

THE SUPREME COURT OF NIGERIA

1ST MARCH, 2002

NIGERIA DEPOSIT INSURANCE CORPORATION - 2ND APPELLANT

AND

CENTRAL BANK OF NIGERIA - - - 1ST DEFENDANT/RESPONDENT

REPUBLIC BANK LIMITED - - - PLAINTIFF/RESPONDENT

SUIT NO: SC. 55/1999

BEFORE THEIR LORDSHIPS:

Salihu M. A. Belgore, JSC

Idris L. Kutigi, JSC

Anthony I. Iguh, JSC

Aloysius I. Katsina-Alu, JSC

Samson O. Uwaifo, JSC

FACTS

The Plaintiff/Respondent was granted a banking license No. 000039 dated 10th June, 1988 by the first Defendant. By a Statutory Instrument (S.1.6. of 1995) dated 29th June, 1995, the first Defendant with the approval of the Head of State revoked the said license. The apparent reason for the revocation was that the Plaintiff bank was in a grave financial condition which has “culminated in the total erosion of its capital base and the dissipation of the depositor’s funds resulting in the inability of the bank to meet its obligations to its depositors and creditors, and the various actions taken by the regulatory authorities to halt further deterioration, including calls on the shareholders to recapitalize the bank, have failed.” This is undoubtedly a very strong reason to which the Respondent should normally equally react without delay.

The appointment of the 2nd Defendant/Appellant as the Provisional Liquidator of the Bank was simultaneously announced. The fact of the revocation and the appointment was

published as Government Notice No. 16 in Extraordinary Federal Republic of Nigeria Official Gazette No. 10 Vol. 82 of 30th June, 1995. The 1st Defendants claimed to have acted under Section 12 of the Banks and other Financial Institutions Decree No. 25 of 1991.

The Plaintiff then instituted an action in the Federal High Court on 11th July, 1995 against the Defendants seeking: (1) a declaration that the revocation as published “is capricious, illegal, null and void as same is based on a cause not cognizable under Section 23 of the Banks and other Financial Institutions Decree 1991”; (2) A declaration that the appointment of the 2nd Defendant as the Provisional Liquidator of the Plaintiff bank is illegal and contrary to Section 38(3) of the Said BOFID; (3) An injunction restraining the Defendants from giving effect to the revocation and acting pursuant to the said Section 38. A motion on notice was filed the next day for an interlocutory injunction restraining the Defendants from giving effect to the revocation and by presenting a petition for winding-up and or by selling or in any way disposing of any of the assets of the Plaintiff.

The Appellant responded by a notice of preliminary objection filed on 12th July, 1995 seeking to strike out the action along with the motion on the grounds that the Plaintiff has no right of action. In a Ruling given on the preliminary objection on 15th August, 1995, Ukeje, J., found that the revocation was properly done under the conditions envisaged by Section 12 of BOFID and that by Section 49 thereof, no action shall lie against the defendants. She dismissed the action.

The Plaintiff appealed and the 2nd Defendant cross-appealed to the Court of Appeal. The substance of the two issues formulated in respect of the appeal was: (1) whether the question of jurisdiction could have been raised to enable the Court to decide on ouster of jurisdiction before the statement of claim was filed and (2) whether on the basis of the preliminary objection an order of dismissal or striking out was proper. In respect of the cross-appeal, the issue for determination was formulated by the cross-appellant thus:

“Whether declaratory action is appropriate in this case, having regard to the fact that this action is for judicial review of an administrative action *id est*, revocation of the Plaintiff’s banking license by the 1st Defendant.”

On the 18th of November, 1988, the Court of Appeal, Lagos Division, in a considered judgment dismissed the cross-appeal and allowed the appeal. It set aside the ruling of the trial court and ordered that the case be remitted to the Federal High Court to be heard by another Judge who would have to comply with Order 31 Rule 1 of the Federal High Court (Civil Procedure) Rules.

The 2nd Defendant (hereinafter called ‘the appellants’) appealed to the Supreme Court and raised four issues for determination namely: (1) whether the learned trial Judge had jurisdiction to entertain the Plaintiff/Respondent’ action; (2) whether the learned trial Judge was right in holding that the Defendant/Applicant’s preliminary objection was premature and that it could not have succeeded without an affidavit in support; (3) Whether the Court of Appeal was right in holding that the learned trial Judge ought to have struck out the case instead of dismissing it; and (4) Whether the Court of Appeal was right to have dismissed the cross-appeal filed by the Defendant/Appellant.

The Supreme Court struck out the Plaintiff/Respondent’s suit, allowed the appeal and set aside the Judgment of the Court of Appeal, and HELD:

On the Purport of Section 49 of Banks and other Financial Institutions Decree (BOFID) No. 25 of 1991

Section 49 of BOFID provides an ouster clause to prevent litigation in case of such event as revocation of banking license by the Central Bank of Nigeria. It provides that:

49(1) “Neither the Federal Government nor the Central Bank of Nigeria, shall be subject to any action, claim or demand by or liability to any person in respect of **anything done in good faith** in pursuance or in execution of any power conferred upon that Government, the Bank or such officer, by this Decree.”

On the Allegation of Bad Faith in the Revocation of Banking License

In order that the court may have jurisdiction to entertain the type of action now in question, the Plaintiff/Respondent has to show or allege bad faith in the way the revocation was done and indicate the elements that constitute bad faith. This must be done preferably at the threshold of the suit being placed before the court because the court is to presume that the act complained of was done in good faith which naturally will deprive it of jurisdiction unless bad faith is positively alleged by way of its elements.

On the Elements of Bad Faith

The endorsement on the writ of summons alleges that the act of revocation was ‘capricious and illegal’. This is probably an allegation of bad faith but without its element it cannot be regarded as positive. The endorsement however goes further to indicate what is regarded as the bad faith by saying that the revocation is ‘based on a cause not cognizable under Section 12 of Banks and other Financial Institutions Decree 1991. This would appear to represent the elements of the alleged bad faith.