



Securities & Exchange Commission, Nigeria

The Apex Regulator of the Nigerian Capital Market

LITIGATIONS AS AT DECEMBER 2007

18. Festus Akinola & Ors Vs Zenos Petroleum & Ors - Suit NO: FHC/KD/CS/111/2007

The above suit was originally instituted at the Federal High Court, Kaduna by the plaintiffs. The Commission is the 3rd Defendant in the suit.

The plaintiffs are challenging the manner in which NNPC divested its 28% equity shareholding in African Petroleum Plc to Zenon Petroleum Ltd. in breach of an earlier agreement between the shareholders and NNPC, wherein NNPC should first offer the shares to the existing shareholders of AP Plc whenever it intends to divest from AP.

The matter was struck out on August 22, 2007 on the ground that the plaintiffs lacked locus standi to institute the action.

Dissatisfied with the ruling, the plaintiffs filed an appeal at the Court of Appeal Kaduna against the decision of the Federal High Court.

The matter is pending in court.

17. Dr. Sabo Joseph Dankaro & Anor Vs SEC & 13 Ors – Suit No. IST/OA/10/06

This matter was instituted at the Investments & Securities Tribunal (IST) by the Applicants on September 18, 2006.

The applicants who claimed to be sons and executors of the estate of the Late Chief (Dr.) Sunday Dankaro sought the Tribunal to compel the Commission and 13 others to restore them with 3, 130, 469 units of Nestle Foods Plc shares owned by their late father which were fraudulently sold by Bonkolans Investments Ltd in 2001.

In its judgment of July 18, 2007, the Tribunal struck out the suit on the ground that the Applicants lacked the legal capacity to sue on behalf of the Estate because they failed to prove that they were legally authorized by the Estate to sue on its behalf.

16. Sikon Securities Ltd Vs. SEC – SUIT NO. IST/APP/01/07

This matter is an appeal against the decision of Administrative Proceedings Committee (APC) in Case No. APC/21/2002 – SEC Vs. Bonkolans Investment Ltd & Ors delivered on January 30, 2003 as it affects Sikon Securities & Investment Trust Ltd.

The Appellant is seeking leave to appeal against the APC decision, and an Order to set aside the directives, decisions, findings and the penalties imposed on it.

The matter is pending at the Investments & Securities Tribunal, Abuja.

15. Ogunlesi A. Johnbosco Vs. NSE & SEC – IST/OA/08/2007

This suit was filed against The Nigerian Stock Exchange (NSE) and SEC at the Investments & Securities Tribunal. The Commission is the 2nd Respondent.

The Plaintiff is claiming the sum of N726,748,801.93(seven hundred and twenty six million, seven hundred and forty eight thousand eight hundred and one naira, ninety three kobo) with interest at 19% per annum from the Respondents to be paid from the Investors' Protection Fund (IPF) as compensation for the

unauthorized sale of his shares by Jenkins Investment Ltd.

The matter is still pending.

14. Chief Andrew Oru VS. NDIC & 2 Ors - Suit No. FHC/L/CS/665/07

The suit was instituted against the Commission, Central Bank of Nigeria (CBN) and Nigeria Deposit Insurance Corporation (NDIC).

The plaintiff is asking the Court to Order the Respondents to jointly and/or severally refund him the sum of N1million he deposited for the purchase of 500,000 units of shares in Allstates Trust Bank Plc during its public offer in 2005, which were not allotted to him by the bank before its liquidation.

The plaintiff is also claiming the sum of N1million from the Respondents as damages for breach of contract.

The matter is still pending.

13. Nwazota Williams Vs. Benue Investments & Property Co. Ltd & 5 Ors Suit No. IST/OA/08/2006

This matter was filed by the Applicant against Benue Investments & Property Co. Ltd and others including the Commission for failure to allot to the Applicant shares subscribed to during Benue Cement Company (BCC) Plc Rights Issue of 2005.

In a bid to resolve the matter out of Court, the Commission mediated between the parties in the interest of the company and its shareholders, especially the core investor, Dangote Industries Ltd, but the parties insisted that the matter should go to full trial.

In its judgment of April 19, 2007, the Investments and Securities Tribunal (IST) dismissed the case and held that the Applicant be refunded his subscription monies with interest that accrued thereon.

12. Chief Ezemegbe Livinus Vs the NSE & SEC Suit No. IST/OA/06/2006

The Applicant whose investments, valued at N3,737,281.91 was lost through Apex Securities Ltd, instituted this action at the Investments & Securities Tribunal (IST) against the NSE and SEC demanding compensation out of the Investors Protection Fund (IPF).

In its judgment delivered on December 13, 2006, the IST, amongst others, ordered that the Respondents should draw up and make public within 90 days, guidelines for implementing the IPF and also ensure that the Plaintiff was compensated within the stipulated 90 days.

The NSE and SEC applied for an extension of time within which to comply with the judgment.

At its sitting of April 19, 2007, the Tribunal granted the application by extending the period within which to comply with the said judgment by 30 additional days with effect from April 19, 2007.

11. Olatunde Ososanya & 4 Ors Vs Access Bank Plc & 6 Ors Suit No. FHC/L/CS/820/06

The Plaintiffs who were shareholders of Afribank Plc filed the above suit alleging that their shares were sold by NSITF to Access Bank Plc without their consent.

They sought for an order declaring the sale illegal, null and void. They also sought for an injunction to restrain SEC and CAC, the 5th & 6th Respondents

respectively, from according any form of recognition to the shares in contention.

The matter has however been discontinued by the Plaintiffs.

10. Akue Christopher & 2 Ors Vs Access Bank Plc Suit No. FHC/L/CS/939/06

The Plaintiffs, as shareholders of Access Bank Plc, alleged that Access Bank Plc had given conflicting information about the currency which the bond they were interested in, was denominated. The Resolution for issuing the bond filed with the CAC indicated that the bond was Naira denominated while the one filed with the Commission indicated that the Bond was denominated in Dollars.

The Commission intervened by convening an all-parties meeting where parties were advised to resolve the matter out of court.

The parties have informed the Commission that the matter had been settled out of Court.

9. EKWENIBE & SONS TRADING COMPANY LTD & 3 ORS VS NIGERIA STOCKBROKERS LTD (NSL) & 2 ORS – SUIT NO. IST/OA/09/06

The above named suit was instituted at the Investments & Securities Tribunal (IST) by the Applicants against Nigerian Stockbrokers Limited and 3 Ors. The Commission was joined as the 3rd Respondent.

The Applicants claimed that they gave out their stock portfolio to the 1st Respondent, Nigeria Stockbrokers Ltd for management but the portfolio was fraudulently sold without due authorization and consent, contrary to the provisions of the ISA 1999.

They further claimed that the aggregate value of their respective shares which were fraudulently sold amounted to N184,053,085.44 (one hundred and eighty four million, fifty three thousand and eighty five naira forty four kobo).

They also claimed that the fraudulent sale of their shares was perpetrated through the CSCS and that the 3rd Respondent (SEC) was slow in penalizing the 1st Respondent.

In its judgment dated February 28, 2007, the IST held that the Applicants have not been able to prove their case satisfactorily against the Respondents and thus the Tribunal refused to grant the relief sought by the Applicants.

8. Chief Livinus Ezemegbe Vs. NSE & SEC – Suit No. IST/OA/06/06

The Commission and the Nigerian Stock Exchange were sued at the Investments & Securities Tribunal (IST) by Chief Livinus Ezemegbe (herein referred to as the "Applicant").

The Applicant alleged that sometime in 2004, he gave Apex Securities Ltd 302,500 units of UAC Plc shares and 128,657 units of Union Bank shares to sell but after the sale, the proceeds were not remitted to him. As a result of the non-remittance of the proceeds, the Applicant instructed the company to buy the shares of Zenith and Guaranty Trust Banks respectively with the proceeds but the shares were not purchased.

After unsuccessful efforts to claim the proceeds, the Applicant complained to the Joint Monitoring Committee (JMC), whereupon the Applicant and the company were invited for a meeting. The company admitted liability and promised to pay the Applicant the value of shares totaling N8,373,281.91.

In September 2004, the company paid the Applicant the sum of N5 million and promised to pay the balance in March 2005, but instead of fulfilling the promise, the Respondent claimed that its former Managing Director had misappropriated the company's money including that of the Applicant.

Based on the above, the Applicant filed this suit at the IST hinging on S.149 – 171 of the ISA 1999 and sought that he was entitled to be paid the sum of N3,737,281.91 out of the Investors Protection Fund (IPF).

The IST in its judgment dated December 13, 2006 ordered among others that the Applicant be compensated from the IPF and that the NSE in collaboration with SEC should draw up and make public within 90 days necessary guidelines for the implementation of the IPF Fund in line with the provisions of the ISA.

The Commission has constituted a committee to comply with the judgment.

7. PROF. A. B. KASUNMU (SAN) VS SEC & ANOR – SUIT NO. FHC/L/CS/70/2001

This matter was instituted against the Commission and the Attorney-General of the Federation by Prof. A. B. Kasunmu (SAN).

The Plaintiff's action arose from the refusal of the Chartered Bank (Now merged with IBTC Plc) to engage him as Solicitor to its public issue of 200,000,000 ordinary shares of 50k each at N4.00 per share in 2001 due to his non-registration with the Commission as a capital market operator.

The Plaintiff sought the Court to determine whether the Commission has the power under the ISA No. 45, 1999 to direct or insist that he or any other legal practitioner must be accredited or registered with it before participating in any capital market transaction.

He also sought for a declaration that the Commission has no right or powers under the ISA No. 45, 1999 or any other law to demand, direct and or insist that the Plaintiff must be accredited or registered with it before he can act or be appointed as a Solicitor in any capital market transaction.

The Federal High Court in its judgment dated January 15, 2003 ruled inter alia:

1. that the provisions of Rule 39 of the Rules and Regulations 2000 made pursuant to the ISA requiring the registration of professionals including legal practitioners by SEC is invalid.
2. that the Commission has no right or power under the provisions of the ISA to direct or insist that the Plaintiff or any other legal practitioner be accredited or registered with the Commission before participating as a solicitor top a public issue.

Status

The Commission has appealed against the judgment of the Federal High Court at the Court of Appeal, Lagos and the appeal is still pending.

6. MR. ANYANBULE VS SEC & 8 ORS - SUIT NO. IST/APP/01/06 (APC/20/2002)

Sometime in 2002, the Commission received a complaint from one Mrs. O.O Abiodun against Nigbel Securities Limited and the Appellant who was the then MD/CEO of the Company for failure to purchase and lodge some shares in her favour.

After hearing the matter, the Administrative Proceedings Committee (APC) of the Commission found the Appellant liable for failure to carry out the client's instruction and for engaging in acts capable of adversely affecting the investing public's image of and confidence in the capital market.

Based on its findings, the APC banned the Appellant from participating in all capital market activities. It also directed that the Appellant be referred to the Chartered Institute of Stockbrokers (CIS) and the Economic & Financial Crimes Commission (EFCC) for further investigation and action.

The Appellant felt dissatisfied with the decision of the APC and appealed to the Investments & Securities Tribunal (IST) on the following grounds:

1. That he was not given fair hearing in accordance with Section 36(1) of the Constitution of the Federal Republic of Nigeria, 1999.
2. That the decision was against the weight of evidence adduced at the hearing of the APC.

In its judgment of December 13, 2006, the IST dismissed the Appeal and held as follows:

1. The Appellant was given fair hearing as he had ample opportunity to defend himself but failed to utilize it.
2. APC of SEC had rightfully evaluated the evidence before it in arriving at its decision in the matter on December 29, 2003.

5. Dr. Sabo J. Dankaro & Anor Vs SEC & ORS – Suit No. IST/OA/10/06

The Applicants were executors of the Estate of Late Chief (Dr.) Sunday Dankaro whose 3,130,469 units of Nestle Foods Plc shares were fraudulently sold in 2001 in the Bonkolans scam.

The Bankolans scam cases were heard and determined by the Administrative Proceedings Committee (APC) of the Commission in 2002. Among other decisions, the APC directed that the CSCS, the Registrars UBN Registrar Dept. and Stockbrokers involved in the transactions should buy back and restore the shares to the affected investors who bought the shares for value without knowledge of the scam.

The Committee also directed that the case be referred to the *EFCC* and the Office of the Attorney-General of the Federation for criminal prosecution of the perpetrators of the crime.

Having waited for a long time without being restored, the Applicants felt dissatisfied with the delay in discharging the order and thus instituted an action at the IST to compel the Commission to direct the stockbrokers concerned to restore their shares.

Status: The matter is still pending at the IST.

4. Olatunde Ososanya & 4 ORS Vs Access Bank Plc & 6 ORS – FHC/L/CS/820/06

The Commission was joined as the 5th Respondent in this action currently pending at the Federal High Court, Lagos.

The Applicants are shareholders of Afribank Nig. Plc and also contributors and beneficiaries of social insurance funds managed by NSITF.

The Applicants averred that NSITF had illegally sold 746,000,000 units of their Afribank Nig. Plc. shares without recourse to the statutory provisions guiding such transactions.

They sought for the following reliefs:

- a) an order restraining the Respondents from crossing over the shares in contention in favour of the purchaser pending the determination of the suit;
- b) an order restraining SEC and the CAC from according any form of recognition to the said shares pending the determination of the suit.

Status: The matter is still pending before the Federal High Court, Lagos.

3. Akue Christopher & 2 ORS Vs Access Bank Plc & 2 ORS – SUIT NO. FHC/L/CS/939/06

The Commission was sued as the 2nd Respondent and a nominal party in the above named action.

The Plaintiffs are shareholders of Access Bank Plc and are challenging certain decisions taken at the AGM of the bank without following the laid down procedures for convening and arriving at such decisions.

The Plaintiffs are therefore seeking an interlocutory injunction to restrain the Commission from accepting and approving the basis of allotment forwarded to it by the bank for approval pending the determination of the suit.

Status: The matter is still pending at the Federal High Court, Lagos.

2. Alh. Zubairu Mohammed & 7 ORS Vs Inland Bank & 4 ORS – Suit

No. IST/OA/07/05

The Applicants in this suit purchased various quantities of shares offered for sale by First Inland Bank Plc (former Inland Bank Plc) during the Bank's public offer in 1996.

Nine years after the purchase of the said shares, the Registrars failed to pay dividends and bonuses to the applicants despite approval of same to its shareholders at various AGMs of the Bank.

After series of futile efforts to get their dividends and bonuses, the applicants instituted this suit at the Investments & Securities Tribunal, Abuja, seeking the following orders:

(a) an order directing the Respondents to render to the Applicants an account for all the rights, interests, benefits or advantages or dividends that accrued on the applicants' shares in Inland Bank from the date of acquisition in 1996 till date;

(b) an order compelling Inland Bank Plc and IBN Securities Ltd (herein referred to as the 1st & 2nd Respondents) to produce and deliver to the Applicants the share certificates in respect of all bonus shares found to be due to each Applicant;

(c) an order directing that the benefits found due and payable to the 1st – 7th Applicants by way of dividends, bonuses and associated interests be paid to the Applicants forthwith.

The Commission and the EFCC were joined in the suit as the 3rd and 4th Respondents respectively.

The Commission was joined at the instance of the Applicants in order to assist and ensure that justice was done to them since the subject matter of the litigation related to transactions in securities.

Status

In its Judgment on December 13, 2006, the IST directed that the Applicants are entitled to their share certificates, bonuses, dividends and other interests accruing from their respective shareholdings from 1996 to date in First Inland Bank Plc.

The Tribunal also ordered that First Inland Bank Plc and IBN Securities Ltd, the 1st & 2nd Respondents respectively, cannot be compelled to release the share certificates, bonus shares and accrued dividends to the Applicants as such are no longer in the possession of the 1st and 2nd Respondents but now in the custody of the 4th Respondent (EFCC) in the performance of its statutory duties.

No cost was awarded to either party.

1. Securities and Exchange Commission Vs Golden Guinea Breweries Plc & 2 ORS – Suit No. FHC/ABJ/CS/118/02

This action was filed by the Commission against Golden Guinea Breweries Plc & 2 Ors for refusal to comply with its directive to issue and deliver share certificates to Messrs Floco Verwaltung-Und, a shareholder of Golden Guinea Breweries Plc (hereinafter referred to as the 1st Respondent) for additional shares it purchased from the 1st Respondent.

The Commission sought the court to determine the following issues:

(a) whether the Commission had the final statutory authority under the ISA 1999 and the Rules and Regulations made pursuant thereto to approve allotment of shares in the 1st Respondent;

(b) whether the Commission had powers in law to direct the Respondents and in particular the 1st Respondent and any publicly quoted company within Nigeria to abide by its lawful directives, with regard to any matter arising from the exercise of its powers as contained in the ISA 1999 and the Rules made pursuant thereto.

The Commission further sought for the following reliefs:

(a) A declaration that it has the final authority pursuant to the ISA 1999 and the Rules and Regulations made pursuant to the Act to approve allotment of shares in the 1st Respondent and in all publicly quoted companies in the Federal Republic of Nigeria.

(b) A declaration that the 1st Respondent and all publicly quoted companies are under a legal obligation to obey the directives of the Commission, being the apex regulatory body on Investments and Securities business in Nigeria.

(c) An order directing the 1st Respondent to issue and deliver to Messrs Floco Verwaltung-Und the share certificates reflecting the additional shares of 21,224,000 units purchased as approved by the Commission.

Status

Judgment in the matter was delivered on November 17, 2006 and all reliefs sought by the Commission were granted in its favour.