#### **Registration of Incorporated trustees: An overview**

Companies and Allied Matters Act 2020 (CAMA) is the legal framework for the registration of incorporated trustees in Nigeria. The primary aim of the law is to allow organisations that do not have legal personality and consequently not able acquire or dispose property, to acquire a form of legal personality. Section 823 of CAMA lists associations or entities bound together by custom, religion, nationality, social development, culture, sporting or charitable purpose and permits them to appoint two or more trustees to apply to the Corporate Affairs Commission (CAC)[[1]](#footnote-1) for registration as “the incorporated trustees” of the association or entity. Section 823 (1) of CAMA provides:

Where two or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, they may, if so authorised by the community, body or association (in this Act referred to as “the association£) apply to the Commission in the manner provided for registration under this Act as a corporate body.

Where the association’s nominees as trustees have applied to CAC for registration, section 823(2) provides that upon being registered by CAC, the trustees shall become a corporate body. It is important to note that it is not the association that is recognised a corporate body but the trustees.

Section 826 (i) of CAMA provides for those that are not qualified to be appointed as a trustee. They include:

1. An infant
2. A person of unsound mind having been so found by a court.
3. An undischarged bankrupt.
4. A person convicted of an offence involving fraud or dishonesty within five years of his proposed appointment.

The association that wishes to register its trustees is by section 825 of CAMA apply to CAC in prescribed form and state the following:

1. Name of the proposed corporate body which must contain the words “Incorporated Trustee of…….;
2. Aims and objects of the association which shall be for the advancement of any religious, educational, literary, scientific, social, development, cultural, spoiling or charitable purpose, and shall be lawful; and
3. Names, addresses and occupations of the secretary of the association, if any.

It is expected that the application referred to in section 825 above will be accompanied by:

1. Two printed copies of the constitution of the association.
2. Duly signed copies of the minutes of the meeting appointing the trustees and authorising the application showing the people present and the votes scored;
3. The impression or drawing of the proposed common seal, if there is one.

According to section 827, the constitution of the association that will accompany their application shall in addition to any other matter include:

1. State the name or title of the association;
2. The aims and objects of the association; and
3. Make provisions, in respect of the following:
4. Appointment, powers, duties, tenure of office and replacement of trustees,
5. The use and custody of the common seal, if there is one,
6. The meeting of the association,
7. The number of members of the governing body, if any, the procedure for their appointment and removal, and
8. Where subscriptions and other contributions are to be collected, the procedure for disbursement of the funds of the association, the keeping of accounts and the auditing of such accounts.

Once the association has made the application as stated above, and successfully fulfil other obligations stated in section 828 involving publication and advisement in newspapers of the association’s intention to register trustees, CAC shall register the association’s trustees and issue them certificate to that effect.[[2]](#footnote-2)

Section 830(1) and (2) of CAMA stipulate the effects of registration of trustees to include the fact that the trustees:

1. become a body corporate
2. have perpetual succession
3. have a common seal if they so wish.
4. Have power to sue and be sued in its corporate name as trustees
5. Subject to section 836 of this Part, power to hold and acquire, and transfer, assign or dispose of any property, or interests therein belonging to, or held for the benefit of such association, in such manner and subject to such restrictions and provisions as the trustees might without incorporation, hold or acquire, transfer, assign or otherwise dispose of the same for the purposes of such community, body or association of persons.

The certificate of incorporation also vests in the trustees all property and interests of whatever nature or tenure belonging to or held by any person in trust for such community, body or association of persons.[[3]](#footnote-3)

It must be noted that an association that registers trustees in terms of CAMA can change or alter its name, objects, or any of them. They can also change the trustees. Such alteration needs to be done with the approval of CAC.

The income and property of the association that has registered trustees in term of CAMA must be applied solely and towards the promotion of the objects of the body as set forth in its constitution. Also, no portion from the property of the association must be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to any of the members of the association.[[4]](#footnote-4) However, a payment in good faith, of reasonable and proper remuneration to an officer or servant of the body in return for any service actually rendered to the body or association is permitted.[[5]](#footnote-5)

If in the event of the winding up or dissolution of the trustee there remains, after the satisfaction of all its debts and liabilities, any property whatsoever, the same shall not be paid to or distributed among the members of the association, but shall be given or transferred to some other institutions having objects similar to the objects of the association.[[6]](#footnote-6)

It should be noted that the significance of registration of trustees of an association commonly comes to the fore mostly where a party in a lawsuit challenges the competence of the association to sue or where the association is not able to tender the certificate of registration of its incorporated trustees.[[7]](#footnote-7) For instance, in the recent case of *Dairo v The Registered Trustees of the Anglican Diocese of Lagos* (*Dairo),*[[8]](#footnote-8)the Lagos Anglican Diocese as the plaintiff instituted a civil suit against the defendants at the High Court of Lagos State with the name “Registered Trustees of the Anglican Diocese of Lagos.” The action was a simple claim for damages for trespass and injunction against the defendants. However, the suit had not gone to trial before the defendants raised a preliminary objection to challenge the competence of the plaintiffs to institute the suit. The defendants demanded that the church present its certificate of registration of its trustees, but the church was unable to do so. In fact, Chief Benjamin Ajayi, one of the purported trustees of the church who testified as the plaintiffs’ witness said at his cross-examination: “I have not seen the certificate of the Registered Trustees of the Anglican Diocese. The Registered Trustees of the Anglican Diocese have not been registered.”[[9]](#footnote-9) The Supreme Court held that since the plaintiffs failed to produce their certificate of registration, they could not prove their capacity to sue. The court accordingly struck out the case. Eko JSC in his ruling said:

“Once the juristic capacity is challenged, the fact of incorporation becomes a fact in issue. The onus of proving that fact lies on the party claiming to be incorporated in the name it has taken out the action as the plaintiff. The burden of proof is discharged upon the production of the Certificate of Incorporation. This is a matter of fact.”[[10]](#footnote-10)

From the above discussion, it is established that whether or not an association registers trustees in terms of CAMA may have implications for the legal status of the association.

### Unincorporated associations

Unless an association acquires a juristic personality in terms of CAMA or any of other options provided by law such as registering as companies limited by guarantee or under common law, it remains a mere unincorporated body. Generally, an unincorporated entity is not a legal entity and this has many implications. Such a body cannot own or transfer property in its name. Unlike an association with a juristic personality whose property is acquired and owned in its name as a person separate from its constituting members, the property of an association without a juristic status is jointly owned by all the members. Such a body will need to appoint representatives to transact on behalf of the constituting members. However, these representatives do not have perpetual succession. Therefore, any property that the association acquires cannot be held in perpetuity in the association’s name. Also, the interests in the property may not be easily transferred without the presence of the representatives who acted for the association to acquire the property in the first place. To illustrate this, where the association’s representatives that acquired a church property on behalf of the association are all deceased, it may become difficult for the association to effectively transfer interest in the property.

Another difficulty with an association without a juristic personality is that where damages are awarded against such association in respect of the association’s property, all the members of the church would be liable to pay the damages. In the Nigerian case of *Onuekwusi v The Registered Trustees of the Christ Methodist Zion Church,* the Supreme Court echoed the differences between a corporation and unincorporated association as follows:

“It is worthy of note that the most fundamental differences between a corporation and unincorporated association are that the former has perpetual succession, it maintains its identity and its personality, notwithstanding changes in its membership, its property does not belong to its members. In the latter’s case, its property belongs to its members from time to time and that property may be owned by entirely different persons at the date when the cause of action arose, at the date when the action is commenced, and at the date when the judgment is pronounced.”[[11]](#footnote-11)

The legal disabilities associated with unincorporated entities, particularly the personal liability of every member for the acts of their members,[[12]](#footnote-12) rendered the unincorporated association form of organisation highly undesirable for associations and that is why most of them strive to claim or acquire juristic personality in any of the available avenues that may be provided by law.

1. Corporate Affairs Commission (CAC) is the government agency established in terms of section 1 of CAMA to register and perform oversight over companies and civil society organisations that register under CAMA. [↑](#footnote-ref-1)
2. Section 829. [↑](#footnote-ref-2)
3. Section 830(2). [↑](#footnote-ref-3)
4. Section 838(1). [↑](#footnote-ref-4)
5. Section 838(2). [↑](#footnote-ref-5)
6. Section 850(4). [↑](#footnote-ref-6)
7. *Registered Trustees of Apostolic Church v The Attorney General of Mid-Western State* 133; *Dairo v The Registered Trustees of the Anglican Diocese of Lagos* (2017) LPELR 42573 (SC) 1. [↑](#footnote-ref-7)
8. (2017) LPELR 42573 (SC) 1. [↑](#footnote-ref-8)
9. *Dairo v The Registered Trustees of the Anglican Diocese of Lagos* 5D-F; *Omomobi v Adeoye* (Unreported, Suit No. FCT/ABJ/CS/1111/070). [↑](#footnote-ref-9)
10. *Dairo v The Registered Trustees of the Anglican Diocese of Lagos* 22D-E. [↑](#footnote-ref-10)
11. *Onuekwusi v The Registered Trustees of the Christ Methodist Zion Church* 26A-D; See also the Nigerian Supreme Court in *Anyaegbunam v Osaka* (2002) 5 NWLR (Pt. 657) 386 at 398, “An unincorporated association does not legally exist and must of necessity act through its appointed representatives. On the other hand, a corporate entity i.e. an association that has been incorporated has legal personality. It can sue and be sued in its corporate name.” [↑](#footnote-ref-11)
12. *Williamson v Wallace* 224 S. E. 2d 253 (NC 1976). [↑](#footnote-ref-12)