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CASE DIGEST

TRADEMARK; TRADEMARK DISPUTES: THE FEDERAL HIGH COURT DOES NOT HAVE ORIGINAL JURISDICTION OVER MATTER RELATING TO TRADEMARK DISPUTES

NULEC INDUSTRIES PLC v. DYSON TECHNOLOGIES LIMITED; REGISTRAR OF TRADEMARKS

SUPREME COURT OF NIGERIA

(NWEZE; AUGIE; OGUNWUMIJU; ABUBAKAR; AGIM, JJ.SC)

On the 11th of February 2011, Nulec Industries Plc (Appellant) made an application to the 2nd Respondent for the registration of Air Amplifier, Air Multiplier and Bladeless Fan, as Trademarks. In the acceptance form dated 16th of February 2011, it was specified by the 2nd Respondent that the said Trademarks will in due course be advertised in the Trademark Journal, further to which the Trademarks were published in the said Trademark Journal on the 15th of September 2012. Meanwhile, on 7th December 2011, the 1st Respondent filed a Notice of Opposition to the said registration, and in response, the Appellant filed its Counter-Statements. However, while the opposition proceedings were still pending, the Appellant, by an originating motion, commenced an action at the Federal High Court (the court dealing largely with commercial disputes).

The 1st Respondent, who was duly served by substituted means, did not file any processes, or put in appearance when the application was heard, wherein the learned trial Judge delivered his ruling, thus granting the reliefs sought by the Appellant. Dissatisfied, the 1st Respondent appealed to the Court of Appeal (lower Court), wherein its major complaint was that the learned trial Judge erred when he assumed jurisdiction over the suit prior to the conclusion of the opposition proceedings before the 2nd Respondent. The lower Court upon consideration of issues submitted before it, allowed the 1st Respondent's appeal.

Also, dissatisfied with the decision of the lower Court, the Appellant appealed to the Supreme Court of Nigeria. One of the issues for determination was *Whether, in regard to the section 251(1)(f) of the Constitution (as amended), sections 7 and 28 of the Federal High Court Act and Sections 20 and 21 of the Trademarks Act, the Federal High Court can rightly exercise original jurisdiction in respect of opposition proceedings pending before 2nd respondent?*

Relying on Section 251 (1) of the Constitution, the Appellant Counsel argued that no provision in the Trademarks Act will be allowed to prevail over the said section 251(1)(f), as regards the exclusive jurisdiction of Federal High Court to hear and determine civil cases arising from any Federal enactment relating to trademarks; and that the words "to the exclusion of any other court in civil causes and matters" therein has inherent in them the granting of original jurisdiction to the Federal High Court. He stated further that the said provision in an Act that the National Assembly is entitled to make pursuant to provisions of section 251(1) of the Constitution, affirms the exclusivity of the original jurisdiction of Federal High Court in trademark causes, and therefore urged the court to hold that the Federal High Court had original jurisdiction to determine the subject matter of this Suit and that it was right in exercising its right to approach the Federal High Court to determine the dispute it has with the 1st Respondent.

In response, the 1st Respondent stated that the Appellant's arguments thrive on the faulty assumption that there is a conflict between the provisions of the Constitution and the Trademarks Act; one of which is that exclusive jurisdiction vested in the Federal High Court is to the exclusion of both Courts and administrative tribunal, which is not true. He further stated that if the Constitution intended to extend the provision to catch Administrative Tribunals, it would have stated so expressly but it had not done so, and that the word courts as articulated under section 6 of the Constitution does not include Administrative Tribunal, which is the role played by the 2nd Respondent in exercising jurisdiction over opposition proceedings. He submitted that the jurisdiction of Federal High Court in this respect is not original but appellate in nature, and 'exclusive jurisdiction' does not necessarily mean that the Federal High Court would have 'original jurisdiction' to hear a case in the first instance over Trademark disputes.

In resolving this issue, the Supreme Court held that:

The process of resolving objections cannot begin by instituting a fresh suit before the Federal High Court. It is after the Registrar would have taken a decision in the opposition proceedings that the right of appeal kicks in. In other words, the Federal High Court does not have original jurisdiction over matters pertaining to the acceptance of applications for registration of trademarks and oppositions to the registration of trademarks. It is the Registrar, who considers the notice of opposition, other processes, and the evidence, if any, before he decides what form the registration will take. It is when the matter goes on appeal that the Federal High Court would determine, after hearing from the Parties and the Registrar, whether, and subject to what conditions or limitations, if any, the registration of a trademark is to be permitted.

Issue resolved in favour of the 1st Respondent.

Femi Attah, Esq., with Suleiman Yakubu, Esq., and Mohammed Ahmed, Esq., for the Appellant
Mark Mordi, SAN with D. D. Killi, Esq., for the 1st Respondent
No Appearance for the 2nd Respondent

This summary is fully reported at (2022) 12 CLRN

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