

MEDICAL HEALTH WORKERS UNION OF NIGERIA (MHWUN)

V.

1. HONOURABLE MINISTER OF LABOUR AND PRODUCTIVITY
2. THE REGISTRAR OF TRADE UNIONS
3. THE REGISTERED TRUSTEES OF NIGERIAN ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA

AND

THE REGISTERED TRUSTEES OF NIGERIAN ASSOCIATION OF COMMUNITY HEALTH PRACTITIONERS OF NIGERIA

V.

1. MEDICAL AND HEALTH WORKERS UNION OF NIGERIA (MHWUN)
2. HON. MINISTER OF LABOUR AND PRODUCTIVITY
3. THE REGISTRAR OF TRADE UNIONS

COURT OF APPEAL (ILORIN DIVISION)

CA/IL/30/2004

MUHAMMAD SAIFULLAHIMUNTAKA-COOMASSIE, J.C.A. (Presided and Rend the Leading Judgment) ABOYI JOHN IKONGBEH, J, C, A.

TIJJAN! ABDULLAHI, J,C,A.

ACTION - Commencement of action - Registration of Trade Union – action challenging refusal of application for registration as a trade union - When and how to commence.

ACTION – Parties to action - Joinder of parties - Whether court can force a defendant on an unwilling plaintiff'- When defendant can he allowed to join in an action.

ACTION - Parties to an action - Joinder of parties - Who may be joined as defendants in a suit - Principles governing.

ACTION - Venue - Action in the Federal High Court - Powers of a trial Judge with respect to venue - Scope of - Exercise of -Whether appealable - Order II rule 4 of the Federal High Court - (Civil Procedure) Rules, 2000.

ADMINISTRATIVE LAW- Certiorari - Nature and purport of- When can be resorted to.

ADMINISTRATIVE LAW - Quasi-judicial action - Meaning of.

APPEAL - Appeal against refusal of registration of trade union When to make - How lo make.

APPEAL - Right of appeal - Exercise of power of Federal High Court Judge with respect to venue - Whether appealable.

CERTIORARI - Certiorari - Nature and purport of - When can be resorted to.

CONSTITUTIONAL LAW - Fundamental rights - Right to freedom of association granted by section 40

Of the 1999 Constitution -Whether absolute.

CONSTITUTIONAL LAW - Rules of court - Federal High Court Rules - Source of- Constitutional status of.

CONSTITUTIONAL LAW - Trade Union Act – Provision of: Whether inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

- COURT - Federal High Court - Power of Judge with respect to venue - Scope of- Exercise of- Whether appealable.
- COURT - Rules of court - Federal High Court Rules - Source of -Constitutional status of.
- COURT - Rules of court - Status and aim of- Need to obey - Federal High Court Rules, 2000 - Source of- Constitutional status of.
- INTERNATIONAL LAW - Treaties - Enactment into Nigerian law by National Assembly - Need therefore- Abidingness of before and after enactment of- Untenanted ILO Convention - Force of in Nigerian Law.
- INTERNATIONAL LAW - Treaties - Treaty entered into by Nigeria -Enforceability of- Precondition therefore - Where not passed into law by National Assembly - Whether has binding force.
- JUDICIAL REVIEW - Certiorari - Nature and purport of - When can be resorted to.
- LABOUR LAW - Commencement of action - Registration of Trade Union - Action challenging refusal of application for registration as a trade union - When and how to be commenced.
- LABOUR LAW - International Labour Organization Convention -Status of- Whether has binding force in Nigeria.
- LABOUR LAW - Trade Unions - Power to register same - Where lies - How exercisable - Factors to consider when exercising discretion to register a trade union - Act of bodies registering trade unions - Nature of.
- LEGISLATION - Treaties - Treaty entered into by Nigeria -Enforceability of- Precondition therefore - Where not passed into law by National Assembly - Whether has binding force.
- PRACTICE AND PROCEDURE - Parties to an action - Joinder of parties - Whether court can force a defendant on an unwilling plaintiff- When defendant can be allowed to join in an action.
- PRACTICE AND PROCEDURE - Parties to an action - Joinder of parties - Who may be joined as defendants in a suit - Principles governing.
- PRACTICE AND PROCEDURE - Rides of court - Status and aim of - Need to obey - Federal High Court Rules, 2000 - Source of -Constitutional status of.
- PRACTICE AND PROCEDURE - Venue - Action in the Federal High Court - Powers of a trial Judge with respect to venue -Scope of- Exercise of- Whether appealable - Order II rule 4 of the Federal High Court (Civil Procedure) Rules, 2000.
- STATUTE - Trade Union Act - Provisions of - Whether inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999
- STATUTE - Treaties - Enactment into Nigerian Law by National Assembly - Need therefore - Abidingness of before and after enactment of- Untenanted International Labour Organization Convention - Force of in Nigerian Law.
- TRADE UNION - Registration of Trade Union - Commencement of action - Action challenging refusal of application for registration as a Trade Union - When and how to be commenced.
- TRADE UNION LAW - International Labour Organization Convention - Status of- Whether has binding force in Nigeria.
- TRADE UNION LAW – Registration of Unions-Appeal against refusal of application – How to make.

TRADE UNION LAW – Trade union – power to register same -Where lies – how exercisable – factors to consider when exercising discretion to register a trade union - Act of bodies registering trade unions – nature of.

TRADE UNIONS LAW – Trade unions Act - Provisions of - Whether inconsistent with the provisions of the Constitution of the Federal Republic of Nigeria, 1999.

WORDS AND PHRASES - Certiorari - Meaning of.

WORDS AND PHRASES - Quasi judicial action - Meaning of.

Issues:

1. Whether the federal High Court, and Ilorin Judicial Division of the court in particular, has the jurisdiction to entertain the suit
2. Whether it was correct to have commenced the action by certiorari proceedings, and if not whether the failure to adopt the correct procedure vitiated the proceedings.
3. Whether the trial court was correct to have distinguished the decision of the Supreme Court of Nigeria in *Osawe v. Registrar of Trade Unions* (1985) 1 NWLR (Pt. 4) 755 which decided similar issue on cognate sections of the Trade Unions Act and the Constitution.
4. Whether the trial court was right to have relied on Articles 87 and 89 of the International Labour Organization Convention to support his judgment when those conventions have not been domesticated as Nigerian law.
5. Whether the trial court was right in holding that the Medical and Health Workers Union of Nigeria was a necessary party to the suit and in joining her accordingly even though there was no relief sought against her at the trial.

Facts:

The 3rd respondent, the registered trustees of Nigerian association of community health practitioners of Nigeria by a letter dated 28th march, 2002 applied to the 1st respondent, the Hon. Minister of labour and productivity to be registered as a trade union. The 1st respondent thereafter directed the 3rd respondent to the 2nd respondent, the registrar of trade unions who was directly responsible for the registration of trade unions. Upon the receipt of the 3rd respondent's application, the 2nd respondent looked into the application and sent his recommendation to the 1st respondent. By a letter dated 19/2/2003, the 1st respondent refused the application of the 3rd respondent to be registered as a senior staff trade union.

The 3rd respondent was dissatisfied with the refusal and instituted an action at the Ilorin division of the federal high court. By a motion *ex pane* dated 4/3/2003 and filed on 5/3/2003 the 3rd respondent sought and obtained leave to apply for a judicial review of the decision of the Honourable Minister of Labour and Productivity and the Registrar of Trade Unions, the 1st and 2nd Respondents respectively and claimed the following reliefs:

- i. An order of certiorari to remove into this Honourable court for purpose of being quashed, the decision of the respondents contained in a letter dated 19th February, 2003 Ref. No.ML. 113/147/1/76 refusing the registration of the applicants as Senior Staff Trade Union.
- ii. Order of mandamus compelling the respondents to register the applicants as a Senior Staff Trade Union under the Trade Union Act, Cap. 437 as amended.
- iii. Declaration that it is unconstitutional, illegal, unlawful and against the provisions of conventions 87 and 89 of the International Labour Organization for the respondents to refuse to register the applicant as a Senior Staff Trade Union.
- iv. Declaration that it is ultra vires the powers of the respondents to refuse, or neglect to register the applicant as a Senior Staff Trade Union without following the provisions of the Trade Unions Act, Cap. 437 as amended or in total violation of the provisions of the Act.
- v. Order directing the respondents to forthwith register the applicant as a Senior Staff Trade Union" After the grant of the 3rd respondent's ex pane motion, the 3rd respondent filed a motion on notice which was served on the 1st and 2nd respondents who filed a notice of preliminary objection challenging the competency of the 3rd respondent's action. The objection was overruled. Consequently, the 1st and 2nd respondents filed their counter-affidavit and the motion on notice was duly heard After the parties had been heard and the matter was adjourned for judgment, the appelland, the Medical and Health Workers Union of Nigeria (MHWUN) by a motion on notice dated 11/2003 prayed the court for the following reliefs:

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- (I) An order joining the applicant, Medical and Health Workers Union of Nigeria (MHWUN) as defendant/ respondent in this suit, and
 - (ii) An order granting the applicant leave to be heard on the plaintiff/applicant's application be fore judgment can be delivered on it."

After hearing the motion, the trial court on 5/4/2004 granted the application and joined the Medical and Health Workers' Union of Nigeria as a co-defendant. Upon being joined as a co-defendant, the appelland filed a counter-affidavit dated 14/5/2004, and all the parties were again heard on 11/6/2004 on the substantive case. The trial court delivered its judgment on 16/7/2004 wherein the 3rd respondent's reliefs i, ii, iii and v were granted. The trial court in conclusion held thus:

"I therefore hold that the non-registration of the applicant is also invalid because it has denied the applicant the right to associate and belong to a trade union of choice recognized by the constitution and the African Charter on Human Rights. See the Musa v. INEC case (supra). In the light of the foregoing, this application succeeds. I hereby hold that the applicant is entitled to the reliefs sought in the matter i.e. reliefs i, ii, iii and v."

The appellant was dissatisfied with the above decision and it appealed to the Court of Appeal. The 3rd respondent, with leave of the court, appealed against the ruling of the trial court dated 5/47 2004 in which the appellant was joined as a necessary party.

The issue of the venue was also taken up on appeal; the appellant contending that the action ought to have been instituted in Abuja where the cause of action arose.

Order 11 rules 1(3) and 4 of the Federal High Court Rules, 2000 states as follows:

"1(3) ... All actions for recovery of revenue, penalties and forfeitures, and also all actions against public officers, shall be commenced and tried in the judicial division of the court in which the cause of action arose.

4 No proceedings which have been taken before the plea in objection shall be in any way affected thereby, but the Judge shall order the cause be transferred to the Judicial Division to which it is proved to his satisfaction, to belong, or, failing such proof, order that it be retained and proceed in the court in which it has been commenced, and the order shall not be subject to appeal."

Sections 3(2) and 5(4) of the Trade Unions Act, Cap. 437, Laws of the Federation of Nigeria, 1990, states as follows:

"3(2) No combination of workers or employers shall be registered as a trade union save with the approval of the Minister on his being satisfied that it is expedient to register the union either by regrouping existing trade unions, registering a new trade union or otherwise howsoever; but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.

5(4) The Registrar shall not register the trade union if it appears to him that any existing trade union is sufficiently representative of the interests of the class of persons whose interests the union is intended to represent.

Section 12(1) 1999 Constitution states as follows:

"12(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly."

Held (Unanimously allowing the 1st appeal and dismissing the 2nd appeal):

1. **On Extent of discretion of a Federal High Court Judge as to venue -**

The provision of Order 11 rule 4 of the Federal High Court (Civil Procedure) Rules, 2000 has given the trial Judge the final say and discretion as to venue. The decision of the trial court on the issue of venue is final and is not appealable. In the instant case the appellant failed to satisfy the trial court that Ilorin Division was not the appropriate venue, hence it ordered the matter to be retained at Ilorin Division. The appellant having appealed against the above decision in spite of the provisions of the above rule was in breach of the rules of court. (P. 147, paras. B-F)

2. On Where lies power to register trade union and how exercisable —

By virtue of sections 3(1) & (2) and 5(1), (2), (3), (4) and (5) of the Trade Unions Act, the Honourable Minister of Labour and Productivity and the Registrar of Trade Unions are endowed with the power to exercise their discretion in registering or refusing to register an applicant who applies to be registered as a trade union. This discretion is always exercised after various factors have been considered, such as:-

- (a) That no proper objection has been raised;
- (b) That none of the purposes of the Trade Union is unlawful; and
- (c) That the requirements of the Act and of the regulations with respect to the registration of Trade Unions have been complied with.

In addition to this, the Registrar shall refuse to register a Trade Union if it appears to him that any existing trade union is sufficiently representative of the interests of the applicant. It is after the consideration of these facts that the Minister of Labour and Productivity and the Registrar of Trade Unions would take their decision under section 5 of the Act. This is undoubtedly a quasi-judicial act. (P. 149, paras. D-H)

Per IKONGBEH, J.C.A. at pages 159-160, paras. G-D:

"I agree with him entirely that with regard to the first appeal, i.e., the appeal by the Medical and Health Workers Union of Nigeria (M.H.W.U.N.). which was joined as the 3rd respondent or defendant before the lower court. The learned trial Judge was in error to have acceded to the request by the 3rd respondent herein, which was the applicant or plaintiff before the lower court, i.e., the Registered Trustees of National Association of Community Health Practitioners of Nigeria, to have an order made in effect forcing the 1st and 2nd respondents herein to register it. I entirely agree with my learned brother that in the circumstances of this case the 1st and 2nd respondents properly exercised their discretion within the law when they refused to register the 3rd respondent. Their refusal was justified in the provisions of section 3(2) of the Trade Unions Act, which entitled them to refuse to register a trade union "to represent workers or employers in a place where there already exists a trade union". In their letter to the 3rd respondent refusing to register it as a trade union they reminded it of the fact that at the time it applied for registration its members were still members of existing trade unions. I agree with my learned brother that the reason given by the learned Judge for rejecting the stand of the 1st and 2nd respondents is not tenable. According to the Judge, as the question whether or not there was another trade union to cater for members of the 3rd respondent was still in a state of flux, the 3rd respondent was entitled to be registered. I agree with my brother that the affidavit evidence before the Judge did not support this view. The evidence shows that the 1st and 2nd respondents were justified in taking the view **that section 3(2) of the Trade Unions Act applied.**"

3. **on how and when to appeal against refusal of application to be registered as a trade union** – pursuant to section 5(5) (b) of the trade unions act, cap. 437, laws of the federation of Nigeria, 1990, an official or member of the union, who was refused registration may, within the period of thirty days (30 days) beginning with the date so specified, appeal to the appropriate high court against the refusal. No specific mode of appeal is prescribed by the section. Hence an applicant may proceed under any of the approved modes of commencing an action seeking redress. In the instant case, the 3rd respondent approached the trial court under the provision of order 47 rules 1 of the federal high court rules. The resort to judicial review by way of certiorari was appropriate and the lower court therefore had jurisdiction to hear and determine the case pursuant to section 251 (1) @ of 1999 constitution of the federal republic of Nigeria. [NEPA v. Edegero (2002) 18 NWLR (pt. 798) 79 referred to.] (Pp. 149-150, paras. H-B; 150, paras. G-H).
4. **on whether condition stipulated to be met by an applicant for registration as a trade union are constitutional** – the right of freedom of association granted by section 40 of the 1999 constitution is not absolute. It is subject to the provision of section 45 of the same constitution. The provision of section 3 and 5 of the trade union act, cap. 437 which spell out condition to be met by an applicant before it could be registered as a trade union are not inconsistent with the provisions of the 1999 constitution. [Osawe v. registrar of trade unions (1985) 1 NWLR (pt. 4) 755 referred to] (Pp. 152, para. E; 154, para. G-H; 155, paras. B-C).
5. **on who may joined as defendant in a suit** – by virtue of the provision of order 12 rule 3 of the federal high court rules 2000, all persons may be joined as defended whom the right to any relief is alleged to exist, whether jointly or severally. [Ajayi v. jolayemi (2001) 10 NWLR (pt. 722) 516; onibudo v. Abdullah (1991) 2 NWLR (pt. 172) 230 referred to.] (Pp. 158, paras. F-G; 159, paras. C-D)

Per MUNTAKA-COOMASSIE, J.C.A. at pages 158-159, paras. G-C:

“In the instant case, the interest of the 1st respondent is to prevent the registration of the appellant as a trade union in order to forestall their breaking away from them. In paragraphs 8 and 9 of the affidavit in support of the motion for Joinder, the 1st respondent averred as follows:

‘8. I am also aware that the decision of the respondents which the plaintiff/applicant is seeking the order of this honourable court to quash as contained in the 1st respondent’s letter reference No. MLIB/147/1/76 dated 19th February, 2003 specifically stated that under the existing trade union act, the medical and health workers of Nigeria, the applicant herein has exclusive jurisdiction to organize members of the plaintiff/applicant and therefore decline to register the applicant as a new trade union.

9. All the relief now being sought by the plaintiff/applicant in this suit if granted by this honourable court will affect the existing interest of the applicant’.

By these averments, it is my considered view that the 1st respondent has disclosed sufficient interest in the claims/relief before the lower court, and the lower court, with respect, was right in joining the 1st respondent as a defendant in this case.”

6. **On who may be joined as defendant in a suit-**

The court cannot force a defendant on an unwilling plaintiff who has no case against that defendant. Yet there must be situations where a defendant can insist that he be allowed to join the fray against the plaintiff to protect himself against the ill effect of the relief that the plaintiff might obtain from the court. (P. 160, paras. F-G)

Per IKONGBEH, J.C.A. at pages 160-161, paras. F-B:

"No doubt, it is generally the law that the court cannot force a defendant on an unwilling plaintiff who has no case against that defendant. Yet there must be situations where a defendant can insist that he be allowed to join the fray against the plaintiff to protect himself against the ill effect of the relief that the plaintiff might obtain from the court. I think this is one such circumstance. The M.H.W.U.N. in this case felt that unless it entered the fray and thwart the efforts of the appellant in its quest, its (M.H.W.U.N.'s) interests would be adversely affected if the Registered Trustees of National Association of Community Health Practitioners of Nigeria were allowed to have its way unchecked and it might later find itself faced with the plea of estoppel by standing by. I think it was perfectly justified in wanting to join the fray in the circumstances of this case. Although the appellant had framed the reliefs it sought from the lower court to look as if it did not concern the M.H.W.U.N., clearly, if those reliefs are granted they are bound to have adverse repercussions on the latter. It claimed that members of the appellant were part of it and that the registration of the appellant would lead to legally unjustifiable split-up of it. In the circumstances, I agree that even if the appellant pretended not to want do battle with the M.H.W.U.N. the latter was perfectly justified in choosing to do battle with the ostensibly unwilling appellant to protect itself from the adverse effect of the appellant's activities."

7. **On Binding force of international treaty not enacted into law by National Assembly —**

An international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. Before its enactment into law by the National Assembly, an international treaty has no such force of law as to make its provisions justiciable in Nigerian courts. Where, however, the treaty is enacted into law by the National Assembly, it becomes binding and our courts must give effect to it like other laws falling within the judicial powers of the court. In (he instant case, there was no evidence before the court that the International Labour Organization Convention, even though signed by the Nigerian Government, had been enacted into law by the National Assembly. In so far as the International Labour Organization Convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria and it cannot possibly apply. This means that relief (iii) was granted based on a non-existing right and law and it was consequently set aside. [Abacha v. Fawehinmi (2000) 6 NWLR (Pt.660) 228 referred to and applied] (Pp. 156, paras. A-F; 157, paras. B-E)

8. **On Nature and purport of certiorari –**

The primary purpose of certiorari in modern administrative law is to quash an ultra vires decision. Certiorari is technically an order bringing a decision of a public body to the High Court so that the court may determine whether the decision is valid. Where the decision is ultra vires, certiorari will issue to quash it. By quashing the decision, certiorari confirms that the decision is a nullity and is to be deprived of all effect. In modern time, certiorari is the means of controlling unlawful exercise of power by setting aside decisions reached in excess or abuse of power. (P. 150, paras. E-G)

9. **On meaning of a quasi-judicial action -**

A quasi-judicial action is a term applied in the action discretion, etc. of public administrative officers or bodies who are required to investigate facts or ascertain the evidence of facts, hold hearings, weigh evidence and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature. (P. 149, paras. C-D).

10. **On status and aim of rules of court and need to obey same -**

The rules of court are to be obeyed: they are not mere rules; they are made to help the cause of justice and not to defeat justice. They are therefore aids to the court and not masters of the court: they are subsidiary legislations but equally they possess the potent force of the principal legislation when validly made. In the instant case, the Federal High Court (Civil Procedure) Rules were made pursuant to the provision of section 254 of the 1999 Constitution. Hence, they possess constitutional force. [Co-operative bank of eastern Nig. Ltd v. Ogwuru (1991) 1 NWLR (Pt. 168) 458 referred to.] (Pp. 147-148, paras, F-B)

Nigerian Cases Referred to in the Judgment:

A-G, anambara state v. okeke (2002) 12 NWLR (pt. 782) 575
Abacha v. fawehinmi (2000) 6 NWLR (pt. 660) 228
Abiola v. federal republic of Nigeria (1995) 3 NWLR (pt. 382) 203
Aleatel kabelmetal (nig) plc. V. ojuegbe (2003) 2 NWLR (pt. 805) 429
Adegoke motors ltd v. adesanya (1989) 3 NWLR (pt. 109) 250
Ajayi v. jolayemi (2001) 10 NWLR (pt. 722) 516
Babalola v. state (1989) 4 NWLR (pt. 115) 264
C&CB v. Nwokocha (1998) 9 NWLR (pt. 564) 98
Clement v. iwuanyanwu (1989) 3 NWLR (pt. 107) 39
Co-operative bank of eastern (nig) ltd v. ogwuru (1991) 1 NWLR (pt. 168) 458
Dalhatu v. tuarki (2003) 15 NWLR (pt. 843) 310
Ige v. farinde (1994) 7 NWLR (pt.354) 42
Inec v. musa (2003) 3 NWLR (pt. 806) 72
Nepa v. edegbero (2002) 18 NWLR (pt. 798) 79
Nwaoboshi v. milad delta state (2003) 11 NWLR (pt. 831) 305
Oau v. olujide & sons (2001) 7 NWLR (pt. 712) 230
Osawe v. registrar of trade union (1985) 1 NWLR (pt. 4) 755
Stitch v. A-G, federation (1986) 5 NWLR (pt. 46) 107
University of Nigeria v. orazulike trading co, (1989) 5 NWLR (pt. 119) p. 19

Nigerian Statutes referred to in the judgment:

Constitution of the Federal Republic of Nigeria, 1999. Ss. 12 (1) 40:45(1): 251(1)(r): 254

Companies and Allied Matters Act. Cap. 59, laws of the Federation of Nigeria. 1990

Trade Unions Act. Cap. 437, Laws of the federation of Nigeria, Ss. 3 (1). (2) And 5 (1). (2). (3). (4) And (5) (6)

Foreign Statute Referred to in the Judgment:

International Labour Organization Conventions 87 and 89.

Nigerian Rules of Court Referred to in the Judgment:

Court of Appeal Rules. O. 3 rr 2, 4 and 5. O. 6 rr. 2. 4 and 5 Federal High Court (Civil Procedure) Rules. 2000. O 11 rr 1 (3).4:0.12r. 3:0. 47

Books Referred to in the Judgment:

Black's Law Dictionary Sixth Edn. p. 847

Judicial Remedies in Public Law. 1992 by Clive Lewis, p. 144

Appeals:

These were two appeals. The first was the one against the judgment of the Federal High Court given in favour of the 3rd respondent and granting its claims. The second was against the ruling of the same Federal High Court which joined the appellant as a necessary party to the suit. The Court of Appeal, in a unanimous decision, dismissed the second appeal. It, however, allowed the first appeal set aside the reliefs granted to the 3rd respondent and dismissed the suit.

History of the Case:

Conn of Appeal:

Division of the Court of Appeal to which the appeal was brought: Court of Appeal. Ilorin

Names of Justices that sat on the appeal: Muhammad Saifullahi Muntaka-Coomassie, J.C.A. (Presided and Read the Leading Judgment); Aboyi John Ikongbeh. J.C.A.; Tijjani Abdullahi. J.C.A.

Appeal No.: CA/IL/30/2004

Date of Judgment: Wednesday. 13th April. 2005

Names of Counsel: Alhaji G. A. Adekola Kaseem. SAN (with him, I. A. Oputa Ajieh, Esq.) -for the Appellant.

Taiwo Abidogun, Esq. -for the 1st and 2nd Respondents.

Mr. Yusufu O. Ali. SAN (with him, R. O. Balogun. Esq., B. Ajanaku.Esq.,A. O. Amoloye. Esq. and O. Olubakinde, Esq.) -for the 3rd Respondent.

High Court:

Name of the High Court: Federal High Court, Ilorin

Name of the Judge: Olayiwola, J.
Date of Judgment: Friday, 16th July, 2004
Date of Ruling: Monday. 5th April. 2004.

Counsel:

Alhaji G. A. Adekola Kaseem. SAN (with him. I. A. Oputa Ajieh, Esq.) -for the Appellant.

Taiwo Abidogun, Esq. -for the 1st and 2nd Respondents. Mr. Yusufu O. Ali, SAN (with him, R. O. Balogun. Esq.. B. Ajanaku, Esq.. A. O. Amoloye, Esq. and O. Olubakinde. Esq.) -for the 3rd Respondent

MUNTAKA-COOMASSIK, J.C.A. (Delivering the Leading Judgment): The Registered Trustee of National Association of Community Health Practitioners of Nigeria by a motion ex pane, dated 4/3/2003 and filed on 5/3/2003 before Federal High Court.

Ilorin sought and obtained leave to apply for judicial review of the decision of the Honourable Minister of Labour and Productivity and the Registrar of the Trade Unions and claimed the following reliefs:

- "(i) An Order of certiorari to remove into this Honourable court for purpose of being quashed the decision of the respondents contained in a letter dated 19th February. 2003 Ref. No. ML. 113/147/1/76 refusing the registration of the applicants as Senior Staff Trade Union.
- (ii) Order of mandamus compelling the respondents to register the applicants as a Senior Stall Trade Union under the Trade Union Act. Cap. 437 as amended,
- (iii) Declaration that it is unconstitutional, illegal, unlawful and against the provisions of Convention 87 and 89 of the International Labour Organization for the respondents to refuse to register the applicant as a Senior Staff Trade Union.
- (iv) Declaration that it is ultra vires the powers of the respondents to refuse, or neglect to register the applicant as a Senior Staff Trade Union without following the provisions of the Trade Union Act, Cap. 4.37 as amended or in total violation of the provisions of the Act. (v) Order directing the respondents to forthwith register the applicant as a Senior Staff Trade Union". See page 25 of the record.

After the ex pane motion was moved and was granted by Hon. Justice P. F. Olayiwola of the Federal High Court, Ilorin on 6/3/2003, the applicant filed a motion on notice pursuant to the provisions of Order 47 of the Federal High Court Rules, 2000 which was served on the respondents.

The gist of the applicant's case was that by a letter dated 28th March, 2002, attached as exhibit NAC2, the applicant applied to the 1st respondent, (Hon. Minister of Labour and Productivity) to be registered as a Trade Union. The 1st respondent thereafter directed the applicant to the 2nd respondent, (The Registrar of Trade Unions) who was directly responsible for the registration of Trade Unions the letter directing the applicant to the 2nd respondent was attached as

exhibit NAC 3 Upon the receipt of the applicant's application the 2nd respondent looked into the application and sent his recommendation to the 1st respondent. By a letter dated 19/2/2003 which was attached as exhibit NAC 5, the 1st respondent refused the application of the applicant to be registered as a Senior Staff Trade Union. It was this refusal that led to the institution of this action at Ilorin Division of the Federal High Court.

Upon the service of the motion on notice on the respondents, a notice of preliminary objection was filed challenging the competency of the said action. The objection was overruled on 30/2/2003. The learned trial Judge held in a nutshell that the action is a quasi judicial decision of the Registrar which the Federal High Court is vested with jurisdiction to hear and determine the matter by section 251(1) (r) of the Constitution, holding that the Registrar of Trade Unions is an agency of the Federal Government. He also agreed that issues of mandamus and injunction are not available at the National Industrial Court or Industrial Arbitration Panel. Consequently, the respondents filed their counter-affidavit and the motion on notice was heard on 28/10/2005. After the parties had been heard and the matter adjourned for judgment, the Medical and Health Workers Union of Nigeria (MHWUN) by a motion on notice dated 7/11/2003 prayed the court for the following reliefs:

- "(I) an order joining the applicant. Medical and Health Workers Union of Nigeria (MHWUN) as defendant/respondent in this suit, and
- (ii) An order granting the applicant leaves to be heard on the plaintiff/applicant's application before judgment can be delivered on it."

This motion was heard on 19/2/2004, and the lower court in its ruling dated 5/4/2004 granted the application and joined the Medical and Health Workers' Union of Nigeria as a co-defendant. In his ruling, learned trial Judge held as follows on page 96 of the record:

"...I would not hesitate to hold that the applicant herein is a necessary party to this suit and that their cause would not be affected by the fact that the main matter had been adjourned for delivery of judgment. However, the respondents have contended that the applicant herein did not depose to any fact however minute why it waited for so long before attempting to join the suit. I would however find succor for the applicant herein in the fact that:

- '(i) they were not joined as a party in the suit by the respondents on their own volition,
- (ii) there is no evidence that when they heard of the pendency of the suit that they stood by.'

Having regard to the foregoing this application succeeds, the applicant herein is hereby ordered to be joined as a defendant/respondent in the main matter".

Upon being joined as a co-defendant, the Medical Health Workers Union, hereinafter called (MHWUN), filed a counter-affidavit dated 14/5/2004, and all the parties were again heard on the 16/2004 on the substantive case. Thereafter, on the

16/7/2004, the learned trial Judge delivered his judgment wherein, the applicant's reliefs I, II, III and V were granted. The trial Judge in conclusion held thus:

"I therefore hold that the non-registration of the applicant is also invalid because it has denied the applicant the right to associate and belong to a trade union of choice recognized by the Constitution and the African Charter on Human Rights. See the *Musa v. NEC's* case (supra). In the light of the foregoing, this application succeeds. I hereby hold that the applicant is entitled to the reliefs sought in the matter i.e. reliefs I, II, III & V."

See page 136 of the Record of Proceedings.

It is against this decision that the appellant MHWUN. appealed to this court. Seven grounds of appeal were filed.

However, the applicant before the lower court filed a motion dated 2/11/2004, wherein it sought for extension of time to seek leave to appeal and extension of time to appeal against the ruling of the trial court dated 5/4/2004 in which MHWUN was joined as a necessary party. This application was taken and granted on 25/11/2004. In the notice of appeal, the applicant/appellant filed only one single ground of appeal, which will be set out at the appropriate time.

In accordance with Order 3 rules 2, 4 & 5 of this court, briefs of argument were filed and exchanged. In the appeal against the final judgment, the appellant i.e. MHWUN, filed their brief of argument in which six issues were distilled for the consideration of the appeal as follows;

- "1. Whether the Federal High Court, qua Federal High Court, and Ilorin Judicial Division of the court in particular has the jurisdiction to entertain the suit (Grounds I and 2).
2. Whether it was correct to have commenced the action by certiorari proceedings, and if not whether the failure to adopt the correct procedure vitiated the proceedings (Ground 3).
3. Whether the learned trial Judge was correct to have distinguished the decision of the Supreme Court of Nigeria in *Osawe v. Registrar of Trade Unions* (1985) 1 NWLR (Pt.4) 755 which decided similar issue on cognate sections of the Trade Union Act and the constitution (Ground 4).
4. Whether the learned trial Judge was right to have relied on Articles 87 and 89 of the ILO Convention to support his judgment when those conventions have not been domesticated as Nigerian Law. (Ground 5).
5. Whether the registration of the 3rd respondent as an incorporate association by the Corporate Affairs Commission ipso facto entitles the association to be registered as a Trade Union (Ground 6).
6. Whether the order of the lower court that the 3rd respondent should be registered as a Senior Staff Trade Union is correct, when there is no evidence before the court that all members of the association are Senior Staff within the context of the public service (Ground 7)."

This appeal will be considered first. Thereafter, attention will be turned to the appeal by the applicant before the trial court against the order joining MHWUN.

The 1st and 2nd respondents, who were the original respondents/defendants to the suit, did not appeal against the judgment of the lower court. In their brief of argument dated 31/1/2005, they raised preliminary objection to issues 4, 5 and 6 distilled from grounds of appeal numbers 5, 6, and 7 respectively of the appellant's brief of argument, and submitted that they were not predicated or do not arise out of the decision of the lower court and urged this court to strike them out. They did not formulate any issues for determination, but instead proffered argument on issue numbers 1, 2, 3, 4, 5 and 6, which I presumed to be those issues for determination formulated by the appellant in its brief of argument.

The 3rd respondent in its brief of argument dated 21/2/2004 adopted the issues for determination formulated by the appellant in its brief of argument. In addition, it raised preliminary objection in grounds 5, 6 and 7 of the notice of appeal, on the ground that:

- and
court.
- (a) The said grounds 5, 6 and 7 are not predicated on the decision of the trial court,
 - (b) The appellant is seeking to re-introduce new issues not canvassed in the trial court.

It was the contention of the 3rd respondent that the learned trial Judge did not hinge his decision on the provisions of Articles 87 and 89 of the International Labour Organization Convention, instead reliance was placed on the Constitution of the Federal Republic of Nigeria and African Charter on Human and Peoples Rights. They therefore submitted that those grounds of appeal are incompetent, hence the issues distilled from them are also consequently incompetent. Also they submitted that the trial Judge never based his decision on the fact that the 3rd respondent is a registered association under the "Companies and Allied Matters Act. (CAM A) Laws of the Federation of Nigeria 1990". Finally on ground 7, the respondents submitted, that it was not the case of the 3rd respondent that its members belong to the Senior Staff cadre. In support of these submissions the following cases, among others, were relied upon:

Babalola v. State (1989) 4 NWLR (Pt. 115) 264 at 2W C & CB v.
Nwokocha (1998) 9 NWLR (Pt. 564) 98/123 A.-G.. Anambra State v.
Okeke (2002) 12 NWLR (Pt. 782) 575 at 679.

The appellant in its reply brief dated 31/1/2005 submitted that ground 5 of the notice of appeal relates to reliefs (ii) and (iii) while ground 6 relates to court's pronouncement concerning the recognition of the 3rd respondent as a professional association and its registration under the Land Instrument Perpetual Act and Companies and Allied Matters Act, (CAMA).

In order to determine whether the disputed grounds of appeal relate to the judgment of the trial court or not, it would be pertinent at this stage, to reproduce those grounds thus: -

- "(5) The learned trial Judge erred in law to have held that it register the applicant Association as a Trade Union by virtue of Articles 87 and 89 of the International Labour Organization Convention.
- (6.) The learned trial Judge erred in law to have held that the registration and recognition of the applicant the National Association of Community Health Practitioners of

Nigeria as a corporate body, ipso facto entitles the Association to be registered as a Trade Union.

(7) The learned trial Judge erred in law to have ordered that the applicant be registered as Senior Staff Trade Union."

Now, the learned trial Judge, in giving judgment for the 3rd respondent held as follows:

"...I therefore hold that the non-registration of the applicant is also invalid because it has denied the applicant the right to associate and belong to a Trade Union of choice recognized by the Constitution and the African Charter on Human Right. See Musa v. JNEC's case (supra).

In the light of the foregoing, this application succeeds. I hereby hold that the applicant is entitled to reliefs sought in the matter i.e. reliefs I, II, III & V."

What then are the reliefs I, II, III and V? They have already been reproduced.

It is clear from the above that ground 5 of the notice of appeal challenged the holding of the lower court that it is unconstitutional? illegal and unlawful to register the applicants' association as a Trade Union by virtue of Articles 87 and 89 of the International Labour Organization Convention, it is a thing of surprise that the lower court did not determine whether the International Labour Organization Convention (herein ILO) is applicable or enforceable in Nigeria before he held as it did. This ground is traceable to or challenges the holding of the lower court, and in my opinion, it is competent.

On ground 6, I find it difficult to discover where the lower court held as the appellant alleged in this ground. The lower court only made reference to the Lands Instrument Perpetual Act and Companies and Allied Matters Act, when the issue of misrepresentation raised by the appellant was being resolved. In his words the trial Judge held thus:

"it has also been contended that there is a misrepresentation the status of trustees used by the applicant in the application for leave to apply for judicial review in this matter. In my opinion any misrepresentation in the status of trustees is not fatal to the case of the applicant as the applicant can sue or be sued in its corporate name as it has been registered under the Lands Instrument Perpetual Act; and the Companies and Allied Matters Act."

This finding was not challenged and neither was ground 6 traceable to it. In essence. I hold that ground 6 having failed to be predicated on the finding or decision of the trial court is incompetent. So also is the issue distilled from it? Ground 7. Obviously is a challenge to the grant of relief No. 5 and it is therefore predicated on the decision of the lower court. Consequently the notice of preliminary succeeds in part. I therefore hold that ground 6 having failed to be predicated on the judgment of the trial court is incompetent and is accordingly struck out. On the issue No 5 for determination distilled from same suffers the same fate. I.e. it is also struck out for being based on incompetent ground of appeal. On the other hand the objection against grounds 5 and 7 fails and it is accordingly refused. Mr. Kaseem. SAN learned counsel to the appellant, adopted this brief at the hearing and urged this court to allow the appeal. On the 1st issue for determination, he submitted that the Federal High Court, Ilorin Judicial Division is not competent to hear this case. [The proper venue, he submitted, is Abuja where all the defendants reside. He relied on the provisions of Order 1] rule I (3) of the Federal ; High Court Rules. 2002. He submitted that the trial court was wrong to have held that the cause of action arose in Ilorin when exhibit NAC 1 was written. (See the briefs) and that 1st and 2nd respondents are deemed to be resident in Abuja. He contended that the lower court ought to have transferred

this case to the proper venue for trial under the provision of Order 11 rule 3 of the Rules. Failure to do that is fatal to the respondents' case. See *University of Nigeria v. Orazulike Trading Coy.* (1989) 5 NWLR Pt. 1 19 p. 19 and *Dalhatu v. Turaki* (2003) 15 NWLR (Pt.8431 310 at 340, Rules of court he .submitted are meant in be obeyed. See- *Alcate kabelmetal (Nig.) Plc. Ojubgbele* (2003) 2 NWLR (Pt. 805) 429. On the 2nd issue for determination, he submitted further that certiorari was not the correct procedure to challenge the decision of the 1st respondent which was essentially administrative executive. He therefore submitted most humbly that the learned trial Judge erred seriously to have held that the union' certiorari was appropriate in tins case. He relied on the ease of *Nwaoboshi v. Milad Delia Stale* (2003) 1] NWLR (Pt.

305.

On issue No. 3, he submitted that the case of *Osawe v. Registrar of trade Unions* (1985) 1 NWLR (Pt. 4) 755 is the locus classicus on cases involving registration of Trade Unions. It was therefore wrong for the trial court to refuse to follow the decision of the Supreme Court in that case and instead re lied on the case of *INEC v. Musa* (2003) 3 NWLR (Pt. 806) 72 at 131 which has no bearing on the case at hand, as it relates to she issue of the registration of political parties under section 79(2) (c) of the Electoral Act. On the 4th issue, he submitted that the trial court was wrong to have held as it did that it was unconstitutional, illegal and unlawful and against the provisions of Articles 87 and 89 of the ILO Convention for the respondent to have refused to register the 3rd respondent as a Senior Staff Trade Union. He contended that ILO Convention having not been enacted into law in Nigeria has no force of law, he referred to section 12(1) of the 1999 Constitution, also *Abacha v. Fawehinmi* (2000) 6 NWLR (Pt. 660; 228.

On the issue number six, the learned counsel submitted that under part B of the third schedule to the Trade Union Act, only Senior Staff Unions which wholly comprised workers in the Senior Staff category both in the public and private sectors are listed, unlike the present 3rd respondent which comprised both Junior and senior workers. For a union to be qualified therefore, all its members must qualify to be senior staff in the service. He therefore submitted that the 3rd respondent was not qualified to be registered as a Senior Stall 'Trade Union as ordered by the lower court.

The learned counsel to the 1st and 2nd respondents. T. Abidogun of counsel at the hearing also adopted his brief of argument dated 31/1/2005 and urged this court to dismiss the appeal. On the 1st issue, the learned counsel submitted by virtue of the provision of Order II rule 4 of the Federal High Court any Federal High Court can sit and determine an)' matter anywhere in the country. He referred to the case of *Abiola v. Federal Republic of Nigeria* (1995] 3 NWLR (Pt. 382) 203 at 234. On the 2nd issue, the learned counsel submitted that the action was properly commenced by writ of certiorari proceedings. He referred to sections 5(1), (2), (3), (4) [and 5, section 3(1), (2) and (5) of the Trade Unions Act, Cap. 437 land submitted that the 1st and 2nd respondents were given the."discretion to either register or refuse to register a Trade Union and that discretion when exercised one way or the other amounts to the respondents taking quasi-Judicial decision.

On the 3rd issue, the learned counsel submitted that the trial Judge was correct in his approach by relying on the case of *INEC v. Musa* (supra) and *Abacha v. Fawehinmi* (supra) in arriving at his decision.

On the 4th issue, he submitted that as the question of domestication on ILO Convention was not made an issue before the trial court, the argument on it was incompetent. Nonetheless, he submitted that Nigeria being a signatory to the ILO Convention, she is bound to respect the

provisions of the Conventions; it is immaterial that the Conventions have not been domesticated as Nigerian Laws.

On the sixth issue for determination, he submitted that the issue of dichotomy into Senior or junior cadres was not an issue raised and or determined by the trial court.

Yusuf Ah (SAN) Esq. learned counsel to the 3rd respondent also adopted his brief of argument and urged this court to dismiss the appeal. On the 1st issue for determination, learned senior Advocate of Nigeria submitted that 3rd respondent has its Headquarters in Ilorin and the 1st - 2nd respondents have offices in Ilorin and in all other states of the Federation, he therefore submitted that the action is properly commenced before the lower court. Assuming, without conceding, that this action ought to be commenced in Abuja. Failure to so do was not fatal to the case. He referred to the provisions of Order 11 rule 1(3) of the Rules of court. The appellant in this case did not raise it timeously. He further submitted that the rules of court do not confer jurisdiction, they are only meant for guidance and convenience - *Clement v. Iwuanyanwu* (1989)3 NWLR (Pt.107) 39, (1989) 4 SCNJ 213 at 217.

On the 2nd. issue for determination, the learned SAN submitted that the act of the Minister or the Registrar of Trade Unions in the registration of Trade Unions or failure to register Trade can rightly and aptly be described as quasi-judicial if not pure judicial act. The combined effect of sections 3(1), (2), 5(1,) (2), (3), (4) and (5) of Trade Unions Act show beyond any doubt that the 1st and 2nd respondents must act judicially and judiciously in determining whether or not to register or decline to register a Trade Union. He relied on the case *Stitch v. A.-C. Federation* (1986) 5 NWLR (Pt. 46) 107. :

On the 3rd issue for determination, it was the counsel's submission that the case of *Osawe v. Registrar of Trade Unions* (supra) was cited out of context and therefore inapplicable and inapposite for the determination of the issues before the lower court. See *Adegoke Motors Ltd. v. Adesanya* (1989) 3 NWLR (Pt. 109) 250 On the 4th issue for determination, he submitted that the issue whether or not ILO Conventions have been domesticated never arose before the lower court as issues were not joined on the point. On the 6th issue for determination, the teamed SAN submitted that the 1st respondent's refusal to register the 3rd respondent as a Senior Staff Trade Union was not hinged on the fact that members of the 3rd respondent comprises both junior and senior cadre. He therefore submitted further that the issue never arose in this case and same was never pronounced by the trial court.

The appellant filed a reply brief dated 31/1/2005, in which he submitted that it did not waive its right to object to the venue of trial.

Having distinctively set out the submissions of all the counsel to the parties, I will now proceed to consider each and every issue raised by the parties in their respective briefs.

On the 1st issue for determination, Order 11 rules 1(3) and (4) of the Federal High Court (Civil Procedure) Rules, 2000 provides as follows:

"1(3) ... All actions for recovery of revenue, penalties and forfeitures, and also all actions against public officers, shall be commenced and tried in the -- judicial division of the court in which the cause of action arose."

The appellant has submitted that this action ought to have been tried in Abuja, where the cause of action arose, but the trial court thought otherwise. The learned trial Judge in his judgment held thus:

"Without mincing words, it is obvious that the cause of action in this matter arose from the letter of the applicant to the 1st respondent on 28/3/2002 for

registration - exhibit NAC 2. Subsequent correspondences between the respondents including exhibits NAC 3 and NAC 5, the letter of refusal of registration all refer to NAC 2. Exhibit NAC 2 emanated from Ilorin here. There is no denying therefore that this division is properly seized of this application for judicial review."

See page 126 of the Record of Proceedings. It is against this decision that the Appellant appealed.

I must admit that all the counsel especially learned senior Advocate displayed evidence of deep research and presented their respective cases very well and calmly. We cannot expect less anyway.

Now, it seems to me with all sense of responsibility that the provisions of Order 11 rule 4 of the Rules of that court i.e. F.H.C, have given the trial Judge the final say and discretion as to the venue. It provides thus:

"No proceedings which have been taken before the plea in objection shall be in any way affected thereby, but the Judge shall order the cause be transferred to the Judicial Division to which it is proved to his satisfaction, to belong, or, failing such proof, order that it be retained and proceed in the court in which it has been commenced, and the order shall not be subject to appeal."

With the finding of the lower court slated above, the appellant had failed to satisfy the court that Ilorin was not the appropriate venue, hence it had ordered the matter to be retained at Ilorin Division. This decision, with tremendous respect, is final and is not appellable.

Therefore it is my respectful view that the appellant having appealed against this finding in spite of the provisions of the rules is in breach of the rules of court. Who will now say that the rules of court are not meant to be obeyed? I therefore have no hesitation in holding that issue 1 should and is hereby resolved against the appellant. Before I leave this point, I must reiterate here that the rules of court are to be obeyed; they are not mere rules, they are made to help the cause of justice and not to defeat justice: they are therefore aids to the court and not masters of the court; they are subsidiary legislations but equally they possess the potent force of the principal legislation when validly made. This court per Ogunlade, JCA as he then was held as follows:

"...Firstly, it must be borne in mind that the Rules of the Court of Appeal were made pursuant to section 8(1) and (2) of the Court of Appeal Act, 1976. See also section 227 of the 1979 Constitution of Nigeria. They are a subsidiary legislation and when validly made have the same force as the principal legislation". See *Cooperative Batik of Eastern (Nig.) Ltd. v. Ogwuru* (199n 1 NWLR (Pt. 168) 458 at 468."

In the instant case, the Federal High Court (Civil Procedure) Rules was made pursuant to the provisions of S. 254 of the 1999 Constitution, hence they possess constitutional flavor. Having resolved issue 1 against the appellant, I hold that, without sounding apologetic, this matter was properly and lawfully heard at the Ilorin Judicial Division of the Federal High Court.

On the 2nd issue for determination, it was the submission of the appellant that the action of the 1st and 2nd respondents was purely administrative and/or executive in nature and since it was not a quasi-judicial action, certiorari cannot lie. It was therefore his submissions that the action was not properly commenced. The respondents in reply, contended that the action was properly commenced by way of judicial review, hence certiorari can lie to remove the decision of

the 1st and 2nd respondents for the purpose of being quashed. The trial Judge on p. 127 of the record found on "this point as follows:

"In my opinion, whether the act is administrative or judicial depends on the facts of the case. In the matter on hand, the applicant applied for registration as a Trade Union under the Trade Unions Act. The Minister considered their application and also considered the records available in the office in respect of contributions by the Medical and Health Workers Union and by the National Union of Local Government Employees Association before coming to the decision - Exhibit NAC 5 where they refused to grant the request of the applicant for registration as a Trade Union. I cannot come to any other conclusion other than the fact that the Minister was acting in a quasi judicial position when he was arriving at the decision. Now Order 47 rule 1 of the Federal High Court provides for grant of an order of mandamus, prohibition or certiorari in the light of this and by virtue of section 251 (r) of the constitution which provides as follows:

'The Federal High Court shall have and exercise jurisdiction to the exclusion of any other Court in civil causes and matters in any action or proceeding For a declaration or injunction affecting the validity of any executive or administrative action or decision by the Federal Government or any of its agencies.'

I reject the contention that the Federal High Court lacks jurisdiction in this matter because it is an administrative act." See pp. 127 - 128 of the record.

With due respect, and without any regret, it is my opinion that this finding of the trial court is correct and I agree with same. A quasi-judicial action has been defined in the Blacks Law Dictionary Sixth Edition at p. 847 as follows:

"A term applied to the action, discretion e.t.c. of public administrative officers or bodies who are required to investigate facts or ascertain the evidence of facts, hold hearing; weigh evidence and draw conclusion from them as a basis for their official action and to exercise discretion of a judicial nature."

A perusal of sections 3(1), (2) and 5(1), (2), (3), (4) and (5) the Trade Unions Act shows that the 1st and 2nd respondents were endowed with the power to exercise their discretion in registering or refusing to register an applicant who applies to be registered as a Trade Union. This discretion is always exercised after various factors have been considered such as -

- (a) no proper objection has been raised;
- (b) that none of the purposes of the Trade Union is unlawful and
- (c) that the requirements of the Act and of the regulations with respect to the registration of Trade Unions have been complied with.

In addition to this, the Registrar shall refuse to register a Trade Union if it appears to him that any existing Trade Union is sufficiently representative of the interests of the applicant, (*italics mine*).

It is after the consideration of these facts that the 1st and 2nd respondents would now take their decision under section 5 of the Act. This undoubtedly is a quasi judicial act and I so holding.

My lords, the picture would become clearer when we note that pursuant to section 5(5) (b) of the Trade Union Act, Cap. 437, an official or member of the Union, who was refused registration may. Within the period of thirty days (30 days) beginning with the date so specified, appealed to the appropriate High Court against the refusal ' No specific mode of appeal was prescribed by this section, hence an applicant may proceed under any of the approved modes of commencing

an action seeking redress. In the instant case, 3rd respondent approached the court under the provisions of Order 47 rule 1 of the Federal High Court Rules that provides thus:

"1(1) An application for-

(a) an order of mandamus, prohibition or certiorari; or

(b) an injunction restraining a person from acting in any office in which he is not entitled to act, shall be made by way of an application for judicial review in accordance with the provisions of this order."

The reliefs claimed by the 3rd respondent in the lower court have earlier been set out in this judgment, amongst which is an order for certiorari. It is therefore pertinent at this junction, to examine

What is the purpose of certiorari? The learned author Clive Lewis in his book titled *Judicial Remedies in Public Law*. Published by Sweet and Maxwell, 1992 stated the purpose of certiorari at page 144 thus:

"The primary purpose of certiorari in modern administrative law is to quash an ultra vires decision. Certiorari is technically an order bringing a decision of a public body to the High Court so that court may determine whether the decision is valid. Where the decision is ultra vires, certiorari will issue to quash the decision. By quashing the decision certiorari confirms that the decision is a nullity and is to be deprived of all effect. In modern rime certiorari is the means of controlling unlawful exercise of power by setting aside decisions reached in excess or abuse of power."

If we extrapolate these principles into the present case, I have no doubt in my mind that the resort to judicial review by way of certiorari is appropriate in this case and I so hold. I also hold that the lower court has jurisdiction to hear and determine this case. I refer to section 251(1)(0) of the 1999 Constitution of the Federal Republic of Nigeria and *NEPA v. Edeghero* (2002) 18 NWLR (Pt. 798) 79/97.1 therefore resolve this issue in favour of the respondents herein.

The only issue which I consider to be the central issue left for determination is whether the trial court was right in the orders that it made. In order to appreciate the real issue in dispute in this case, it will be necessary to set out the real issues in dispute in this case. The 3rd respondent by exhibit NAC 2, applied to the 1st and 2nd respondents to be registered as a Trade Union under the Trade Unions Act, Cap. 437, Laws of the Federation of Nigeria. By virtue of exhibit NAC 5, the 1st and 2nd respondents turned down its request to be registered as a Trade Union. In refusing to register the 3rd respondent, the 1st and 2nd respondents stated in exhibit NAC 5 as follows:

"3. Section 3 subsection 2 of the Trade Unions Act, Cup. 437 of 1990 (quoted in part) states as follows:

'but no Trade Union shall he registered to represent workers or employers in a place where there already exists a Trade Union.

Similarly, section 5 subsection 4 of the same Act on procedures slates as follows: -

"On the receipt of application for registration –

'The Registrar shall not register the trade union if it appears to him that any existing Trade Union is sufficiently' representative of the interests of the class of persons whose interests the Union is intended to represent.'

Records available in this office have abundantly shown that the two General Secretaries of Medical and Health Workers Union of Nigeria and National Union

of Local Government Employees indicate that members of the National Association of Community Health Workers were/are still members of their respective trade Union. Meanwhile, the unions have been contesting for the unionization of the Community Health Workers in the civil courts in some states of the country and at the Industrial Arbitration Panel as well as at the National Industrial Court.

It is pertinent to observe that application for registration as a Senior Staff professional Association does not arise in this matter, because, there is no dichotomy between the Senior and Junior Staff Unions in the jurisdictional scope of the two Unions mentioned above. Both MWHUN and NULFE cover all the employees in their respective areas of jurisdictional scopes.

Therefore, granting professionalism to a cadre in the circumstance does not automatically confer that the body has trade union rights, and it does not equally allow for a pull out of the group of employees from their union, because there is an existing trade union that looks after the interest Of Community Health Practitioners of Nigeria.

7. In view of the foregoing and in accordance with the subsection 3 of Trade Unions Act, Cap. 37 of the Laws of the Federation of Nigeria, 1990, the Honorable Minister is not satisfied that you should be registered as a Trade Union of Senior Staff Association. Your request for registration as a Trade Union of Senior Staff Association cannot be favorably considered ..." (Italics mine for clarity).

It is to be noted that the reasons adduced by the 1st and 2nd respondents (as stated above) were not challenged by the 3rd respondent, which rather contended that by virtue of section 40 of the 1999 Constitution, they have the right to form or belong to any trade union of their choice. This right, however, is subject to the provisions of section 45(1) of the same 1999 Constitution. It was also the contention of the 3rd respondent that sections 3 and 5 of the Trade Unions Act, Cap. 437 are inconsistent with the provisions of section 40 of the 1999 Constitution and to that extent is null and void.

Void, being an existing law it is subject to the provisions of the constitution. In addition, he contended, that by virtue of the provisions of the African Charter on Human and Peoples Rights, and Articles 87

and 97 of the ILO Convention, the 3rd respondent has the right to form a trade union of its choice.

In the determination of this issue, the trial court, now lower court found as follows:

"The question I now pose is. is the decision of the Minister judicially or judiciously exercised? The applicant was turned down for registration because it was alleged that there was an existing Trade Union taking care of her union activities. But by the Community Health Practitioners Decree No. 61 of 1992, the Federal Government enacted the legislation for the Community Health Practitioners in the country to realize its community and rural health objectives. The question is why should the Registrar deny the Workers Trade Union status if the Government itself has carved the body out as separate profession. It was averred by the Minister or Registrar that there was existing Trade Union for that purpose but the bottom has been knocked out of this contention by the letter the

Minister himself exhibit - NAC 5 in paragraph 8, where their letter reads as follows:

'8. By a copy of this letter, the Registrar of Trade Unions and the 2 unions contending for the unionization of the members of the Community Health Practitioners are being informed of the Hon. Minister's decision on the matter.

'This paragraph clearly shows that the situation is fluid contrary to the view that there is existing trade union for the appellant. The truth is that the Medical Workers Union and the National Union of Local Government Employees are contending for the unionization of the applicant.

In my humble view, it is more discreet to allow them form a trade union within themselves rather than leave them at the mercy of the two contending forces which they do not want... In the light of the above, I am of the view that the discretion of the Minister, not to register the applicant as a trade union has not been judicially and judiciously exercised... I therefore hold that the non registration of the applicant is also invalid because it has denied the applicant the right to associate and belong to a Trade Union of (their) choice recognized by the constitution and the African Charter on Human Rights - See *Musa v. INEC's case* (supra).

In the light of the foregoing, this application succeeds. I hereby hold that the applicant is entitled to the reliefs sought in the matter i.e. reliefs I, II, III and V." See pages 133 - 136 of the Record.

I have carefully gone through the affidavit evidence before the court, and I am of the view that these findings of the lower court were not based on the evidence before that court. In the counter-affidavit filed by the appellant dated 14/5/2004, particularly A paragraph 7 it was deposed to as follows:

- "7. I am further aware that the following Community Health Practitioners/ Workers are members of the 3rcj respondent union and are currently holding the various executive position in the 3rd respondent union too.
- (a) Comrade Lot Dadiya. National Vice President, North East.
 - (b) Comrade Halsam K. Lawan. Chairman, Yobe State Council.
 - (c) Comrade Muhammed Kadir, Chairman, Gombe State Council.
 - (d) Comrade Danbala Dogo, Chairman. Kaduna State Council.
 - (e) Comrade AI-Mumini, Chairman. Kwara State Council.
 - (f) Comrade Musa Das. Chairman. Bauchi State Council.
 - (g) Comrade Ahmed Idris, Chairman, Jigawa State Council.
 - (h) Comrade Halilu Ismaila, Chairman, Zamfara State Council.
 - (I) Comrade A. Joseph, Chairman, Enugu State Council.
 - (j) Comrade U. U., Chairman, Taraba Slate Council.
 - (k) Comrade Hussan Obatu, Chairman, Nasarawa State Council, and
 - (l) "Comrade Ore, Chairman, Ogun Stale Council".

In further affidavit in verification of the facts relied upon filed by the 3rd respondent in reply to the counter-affidavit filed by the appellant, this important averment was not denied. It is therefore crystal clear that the 3rd respondent indeed belonged to an existing trade union i.e. the appellant. (Italics mine for emphasis).

It is on this basis, my lords that I hold that the relief's numbers I, II and v granted by the lower court cannot stand. I also wish to point out that the right of freedom of association granted by section 40 of the 1999 Constitution is not absolute. It is subject to the provisions of section 45 of the same constitution. Section 45(1) of the 1999 Constitution provides as follows: -

"45(1) Nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably Justifiable in a democratic society -

(a) in the interest of defence, public safety, public order, public morality or public health, or

(b) for the purpose of protecting the rights and freedom of other persons".

That being the case, can the provisions of sections 3 and 5 of the Trade Unions Act, Cap. 437, 1999 be said to be in conflict with section 40 of the 1999 Constitution simply because it spelt on! Conditions to be met by an applicant before it could be registered as a Trade Union. This question has been answered by the Supreme Court of Nigeria in the case of Osawe v. Registrar of Trade Union (1985) 1 NWLR (Pt. 4) 755 at 763, Where his Lordship Kazeem, JSC held as follows:

"As regards ground 2, it was not disputed that the fundamental right enshrined under section 37 of the Constitution of 1979 for freedom of association as trade unions was subject to the derogation set out in section 41(1) (a) of the said Constitution. Hence, section 37 of the Constitution is not absolute as it can not invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health. It was not also the contention of the appellants that section 3(2) of the Trade Unions Act. 1973 as amended by section 1(1) (a) of the Trade Unions (Amendment) Act, 1978 was a law reasonably justified a democratic society. It was in fact in order to maintain public order out of a chaotic situation that the exercise of 1978 was embarked upon which gave rise to the promulgation of the Trade I inions (Amendment) Act, 1978.1 am therefore unable lo agree that section 3(2) of the Trade Unions Act. 1973 as amended contravenes section 37 of the Constitution of 1979."

I am obliged and bound by this holding, and I consequently hold that the provisions of sections 3 and 5 of the Trade Unions Act. Cap. 437 are not inconsistent with the provisions of the 1999 Constitution.

On relief iii granted by the trial court, it is crystal clear that the relief was granted in error. The relief granted by the trial court is for a declaration that it is unconstitutional, illegal, unlawful and against the provisions of Articles 87 and 89 of the International Labour Organization Convention for the respondents to refuse to register the applicant as a Senior Staff Trade Union (S.S.T.LI). There is no evidence before the court that the ILO Convention, even though signed by the Nigerian Government, has been enacted into law by the National Assembly. Section 12 of the 1999 Constitution provides as follows:

"12(1) No treaty between the Federation and any other country shall have the force of law except lo the extent to which any such treaty has been enacted into law by the National Assembly."

In so far as the ILO Convention has not been enacted into law by the National Assembly, it has no force of law in Nigeria and it cannot possibly apply. See also Abacha v. Fawehinmi

(2000) 6 NWLR (Pt. 660) 228 at Pp.288 - 289 Ogundare. JSC of blessed memory had this to say:

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"Suffice it to say that an international treaty entered into by the government of Nigeria does not become binding until enacted into law by the National Assembly. See section 12(1) of the 1979 Constitution which provides:

'12(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted into law by the National Assembly (AFRC).'

(See now the re-enactment in section 12(1) of the 1999 Constitution). Before its enactment into law by the "National Assembly, an international treaty has no such force of law as to make its provisions justiciable in our courts. See the recent decision of the Privy Council in *Higgs & An or. v. Minister of National Security & Ors.*

The Times of December 23, 1999 where it was held that –

In the law of England and The Bahamas, the right to enter into treaties was one of the surviving prerogative powers of the Crown. Treaties formed no part of domestic law, unless enacted by the legislature.

Domestic courts had no jurisdiction to construe or apply a treaty, nor could unincorporated treaties change the law of the land. They had no effect upon citizens' rights and duties in common or statute law.

They might have an indirect effect upon the construction of statutes or might give rise to a legitimate expectation by citizens that the government, in its acts affecting them, would observe the terms of the treaty.

In my respectful view, I think the above passage represents the correct position of the law, not only in England, but in Nigeria as well.

Where, however, the treaty is enacted into law by the National Assembly, as was the case with the African Charter which is incorporated into our municipal (i.e. domestic) law by the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act. Cap. 10, Laws of the Federation of Nigeria, 1990 (hereinafter is referred to simply as Cap. 10), it becomes binding and our courts must give effect to it like all other laws falling within the judicial powers of the courts. By Cap. 10 the African Charter is now part of the laws of Nigeria and like all other laws the courts must uphold it. The charter gives to citizens of member states of the Organization of African Unity rights and obligations, which rights and obligations are in force and enforced by our courts, if they must have any meaning;'

"My conclusion therefore is that relief iii was granted based on a non-existing right and law and it is consequently set aside. In all this appeal succeeds in part and I order as follows

- "(a) that this action is properly commenced and determined at the appropriate venue i.e. Ilorin Division of the Federal High Court; and
- (b) The reliefs granted by the lower court are herewith set aside, and the 3rd respondent's

Claims are hereby dismissed."

Appeal Against Order of Joinder

As I earlier slated in this judgment, the 3rd respondent, who was the appellant in the substantive ruling was joined as a co-defendant. In this case, it is against this joinder that (he applicant in the court below has appealed to this court. In the notice of appeal dated 25/11/2004, the applicant, hereinafter called the appellant, filed a sole ground of appeal. In accordance with the rules of this court, in Order 6 rules 2, 4 & 5 of the Court of Appeal Rules. 2002, both parties filed and exchanged their respective briefs of arguments. Both the appeal against the substantive matter and this appeal were heard together. The appellant in his brief of argument formulated one issue for determination as follows:

"Whether the trial court was right in holding that the Medical and Health Union of Nigeria was a necessary party to the suit and in joining her accordingly even R though there was no relief sought against her at the trial?"

The 1st respondent in his brief of argument dated 5/1/2003 formulated its sole issue for determination as follows: -

"Whether the trial court was right in holding that the 1st respondent herein was a necessary party and/or that the reliefs sought by the appellant as applicant at the trial court would directly affect the 1st respondent herein to entitled it to be heard before judgment?"

The gist of the appellant's submission in his brief is that since no relief was claimed against the 1st respondent, he is not a necessary party, as the claims could be effectively determined by the court without the 1st respondent being joined as a party. Reliance is placed on the case of *Ige v. Farinde* (1994) 7 NWLR (Pt. 354) 42 at 65, and Order 12 rule 3 of the Federal High Court Rules, 2000.

The 1st respondent in his brief submitted that by the nature of the claims and reliefs sought by the appellant, the affidavit evidence and the exhibits attached to the motion on notice the 1st respondent is not only a necessary party but also a person who is directly affected by the result of the suit.

I have earlier in the judgment set out the decision of the lower court on this issue. I only wish to say that by virtue of the provisions of Order 12 Rule 3 of the Federal High Court Rules 2000. all persons may be joined as defendants whom the right to any relief is alleged to exist, whether jointly or severally. In the instant case, the interest of the 1st respondent is to prevent the registration of the appellant as a Trade Union in order to forestall their breaking away from them. In paragraphs 8 and 9 of the affidavit in support of the motion for joinder, the 1st respondent averred as follows:

- "8. I am also aware that the decision of the respondents H which the plaintiff/applicant is seeking the order of this Honorable court to quash as contained in the 1st respondent's letter reference No. MLIB/147/1 /76 dated 19th February, 2003 specifically stated that under the existing Trade Unions Act. the Medical and Health Workers of Nigeria, the applicant herein has exclusive jurisdiction to organize members of the plaintiff/ applicant and therefore decline to register the applicant as a new Trade Union.
9. All the reliefs now being sought by the plaintiff/applicant in this suit if granted by this Honorable court will affect the existing interest of the applicant."

By these averments, it is my considered view that the 1st respondent has disclosed sufficient interest in the claims/reliefs before the lower court, and the lower court, with respect, was right in joining the 1st respondent as a defendant in this case. It cannot be otherwise. See:

Oba Joseph Adeyemo Ajayi v. Oba Joseph Jolayemi (2001) 10 NWLR (Pt.722) 516, (2001) 3 SCNJ 250; Onibudo & Ors. v. Abdullahi & Ors. (1991) 2 NWLR (Pt. 172) 230 at 246 per Kalgo, JCA as he then was.

I therefore find no merit in this appeal against the joinder, and it is hereby dismissed. The decision of the lower court is un-assailable; same is hereby restored and affirmed. In view of my decision vis-a-vis the question of certiorari and other related issues. I still hold that the parties belong to one respectful family which forces me to refrain from awarding any costs to any party. Parties shall therefore bear their own respective costs.

IKONGBEH, J.C.A.: I had the privilege of reading in the draft the judgment just delivered by my learned brother, Muntaka-Coomassie. JCA. With amazing lucidity my brother laid bare the issues agitated by counsel for the parties and he applied his analytical-mind to them in a manner that would convince even the dimmest of minds of the soundness of his arguments and conclusions.

I agree with him entirely that, with regard to the first appeal, i.e., the appeal by the Medical and Health Workers Union of Nigeria (M.H.W.U.N.), which was joined as the 3rd respondent or defendant before the lower court, the learned trial Judge was in error to have acceded to the request by the 3rd respondent herein, which was the applicant or plaintiff before the lower court, i.e., the Registered Trustees of National Association of Community Health Practitioners of Nigeria, to have an order made in effect forcing the 1st and 2nd respondents herein to register it. I entirely agree with my learned brother that in the circumstances of this case me 1st and 2nd respondents properly exercised their discretion within the law when they refused to register the 3rd respondent. Their refusal was justified by the provisions of section 3(2) of the Trade Unions Act, which entitled them to refuse to register a trade union "to represent workers or employers in a place where there already exist a trade union". Their letter to the 3rd respondent refusing to register it as a trade union they reminded it of the fact that at the time it applied for registration its members were still members of existing trade unions.

I agree with my learned brother that the reason given by the learned Judge for rejecting the stand of the 1st and 2nd respondents is not tenable. According to the Judge, as the question whether or not there was another trade union to cater for members of the 3rd respondent was still in a state of flux, the 3rd respondent was entitled to be registered. I agree with my brother that the affidavit evidence before the Judge did not support this view. The evidence shows that the 1st and 2nd respondents were justified in taking the view that section 3(2) of the Trade Unions Act applied.

I also agree with my learned brother's reasoning and conclusion with respect to the second appeal, i.e., the appeal by the Registered Trustees of National Association of Community Health Practitioners of Nigeria against the joinder of the M.H. W.U.N. The learned trial Judge properly joined it in the matter. The argument of the learned Senior Advocate of Nigeria, for the appellant, that it was wrong of the Judge to force a defendant on his client against whom the latter did not wish to do battle does not impress me. No doubt, it is generally p the law that the court cannot force a defendant on an unwilling plaintiff who has no case against that defendant. Yet there must be situations where a defendant can insist that he be allowed to join the fray against the plaintiff to protect himself against the ill effect of the relief that the plaintiff might obtain from the court. I think this is G one such circumstance. The M.H.W.U.N. in this case felt that unless it entered the fray and thwart the efforts of the appellant in its quest, its

(M.H.W.U.N.'s) interests would be adversely affected if the Registered Trustees of National Association of Community Health Practitioners of Nigeria were allowed to have its way unchecked and it might later find itself faced with the plea of estoppel by standing by. I think it was perfectly justified in wanting to join the fray in the circumstances of this case.

Although the appellant had framed the reliefs it sought from the lower court to look as if it did not concern the M.H.W.U.N. clearly, if those reliefs are granted they are bound to have adverse repercussions on the latter. It claimed that members of the appellant were part of it and that the registration of the appellant would lead to legally unjustifiable split-up of it. In the circumstances, I agree that even if the appellant pretended not to want to battle with the M.H.W.U.N., the latter was perfectly justified in choosing to do battle with the ostensibly unwilling appellant to protect itself from the adverse effect of the appellant's activities.

It is for these reasons and the more detailed reasons lucidly advanced by my learned brother in his lead judgment that I agreed with his ultimate conclusion that the first appeal, i.e., the appeal by M.H.W.U.N. against the decision of the learned Judge to order the 1st and 2nd respondents to register the 3rd respondent therein, i.e. the Registered Trustees of National Association of Community Health Practitioners of Nigeria, be allowed. I agree that the order of the lower court enjoining the 1st and 2nd respondents to register the 3rd respondent should not be allowed to stand. It is for the further reasons advanced that I agree that the second appeal, i.e., the appeal by the Registered Trustees of National Association of Community Health Practitioners of Nigeria against the decision of the learned Judge joining M.H.W.U.N. as a party is dismissed.

I abide by all the consequential orders.

ABDULLAH!, J.C.A.: I have read in advance the judgment just delivered by my learned brother, Muntaka-Coomassie, JCA, in this appeal. I entirely agree with his reasoning and conclusions reached therein. His lordship has exhaustively and "meticulously dealt with all the issues in this appeal.

Section 3 (2) of the Trade Unions Act provides thus:

"3(2) No combination of workers or employers shall be registered as a trade union save with the approval of the Minister on his being satisfied that it is expedient to register the union either by regrouping existing trade unions, registering a new trade union or otherwise howsoever; but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union." (Italics supplied for emphasis).

It is my view that the provisions of the Act stated above are clear and unambiguous. In the case of Obafemi Awolowo University Ile-Ife v. R. A. Oliyide and Sons Ltd (2001) 7 NWLR (Pt. 712). at 473. Paragraph F. this court held thus:

"Where the words of a statute are not ambiguous therefore, the words shall be interpreted by literal, ordinary, natural, grammatical meaning such approach shall result in absurdity, then one can fail on applying the canons of interpretation of the statute." (Abioye v. Yakubu (1991) 5 NWLR (Pt. 199) 130 referred to.) (Pt. 473, para. F).

I am of the view that giving the words used in section 3(2) of the Act, their literal, ordinary, natural and grammatical meaning the action of the Minister that there is already an existing trade union taking care of the interest of the appellants cannot be faulted in any way.

For this reason and the fuller reasons contained in the lead judgment of my learned brother, I too allow the appeal partially and dismiss the appeal on joinder. I abide by all the consequential orders made by His lordship in the lead judgment including the order that parties should bear their own costs.

Appeal dismissed.