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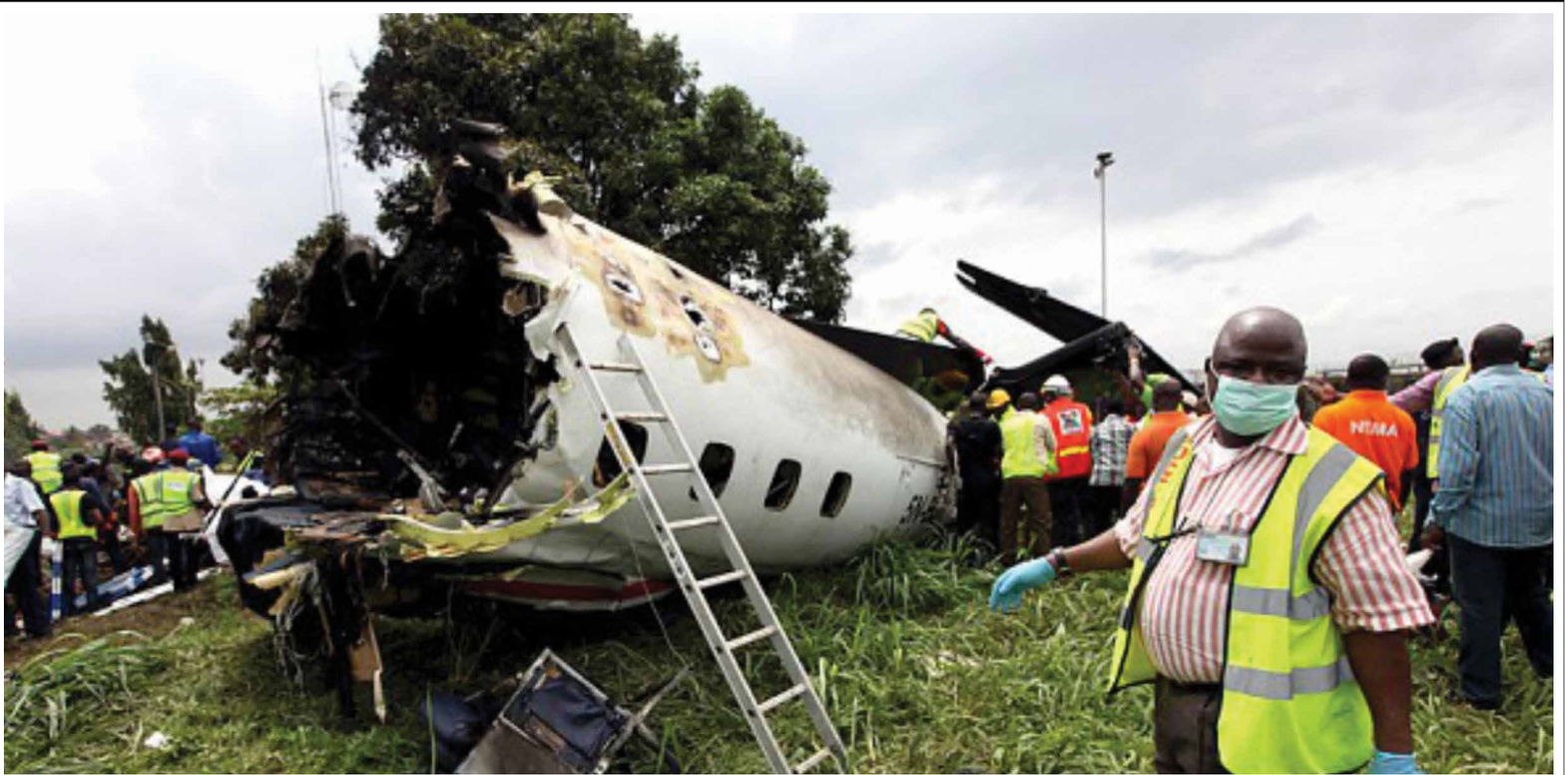

THE LAW ON THE INVESTIGATION OF AIR ACCIDENTS IN NIGERIA: A CASE FOR REFORM

- 'Wale Irokosu

This article considers the Nigerian law on the investigation of aviation accidents, the challenges, and the need for reform. It focuses on the issues of independence of the Accident Investigation Bureau (AIB), transparency of the Bureau's investigation, priority of investigative agencies and suspension of airlines' operating licences (AOL) before the conclusion of investigations.

Generally, an accident reduces confidence in the safety of any mode of transport. This is why independent investigations of accidents are important in improving transport safety. The analysis of the circumstances of accidents often leads to recommendations being made to prevent the events re-occurring. Thus, the underlying objective of investigating aviation accidents is to prevent future accidents, and not to apportion blame or liability. Aviation accidents are often fatal and tragic due to the high altitude at which aircrafts fly, and the large number of people that travel by air. Also, the chances of survival are slim. The fatal nature of aircraft accidents makes investigation difficult. Most, if not all, of the people with first hand experiences of the cause of the accident often die in the accident. The other persons who would be in the position to give useful evidence on the cause of accident are often industry stakeholders. They may not be encouraged to give useful insight as to the cause of the accidents to avoid lawsuits or liability for the accident.

The procedures for air accident investigations were first laid down in 1928 by the US National Advisory Committee for Aeronautics. They required air accident investigators to...

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THE LEGAL STRUCTURE OF THE NIGERIA PREMIER LEAGUE

- Lekan Dairo

The Nigeria Premier League is the highest level of domestic football in Nigeria with 20 teams. The league was founded in 1972 with six teams and was subsequently renamed the "Professional League" in 1990.

The Federal Government promulgated Decrees 10 and 11, which codified the introduction of professional football in Nigeria and stipulated that professional clubs should run as limited liability companies.

Teams like Iwuanyanwu Nationale / Heartland F.C. (Owerri), Shooting Stars F.C. (Ibadan), Rangers International (Enugu), Stationery Stores (Lagos) and Bendel Insurance F.C. (Benin City), emerged. They had large fan support and their fans will travel several distance to cheer them (in away fixtures), this was an evidence of the growth of football in Nigeria.

The modern premier league era in Nigeria began in 2003, when the Nigerian Football Association inaugurated an interim committee to manage the league.

It is imperative to state that the overbearing influence and interference of the government and the failure to privatise the management of the league led to its almost total collapse.

In other parts of the world, there is less interference by government in the administration and management of football. For instance, the English Premier League (E.P.L.), Spanish La Liga (Liga de FutbolProfesional (L.F.P.), German Bundesliga and the Serie A League, have structures that encourage investment in football and minimal interference by the government.

The E.P.L was founded on 20th February, 1992, as a limited liability company, when the English League was facing similar challenges to the one encountered by the Nigeria premier League, which were poor management as well as low funding.

The E.P.L. is a corporation of 20 member clubs, which are owners and act as shareholders having one vote each on issues such as rule changes and contracts.

The E.P.L. is the most lucrative league in the world having generated revenue of £2,900,000,000 (Two Billion Nine Hundred Million Euros) in the 2012/2013 season. The E.P.L. generates the highest revenue of any football league in the world and it is the second most profitable after the German Bundesliga. The Bundesliga is more profitable because of its wage to revenue generation ratio.

The Football Associations of the above mentioned leagues are not directly involved in the day-to-day operations of professional football in their respective countries.

However, the Football Associations might have certain rights exclusively exercisable by them. For instance, the English Football Association, has veto power as a special shareholder during the election of the Chairman and Chief Executive Officer and when new rules are adopted by the league.

In Nigeria, the different administrations of the N.F.A. managed the league through several governing bodies and the last of which was the Nigerian Football League Limited (N.F.L.) incorporated in 2006.

However, the Federal High Court, sitting in Abuja, declared the N.F.L., which was managing the Nigeria premier League illegal in Suit No. **FHC/ABJ/CS/179/2010 between DR. SAM JAJA V. THE NIGERIAN FOOTBALL LEAGUE & 4 OTHERS**

Consequently, the League Management Company (L.M.C.) was incorporated in 2012 and it was issued the license of the football governing body, N.F.A., to manage and run a transparent and commercially sustainable professional premier league...

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THE LAW ON THE INVESTIGATION OF AIR ACCIDENTS IN NIGERIA: A CASE FOR REFORM

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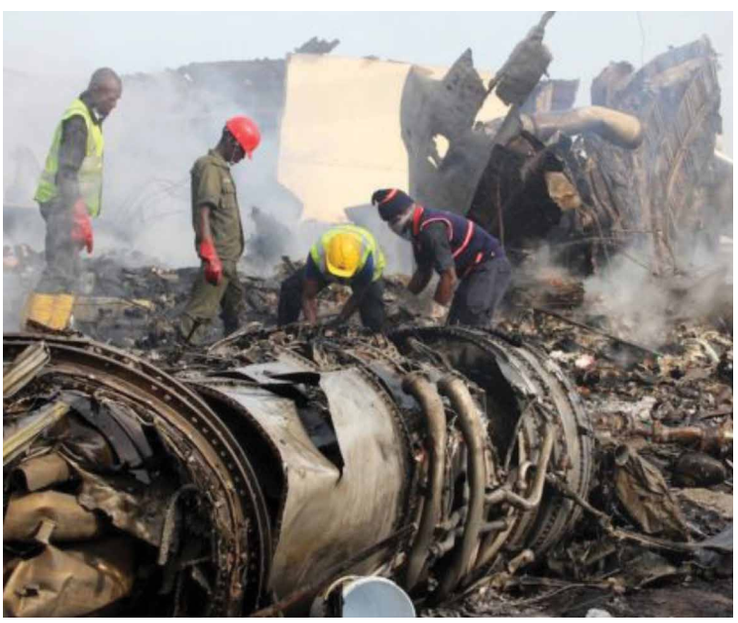
...consider the immediate and underlying factors of an accident, in order to establish and apportion blame for its occurrence. A credit system that weighted causal factors according to their overall culpability was put in place. For example, an accident could be regarded as being 70% the result of pilot error and 30% the result of environmental factors. In 1948, the Chicago Convention of the International Civil Aviation Organization drafted a set of procedures to govern the burgeoning international aviation industry. These procedures include rules concerning the responsibilities of contracting states, in the event of an aviation accident occurring on their soil. These standards and recommended practices were designated as Annex 13 of the Convention.

Currently, the Civil Aviation Act, 2006, is the principal legislation regulating civil aviation in Nigeria. Section 1 of the Act vests the Minister of Aviation with the responsibility for the formulation of policies and strategies for the promotion of civil aviation in Nigeria. The Minister is also responsible for ensuring that Nigeria's obligations under international agreements are implemented and adhered to. The Act created the Nigerian Civil Aviation Authority and vests it with the authority to regulate civil aviation in Nigeria. Also, Section 73 of the Act, domesticates international treaties to which Nigeria is a party, including the aforesaid Chicago Convention, the 1999 Montreal Convention and the 2001 Cape Town Convention. Most importantly, Section 29(1) of the Act established the Accident Investigation Bureau (AIB) as a body corporate with power to sue and be sued in its corporate name "except for matters associated with accident reports". Section 29(12) reiterated the sole objective of investigation of accidents in line with the Chicago Convention. That is, "prevention of accidents and not to apportion blame or liability". Also, the content of any air accident investigation report by the Bureau is not admissible in evidence pursuant to Section 29(14) of the Act.

Section 29(2) states that the Bureau shall be autonomous. However, the other provisions of the same Section 29(2) put paid to the notion of independence where it stipulates, "that it shall report to the President through the Minister of Aviation." A contradiction! The Bureau's level of autonomy is debatable, if the aforesaid reporting line and the other provisions of the Act are considered. Section 29(3)(a) states that the President, upon the recommendation of the Minister of Aviation shall appoint the Commissioner of Accident Investigation. Based on Section 29(5)(a) of the Act, the AIB is funded largely by subventions and budgetary allocations from the Federal Government. The Commissioner of Accident Investigation, in line with Section 29(7) of the Act, can only recruit staff with the approval of the Minister. Section 29(10) empowers the Minister of Aviation to make regulations for the investigation of accidents. In essence, the Bureau is funded and controlled by the Government and is anything but autonomous if it cannot recruit staff, make regulations on investigations and release investigation reports independently.



It is opined that all the aforesaid provisions of the Civil Aviation Act impede the independence of the AIB, and are inconsistent with the provisions of Article 5.4 of Annex 13 to the Convention on International Civil Aviation and the Nigeria's obligations thereto. Article 5.4 states that:

"The accident investigation authority shall have independence in the conduct of the investigation and have unrestricted authority over its conduct, consistent with the provisions of this Annex (underline mine for emphasis)".

It is noteworthy that the said Annex 13 contains international standards and recommended practices for the investigation of air accidents. Section 29(11)(e) of the Civil Aviation Act specifically incorporates the provisions of Annex 13 of the International Convention on Civil Aviation. Conversely, Section 29(10) of the said Act empowers the Minister of Aviation to make regulations for the investigation of accidents. The fact that the AIB cannot independently release the final reports on accident investigations is a clear evidence of its lack of independence. For example, none of the official final reports of the air crashes, which occurred in the last decade, has been released. That is, Bellview Flight 210 where 117 persons died on 22nd October, 2005; Sosoliso Airlines Flight 1145 where 107 died on 10th December, 2005; and ADC Flight 992 where 96 people including the then Sultan of Sokoto died on 29th October, 2006. The Commissioner of the AIB, who headed the investigation of the Sosolisoaircrash was quoted in Thisday Newspaper of 14th June, 2012, as stating that the report of the aforesaid Sosoliso was ready but not yet released by the Federal Government. He also commented that "the accident was caused by lack of diesel to power the generating set for the runway".

It is noteworthy that all the aforesaid airlines are now defunct, even without the release of air crash investigation reports. Perhaps, their demise is due to a combination of negative public perception of the safety of their aircrafts and the knee jerk suspension of the licenses by the authorities. Consequently, hundreds of jobs and considerable investments were lost. Also, it is opined that the AIB's lack of

independence leads to loss of confidence in the Bureau and the aviation industry. The public does not understand the Bureau's operations and procedures. They understandably believe that the AIB's work is shrouded in secrecy and it attempts to cover up lapses in the aviation industry. This affects the survival of the airlines involved in accidents as evident by their demise over the years.

The AIB could have used the opportunity of the major air crashes of the last decade to educate the public about the processes of investigation and the expected time frame for the conclusion of its reports. This would have helped the Bureau's public perception and confidence.

As a corollary, the negative perception and public outrage after air accidents often forces the aviation authorities to make 'knee jerk decisions'. The authorities often suspend the operating license of the airlines involved in accidents without investigation. Internationally, an air crash investigation typically takes an average of two years. For example, the final report of the investigation of the crash of Air France Flight 447 from Rio de Janeiro to Charles de Gaulle International Airport, Paris on 1st June 2009, where 216 passengers and 12 aircrew died, was only released on 5th July, 2012. Similarly, the final report of British Airways Flight 38, which crash landed at the Heathrow Airport on 17th January, 2008, was only released on 9th January, 2010. None of the airlines' licenses were suspended pending investigation. Sosoliso Airline's licence was suspended after the Port Harcourt accident before the conclusion of the investigation, which led to the demise of the airline. It need not have suffered the loss of its business, if its license was not suspended before conclusion of investigation. Dana Airline's licence was also suspended from 3rd June to 15th June, 2012 as a "safety precaution" after the crash of its McDonnell Douglas MD-83 aircraft.

The Dana crash raises another issue that was not specifically addressed under the Civil Aviation Act: the management of the relationship between a judicial or administrative proceeding to apportion blame or liability and the AIB's investigation. Following the tragic accident, which claimed the lives of 159 passengers and the public outrage that ensued, the Lagos State Government, probably reading the negative public mood towards the often inconclusive investigations by AIB, set up a Coroner's Inquest. A Chief Magistrate, Mr.Komolafe, was appointed the Coroner to investigate the cause of the air accident. This highlighted the issue of priority of investigation of air accidents, when another arm of government is interested in the cause of the accident. However, the issue of the constitutionality and competence of the said coroner of Lagos State to investigate the cause of an air crash, when aviation is an exclusive remit of the Federal Authorities is currently subjudice. The proceeding is currently on hold due to legal hostilities in suit no. FHC/L/CS/956/12 between Civil Aviation Round Table Initiative Limited & Another V. Komolafe& 10 others before Hon. Justice Okon Abang of the Federal High Court, Lagos.

In the United States, the National Transportation Safety Board (NTSB) was established in 1967 to conduct independent investigations of all major transport accidents. It is not part of the Department of Transportation (DOT) or affiliated with any of DOT's modal agencies, including the Federal Aviation Administration. The Safety Board has no regulatory or enforcement powers. To ensure that the Safety Board's investigations focus only on improving transportation safety, and not on apportioning blame or liability, the Board's analysis of factual information and its determination of probable cause cannot be entered as evidence in a court of law.

> "Generally, an accident reduces confidence in the safety of any mode of transport. This is why independent investigations of accidents are important in improving transport safety."

In cases of suspected criminality, other agencies may participate in the investigation. The Safety Board does not investigate criminal activity. In the past, once it has been established that a transportation tragedy is a criminal act, the FBI becomes the lead federal investigative body with the NTSB providing any requested support. For example, the 11th September, 2001 crashes of four airliners were obviously the result of criminal actions and therefore, the Justice Department not the NTSB, assumed control of the investigations. The NTSB provided requested technical support. However, the FBI and the Justice Department can no longer assume control of investigations. According to section 1131 (2)(b) of the National Transportation Safety Board Reauthorization Act, 2006, the Attorney General of the US, in consultation with the Chairman of NTSB, must determine and notify NTSB that circumstances reasonably indicate that the accident may have been caused by an intentional criminal act. The Board shall then relinquish investigative priority to the Federal Bureau of Investigation. The relinquishment of investigative priority by the Board would not affect the authority of the board to continue its investigation.

Also, the NTSB holds a public hearing as part of a major accident investigation for two reasons: "to gather sworn testimony from subpoenaed witnesses on issues identified by the Board during the course of the investigation; and, to allow the public observe the progress of the investigation. Hearings are usually held within six months of an accident but may be delayed for complex investigations. The United States' approach may be adopted, or considered, in respect of reform of the issue of priority over investigation in the face of conflicting interests by different government arms or agencies, public hearing and independence of the AIB.

In sum, and as inherent above, it is clear that the law on the investigation of air accident needs to be amended. Its current state leaves much to be desired in the areas of independence and transparency of the AIB, in line with our international obligations and best practices. A situation where the AIB has not published any of the reports of all the air accidents of the past decade is not acceptable. Also, it is opined that public hearings of the proceedings of the AIB would go a long way in tempering outrage against airlines involved in air accidents. Conversely, regular public updates may suffice, if public hearing of the proceedings of the AIB is impractical. This may address the issues of transparency and public confidence.

Finally, the 'knee jerk' approach of suspending air licences after accidents without investigation is economically suicidal for a developing country like Nigeria and should be avoided.

JURISDICTION OVER ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS IN NIGERIA

- Anu Sulaimon

This Article will discuss the requirements and challenges of enforcing foreign judgments and arbitral awards in Nigeria.

In order to enforce a foreign judgment in Nigeria, same must first be accorded some recognition by a Nigerian Court before necessary procedures can be set in motion for its enforcement.

Foreign judgments are only enforceable in Nigeria upon satisfying the provisions of either of the following laws:

a. Foreign Judgments (Reciprocal Enforcement) Act, Cap F35, LFN 2004 (**Act**).

b. Reciprocal Enforcement of Judgments Ordinance, Cap 175 Laws of the Federation of Nigeria and Lagos, 1958 (**1958 ordinance**).

The Supreme Court of Nigeria[1] has laid to rest the questions on the applicability of the aforesaid laws. The 1958 Ordinance applies to all judgments of the superior courts obtained in the United Kingdom and its application can be extended to any other territory administered by the United Kingdom or any other foreign country i.e Commonwealth countries.

The aforesaid Act applies to judgments of a country, which offer reciprocal treatment to the judgments of Nigerian courts. Thus, enforcement of judgments under the Act is based on the principle of reciprocity.[2]

The principle of reciprocity stipulates that a State/Country should recognize and enforce the judgment of another, only if its own judgment will be accorded similar reciprocal treatment.

An application for registration of a Judgment delivered by United Kingdom or any other foreign country i.e Commonwealth countries is to be made within twelve months after the date of the Judgment or any other longer period allowed by the court registering the Judgment.[3]

An application for registration of a foreign Judgment based on reciprocity, under the Act is to be made within six years after the date of the Judgment.[4]

In essence, the registration of foreign judgments delivered in commonwealth countries has a time limit of a year. Whilst, foreign judgments delivered outside the commonwealth countries can be registered within a longer period of 6 (**six**) years.

An Application for registration of a foreign judgment is to made by a Petition Ex parte or Motion Ex parte[5]...

THE LEGAL STRUCTURE OF THE NIGERIA PREMIER LEAGUE

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...The purpose of setting up the L.M.C is to prevent the collapse of the Nigeria premier League, which was overwhelmed by legal, contractual, administrative and financial impediments (low funding and lack of publicity/promotion).

Upon incorporation, promoters of L.M.C. were allotted 25% shares, the N.F.A. Chairman, as the representative of the association holds 5% of the allotted shares, whilst the Chairman (Rt. Hon. Ndukalrabor) of the Interim League Management Committee holds 20% in trust.

The L.M.C. will be owned by 4 (Four) parties namely: the NFA; participating clubs; Institutional Investors and the general public. This ownership structure will enhance the development of professional football in Nigeria by encouraging individuals and companies to invest in football.

Also, the ownership structure of L.M.C. is similar to what is obtainable in the English Premier League (E.P.L.), Spanish La Liga (Liga de FutbolProfesional (L.F.P.), German Bundesliga and the Serie A League.

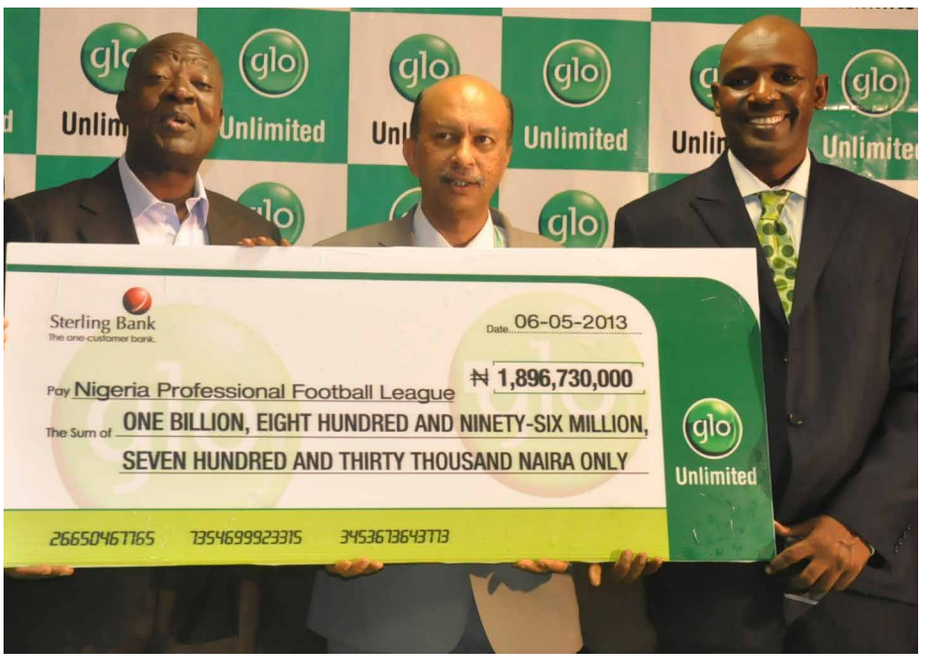
It is imperative to state that Section 1 of the Nigerian Football Association Act, Cap. N110, Laws of the Federation 2004 (hereinafter referred to as **"the Act"**), which established the football governing body, N.F.A., empowers N.F.A. to run and manage the professional league.

By virtue of Section 2 (a) of the Act which states the aims and objectives of N.F.A., provides that:

"The aims and objects of the Association are to-

(a) encourage the development of all forms of amateur and professional football in accordance with the statutes and laws of the Federation of the sport of football, and of any other international football body to which the Association is affiliated...."

Also, Section 6 of the Act states that the functions of the Board of the N.F.A., shall include to ***"organise league and other matches for professional and amateur clubs in co-operation with the respective bodies recognised by the Association".***



In view of the provisions of Sections 2 and 6 of the Act, the N.F.A. is saddled with the legal responsibility and power to manage, run and organise the development of football in Nigeria, either at the amateur or professional level and also it has the power to assign or licence an association or a body corporate to manage and organise the league.

Also, N.F.A.'s decision to licence L.M.C. to organise the Nigeria Premier League, is in conformity with Article 17 of the Federation Internationale de Football Association (FIFA) Statutes, that guarantees independence of Football Associations, the Article provides as follows:

1. "Each Member shall manage its affairs independently and with no influence from third parties.

2. A Member's bodies shall be either elected or appointed in that Association. A Member's statutes shall provide for a procedure that guarantees the complete independence of the election or appointment.

3. Any Member's bodies that have not been elected or appointed in compliance with the provisions of par. 1, even on an interim basis shall not be recognised by FIFA.

4. Decisions passed by bodies that have not been elected or appointed in compliance with par. 1 shall not be recognized by FIFA."

It will suffice to note that the birth of L.M.C. will tremendously help in developing football in Nigeria, as there will be less interference in the management of football in Nigeria by the Government and will promote the development of professional football in Nigeria.

For instance, Globacom, sometime in May, 2013, signed a 3 year contract (worth N1,896,730,000 (One Billion, Eight Hundred and Ninety-Six Million, Seven Hundred and Thirty Thousand Naira) with the L.M.C. for the sponsorship of the Nigeria Premier League, this will encourage other prospective investor to consider financing the Nigeria Premier League.

Thus, the challenges of mismanagement, low funding and lack of publicity/promotion, which were hitherto faced by the Nigeria premier League will be brought into oblivion.

JURISDICTION OVER ENFORCEMENT OF FOREIGN JUDGMENTS AND ARBITRAL AWARDS IN NIGERIA

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...However, upon the registration of a foreign judgment, a judgment debtor may apply to a Judge to set aside the registration or execution of the Judgment[6], where the Court is satisfied that any of the following occurred:

a. the Judgment was registered in contravention of the provisions of the Act;

b. the original court had no jurisdiction;

c. the Judgment debtor did not receive notice of the proceedings or processes in sufficient time to enable him prepare for and appear at the proceedings;

d. the Judgment was obtained by fraud;

e. enforcement of the Judgment will be contrary to public policy in Nigeria;

f. the rights in the Judgment are not vested in the person by whom the Application for registration was made.[7]

In addition, a foreign judgment delivered in the United Kingdom or Commonwealth countries shall not be registered under the Ordinance where the Judgment debtor, being a person who was neither resident within the jurisdiction of the original Court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that Court.[8]

This is a major challenge to the enforcement of foreign judgments in Nigeria because same is an open invitation to fraud and improper conduct.[9] It is opined that a person who fails to submit himself to the jurisdiction of a Commonwealth Court should not be made to benefit from his wrong. This will also prevent a successful party from reaping the fruits of his Judgment.

Another challenge to the enforcement of foreign judgment is the issue of jurisdiction. Historically, any high court in Nigeria could enforce a foreign judgment. However, the High Court of Lagos State in **ACCESS BANK PLC V DR ERASTUS AKINGBOLA (2014) 3 CLRN 124** held that foreign judgments should only be registered in courts with original jurisdiction over the subject matter of the Judgment.

The ratio decidendi of the said decision was that the Ordinance was in conflict with the provisions of Section 251 of the 1999 Constitution. Whilst, the 1958 Ordinance provides that an application to register a judgment is to be made in a High Court of Nigeria. Section 251 of the said Constitution stipulate or enumerate the subject matters, which are within the confines of the exclusive jurisdiction of the Federal High Court:

companies and allied matters being one of them. It is trite law that any legislation in conflict with the provisions of the Constitution is invalid to the extent of the inconsistency.[10]

This decision may be contested on the basis that the provision of the 1958 Ordinance is not in conflict with the Constitution. The said Ordinance deals expressly and specifically with enforcement of foreign judgments. On the other hand, Section 251 of the Constitution is silent on the enforcement of foreign judgments. Thus, it is respectfully opined that there is no conflict between the provisions of the Ordinance and the Constitution.

More so, the registering Court does not adjudicate over the original dispute, nor does it sit as an appellate court. The High Court is only dealing with enforcement of the judgment, which entails attachment of assets, seizure and sale of chattels of the judgment debtor under warrant of court to satisfy a Judgment debt.[11] This is not the same as a trial of the original subject matter.

The third major challenge to the enforcement of foreign judgment is the issue of joinder. Parties may be joined in a suit at any stage including the stage of execution upon showing sufficient and good grounds why they should be joined. A party is not deprived of his right to sue at common law upon an obligation created by a foreign judgment.[12]

Thus, a party can be joined in an action for registration and enforcement of a foreign judgment, when they were not parties to the suit in the original court which heard the matter and delivered Judgment.

Arbitral Awards

Arbitral Awards are recognised by Nigerian courts irrespective of the country where the award was made.[13]

An award creditor is only required to bring an application to enforce the award. The application is to be accompanied by a duly authenticated original award or a certified copy and the original arbitration agreement or a certified copy.[14]

There is no requirement for registration before enforcement.[15] However, an arbitral award may be set aside by a court, where any of the following occurs:

a. The award contains decisions on matters which are beyond the scope of the submission to arbitration;

b. The arbitral proceedings or award has been improperly procured as for example where the arbitrator has been deceived or material evidence has been fraudulently concealed;

"Thus, a party can be joined in an action for registration and enforcement of a foreign judgment, when they were not parties to the suit in the original court which heard the matter and delivered Judgment."

c. The arbitrator or umpire has misconducted himself; and

d. There is an error of law on the face of the award.[16]

An application to set aside an arbitral award is to be made within 3 (three months) from the date of the award or disposal of a request for an additional award.[17]

Also, consideration must be given to the provisions of the relevant statutes of limitation in determining the period for bringing an application to enforce the award. The Limitation Laws apply to Arbitral awards with effect from the date of accrual of the cause of action and not when the Award was delivered.[18]

In surmise, it appears that foreign arbitral awards are easier to enforce in Nigeria than foreign judgments. The hurdle of registration and the challenge posed by the issue of jurisdiction can be avoided with arbitration. Therefore, it is advisable to incorporate an arbitration clause in an agreement, with a foreign jurisdiction as the forum for dispute resolution.

[1]Macaulay v R.Z.B., Austria (2003) 18 NWLR (PT.852) 282 AT 296 PARA E – H, Grosvenor Casinos Ltd. v. Ghassan Halaoui (2009) 10 NWLR (Pt 1149) 309

[2]Section 3, Foreign Judgments (Reciprocal Enforcement) Act, Cap. F35, Laws of the Federation of Nigeria, 2004

[3]Section 3(1) of the Reciprocal Enforcement of Judgments Act, Cap. 175 LFN 1958; Macaulay v R.Z.B., Austria (2003) 18 NWLR (PT.852) 282

[4]Section 4 of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. F35, Laws of the Federation of Nigeria, 2004

[5]Rule 1 (1) of the Reciprocal Enforcement of Judgments Rules 1958

[6]Rule 12 of the Reciprocal Enforcement of Judgments Rules 1958

[7]Section 3(2), of the Reciprocal Enforcement of Judgments Act, Cap. 175 LFN 1958; Section 6 of the Foreign Judgments (Reciprocal Enforcement) Act, Cap. F35, Laws of the Federation of Nigeria, 2004

[8]Section 3(2)b of the Reciprocal Enforcement of Judgments Act, Cap. 175 LFN 1958

[9]Grosvenor Casinos Ltd. v. Ghassan Halaoui (Supra)

[10]Kotoye v CBN (1989) 1 NWLR (Pt. 98) 419

[11]Purification Techniques (Nig.) Limited v Attorney General of Lagos State (2004) 9 NWLR (Pt 879) 665

[12]Mudashiru v Onyearu (2013) 7 NWLR (Pt. 1353) 433

[13]Section 51(1) of the Arbitration and Conciliation Act Cap A18 LFN 2004 Act

[14]Section 31 of the Arbitration and Conciliation Act Cap A18 LFN 2004 Act

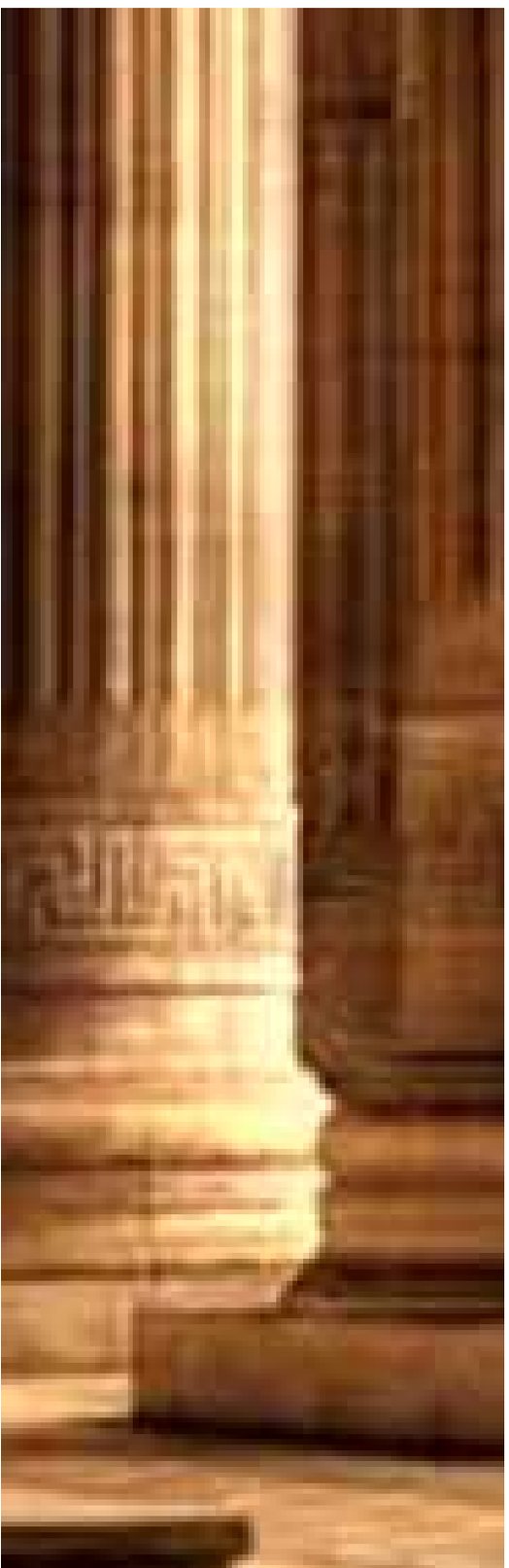
[15]Tulip (Nig.) Ltd v. NTMSAS (2011) 4 NWLR (pt. 1237) 254

[16]Section 29(2) and 30 of the Arbitration and Conciliation Act Cap A18 LFN 2004Act, Araka v. Ejeagwu (2000) 15 NWLR (Pt. 692) 684, Baker Marine (Nig.) Ltd. v. Chevron (Nig.) Ltd. (2000) 12 NWLR (Pt. 681) 393

[17]Section 29(1) of the Arbitration and Conciliation Act Cap A18 LFN 2004 Act

[18]City Engineering (Nig) Ltd. v. FHA (1997) 9 NWLR (pt.520) 244

CASE LAW ALERT



1. RIGHT OF APPEAL AGAINST DECISION OF NATIONAL INDUSTRIAL COURT

Local Government Service Commission, Ekiti State & Anor v. Mr. M. A. Jegede – Appeal No. CA/EK/07/M/2013.

Introduction

"By virtue of Sections 240 and 243 of the 1999 Constitution, the Court of Appeal is well positioned to exercise appellate jurisdiction over decisions of the National Industrial Court and there is no existing constitutional provision which divested the Court of Appeal of its appellate jurisdiction over decisions emanating from the National Industrial Court on any subject matter." This was the decision of the Court of Appeal in APPEAL NO. CA/EK/07/M/2013; LOCAL GOVERNMENT SERVICE COMMISSION, EKITI STATE &ANOR v. MR. M. A. JEGEDE.

Background

Honourable Justice B.B. Kanyip of the National Industrial Court, Ibadan Judicial Division delivered a Judgment in Suit No. NIC/LA/162/2011; Mr. M.A Jegede v. Local Government Service Commission Ekiti State & Attorney-General of Ekiti State in favour of the Respondent (Judgment).

Aggrieved by the decision of the National Industrial Court, the Applicant filed a Motion on Notice dated and filed on 17th January, 2013 seeking inter alia, leave to appeal against the Judgment. However, the said Application was strongly opposed by the Respondent on the ground that by the combined effect of Section 243(3) of the 1999 Constitution of the Federal Republic of Nigeria (As Amended) and Section 9(1) and (2) of the National Industrial Court Act, the Applicants do not have a right of appeal against the Judgment.

Decision

Unanimously granting the Application, the Court of Appeal per Honourable Justice M. A. Oredola J.C.A., delivering the Lead Ruling held that Section 240 of the Constitution of the Federal Republic of Nigeria, 1999 as amended clearly and expressly vested appellate jurisdiction in the Court of Appeal. The jurisdiction so vested is with regard to certain courts which are specified therein inclusive of the National Industrial Court.

The Court of Appeal also noted that Section 243(4) of the said 1999 Constitution as amended is clear that "the decision of the Court of Appeal in respect of any appeal arising from any civil jurisdiction of the National Industrial Court shall be final."

The Court further held that the law is firmly established that if any court and more so an appellate court, is to be divested of its conferred jurisdiction, it is done expressly and not impliedly. In a similar vein, a court of law can only be garbed or clothed with the toga of finality by express provision to that effect and not by implication.

2. Eko Hotels Limited v The Financial Reporting Council of Nigeria

The Federal High Court decided that under the Financial Reporting Council of Nigeria (FRCN) Act 2011, the FRCN cannot enlarge its regulatory powers to regulate private companies. The Court held that FRCN does not have oversight functions over private companies.

The effect of this decision is that, the FRCN cannot regulate the activities of private companies. Also, private companies are not required to make returns to the FRCN.

3. Saipem Contracting Nigeria Limited (Nig Co) & Ors v FIRS

The Federal High Court held that Companies Income Tax and Withholding Tax are applicable on income "derived" from Nigeria by non-resident companies, without regard to whether the companies have a taxable presence in Nigeria or not.
The Court also held that non-resident companies are exempted from Nigerian Value Added Tax payment obligations.

However, we expect the Judgment to be appealed based on the fact that the judgment in this instance goes against the principle of tax treaties, which provides specific guidelines in respect of the taxation of the business profits of residents of treaty countries.

BOOK OF LEGAL JARGONS

MARITIME LAW

Affreightment: An agreement by an ocean carrier to provide cargo space on a vessel at a specified time and for a specified price to accommodate an exporter or importer.

Backfreight: The owners of a ship are entitled to payment as freight for merchandise returned through the fault of either the consignees or the consignors. Such payment, which is over and above the normal freight, is called backfreight.

Beneficial ownership: designates the owner who receives the benefits or profits from the operation.

Cabotage: the carriage of goods or passengers for remuneration taken on at one point and discharged at another point within the territory of the same country.

Charterer: the person to whom is given the use of the whole of the carrying capacity of a ship for the transportation of cargo or passengers to a stated port for a specified time.

Charter party: a contractual agreement between a ship owner and a cargo owner, usually arranged by a broker, whereby a ship is chartered (hired) either for one voyage or a period of time.

Demurrage: a fee levied by the shipping company upon the port or supplier for not loading or unloading the vessel by a specified date agreed upon by contract. This fee is usually, assessed upon a daily basis after the deadline.

Free From Average: it means free from claims against the ship.

Ocean waybill: a document, issued by a shipping line to a shipper which serves as a receipt for the goods and evidence of the contract carriage.

Off-hire clause: in a time charter, the owner is entitled to a limited time for his vessel to be off hire until such time as the vessel may be repaired or dry-docked.

Open registry: a term used in place of “flag of convenience” or “flag of necessity” to denote registry in a country which offers favorable tax, regulatory, and other incentives to ship owners from other nations.

Salvage: the property which has been recovered from a wrecked vessel, or the recovery of the vessel herself.

Voyage charter: a contract whereby the ship-owner places the vessel at the disposal of the charterer for one or more voyages, the ship-owner being responsible for the operation of the vessel.

1. PENSION REFORM ACT 2014

On Tuesday, 1st July, 2014, the President of the Federal Republic of Nigeria, His Excellency, President Goodluck Ebele Jonathan, signed the Pension Reform Bill, 2014, into law.

The said law, which repealed the Pension Reform Act, No.2, Laws of the Federation of Nigeria, 2004, is to govern and regulate the administration of the Uniform Pension Scheme for both public and private sectors in Nigeria.

Highlights of the new law include:

a. Vesting the Pension Commission with power to institute criminal proceedings against employers for persistent refusal to remit pension contributions;

b. Upward review of the penalties and sanctions, to serve as deterrents against infractions of the law;

c. Vesting the Pension Commission with power to revoke the licence of erring pension operators;

d. Vesting the Pension Commission with power to take proactive corrective measures on licensed operators whose situations, actions or inactions jeopardise the safety of pension assets.

e. Providing for the applicability of the Act to organisations with less than 3 (Three) employees and self-employed persons as well as, organisations with 15 (Fifteen) or more employees, as against 5 (Five) or more employees under the 2004 Act.

f. Failing to cover organizations with less than 14 (Fourteen) employees but more than 3 (Three) employees. Thus, legally exempting employers of firms with 4 (Four) to 14 (Fourteen) employees, from participation in the scheme.

g. Employer to contribute 10% and employee to contribute 8% of monthly emolument. However, where the employer wishes to pay all the contribution, the employer is to pay not less than 20% of the employee's monthly emolument.

2. REGULATION OF SMOKING LAW

On 17th February, 2014, His Excellency, Governor Babatunde Raji Fashola (SAN), signed the Regulation of Smoking Law, into Law in Lagos State.

This Law has as its major purpose to provide for the regulation of smoking in public places in Lagos. It also makes it a crime for anyone to smoke a cigarette in the presence of a child or expose the child to any form of smoke.

Certain areas in Lagos have been designated "no smoking areas" consequent upon this law. No one shall smoke in those public places such as: Libraries, museums, galleries, public toilets, hospitals and health care premises, nurseries, day care centres, primary schools, restaurants, cinemas, concert halls, conference centres, e.t.c.

Thus, from August 2014, all owners or occupiers of certain premises are expected to designate an area no more than 10 per cent of the premises as a "smoking area" which must have good ventilation.

An offender of this Law or anyone who obstructs an officer from inspecting the public place to ensure compliance with this Law will be liable upon conviction to payment of a fine of not less than ten thousand naira (N10, 000. 00) and not more than N15,000.00**(Fifteen Thousand Naira)** or to imprisonment of not more than 3 **(Three)** months and not less than a month or to both fine and imprisonment.

Continued flagrancy of this law makes the offender liable to N50,000.00 **(Fifty Thousand Naira)** or 6 **(Six)** months imprisonment or both.

Also, any owner or occupier who fails to put up a "No Smoking" sign shall be liable on conviction to a fine of N100,000.00 **(One Hundred Thousand Naira)** or imprisonment of six months or other punishment.

3. CONSUMER PROTECTION AGENCY LAW

On 10thMarch, 2014, the Governor of Lagos State, Governor Babatunde Raji Fashola, SAN, signed the Consumer Protection Agency Law into Law.

The said law is to provide for the protection and promotion of the interests of consumers, settlement of consumer disputes and other purposes connected thereto.

This established agency has as its principal objects, the duty to promote and protect the rights of all consumers in Lagos state, such as the right to be informed about the quality, quantity and standard of goods and services, the right to seek redress against unfair trade practices or unscrupulous exploitation of consumers.

The agency is saddled with the responsibility of advising the government on consumer protection issues, ensuring speedy redress of consumer complaints, and compensating injured consumers, amongst others.

Consumers in Lagos are encouraged to report to the Agency, any defective products and services.

To attend to these reports are Consumer Protection Committees set up in each Local Government, to receive and investigate consumer complaints and make recommendations to the Agency on the complaints received. In effect, the Agency can institute an action on behalf of the consumer or a class of consumers for remedies with respect to an act or for any damage suffered by such consumers.

WEIRD CASES

1. Marriage relationships should be nurtured even at old age, but not as demonstrated in this case, at the High Court of Lagos State.

An 80 year old woman filed a divorce petition against her 82 year old husband.

They had been married for over fifty years and have numerous grand children. The marriage must have suffered a lot of problems, which were swept under the carpet.

The lawyer handling the case did not give reasons in open court as to why the woman wanted a divorce. Notwithstanding the Judge's suggestion that they explore settlement, the lawyer stated that the woman insisted on being granted a divorcee, saying she couldn't stay with the old man.

2. Judges get understandably irritated when mobile phones ring in court. It does not serve justice well if, while Counsel or witnesses are speaking in solemn tones, the court is suddenly given a loud ringtone blast.

Ringing phones have sometimes been confiscated by judges, and in one American case, a judge had the whole courtroom effectively put under arrest until the culprit confessed it was his phone, which rang.

In a particular instance, when a phone rang during court proceedings, everyone in court became very anxious. The ring tone of the phone was loud but it was hard to tell where it was coming from people began to ransack through their pockets and bags in search of the ringing phone.

Court Bailiffs have a reputation of Zero tolerance for phone ringing and the owners are immediately escorted out of the courtroom and the phone seized instantly.

As the ringing went on, its source gradually became clear: the offending phone was sitting inside the Judge's robes. “I apologise”, he announced gravely while trying to fumble through his robe to the phone.

Unfortunately, the courtroom's advanced sound system with a microphone right in front of the Judge meant that the phone rings were amplified resoundingly. The Judge was not escorted out of the court by the Bailiffs.[19] You may know why.

19 Further Weird Cases by Gary Slapper

EDITOR'S NOTE

“Probitas Partners Journal is published to provide insight into topical issues of law, business and policies.

For comments and enquiries, please feel free to contact us at editor@probitaspartnersllp.com.”

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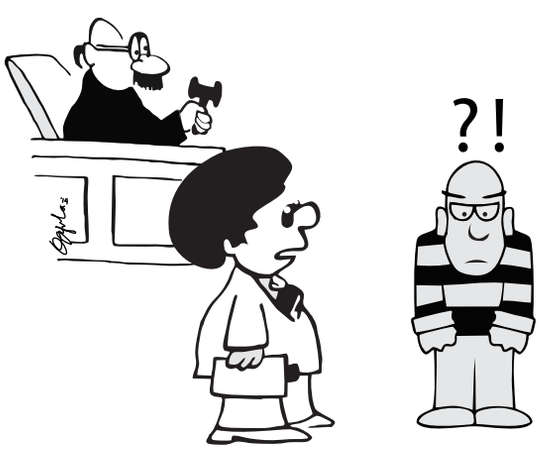
CARTOON



High Court - You are hereby sentenced to 30 years imprisonment.

Convict - Lawyer , what shall we do now?

Lawyer - We will appeal to the Court of Appeal.

Court of Appeal - The sentence is affirmed and the Appeal is hereby dismissed.

Convict - Lawyer, what shall we do now?

Lawyer - We will appeal to the Supreme Court.

Supreme Court - We abide by the decision of the lower courts

Convict - Lawyer,what shall we do now?

Lawyer - (looking at him quizzically)

What do you mean 'WE'?

I go home, you go to jail.