



The Legal Luminary

In-house E-Newsletter of the Legal Department

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"We spend January 1st walking through our lives, room by room, drawing up a list of work to be done, cracks to be patched. Maybe this year we ought to walk through the rooms of our lives...not looking for flaws, but for potential."

Ellen Goodman

NEWS

N27bn Scam: EFCC rearrests jailed police pension boss, slams fresh criminal charges on him. As NLC demands retrial

Confusion over the ceasefire declared by Boko Haram, has persisted with a top member of the group dismissing any future dialogue with the FG

A Dutch court recently indicted Shell Nigeria of being partly liable for environmental damage and asked it to pay compensation

Foreign Reserves: Reps To Probe Ezekwesili's Allegation On \$67bn.

The value of the naira further depreciated yesterday as the Central bank of Nigeria (CBN) sold \$120 million dollars at its bi-weekly auction at N155.74

From the Editor!

Welcome to another edition of the premier and only e-newsletter in the Corporation "the Legal Luminary". This is the first edition of the year 2013 and we would like to wish you an awesome and blessed new year! In this edition we will be looking at the recent judgment of the Supreme Court in the matter of Olusegun Egunjobi vs Nigeria. This case is of particular interest to the Corporation as after a series of appeals which reached the apex court in the land the judgment was upheld in the Corporation's favour.

The Q and A section is also quite enlightening as it clarifies the fiduciary duties of Directors in insured institutions.

Please send your queries and comments and we will be glad to publish them.

Q. What are the fiduciary duties of the Directors of an insured institution?

A It is to be noted that an insured institution is first incorporated as a company under the Companies and Allied Matters Act 1990 (CAMA) S 244 of the CAMA provides that "the Directors of a company are appointed by the company to direct and manage the business of the Company". Notwithstanding the executive powers bestowed on Directors to manage and direct the affairs of a company, there are also fiduciary duties which regulate their conduct. *These fiduciary duties are as follows:*

Directors must observe utmost good faith in company transaction S279 CAMA

Directors are to act in the best interest of the company to preserve assets, further its business and promote company purpose. S 279 (3) CAMA

The interest of Directors shall not conflict with that of the company. S 280(1) CAMA

Where secret profits are made or benefits derived, Directors are accountable to the company. S 280(3)

Directors are to exhibit a duty of care and skill while performing their functions. S 283 CAMA

Directors are trustees of the company. S 283

Where a Director is in breach of one or more of these duties, there are available remedies to the shareholders. Apart from fiduciary duties of a bank Director, they also have other duties to the bank as provided under the Bank and Other Financial Institutions Act 1991, Nigeria Deposit Insurance Act 2006 and other banking legislations.

OLUSEGUN EGUNJOBI VS NIGERIA

The Supreme Court gave judgment recently upholding the conviction of the accused person in the above matter. This is a welcome ruling which indicates that the efforts of the Corporation in promoting safe and sound banking by ensuring that the activities of directors and officers of banks who carry out unsafe and unsound banking practices do not go unchecked. Below we present the antecedents of this case.

In 1999 four persons were arraigned before the Failed Banks (Recovery of Debt) and Financial Malpractices in Banks Tribunal at Calabar upon a nine-count charge. The offences for which the Accused persons were tried included conspiracy to commit felony, granting loan facilities without lawful authority, stealing and conspiracy to steal, issuing of dud cheques and obtaining under false pretences. The Accused persons were:

Mr. Samuel Apata (1st Accused) who was the Branch Manager of the Nigeria-Arab Bank, Broad Street Branch, Lagos (which later metamorphosed into the defunct Assurance Bank Plc).

Mr. Olusegun Egunjobi (2nd Accused) the then Branch Accountant of the defunct Assurance Bank, Broad Street Branch, Lagos; and

Mr. Otta Akhibi (3rd Accused), the Managing Director of Axtro Films Limited (4th Accused), a customer of the defunct Assurance Bank.

The total sum involved was N60, 341,466.35 (Sixty Million Three Hundred and Forty One Thousand Four Hundred and Sixty Six Naira Thirty Five Kobo) only.

On the 24th of March, 1999, the tribunal which was presided over by the Hon. Justice Fasasi O. Oguniola, delivered judgment convicting the Accused Persons. The 1st to 3rd Accused/Convicts were sentenced to serve 5 years in prison. The 2nd Accused/Convict was sentenced to an aggregate of 18years imprisonment which started running from 24th March, 1999. However, the Judgement did not make any consequential orders to enable the Corporation to recover the sums involved in the offences.

Thereafter, Mr. Olusegun Egunjobi, the 2nd Accused/Convict appealed against his conviction. His appeal to the Court of Appeal (Calabar Division) was determined against him even though his sentence was reduced to about 18 months. Still dissatisfied with the verdict of the Court of Appeal the 2nd Accused further appealed to the Supreme Court.

One of the major grounds was the issue of jurisdiction which is so fundamental and radical that it forms the foundation of adjudication as any judgement or proceeding, however well conducted without jurisdiction is a nullity. He cited *Katto v CBN* (1191) 9 N.W.L.R (pt 214) 126.

It should be noted that the issue of jurisdiction being very fundamental should be determined at the earliest opportunity. Where a court lacks jurisdiction, there is

want of competence to try the matter. If a court has no jurisdiction to hear and determine a case, the proceedings remain a nullity *ab initio* no matter how well conducted and decided. *Labiya v Aretiola* (1991) 8NWLR (Pt 358) 129 at 169, *Onagoruwa v The State* (1992)2 NWLR (Pt.221) 33 at 44.

However, on the 14th of December 2012 the Supreme Court upheld the conviction of the accused and held that the appeal lacked merit and dismissed it in its entirety.

This is a victory for the Corporation in its onerous responsibility of providing safe and sound banking thereby restoring confidence in the system.

SOCIAL DIARY

Congrats to Mrs. ZMB Umar, Mr. V.A Nwabueze, Mr. David Yisa, Mr. Levi Azu, Mr. H.T Robinson, Mrs Chioma Momah, Mr. Ifiok Enefiok and Mrs. Bridget Ben- Ogbeide all of the Legal Department. We wish you surpass the expectations that your careers put forth and at the same time find pleasure in your new positions. We are extremely happy for you, our dear colleagues. Cheers.

Congrats to all Muslim Ummah on the peaceful and successful celebration of the Maulud marked on the Thursday, the 24th of January, 2013.

Kudos to NDIC, in particular, the Performance Management Unit on the conclusion and roll -out of the new Performance Management System (PMS). Its our desire that the test- run of PMS goes well.

