two Courts below.

The Court of Appeal had as can be seen at pages 1068 - 1069 of the Record of Appeal Vol. III stated as follows:-

"The Annual General Meeting of the appellant company duly convened on the 9th of March, 2007 at Aba, Abia State was to present the valuation report and adopt this price of N2.65 per share as special business of the Annual General Meeting.

As the meeting commenced, the Chairman of the Board of Directors of the appellant company who testified as the PW1, Nze Edozie Ucha Okafor, in the Lower Court, stood up to read his address and midway into his address as Chairman of the appellant company at the meeting of shareholders, and upon the mention of N2.65 per unit of the shares of the appellant company, commotion erupted. Some of the respondents walked up to the chairman, seized the microphone from him and chaotic situation arose causing the meeting to be in disarray. Fearing for their lives, the chairman adjourned the meeting and members dispersed including the policemen invited to provide security at the venue of the meeting who could not control the chaos.

It was after the adjournment of the meeting that it was later learned that some of the respondents regrouped and purported to have removed Nze Edozie Uche Okafor as the Chairman of the appellant company without affording him an opportunity to defend himself of whatever allegation made against him. The purported removal was also in breach of Clause 80(d) of the Articles of Association of the appellant's Company."

The appellant had taken the above quoted part of the judgment per Bage JCA (as he then was) as findings of the Court which actually were the learned Justice's summary of the facts of the appellant's case as an introductory not representing the findings of the Court.

A fuller perusal of the judgment of the Lower Court showed it was the presiding Justice's style of judgment writing and were not what the appellant is pushing for the adoption of this Court as the findings of the Court below. This is because as borne out by the records, the Lower Court did not find as a fact that the appellant's said Annual General Meeting was characterized by violence or that the chairman was chased out of the AGM rather the judgment affirmed the election of the 1st respondent as the chairman of the company. Also, the Court below did not impugn the evaluation of the evidence by the Trial Court.

The concurrent findings of fact of the two Courts below are that PW1, Nze Edozie Okafor was validly removed as the chairman of the appellant's board of directors and Mr. Maribe okafor elected the new Chairman of the appellant and that done by majority of the shareholders.

The question that would then arise is, if what transpired in the course of making those findings culminating in the conclusion were through perverse means or wrong application of the law, procedurally or substantive.

Going through the records, I find it difficult not to go along the argument put forward by the learned counsel for the respondents that things followed due process of law.

A rehash of the situation would be captured in the following summation, that so long as "majority of the shareholders" as stated by the PW6 voted the removal of Mr. Edozie Uche okafor (PW1) as the chairman of the company at the AGM of 9/3/2007, that conduct or exercise is in law and by virtue of Section 65 of CAMA deemed to be a lawful act of the company (appellant) itself because in company law, the AGM represents the source of ultimate authority within the corporate governance.

Again, to be said is that as long as the removal and replacement of the said chairman were done by the appellant company itself through the instrumentality of the shareholders cum members in a validly convened AGM, it was absolutely misconceived for the same company to challenge its own act in the absence of an extra ordinary general meeting summoned pursuant to Section 215 of CAMA either to review or set aside the proceedings of the last AGM. The appellant's company cannot turn round to initiate a suit against itself to nullify the act of its shareholders carried out in a validly convened AGM.

From the evidence led at the trial as contained in the printed record, the appellant's former Board Chairman, Edozie Uche Okafor was validly removed from office by the company itself at the AGM of 9/3/2007, the action purportedly filed by the said chairman in the name of the appellant to nullify his removal is misconceived and unsustainable because the company cannot approbate and reprobate on the same act.

The Annual General Meeting, is a general meeting of the shareholders and it constitutes a vital organ of the company for important decision making. Consequently any decision taken by the shareholders at the AGM is a decision taken by the company. The individual member who feels adversely affected by the decision cannot rightly use the name of the company to sue the shareholders for taking the decision. Therefore, any action taken by an individual member using the name of the company as plaintiff against the shareholders is misconceived and unsustainable in law.

At the risk of over flogging, what is now trite in relation to matters within the purview of the Companies and Allied Matters Act, CAMA that the procedure for removal of a director is strictly as provided under Section 262 of CAMA and special notice is required. Neither Section 626 nor any other section of the companies and Allied Matters Act makes provision for the removal or ousting of the Board Chairman or Managing Director from office.

Be that as it may, the law is trite that the chairman of the Board of Director or the Managing Director can be removed summarily for serious misconduct or when there is crisis of confidence between him and the shareholders. See "Company Law and Practice in Nigeria", 3rd Edition by Dr. Orojo, page 315, Paragraph 1.

The serious acts of misconduct which led to crisis of confidence between the appellant's ousted chairman and the shareholders were adequately highlighted by the respondents both in their pleadings at pages 543 - 545 of the record of appeal and the oral evidence of the DW1 at page 686 to 696 of the same record, Vol. II.

The various acts of misconduct enumerated by the respondents as reasons for crisis of confidence and removal of Edozie Okafor as chairman of the appellant's board of Director were neither challenged nor controverted at the trial, as borne out on the record and some of them are thus:-

i) Secret amendment of the appellant's Articles and Memorandum of Association by Edozie Okafor without the approval or knowledge of the shareholders.

ii) His refusal to make copies of the amendments available to the shareholders.

iii) His handedness and running of the company as his private business.

iv) Reconstitution of the Board of Directors without approval.

v) Gross financial misconduct, embezzlement and misappropriation of appellant's funds.

vi) Illegal sales of company's assets and diversion of the proceeds to his personal use.

vii) Refusal to declare dividends and give annual financial reports of the company as required by law.

The strength of the argument of the appellant is that Nze Edozie Okafor was Board Chairman for life under Clause 8(d) of the aforesaid Memorandum and Articles of Association which purported to make Edozie Okafor "Managing Director/chief Executive of the Board of Directors for Life", which is inconsistent with the provisions of the companies and Allied Matters Act. Such positions are not recognized under the Act and so are therefore void, ineffective and unlawful. The law only recognizes the position of a "Director for Life" who can still be removed or rejected by the members at an annual general meeting. See Sections 255, 248 and 262 of CAMA. This is in accord with the decision of the Lower Court that these are elective offices and positions.

A "Life Chairman of the Board of Directors or Managing Director for Life" are not lawfully sustained because the powers to elect a Chairman or MD and fix/determine the period for which he is to hold office are by statute, conferred on the directors or by members at an annual general meeting. See Section 263 of CAMA.

It needs be stated that any clause in the Memorandum and Articles of Association which purported to make a person a "Managing Director for Life" or "Board Chairman for Life" contrary to the express provisions of the law, is an illegal contract and therefore unenforceable. Such clause is abinitio illegal and does not require a formal amendment to deprive it of the force of law. The Court does not enforce an illegal contract and one cannot place something upon nothing or rely on an illegality to enforce a purported right. See UAC V. Mcfoy (1962) AC 152.

A combined reading of Sections 214 and 218 of CAMA, the removal, election, appointment of directors etc, constitute one of the ordinary businesses of an annual general meeting. It is therefore opined that so long as notices of the AGM were duly issued and served on all the members/shareholders, it is presumed that the removal, election and appointment of directors will inexorably form an integral part of the ordinary business to be transacted. Any omission or error as to the general nature (agenda) of the business of an AGM shall not invalidate the meeting. see Section 218 (5) of CAMA.

It follows that any director (like Nze Edozie Uche Okafor) who received due notice of the AGM, did not require any other notice to indicate that the removal, election or appointment of director's would likely take place at the AGM because by virtue Section 218 (2) CAMA a statement that "the purpose is to transact the ordinary business of an AGM shall be deemed to be a sufficient specification that the business is for election of directors and by implication. Chairman of the Board of Director/Managing Director."

The appellant had raised the issue of being denied fair hearing at the AGM that removed him as he was not present to defend himself when the decision was reached. The evidence in the record bears a contrary position in that the findings of the two Courts below did not support an allegation that the AGM went riotous and chaotic and so was abruptly ended. what is shown by evidence is that PW1, Edozie Okafor himself left the meeting of his own volition and not being heard was his own doing and so not the fault of others. Moreover, this issue of a lack of fair hearing was not raised when PW1 testified at the trial nor was it canvassed and so cannot be made an issue at this level without leave of Court and certainly not through the submission of counsel.

I agree with learned counsel for the respondents that PW1, Nze Edozie Okafor having been removed by the appellant's shareholders as the Chairman of the Board of Directors at the AGM on 9/3/2007 lacked the capacity or locus standi to summon and preside over any subsequent meeting of the Board as chairman until he had successfully challenged that removal. See Longe V. FBN Ltd (2006) All FWLR (Pt. 313) 46 at 71.

The appellant had also raised an issue of the impropriety of the appointment of Maribe Okafor as chairman, he not being a director of the appellant that argument is not sustainable in the light of the provisions of Section 240 (2) of CAMA which provides that a member can be chosen as chairman at an annual general meeting if no director is present. In this instance, there is no evidence that a director was present when majority of the Shareholders elected Maribe Okafor as Nze Edozie Okafor voluntarily left the meeting.

In respect of the arguments of the appellant that the Trial Court and affirmed by the Court below erroneously awarded claims not part of the reliefs sought. That concern would not fly in the light of the evidence before the Court upon which the Trial Court made the orders which clearly were consequential and the Court was acting in due exercise of its powers. There are consequential orders which are incidental to the decision of the Court and which flowed necessarily, naturally, directly and consequently from the judgment and not extraneous nor could be classified as strange and did not need to have been claimed earlier to be given or granted. SeeAkapo V. Hakeem-Habeeb (1992) 6 NWLR (Pt. 247) 296 at 297; Ogbahon V. Registered Trustees of Christ's Chosen Church of God(2002) 1 NWLR (Pt.749) 675 at 701; Ilona V. Idakwo (2003) 11 NWLR (Pt.830) 53 at 87.

What I have been grappling with in putting across is that this appeal lacks merit from what I have stated earlier and the better and fuller reasoning in the lead judgment.

Appeal dismissed as I abide with the consequential orders made.

**CHIMA CENTUS NWEZE, J.S.C.:**

My Lord, Augie, JSC, obliged me a draft of the leading judgment delivered now. I agree with His Lordship that, being unmeritorious, this appeal deserves to be dismissed.

Appeal dismissed.

**EJEMBI EKO, J.S.C.:**

The Respondents are shareholders in the Plaintiff/Appellant company. The PW1, Edozie Uche Okafor, was until the Annual General meeting (AGM) of the Plaintiff/Appellant company, held on 9th March, 2007, the Chairman, Managing Director/Chief Executive Officer of the Appellant. He was addressing the AGM on the appropriate dividend to be paid/declared per share in shares of the Appellant Company when a commotion ensued. The PW.1, in consequence, walked out on the AGM. He claimed that as a result of the confusion and chaos he adjourned the AGM and that thereafter some shareholders purportedly reconvened and that, upon a motion adopted by the majority of the remaining shareholders, he was removed as the chairman, Managing/Chief Executive Officer of the Appellant company. One Maribe Okafor was immediately, also upon a motion, elected on the floor of the AGM as the Chairman, Managing Director/Chief Executive Officer of the Appellant to replace the PW.1.

The PW.1 purported to convene a board meeting, even after his removal as the Chairman, Managing Director/chief Executive officer of the Appellant. The PW.1 convened the board meeting for the purpose of

47

the board resolution authorising him to file the action the subject of this appeal. Upon the "board" resolution authorising the filing of the action, this suit was filed in the name of the Appellant company.

At the Trial Court, the PW.1 testified and listed, inter alia, his following grouses -

l. That he was denied fair hearing before the adverse resolution removing him as the Chairman, Managing Director/Chief Executive officer was adopted upon a motion;

ll. That there was no prior notice of such motion as a business on the agenda of the AGM;

III. That by Article 80(d) of the Memorandum and Articles (MEARTA) of the Appellant company he was appointed the Chairman, Managing Director/Chief Executive Officer of the Appellant company, and

IV. That by the said Article 80(d) of the MEARTA, he (the PW.1) could not be removed as the Chairman, Managing Director/Chief Executive Officer of the Appellant company except upon previous amendment of the said Article 80(d) of the MEARTA of the Appellant.

All the reliefs sought in the suit of the Appellant seem to promote the personal/private interest of the PW.1. That is what prompted the Respondents to ask the pertinent question: in the circumstance, is it appropriate that the PW.1, in whom vests the locus standi, to sue and not the Appellant?

Our jurisprudence does not recognise nor authorise busy-bodies to meddle in administration of justice. It also does not, as such, encourage mercenary actions. That is why as a pre-condition, the claimant or plaintiff must disclose his locus standi for bringing the action. Locus standi is the legal right or standing the claimant has for bringing the action, and of course, by extension the legal right he has to be heard in litigation before a Court of law or Tribunal established by law:AJAGUNGBEDE III V. ADEYELU II (2001) 16 NWLR (pt.738) 140. The locus standi the claimant has to approach the Court and the jurisdiction, the Court has to entertain his complaint are intertwined, and they relate to the competence the Court has to entertain and adjudicate on the suit. The right the litigant has to the direct and "easy accessibility" to the Court secured and maintained by Section 17(2)(e) of the 1999 Constitution, as amended, to invoke the judicial powers of the Court of law in relation "to all matters" between the claimant and the defendant, under Section 6(6)(b) of the Constitution, is only available to the persons, as claimants, in whom the right to enforce the cause of action is legally vested. Without locus standi in the matter the plaintiff has no right of easy accessibility to the Court of law to invoke its judicial powers.

There lies the pertinence of the question raised by the Respondents herein. They submit, correctly in my view, that the fair hearing allegedly denied the PW.1 was not the Appellant company's right to fair hearing; that the wrongful acts of the shareholders of the Appellant still remain the act of the Appellant company, and not the act of the shareholders as individuals; further that all actions of the Respondent are acts of the Appellant company; and that the wrongs the Respondents allegedly did to the PW.1 are personal to the PW.1 and in no way any wrongs done to the Appellant company for whom the wrongs were even done. The PW.1 has employed the Appellant to promote his personal and private interest. In initiating this action, the Appellant and the PW.1 seem not to believe that they are each two distinct and different juristic persona.

I see here a tinge of the absolutism of Louis XIV of France who stated: "I am the state" (L'etat, c'est moi) and the state is me. King Louis XIV found no distinction between himself and the state vice versa.

The claim seeking to nullify the appointment of Maribe Okafor as the Chairman, Managing Director/chief Executive officer, said to be an impostor in view of the life appointment as such of the PW.1 enshrined in Article 80(d) of MEARTA of the Appellant should be the suit at the grievance of the PW.1 who was the ousted Chairman, Managing Director/Chief Executive officer of the Appellant. Maribe Okafor, de facto, is the incumbent Chairman, Managing Director/Chief Executive Officer of the Appellant. The existing status quo at the time the suit was taken out favoured him. On the authority of ROSSEK V. ACB LTD (1993) 8 NWLR (pt. 312) 382, which discourages self-help in order to redress an illegality, it behoves the PW.1, if he posits that Maribe Okafor was an imposter Chairman, Managing Director/Chief Executive Officer illegally enthroned in defiance of Article 80(d) of the MEARTA, to do his private battle personally. Until the PW.1's removal, and the appointment of Maribe Okafor, as Chairman Managing Director/Chief Executive Officer of the Appellant, are set aside the PW.1 lacked the vires to summon the board meeting to seek the power authorising the taking out of the action the subject of this appeal.

My Lords, the dictum of Bairamian, F. J. in MADUKOLU V. NKEMDILIM (1962) 1 ALL NLR 587 at 593 that the Court is only competent if, amongst other things, the case comes before the Court initiated by the due process of law, and upon fulfillment of any condition precedent to the exercise of jurisdiction (cited with approval in SKENCONSULT (NIG) LTD & ANOR V. UKEY (1981) 1 SC (6), applies in full force to the instant case. The fact of the Appellant lacking the requisite locus standi as condition precedent for taking out this suit to promote the private and personal legal interest of the PW.1 renders the suit incompetent. I agree with the Respondent on this issue.

On whole, I am in agreement with my learned brother, AMINA ADAMU AUGIE, JSC that this appeal totally lacks merit and it is hereby dismissed. I also make no order as to costs.

Appeal dismissed.