



# Securities & Exchange Commission, Nigeria

*The Apex Regulator of the Nigerian Capital Market*

## LITIGATIONS AS AT DECEMBER 2006

### 1. BONKOLANS INVESTMENTS LTD VS SEC SUIT NO. IST/APP/01/2003

*The matter arose from the decision of the Administrative Proceedings Committee (APC) of the Commission on the alleged scam on the floor of the Nigeria Stock Exchange involving the illegal sale of Nestle Foods Plc, Unilever Plc and other securities by some individuals through some stockbroking houses.*

*Consequently, the stockbroking houses and individuals involved including the Nigerian Stock Exchange, the Central Securities Clearing Systems Ltd. (CSCS) and Union Bank PLC (Registrar Dept) were invited before the APC of the Commission to explain their roles in the scam.*

*At the end of the hearings, APC directed some stockbroking houses and their brokers that participated in the scam to either restore, or buy back the shares illegally sold by them to their bonafide owners. Some of the stockbrokers were suspended and or banned from participating in the Nigerian capital market.*

*In 2003, Four (4) of the operators Union Bank Nig. Plc, Lighthouse Asset Management Co. Ltd, FIS Securities Ltd and the Central Securities Clearing Systems Ltd. felt dissatisfied with the decision of the APC, appealed to the Investments and Securities Tribunal (Tribunal).*

#### **JUDGMENT**

*On February 26, 2004 the Tribunal gave its judgment in respect of the consolidated appeals.*

*The highlights of the decision are as follows:*

#### *i) Union Bank of Nigeria PLC (UBN REGISTRARS DEPARTMENT)*

*The Tribunal affirmed with modification, the decision of the APC that UBN Registrars' Department should restore the investors to their original position.*

*It referred the case back to the Commission for proper apportionment as it affects all parties (stockbroking firms) through whom the Nestle PLC shares were sold. UBN Registrars' Department should be liable to the tune of 40% of the residue of amount of loss suffered. This was to avoid a multiple buy-back situation.*

*The Tribunal however set aside the decision of the APC of the Commission on the penalties awarded against UBN Registrars' Department and ordered the refund of same to UBN Registrars' Department.*

#### *ii) Lighthouse Asset Management Ltd.*

*The Tribunal overruled the decision of the APC of the Commission and allowed the appeal by Lighthouse. It stated that the appellant was not negligent since it had done all that it needed to do in the circumstance of the case. The Commission was ordered to refund the cost of proceedings paid to it by the appellant.*

#### *iii) FIS Securities Ltd*

*The Tribunal upheld the decision of the APC of the Commission in respect of FIS Securities Ltd. The Commission was however ordered to refund the cost of proceedings paid to it by the appellant, within two weeks of its ruling.*

#### *iv) CSCS*

*The appeal by CSCS also failed, although the Commission was ordered to refund the cost of proceedings paid by the appellant. The CSCS was found vicariously liable for the fraud perpetrated by its employees. It is however to be responsible for 60% of the residual amount of the loss by investors.*

*However, the Commission appealed against the orders on cost refund.*

## **2. SAMUEL OSIGWE VS. BPE, SEC & ORS (SUIT NO. IST/OA/02/2003)**

*This matter was instituted at the IST against BPE, SEC and 13 other respondents by the Appellant on behalf of himself and as a representative of all classes of persons who had registered to purchase shares in public companies under the Privatization Share Purchase Loan Scheme (PSPLS) of the Federal Government in 1999.*

*The Appellants sought for the following orders from the IST:*

- 1. an order to suspend the share acquisition scheme as presently structured until BPE complies with the relevant provision of the ISA 1999 and the Rules made there under.*
- 2. an order directing the Respondents to immediately comply with the provisions of the ISA 1999 and the underlying Rules and Regulations made thereto with respect to the PSPLS by ensuring that the relevant statement prospectus are duly filed with and effectuated by SEC.*

*The Commission was joined in its regulatory capacity in the Nigerian capital market and because it has the duty to ensure that public offering of securities comply with the ISA 1999 and the Rules made thereunder.*

*The Commission's Counsel contended that the Commission was not a necessary party to the matter and sought the tribunal to strike out the name of the Commission from the suit.*

### **JUDGMENT**

*In its judgment delivered on February 12, 2004, the tribunal struck out the names of the 2nd to 15th Respondents from the proceeding but refused to strike out the name of the Commission;*

*The Appellant has further appealed against the judgment to the Court of Appeal with the Commission as the 16th Respondent.*

## **3. MOLTEN TRUST LIMITED & OTHERS VS. SEC (SUIT NO. IST/APP/03/2004)**

*Molten Trust Limited (the appellant) and its Managing Director was brought before the APC for conniving with one Mr. Michael Adegubusi , an Assistant Registrar with UAC Plc to forge, clone and sell UAC Plc share Certificates through the appellant.*

*The Appellant Company was suspended from participating in the capital market for 3 months while its Managing Director, Mr. M.O Oduwole was suspended for one year by the APC.*

*The Appellant was dissatisfied with the APC decisions and filed an appeal at the IST challenging the decisions.*

### **JUDGEMENT**

*The IST delivered its judgment on February 22, 2005 and affirmed the decision of the APC suspending the company and set aside the decision on the Managing Director, since it was not in conformity with the principle of natural justice and fair hearing.*

*The Tribunal ordered the Commission to re-invite Mr. M.O Oduwole for retrial after giving him adequate notice of the charges against him.*

## **4. THOMAS KINGSLEY SECURITIES LIMITED (TKSL) VS. SEC & OTHERS (CASE NO. IST/OA/01/2005)**

*The Appellant and its CEO were found to have taken undue advantage of the ignorance of some investors to misappropriate investors' funds.*

*The Commission invoked the provision of Section 232 of the ISA 1999 which obliged it to pass information of possible criminality to the appropriate prosecuting authorities where such evidence is discovered in the course of its investigation and consequently handed over the 1st Appellant, Chief (Sir) Kingsley Ikpe to the EFCC for further investigation and possible prosecution. In addition, the Commission sought the order of the Tribunal to allow it use monies found in the accounts of the Appellants to restore investors that incurred losses from dealing with the Appellants.*

**JUDGEMENT**

*In its judgment delivered on October 27, 2005, the tribunal ordered inter alia:*

- a) all accounts of TKSL operated by Chief (Sir) Kingsley Ikpe and his personal accounts with any bank or financial institution in Nigeria be frozen.*
- b) that an Interim Management Team be setup by SEC to operate the frozen accounts of TKSL and that of its CEO for the purposes of applying monies found therein to settle investors affected by the conduct of the Respondents.*

**5. BENUE INVESTMENTS & PROPERTY CO. LTD (BIPC) VS SEC & 6 ORS – APPEAL NO. IST/APP/02/2006**

*This suit was instituted at the Investments & Securities Tribunal by the Appellants, Benue Investments & Property Co. Ltd (BIPC) and BIC Securities Ltd against the Commission and 6 others challenging the decision of the Commission directing Dangote Industries Ltd (DIL) to:*

- i. pay a premium of N259,262,694 for the 432,104,491 shares renounced by the 1st appellant (BIPC) to DIL during the Rights Issue of Benue Cement Co. Plc (BCC) in December 2005.*
- ii. allot a part of the said rights already allotted to BIPC during the Rights Issue to enable the company raise its shareholding in BCC Plc to the maximum of 10%.*

*The Appellants sought for an injunction to stop the Respondents including the Commission from:*

- i. Going on with all processes and proceedings relating to the BCC Plc rights issue pending the determination of the Appeal.*
- ii. Transferring the proceeds in respect of the 432,104,491 units belonging to BIPC pending the determination of the Appeal.*

*The matter is pending.*

**6 . MR. A. ANYANBULE VS SEC & 8 ORS – APPEAL NO. IST/APP/01/06**

*This suit was instituted by the Appellant at the Investments & Securities Tribunal seeking an order to suspend the decision of the Administrative Proceedings Committee (APC) pending the hearing and determination of the suit.*

*The appellant was found to have failed in carrying out his client's instructions to purchase shares, thereby violating the Rules and Regulations of the Commission. He was consequently barred by the APC from engaging in any business in the capital market.*

*The APC had also directed that the actions of the Appellant be reported to the Chartered Institute of Stockbrokers (CIS) and any other professional bodies he belonged to. It further directed that he be reported to the Economic and Financial Crimes Commission for further investigation.*

*The matter is pending.*

**7. ALH. ZUBAIRU MOHAMMED & 6 ORS VS INLAND BANK PLC & ANOR – SUIT NO. IST/OA/07/2005**

*The Applicants filed this action before the Investments & Securities Tribunal against Inland Bank Plc, IBN Securities Ltd, (Registrars to the 1st Respondent).*

*The Applicants are seeking inter alia:*

- a) An order directing the respondents to render to the applicants an account for all rights, interests, benefits or advantage or dividends that accrued to their shares in the 1st respondent's (Inland Bank) equity from the date of acquisition in 1996 till date*
- b) An order compelling the 1st & 2nd respondents to produce and deliver to them share certificates in respect of all bonus shares found to be due to each of them*
- c) An order directing the benefits found due and payable to the 1st -7th applicants by way of dividends, bonuses and associated interests be paid to them by the 1st and 2nd respondents forthwith..*

*The SEC and the EFCC were joined as desirable and necessary parties to the suit as co-respondents so that both may be bound by the outcome of the judgment.*

*The Commission had filed a preliminary objection seeking that its name be struck out from the suit.*

*The matter is pending.*

#### **8. BLUECHIP ACQUISITION AND INVESTMENTS CO LTD VS SEC & 4 OTHERS (SUIT NO IST/APP/01/2005)**

This appeal was filed at the IST by the Appellant as a fall out of an earlier suit instituted by the Appellant i.e. Suit No IST/OA/04/2004 Bluechip Acquisition & Inv. Ltd v Zenith Bank Plc & 3 others, against Zenith Bank Plc, IBTC, FBN (Merchant Bankers) Limited and First Registrars Nigeria Limited, (herein referred to as the 2nd – 5th Respondents) for failing to provide the appellant with its certificate for 100,000 units of Zenith Bank Plc shares it subscribed to during the Zenith Bank Plc public offer in 2005.

The Appellant after fruitless efforts to obtain its share certificate sued the 2nd – 5th respondent for deliberate violation of Sections 83, 86, 87, 96, 252 and 263, of the ISA 1999.

After hearing the arguments of counsel on both sides, the Tribunal ordered the (2nd – 5th) Respondents to provide the Appellant with its share certificate within one week from the date of the judgment. The Respondents were also ordered to pay to the appellant the sum of N89,500.00 representing losses suffered by the Applicant as a result of the Respondent's failure to dispatch to the Applicant its share certificates.

The Tribunal further ordered a fine in the sum of N40,000.00 against the respondents to be paid into the consolidated revenue account of the Federation.

#### **JUDGMENT**

In its judgment on the Appeal delivered on October 27, 2006 the IST directed the Commission to investigate the 2nd – 5th Respondents and also to take necessary action on the outcome of its investigation.

#### **APPEAL NO. IST/APP/03/2004 – MOLTEN TRUST LTD AND OTHERS VS SEC**

This is an appeal brought by the 1st Appellant, Molten Trust Ltd and its Managing Director Mr. Oduwale challenging the suspension imposed on them by the APC from capital market activities. The Tribunal upheld the decision of the APC suspending the 1st Respondent Molten Trust Ltd. but nullified the suspension order on the 2nd Appellant, Mr. M. O. Oduwale on the ground that he was not accorded fair hearing and ordered that Mr. Oduwale be retried. Mr. M.O.Oduwale being dissatisfied with the judgement of the IST further appealed to the court of appeal and also to the Commission for clemency and a review of his case.

#### **2005 Litigations**

##### **IST/OA/01/2005-SEC & OTHERS VS THOMAS KINGSLEY SECURITIES LTD AND OTHERS**

The Commission had sought and obtained an order from the Investments & Securities Tribunal IST to freeze the accounts of the Respondents, Thomas Kingsley Securities Ltd. and that of its Chief Executive Officer Sir Kingsley Ikpe.

The APC had heard evidence in respect of 9 complaints against the company and its CEO bordering on illegal sale of shares and non-lodgment of shares paid for.

In the case of one of the Complainants, Chief Tony Ezenna, the company and its CEO received N135 million i.e. approximately \$1million for the purchase of shares but only a portion of the amount was utilized.

The Commission is seeking the order of the IST with a view to utilizing the monies found in the company's bank accounts to restore investors that suffered loss arising from the unethical conduct of the Respondents.

The Respondents thereafter filed a motion of preliminary objection challenging the order on the grounds that the Commission did not have the locus standi to institute the suit against the Respondent, and that the Commission did not lose anything from the transactions that led to the suit.

The IST has heard and determined the motion and found in favour of the Commission and has also commenced hearing of the substantive suit by adopting the witness statements filed by both the Commission and Chief Tony Ezenna, the principal investor that incurred loss arising from his dealings with the company.

The matter was adjourned to September 29, 2005 for continuation of hearing.

**Suit No. CA/L/45/M/2004 – SEC Vs Prof. A. B. Kasunmu**

The plaintiff, a law firm, instituted this suit challenging the decision of the Commission to accredit legal practitioners prior to their participation in Capital Market activities.

Judgment was given in favour of the plaintiff at the court of first instance, the Federal High Court, hence the Commission appealed against the decision on the ground that the court erred in law.

The Commission's external counsel had filed a Motion on Notice at the Court of Appeal, Lagos seeking for an extension of time within which to file the Commission's brief.

However, counsel reported that he was still awaiting the receipt of the hearing notice from the Court of Appeal, Lagos.

**Suit No. FHC/L/CS/290/05 - Gen. Mohammadu Shuwa & Others Vs SEC & Others**

Following the approval granted by the Commission to allow IMB International Bank Plc to continue with its January 2004 public offer, the Plaintiff, Major Gen Mohammed Shuwa, the former Chairman of the bank, instituted this suit against the Management of the bank and joined the Commission as the 3rd defendant

The plaintiff is praying the Court, inter alia to declare that the Commission had failed to perform its statutory duty by approving the sale of the bank's shares irrespective of the several irregularities and contraventions brought to its attention prior to approval, and that the approval granted by the Commission be declared null and void and of no effect whatsoever.

The Commission had already filed a Notice of Preliminary objection for an order to strike out the suit for lack of jurisdiction on the grounds that Federal High Court was not the proper court to entertain the matter but the Investments & Securities Tribunal relying on the strength of Sections 234(1) and 242 of the ISA.

The court has ordered parties to maintain status quo antebellum i.e. that there should be no meeting of the company with a view to diluting shareholdings of members of the company until the application is disposed off.

The Commission had complied with this order not to take contrary step since it was only a party to the suit.

**Lawrence Jegede Vs UBA Plc & 4 Others – Suit No. FHC/L/CS/580/2005**

This suit was instituted at the Federal High Court, Lagos by the plaintiff, Lawrence Jegede, a shareholder of United Bank of Africa Plc UBA. UBA is sued as the 1st Defendant while the Commission is joined as the 4th Defendant because of its regulatory oversight function of the Nigerian capital market.

The plaintiff is seeking a declaration that the financial statement of (31st March 2000 – 30th September 2004) of UBA Plc as contained in its proposed scheme of merger with Standard Trust Bank PLC be declared as inaccurate, reckless and fraudulent and therefore could not be used in the proposed merger at the court-ordered meeting of the 1st & 2nd Defendants scheduled for July 6, 2005.

He also sought for an interim injunction to restrain Central Bank of Nigeria, the 3rd Defendant from approving the alleged "cooked-up" accounts of the 1st Defendant's last financial year ended March 31, 2005 until the production of an honest, accurate and reasonable statement of accounts for the 3rd Defendant's necessary approval, and also for general damages against the 1st & 2nd Defendants in the sum of N100, 000 only.

The matter is still pending in court though the merger between UBA and STB has been consummated.

**Alh. Umar Abba Gana Vs SEC – Suit No. FHC/ABJ/M/335/02**

The above matter was filed against the Commission by the Applicant before the Federal High Court, Abuja.

The Applicant sought an order to prohibit the Commission from compelling him to appear before its Administrative Proceedings Committee concerning the investigation of the alleged concealment of debts owed by African Petroleum Plc while he was the Managing Director of the company.

After hearing arguments of counsel on all the issues raised, the Federal High Court gave

judgment in the applicant's favour holding that the Respondents i.e. the Commission and the Attorney-General of the Federation are prohibited from compelling the appellant to appear before SEC's APC to answer on the alleged concealment of the debt owed by AP Plc.

The Commission after reviewing the judgment felt that the Federal High Court had misunderstood the functions of the Commission and its powers under the ISA, hence the basis of its judgment. It therefore advised that the Commission should appeal against the judgment at the Court of Appeal in order to set the records straight.

The Commission has filed a Notice of Appeal at the Court of Appeal, Abuja and same had been served on the Respondent. Parties had also been summoned by the Federal High Court for the purposes of settlement of records for the appeal.

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