

CASE DIGEST

CAPITAL MARKET; SECURITIES AND EXCHANGE COMMISSION; INVESTMENT AND SECURITIES TRIBUNAL: CAN CAPITAL MARKETS DISPUTES BE SUBJECT TO THE EXCLUSIVE JURISDICTION OF THE INVESTMENT AND SECURITIES TRIBUNAL?

MUFUTAU AJAYI v. SECURITIES AND EXCHANGE COMMISSION

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(MUFUTAU AJAYI v. SECURITIES AND EXCHANGE COMMISSION)

SUPREME COURT OF NIGERIA

(*John Okoro, Chima Nweze, Uwani Musa, Mohammed Garba, Helen Ogunwumiju*)

Background Facts

Mufutau Ajayi (Appellant) is a Chartered Accountant, a member of the Institute of Chartered Accountants of Nigeria (ICAN) and was a former employee of African Petroleum Plc (the company) till he retired from service in April 2000, wherein he served as the company's Finance and Accounts Manager. Sometime in the year 2000, the National Council on Privatization offered for sale on behalf of the Federal Government of Nigeria 86,400,000 ordinary shares of African Petroleum Plc while the Appellant was still in active service of the said Company. A year later, a core investor of the company alleged in a press conference that the past management of the company had failed to disclose debts of ₦22.5 billion owed by the company to various creditors. It also alleged that the auditors of the company were negligent in the auditing of the company. The Securities and Exchange Commission (SEC) upon this information, set up a Committee to investigate the allegation, and the findings of the Committee affirmed that the sum of ₦10, 181,606 billion disclosed in the prospectus of the company was less than what the company owed. The Administrative Proceedings Committee (Committee) of the SEC found that the Appellant, being an officer of the company authorized the issue of the prospectus which contained an untrue statement that the total indebtedness of the company was ₦10.2 billion whereas subsequent revelations indicated otherwise, thereby contravening the provisions of sections 62 (1), (2) (d) and 63 of the Investment and Securities Act (ISA) 1999.



Pursuant to the findings of the Committee, the Committee directed that: i) the Appellant be strongly reprimanded for his role in the debt concealment; ii) he is therefore disqualified from being employed or participating, in any capacity, in the securities industry; iii) he is to be referred to the Economic and Financial Crimes Commission (EFCC) for further criminal investigation and action; iv) ICAN and all professional bodies to which the Appellant belongs shall be informed of his actions and this decision.

Upon being notified of the decision of the SEC, the Appellant approached the Federal High Court (trial court) for judicial review of the decision. The SEC raised an objection to the jurisdiction of the Federal High Court to hear and determine the case. The trial court upheld the objection and held that the proper venue for the Appellant to take the matter to was the Investments and Securities Tribunal (IST) and not the Federal High Court. Dissatisfied with the decision of the trial court, the Appellant appealed to the Court of Appeal (lower court), which affirmed the ruling of the trial court.

Further dissatisfied by the decision of the lower court, the Appellant appealed to the Supreme Court. One of the issues raised for determination is: *Whether the lower Court was right to affirm that the trial Federal High Court did not have the jurisdiction to entertain the Appellant's suit.*

Arguments

Learned Counsel for the Appellant argued that the Appellant's application for judicial review by way of an order of certiorari in respect of the violation of the Appellant's right to fair hearing necessarily means that the Federal High Court has the jurisdiction to entertain the action. Furthermore, the Appellant's case was because the Respondent constituted its Committee and reached prejudicial conclusions and findings against the Appellant without an opportunity to respond to the allegations against him, contrary to Section 36(1) of the 1999 Constitution (as amended). Similarly, the Appellant settled that there is nothing in the Investment and Securities Act (ISA), 1999 or 2007, that gives the IST judicial powers to make the orders of certiorari and injunction being sought by the Appellant in his application at the trial court.

In response, Learned Counsel for the Respondent contended that the ISA does not give the Appellant any option as to what Court he could institute his action or appeal save the Investment and Securities Tribunal, and since the instant suit is against the decision of the Respondent, it is the IST that has the jurisdiction to entertain capital market transactions and disputes and not the Federal High Court because the action of the Committee and that of the Respondent are acts done under the Act. Counsel submitted that the Appellant has a right of appeal to the decision of the Committee to the Court of Appeal as provided by the ISA and not to seek an order of certiorari, and therefore prayed for the resolution of this issue in favour of the Respondent.

Decision of the Court

In resolving this issue, the Supreme Court held that:

The law is well settled that disputes bordering on capital market operations and investments are within the exclusive jurisdiction of the Investments and Securities Tribunal. Section 284(1) of the Investments and Securities Act, provides that the Investment and Securities Tribunal shall have jurisdiction, to the exclusion of any other Court or Tribunal or body, to hear and determine any question of law or dispute involving; "(a) a decision or determination of the commission in the operation and application of this Act, and in particular, relating to any dispute. (i) between capital market operators;(ii) between capital market operators and their clients; (iii) between an investor and securities exchange or capital trade point or clearing and settlement agency; (iv) between capital market operators and self-regulatory organization; (b) the commission and self-regulatory organization; (c) a capital market operator and the commission; (d) an investor and the commission; (e) an issuer of securities and the commission, and (f) disputes arising from the administration, management and operation of collective investment schemes."

By virtue of the above provision, therefore, it implies that any grievance, whether on denial of fair hearing by the Committee as in the present case, rule of law, equity, facts or law, etc., should be instituted in the Investment and Securities Tribunal (IST). It is unequivocal that the proper forum with jurisdiction to hear and determine the case of the Appellant is the Tribunal and not the Federal High Court. It follows therefore that the Court below has no vires to assume jurisdiction over a matter which had no foundation at the trial Court.

Issue resolved in favour of the Respondent.

Mofesona Tayo-Oyetibo, Esq. and Eutare Nwaozulu for the Appellant
Ife Olu Akindoju, Esq. for the Respondent

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