**NATIONAL INSURANCE COMMISSION v. THE NIGERIA COUNCIL OF**

**REGISTEREDINSURANCEBROKERS**

COURTOFAPPEAL

5 (ABUJADIVISION)

CA/A/152/M/05

THURSDAY 2ND MARCH 2006 10 *(MUHAMMAD;OMAGE;ODILI,JJ.CA)*

***INSURANCE LAW*** *– Both National Insurance Commission (“NAICOM”) and The Nigeria Council of Registered Insurance Brokers* (“*NCRIB”) are empowered by law to regulate insurancebrokers though NCRIB hasmore extensive powers becauseit regulates*

15 *both natural andartificial persons - both NationalInsurance Commission (“NAICOM”) and The Nigeria Council of Registered Insurance Brokers* (“*NCRIB”) are empowered by law to regulate Insurance Brokers though The Nigeria Council of Registered Insurance Brokers* (“*NCRIB”) has more extensive powers because it regulates both natural and artificial persons*

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***INTERPRETATIONOFSTATUTES–*** *Legislator maypromulgate anew lawto correct a mischief contained in an existing law - separate statutes can co-exist where they can be reasonably construed in a way that would give effect to them - words of a statute are ambiguous the court must seek the intention of the lawmaker*

25 **Facts:**

The appellant instituted an action against the respondent by way of Originating Summons in the Federal High Court Abuja and raised the following questions:

30

(A) Whether power to register and de-register Insurance brokers is still vested in the Plaintiff by the provisions of the National Insurance Commission NAICOM Decree 1997.

35 (B) Whether the claim by the defendant that it has exclusive power by virtue of Section 5 of the Nigeria Council of Registered Insurance Brokers (NCRIB) Act 2003 to register and de-register Insurance Brokers is consistent with the provision of the National

Insurance Commission Decree No.1 of 1997 and Insurance Act

40 2003.

The appellant (as plaintiff in the lower court) sought the following consequential reliefs which *inter alia* were a declaration that the power to register and de-register insurance brokers is vested in the appellant and not the respondent and, an order of perpetual injunction restraining the respondent from usurping the appellant’s powers.

The learned trial Judge held that the power to register and de-register insurance brokers is vested intherespondent and nottheappellant and thereforedismissed all the consequential reliefs sought. Dissatisfied with the decision of the Federal High Court, the appellant appealed to the Court of Appeal.

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**Held:** (*Unanimously dismissing the appeal*)

**[1] *Insurance Law –Both NAICOMand NCRIBareempowered by law to regulate insurance brokers though NCRIB has more extensive*** 10 ***powersbecauseit regulatesboth naturaland artificialpersons***

Mr. Adeyemi in his response stated that the argument of the appellant through counsel on this issue is illogical and not based on any law. That the register to be kept by the respondent under SS 5 and 6 of NCRIB Act

15 is to containnames of natural persons whereas onlycorporate bodies are requiredtobe registeredbytheappellant under S.36of the InsuranceAct. Learnedcounsel saidthattheinterpretation placedbytheappellant onthe word ‘person’ in S.36 of the Insurance Act is erroneous in the sense that the word “person” in the said section is limited and qualified bythat same

20 section 36 in sub- section 36(a), as a partnership or a company with limited liability duly registered under the Companies and Allied Matters Act 1990 .“ That this clearly limits the applicant’s entitlement to apply for registration to carry on business to artificial persons and not natural persons.

25

What I see before me however is as stated bythe learned counsel for the respondentwhoseargumentsIam persuadedtowards.IanswerIssue3in the negative and to say that the issue really does not apply in the circumstances of this appeal, as the necessary laws have spelt out what 30 is to obtain and what roles the two bodies are to play and those affected. Perhaps it may be necessaryfor emphasis for me to say that the register to be kept byNCRIB is for those whoare registered as practicing brokers whoare obligedtoobeythe lawof NCRIBor NAICOMas thecase maybe since the particular provisions stated are unambiguous and clear.

35 (p. 122 lines 18 to 29; p. 123 lines 7 to 15)

1. ***InsuranceLaw -NAICOMisnotstatutorilyempoweredto registerand certifyindividual insurancebrokersandthecourtwillnot readthings***

***into its enabling Act to confer it with such powers***

40

To carry out the duty I see before me I answer this question in Issue 4 in the negative and to say that the appellant has no role to play in the certificationor registration of individualinsurancebrokers. Theintentionof learned counsel for the appellant to expand the role of the appellant cannotgo beyondwishfulthinkingwhich unfortunatelyIsee nojurisdiction to oblige.(p.124 lines 26 to 30)

1. ***Insurance Law – NCRIB is empowered to deal with qualification of insurance brokers while NAICOMis empowered to register the bod-***

5 ***iesandthepowersgiventoNCRIBdonotrenderthepowerofNAICOM nugatory***

Learned counsel for the respondent said section 36(3) (a) of the Insurance

Act stipulates that only companies that meet the qualifications that would

10 be specified would be registered. That the appellant not being a professional body is not competent to prescribe the qualifications for professional insurance brokers which role belongs to the respondent and it was accordingly given to it by its enablingAct. That the learned trial Judge was right to have held in his judgment that the respondent is the body to

15 deal with qualification of insurance brokers while the appellant is to register the bodies for business.

I am persuaded by the argument of the learned counsel for the respondent who has captured trulythe provisions of the law. No matter what the learned

20 counsel for appellant would say or wish that cannot change the law as stated either by NAICOM Act or the NCRIB Act. I answer the question here in the negative and hold that the power given to the respondent under the NCRIB Act to register and enroll insurance brokers before they are registered with the appellant has not rendered nugatory the power of the

25 appellant to regulate insurance business.(p.124 lines 42 to p.125 line 12)

**[4] *Interpretation of statutes – Legislator may promulgate a new law to correct a mischief contained in an existing law***

30 It may be rightly presumed that the intention of the law makers in promulgating a new law where one on the same subject - matter, is still existing is to correct any mischief or societal ill which was not taken care of by the already existing one. Therefore where an earlier legislation contains a very harsh provision capable of depriving the citizen of his

35 entrenched right and a new legislation plays down such harsh provisions it must be clear that the law makers intend to do away with that harsh provision contained in the earlier legislation. Acourt of law which is also a court of justice must give both legislations a truly harmonious interpretation. (p. 116 lines 26 to 33)

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**[5] *Interpretationof statutes–Separatestatutescan co-existwherethey can be reasonably construed in away that would giveeffect to them***

To deal with that leg I shall refer to the case of *Governor of Kaduna State v. Kagoma* (1982) All NLR 160 per Fatayi Williams CJN:

“1. S. 98 of the Local Government Law does not repeal albeit by implication, the provisions of S. 2 of the Commissions of Inquiry Law but that both are to exist side by side since both the earlier and the later statutes can be

5 reasonably construed in such a way as to give effect to them. Furthermore, the later statute is worded in clear and affirmative language restricting the powers conferred there to a specified authority and to specific subject, without any express or implied repeal.

10

2. The earlier statute only becomes inapplicable so long as the provision of the later statute dealing with specific matters are in force.

15 3. The Local Government Law is to be construed and that

enactment was being read the day after the

Commissions of inquiry Law was passed into law.

4. It is trite law that where there are two enactments, one

20 making general provisions and the other making specific

provision, the specific provisions are, by implication, excluded from the general provision.”

The treatment of the case above by the learned Chief Justice has settled

25 the issue at hand and it is therefore not difficult considering those relevant Sections of the two laws above stated and principles in the case of *Governor of Kaduna State v. Kagoma* (*supra*) to say with firmness that there is no conflict in the two laws or in the roles allocated to the two bodies either that of Insurance Brokers Council or the Insurance

30 Commission. Therefore I answer the question raised in Issue 1 in the negative.(p. 118 lines 12 to 43)

**[6] *Interpretationof statute–Wordsof astatuteareambiguousthecourt must seek the intention of the lawmaker***

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If the words of a statute are ambiguous, then the intention of parliament must be sought first in the statute itself, then in other legislations, and contemporaneous circumstances and finallyin the general rules laid down and often approved, namely, by ascertaining what was the common law

40 before the making of the Act, what was the mischief and defect for which

common law did not provide, what remedy parliament had resolved and appointed to cure the disease of the remedy.(p. 120 lines 12 to 20)

**ODILI, JCA(Delivering the Lead Judgment):** In May 2004, the appellant being plaintiff in the court below brought an action through Originating Summons at the Federal High Court Abuja against the respondent being defendant seeking the determination of consequential reliefs.

The questions having been resolved in favour of the respondent by Hon. Justice S.

5 J.Adah in a judgment delivered on 13th day of June, 2005, an appeal was therefore lodged to this Court.

STATEMENT OF QUESTIONS RAISED IN THE ORIGINATING SUMMONS:

(A) Whether power to register and de-register Insurance brokers is

10 still vested in the Plaintiff by the provisions of the National Insurance Commission NAICOM Decree 1997.

(B) Whether the claim by the defendant that it has exclusive power by virtue of Section 5 of the Nigeria Council of Registered

15 Insurance Brokers (NCRIB) Act 2003 to register and de-register

Insurance Brokers is consistent with the provision of the National Insurance Commission Decree No.1 of 1997 and Insurance Act 2003.

20 Upon the determination of the two (2) questions Formulated above the plaintiff prays for the following reliefs:

1. A declaration that the power to register and de-register Insurance

Brokers is exclusivelyvested in the Plaintiff and not the defendant 25

1. A declaration that the provision of Section 5 of Nigeria Council of Registered Insurance Brokers Act, 2003 which purports to vest power of registration and de - registration of Insurance Brokers are inconsistent with the provisions of the National Insurance 30 Commission Decree No. 1 of 1997 and therefore null and void to the extent of their inconsistency.
2. An order of perpetual injunction restraining the defendant and its agents from registering or de - Registering Insurance Brokers or

35 in any manner interfering, usurping the plaintiff’s powers to register, de-register and regulate insurance brokers under the National Insurance Commission Decree No. 1 of 1997 and InsuranceAct 2003.

40 4. An order declaring null and void all acts of registration and/or deregistration of Insurance brokers carried out by the Defendant or its agents.

On the 13/6/05 the learned trial Judge in his judgment held:-

“A The power to register and de-register insurance brokers is not vested in the plaintiff/appellant by virtue of the NAICOM Decree now Act 1997.

5 B. The claim of the defendant respondent that it has exclusive power by virtue of Section of the NCRIB Act 2003 to register and de-register Insurance Brokers is consistent with the provision of the National Insurance Commission Decree No. 1 (now Act) of

1997 and the insurance Act 2003. In consequence of the

10 foregoing, I refuse and dismiss all the consequential reliefs of the plaintiff in this case.”

The appellant appealed upon 7 Grounds of Appeal and in the Brief of Argument raised 5 issues: -

15

ISSUES FOR DETERMINATION

1. Whether there exists a conflict in the duties established by

NAICOM Act 1997, Insurance Act No. 1, 2003 on one part and

20 NCRIB Act 2003 and whether the trial court ought not to have

applied Section 100 of the Insurance Act 2003 to resolve any such conflict in favour of NAICOM Grounds 1 and 2

2. Whether the trial court was right to have severed brokerage

25 Insurance business from insurance business as well as qualification to practice as an Insurance Brokers and qualification to engage in the business of insurance Broker - Grounds 3 and 5.

3. Whether the word register to be kept by the NCRIB is not the

30 register of practicing Brokers registered byNAICOM and whether it is an authority for any insurance Broker to go into business of Insurance Brokerage - Ground 4.

4. Whether the Trial court was right to have held that in spite of

35 Sections 6, 7, 8 of NAICOM Act No. 1, 1997 and Section 36 - 42

of Insurance Act No. 1, 2003, the appellant has nothing to do with the certificates or licensing of Insurance Brokers - Ground 6.

5. Whether it does not run contrary to the aim and objective of the

40 establishment of NAICOM as a regulatory body to field that its

function is only to register any person approved by the council created by NCRIB - Ground 7.

The respondent so formulated 5 issues which are substantially the same as those of the appellant. They are:-

1. Whether there is any inconsistency between the Nigeria Council of Insurance Brokers (NCRIB)Act 2003 on the one hand and the National Insurance Commission (NAICOMAct 2003) on the other hand.

5

1. Whether the learned trial court was right in severing insurance broking business from insurance business as well as in distinguishing the power to prescribe qualifications and register individual professional insurance brokers from the power to

10 register corporate insurance brokers.

3. Whether the register of members to be kept under the NCRIB Act is to contain a list of brokers already registered and whether the register qualifies the members to carry on business without

15 recourse to NAICOM.

4. Whether the appellant has any role to play in the qualification or registration of individual insurance brokers.

20 5. Whether the power given to the respondent under the NCRIB Act to register and enroll insurance brokers before theyare registered with the appellant has rendered nugatory the power of the appellant to regulate insurance business,

25 In the light of the similarity in the issues raised on either side, I shall answer questions from any sides since it would not matter whose question is taken up.

ISSUE NO. 1

Learned counsel for theAppelant, Mr. Chukwuma-Machukwu Ume stated that there

30 exist inconsistencies in the duties and functions of the bodies created and established under National Insurance Commission Act No. 1 of 1997, Insurance Act No. 1 of 2003 to which he thereafter referred to as the Commission on one part and the Nigeria Council of Registered Insurance Brokers Act 2003 (hereafter referred to as the Council on the other part.

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Learned counsel said that the Commission is to insurance institutions what the Central Bank is to banking institutions. He went on to elaborate on what the functions of the Central Bank are in relation to the regulatory processes in the matters of banks and financial institutions. He then compared the Central Bank

40 position like that of the Chartered Institute of Stock Brokers Act Cap 9 LFN 2004 and the Council established thereunder. He also referred to the Chartered Institute of Taxation in Nigeria Cap C 10 LFN 2004: Chartered Institute of Insurance of Nigeria Act Cap C 11 LFN 2004. Learned Counsel said all the above numerated bodies and many more not mentioned no doubt are arrived at professionalizing their professions. That they contain similar provisions on registration contained in Sections 5, 6, 7 and 8 of NCRIB but none had been interpreted to mean that these bodies now determine who engages in the practice or business of banking or insurance or stock broking. Mr. Ume further submitted that the Council established under Nigeria Council for Registered Insurance Brokers left the realm which other

5 Council in the aforementioned bodies play - that is, to call together and register persons or bodies already re-registered and licenced by the government established regulatory body as NAICOM. That instead the promoters and sponsors of the Act deceived the National Assembly into inserting into the Act those Sections that conflicted with the regulatory functions of the appellant. He 10 referred particularly to section 7 of NCRIB, S. 18 (7) and (8) NCRIB

Learned counsel said those provisions make the appellant a mere extension of NCRIB instead of an established independent body with the sole responsibility of monitoring and regulating the crucial insurance industry which is a crass violation 15 of the provision of SS.6, 7, 8 of NAICOM Act No. 1 of 1997.

Learned counsel for the appellant contended that the attempt in the NCRIB Act to amend Section 36(3) of the Insurance Act to the effect that all that corporate bodies needed to do in order to be registered by the appellant is to be enlisted by

20 the council not only put them in direct conflict and collusion with the rules, duties and powers of the appellant but also amounted to the usurpation of the statutory duty of CorporateAffairs Commission. That by Section 33(2) of the NCRIBAct, the council automatically dispenses with the requirement of the Corporate Affairs Commission and makes registration with it equivalent to registration with CAC.

25 That a Company or Partnership does not therefore need to register with CAC before going for licensing by NAICOM. That this is really wrong.

Mr. Ume for the appellant further stated that there are other conflicts in the area of requirements to remain in practice. That sections 36 - 44 of Insurance Act 2003

30 provided the dos and don’ts that will disqualify insurance broker and expose its licence for cancellation. That contrarily, the NCRIB went ahead to prescribe different dos and don’ts insisting that only on those grounds should the Insurance brokers licence be revoked by the National Insurance Commission. He referred to

Sections 18 (7) & (8) of NCRIB Act. That this creates a situation of uncertainty of

35 whom, when and how a licence, can be revoked which is a picture of two masters in one ship.

Learned counsel submitted that it cannot be the intention of the legislature to create two opposing bodies for one function which would lead to confusion. He

40 cited *Ibrahirn v. Sheriff* (2004)14 NWLR (pt 892) 43 at 5; *Din v. A-G Federation* (2004)12 NWLR (Pt. 888) 459 at 465.

Learned counsel further said that if the trial court had taken all the Sections together along with the other relevant provisions the court below, would have come to the conclusion that there are inconsistencies and conflicts in the statutes before the court. He referred to Okonkwo v. INEC (2004) 1 NWLR (pt 854) 242 at 259.

Mr. Ume of counsel said that in the construction of statutes the trial court failed to take a holistic view of the statutes. That if the court had done so, it would have

5 noted the conflicts and would have applied Section 100 of the Insurance Act to resolve the conflict in favour of NAICOM. He cited the case of *Nwole v. Iwuagwu* (2004)15 NWLR (Pt. 895) 61 at 69.

Learned counsel for the appellant said Section 100 is not ambiguous. That NCRIB

10 is any other enactment applicable to Insurance Institution. That Insurance Institution includes insurer, reinsurer, insurance broker or loss adjuster and that the interpretation of the provisions by the trial court if not upturned by this Appeal Court will definitely lead to absurdity.

15 Learned counsel for the respondent in his Brief stated that the learned trial Judge was right in holding that there was no inconsistency between NCRIB Act 2003 and the NAICOM Act 1997 and the insurance Act 2003. That the arguments by appellant’s counsel to the contrary lacked merit and ought to be rejected. He stated that one of the cardinal principles of interpretation is that the meaning of a

20 word in a statute depends upon the context in which the word is used and having regard to other words used in the statute. That the principle is “*Noscitur a Sociis* (meaning “A thing is known by its associates). He cited the case of *Bromley London Council* (1983) 1 AC 768; (1982) 1 All E.R 129.

25 Learned counsel for the respondent, Chief Adeyemi said taking a holistic view of the NAICOM Act particularly Sections 6, 8, 16 (1)(b), 25, 31, 33, 37 and 42, that the word ‘business” in the Act means commercial enterprises and does not include professional services where service rather than profit is the primary objective. That therefore, the appellant’s power does not extend to the regulation of

30 professional insurance matters where such services are performed by individuals (i.e. natural persons). That the NAICOMAct 1997 defines an insurance broker only for the purpose of the Act and not for all purposes. That the Act deals with commercial matters while the NCRIB Act and the Chartered Act deal with professional matters.

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Learned counsel said therefore the NCRIB Act and the NAICOM Act are not inconsistent with each other. He stated on that granted, without conceding that there is any inconsistency, as to the two enactments are Acts of the National

Assembly, the later one, i.e. the NCRIB Act of 2003, prevails over the earlier one

40 that is the NAICOM Act of 1997. He cited *Governor of Kaduna State v. Kagoma*

(1982) All NLR 162 at 173; *Crownstar & Co. Ltd. v. The Vessel MV Vali* (2001) 1 NWLR (Pt. 37), Eastborne Corporation v. Forest Cream Parlour (1995) 2 Q.B 92

Chief Adeyemi for the respondent said S.7 (4) of the NCRIB Act 2003 is perfectly consistent with Section 36 of the Insurance Act 2003 and is intended to be applied harmoniously with it.

Learned counsel said that the appellant’s contention that Ss. 18(7) and 8 of the NCRIB Act are inconsistent with the Insurance Act is misconceived as the provisions on enforcement of sanctions against an erring insurance broker contained in the NCRIB Act are additional to the sanction contained in the

5 InsuranceAct and NAICOMAct. That contrary to the erroneous view of the appellant, the provisions of the NCRIBAct have not derogated from any of the powers or sanctions contained in Ss. 36 – 44 of the Insurance Act.

That the additional provisions made in the NCRIB Act were necessitated by the 10 failure of the appellant and its precursors to deal with corrupt insurance brokers. That the mischief which prompted the new provisions were contained in the uncontroverted affidavit of the respondent. He referred to pages 1 - 3 of the Supplementary Record of Appeal and the case *of Cotecna International Ltd v. Churchgate Nigeria Ltd & Anor* (2004) 11 NWLR (Pt. 883) P. 128 at 142 - 143.

15

Learned counsel for the respondent went on to state that even before the enactment of the NCRIB Act 2003, the appellant had never enjoyed exclusive power to register and de-register insurance broking institutions. He cited S. 36 (4) of the Insurance Act 2003 which law gave the Chartered Insurance Institute of

20 Nigeria which was created by legislation in 1993, some role in the qualification of insurance brokers and that before the more appropriate professional body, the respondent was created by law. He cited Section 100 of the Insurance Act 2003 and stated that the appellant’s prayer that the court should use S.100 of the

Insurance Act 2003 to declare some Sections of the NCRIB Act void is 25 misconceived.

Chief Adeyemi submitted further that it is not correct, as the appellant had contended that enrolment with the respondent under the NCRIB Act is the only condition for the registration or deregistration of a corporate insurance broker by

30 the appellant. That the listing by the respondent is just one of the conditions. That it is also not correct that the NCRIB Act has transferred all its responsibilities to the respondent as there are several other provisions in the law which empower the appellant regarding the registration and cancellation of registration of corporate brokers. He cited SS. 36 - 44, 7, 50 (2) and 53 of the Insurance Act. Learned

35 counsel said all the authorities relied upon by the appellant for the purpose of interpreting the NCRIB Act and detecting the intention of the legislature are irrelevant as the wordings of theAct are clear and unambiguous. He cited the case of *Camptel International SPA v. Dexson Ltd* (1996) 7 NWLR (pt 459) 170 at 177.

40 Learned counsel for the respondent went on to say that contrary to the assertion of the appellant that the NCRIB Act has not substituted the respondent for the CorporateAffairs Commission. That it is incorrect to say that S. 33(2) of the NCRIB Act has dispensed with the registration of corporate bodies with the Corporate Affairs Commission (C.A.C).

!n his Reply Brief learned counsel for the appellant said because Insurance business is as important as banking business, the Federal Government of Nigeria has to establish a sole regulatory body to monitor and regulate the insurance practice in Nigeria. That sole regulatory body is the National Insurance

5 Commission (NAICOM) which is the overseer of insurance industry of which brokerage is an integral part. He said it was fallacious respondent’s description of business as including a profession. Learned counsel went on to say that the appellant’s position represents the law because ‘profit’ is not an essential part of the legal definition of business, he referred to Halsbury’s law 3rd Ed. 10,11.Also the 10 case of *Rolls & Miller* (1884) 27 Ch. D. 71 at 88; Blacks Law Dictionary.

Learned counsel also stated that the basic and well settled cannon of construction is that if there is nothing to modify, alter or qualify the language of a statute, it must be construed in the ordinary and natural meaning of the words and sentence used.

15 That the word ‘business’ in its ordinary and plain meaning includes profession. He cited the cases of *Ikazue v. Mbadugha* (1984) 5 SC 79. In *Re Wilkinson* (1922) 1 KB 584 at 587.

Mr. Ume stated on that the practice of an Insurance broker anytime, anywhere is a

20 pursuit upon lines sufficiently commercial to bring it within the term business. That he cannot practice whether as individual or company, the operative word being “no person shall’ without being licenced by NAICOM has the sole responsibility to register him. He cited *R v. Mills* (1964) 1 O.R. 74 Onatoria, Canada Court of Appeal.

25

It may be rightly presumed that the intention of the law makers in promulgating a new law where one on the same subject - matter, is still existing is to correct any mischief or societal ill which was not taken care of by the already existing one.

Therefore where an earlier legislation contains a very harsh provision capable of

30 depriving the citizen of his entrenched right and a new legislation plays down such harsh provisions it must be clear that the law makers intend to do away with that harsh provision contained in the earlier legislation. A court of law which is also a court of justice must give both legislations a truly harmonious interpretation. See

*Cotecna International Ltd v. Churchgate (Nig) Ltd* (2004) 11 NWLR (Pt. 883) p. 128

35 at 142 - 143 per Aderomi JCA*; Akuneziri v. Okenwa & Ors* (2000) 15 NWLR

(Pt. 691) 526.

I shall here recast some of the relevant provisions of the two laws which counsel want to be interpreted in favour of their respective position.

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Section 7(4) of NCRIB provides:

“Enrolment in the list shall be a condition precedent to the licensing of a body corporate by the National Insurance Commission.”

Section 18(7) & (8) Provides:-

10(7) “A body corporate whose name has been erased front the list shall have its certificate of registration revoked by the National

5 Insurance Commission.”

18(8) “A body corporate who through disciplinary action or otherwise has the number of its partners reduced to one shall immediately appoint an additional partner provided that if the body corporate

10 body remains for 12 months with one partner the name of the

body corporate shall be erased and its certificate of registration revoked by the National Insurance Commission”.

Ss. 6, 7, 8 of NAICOM Act No.1 of 1997 which learned counsel for the appellants 15 contends are in conflict with the provisions of S. 18 of NCRIB provides:

Section 6:

The principal object of the Commission shall be to ensure the effective

20 administration, supervision, regulation and control of insurance business in

Nigeria.

Section 7(a):

25 “The Commission shall establish standards for the conduct of insurance business in Nigeria.

Section 8(a)

30 “The Commission shall have power to establish a bureau to which complaints, against any insurer, reinsurer, insurance broker or loss adjuster (in this Decree referred to as (“insurance institution) may be submitted by members of the public

35 Section 36(3) (b):

“If the Commission is satisfied that the applicant is a partnership or a company with limited liability duly registered under companies and Allied

Matters Act, 1990, It shall register the applicant as an insurance broker by 40 issuing the applicant with a Certificate of registration.

Learned counsel for the appellant had submitted that bySection 33(2) of the NCRIB Act the Council, automatically dispensed with the requirement or the Corporate Affairs Commission and makes registration with it equivalent to registration with the Corporate Affairs Commission.

To understand the reasoning of the learned counsel for the appellant and see if one would agree with that reasoning or not I would restate the provisions of Section 33 (2) & (3) of NCRIB:

5 S.33(2) Section 36 of the Insurance Act 1997 is amended by deleting subsection (3) and substituting for the following new subsection.

(3) If the Commission is satisfied that the applicant is a listed body

Corporate within the meaning of the Nigeria Council of Registered Insur-

10 ance Brokers Act 2003.

To deal with that leg I shall refer to the case of *Governor of Kaduna State v. Kagoma (1982) All NLR 160* per Fatayi Williams CJN:

15 “1. S. 98 of the Local Government Law does not repeal albeit by implication, the provisions of S. 2 of the Commissions of Inquiry Law but that both are to exist side by side since both the earlier and the later statutes can be reasonably construed in such a way as to give effect to them. Furthermore, the later statute is worded

20 in clear and affirmative language restricting the powers conferred there to a specified authority and to specific subject, without any express or implied repeal.

2. The earlier statute only becomes inapplicable so long as the

25 provision of the later statute dealing with specific matters are in force.

3. The Local Government Law is to be construed and that enactment was being read the day after the Commissions of

30 inquiry Law was passed into law.

4. It is trite law that where there are two enactments, one making general provisions and the other making specific provision, the specific provisions are, by implication, excluded from the general

35 provision.”

The treatment of the case above by the learned Chief Justice has settled the issue at hand and it is therefore not difficult considering those relevant Sections of the two laws above stated and principles in the case of Governor of Kaduna State v.

40 Kagoma (*supra*) to say with firmness that there is no conflict in the two laws or in the roles allocated to the two bodies either that of Insurance Brokers Council or the Insurance Commission. Therefore I answer the question raised in Issue 1 in the negative.

ISSUE 2.

Learned counsel for the appellant said that it was contradictory to say that an insurance broker should not be regulated by NAICOM. That the regulation or control cannot be a regulation as such if it does not include qualification and certification. That the statutory, judicial and dictionary definitions of insurance and

5 insurance broker shows that theyare inseparable thus demanding there is no need for duplication of bodies. He cited the case of *Lucina v. Craufurd (1806) 2 Bos & PNR 269*.

Learned counsel said it was wrong for the trial court to have attempted to

10 distinguish between practice as an insurance broker and engaging in the business of insurance broker thereby ascribing different qualification for the two when this is not so. That there is only one qualification to practice or engage in the business of insurance broker and only NAICOM is empowered to certify this qualification. That to engage in the business of a thing is one and the same as practicing of a thing. 15 He cited in *Re William Will Trusts, Chartered Bank of India, Australia and China v. Williams* (1953) 1 All E.R 536 at 537.

In response, learned counsel for the respondent said that on the issue that the true position is that respondent has the exclusive power to register insurance broking

20 professional. That the profession of insurance broking is practiced by individuals who are employed or hired by corporate bodies that were registered with the appellant. That the appellant has control over the corporate bodies while the respondent is responsible for the training, certification and discipline of the individual professionals. Chief Adeyemi said the learned trial Judge was right in

25 discussing insurance business and broking business separately as the two are treated under separate parts of the InsuranceAct and to enable him show the role of the two relevant professional bodies (CIIN and the NCRIB) to the two areas. That in the United Kingdom whose insurance law and practice Nigeria adopts as precedent, the regulation, supervision and control of insurance business is by law

30 vested in the Secretary of State and the Financial ServicesAuthority, He referred to the Insurance CompaniesAct 1982 and the Financial ServicesAct 1986 both of the UK and also the Insurance Brokers (Registration)Act of 1977 also of the UK. That section 3 of the Act empowers the Council created under the Act to register individual insurance brokers while S.5 of the Act empowers the Council to enroll

35 corporate insurance brokers. He said both the Authority and the Council work harmoniously in the UK to ensure the smooth performance of the profession.

In their Reply Brief learned counsel for the appellant said the regulatorystructure in the UK is not the same as in Nigeria. He submitted that Section 3(2) of Insurance

40 Brokers (Registration) Act 1977 of UK which is *in pari materia* with section 6(2)(b) of the Nigeria Council of Registered Insurance Brokers Act 2003 shows that the Register to be kept by NCRIB is purely the register of NAICOM licenced practicing Insurance brokers. That section 3(2) of Insurance Brokers (Registration) Act 1977 of UK is similar to section 6(2) (a) of NCRIB Act. He cited the English case of

*Pickles v. Insurance Brokers Registration Council* (1984) 1 WLR 748; (1984) 1 All

E.R 1073 where the counsel required Pickles to inform them of time which he had spent at his insurance broking business over the past five years. That information was not forthcoming, and registration was refused. Pickles appealed to the High Court against the refusal. The court held dismissing the appeal that the

5 council was entitled to seek the information and Pickles had no automatic right of registration.

It has always been the law that the duty of the court is to interpret a statute and to give effect to the clear intention of the legislation. It is a canon of interpretation that

10 the court will lean against construction that will produce an absurdity or avoidable invalidity. See *Adigun v. A-G Oyo State* (1987) 1 NWLR (Pt. 53) 678; *Din v. A-G Federation* (2004) 12 NWLR (Pt. 1888) . 459 at 478; If the words of a statute are ambiguous, then the intention of parliament must be sought first in the statute itself, then in other legislations, and contemporaneous circumstances and finally

15 in the general rules laid down and often approved, namely, by ascertaining what was the common law before the making of the Act, what was the mischief and defect for which common law did not provide, what remedyparliament had resolved and appointed to cure the disease of the remedy see *lfezue v. Mbadugha* (1984) 1

SCNLR 427. See also *African Newspaper (Nig) Ltd & 22 Ors v. Federal Republic of* 20 *Nigeria* (1985) 2 NWLR (Pt. 6) 137 at 140.

I would further refer to the case of *Registered Trustees, ECWA Church v. Ijesha* (1999) 13 NWLR (Pt. 635) 368 at 392 paras F - G per Amaizu JCA.

25 When words in a statute are clear, free from ambiguity in themselves, they are to be construed according to the strict, plain meaning of the words themselves. A corollary to this general rule of literal interpretation is that nothing is to be added to, or taken from a statute unless there are adequate grounds to justify the inference that, the legislature intended something which it omitted to express.

30

Having considered this issue in the light of the provisions of the laws either that of NAICOM or NCRIB the learned trial Judge did not vest upon himself the duty of severing the brokerage insurance business from insurance business as well as qualification to practice as an insurance broker and qualification to engage in the

35 business of insurance broker. In my humble view what the learned trial Judge did was give effect to the intention of the legislature as clearly and unambiguously stated in either of the two laws. He interpreted the relevant provisions of either law and in keeping with the spirit of the law and without deviating from what the legislature intended stated where what role resided and in which body. Therefore I

40 answer Issue 2 positively to the point that the learned trial Judge did not allocate the roles *suo motu* but rather gave effect to the different provisions and if in doing so the impression that there was a severance of roles to which each of the two bodies should confine themselves then so be it as it tallied with the intendment of the legislature. For this I take refuge in the case of *Okonkwo v. INEC* (2004) 1 NWLR (Pt. 854) 242 at 298 - 299 per Ogunbiyi JCA.

ISSUE 3

Learnedcounsel for theappellant said that theregister and registration envisaged by NCRIB does not include or extend to authorization or licencing of Insurance

5 brokers. That it only envisaged and is confined to keeping the register of the brokers authorisedand licencedbyNCRIB.That theRegister tobe keptbyNCRIB is just record keeping of NAICOM licenced brokers and serves the same purpose as theregisters keptbyCharteredInsurance of Brokers whilethe registration and licensing of stock brokers is the soleresponsibilityof the Commission established

10 under the Exchange and Securities Commission Act 1988. Mr. Ume said the

CharteredInstitute of Insurers,andInstitute of lossAdjusters equallykeepregister anddo register its member in accordancewiththeir laws similar tothat of Sections 5 & 6 of NCRIB.Also that deregistration from the register kept bythis bodies does not amount to automatic de - registration and de-licensing by NAICOM or other

15 regulating Organs. That at worst deregistration of a person from the register kept by these bodies denies the person some professional assistance which these bodiescanrender totheirmembers.The InsuranceActNo1 2003madeadequate and elaborate provision on what can lead to deregistration and de-licensing of an insurer, broker, loss Adjuster registered by it. He cited Sections 37, 38, 39 for 20 Brokers.

Mr.Umeof counselsaiditis preposterous and incompatiblewith NAICOMActthat NCRIBActshould providethat“Enrolmentin thelistshallbe aconditionprecedent to the licensing of a body corporate by the National Insurance Commission. He

25 urgedthe courttoholdthat whatour lawintends andrecognizes is registrationand deregistration by the appellant in accordance with the provision of National Insurance Commission Decree andInsuranceAct 2003. That the net effectof the Insurance Act2003 that“No personshall transactbusiness brokering unless heis registered”and” .Sohoweverthatwhereanyoftheprovisionsof theCom-

30 panies and Allied Matters Act 1990 and other enactment is inconsistent with any provision of this Act, the provision of this Act shall prevail to the extent of that inconsistence is that anySection(s) of NCRIB purporting tomake the registration under NCRIB the ultimate for qualification and licensing are inconsistent with the

InsuranceAct 2003 and to this extent of their inconsistency null and void and the

35 courtshould so hold.Learnedcounselfurther statedthat the word usedin Section 36of InsuranceAct2003is “Nopersonshall” hasonmanyinstances beendecided byown courts to include na tural and artificial person. He cited the cases of *Royal Mail Stream Packet Co. v. Braham* (1877) 2 A.C 381, *Leske v. S.A Real Estate*

*Investment Co. Ltd* (1930) 45CLR 22at 25*; lbrahim v. Judicial Service Committee* 40 (1998)14 NWLR (Pt. 584) 1 at 7

Learned counsel said the word “shall” indicates and enforces the fact that nobody can appropriatelybe referred to as a broker without being registered byNAICOM. He cited *the case of Ejikemele v. Opara* (1998) 9 NWLR (Pt. 567) 587 at 596.

Learned counsel for the appellant urged the court to hold that in accordance with Section 36 of Insurance Act 2003 no person, including natural and corporate persons, is qualified to practice or engage in the business of insurance broker unless he/she is registered with the Commission and licensed by same. That the

5 court should hold that the register to be kept by the NCRIB and the registration to be done by it is limited to the registration of persons/corporations registered and licensed by NA to practice insurance brokering. That section 2a - h of NCRIB graphicallypresentedthe aim andpurposeof theregister andthe registrationtobe carried out by the Council. That it is clearly all about those already certified and

10 licensed by the regulatory body to practice Insurance brokerage. Mr. Ume said that it will put the law in a confused state to uphold the trial courts interpretation of section 5 & 6 of NCRIB in the face of the clear provision of Section 36(8) of the Insurance Act 2003. He stated on that the trialcourt’s finding unless upturned has the effect of turningmere professional associations andbodies into self regulating

15 bodies thereby undermining the important role played by Government regulatory bodies.

Mr. Adeyemi in his response stated that the argument of the appellant through counsel on this issue is illogical and not based on any law. That the register to be

20 kept by the respondent under SS 5 and 6 of NCRIB Act is to contain names of naturalpersonswhereas onlycorporatebodiesare requiredtoberegistered bythe appellant under section 36 of the Insurance Act. Learned counsel said that the interpretation placed by the appellant on the word ‘person’ in section 36 of the

Insurance Act is erroneous in the sense that the word “person” in the said section

25 is limited and qualified by that same section 36 in sub- section 36(a), as a partnershipor acompanywithlimited liabilitydulyregisteredunder theCompanies and Allied Matters Act 1990 .“ That this clearly limits the applicant’s entitlement to apply for registration to carry on business to artificial persons and not natural persons. Therefore the cases cited by the appellant in support of that 30 argumentdefining whoapersonis areirrelevant.

On the question whether the registration by respondent is an authority for insurance brokers to carry out business, learned counsel said he conceded that an insurance broker registered or listed by the respondent has to apply for

35 registration with NAICOM beforegoing into business. Thatthe learned trialJudge stated the position correctly at page 12 of his judgment.

In his Reply Brief learned counsel for the appellant said that wherever the

Insurancebroker practices insurancebrokeragewhetheras individualor corporate

40 itaffects the interest of thegeneral public which the Federal Government seeks to protect and safeguard bythe establishment of NAICOMas a FederalGovernment Agency. That the Federal GovernmentAgency (NAICOM) is better equipped and fortified to protect the insurance institution. The NCRIB being more of a pressure group with private and personal interest cannot do this better.

Going through the arguments of learned counsel for the appellant it is not difficult to see that these arguments submissions and judicial authorities which are not relevant to the case in hand would have suited most beautifully in an academic exercise, seminar and symposia at the end of which suggestions on how these 5 bodies ought to be regulated or provided for would have been pushed forward. Unfortunately the court is not the proper arena for such exercises and I decline to be drawn in. What I see before me however is as stated by the learned counsel for the respondent whose arguments I am persuaded towards. I answer Issue 3 in the negative and to say that the issue really does not apply in the circumstances of

10 this appeal, as the necessary laws have spelt out what is to obtain and what roles the two bodies are to play and those affected. Perhaps it may be necessary for emphasis for me to say that the register to be kept by NCRIB is for those who are registered as practicing brokers who are obliged to obey the law of NCRIB or

NAICOM as the case may be since the particular provisions stated are 15 unambiguous and clear.

ISSUE NO. 4

The learned counsel for the appellant submitted that the learned trial Judge read

20 into the NCRIB Act an intention not intended by the parliament when he stated that “The certification, qualification and licensing of an Insurance broker is that which was created for under the Nigeria Council of Registered Insurance Brokers”. Mr. Ume further stated that it is a notorious fact that insurance is a course of study in

Nigerian Universities and insurance brokerage is studied as part and parcel of

25 Insurance. That there is nowhere in the Act where it is stated that the NCRIB should deal with the qualification, certification, accreditation and licensing of Insurance brokers. Learned counsel for the appellant said that the functions of qualification, certification, accreditation and licensing of insurance brokers are equally that of the appellant, by virtue of Sections 6, 7 and 8 of NAICOM Act of

30 1997. That these functions are curiously missing in S.2 (a – h) which stated the duties of the Council under NCRIBAct. That our courts have consistently refused to read into statutes what are not contained in them. He referred to the case of *Edozien v. Edozien* (1998) 13 NWLR (Pt. 580) 133 at 137.

35 Learned counsel said it is equally not the duty of the court to supply any omission in a statute. He cited the case of *Jideonwu v. Chukuma* (2000)1 NWRL (Pt. 641) 397 at 400. Mr. Ume said that it is the appellant and not the respondent that is statutorily equipped to carry out these functions by virtue of S.31 of the National Insurance CommissionAct 1997.

40

Learned counsel for the respondent said appellant has no statutory or any other role to play in the certification of insurance brokers. That a body that does not train or educate cannot go ahead and certify or qualify. That the only function assigned to the appellant by its enabling Act in respect of training of insurance professionals is funding. He referred to S.7 (k) of NAICOM Act 1997 which provides that appellant shall contribute to the educational programmes of the Chartered

Insurance Institute of Nigeria and the West African Insurance Institute”. He cited S.19 of NAICOM Act 1997.

5 Mr. Adeyemi learned counsel for the respondent said no law obliges an individual general insurance practitioner, individual insurance broker, actuary, claims manager, risk surveyor or claims assessor to register with the appellant. That no law in Nigeria except the NCRIB Act 2003, makes provisions for the registration and discipline of individual insurance brokers.

10

Learned counsel said the appellant is trying to undermine this law so that the gate may remain wide open for quacks and dubious people to penetrate the profession and completely ruin its image.

15 In the arguments for and against in this issue it must be noted that literal interpretation of statutes is preferred where it is available. The duty of the court is to give this literal interpretation in such a circumstance the consequence not withstanding see *Edozien v. Edozien* (1998) 13 NWRL (Pt. 580) 133 at 151 para F.

20 It is not the duty of the court to read into an enactment, words which are not found there and which will alter its operative effect. See *Edozien v. Edozien (supra)* at 152 para D.

It is clear to me that what learned counsel for the appellant is calling on this court 25 to do here is neither the duty of the court nor what the relevant laws have provided. To carry out the duty I see before me I answer this question in Issue 4 in the negative and to say that the appellant has no role to play in the certification or registration of individual insurance brokers. The intention of learned counsel for the appellant to expand the role of the appellant cannot go beyond wishful thinking 30 which unfortunately I see no jurisdiction to oblige.

ISSUE NO. 5

Learned counsel for the appellant is not duty bound to register anybody presented

35 by the respondent for registration. That to hold otherwise is to make the appellant ineffective and redundant and this could not have been the intention of the legislature. Mr. Ume had contended that the Insurance Act No. 1 of 2003 made elaborate provisions of who should be qualified to be registered as insurance

Brokers. The Act equally provided that on the registration by the Commission the 40 person will be issued with certificate - see Section 36(3)(b), also Section 36(7).

Learned counsel for the respondent said S.36(3) (a) of the Insurance Act stipulates that only companies that meet the qualifications that would be specified would be registered. That the appellant not being a professional body is not competent to prescribe the qualifications for professional insurance brokers which role belongs to the respondent and it was accordingly given to it by its enabling Act. That the learned trial Judge was right to have held in his judgment that the respondent is the body to deal with qualification of insurance brokers while the appellant is to register the bodies for business.

5

I am persuaded bythe argument of the learned counsel for the respondent who has captured truly the provisions of the law. No matter what the learned counsel for appellant would sayor wish that cannot change the law as stated either byNAICOM

Act or the NCRIBAct. I answer the question here in the negative and hold that the

10 power given to the respondent under the NCRIB Act to register and enroll insurance brokers before they are registered with the appellant has not rendered nugatory the power of the appellant to regulate insurance business.

From the foregoing I have no difficulty at all in holding that this appeal lacks merit

15 and I dismiss it. I affirm the decision of the court below. I award 310,000 (Ten thousand Naira) to the respondent to be paid by the appellant.

**MUHAMMAD,JCA:** I agree.

20 **OMAGE,JCA:** I agree.

**Cases Cited in the Judgment:**

*Adigun v. A-G Oyo State* (1987) 1 NWLR (Pt. 53) 678

*African Newspaper (Nig) Ltd & 22 Ors v. Federal Republic of Nigeria* (1985) 2

25 NWLR (Pt. 6)137

*Akuneziri v. Okenwa & Ors* (2000)15 NWLR (Pt. 691) 526

*Camptel International SPA v. Dexson Ltd* (1996) 7 NWLR (Pt. 459) 170

*Cotecna International Ltd v. Churchgate Nigeria Ltd & Anor* (2004) 11 NWLR (Pt. 883) 128

30 *Crownstar & Co. Ltd. v. The Vessel MV Vali* (2000) 1 NWLR (Pt. 639) 37

*Din v. A-G Federation* (2004)12 NWLR (Pt. 888) 459

*Edozien v. Edozien* (1998) 13 NWRL (Pt. 580) 133

*Ejilemele v. Opara* (1998) 9 NWLR (Pt. 567) 587

*Governor of Kaduna State v. Kagoma* (1982) All NLR 162

35 *Ibrahirn v. Sheriff* (2004)14 NWLR (Pt. 892) 43 *Ikazue v. Mbadugha* (1984) 5 SC 79*;* (1984) 1 SCNLR 427 *Jideonwu v. Chukuma* (2000)1 NWRL(Pt. 641) 397 *lbrahim v. Judicial Service Committee* (1998)14 NWLR (Pt. 584) 1

*Leske v. S.A Real Estate Investment Co. Ltd* (1930) 45 CLR 22

40 *Nwole v. Iwuagwu* (2004)15 NWLR (Pt. 895) 61 *Okonkwo v. INEC* (2004) 1 NWLR (Pt. 854) 242

*Registered Trustees, ECWA Church v. Ijesha* (1999) 13 NWLR (Pt. 635) 368

**Foreign Cases Cited in the Judgment:**

*Lucina v. Craufurd (1806) 2 Bos & PNR 269*.

*Bromley London Council* (1983) 1AC 768; (1982) 1All E.R 129

*Eastborne Corporation v. Forest Cream Parlour* (1995) 2 Q.B 92

*Pickles v. Insurance Brokers Registration Council* (1984) 1 WLR 748; (1984) 1All

E.R 1073

5 *R v. Mills* (1964) 1 O.R. 74 Onatoria,

*Re Wilkinson* (1922)1 K.B 584

*Re William Will Trusts, Chartered Bank of India, Australia and China v. Williams*

(1953) 1All ER 536

*Rolls & Miller* (1884) 27 Ch. D. 71

10 *Royal Mail Stream Packet Co. v. Braham* (1877) 2 A.C 381

**Statutes Cited in the Judgment:**

Chartered Institute of Insurance of NigeriaAct Cap C 11 LFN 2004

Chartered Institute of Stock Brokers Act Cap 9 LFN 2004

15 Chartered Institute of Taxation in Nigeria Cap C 10 LFN 2004 Financial Services Act 1986 both of the UK

Insurance Brokers (Registration) Act 1977 of UK, Section 3(2)

National Insurance Commission Act 1997,Sections 6, 7(k),8, 16(1)(b),19, 25, 31,

33(2) (3), 36, 37, 42; 2003 Section 6(2)(b), 36(8), 36 - 44, 7, 50 (2) and 53 100;

20 1982

NCRIB Act 2003, Section 2a – h, 5, 6(2)(a), 7(4), 18(7)(8)

**Books Cited in the Judgment:**

Halsbury’s law 3rd Ed. 10,11

25 **History:**

**HIGHCOURT** Adah J.

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**COURT OF APPEAL (ABUJADIVISION)**

Ibrahim Tanko Muhammad, JCA*(Presided)*

Victor Amieopomo Oyeleye Omage, JCA

Mary U. Peter Odili, JCA *(Read the Lead Judgment)*

35 **Counsel:**

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Chief Funmi Adeyemi Esq. (*with him* Akin Oni Esq.) for the Respondent

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