



Sikiru Agboola Lasisi v Registrar of companies

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Abstract

This case review centered on a judge's resolve not to allow expatriates, to ruin the spirit and intent of state policy through the use of technical legal compliance, to thwart the intent and policy behind a statute. Although, the Supreme Court of Nigeria was not enamoured, it was suggested by this review that, strict interpretation of statutory provisions may not evolve a justice based economic system.

Keywords: indigenization, expatriate, registrar of companies, mandamus

Introduction

Political independence without economic independence is but an empty shell. This informed the indigenization schemes in Nigeria, Ghana and other newly independent countries. Years after independence, it was obvious that the economy of these nations were still completely dominated by foreigners. In Nigeria, the transport, retail and distributive trades were largely controlled by Asians, who thus overshadowed indigenous participation. The promulgation into law of the indigenization scheme ^[1] arose for two basic reasons: to eliminate the domination of foreign enterprises in the country and to give local entrepreneurs the chance to develop independently and to reduce the drain of foreign exchange in terms of dividend distributions and salary remittances.

The scheme was embodied in the Nigerian Enterprises Promotion Act, 1972, later replaced and abrogated by the Nigerian Enterprises Promotion Act of 1977. The Act required a total Nigerian equity ownership ^[2] or a partial Nigerian equity ownership ^[3]. The act was seen as a major move 'in divesting control of the economy from the hands of non citizens to those of Nigerians' ^[4]. A notable jurist and scholar, Akinola Aguda, noted that the Indigenization Act 'attempted for the first time to wrest from aliens some of the powers of economic control of the country and place them in the hands of the citizens' ^[5].

In spite of the encomiums which heralded the enactment of the Act and the measures put in place by government to ensure the success of the scheme, a lot of negative devices were evolved to make the legislation stillborn. It was commonplace to find companies dominated by foreign partners inviting a few non-influential and unpatriotic Nigerians, such as drivers and house helps, to act as fronts, by empowering them financially for the sole purpose of defeating the indigenization legislation through a *de jure* acquisition of equity.

Lasisi v. Registrar of Companies ^[6] was the first reported of such cases in any jurisdiction with similar indigenization statute, where a Registrar's statutory power to refuse to incorporate a proposed company was tested against specific provisions and the intent of an indigenization statute.

Facts of the case

The petitioner submitted a memorandum and articles of association to the Registrar of Companies for registration, but the Registrar refused to incorporate the proposed company, on the ground inter- alia, that certain clauses of the memorandum were against sections 4 and 5 of the Nigerian Enterprises Promotion Decree 1972. The registrar argued that some clauses in the submitted memorandum of association gave vent to the proposed company to carry on business exclusively reserved for Nigerian citizens or associations.

Not satisfied with the decision of the Registrar, the petitioner applied for an order of mandamus to compel the Registrar to recant.

Held

In refusing the application, His Lordship held that since many of the objects of the proposed company were within Schedules I and II of the Indigenization Decree and, therefore, unlawful, the Registrar was justified in refusing registration.

Comments

The interest generated by this case lie not so much with the conclusions of this court, but with the conclusions of the Supreme Court, while reversing the decision of the trial court ^[7]. The trial court had refused to issue an order of mandamus directing the registration of British Leyland International (Nigeria) Limited, because of its supposed extra legal alien relationship, coupled with objects which infringed some sections of the Indigenization Act.

In the lead judgment, Bello JSC conceded and agreed with suggestions that Nigerian subscribers were being used as 'frontmen', in the following statement ^[8]:

It has been suggested... that the whole arrangement is a device to defeat the object of the Nigerian Enterprises Promotion Decree and that the two subscribers (Nigerians) are being used as frontmen to achieve that purpose. We think there is some evidence in the records of appeal to speculate on this suggestion. It appears that

the alien company, the British Leyland International Limited, has the intention of carrying on business in Nigeria and for that reason it must incorporate a separate entity... Under the circumstances, it is possible to speculate that there must have been some arrangements between the subscribers to the memorandum and the alien company or its agents with regard to the shares or other financial interest in the proposed company. However, these arrangements have not been disclosed in the affidavit... The question whether an alien has an interest or owns shares in the proposed company can only be answered after its remaining or part of the 998 shares have been allotted and the shareholders have been published. It appears to us that the objection of the registrar... is premature.

...We are of the view that the learned judge erred in law in holding that the company is not a Nigerian association within the meaning of the Nigerian Enterprises Promotion Decree. The evidence before him does not show that any alien, corporate or incorporate, owns any of its share or other financial or proprietary interest. The evidence, however, shows that two Nigerian citizens own its two shares the question as to who will own the remaining share is a matter of speculation and is therefore a question that a court of law should not indulge in.

The stance of the Supreme Court had the effect of emasculating the growth and development of the Indigenization Act. The Supreme Court postulated that there must be a strict breach of the indigenization law. In other words, there must be evidence of an alien holding at least one share before a court could intervene. It is submitted that undisclosed sophisticated formal or informal arrangements between nationals and foreigners resulting in *de facto* control by aliens should be beyond the capacity of the court to discern through evidential rules. In a similar case, *Kehinde v. Registrar of Companies* ^[9], the Registrar of Companies refused to register Honda Manufacturing (Nig.) Ltd, on grounds that the articles of association of the company contained provisions that enabled Japanese minority shareholders to effectively control the company. In his view, granting corporate personality to such an arrangement would conflict with the intent of Nigerian Enterprises Promotion Act of placing control of the economy in the hands of Nigerian. Anyaegbunam J., who presided, while agreeing that the provision of weighted votes in the articles of the company had effect and in fact, made a mockery of the majority shareholding in favour of Nigerians, as provided for by the Nigerian Enterprises Promotion Decree, 1977, 'stopped short of saying his hands were tied, by acceding to the application for mandamus to compel the Registrar to register the company.

Decisions like these lay bare the adversarial system of adjudication in the quest for truth and justice. The courts in both cases had reasons to believe that the indigenization objects were being hoodwinked, but allowed itself to be tied by the process; thus, allowing the *hoi polloi* to question its role and duty in the face of a clear assault on a popular state

policy. The cradle from whence the system was foisted had not been slavish to the process. In *R.v. Preston Supplementary Benefits Appeals Tribunal, Ex P. Moor* ^[10], a case decided a year before the Supreme Court reversed the case under review, the English Court of Appeal refused to grant *certiorari*, in the face of clear error in law, to give benefit to four students living together and claiming to be householders, a claim which was unshakable in law. According to the Court of Appeal, the decision of the tribunal represented the better way of administering the Supplementary Benefit Act 1966. The statement of Lord Denning in that case is instructive;

It is plain that Parliament intended that Supplementary Benefit Act, 1966 should be administered with as little technicality as possible. It should not become the happy hunting ground of lawyers. The courts should hesitate long before interfering by *certiorari* with the decisions of the appeal tribunals. The courts should not enter into meticulous discussion of the meaning of this or that word in the act. They should leave the tribunals to interpret the act in a broad reasonable way, according to the spirit and not to the letters.

Relating the foregoing to the case under review, the Supreme Court should have borrowed a leaf from the wisdom of Lord Denning, MR, by granting reasonable latitude to the Registrar, an important partner in ensuring the effective operation of the Indigenization Act, to interpret the legislation in a broad and reasonable way, according to the spirit and not to the letter.

Conclusion

Strict application of statutory provisions by the court may not evolve a justice based economic system. It is inequitable to allow ingenuous expatriates to ruin the spirit and intent of state commercial policies by cashing on technical legal compliance. The Nigerian court must be tolerant in allowing reasonable latitude of interpretation in areas where the administrative authorities are themselves specialists ^[11].

References

1. Akeredolu Ale EO. Private foreign investment and the underdevelopment of indigenous entrepreneurship in Nigeria. In: Gavin Williams (ed). Nigeria; Economy and Society London: Rex Collins, 1976, 109.
2. Section 4(a) & (b) of the 1972 Act.
3. The Act divided enterprises into two schedules. All enterprises listed in schedule 1 were reserved exclusively for Nigerians. Schedule II permitted foreign participation in a registered company only if the paid-up share capital exceeded N400,000 or the annual turnover exceeded N1 million and only if the equity participation of Nigerian citizens or association was at least 40 percent.
4. Akinjide RO. Attorney General and Minister of Justice (1979-1983). This is an excerpt from his speech delivered at the 21st Annual Conference of the Nigeria Association of Law Teachers, Hosted by UNILAG on 22nd March 1983.
5. AgudaAkinola. Nigeria in search of social justice through the law'. Public lecture delivered at the University of Ife on 5th March, 1979.

6. Barnes KD. Incorporating foreign control over Nigerian companies? The registrar's refusal considered. JPPL. 1984; 1(2):55.
7. Lasisi v. Registrar of Companies, 1FNR, 1976, 101.
8. Ibid at 108.
9. 1979, 3LRN 231.
10. IWL. See also R.v. Barnsley Supplementary Benefits Appeal, ex p. Atkinson, IWL, 1975-1976, 624-1047.
11. A similar criterion is used for judicial review in the United States. See B. Schwartz and H.R.W. Wade, Legal Control of Government (Oxford: Oxford University Press, 1972, 232.