

CASE DIGEST

COPORATE LAW; PRE-INCORPORATION CONTRACTS: CAPACITY TO CONTRACT: AN UNINCOPORATED ASSOCIATION HAS CAPACITY TO ENTER INTO CONTRACT THROUGH ITS MEMBERS

REV. DR. (MRS.) NKECHI ANAYO-ILOPUTAIFE; REV. FIDEL ADUAYE ODIETE (for themselves and on behalf of all other Members of Faith Revival Ministries otherwise known as Victory Christian Centre or Faith Revival Ministries World Outreach); THE INCORPORATED TRUSTEES OF FAITH REVIVAL MINISTRIES v. NASCO ESTATE CO. LTD.; MOTOR TYRES SERVICES COMPANY.

COURT OF APPEAL (NIGERIA)
(LAGOS DIVISION)

(OGBUINYA; BAYERO; BANJOKO, JJ.CA)

Sometimes in 1978, the Federal Government of Nigeria leased a large expanse of land, situate and lying along Lagos-Badagry Express Road, Lagos, to Nasco Estate Co. Ltd (1st Respondent) under certain terms and conditions on its usage. The 1st Respondent subsequently subleased part of the same land to Motor Tyres Services Company (2nd Respondent) under the same conditions in the head lease. In 1993, the 2nd Respondent assigned the residue of its interest in the same land portion to 'The Incorporated Trustees of Faith Revival Ministries' (3rd Appellant) trustees under certain conditions. It is the case of the 1st Respondent that in the Appellants unlawfully entered the land in dispute, built buildings thereon and started using it for religious purpose contrary to the user covenant in the head lease. Sequel to that, the 1st Respondent approached the High Court of Lagos State (lower Court), seeking for a declaration that the Appellants have no right title or interest in the land in dispute, among other orders. The Appellants in response stated that the 1st Respondent consented to the assignment of and that the land in dispute is not being used for religious purposes. Also, they raised the defence of laches, acquiescence, waiver and estoppel against the suit, and consequently counter-claimed. Upon the conclusion of trial, the lower Court in a considered judgment, granted the 1st Respondent's claim.

Dissatisfied with the decision of the lower Court, the Appellants appealed to the Court of Appeal. One of the issues for determination is *Whether the learned trial Judge at the Court below was justified in holding that the 3rd Appellant lacked the capacity to enter the Deed of Assignment dated 12th August 1993.*

Learned Silk for the Appellants argued that the lower court's holding that the 3rd Appellant lacked the capacity to enter the deed of lease was contrary to the law. He persisted that an unincorporated association can own property through its trustees. The learned Silk further submitted that the lower court wrongly refused to take cognizance original certificate of incorporation.

In response, learned Counsel to the 1st Respondent argued that for the trustees to claim the land in dispute, they must show evidence of incorporation at the time of acquiring interest. He said their only evidence, which was the Deed of Assignment (Sublease/Agreement) was executed prior to the incorporation whilst the certificate of incorporation showed that the incorporation came after the sublease. He took the view that the Agreement showed the lease was to the unincorporated association and not its trustees. He insisted that an unincorporated association has no capacity to hold land except through its trustees or individuals, and further added that it is the trustees, not the association, that apply for registration.

In resolving the issue, the Court of Appeal held that:

The law grants ample latitude to an unincorporated association to enter into a pre-incorporation contract through the medium of its members, as its trustees, pending its incorporation. The property, whether real or otherwise, acquired by the trustees will vest in the unincorporated association upon its registration. It flows that the 3rd Appellant had the imprimatur of the law statutory and case-law, to engage itself in the pre-incorporation contract through its member trustees. The property, or proprietary interest acquired in the pre-incorporation contract, will automatically vest in the association upon incorporation. In essence, the 3rd Appellant's trustees, who entered into the contract of assignment of the demised premises, held the disputed land in trust for the 3rd Appellant pending its registration. Thus, the 3rd Appellant's right over the disputed property was in incubation during the gestation period of its incorporation. In the mind of the law, the 3rd Appellant's interest in the disputed property was in escrow as it was contingent upon the happening/occurrence of an event - its incorporation. Thus, the lower court, with due respect, was in grave error as well as fractured the law when it reached that finding. It will smell of judicial sacrilege to affirm a finding that has disclosed a serious hostility to the law.

Issue resolved in favour of the Appellants.

S.N. Agweh, SAN with O. Kutemi, Esq., for the Appellants
Michael Akinleye, Esq., for the 1st Respondent
B. A. Sodipo, Esq. for the 2nd Respondent

This summary is fully reported at (2022) 8 CLRN

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