



OLANIWUN
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DISPUTES



2024

HIGHLIGHTS

2025

OUTLOOK

2024 Wrap-Up

01

FOREWORD

02

NOTABLE NIGERIAN CASES

Constitutional Matters

- The Federation can pay local government allocations from the Federation Account to Local Government Councils directly.
- The National Lottery Act Cap N145 LFN enacted by the National Assembly, exceeds its constitutional authority and is therefore ultra vires and unconstitutional.
- Applicants can file joint application for the enforcement of their fundamental rights.

Tax Matters

- The Tax Appeal Tribunal (“TAT”) upholds FIRS’ discretionary power under section 21 of CITA to treat undistributed profits as distributed, emphasizing that penalties and interest on tax liabilities remain enforceable during disputes.

Oil & Gas

- The Nigerian Midstream and Downstream Petroleum Regulatory Authority has the statutory authority under Sections 125(3) and 174(3) of the Petroleum Industry Act 2021 to regulate midstream and downstream petroleum liquids operations, including prescribing additional activities tied to licenses or permits.

Public Policy

- Courts should interpret the word “May” as mandatory when it is used to impose a duty upon a public officer for the benefit of the citizens.
- A court will rightly intervene where a university withholds the result of a student without stating a reason, despite the absolute discretion of universities to award degrees.

Other Matters

- The EFCC is allowed to freeze an account suspected to be involved in financial crime without court order for 72 hours but must seek order of court to keep the account blocked beyond the stipulated number of hours.
- Lawyers are not Estate Agents and Property Managers neither can they act as Commission Agents.
- Order 11 Rule 6 of the Court of Appeal Rules, 2021: Supreme Court Holds that a withdrawn incompetent appeal should not be dismissed by the Court of Appeal.
- The Federal High Court voids sections of the Money Laundering Act (Prevention and Prohibition) Act 2022 as they relate to Legal Practitioners.

03

LAWS, PROCEDURE AND PRACTICE

Review of the Salient Provisions of the Cybercrimes (Prohibition, Prevention etc.) (Amendment) Act, 2024.

Review of Salient Provisions of the Supreme Court Rules, 2024.

04

NOTABLE FOREIGN CASES

Copyright owners who file timely claims under the discovery rule may recover damages for all infringing acts, regardless of when the infringement occurred.

Public officials can be held liable for blocking critics on their personal social media account.

Private organizations such as Internet service providers (“ISP”) have a duty to protect their clients’ personal information and should not voluntarily disclose this information to law enforcement authorities requesting it.

US Circuit Court Enforces Arbitral Award against Nigeria Despite Nigeria’s Sovereign Immunity Argument.

2025 Outlook

POTENTIAL DISPUTES ARISING FROM DECISION OF THE SUPREME COURT ON LOCAL GOVERNMENT AUTONOMY.

IMPACT OF THE SUPREME COURT RULES 2024.

TAX BILLS AND REGULATIONS: POTENTIAL TAX DISPUTES ARISING THEREFROM.

ENERGY AND NATURAL RESOURCES; OIL ASSET DIVESTMENT AND CONTRACTUAL DISPUTES.

MINING AND MINERAL RIGHTS CONFLICTS.

INCREASE IN MONETARY POLICY RATE: POTENTIAL DISPUTES ARISING THEREFROM.



Foreword

The year 2024 marked a transformative period for dispute resolution in Nigeria, driven by landmark judicial pronouncements on constitutional rights, public policy, procedural advancements, etc. The Supreme Court delivered significant decisions addressing crucial issues like local government autonomy and the protection of individual rights in the context of national security. These decisions underscore the judiciary's role in upholding democratic principles, advancing justice and providing clarity on the autonomy and obligations of government entities.

One of the most impactful shifts this year is the Supreme Court Rules 2024, which repeals the 1985 Rules. This updated procedural framework embodies a progressive step toward enhancing the efficiency and responsiveness of Nigeria's apex court. Key innovations include provisions for electronic filing, virtual hearings and a streamlined case management system. The reduction in procedural timelines aims to expedite the justice delivery process, ensuring timely resolutions and promoting public confidence in the judiciary. The integration of digital platforms signifies an alignment with modern technological standards, supporting Nigeria's journey toward a more efficient legal infrastructure.

The year 2024 also witnessed the amendment of the Cybercrimes (Prohibition, Prevention, etc.) Act, an essential step reflecting Nigeria's commitment to securing its digital landscape. The amendments provide greater protections against cyber threats, establishing clearer responsibilities for cybersecurity agencies and internet service providers. It further underscores the urgent need for proactive digital safeguards to address emerging cyber threats and enhances requirements for timely reporting of cyber incidents, reinforcing accountability in both the public and private sectors.

On the international stage, notable decisions from foreign courts offer valuable perspectives for Nigeria. The U.S. Supreme Court's ruling that public officials can be liable for blocking critics on personal social media accounts marks a significant precedent in balancing official accountability with freedom of speech. Likewise, the Supreme Court of Canada's decision on the privacy obligations of internet service providers sets a robust standard for data protection, particularly against voluntary disclosures to law enforcement, underscoring the rising importance of privacy rights in an era of pervasive digital surveillance.

Looking forward to 2025, Nigeria's dispute resolution landscape will likely be shaped by the ongoing impact of the Supreme Court Rules 2024 as practitioners and litigants navigate the new procedural environment. Additionally, the Supreme Court's recent stance on direct funding of local governments from the federation account, overriding State resistance, portends potential conflicts as States seek to maintain control over local allocations.

Overall, 2024 set the tone for an increasingly dynamic dispute resolution space in Nigeria, one where digital innovation and judicial reform work in tandem to address the evolving demands of justice. The decisions and reforms of the year provide a robust foundation for 2025, promising further advancements in both procedural efficiency and substantive jurisprudence as Nigeria continues to refine its legal system for a more just and equitable society.



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2024 WRAP-UP



02

NOTABLE NIGERIAN CASES



The Federation Can Pay Local Government Allocations from the Federation Account to Local Government Councils Directly



SUIT NO SC/CV/343/2024 - ATTORNEY GENERAL OF THE FEDERATION V. ATTORNEY GENERAL OF ABIA STATE AND ORS.



BRIEF FACTS

The Plaintiff filed an Originating Summons suit at the Supreme Court (“SC”) seeking mainly the determination of whether under section 162(3) and (5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN), amounts standing to the credit of a Local Government Councils (“LGCs”) in the federation account can be paid directly to the LGCs. The Plaintiff also sought a declaration to this effect. The suit was predicated on the failure of the States to pay to the LGCs money standing to their credit, contrary to section 152(4), (5) and (6) of the CFRN.

The Defendants raised several preliminary objections including that the Attorney General of the Federation (“AGF”) did not have the right to institute the suit, the Registrar of the Supreme Court failed to sign the Originating Summons, the suit was speculative, the suit was a re-litigation, the suit failed to disclose the existence of any dispute between the States and Federation to invoke the original jurisdiction of the Supreme Court under Section 232 of the CFRN, and the AGF failed to join the State Houses of Assembly and LGCs as parties. The Defendants also filed their response wherein they argued mainly that paying the LGCs directly would violate the provision of section 162(5) and (6) of the CFRN which mandates that LGCs funds should be paid to the States for the benefit of their LGCs.



DECISION OF THE COURT

In resolving the preliminary objections, the SC held that the suit disclosed a clear dispute between the Federation and the States and fell within the original jurisdiction of the SC, the Federation has the right to protect the Constitution and so the AGF has the right to institute proceedings in the public interest. The SC also held that the failure of the Registrar to sign the Originating Summons was not sufficient to vitiate the suit because the failure is not attributable to the Plaintiff, and the failure to join the State Houses of Assembly and LGCs was not fatal because the suit could be determined without them.



On the merit, the SC found that Section 162(3) of the CFRN provides for the separate ownership of amounts in the federation account as between the three tiers of government, and the section did not intend a joint ownership of the amounts. The SC also found that section 162(5) and (6) of the CFRN could not have intended that the States should retain money distributed to the LGCs, because the subsections merely prescribe the procedure for distributing the money to the LGCs and does not authorise the States to retain amounts due the LGCs.

Upon tracing the history behind the subsections to show the intention of the law makers, the Court found that the provisions of section 162(5) and (6) of the CFRN were enacted to enable the States to collect the money as agents of the LGCs and deliver same to the LGCs. Therefore, all money belonging to the LGCs from the Federation Account can be distributed directly to the LGCs, and thus, no law of the House of Assembly of a State can provide otherwise. In addition, the CFRN having guaranteed a system of local government by democratically elected LGCs, the LGCs are solely responsible for the control and management of funds belonging to the LGCs. Therefore, the Court declared the States' retention and use of money standing to the credit of LGCs from the Federation Account unconstitutional and illegal.

In conclusion, the SC held that “the Federation can pay Local Government allocations from the Federation Account to Local Government Councils directly or pay to them through states. In this case, since paying them through States has not worked, the justice of the case demands that the Local Government Council allocations from the Federation Account should henceforth be paid directly to the Local Government Councils”.



BRIEF COMMENTS

Though the purist school of thought on constitutional interpretation may not agree with the liberal approach of the Supreme Court in its interpretation of section 162(5) and (6) of the CFRN, the decision marks a pivotal step forward in bolstering local government autonomy and accountability in Nigeria's federal system. By authorising direct payments from the Federation Account to LGCs, the Supreme Court has reaffirmed the constitutional standing of local governments as a distinct and independent tier within the federal structure. The decision underscores the importance of LGCs having control over their resources to fulfil their mandate to serve their constituencies without undue interference from State governments. Furthermore, the decision addresses the persistent issue of States withholding funds due to LGCs, setting a strong precedent for the unimpeded financial empowerment of LGCs to enhance their operational effectiveness and community impact.



The National Lottery Act Cap N145 LFN enacted by the National Assembly, exceeds its constitutional authority and is therefore ultra vires and unconstitutional -



SUIT NO SC/1/2008 - ATTORNEY GENERAL OF LAGOS STATE AND ORS. V. ATTORNEY GENERAL OF THE FEDERATION AND ORS.



BRIEF FACTS

The Plaintiffs invoked the original jurisdiction of the Supreme Court ("SC") by an Originating Summons seeking, inter alia, the determination of (x) having regards to section 4(2) and (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) (CFRN) which gives the National Assembly the exclusive power to make laws on the Sixty-eight (68) items exhaustively set out in part I of the second schedule of the 1999 Constitution, whether the National Assembly has the vires to make any law to regulate and control the operation of the lottery in Nigeria; and (y) having regards to section 4(4)(a) and (b) of the CFRN, whether lottery falls within items which the National Assembly are concurrently empowered to make laws with regards thereto. The Plaintiff also sought declarations to that effect. The suit was predicated on the constitutionality of the National Lottery Act, CAP N145, Laws of the Federation of Nigeria (National Lottery Act) and the validity of its continued applicability and enforcement.

The Defendants filed their response wherein they argued mainly that lottery, gaming, betting, etc., are all within the context of interstate commerce as envisaged by Items 62(a) of the Exclusive Legislative List which empowers the National Assembly to legislate on trade and commerce. In addition, they argued that lottery constitutes "economic activities" under Section 16(4)(b) of the CFRN further to which the National Assembly can legislate upon. The recondite issue in the suit is whether the National Assembly has the power to legislate on lottery and thereby enacting the National Lottery Act.

The Supreme Court noted that the scope of each legislative powers is clearly delineated in the CFRN specifying where each body may exercise their respective authorities.





DECISION OF THE COURT

In resolving the issue, the SC commenced by establishing the status of the CFRN as the supreme law and fundamental legal authority of Nigeria, and in accordance with its provisions, Nigeria practices federalism, a system of governance in which power is constitutionally divided between the three tiers of government. The SC found that inherent in the principle of federalism, is the division of powers of the government between the arms of the government, namely the Executive, Legislature and Judiciary and further dividing these powers across the different tiers of government, with each tier having its own authority existing separately as prescribed by the CFRN to prevent governmental powers from being concentrated at one level.

Further, as it relates to the legislative arm of government charged with the essential function of making law, the SC noted that Section 4 of the CFRN vests the legislative powers of the federation in the National Assembly and that of each State in the State Houses of Assembly. It was also noted that the scope of each legislative powers is clearly delineated in the CFRN specifying where each body may exercise their respective authorities.

The SC defined lottery as “a scheme or a game in which participants must give something of value and a winner is selected by chance or luck or random drawing not by skill and the winner receives a benefit as a result of the chance-based selection”. The SC held that there is no express mention or inference of the word “lottery” in Section 4(2), (3), (4)(a)(b), and (5) of the CFRN, and Items 7(a) of the Concurrent List, Second Schedule to the CFRN upon which the Defendants argued that the power exercised by the 2nd Defendant, the National Assembly, in enacting the National Lottery Act is derived from.

The SC found that whilst parties agree as to the foregoing, the Defendants’ position is that lottery, gaming, betting, etc., are all within the context of interstate commerce as envisaged by Items 62(a) of the Exclusive Legislative List, which empowers the National Assembly to legislate on trade and commerce. In resolving the issue of whether lottery constitutes trade and commerce as canvassed by the Defendants, the SC held that lottery does not constitute “trade and commerce” as envisaged under Item 62(a) of the Exclusive Legislative List as lottery is fundamentally a game of chance lacking the certainty, mutual exchange and reciprocity typically associated with trade and commerce.

The SC also determined that lottery and game of chance though may yield revenue for the government, do not qualify as “economic activities” referred to in Section 16(4)(b) of the CFRN, intended to cover activities that are directly concerned with the production, distribution and exchange of wealth or of tangible goods and services. Going further, the SC held that economic activities in this context imply undertakings that contribute to fundamental economic growth by enhancing productive capacity, facilitating trade or providing essential services to the public. They are primarily directed towards sectors and activities that stimulate the overall economic structure and output such as agriculture, manufacturing and commerce, which are pivotal to the generation of wealth and sustainable economic development, which contrasts with lottery and gaming activities, which do not fulfil this core economic role.

Consequently, having found that lotteries neither constitute “trade and commerce” as contemplated under Item 62(a) and (d) of the Exclusive Legislative List, nor do they qualify as an “economic activity” envisaged in Section 16(4)(b) of the Constitution, the SC held that lotteries fall outside the legislative competence of the National Assembly and as such, the National Assembly exceeded its constitutional authority by enacting the National Lottery Act.

The SC found that Section 4(7)(a) of the CFRN confers on state legislatures the power to enact laws on any subject not specifically assigned to the National Assembly in the Exclusive Legislative List. Hence, the SC held that, as Lotteries are not expressly mentioned in the Exclusive Legislative List, the Constitution implicitly assigns lotteries to the domain of State legislative competence and agreed with the Plaintiffs that the regulation of lotteries falls within the exclusive legislative jurisdiction of the States.

Conclusively, the SC held that the National Assembly lacks the competence to enact the National Lottery Act, 2005, and declared same as unconstitutional, having been enacted ultra vires the legislative authority of the National Assembly.



BRIEF COMMENTS

The SC's decision underscores the fundamental principles of constitutionalism and federalism in Nigeria, reaffirming the constitutional limits on the legislative competence of the National Assembly. By holding that the National Lottery Act exceeds the National Assembly's vires, the SC has reinforced the separation of legislative powers between the federal and state governments as enshrined in the Constitution. This decision clarifies that the legislative competence of the National Assembly is confined to matters explicitly stated in the Exclusive Legislative List and shared matters in the Concurrent Legislative List. It also highlights that residual matters, such as lotteries, fall within the exclusive jurisdiction of the states. This judgment serves as a critical precedent for ensuring adherence to the constitutional allocation of powers, thereby safeguarding the federal structure and preventing overreach by any tier of government.



Applicants can file joint application for the enforcement of their fundamental rights



TOTAL EXPLORATION & PRODUCTION (NIG) LTD V. OKWU & ORS
[2024] LPELR – 62623 (SC)



BRIEF FACTS

The 1st - 6th Respondents filed an application for the enforcement of their fundamental human rights against the Appellant and the 7th - 10th Respondents. They also claimed NGN250 million damages. The Applicants' case is that the 9th Respondent beat them up at the Appellant's premises and even shot them such that two of them sustained bullet wounds after which their vehicle was impounded, for exchanging words with the 7th Respondent.

The trial court delivered judgment in the 1st - 6th Respondents' favour ordering that the 2nd Respondent be released and awarded the sum of NGN230 million as damages. Dissatisfied with the trial court's decision, the Appellant appealed to the Court of Appeal which affirmed the trial court's decision. The Appellant further appealed to the Supreme Court. At the Supreme Court, for the first time, the Appellant argued that the 1st – 6th Respondents' application before the trial Court was incompetent because they filed a joint application to enforce their individual rights. The Appellant's argument was premised on the use of the words 'any person' in section 46 of the CFRN, which it argued cannot be interpreted to connote plural.



DECISION OF THE COURT

The Supreme Court struck out the issue of joint filing of an application for enforcement of fundamental human rights on the basis that the challenge was a procedural irregularity which cannot be raised and argued for the first time at the Supreme Court as the Appellant did not raise it at the trial Court or the Court of Appeal. However, the Court proceeded to decide the issue on the merit to put to rest the long-standing debates that emanated from conflicting decisions of the Court of Appeal on this issue.

The Supreme Court held that applicants could file a joint application for the enforcement of their rights when their rights are violated by a common act or acts committed by one or more respondents. It interpreted "any person" in Section 46 of the CFRN and Order II Rule 1 of the Fundamental Rights (Enforcement Procedure) Rules 2009 to include the plural form, affirming that the use of the singular term does not exclude multiple applicants if the facts and issues are shared among them. The Court emphasized that statutory construction recognizes singular terms as encompassing the plural unless expressly stated otherwise.





BRIEF COMMENTS

This Supreme Court's judgment is a significant step toward simplifying the enforcement of fundamental rights in Nigeria. There is no gainsaying that allowing joint applications in cases where multiple applicants' rights are allegedly infringed upon by the same act, will promote judicial efficiency, reduce case congestion and limit the potential for conflicting decisions on similar issues. This interpretation not only aligns with practical considerations but also reinforces access to justice, enabling groups of applicants to present a joint claim without undermining the individuality of their rights. Each applicant's personal rights remain intact, provided that the reliefs sought are distinctly tailored to each applicant within the joint application. The decision thus ensures that applicants face no prejudice while facilitating a more streamlined judicial process for claims with shared facts or issues.



The Tax Appeal Tribunal upholds FIRS' discretionary power under section 21 of CITA to treat undistributed profits as distributed, emphasizing that penalties and interest on tax liabilities remain enforceable despite dispute



RAND MERCHANT BANK NIGERIA LIMITED V. FEDERAL INLAND REVENUE SERVICE [TAT/LZ/WHT/007/2023].



BRIEF FACTS

Rand Merchant Bank Nigeria Limited (**RMB** or the **Appellant**), initiated an appeal before the Tax Appeal Tribunal (the **TAT**), contesting a demand notice issued by the Federal Inland Revenue Service (**FIRS** or the **Respondent**) for additional withholding tax (**WHT**) liability of N602,590,813.53 (Six Hundred and Two Million, Five Hundred and Ninety Thousand, Eight Hundred and Thirteen Naira, Fifty-Three Kobo). This additional liability was imposed on the Appellant further to the provisions of section 21 of the Companies Income Tax Act (**CITA**), which permitted the **FIRS** to treat the undistributed profits of the Appellant as distributed, where it appears to the **FIRS**, that such refusal to distribute was done with a view to reducing the aggregate tax payable by the company.

The Appellant objected to the additional **WHT** liability together with penalty and interest contained in the demand notice on the grounds that section 21 of the **CITA** grants the **FIRS** the power to treat the undistributed profits as distributed only where such non-distribution was done with a view to evade tax. In the instant case, the Appellant contended that the decision of its board of directors was a legitimate commercial decision for long term sustainability and increased profitability of its business and not for tax avoidance or evasion, therefore, the imposition of the additional **WHT** liability was unfounded and unjustified.

The Respondent on its part contended that pursuant to section 21 of **CITA**, it had no obligation to prove or establish that the non-distribution was done for tax avoidance purposes, rather is empowered to disprove such non-distribution where it appeared to the **FIRS** that the reason for same was to reduce the tax chargeable on the profits of the company. Furthermore, the **FIRS** argued that the Appellant had failed to prove by evidence how the distribution of the dividends would be detrimental to its business.



DECISION OF THE TRIBUNAL

The ruling emphasizes the need for companies to ensure that profit retention decisions are well-documented and supported by clear, commercially reasonable justifications beyond mere profitability.

In arriving at its decision, the TAT interpreted the provisions of section 21 of CITA to mean that the FIRS is vested with absolute discretion regarding the undistributed profits of a company and may treat same as distributed. In other words, the FIRS has the absolute discretion to allow or disregard the non-distribution of a company's dividends. Further, the TAT agreed with the FIRS' submission that there was no obligation on them to prove that tax evasion or avoidance was the ultimate purpose of the Appellant's non-distribution of its profit. Accordingly, the TAT held in favour of the FIRS and upheld the assessed WHT liability.

Regarding the issue raised by the Appellant with respect to the levying of penalties and interests, the TAT held that a prompt objection to a demand notice or an appeal does not, by itself, extinguish tax liabilities and penalties but only puts them in abeyance pending the determination of the appeal. Additionally, the issue of penalties and interest arise when a tax sum is due and payable and not when the tax becomes final and conclusive. Therefore, the fate of interest and penalties are tied to the principal tax. Having established that the Appellant was liable to the WHT liability, the TAT found that the Appellant was also liable to the payment of interest and penalties.



BRIEF COMMENTS



This decision reinforces the expansive discretionary powers granted to the FIRS under section 21 of the CITA. By holding that the FIRS need not prove that tax evasion or avoidance is the motive behind a company's non-distribution of profits, the ruling effectively shifts the burden of proof to taxpayers to provide concrete evidence justifying their decision to retain profits. This interpretation underscores the inherent risk for companies seeking to retain their earnings, as such business decisions, when perceived by the FIRS to have certain tax implications, may lead to adverse tax consequences.

The TAT's view that penalties and interest are tied to principal tax liabilities and continue to accrue pending resolution also highlights the importance of proactive tax compliance. While the ruling provides clarity on FIRS' authority, it emphasizes the need for companies to ensure that profit retention decisions are well-documented and supported by clear, commercially reasonable justifications beyond mere profitability.

However, the decision raises concerns about the potential for overreach as the absolute discretion granted to FIRS, could potentially pose certain financial restraints for companies seeking to implement long-term business strategies that require profit retention. Ultimately, this case serves as a cautionary tale for businesses, highlighting the importance of balancing commercial decisions with legal sagacity, robust tax planning and compliance to mitigate exposure to discretionary assessments and penalties.

The Nigerian Midstream and Downstream Petroleum Regulatory Authority has the statutory authority under Sections 125(3) and 174(3) of the Petroleum Industry Act 2021 to regulate midstream and downstream petroleum liquids operations, including prescribing additional activities tied to licenses or permits



IHS NIGERIA LTD. & ANOR. V. THE NIGERIA MIDSTREAM & DOWNSTREAM PETROLEUM REGULATORY AUTHORITY – SUIT NO. FHC/ABJ/CS/1029/2023.



BRIEF FACTS

IHS Nigeria Ltd and INT Towers Ltd (**“Plaintiffs”**), approached the Federal High Court, Abuja Judicial Division (**the “Court”**) to challenge the Nigerian Midstream and Downstream Regulatory Authority’s (**“NMDPRA” or the “Defendant”**) powers to demand that the Plaintiffs pay the statutory levy for the Midstream and Downstream Gas Infrastructure Investment Fund (**“MDGIF”**) given that the Plaintiffs are licensed to provide telecommunications infrastructure and collocation services and by implication, their scope of business is to provide infrastructure and collocation services to its customers. The Plaintiffs’ case was that it relies heavily on Automotive Gas Oil (**AGO**) to power its Base Transceiver Stations across Nigeria, but that based on its scope of operations, it was not mandated to pay the statutory levy for the MDGIF as provided under the Petroleum Industry Act (**the “PIA”**) since it only imports AGO internally but does not resell same to third parties. However, NMDPRA contended that transferring AGO to storage or using it in agreements with telecommunications companies equates to a wholesale transaction, making the Plaintiffs liable to pay the prescribed levies. The Authority also contended that based on the condition of the Plaintiffs’ permits, they are classified as wholesale petroleum suppliers making them liable to pay the prescribed levies.



DECISION OF THE COURT

The Court affirmed NMDPRA's powers to regulate operations in the midstream and downstream which includes imposing levies. The Court took the view that NMDPRA possesses broad authority, as stipulated in Sections 125(3) and 174 (3) of the PIA, to enact regulations governing the administration of midstream and downstream petroleum liquids operations, as well as mandate additional activities contingent on holding a license or permit. The Court also held that there is no conflict between the definition of the term "sold in Nigeria" outlined in Regulation 48 of the Midstream and Downstream Petroleum Operations Regulations 2023 ("MDPOR") and Sections 47(2)(c) and 52(7)(a) of the PIA, as the PIA does not explicitly define the term and that the PIA's definition section (Section 318) does not distinguish between permit and licence, indicating that they can be used interchangeably. Thus, the Plaintiffs are liable to pay the levies, as they consented to the terms and conditions of the licences or permits when they obtained them and commenced business activities in respect of same. The Court also held that NMDPRA's MDGIF levies are not punitive measures but statutory contributions to foster infrastructure development.



BRIEF COMMENTS

This decision has stirred mixed reactions among players in the telecommunications sector because the Court's views on the MDGIF seems not to lean towards the general business operations of a company but on whether the company holds a licence or permit for importation of petroleum products for consumption within the meaning of the MDPOR. The Federal High Court's decision, while authoritative, leaves unresolved questions about the boundaries of regulatory authority under the PIA. Should the Plaintiffs pursue an appeal, the Court of Appeal will need to address whether Regulation 48(c) can validly extend the definition of "sold in Nigeria" beyond the contemplation of the PIA. The appellate court's interpretation will also have to reconcile the apparent inconsistency between the Regulation and Sections 47(2)(c), 52(7)(a), and 52(9) of the PIA, which explicitly tie the levy to wholesale sales in Nigeria.

Ultimately, the outcome of this case will shape the regulatory landscape for both petroleum and non-petroleum entities, determining the extent to which regulatory agencies can impose obligations beyond the express provisions of enabling legislation. The judgment serves as a reminder of the need for clarity and precision in legislative drafting and regulatory rulemaking to avoid unintended burdens on businesses.



Courts should interpret the word “May” as mandatory when it is used to impose a duty upon a public officer for the benefit of the citizens of Nigeria



FRN V NNAJIOFOR [2024] 10 NWLR (PT. 1947) 443



BRIEF FACTS

The Respondent and others were arraigned before the Federal High Court (“FHC”) on a two-count charge for conspiracy and aiding another person to commit an offence contrary to the provisions of Section 18 of the Money Laundering (Prohibition) Act 2011, punishable under Section 2(5) of the Act. The Respondent objected to the admissibility of an extra-judicial statement which resulted in a trial-within-trial. The trial court overruled the objection and admitted the statement in evidence. The Respondent appealed this decision and the Court of Appeal (“CA”), in allowing the appeal, remitted the matter to the Chief Judge of the FHC for reassignment to another judge for hearing and determination. The Appellant then appealed the CA’s decision.



DECISION OF THE COURT

The Supreme Court (“SC”) held that though the word “may” is generally permissive, in some cases, it may be interpreted as mandatory depending on the circumstances of the case and the mischief sought to be cured by the Statute. The SC held that the objective of a legislative provision assigning a public duty to a public officer, even when using a permissive term like “may,” is to make the performance of that duty mandatory for the benefit of private citizens.

The SC reasoned that the mischief sought to be curbed by Sections 15(4) and 17(2) of the ACJA includes such unsavoury situations as where an alleged confession is extracted through torture and duress. This aims to avoid miscarriage of justice and to reduce to the barest minimum the incidents of retractions and time consumed by trial within trial. So, the use of “may” with regards to video recording of confessional statements is not permissive, but mandatory. Hence, the SC interpreted the word ‘may’ in these sections as mandatory because they impose a public duty on the Police and other law enforcement agents to act in a manner that protects the citizens suspected of committing crimes.



BRIEF COMMENTS

This decision is laudable as it safeguards citizens suspected of having committed a crime from torture or coercion in volunteering their statements to the Police. It is hoped that this decision will make the government to ensure that adequate facilities are provided in all Police stations in Nigeria to ensure compliance with the mandatory provision of the ACJA in the taking of the extra-judicial statements of suspects.



Courts will rightly intervene where a university withholds the result of a student without stating a reason, despite the absolute discretion of universities to award degrees



UNIVERSITY OF PORT HARCOURT V. NWUZOR [2024] LPELR-62382



BRIEF FACTS

The Respondent was a student who was admitted to the master's degree programme at the Appellant in the 1998/1999 academic year. Upon conclusion of his master's programme in July 2022, he was issued a statement of result which bore 3.44 as his cumulative grade point average ("CGPA") subject to the issuance of a certificate by the Senate. The Respondent upon confirmation that his peers received success letters in 2004 as opposed to a certificate, approached the Appellant and requested for the issuance of his certificate. His application was met with different excuses by the Appellant. Subsequently, after exhausting all options and when the Appellant revealed to him that his certificate was not released because his CGPA was below the threshold of 3.00, contrary to the content of the statement of result, he thereafter instituted this action at the FHC.

The FHC ruled in favour of the Respondent and awarded the sum of ₦25 million as exemplary damages against the Appellant, while refusing to grant the Respondent's claim for aggravated damages. On appeal to the CA by the Appellant, the CA upheld the decision of the trial Court in its majority decision. Dissatisfied with the decision of the CA, the Appellant further appealed to the SC.



The Supreme Court's decision represents a significant step in curtailing the abuse of the discretion of universities in Nigeria concerning the award of certificates



DECISION OF THE COURT

The SC, by a majority decision, recognized the Appellant's right to award certificates and degrees under its enabling statute¹, noting that such degrees are awarded where a student conforms with the standards required for any degree and such standards are set at the absolute discretion of the awarding institution. However, the Court held that the case at hand was not one of non-qualification as the evidence before the Court revealed that the Respondent qualified for the award and that the unjustifiable refusal to issue the certificate made the issue no longer an internal university matter but one of public policy. Hence, the trial Court had the jurisdiction to entertain the matter.

The Court further held that the continuous actions of the Appellant in giving different explanations and delaying the release of the certificate made the cause of action continuous. The cause of action crystallized in 2009 when the Respondent discovered that the Respondent was not going to release the certificate, therefore, the suit was not time-barred under section 2(a) of the Public Officers Protection Act.

However, a dissenting judgment by Saulawa JSC distinguished the current case from the SC's decision in **Unilorin v. Adesina**² which was relied on by the majority. The basis for the distinction is that in the current case, the pleadings show that the statement of result had been released remaining the certificate which is the exclusive statutory function of the Appellant to be exercised by its Senate.



BRIEF COMMENTS



The FHC ruled in favour of the Respondent and awarded the sum of ₦25 million as exemplary damages against the Appellant, while refusing to grant the Respondent's claim for aggravated damages.

The SC's majority decision builds upon the decision in *Unilorin v. Adeshina* and represents a significant step in curtailing the abuse of the discretion of universities in Nigeria concerning the award of certificates. As such, the effect of this decision is that while the law recognizes the discretionary power of the universities to award certificates, same must not be exercised without regard to the institution's enabling statutes and international best practices. Furthermore, the SC establishes that public policy is a cogent consideration that takes precedence over the internal autonomy of universities in the context of award of degree certificates

1. *University of Port Harcourt Act. Cap U13, LFN, 2004.*

2. [2014] 10 NWLR [Pt. 1414]. 159. *In this case, the Supreme Court upheld the decision of the trial Court and CA in favour of the respondent whose results remained unreleased by the Appellant. The court held, amongst others, that the courts have no jurisdiction to interfere in the internal or domestic matters of a university, but where it becomes clear that in resolving domestic disputes, the university is found to have breached the civil rights and obligations of a student thereby raising issues of public import, the courts would have jurisdiction. It held further that despite the university's power and discretion in awarding degree certificates, where same was withheld without reason, the courts would interfere.*



The EFCC is allowed to freeze an account suspected to be involved in financial crime without court order for 72 hours but must seek order of court to keep the account blocked beyond the stipulated number of hours



IPINLOJU DAMOLA FEMI V. EFCC & 3 ORS. – [2024] LPELR-61914 (CA) 16.



BRIEF FACTS

The Appellant's bank account with the 4th Respondent was frozen due to a written request by the 1st to 3rd Respondents asking the 4th Respondent to freeze the Appellant's bank account on the basis that investigations on issues pertaining to fraud were ongoing against the Appellant. Although the 1st Respondent sought an order of Court freezing the Appellant's bank account, same was, however, frozen upon the 1st Respondent's written request before the order could be granted. As a result, the Appellant was unable to make further transactions from his account. Consequently, the Appellant filed an originating motion seeking amongst others, an order declaring that the act of freezing his bank account by the Respondents was an infringement of his fundamental rights as guaranteed under sections 34, 35 and 44 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) ("**CFRN**"). The trial court refused the Appellant's reliefs and dismissed the Appellant's originating motion on the ground that the 1st Respondent already obtained an ex-parte order at the FHC to freeze the Appellant's account. Aggrieved by the decisions of the trial Court, the Appellant appealed to the CA.



DECISION OF THE COURT

In resolving this issue in favour of the Respondents, the Court distinguished the cases of *GTB v. Ademola* (supra) and *Olagunju v. EFCC* (supra) from the instant case by noting that in the *GTB* and *Olagunju*'s cases, there was no prior application for an order of Court either before and after the freezing of the account but in the instant case, an application for the order of Court to freeze the account was sought and although it was yet to be granted before the bank account was frozen, the Court eventually granted same.

Also, the Court noted that since the 1st Respondent took steps to obtain an order of Court and the delay was not caused by the 1st Respondent, any damage occasioned pending issuance of the order cannot be transferred onto the 1st Respondent because it cannot interfere with the workings of the Court. The Court further relied on a circular by the CBN directing the 4th Respondent to freeze accounts which are suspected to hold proceeds of fraud or a crime without an order of Court.

Furthermore, the Court stated that section 28 of the EFCC Act grants the 1st Respondent the power to arrest and attach property of persons suspected of having committed financial crimes. However, such powers must be exercised with the supervision of the Court and based on reasonable suspicions. Relying on the provisions of section 6(5)(b) of the Money Laundering (Prohibition) Act, 2011, the Court held that the 1st Respondent has the powers to freeze a bank account without a Court order for 72 hours but must seek an order of Court to keep the bank account frozen beyond the stipulated 72 hours. The Court consequently dismissed the appeal.



BRIEF COMMENTS



This decision reflects a balanced approach to addressing the powers of security agencies in combating financial crimes while safeguarding constitutional rights. By affirming the EFCC's authority under section 6(5)(b) of the Money Laundering (Prohibition) Act, 2011 to freeze accounts for up to 72 hours without a court order, the Court recognizes the practical need for immediate action in situations where delays could result in the dissipation of suspected proceeds of crime. This flexibility is crucial for effective law enforcement and ensures that criminal investigations are not frustrated by procedural bottlenecks.

At the same time, the Court's insistence that any freezing beyond 72 hours requires judicial approval strikes a necessary balance, reinforcing the primacy of due process and preventing potential abuse of power. By distinguishing this case from prior decisions of the appellate courts, the Court acknowledged the unique circumstances where swift action was paired with timely steps to secure a court order. This decision underscores the importance of preserving the integrity of investigations while upholding the constitutional rights of individuals, demonstrating a nuanced understanding of the interplay between efficient crime prevention and the rule of law.



Lawyers are not Estate Agents and Property Managers neither can they act as Commission Agents



INCORPORATED TRUSTEES OF NIGERIA BAR ASSOCIATION V. CHARLES [2024] 4NWLR (PT. 1927) 126



BRIEF FACTS

The Complainant accused the Respondent, a Legal Practitioner, of mismanaging his properties and failing to account for the sum of ₦16,000,000 in rent collected over a nine-year period from 2006 to 2015. The Respondent was reported to the Nigeria Police and the Nigerian Bar Association and prosecuted for: (i) failure to render accounts for the rent money, (ii) misappropriation of the rent for personal use, and (iii) collecting a 10% management fee as a lawyer, which allegedly amounted to infamous conduct under the Rules of Professional Conduct for Legal Practitioners, 2023 (“RPC”).

The Respondent denied these allegations, claiming he acted as a brother, not in a professional capacity, and that he maintained proper records, remitting the rent after deducting his 10% management fee for services rendered.



DECISION OF THE COURT

The LPDC examined whether a client-lawyer relationship existed between the Complainant and the Respondent. Relying on the Respondent’s statement to the Nigeria Police, in which he acknowledged being debriefed by the Complainant as Property Manager, the LPDC held that there exists a client/lawyer relationship. The Respondent argued that no professional fees were paid to establish such a relationship. However, the LPDC rejected this argument, clarifying that legal services can be rendered pro bono. Moreover, the Respondent admitted collecting a 10% fee from the rent, further supporting the existence of a professional relationship.

The LPDC also considered whether a legal practitioner could act as a Property Manager. It held that lawyers cannot serve as Estate Agents, Property Managers, or Commission Agents, as these roles are incompatible with the legal profession. Although the LPDC found no sufficient evidence of misappropriation or failure to render accounts, it determined that the Respondent was guilty of infamous conduct for accepting the role of Property Manager, violating Rule 7(2) of the RPC and punishable under section 12 (1) of the Legal Practitioners Act, Cap. L11, LFN, 2004 (“LPA”). Consequently, the Respondent was suspended from legal practice for two years under Section 12(1) of the LPA.



BRIEF COMMENTS

The decision elicited widespread reactions from legal practitioners who found the decision a bit too harsh. However, the decision, in our view, is in consonance with the long-time stance of the LPDC that a Legal Practitioner shall not practice as a lawyer and engage in any trade or business at the same time except those expressly spelt out in section 7(3) of the RPC which includes:



being a non-executive director



secretary of a company



shareholder of a company



Order 11 Rule 6 of the Court of Appeal Rules, 2021: A withdrawn incompetent appeal should not be dismissed by the Court of Appeal



SUNTRUST BANK NIGERIA LTD. V EATON ACQUISITION LTD. & ANOR. [2024]15 NWLR (PT. 1962) 589.



BRIEF FACTS

The action leading up to this appeal was commenced by the 1st Respondent against the 2nd Respondent in the Federal High Court (“FHC”) as Suit No. FHC/L/CS/115/2021. The FHC entered judgment in the action on the 17.02.2021 in favour of the 1st Respondent (the “Judgment”). The Appellant, who was not a party to the original action, as interested party, filed an application on the 12.03.2021 (“2021 Application”) before the Court of Appeal, Lagos Division (“Court of Appeal”) seeking leave to appeal as an interested party against the Judgment. The Respondents both filed counter affidavits to this application.

Realising that the 2021 Application was filed out of time, the Appellant filed a new application on the 23.03.2022 (2022 Application) incorporating the prayers for leave to appeal as an interested party and the trinity prayers to appeal against the Judgment. On the same 22.03.2022, the Appellant also filed a notice of withdrawal of the 2021 Application, with the intention of relying on the 2022 Application.

When the applications came up before the Court of Appeal on 24.03.2022, the Respondents contended that the order to be made by the Court of Appeal on the Appellant’s notice of withdrawal of its earlier 2021 Application is one of dismissal. Consequent on the Respondents’ objection, and after the Court of Appeal had ordered for and considered argument of Counsel on the point, the Court of Appeal in its Ruling on 02.08.2022 treated the 2021 Application as an appeal under section 30 of the Court of Appeal Act, 2004 (as amended) and dismissed it, effectively foreclosing the consideration of the 2022 Application, noting that since the Respondents had filed counter affidavits to the motion, issues had been joined thereon.

Dissatisfied, the Appellant appealed to the Supreme Court against the order of dismissal.



DECISION OF THE COURT

The Supreme Court acknowledged that an application for leave to appeal qualifies as “an appeal” under section 30 of the Court of Appeal Act, 2004 (as amended) and that by virtue of the provisions of Order 11 Rule 6 of the Court of Appeal Rules, 2021 (“CAR”), an appeal that is withdrawn is “deemed to have been dismissed”. However, the Court went further to highlight that even if the 2021 Application was treated as an appeal by the Court of Appeal, the dictates of justice demand that application ought to be struck out to pave way for the hearing on the merits of the 2022 Application which was pending before the Court. The apex Court emphasised that the rules of court should be treated as handmaids of justice, with emphasis on substantial justice and not technical justice.

The Supreme Court held further that the 2021 Application was withdrawn because it was incompetent and that having filed a competent motion for leave to appeal (the 2022 Application) to which issues had been joined by the parties, the Court of Appeal was faced with two applications for leave, one which was incompetent and the other competent; and the Court of Appeal ought to have struck out the incompetent application rather than dismiss same.

The apex Court also relied on the trite principle that where a court lacks jurisdiction to entertain a case, the appropriate order to be made is one striking out such matter rather than dismissing same. Ultimately, in a unanimous decision, the Supreme Court allowed the appeal, holding that the appropriate order to be made is striking out and not dismissal of the 2021 Application.



BRIEF COMMENTS

The Supreme Court’s decision exemplifies the judiciary’s commitment to the principle of substantial justice over procedural technicalities. By addressing the error of the Court of Appeal, the Supreme Court reinforced the position that procedural rules are designed to aid the course of justice, not to stifle it.

At the heart of the dispute was the treatment of the Appellant’s 2021 Application, which had been withdrawn due to its incompetence. The Court of Appeal, by dismissing rather than striking out the application, effectively foreclosed the Appellant’s right to pursue its competent 2022 Application. This strict adherence to a literal interpretation of procedural rules under Order 11 Rule 6 of the CAR ultimately led to an unjust result. The Supreme Court rightly intervened, emphasising that procedural rules must serve as handmaids to justice, ensuring fairness and equity rather than creating unnecessary barriers to the resolution of disputes on their merits.

The Supreme Court’s reasoning underscores the importance of judicial discretion in the interpretation of procedural rules. The Court’s acknowledgment that the Appellant took all necessary steps to rectify the procedural misstep further highlights its commitment to fostering an environment where litigants are not unduly punished for procedural errors.



The Federal High Court voids sections of the Money Laundering Act (Prevention and Prohibition) Act, 2022 as they relate to Legal Practitioners



ABU AROME V. CBN & ORS. - SUIT NO. FHC/ABJ/SC/25/2023



BRIEF FACTS

The Plaintiff, a legal practitioner, requested a hardware token and cheque book from Guaranty Trust Bank (“GTB”) for the purpose of setting up online banking services for his law firm’s bank account (the “Account”) with GTB. The Plaintiff’s request was denied by GTB’s customer service representative following a restriction placed on the Account by the Central Bank of Nigeria (CBN) on the ground that the Plaintiff’s firm did not comply with sections 17(2) and 30(1) of the Money Laundering (Prevention and Prohibition) Act, 2022 (the “MLA 2022”), and regulation 63(1) of the CBN’s Anti-Money Laundering (Combating the Financing of Terrorism and Countering Proliferation Financing of Weapon of Mass Destruction in Financial Institutions) Regulations, 2022 (the “AML Regulations”) which mandate Designated Non-Financial Businesses and Professions (“DNFBP”) to obtain a Special Control Unit Against Money Laundering (“SCUML”) certificate⁴, and report certain transactions to the Economic and Financial Crimes Commission (“EFCC”).

Further to the restriction of the Plaintiff’s account, he commenced an action by an Originating Summons against the CBN, EFCC, GTB and Attorney General of the Federation (“AGF”) as 1st – 4th Defendants, respectively, before the Federal High Court (“FHC”), seeking, in the main, a declaration that sections 6, 7, 8, 9, 11, and 30 of the MLA 2022 were inapplicable to legal practitioners and that the categorization of legal practitioners as DNFBPs under section 30 of the MLA was unconstitutional.

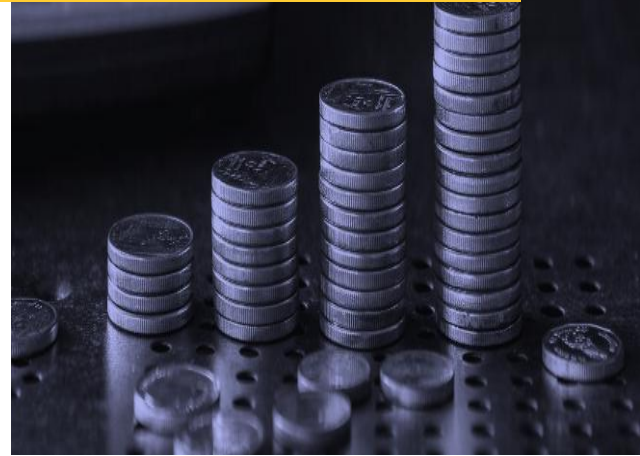
The Plaintiff’s request for a hardware token and cheque book was denied by GTB’s customer service representative on the ground that the Plaintiff’s firm did not comply with some sections the MLA 2022 and CBN’s the AML Regulations, 2022.

4. This is a certificate issued by the SCUML to Designated Non-Financial Businesses and Professionals to ensure adherence to anti-money laundering and counter-terrorist financing regulations.



DECISION OF THE COURT

The Court granted the main relief of the Plaintiff and held that sections 6, 7, 8, 9, and 11 of the MLA 2022 (the “Offending Sections”) and the re-inclusion of notaries and legal practitioners in the definition list of DNFBPs in section 30 of the MLA 2022 were unconstitutional, null and void, in relation to legal practitioners. The Court placed heavy reliance on the CBN v Registered Trustees of NBA [2021] 5 NWLR (Pt. 1769) 268 in its decision and held that the Offending Sections conflict with section 192 of the Evidence Act 2011, section 19(1) of the Rules of Professional Conduct for Legal Practitioners (ROC) and sections 20 and 21 of the Legal Practitioners Act (LPA).



BRIEF COMMENTS

The decision is laudable given the need to preserve confidentiality, a cornerstone of the attorney-client relationship. However, the decision by the court that the offending sections were unconstitutional opens the decision to criticism. This is because there was nothing in the arguments of parties before the Court or the analysis of the arguments by the Courts that point to any constitutional provision or principle. Attorney-client privilege or confidentiality has no root in the constitution and as the Court rightly held, its basis is in the Evidence Act, LPA and RPC.

2024 WRAP-UP



03

LAWS, PROCEDURE AND
PRACTICE

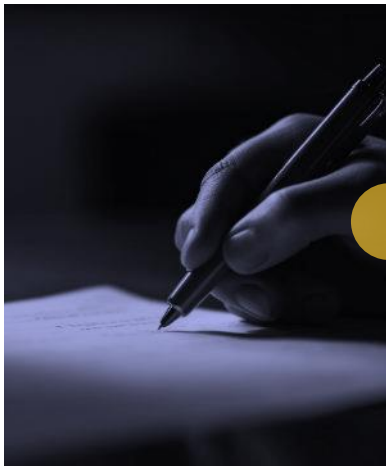


Review of the Salient Provisions of the Cybercrimes (Prohibition, Prevention etc.) (Amendment) Act, 2024

Nigeria is rapidly advancing into the digital age, integrating computers and the internet into various aspects of daily life. However, this technological growth has also led to an increase in both traditional and emerging forms of cybercrime, necessitating swift legislative responses. In 2015, the National Assembly enacted the Cybercrimes (Prohibition, Prevention, etc.) Act (the “Principal Act”), aimed at establishing a regulatory framework to combat the growing threat of cyber insecurity. Recognizing the evolving nature of cyber threats, which continue to rise despite the existence of the Principal Act, the Federal Government initiated a comprehensive review, culminating in the enactment of the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act, 2024 (the “CAA”) which was signed into law on 28 February 2024. Although it was stated in the explanatory memorandum of the CAA that it was enacted to insert some consequential words that were omitted in the Principal Act, the amendments go beyond merely inserting omitted words. The amendments are succinctly analysed below.



KEY FOCUS AREAS



Provision of Additional Duties for the National Security Adviser

Section 41(1) of the Principal Act provides for co-ordination and enforcement and empowers the office of the National Security Adviser (“NSA”) as coordinating body to carry out several functions. The CAA replaced subsections (d) to (h) with subsections (d) to (f). The CAA essentially created two new duties for the NSA in the new paragraphs (d) and (e), namely; to ensure the establishment of sectoral Computer Emergency Response Teams (“CERT”) and sectoral Security Operation Centres (“SOC”) that shall feed into the national CERT, and to ensure that all public and private organizations integrate and route their internet and data traffic through the sectoral SOC’s, thereby protecting the national cyberspace.



Reporting of Cyber Threats

The CAA amended this section, providing that the relevant person or institution shall report these cybercrimes to the respective sectoral CERTs or sectoral SOC⁵. Section 3 of the CAA further amends section 21(3) of the Principal Act by reducing the period within which persons or institutions can report such occurrence from 7 days to 72 hours, thereby creating a higher sense of urgency to report attacks, intrusions and disruption of computer networks.



Reducing Ambiguity for Offences Involving Computer Messages

The CAA amends section 24 of the Principal Act and criminalizes sending messages known to be false for the purpose of causing breakdown of law and order, posing threat to life or causing such message to be sent.



Manipulation of ATM/POS Terminals

Section 30(1) of the Principal Act criminalizes manipulation of ATM machine or Point of Sales Terminals with intent to defraud. The CAA expands the applicability of the section by including manipulation of “any other payment technologies”. This change is in line with current digital realities and development in electronic payment systems, ultimately ensuring accountability for digital transactions.



NIN as the Mode of Verification in Financial Institutions

Prior to the CAA, Section 37(1)(a) of the Principal Act provides that financial institutions must verify the identity of customers before the issuance of ATM cards, credit cards, debit cards, and other related electronic devices. However, the CAA amended this provision by specifically providing that the means of identification shall be by “National Identification Number issued by National Identity Management Commission”.



Demand for Compliance with the Nigerian Data Protection Act

Section 38(1) of the Principal Act mandates service providers to keep all traffic data and subscriber information as may be required by relevant authority for regulation of communication services for a two-year period. The CAA⁶ replaced this subsection with a similar provision but added that the service providers should “keep and protect” such data and to do so in accordance with the Nigerian Data Protection Act (“NDPA”).

This amendment makes the NDPA the guiding legislation for service providers in complying with this provision of the CAA.



Amendment to the Cybersecurity Levy on Electronic Transactions

Section 44 of the Principal Act provides for the establishment of the National Cyber Security Fund (the “Fund”). While the Principal Act charges a levy of 0.005 of all electronic transactions by the businesses specified in the second schedule⁷ to the Principal Act, the CAA⁸ provides that a levy of 0.5% of all electronic transactions value shall be charged by the businesses specified in the second schedule and shall be paid into the Fund.

The CAA also prescribes punishment for defaulting businesses, which is payment of fine of not less than 2% of their annual turnover. By the CAA, failure to pay will result in withdrawal of the business’ operational license⁹. Additionally, the CAA assigns the responsibility for administering the Fund to the Office of the National Security Adviser (ONSA). This office is now tasked with maintaining records of the Fund and overseeing its proper administration, in compliance with audit guidelines set forth by the Auditor-General of the Federation.¹⁰

6. Section 9 of the CAA

7. The businesses referred to in Section 44(2)(a) are: GSM service providers and all telecommunication companies; Internet Service Providers; Banks and other Financial Institutions; Insurance Companies; Nigerian Stock Exchange.

8. Section 11 of the CAA

9. Section 11(b) of the CAA.

10. Section 44(8) of the CAA.



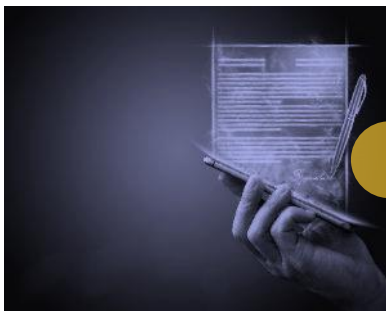
Deletion of Section 48(4)

The CAA deleted section 48(4)¹¹ of the Principal Act. By this deletion, it removes the cancellation of the international passport of convicted persons under the Act and the withholding of the passports of convicted foreigners. This amendment is aimed at protecting the fundamental human rights of convicts.



Establishment of Sectoral CERTs and SOCs with Mandatory Cyber Incident Reporting

The CAA¹² creates Sectoral CERTs and SOCs to improve cybersecurity incident management to work in conjunction with the National CERT established under the Principal Act.¹³ This seeks to ensure quicker responses and minimizing damage.¹⁴



Limitations on the Validity of Electronic Signatures

Section 2(b) of the CAA excludes certain transactions¹⁵ from being validated by electronic signatures unless such transactions¹⁶ are verified with certified true copies (“CTCs”) of same. For these transactions, CTCs must be submitted to ensure the integrity of the documents before the electronic signatures can be accepted.



CONCLUSION

The CAA is a child of necessity and a forebearer of cohesion as it was necessary to clear ambiguities, expand the scope of the applicability of certain provisions and enact a law that is in tandem with current realities with respect to cybercrimes. Successful implementation of the CAA will require collaboration among government agencies, businesses, and the public to effectively combat evolving cyber threats in Nigeria.

It is also important to mention that the implementation of the cybercrime levy has been suspended by the Federal Government. By a circular of 17 May 2024¹⁷, the Central Bank of Nigeria (“CBN”) withdrew its earlier circular¹⁸ of 6 May 2024 directing that financial institutions implement collection of the cybercrime levy. However, in September 2024, the CBN announced that it has reduced the cybersecurity levy on electronic transactions from 0.5% to 0.005% in its new fiscal guidelines for 2024-2025. In a policy document released on 17.09.2024, the CBN stated that it “shall continue to enforce the payment of the mandatory levy of 0.005% on all electronic transactions by banks and other financial institutions, in line with the Cybercrime (Prohibition, Prevention, etc.) Act, 2015.”

11. Section 12 of the CAA.

12. Section 10 of the CAA

13. The CAA in section also imposes stricter reporting rules for individuals and organizations facing cyberattacks or disruptions, it provides that incidents must be reported to the National CERT through their Sectoral CERTs or SOCs within 72 hours, as against the 7-day window provided under Section 21(3) of the Principal Act.

14. Further, non-compliance leads to penalties, including suspension of internet access and a ₦2,000,000 fine to the Nigerian Communications Commission (NCC) by virtue of section 21(3) of the Principal Act.

15. These include wills, birth and death certificates, marriage and divorce matters, court documents, utility cancellations, and the handling of hazardous materials.

16. See section 17(4)(a - h) of the Principal Act for the list of transactions

17. PSM/DIR/PUB/LAB/017/005: Re: Cybercrimes (Prohibition, Prevention, ETC) (Amendment) Act 2024- Implementation Guidance on the Collection and Remittance of the National Cybersecurity levy.

18. PSM/DIR/PUB/LAB/017/004: Re: Cybercrimes (Prohibition, Prevention, ETC) (Amendment) Act 2024- Implementation Guidance on the Collection and Remittance of the National Cybersecurity levy.

Review of Salient Provisions of the Supreme Court Rules 2024

A key development in the year 2024 is the advent of the Supreme Court Rules 2024 (the “**New Rules**”), which repealed the Supreme Court Rules of 1985, as amended (the “**Old Rules**”). The New Rules introduce several significant innovations, with some of the most notable amendments outlined below.



KEY FOCUS AREAS

Definition of “Appeal”

The New Rules define an appeal as ‘entry of Appeal after the record of appeal has been transmitted from the Court below’. Under the Old Rules, the broader definition of ‘appeal’ allowed the Supreme Court to consider applications for leave to appeal as valid and pending appeals, upon which a party seeking stay of execution,¹ stay of proceedings or an injunction pending appeal can predicate such applications. However, the New Rules’ more restrictive definition of “appeal” might suggest that unless an appeal has been entered at the Supreme Court after the record of appeal has been transmitted from the Court of Appeal within the time allowed by the New Rules or such time extended by the Court, there is no pending appeal. On this view, the ability of parties to seek “stays” based solely on applications for leave to appeal could be potentially constrained, thereby limiting the opportunity to seek preservatory orders before leave is granted. While the New Rules have significantly improved clarity for practitioners, the narrower definition of “appeal” could have negative consequences for applicants who require urgent preservation of their rights before leave to appeal is granted.

Electronic Seal

Unlike the Old Rules that referred to only a physical version of the Seal of the Court and physical files with respect to appeals/matters, the New Rules make provision for the use of an electronic version of the Seal of the Supreme Court and also mandate the Registrar of the Supreme Court (the “Registrar”) to furnish the electronic unit of the Registry of the Supreme Court (the “Registry”) copies of filed processes, within 15 days to enable them to create electronic files.¹⁹

Number of Counsel

The New Rules have reduced the number of counsel that can appear in a matter before the Supreme Court. Under Order 2 Rule 13(2), a Senior Advocate of Nigeria (SAN) is restricted to appearing with no more than five counsel. In cases where more than one SAN appear for the same party, the total number of counsel for that party must not exceed eight, including the SANs, whilst non-SANs shall not appear with more than four junior counsel. This provision reflects an understanding of the need to streamline court appearances, ensuring that cases proceed without excessive legal representation in the court room.



Service

The New Rules have broadened the definition of address for service to include not just physical and postal addresses, as provided for under the Old Rules, but also electronic mail addresses, GSM telephone numbers, and any other available modes of communication,²⁰ a limitation which had frequently resulted in avoidable procedural objections and delays in the progression of appeals²¹. This marks a significant improvement by embracing modern communication methods and expanding the options available for serving notices, thus reducing the procedural bottlenecks in service of processes that previously plagued the appeal process. In addition, the New Rules provide that a notice of appeal shall either be served personally on the Respondent or on the legal practitioner who represented such Respondent(s) at the Court of Appeal or via electronic means.

The New Rules also introduce a seven-day ultimatum for any legal practitioner who no longer represents a client to inform the Registrar accordingly after receipt of service, failing which such counsel will not only incur costs, but such failure may be treated as an act of professional misconduct.²²

Order 3 Rule 6(2) of the New Rules permits parties to undertake to serve any process other than a notice of appeal on the other parties. This is conditioned on the requirement that the serving party must depose to an affidavit of service and file it at the Registry. This provision introduces flexibility and expediency, empowering parties to take an active role in the service of process while maintaining accountability through the filing of affidavits of service. Further improving the clarity and efficiency of the service process, the New Rules stipulate, under Order 3 Rule 7, that failure to endorse an address for service on any process to be filed will not be treated as a mere irregularity. Under this provision, the Registry is instructed not to accept for filing, any process without an endorsed address for service, and if mistakenly accepted, such a process will not be deemed as properly filed.

Applications

Order 4 of the New Rules provides the procedure for applications to the Supreme Court. The New Rules provide that every application shall be brought by way of Motion on Notice, supported by an affidavit, and unlike the Old Rules, a written address which shall not exceed 10 pages. A respondent shall have 14 days to respond to the motion with a counter affidavit, and a written address not exceeding seven pages, and the Applicant also has the liberty to file a reply address not exceeding five pages within five days.

A key modification concerns the application for an extension of time to appeal or for leave to appeal. The Old Rules required the inclusion of the judgment being appealed and any necessary supporting documents, such as transcripts of proceedings, to establish a prima facie reason for the appeal. In addition to this, the New Rules now require certified true copies of the decisions of the trial court and the lower court, where leave to appeal was refused, the order of refusal, and a written address in support of the application.

20. Order 3 Rule 1 of the New Rules.

21. The majority decision of the Supreme Court in *Odey v. Alaga* [2021] 13 NWLR (Pt. 1792) 1 at 63, paras G- H is to the effect that a Notice of Appeal must be served personally and failure to serve it personally renders the appeal incompetent. However, the Supreme Court in *Amaechi v. Gov. Rivers State* [2022] 17 NWLR (Pt. 1858) 1 at 45, paras E - F relying on its decision in *A.G. Fed v. Anuebunwa* [2022] 14 NWLR (Pt. 1850) 211 wherein it departed from the decision in *Odey v. Alaga* and applied the proviso to Rule 3(1) of Order 2 of the Supreme Court Rules to the effect that where the facts show that the notice of appeal was served on the respondent's counsel at the lower court at the address indicated in the notice of appeal personal service of the court is satisfied that it has been communicated to the respondent.

22. This provision mirrors Order 2, Rule 9 of the Court of Appeal Rules and included that it will be treated as a professional misconduct as against mere payment of cost.



Furthermore, any application for leave to appeal, if refused by the Court of Appeal, must be made to the Supreme Court within 21 days of such refusal²³. With the New Rules, the Court can hear an application in chambers, provided that the respondent files a notice of non-contention within 14 days of service of the application, indicating that they do not intend to oppose it²⁴.

A particularly commendable change is the automatic extension of time for filing processes. The New Rules eliminate the need for an application for an extension of time, except in appeals against death sentences. Instead, the time for filing is automatically extended once for the same period initially prescribed. A further extension may be granted upon payment of a penalty for the period in default, provided it does not exceed the originally prescribed time, with no additional extensions allowed thereafter²⁵. This reform is designed to prevent laxity and unnecessary delays, ensuring that litigants remain diligent in meeting deadlines. Finally, Order 4 Rule 14 provides a strict framework for setting aside proceedings for non-compliance with the Rules. The New Rules mandate that such applications must be brought timeously and before the applicant has taken any further steps after becoming aware of the irregularity. Once any further steps have been taken, the right to challenge the non-compliance is considered waived. This ensures that parties cannot use procedural non-compliance as a tactical delay after having actively engaged in the proceedings.

Fees

The New Rules stipulates the local government and government agencies as entities exempt from paying Supreme Court fees, aligning with broader efforts to minimize financial burdens on public bodies. In addition, the Old Rules allowed for the recovery of costs from individuals ordered to pay the government or governmental bodies, even if fees were waived. This proviso has been removed from the New Rules, implying that, subject to the Court's interpretation, costs may no longer be recoverable from individuals in respect of fees that have been waived.

Record of Appeal

The New Rules define “record of appeal” to include electronic records²⁶, and mandate that in addition to the requirement of physical copies, electronic copies of documents be included in the record of appeal. A clear move towards digitization and reflects the Court's recognition of the benefits of electronic record-keeping. The New Rules also abridge the time for transmission of record of appeal from a period not less than six months from the date of filing the appeal (as prescribed by the Old Rules) to a period of three months²⁷. This development substantially reduces the timeline for compilation and transmission of records of appeal to the Supreme Court. In further demonstration of the Supreme Court's want for expediency, Order 6 Rule 7 provide that where upon the expiration of 30 days after the filing of a notice of appeal and notification by the appellant, the registrar of the lower Court has failed to transmit the record of appeal to the Supreme Court, the appellant shall compile the record of appeal and transmit same to the Supreme Court within 30 days of the lower Court's registry's failure.

23. Order 4 Rule 8 of the New Rules.

24. Order 4 Rule 12 of the New Rules.

25. Order 4 Rule 15 of the New Rules

26. Order 1 of the New Rules.

27. Order 6 Rule 4 of the New Rules.



Entry of Appeal

Order 7 Rule (2) provides that no stay of proceedings with respect to a matter before the Court of Appeal shall be granted pending the decision of the Supreme Court on an interlocutory appeal, thereby preventing unnecessary delays in proceedings before the Court of Appeal. Order 7 Rule 4 makes a laudable introduction by empowering the Supreme Court to receive further evidence on questions of fact with respect to appeals. However, with respect to appeals from judgments after trial or hearing on the merit, no such evidence (other than evidence as to matters which occurred after the date of trial or hearing) shall be admitted except on special grounds.

The Supreme Court now also has the discretion to order a new trial on a specific question without interfering with other parts of the judgment being appealed²⁸. This ensures that litigants are not subjected to a full retrial for issues affecting only part of their case. Moreover, the Court may order a new trial on a part of the judgment appealed against while affirming the remainder, allowing successful litigants to proceed with execution on the affirmed portion while the contested part undergoes further trial. This provision strikes a balance between correcting judicial errors and maintaining the efficiency of the justice system.

Additionally, the Supreme Court could proceed to determine such part of the matter set down for new trial in the interest of justice where remitting the matter to the trial court would occasion a serious miscarriage of justice²⁹, as justice delayed is justice denied.

Proceedings in the Original Jurisdiction of the Supreme Court

The New Rules provide that any procedure in the exercise of the Supreme Court's original jurisdiction, not explicitly provided for in the New Rules, shall be conducted in accordance with the practice and procedure of the Federal High Court³⁰. This ensures consistency, and clarity of applicable rules to all matters and instances and prevents procedural gaps.

The New Rules introduce a 30-day timeline for a respondent to file a response to an action commenced by Originating Summons, a provision which was absent in Order 3 of the Old Rules³¹. However, the timelines for filing of defence and reply remain unchanged. The New Rules abridged the timeline for entering a defence to a summons before the Supreme Court from 21 days to 14 days³², promoting faster resolution of disputes. The New Rules also require a written address to be filed along with an application and supporting affidavit³³, while the Old Rules only required the filing of a motion and affidavit.

References as to Constitutional Questions and Reserved Questions of Law

The New Rules introduce a significant addition in Order 10 Rule 1, which provides specific forms for cases stated involving constitutional interpretation or application³⁴, as detailed in the First Schedule to the Rules.

28. Order 7 Rule 5 of the New Rules.

29. Order 7 Rule 3 section 22 of the Supreme Court Act

30. Order 8 Rule 1.

31. Order 8 Rule 6(4).

32. Order 8 Rule 9(1).

33. Order 8 Rule 14.

34. Forms 18, 19 And 20



Ten hard copies and one electronic copy of such forms must be filed with the Registrar. The forms differ depending on the type of case stated. Form 18 is to be used when the facts are disputed, Form 19 for when the facts are not disputed and Form 20, when the case stated involves the determination of the constitutional validity of a law. This addition is a commendable improvement, providing a structured and uniform process for cases involving constitutional questions. The forms reflect the importance and gravity of such issues, emphasising the Court's commitment to handling constitutional matters with the appropriate reverence and precision.

Civil Appeals

A notable innovation of the New Rules in civil appeals is the provision that a notice of appeal in a civil matter may be filed electronically³⁵. The New Rules also provide that notice of appeal in a civil matter may be signed either by the appellant in person or by their legal practitioner, expanding flexibility in the filing process.³⁶

While the Old Rules allowed the Supreme Court to strike out an appeal upon the death of an appellant, the New Rules include a proviso that the Court will not strike out an appeal if there is a pending application for substitution, intervener, or other appropriate remedies.³⁷ The New Rules also provide a specific procedure for applying to change the name of a party and introduce a 60-day deadline for the restoration of an appeal dismissed for non-compliance with the provisions of this order.³⁸

Costs

The New Rules have a distinct order (Order 12) for costs. One significant development is the potential for counsel to be held personally liable for costs due to abuse of process³⁹. This includes counsel representing the Federal or State Governments. Costs imposed personally on a Counsel must be paid within 90 days of the order and certificate of compliance must be filed within the said time⁴⁰ and a party in default shall cease to have the right of audience in any Court of law in Nigeria until compliance.⁴¹

Furthermore, the New Rules set minimum amounts to be awarded in specific cases and instances⁴², costs for a successful party in a civil appeal shall be a minimum of N2 million, costs for delay of hearing is set at a minimum of N1 Million, costs in an application in a civil appeal at a minimum of N500,000 and cost for abuse of court processes at a minimum of N2 million.

35. Order 11 Rule 2(1).

36. Order 11 Rule 2(4).

37. Order 11 Rule 12.

38. Order 11 Rule 17(4).

39. Order 12 Rule 3.

40. Order 12 Rule 6.

41. Order 12 Rule 7.

42. Order 12 Rule 7.



Criminal Appeals

The New Rules deleted the provision for making oral applications in criminal appeals. The New Rules also deleted the provision of the Old Rules which provides that the court may deem an application for leave to appeal when granted as a notice of appeal⁴³. The New Rules in Order 13 Rule 5 permit a notice of appeal to signed either by the appellant or their legal practitioner. Similar to this addition, the New Rules provide that an interlocutory application to be made by an Appellant can be made by a legal practitioner on behalf of an Appellant⁴⁴. As regards a body corporate, a Company's Secretary, Director, Manager or Legal Practitioner may sign documents on its behalf⁴⁵.

The New Rules also provide for summary determination and dismissal of frivolous and vexatious appeals. Appeals involving solely grounds of law which do not disclose substantial grounds of appeal may be summarily determined and where deemed vexatious or frivolous, the Court may dismiss same without adjourning for full hearing⁴⁶. This innovation is envisaged to filter cogent appeals from frivolities clouding the court's docket.

Fast Track Criminal Appeals

Order 14 of the New Rules governs criminal appeals from terrorism, rape, kidnapping, corruption, money laundering and human trafficking (Fast Track Offences). This is an innovation that was not contained in the Old Rules. The New Rules provide that the Court shall prioritize these cases, with hearings scheduled daily, where possible, until final determination.⁴⁷

Unique timelines are set for these fast-track appeals; compilation and transmission of records of appeal shall be within 15 days of filing a notice of appeal, and the respondent may compile additional records within 5 days of service of the records on him⁴⁸. All appellant's briefs shall be filed within 10 days from receiving the records from the Court of Appeal, respondent brief to be filed within seven days of receiving the appellant's brief and reply brief to be filed not later than three days from receipt of the respondent's brief⁴⁹. The introduction of these strict timelines reflects the Court's determination to address serious criminal matters swiftly, ensuring that justice is not delayed in cases of national importance.

Procedure in Pre-election and Election Appeals

In what is entirely a novel addition to the New Rules, Order 15 sets out the procedure for pre-election appeals or election appeals from the lower Court and effectively replaces the Supreme Court Pre-Election and Election Appeals Practice Directions of 2023 (the "EAPD"). The matters covered in this Order range from the filing of notices of appeal and transmission of records to the filing of briefs and the making of oral arguments.

The New Rules increase the limit of written briefs in election matters from 40 pages (as provided under the EAPD), to 45 Pages. The page limit of a reply brief on points of law is 10 pages.

41. Order 12 Rule 7.

42. Order 12 Rule 7.

43. Order 9 Rule 3(2) of the Old Rules.

44. Order 13 Rule 2.


45. Order 13 Rule 5(6).

46. Order 13 Rule 20.

47. Order 14 rule 6.

48. Order 14 rule 3.

49. Order 14 rule 5.



Order 15 Rule 2 sets the time to appeal against a ruling or judgment in a pre-election or election matter to be within 14 days from the date of the delivery of the ruling or judgment appealed against. Also, stringent timelines for the filing of briefs of argument were provided by the rules to facilitate the timely determination of pre-election and election appeals in line with section 285 of the Constitution. The New Rules also provide that cross appeals shall be argued along with appeal⁵⁰.

Brief of Argument

The New Rules make significant changes to the timelines for filing of briefs. Under the Old Rules, the timeline within which to file the Appellant's brief, after receipt of the record of appeal, was 10 weeks. Under the New Rules, however, it is 45 days. Under the Old Rules, Respondent's brief was to be filed within eight weeks of service of the Appellant's brief. The New Rules reduce this timeline to 30 days. A reply brief was to be filed within four weeks of service of the Respondent's brief under the Old Rules, but the timeline is now 14 days under the New Rules. Furthermore, the Old Rules allowed for a maximum of one hour of oral arguments from each side, unless otherwise directed. The New Rules provide for 15 minutes instead.

Order 16 Rule 7 allows parties with identical or joint interests to file joint briefs. Another commendable provision in the New Rules is Order 16 Rule 12 which grants the Court the power to order accelerated hearing in any matter or appeal or waive compliance with the provisions of Order 16 in relation to the preparation and filing of brief of argument in the interest of justice. Order 16 Rule 13 of the New Rules provides that the computation of time to do any act provided by the rules shall be exempted during the occurrence of any event which disrupts the normal conduct of the business of the Court. Thus, accounting for unforeseen scenarios, such as judicial workers strike, that may temporarily impair the Court's ability to function normally.

Parties can now file additional authorities so long as notice is given to the Court and other parties at least five days before the date of hearing.⁵¹

Electronic Filing, Virtual Hearing and Electronic Case Scheduling and Management

Order 17 of the New Rules introduces a new electronic filing system for the Court and prescribes the procedure for electronic filing, the payment of fees for electronic filing, and the use of electronic signatures and empowers the Chief Justice of Nigeria ("CJN") to periodically issue Practice Directions on the regulation and administration of the Court's electronic filing system.

Order 18 of the New Rules provides for the procedure for virtual hearings, including the dress code, rules of etiquette, and the notification of parties. Just like for E-filing, the CJN is permitted by the New Rules to periodically issue Practice Directions for the regulation of virtual hearing. Order 19 of the New Rules requires the Court to implement an electronic case scheduling and management platform for the efficient and effective management of case-loading and case scheduling and empowers the CJN to make practice directions in this regard.

50. Order 15 Rule 9.

51. Order 16 Rule 14.



Judgment

A commendable innovation under the New Rules is the provision of Order 20 Rule 1 which provides that judgment of the Court may be pronounced in open Court (as in the Old Rules) or at virtual hearings, providing flexibility for the Court to adapt to different circumstances.

Additionally, by Order 20 Rule 2, failure of Counsel duly notified of the date for pronouncement of judgment to appear would be regarded as an act of disrespect to the Court, highlighting the seriousness with which the Court views its judgments and the expectation of professional decorum from counsel.



CONCLUSION

The changes in the New Rules are no doubt aimed at ensuring the speedy and efficient dispensation of justice and bringing the practice and procedure of the Supreme Court in line with digital realities. The New Rules provide clarity on certain questions that have hitherto been controversial and in many respects, promotes prioritization of substantial justice over technicalities. Also, the provisions on E-Filing and the Case Scheduling and Management System are particularly commendable. We note, however, that the efficiency of some of these provisions is contingent on the practice directions to be issued by the C.J.N to drive their implementation.

2024 WRAP-UP



04

NOTABLE FOREIGN CASES
REPORTED IN 2024

Copyright owners who file timely claims under the discovery rule may recover damages for all infringing acts, regardless of when the infringement occurred



WARNER CHAPPELL MUSIC, INC. V. NEALY, 114 S. CT. 1135 [2024]



BRIEF FACTS

Sherman Nealy co-founded Music Specialist, Inc. (MSI) in 1983, which recorded music during the 1980s but was dissolved shortly thereafter. Nealy was incarcerated from 1989 to 2008 and again from 2012 to 2015. During his imprisonment, his business partner, Tony Butler, licensed MSI's music catalog to Warner Chappell Music without Nealy's knowledge. These licenses resulted in commercial use of MSI's works, including prominent interpolations such as Flo Rida's hit song "In the Ayer".

Upon his release in 2016, Nealy discovered these unauthorized agreements and, in 2018, sued Warner Chappell for copyright infringement. He sought damages for infringing activities dating back to 2008, asserting his claims were timely under the Copyright Act's discovery rule because he only became aware of the infringing conduct less than three years before filing the lawsuit.

Under the Copyright Act (17 U.S.C. §507(b)), a plaintiff must file a suit "within three years after the claim accrued." Warner Chappell argued that even if Nealy's claims were timely under the discovery rule, he could only recover damages for infringements occurring within the three years preceding the lawsuit.



DECISION OF THE COURT

On May 9, 2024, the U.S. Supreme Court delivered a landmark ruling in favour of Nealy, affirming the Eleventh Circuit's decision that copyright owners can recover damages for timely infringement claims, regardless of when the infringement occurred.

The Court observed that under section 507(b) of the Copyright Act, a plaintiff must file a suit for copyright infringement within three years after the claim accrues. Courts have interpreted this provision under two competing rules (x) the injury rule; where a claim accrues when the infringing act occurs, and (y) the discovery rule; where a claim accrues when the plaintiff discovers or, with due diligence, should have discovered the infringing act.

In this case, the Supreme Court confined its review to whether a plaintiff with a timely claim under the discovery rule can recover damages for acts of infringement occurring more than three years before filing suit. The Court held that the Copyright Act's remedial provisions do not impose a separate three-year limitation on the recovery of damages. It clarified that any limitations on monetary recovery must arise from the Act's provisions for statutory damages or actual damages and profits, which hold an infringer liable without regard to the timing of the infringing acts. Consequently, a copyright owner with a timely claim under the discovery rule may seek damages for all infringing acts, regardless of their age.

This decision abrogated the Second Circuit's ruling in *Sohm v. Scholastic Inc.*, 959 F.3d 39 (2d Cir. 2020), which incorrectly capped recoverable damages to those incurred within three years of filing suit. The Supreme Court clarified that its earlier decision in *Petrella*—where a plaintiff could not invoke the discovery rule due to long-standing knowledge of the infringement—did not support a three-year damages cap.

Accordingly, since Nealy invoked the discovery rule to bring claims for infringing acts occurring more than three years before filing suit, the Court held his claims were timely, and that he is entitled to damages for all such acts.



BRIEF COMMENTS

This decision of the U.S. Supreme Court is a landmark ruling that significantly strengthens the position of copyright owners by affirming their right to recover damages for all infringing acts, irrespective of their age, so long as the claim is timely under the discovery rule. This decision acknowledges the realities faced by copyright owners, particularly those who may not have the resources or means to detect unauthorized uses of their works promptly. By rejecting the Second Circuit's limitation on recoverable damages in *Sohm v. Scholastic Inc.*, the Court ensures a more equitable application of copyright law.

This ruling is particularly important in addressing the practical challenges of copyright enforcement, where infringers often exploit the lack of immediate discovery to shield themselves from liability for long-standing violations. The Court's clarification that the Copyright Act's three-year statute of limitations governs only the timeliness of claims and not the scope of recoverable damages provides consistency in judicial interpretation and remedies a critical ambiguity in prior case law.

The decision also strengthens the deterrent effect of copyright law. By affirming that infringers remain liable for their actions regardless of when they occurred, the Court sends a strong message against willful and concealed infringement. This ensures that infringers cannot unfairly benefit from unauthorized exploitation of copyrighted works simply because the owner was unaware of their activities for an extended period.

Public officials can be held liable for blocking critics on their personal social media account



MICHELLE O'CONNOR-RATCLIFF V. CHRISTOPHER GARNIER 601 U.S [2024].



BRIEF FACTS

Michelle O'Connor-Ratcliff and T.J Zane created public Facebook profiles to promote their campaigns for election into the Poway Unified School District (PUSD) Board of Trustees (PUSD Board). The Petitioners successfully won the elections and continued sharing PUSD related content – inclusive of communicating with constituents and soliciting feedback, on their public Facebook profiles. The Respondents (Christopher Gamier and Kimberly Gamier) were parents of students who attended schools within the PUSD and regularly expressed criticisms against the PUSD Board on the Petitioners' social media accounts. The Petitioners deleted the Respondents' comments and subsequently blocked them from commenting on their social media accounts.

The Respondents commenced an action at the District Court against the Petitioners on the ground of the violation of their First Amendment rights because social media accounts constitute public fora. The District Court held that the Petitioners acted “under colour of” state law when the Respondents were blocked on their social media accounts but granted the Petitioners qualified immunity in respect of the damages claimed by the Respondents. On appeal to the Ninth Circuit, the judgment of the District Court was affirmed. Dissatisfied with the appeal, the Petitioners applied to the Supreme Court of the United States (**SCOTUS**) for review of the judgment on a writ of certiorari.



DECISION OF THE COURT

The SCOTUS vacated the judgment of the Ninth Circuit and held that the Ninth Circuit's approach deviated from the approach laid down in *Lindke v Freed*⁵² where the SCOTUS ruled that public officials who obstruct a person from interacting with the public official's social media account engage in state action under 42 U. S. C. 1983 only where the public official both (y) “possessed actual authority to speak on the State's behalf on a particular matter”, and (z) “purported to exercise that authority when speaking in the relevant social-media posts.”

In light of *Lindke v Freed* [Supra], the SCOTUS remanded the case to the Ninth Circuit for further proceedings consistent with the SCOTUS's opinion in *Lindke v Freed* [Supra]. Although the SCOTUS affirmed that public officials who post public office related issues on their personal social media accounts can be held liable for violating the First Amendment right of members of the public when they block public users, the SCOTUS clarified that such liability is applicable only where the public officials are empowered to speak on the State's behalf and are exercising said power.



The SCOTUS decision reinforces that public officials can be held liable for First Amendment violations if they block members of the public from social media accounts used for official purposes. However, this liability applies only if the officials possess actual authority to speak on the State's behalf and exercise that authority in the contested posts. Consequently, public officials must clearly distinguish between personal and public accounts to avoid infringing on constitutional rights. In Nigeria, although there has been no judicial pronouncement on similar cases, the rise of social media use may prompt future litigation on whether blocking critics from official social media pages breaches fundamental rights.

Private organizations such as Internet service providers (“ISP”) have a duty to protect their clients' personal information and should not voluntarily disclose this information to law enforcement authorities requesting it.



R V. BYKOVETS, 2024 SCC 6



BRIEF FACTS

Sometimes in 2017, the Calgary Police commenced investigation into an allegation of fraudulent online purchases from a liquor store. The investigation revealed that the store’s online sales were handled by Moneris, a third-party payment processing company. The Police contacted Moneris to provide the IP addresses used for the purchases and they flagged two IP addresses, one registered to Mr. Bykovets (Mr. Bykovets or the Appellant) and the other to his father. They also proceeded to obtain a search warrant which was executed at their residences. Further to that, Mr. Bykovets was arrested and charged with offences relating to, among others, the possession and the use of third parties’ credit cards and personal identification documents.

Prior to the commencement of trial, Mr. Bykovets challenged the police’s request to obtain the IP addresses from Moneris, alleging that it violated his right against unreasonable search and seizure under section 8 of the Canadian Charter of Rights and Freedoms (the Charter). He then asked the trial judge to exclude the evidence obtained from the police’s use of his IP address considering that his right under section 8 of the Charter was infringed.

The trial Judge in holding that Mr. Bykovet’s right has not been breached, found that there must be a search within the contemplation of section 8 of the Charter to establish a violation of his rights. The trial judge held that a search occurs where the state invades a reasonable expectation of privacy. Therefore, the Police’s request to the processing company was not a search under section 8 of the Charter because Mr. Bykovet did not have a reasonable expectation of privacy in his IP address as IP addresses do not provide a link to, or any other information about an Internet user.



DECISION OF THE COURT

The Supreme Court in its decision noted that the principal object of Section 8 of the Charter was for the protection of privacy or the individual's "right to be left alone". Therefore, to establish a breach of Section 8, there must have been a search. Also, a search occurs where the state invades a reasonable expectation of privacy. An expectation of privacy is reasonable where the public's interest in being left alone by the government outweighs the government's interest in intruding on the individual's privacy to advance its goals, notably those of law enforcement.

The Supreme Court analyzed an expectation of privacy by considering the following:



the subject matter of the search



the claimant's interest in the subject matter



the claimant's subjective expectation of privacy; and



whether the subjective expectation of privacy was objectively reasonable.

The Supreme Court stated that an IP address alone may divulge the identity and other personal information of the user; and when combined with other information that is volunteered by other companies, it can expose a high range of a user's personal online activity. The majority of the Supreme Court held that the request by the State for an IP address constitutes a search under section 8 of the Charter, allowed the appeal, set aside the conviction and ordered a new trial.



BRIEF COMMENTS

The decision of the Supreme Court of Canada is a laudable one as it represents a significant affirmation of privacy rights in the digital age. By holding that an inquiry into an IP address constitutes a search, the Court recognised the profound implications of digital information and the ease with which it can reveal extensive details about an individual's online activities. This ruling ensures that ISPs are obligated to protect their client's information, requiring law enforcement to obtain judicial authorization before accessing such data.

The decision underscores that an IP address is not merely a collection of numbers but a critical link to an individual's digital footprint. By requiring prior judicial authorization, the Court balances effective law enforcement with the protection of Canadians' informational privacy rights. Whilst the CFRN guarantees the right to privacy of citizen's homes, telephone and telegraphic communications, it is unlikely that a Nigerian Court will set aside a conviction on the basis of an improperly obtained evidence based on the principle that improperly obtained evidence can be admitted by the Court.

US Circuit Court Enforces Arbitral Award against Nigeria Despite Nigeria's Sovereign Immunity Argument



ZHONGSHAN FUCHENG INDUSTRIAL INVESTMENT CO. LTD V. FEDERAL REPUBLIC OF NIGERIA (NO. 23-7016)



BRIEF FACTS

Nigeria and China signed a bilateral investment treaty in 2001 (the “**Treaty**”), under which the two countries agreed to treat the investors of the other country fairly and protect their investments. Based on the Treaty, Zhongshan Fucheng Industrial Investment Co. Ltd (“**Zhongshan**”) through its Nigerian subsidiary Zhongfu International Investment (Nig) FZE (“**Zhongfu**”) developed an industrial park and built factories in the free trade zone in Ogun State (the “**Zone**”) for zone tenants to use. As of 2016, Nigeria had collected circa NGN160 million in tax from Zhongshan’s development in the Zone. However, in the same 2016, Ogun State Government terminated the relationship with Zhongshan on the grounds that a different Chinese company was the one legally entitled to Zhongshan’s part of the Zone and that Zhongshan had defrauded Ogun State.

Pursuant to the Treaty, Zhongshan commenced arbitration against Nigeria. Nigeria participated in the arbitration and at the end, the Tribunal held that Nigeria breached its obligations under the Treaty and awarded to Zhongshan USD55.6 million compensation and USD75,000 in moral damages, with interest (the “**Award**”). Nigeria did not pay the award debt and after about a year, Zhongshan commenced an action at the District Court for the District of Columbia (the “**District Court**”) to enforce the Award. The District Court dismissed Nigeria’s argument that the court lacked subject-matter jurisdiction and personal jurisdiction because Nigeria was immune under the Foreign Sovereign Immunities Act of 1976 (“**FSIA**”) and the exceptions in FSIA did not apply in the circumstance. Nigeria appealed to the United States Court of Appeal for the District of Columbia Circuit (the “**Court**”).



The Court held that Nigeria and Zhongshan shared legal relationship because Nigeria owed Zhongshan legal duties under the Treaty...





DECISION OF THE COURT

The Court affirmed the decision of the District Court and held that the FSIA exception applied because the Award is governed by the Recognition and Enforcement of Foreign Arbitral Awards (the “Convention”). The Convention, 21 U.S.T. at 2560; 9 U.S.C. § 202 (2) provides that the Convention will apply only to arbitral award “arising out of a legal relationship, whether contractual or not, which is considered as commercial.” The Court held that the Award met these conditions.

On whether the Award arose out of legal relationship, the Court held that Nigeria and Zhongshan shared legal relationship because Nigeria owed Zhongshan legal duties under the Treaty, and the Treaty expressly obligates Nigeria to protect the investments of Chinese investors including Zhongshan and states. The Court held that although the Treaty was between Nigeria and China, but because Nigeria committed under the Treaty to protect Chinese investors and treat them fairly, Nigeria assumed duties that could be enforced against her by Chinese investors, including Zhongshan.

On the relationship between Nigeria and Zhongshan being commercial, the Court held that it was a commercial relationship because (x) the investment Zhongshan made was in a money-making enterprise; (y) the Treaty is expressly designed to promote commerce; and (z) Nigeria collected hundreds of thousands of dollars in tax revenue from the investment; amongst other reasons. In dismissing Nigeria’s main argument that the Award does not fall within the contemplation of the Convention as it engaged in private activities as opposed to public sovereign acts, the Court held that a person under the Convention includes a foreign state even when it engages in public acts which breach its obligations towards third parties under a bilateral investment treaty that is connected to commerce.



BRIEF COMMENTS

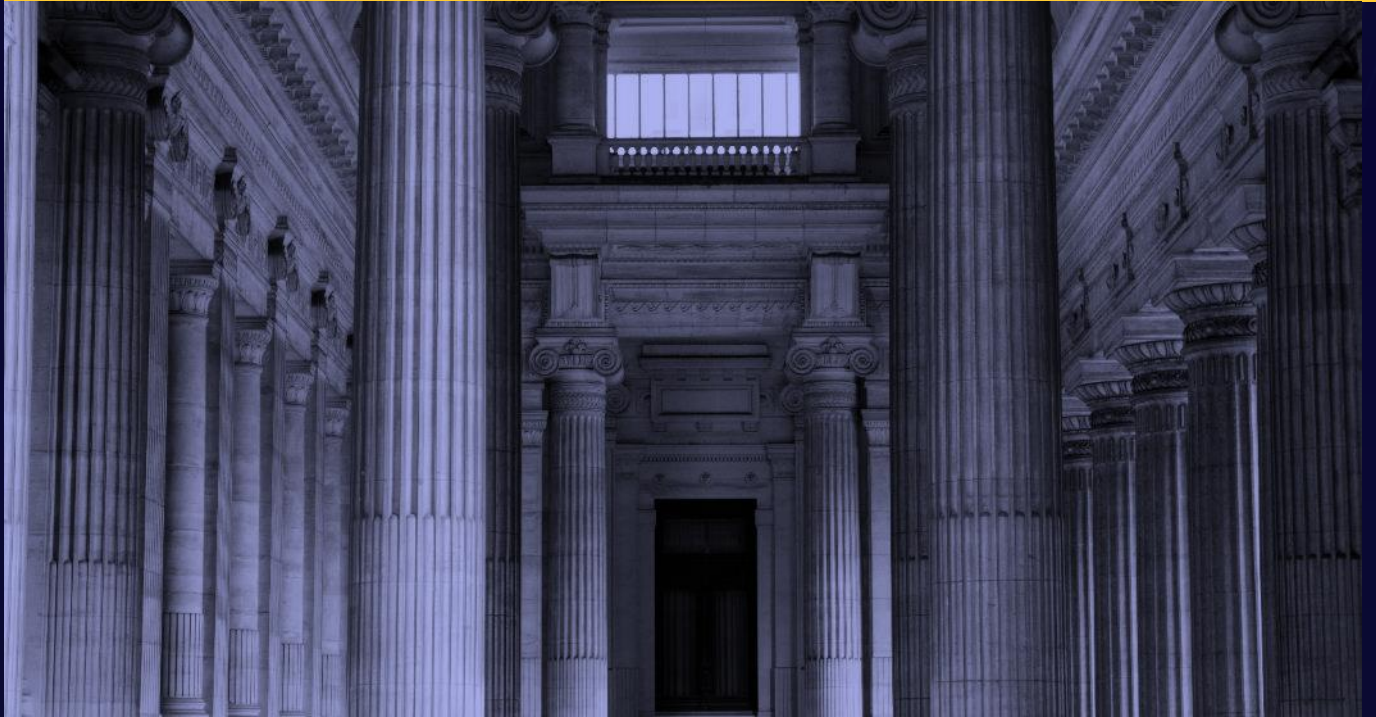
The decision of the Court leans towards the approach of courts all over the globe on enforcing awards where sovereigns have acted in a commercial relationship with the national of another sovereign, even if the sovereign acted in sovereign capacity. We believe that sovereigns will now factor this into consideration when entering into commercial relationships.

In addition, based on Section 60 of the Nigerian Arbitration and Mediation Act 2023 (“AMA”)⁵³ and the decision of the Nigerian Court of Appeal in **African Reinsurance Corp. v. AIM Consultants Ltd**⁵⁴, it can be expected that faced with the same circumstance, a Nigerian Court would have also enforced an award against a sovereign.

53. Section 60 of the AMA provides for the application of the Convention which is set out in the Second Schedule to the AMA to an award made in an arbitration in a country other than Nigeria, provided that (i) the country is a party to the Convention, and (ii) the differences arise out of a legal relationship, whether contractual or not, considered commercial under the law of Nigeria

54. [2004] 11 NWLR (Pt. 884) 223 at 242-243, paras G-A. In this decision, the CA held that if the actions of a sovereign are commercial, then the doctrine of state immunity does not arise.

2025 OUTLOOK





Potential Disputes Arising From Decision Of The Supreme Court On Local Government Autonomy

The Supreme Court of Nigeria, on 11th July, 2024 delivered judgment in the landmark case of Attorney General of the Federation v. Attorney General of Abia State and Ors⁵⁵ wherein it held that the CFRN provides for the separate ownership of amounts in the federation account as between the three tiers of government, and the section did not intend a joint ownership of the amounts. Therefore, the SC held that the Federal government could pay Local Government allocations from the Federation Account to Local Government Councils directly or pay to them through states. In this case, since paying them through states has not worked, the justice of the case demands that the Local Government Council allocations from the Federation Account should henceforth be paid directly to the Local Government Councils.

This judgment has been met with wide spark reaction from the general populace as it is a decision that signals the emancipation of local governments administration from the shackles of the State Government – who in the guise of control and administration of the funds standing to the credit of the local government – have deprived local government of the use of the funds standing to their credit. The implication of the judgment is that the federation will pay the funds standing to each LGCs to democratically elected LGCs and not state governments. By extension, state governors no longer have access and control of the funds. Whilst the Nigeria Governors' Forum (NGF) have welcomed the decision of the Supreme Court, we note that some state governments have started devising means to circumvent the decision of the SC to ensure that they have partial or total control on the said funds.

Consequently, Senator Tony Nwoye sponsored a motion to halt the attempt by the States as he noted that 'state governors are already using their House of Assembly to enact laws that would mandate respective local government councils in their states, to remit monies into State/Local Government Joint Accounts ruled against by the Supreme Court'⁵⁶.

Further concerned that the modus Operandi of subverting this financial autonomy of Local governments by state governments through their houses of assembly is to insert clauses in their laws requiring the Local Governments, upon receipt of their allocation from Federation Account, to remit all or majority or substantial portion of their allocation to a dedicated account which the State Governments will keep, control, manage or disburse for them using some nomenclatures like state/LGA joint account, state/LGA Consolidated revenue account, Local Government Joint Security Trust account etc.



55. Reported Above

56. Channels TV, *Autonomy: Senate Asks State, Local Govts To Comply With Supreme Court Judgement* • Channels Television accessed 23 October 2024. *Autonomy: Senate Asks State, Local Govts To Comply With Supreme Court*

We envisage that there will be a lot of resistance – on the laws that may emanate from the state houses of assembly and other measures to achieve the state government’s ploy - from not only local governments, but also individuals and pressure groups, ultimately leading to disputes. Although, the Senate has indicated that they will make attempts toward altering any section of the Constitution or any law to give birth to the complete autonomy of the local governments in line with the decision of the Supreme Court,⁵⁷ until this is done, there is likelihood of dispute arising from these situations.

Furthermore, various states who do not have democratically elected local government have conducted local government elections and others are making effort to conduct the local government election to qualify them for their statutory allocation. We envisage that this will also give rise of election petitions at the state levels.



57. *Premium Times*, 'LG autonomy: Senate urges governors to comply with Supreme Court judgement' available at [LG autonomy: Senate urges governors to comply with Supreme Court judgement](#) accessed 23 October 2024.



Impact Of The Supreme Court Rules 2024

The passing of the Supreme Court Rules 2024 comes with a tidal shift in proceedings before the Supreme Court, the New Rules generally emphasize precision and a lack of tolerance for indolence or nonchalance, while providing refreshing innovations in line with technological developments. We envisage that there will be a radical change in the practice of law at the Supreme Court when the 2024 rules are being implemented in its full gear.

With the enactment of the New Rules, we envisage that parties will be wary about filing frivolous actions due to the provisions for summary dismissal and high quantum of costs prescribed against unsuccessful litigants. This deterrent applies not just to parties, as counsel may be held liable to pay costs for abuse of court processes. We foresee either a reduced number of cases filed in the Supreme Court in the coming year or a consequential increased number of dismissed appeals pursuant to the New Rules which is to apply retrospectively.

Furthermore, with the definition of Appeal now limited to the entry of Appeal after the record of appeal has been transmitted from the Court below, it means that parties dissatisfied with the decision of the Court of Appeal cannot immediately upon filing Notice of Appeal or a Motion for Leave to Appeal, file a motion for stay of execution or proceedings, rather, they have to wait till the appeal is entered. This will have a far-reaching effect on litigants as the judgment creditor may proceed with enforcement proceedings successfully even before the appeal is entered. We envisage that this change will exert considerable pressure on judgment debtors, potentially leading to more urgent and strategic challenges to enforcement proceedings. In effect, litigants will have to adopt a more proactive and strategic approach to managing their cases under this new regime.

Additionally, the introduction of electronic filing, service, and case management marks a transformative step toward modernizing the court's operations. This innovation promises to enhance the efficiency and speed of case management, thereby minimizing delays often caused by issues related to service of process. By allowing for electronic service, the New Rules will likely curtail objections arising from claims of non-service, contributing to a more streamlined and reliable appellate system. Ultimately, these technological advancements are poised to revolutionize the practice of law at the Supreme Court, setting a new standard for efficiency and accessibility.

There will be a radical change in the practice of law at the Supreme Court when the 2024 rules are being implemented in its full gear.





Tax Bills And Regulations; Potential Tax Disputes Arising Therefrom



As Nigeria continues to navigate economic challenges, the government has placed significant emphasis on tax reforms. This has led to legislative efforts, such as the transmission of the Nigeria Tax Bill, Nigeria Tax Administration Bill, Nigeria Revenue Service Bill, and Joint Revenue Board Establishment Bill to the National Assembly. These bills aim to provide a unified fiscal legislation by consolidating all fiscal legislations into one Act and providing uniform procedure for efficient tax administration. One of the major changes brought by the bills is on the value added tax (VAT) distribution formula on the basis of derivation. This has been criticized as being against federalism's principle of equitable revenue distribution. If enacted, this will likely prompt legal disputes, as the Northern Governors Forum already publicly expressed rejection of the reform.

The government's plans to introduce a Windfall Tax in the proposed Finance Bill 2024, with retroactive application to profits from previous financial years, are likely to ignite significant legal battles. Financial institutions may argue that retroactive taxation undermines principles of legal certainty, impacting their financial planning and operational stability. Legal challenges could question the fairness and legality of taxing profits earned under prior regulations.

Disputes may arise over customs duties and import tariffs, particularly concerning the classification of imported goods and eligibility for tax exemptions or rebates. Companies importing critical industrial inputs could contest unfavourable duty classifications or argue for rebates on imported materials essential for production, especially if government policies shift or become ambiguous.

The issuance of the Deduction of Tax at Source Withholding Regulations ("WHT Regulations") in 2024 has already sparked controversy. With initial regulations suggesting reduced rates from 10% to 5% and a commencement date set before official gazetting, disputes may arise over whether the Federal Inland Revenue Service (FIRS) can retroactively demand shortfalls in remittances. Companies that adhered to the reduced rates as published may challenge such demands, citing procedural inconsistencies and reliance on government-published regulations.

Finally, the pressure on tax authorities to meet revenue targets could result in aggressive and potentially inflated tax assessments. Both the FIRS and state tax agencies may face legal challenges as businesses contest assessments they deem unfair or unsupported by evidence. This overzealousness, driven by the need to plug revenue leaks and increase tax compliance, may lead to numerous tax appeals and administrative disputes.



Energy and Natural resources

Oil Asset Divestment and Contractual Disputes

The rising global oil prices have led major International Oil Companies (IOCs) to reconsider their asset portfolios in Nigeria, resulting in asset sales and renegotiations of existing offtake agreements. We envisage that these may lead to disputes over pricing terms, fulfilment of supply obligations and the valuation of assets transferred. Contractual disagreements may also arise as buyers and sellers renegotiate terms to adapt to changing market conditions.

As IOCs continue divesting assets, disputes are likely to arise in the decommissioning of aging infrastructure. Proper decommissioning is crucial to mitigate environmental damage, but disagreements may surface regarding the extent and execution of decommissioning responsibilities. Local communities and environmental groups could initiate legal action if decommissioning is improperly handled, leading to claims of environmental degradation.



The monetary policy rate has been repeatedly increased by Central Bank of Nigeria, the recent being 27.25% as of September 2024. With this development, we envisage that borrowers are most likely to default on repayment obligations and also challenge increased interest rates. We envisage disputes both ways - recovery actions from lenders and actions by borrowers challenging excessive/unauthorized debits.



Lithium Mining and Mineral Rights Conflicts

The surge in demand for lithium and the launch of Nigeria's largest lithium processing plant have heightened competition over mineral rights. As both domestic and international companies vie for strategic access, disputes may arise over licensing, compensation to affected communities, and environmental compliance. The involvement of global supply chains could further complicate legal scenarios, as companies linked to major international corporations face heightened scrutiny and regulatory demands.

With the expansion of mining operations, conflicts over fair compensation to local communities and adherence to environmental regulations are expected. Disputes may stem from claims of insufficient community engagement, environmental damage, or unmet promises of economic benefits. As Nigeria's mining sector grows, the government and companies will need to navigate these challenges carefully to avoid protracted litigation.

Potential Disputes Arising from Increase Monetary Policy Rate

Glossary Of Terms

ABBREVIATION	MEANING
AGO	Automotive Gas Oil
CERTs	Arbitration and Mediation Act 2023
AML Regulation	Anti-Money Laundering, Combating the Financing of Terrorism and Countering Proliferation Financing of Weapon of Mass Destruction in Financial Institutions) Regulations, 2022
CAA	Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act, 2024
CERT	Computer Emergency Response Teams
CFRN	Constitution of the Federal Republic of Nigeria as amended
CITA	Companies Income Tax Act
DNFBP	Designated Non-Financial Businesses and Professions
EAPD	Supreme Court Pre-Election and Election Appeals Practice Directions, 2023
NCF	Economic and Financial Crimes Commission
EFCC	Nigerian Deposit Insurance Corporation
FCT	Federal Capital Territory, Abuja
FGN	Federal Government of Nigeria
FHC	Federal High Court
FIRS	Federal Inland Revenue Service
FSIA	Foreign Sovereign Immunities Act, 1976
GPFs	Gas Processing Facilities
GASPA	Gas Supply and Processing Agreement for Accelerated Gas Development
INEC	Independent National Electoral Commission
IOC	International Oil Corporations
IPOB	Indigenous People of Biafra
LPDC	Legal Practitioners Disciplinary Committee
LPA	Legal Practitioners Act

Glossary Of Terms

ABBREVIATION	MEANING
LGC	Local Government Council
MDGIF	Midstream and Downstream Gas Infrastructure Investment Fund
MDPOR	Midstream and Downstream Petroleum Operations Regulations 2023
MLA 2022	Money Laundering (Prevention and Prohibition) Act, 2022
NERC	Nigerian Electricity Regulatory Commission
NMDPRA	Nigerian Midstream and Downstream Regulatory Authority
NRC Act	Nigerian Railway Corporation Act
NWC	National Working Committee
NGF	Nigeria Governors' Forum
NIN	National Identification Number
NCC	Nigerian Communications Commission
NDPA	Nigerian Data Protection Act
PIA	Petroleum Industry Act
RPC	Rules of Professional Conduct for Legal Practitioners
SC	Supreme Court
SCOTUS	Supreme Court of the United States
SCUML	Special Control Unit Against Money Laundering
SEC	Securities and Exchange Commission
SOC	Sectoral Security Operation Centres
TAT	Tax Appeal Tribunal
US	United States
VAT	Value Added Tax
WHT	Withholding Tax

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