

# CASE DIGEST

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## **COMPANY LAW: COMPANY REGISTRATION; THE ONLY WAY TO PROVE A COMPANY'S EXISTENCE IS BY A CERTIFICATE OF INCORPORATION.**

### **A. DIKKO AND SONS LTD. v. CORPORATE AFFAIRS COMMISSION SUPREME COURT**

*(ARIWOOLA; AUGIE; ABBA-AJI; GARBA; JAURO, JJ.SC)*

A. Dikko and Sons Ltd. (the Appellant) was registered on 4/9/2008 as a private limited liability company by Corporate Affairs Commission (the Respondent), with registration No. 771050. The Respondent subsequently and in negligence, registered another company called A. Dikko and Sons Nigeria Limited on 17/12/2008 with registration No. 791987. Thereafter, cheques meant for the Appellant were lodged into an account with a commercial bank by the person who promoted the company called A. Dikko and Sons Nigeria Limited, who later withdrew and made away with the money. The Appellant sued the Respondent for negligence in registering the second company similar in name to its company and alleged that the negligence of the Respondent led to suffering through the losses it incurred. The Appellant lost the case at the trial court on the ground that it did not produce the certificate of incorporation of the 2nd company to entitle it to damages. Aggrieved with the decision of the trial Court, the Appellant appealed to the Court of Appeal (lower Court) but lost also on appeal at the lower court.

Further aggrieved, the Appellant appealed to the Supreme Court. One of the issues formulated for determination was *Whether the Appellant was able to prove negligence by the Respondent to register the 2nd company with a similar name to its name?"*

In the argument, Learned counsel contended that the learned Justices of the lower Court had thought that the appellant has prayed the trial court to declare that A. Dikko and Sons Nigeria Limited was registered by the Respondent and then reasoned that the Appellant had to prove that the company was registered before it could consider the alleged negligence. Counsel argued that the appellant only prayed the court to declare the acts of registration negligent, and submitted that the holding of the Court of Appeal amounted to providing answers to questions not asked. Lastly, the Counsel contended that the declaratory relief sought by the plaintiff was not for the declaration of registration of the 2nd company by the court but rather, to declare that the respondent negligently or carelessly registered the company which was all the plaintiff was required to prove.

In response to the Appellant Counsel's argument, the Learned Counsel for the Respondent stated that by the peculiar nature of this appeal and the settled pleadings and reliefs of the Appellant, the lower Court was legally and procedurally guided to conceive the issue for resolution in the appeal to entail ascertaining the registered status of the 2nd company as a prelude to addressing the question of the alleged negligence and involvement of the Respondent in the alleged registration.

He submitted that the lower courts had rightly conceived the live issue for resolution and had also properly placed the burden of proof on the Appellant. Learned counsel contended that the question of the similarity of the two company names was raised in the Statement of Claim which was dearly denied and traversed in the Statement of Defence. He submitted that issues were properly joined between the parties and it behoved the Appellant who had positively raised the questions of registration and similarity of the 2nd company to the Appellant, to prove the same.

In resolving this issue, the Supreme Court held that:

Generally, no company shall be registered under the Company and Allied Matters Act by a name which is identical to that of the company in existence which is already registered or so nearly resembles the same name as to be calculated to deceive, except where the company existence is in the cause of being dissolved and signifies its concerned manner as the Commission requires. It is the appellant's contention that a 2nd company had been registered by the Respondent which carries an identical name with it, in violation of the provision of the Companies and Allied Matters Act and in breach of a statutory care owed it. However, the only way and means by which the law requires proof of the existence of a registered company is by producing the Certificate of Incorporation. There cannot be a duty of care by the respondent to the appellant until it is established and proved that indeed a 2nd company was registered by the Respondent with a similar name. And the only way to do so is the production of its Certificate of incorporation, which was not produced by the Appellant.

Issue resolved in favour of the Appellant.

Adekola Mustapha, SAN with A. Ayopemi Esq., for the Appellant

Adeola Adedipe ESQ. with A. F. Mahmud, Esq., and Janet Omotosho, Esq., for the Respondent

This summary is fully reported at (2022) 11 CLRN.

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