

IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON THURSDAY, THE 20TH DAY OF FEBRUARY, 2020
BEFORE HIS LORDSHIP, HONOURABLE JUSTICE N. E. MAHA
JUDGE

SUIT NO: FHC/ABJ/CS/1032/2019

BETWEEN

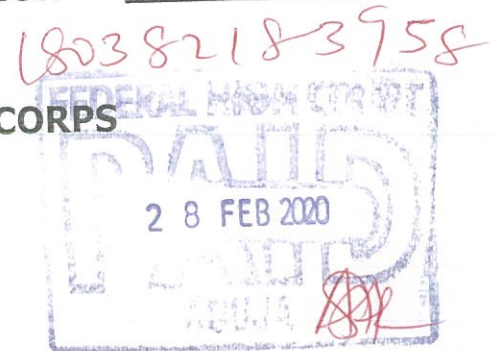
- 1. UNIVERSITY OF CALABAR**
- 2. VICE CHANCELLOR UNICAL**

PLAINTIFFS

AND

- 1. ATTORNEY-GENERAL OF THE FEDERATION
AND MINISTER OF JUSTICE**
- 2. MINISTER OF INTERIOR**
- 3. NIGERIA SECURITY & CIVIL DEFENCE CORPS**

DEFENDANTS



JUDGMENT

The Plaintiffs, University of Calabar and Vice Chancellor Unical filed an Originating Summons, against the Attorney-General of the Federation, Minister of Interior and Nigeria Security and Civil Defence Corps. Sometime in August 2019, the 3rd Defendant a body Established by an Act of the National Assembly, wrote a letter to the Plaintiffs, where it alleged that the 1st Plaintiff was illegally deploying security guards and operatives in defiance of the Nigeria Security and Civil Defence Corps Act (NSCDC Act), the Private Guard

UNIVERSITY OF CALABAR & ANOR V. A.G.F & MINISTER OF JUSTICE & 2 ORS

FHC/CS/1032/2019

1

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

28/2/2020

[Handwritten signature]

Companies Act (PGC Act) and the Private Guard Companies Regulations 2018. The Plaintiffs caused their Counsel Messrs. Emmanuel Umoren & Co to write back to them, disputing the allegation and asserting their purported rights under the University of Calabar Act, which is their enabling law. The 3rd Defendant replied to the letter of the Plaintiffs with two letters of their own, dated the 22nd and 23rd August 2019, respectively, where its position was restated and so, informed the Plaintiffs that they would prosecute the officers and staff of the 1st Plaintiff, operating as security guards and seal up or shut down the 1st Plaintiff's premises, if the disobedience of the statute and regulations persist.

The crux of the dispute between the parties is, if 1st Plaintiff, an educational institution created by an Act of the National Assembly, can maintain a security department, without incorporating a private guard company and obtaining a license from the 3rd Defendant, or employing the services of one of the companies already licensed for that purpose. The Plaintiffs caused their counsel to file an action in this Court against the Defendants, on the 5th of September 2019. Here, reliefs sought *inter alia*, challenges the validity of certain provisions of the Private Guard Companies Regulations 2018.

The Originating Summons asks these questions -

- “1. *Having regard to the nature of the first Plaintiff's statutory status by virtue of the University of Calabar Act, 1979, whether the 1st Plaintiff's Security Department falls into categories of private security companies contemplated to be licensed and regulated by the 3rd Defendant by virtue of the Private Guard Companies Act, Cap p30, LFN 2004, National Security, Civil Defence Corp Act, Cap N146, LFN 2004 and the private Guard Companies Regulations 2018, which all purposes of this action must be regarded as subsequent legislation to the University of Calabar Act, 1979.*
2. *That consequent on (a) above, constitutionally can S.15 and 23 of the PGC Regulation 2018, which is a subsidiary legislation, stand in contention with the University of Calabar Act 1979, which is a primary legislation of the National Assembly?”*

Whereupon the Plaintiffs claim -

- “1. *A Declaration that the 1st Plaintiff's Security Department by its nature and being an apparatus of an organization established by an Act of the National Assembly, University of Calabar Act, 1979*

does not fall within the jurisdictional scope and or category of persons and/or bodies to be regulated by the 3rd Defendant and cannot therefore be required and or compelled to be registered and/or licensed by the 3rd Defendant.

- 2. A Declaration that the S. 15 and 23 of the PGC Regulation 2018, being a subsidiary legislation cannot by any means whatsoever confer authority on the 3rd Defendant to regulate the conduct of a body created pursuant to the University of Calabar Act, 1979.*
- 3. A Declaration that the University of Calabar Act, 1979 being an earlier legislation to the Private Guard Companies Act, Cap PM), LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, would have been so amended by the National Assembly to enable the Defendants, especially the 3rd Defendant regulate the 1st Plaintiff, if it was the intention of the National Assembly.*
- 4. An Order of interim injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or agents from embarking on any action howsoever and whatsoever against the 1st Plaintiff's Security Department including but not limited to sealing up*

the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly and unlawfully enforcing the provisions of the Private Guard Companies Act, Cap PM), LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of its lawful duties pending the hearing of the Motion on Notice.

5. *An Order of interlocutory injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or members from embarking on any action howsoever and whatsoever against the 1st Plaintiff's Security Department including but not limited to sealing up the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly enforcing the provisions of the Private Guard Companies Act, Cap P30, LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of its lawful*

28/2/2020

duties pending the hearing and determination of the substantive Originating Summons.

6. *An Order of perpetual injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or members from embarking on any action howsoever and whatsoever against the 1st Plaintiff's Security Department including but not limited to sealing up the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly enforcing the provisions of the Private Guard Companies Act, Cap PM), LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of its lawful duties.*
7. *An Order of interim injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or members from embarking on any action howsoever and whatsoever against the 1st Plaintiff's Security Department including but not limited to sealing up the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of*

purportedly enforcing the provisions of the Private Guard Companies Act, Cap P30, LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of its lawful duties under the University of Calabar Act, 1979 pending the determination of the Motion on Notice.

8. *An Order of interlocutory injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or members from embarking on any action howsoever and whatsoever against the 1st Plaintiff's Security Department including but not limited to sealing up the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly enforcing the provisions of the Private Guard Companies Act, Cap PM), LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of its lawful duties under the University of Calabar Act, 1979 pending the hearing and determination of the Originating Summons.*

9. *An Order of perpetual injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or agents from embarking on any action howsoever and whatsoever against the 1st Plaintiff's Security Department including but not limited to sealing up the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly enforcing the provisions of the Private Guard Companies Act, Cap P30, LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of its lawful duties under the University of Calabar Act, 1979.*
10. *An Order of interim injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or agents from embarking on any action howsoever and whatsoever against the Plaintiffs including but not limited to the arrest and prosecution of the 2nd Plaintiff and any other officer or staff or agent of the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly and unlawfully enforcing the provisions*

28/2/2020

of the Private Guard Companies Act, Cap P30, LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of their lawful duties pending the hearing and determination of the Motion on Notice.

11. *An Order of interlocutory injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or agents from embarking on any action howsoever and whatsoever against the Plaintiffs including but not limited to the arrest and prosecution of the 2nd Plaintiff and any other officer or staff or agent of the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly and unlawfully enforcing the provisions of the Private Guard Companies Act, Cap P30, LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of their lawful duties pending the hearing and determination of the substantive Originating Summons.*

12. *An Order of perpetual injunction restraining the Defendants jointly and severally whether by themselves or through their officers and or agents from embarking on any action howsoever and whatsoever against the Plaintiffs including but not limited to the arrest and prosecution of the 2nd Plaintiff and any other officer or staff or agent of the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly and unlawfully enforcing the provisions of the Private Guard Companies Act, Cap P30, LFN 2004, National Security and Civil Defense Corp Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of their lawful duties.*
13. *An Order striking down S. 15 and 23 of the Private Guard Companies Regulations 2018 in so far as they affect the 1st Plaintiff being an entity created by statute i.e. the University of Calabar Act, 1979 which is a primary legislation.*
14. *Solicitors cost of this action as assessed by the Court”.*

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Grounds, on which the Plaintiffs brought these reliefs, are that -

- “1. 1st Plaintiff's Security Department is not a private security company within the ambits and contemplation of the Private Guard Companies Act, Cap P30, LFN 2004.*
- 2. 1st Plaintiff is a specialized statutory body created by an Act of the Federal Republic of Nigeria, to cater for students of a tertiary institution which require specialized staff and officers to man the Security Department, that deals only with the 1st Plaintiff.*
- 3. 1st Plaintiff's security personnel, are staff and officers of a statutory body, and as such cannot be compelled to be registered as a private company, for being licensed within the context of the Private Guard Companies Act, Cap no P.30, LFN 2004”.*

A 27-paragraph Affidavit deposed to by Moses Abang, the Registrar of the 1st Plaintiff and Exhibits UC1- UC5 attached to it, together with a Further Affidavit to the 3rd Defendant Counter-Affidavit and replies on point of law with Written Addresses, all filed in support of the Originating Summons.

In opposition, the first Defendant filed a 6-paragraph Counter-Affidavit deposed to by one Barnabas Onoja, litigation clerk in the

office of the 1st Defendant and no exhibits attached. The 2nd Defendant caused to be filed on their behalf a memorandum of conditional appearance but filed nothing more. The 3rd Defendant caused a memorandum of conditional appearance to be filed and a 23 paragraph Affidavit deposed to by one Anyabe Rachel Ajijir, an officer of the 3rd Defendant. **Exhibits PGC 1-5** were attached in support.

On the 6th day of December, 2019, the matter came up for hearing. Learned counsel to the parties, adopted their processes and made adumbrations thereon.

In his Written Address in support of the Originating Summons, Learned Counsel to the Plaintiffs, Emmanuel Umoren Esq. submitted two issues for determination. They are -

- “i. having regards to the nature of the first Plaintiff's statutory status by virtue of the University of Calabar Act, 1979, whether the 1st Plaintiff's Security Department falls into categories of private security companies contemplated to be licensed and regulated by the 3rd Defendant by virtue of the Private Guard Companies Act, Cap P30, LFN 2005, National Security, Civil Defence Corp Act, Cap N146, LFN 2004 and the private Guard Companies*

regulations 2018 which for all purposes of this action must be regarded as subsequent legislation to the University of Calabar Act, 1979.

- ii. *That consequent on (a) above, constitutionally can S15 and 23 of the PGC Regulation 2018, which is a subsidiary legislation, stand in contention with the University of Calabar Act 1979, which is a primary legislation of the National Assembly?"*

The 1st and 3rd Defendants submitted the same issue for determination. It reads -

"whether having regard to the obvious facts and circumstances of the case, the Plaintiffs are entitled to strictly comply with the Nigerian Security and Civil Defence Corps(Amendment) Act 2007, Private Guard Companies Act and Private Guard Companies Regulation, 2018 as it affects their security guards and operatives".

The issues submitted by respective Learned Counsel when considered together capture the main points in contention. However, for the sake of giving a compact opinion on the matter, I have formulated two issues to determine this matter, because they subsume all the issues formulated by Learned Counsel to parties.

ISSUES FOR DETERMINATION

- “1. Whether the Nigeria Security and Civil Defence Corps Act 2007, the Private Guard Companies Act 1986 and the Private Security Guard Regulation 2018 empowers the 3rd Defendant to regulate the activities of the security Department of the 1st Plaintiff.*
- 2. Whether Paragraphs 13 and 23 of the PGC Regulations 2018, a subsidiary legislation is binding on the 1st Plaintiff, having regards to the Private Guard Companies Act, Cap P30, LFN 2004.”*

Before I delve into the resolution of the above issues, based on arguments, I will turn first, to the two preliminary points raised by Plaintiffs' Counsel, and it is the Court's opinion that the Affidavit of the 3rd Defendant is in substantial compliance with section 115 of the Evidence Act 2011.

Secondly, it was contended that the 1st Defendant's Counter Affidavit was filed out of time, based on the fact that the Originating Summons was served on the 1st Defendant since 10th September 2019.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Under the law, a Defendant to an Originating Summons shall file a Counter Affidavit with all exhibits he intends to rely on and a Written Address, within 30 days from service of the Originating Summons. I note that the 3rd Defendant's Counter-Affidavit was filed on 23rd October 2019, and no application was filed to regularize that process. It is my view that non-compliance with the 2019 Federal High Court (Civil Procedure) Rules automatically nullified the 1st Defendant Counter Affidavit in this suit. Rules of Court must be obeyed and where there is non-compliance, the Court must not be passive, because justice is best served when all parties in litigation adhere to Rules of the Court.

Having come to the above conclusion on the second preliminary point, I hold that 1st Defendant's Counter Affidavit is incompetent and is struck out accordingly.

Next, in the Written Address from Emmanuel Umoren Esq., it was pointed out that the 1st Plaintiff is a body established by an Act of the National Assembly, particularly the University of Calabar Act, 1979 ("UNICAL Act"). Citing Section 1 (1) of the Act and provides, thus -

"There is hereby established, the University of Calabar (in this Act referred to as "the University")"

which shall be a body corporate with perpetual succession and a common seal”.

Plaintiffs' Counsel postulated that the University of Calabar Act, 1979, allows the 1st Plaintiff to make provisions for the establishment of any body and or authority for the maintenance of peaceful and non-violent co-existence of members of the University which includes staff, students and visitors. It was further postulated that the Nigeria Security and Civil Defence Corps Act, Cap N146, LFN 2004 ("NSCDC Act"), was enacted for the purpose of generally assisting other law enforcement agencies in the maintenance of peace and order amongst the civilian population. It was also his contention that the Act only vests the 3rd Defendant with the powers to supervise and monitor the activities of all private guard companies. He called in aid of section 1 (d) of the Nigeria Security and Civil Defence Corps Act.

It was further argued that by the interpretation of Private Guard Companies Act, the 1st Plaintiff's Security Department, being an administrative arm of the University and not a private entity, does not fall within the contemplation of security bodies to be supervised and regulated by the 3rd Defendant; that the subject Department has statutory mandate and so, the attempt and threats of the 3rd Defendant in this regard as disclosed on the face of **Exhibits UC5**

A & B are *ultra vires*, and the 3rd Defendant lacks the efficacy to exercise such power in the first place and thus, acted outside the scope of its statutory powers and functions. Submitting more, that 3rd Defendant is mandated under the law to operate within the confines of the law which established it, and failing which its action will be declared *ultra vires*. Citing *Nemi & Ors v. State* (1994) LPELR-24854(SC), *Mobil Oil Nigeria Plc v. Alhaji Bashir Mohammed & Anor* (2018) LPELR-43667(CA) and *Olaniyan v. University of Lagos* (1985) NWLR (Pt.9)599, where the Supreme Court held-

"...if the powers of a Corporation are given or acquired at common law or by custom or by charter, the corporation is a person at common law and may do anything which an ordinary person can do, see: Wenlock (Baroness) v. River Dee Co. (1885) 10 App. Cas. 354: see also British South Africa Co. v. De Beers Consolidated Mines (1910) 1 Ch. 354. On the other hand, a Corporation or Company which is created by or under a Statute cannot do anything at all. Unless authorized expressly or impliedly by the Statute or instrument defining its powers. It simply has not got the vires or the powers or authority to act outside the Statute. If it so acts, the act will be held to be ultra vires and declared null and void..."

With regards to the Private Guard Companies Act, Cap P30, LFN 2004 ("PGC Act"), it was contended that only private Companies whose object entails services of watching, guarding, patrolling or carrying of money may be licensed under the Act. On the application of the maxim ***expressio unius est exclusio alterius***, Plaintiffs Counsel argued that the Private Guard Companies Act, limited the regulatory scope of the Defendant to private Companies and not statutory bodies; calling in the aid of the case *Udoh v. O.H.M.B.* (1993) NWLR (Pt.304)139, where the Court held- ,

"...It is a well settled principle of construction of statutes that where a section names specific things among many other possible alternatives, the intention is that those not named are not intended to be included. Expressio unius est exclusio alterius. This is that the express mention of one thing in a statutory provision automatically excludes any other which otherwise would have applied by implication. with regard to the same issue..."

Learned Plaintiff's Counsel reproduced the definition of the term *Company* in Black's Law Dictionary, 10th Edition. Again, stating that a company is -

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

“A corporation or, less commonly, an association, partnership, or union that carries on a commercial or industrial enterprise.”

Having regard to the above, Learned Counsel submitted that 1st Plaintiff Security Department, consist of members of University staff, whose appointment and employment are coated with a statutory flavor with the regime of the labour laws of the Federal Republic of Nigeria and cannot be construed to be employees of private Company to be regulated by the 3rd Defendant; that no commercial motive or commercial benefit derived from the functions and services rendered by the security department over and beyond keeping the peace within the university premises; that the National Assembly had enacted a legislation to regulate and provide for licensing of Private Guards Companies and if ,the intention was to include institutions such as the 1st Plaintiff, it would have made clear provisions for that, and the 3rd Defendant cannot on its own extend its *vires* beyond that granted it , under the law. Citing *Nemi & ors v. State* (1994) LPELR-24854(SC) and *Tijani Musa Tumsah v. FRN & Anor.* (2018) 17 NWLR (Pt. 1648) 238.

Learned Counsel submitted that it cannot be the intention of the drafters of the Private Guard Companies Act, to force a person who can protect himself to contract the services of another just as a

willing employee cannot be forced upon an unwilling employer, citing *Ilodibia .v. N.C.C. Ltd.* (1997) 7 N.W.L.R (Pt. 512) 174.

On the other hand, Learned Counsel for the 3rd Defendant, Orji Ejike Augustine Esq., argued that Section 3 of Nigeria Security and Civil Defence Corps(Amendment) Act 2007, has a role to play in the present circumstance, contrary to the contention of the Plaintiffs, that the law empowers it to recommend to the Minister the registration of private guard companies, inspect the premises of private guard company, supervise and monitor the activities of all private guard companies and seal up any private guard company that operates without a valid licence. It was argued further that the letters sent to the Plaintiffs were based on infractions of the 2018 Private Guard Companies Regulation. He called in the aid of section 1(1), (a) (b) of the Private Guard Companies Act.

Learned Counsel for 3rd Defendant submitted that in interpreting or constructing a statute or regulation or instrument, regard must be given to the entire enactment or similar enactments in order to understand its purport and meaning. Citing *Nigeria Customs Service v. Abileowo Invt Ltd* (2014) 10 WRN 106 and *Idris v. ANPP* (2008) 8 NWLR (PT.1088) PG 33, where the Court of Appeal, held thus-

"...in interpreting a statute, regard must be given to the entire enactment in order to understand its purport and meaning..."

Learned Counsel also contended that the term "private guard" used in Private Guards Companies Act is intended to mean that any security guards and operatives that are not conventional statutory law enforcement security agencies like the Police, Armed Force, Nigerian Customs Service, Nigeria Immigration Service; contending that Plaintiffs cannot benefit from the exemption under Section 36 of the Private Guard Companies Act 1986 and the 1st Plaintiff is not a conventional security law enforcement agency, relying on Section 24 (1) (b) of Private Guard Companies Act .

Arguing more that the term "person" covers both natural and artificial person like in the case of Plaintiffs, and it is a double offence for the Plaintiffs to allow their security guards, organization and operatives, to without permit and licence wear uniforms and ranks. Relying on **Exhibit PGC 1** and section 16(1) of Private Guard Companies Act which provides-

"No employee...shall wear, carry or bear any uniform, cap, badge, accoutrement or other identification mark unless such uniform, cap, badge,

accoutrement or other identification mark has first been approved for use by the minister”.

In conclusion, Learned Counsel submitted that the 2018 Private Guard Companies Regulation was made by the Minister of Interior in pursuance to his powers under Section 35 of the Private Guard Companies Act 1986 and thus, within the power of the 3rd Defendant to seal the premises of the Plaintiffs or enforce the law as appropriate as the licensing authority. Citing Regulation 28 of Private Guard Companies Regulation, 2018 which provides -

"Notwithstanding the provision of these Regulations, the licencing authority may issue policy guidelines, circulars and any other form of directives for the effective regulation of the company".

Issue One

I have gone through the relevant sections of the various laws which are hereunder reproduced, starting with the Nigeria Security and Civil Defence Corps (Amendment) Act 2007.

Section 3 of the Nigeria Security and Civil Defence Corps (Amendment) Act 2007 provides *inter alia*:

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

“(2) The Corps Shall -

- (a) assist in the maintenance of peace and order and in the protection and rescuing of the Civil population during the period of emergency.*
- (b) recommend to the Minister the registration of private guard companies,*
- (c) From time to time, inspect the premises of private guard companies, their training facilities and approve same if it is up to standard.*
- (d) Supervise and monitor the activities of all private guard companies and keep a register for that purpose-*
 - (i) periodically organise workshop and training courses for private guard companies, and*
 - (ii) Seal up any private guard company which operates without a valid licence”.*

Now, the long title of the Private Guard Companies Act 1986, provides as follows-

“An Act to regulate and provide for the licensing of private guard companies which must be wholly owned by Nigerians and other matters ancillary thereto.”

**CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA**

Section 1 Private Guard Companies Act 1986, provides as follows-

“(1) As from the commencement of this Act, no organisation shall perform the service of watching, guarding, patrolling or carrying of money for the purpose of providing protection against crime unless the organisation concerned—

(a) is registered as a company under or pursuant to the Companies and Allied Matters Act;

(b) has applied for and has been granted a licence by the Minister in accordance with the provisions of this Act; and

(c) is wholly owned by Nigerians in accordance with the Schedule to the Nigerian Enterprise Promotion Act”.

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

Section 35 provides -

“The Minister may make regulations generally for the purpose of giving effect to the provisions of this Act”.

Section 36 provides that, in this Act unless the context otherwise requires-

“...company” or “private guard company” means any company incorporated in Nigeria and licensed under the provisions of this Act for the purpose of providing such services as are permitted under section 1 of this Act...”

The extant provision of the Private Guard Companies Regulations read -

Paragraph 23

“Any person or corporate entity wishing to employ more than one person for the purpose stated in section 1(1) of the Act shall engage the services of a licensed company”.

Having painstakingly set out the sections and paragraph of legislation relevant to resolving the issues in dispute, it is imperative to state at once that, where the provisions of a statute are clear and unambiguous, they should be read and construed as it is, without embellishments. The words should be given their ordinary meaning except where such a construction would be ridiculous, not logical and sensible. See *A.G Anambra State v A.G Federation* (1993) 6NWLR (pt.302)p. 692; *Torilla v. Williams* (1982) 7 SC (reprint); *Saleh v. Abah* (2017) 12 NWLR (pt.1578) 100 SC; *Tsokwa v. Ibi* (2017) 10 NWLR (pt.1574) 343; *A-G Federation v. Abubakar* (2007) All FWLR (Pt.375) 405; *Gana v. SDP & Ors* (2019) LPELR-47153(SC); *Ogbunyiya v. Okudo* (1979) 69 SC 32 and *Abegunde v. Ondo State House of Assembly* (2015) 8 NWLR (Pt. 1461) 314 @ 357.

I must at this stage explain the powers of the 3rd Defendant. Sections 1,3,4,15,16 and 25 Nigeria Security and Civil Defence

Corps (Amendment) Act sets out the establishment, scope of the powers and duties of the 3rd Defendant, and thus empowers it, to license and control the activities of private security guards. Doubtless, its powers in that regard are wide and far reaching. The amendment of the Act and the overt delegation of the duties of the Minister of Interior in that regard also, fortify that power. In that respect the powers of the 3rd Defendant over Private Guard Companies include licensing, supervision, monitoring, discipline and inspection.

The Private Guard Companies Act makes the Minister of Interior, the sole power for licensing and controlling private security guard companies and the powers have been delegated both by the overt act of the Minister and the Nigeria Security and Civil Defence Corps Act to the 3rd Defendant. The power of the 3rd Defendant over private security guard companies is also strengthened in this regard and the legislature intended that the 3rd Defendant retain much power over security guard companies in Nigeria.

Where a Court faces interpreting a statute, as in this instant case, the Court is empowered only to interpret the statute as it finds it and nothing more. I refer Counsel to the case of *Coca-Cola (Nig.) Ltd. v Akinsanya* (2017) 17 NWLR (Pt.1593) 74 at 128.

To do this it can call in aid several tools of construction to determine the true intention of the legislature. However, the primary tool is to adopt the literal words of the legislation itself. The Supreme Court in *Coca-Cola (Nig.) Ltd v Akinsanya* (Supra) held -

“...the intent of the lawmaker and or the purpose for particular provisions of a statute is intertwined. It is from the words of the statute and no other source that the intention of the framers of a statute or the 1999 Constitution (as amended) must be ascertained...”

The Nigeria Security and Civil Defence Corps Act, the Private Guard Companies Act intended the Nigeria Security and Civil Defence Corps to have control over licensing of Private Security Guards. The fundamental question that arises therefore, is does the 1st Plaintiff qualify as a private security guard company or an entity that ought to have the activities of one of its departments or administrative arms supervised by the 3rd Defendant.

Fortunately, the Private Guard Companies Act provides an interpretation on who a private security company is. For an entity to qualify for the interpretation of company or private Company under section 36 of the Private Guard Companies Act, the Company has to be – “(a) incorporated under the laws of Nigeria and; (b) be

licensed under the provision of the act for the purpose of providing such services as are permitted under section 1 of the Act."

It is not in contention and indeed the court takes judicial notice of the fact that the 1st Plaintiff is an entity created by an Act of the National Assembly, by the University of Calabar Act 1979. The next question to ask myself is, can it then be said by any stretch of imagination that the 1st Plaintiff is a company incorporated under the laws of Nigeria? The law is clear that where a word has been defined in a statute, the court is bound to follow the meaning therein.

The question was however answered by the Supreme Court in *Ardo v. Nyako* (2014) 10 NWLR (pt.1416)591 at 628, where it held -

"...Where a word has been defined in a Statute, the meaning given to it in the definition must be adhered to in the construction of the provision of the Statute unless the contrary intuition appear from the particular section or the meaning is repugnant in the context in which the definition is used..."

The intention of the legislature is made even clearer in this regard when recourse is had to the long title of the Private Guard Companies Act.

"An Act to regulate and provide for the licensing of private guard companies which must be wholly owned by Nigerians and other matters ancillary thereto".

The law is settled that the long title of a statute forms part of the statute for interpreting the statute and giving effect to the intention of the law makers. The Supreme Court held in *Bello & Ors. v. AG Oyo State* (1986) LPELR-764(SC) Per Karibi-Whyte, J.S.C when the Court held -

"...The long title of a statute is now accepted as an important part of it and may be relied upon as explaining its general scope and aids in its construction. Thus, in this case, the general scope of the Torts law as stated in the long title is inter alia to provide for the compensation of the families of deceased persons killed by accidents. However, in determining the meaning of the provisions of the law, it is to the section construed that the interpreter should first seek assistance. Where the meaning of the words used in the section are clear and unambiguous that meaning governs. Resort is only to be had to the long title to resolve ambiguity. It is not permissible to look at the scope of the long title to modify the interpretation of the plain words of the section..."

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA 28/2/2020

The resort to the long title is for the abundance of clarity and to show that there is no contradiction between the clear meanings of the section and the general scope and purpose of the legislation.

It is clear from the above and I hereby find and hold that the powers of the 3rd Defendant does not extend to regulating the activities of the Plaintiffs. As argued by Learned Counsel for Plaintiffs, which I agree that the 1st Plaintiff security personnel are staff and officers of a statutory body and outside the scope Private Guard Companies, to be licensed within the context of the Private Guard Companies Act , that the University of Calabar empowered the Vice Chancellor in relation to all activity necessary for the actualisation of the purpose of the Act, including the security of the university community and its visitors, and all these form part of the administrative function, delegated by the University of Calabar Act and expounded in item 12 of the 3rd schedule of the University of Calabar Act.

The above provision is further strengthened by the exemptions under the section 36 of the Private Guard Companies Act which provides *inter alia* as follows:

“36(3) This Act shall not be construed as requiring any of the following persons to hold a licence under or to observe any of the conditions of this Act, that is to say-

(c)any inspector, guard, watchman or other person employed to do inspecting, guarding, watching or inquiry work for one employer only (such employer not being a private guard company) in respect of inspecting, guarding, watching or inquiry work done for that employer for the protection of persons or property arising out of the functions or business exercised or carried on by that employer.”

It seems to me that the said Private Guard Companies Act exempts anyone who does inspector, guard, watchman or such duties for **one employer** to keep that employers place of business secure in the course of that employer's business. The operative word is 'employer'. Nothing in the Affidavit of the Defendant disproves the claim that the University of Calabar is the employer of the security guards, posted at their other businesses such as the University of Calabar Micro Finance Bank and other businesses which the university set up to facilitate the objectives of the University under their enabling Act.

I am satisfied that nothing in the Nigeria Security and Civil Defence Corps Act confers any such powers of supervision of the Plaintiffs or any other entity exempted from operating the Private Guard Companies Act 1986, on the Defendants. The Private Guard Companies Act 1986, was enacted to regulate the activities of

Private Guard Companies and licensing, training and all other activities connected with private guard companies. The Private Guard Companies Act 1986, only applies to Private Guard Companies or Companies intending to operate as private guard companies or acting as Private Guard Companies. It does not include companies not engaged in that business. No entity can expand the scope of powers donated in a Statute beyond what was intended by the law makers. The Court of Appeal held in *MIC Royal Ltd. v. APCON* (2018) LPELR-45314(CA) Per Tijani Abubakar, (Pp. 40-50, paras. E-A) held, thus -

"...Now, the issue to be considered first is whether the Lower Court was right when it held that the provisions of the APCON Act and any subsidiary legislation made pursuant thereto apply to persons who are not engaged in the practice of the profession of advertising? I have given careful consideration to the submissions of learned counsel on the other relevant issues in this appeal. It is the contention of learned counsel for the Appellant that the Appellant, does not engage in the practice of the profession of advertising, and cannot therefore be bound by the provisions of the APCON Act; the Respondents' learned counsel contends to the contrary. Now, the relevant statute in this case is the Advertising

Practitioners (Registration etc) Act, CAP A7, LFN, 2004, which establishes the Respondent. It is instructive that the question to be resolved here relates to the scope and extent of the Act; and it appears both the Appellant and Respondent's Learned counsel are not in agreement that this is discoverable from the Long title of the Act. While the Appellant is of the view that the Long Title shows the intent of the legislature and the purpose for which the Act was enacted; the Respondent's counsel argues that it is legal and logical not to use only the long title in interpreting the application of a statute, urging the Court to also construe the provisions of Section 1 of the Act. Without doubt, long title can be relied on to discern the purpose and scope of a statute; however, it must be said that where the statute is clear and unambiguous, it will be unnecessary to resort to the long title for purposes of interpretation. See the decision in Bello & Ors v. AG. Oyo State (1986) LPELR -764 (SC), where it was held as follows: "The long title of a statute is now accepted as an important part of it and may be relied upon as explaining its general scope and aids in its construction. Thus, in this case, the general scope of the Torts law as stated in the long title is inter alia to provide the compensation of the families of deceased persons killed by accident. However, ... resort is only to be had to the long title to resolve

ambiguity. It is not permissible to look at the scope of the long title to modify the interpretation of the plain words of the section..."Having sought guidance from the Supreme Court, it is my view that the starting point under this issue is to consider the relevant section of the Act, and if it is discovered that there is any ambiguity, resort can be made to the long Title in discovering the scope of the Act. It is common knowledge that Section 1 of the APCON Act expansively enumerated the functions of the Respondent; the section reads..."

The Court further held that -

"...It is not in doubt that learned Counsel for the Respondent urged the Court to construe the provisions of Section 1(d) supra to the effect that it gives power to the Respondent to regulate and control the practice of advertising and where the advertisement relates to matters of foods, cosmetics, beverages and drugs, such control and regulation is subject to the Minister of Health's approval. With greatest respect, I cannot pretend that I am fully with the learned counsel on this contention. I have closely read and re-read the entire 31 sections of the Act, and I have no doubt in my mind that the scope and extent of the APCON Act is limited to the regulation and control of practitioners of the profession of

advertising. The intention of the Nigerian Legislature in enacting the APCON Act is in my view to regulate the practice of the profession of advertising or simply put, regulate the affairs of those engaged in the profession of advertising. Section 1(d) relied upon by the Respondent is clear and plain to the effect that in matters under the scope of the Act, bordering on advertisement relating to food, cosmetics, beverages, and drugs, the approval of the Minister of Health must be obtained. As the Appellant's counsel rightly submitted, Section 1(d) does not in any way confer powers to regulate or control non-members or persons not engaged in the practice of the profession of advertising. It is clearly visible that the section only circumvents the blanket powers of the Respondent to regulate and control persons engaged in the practice of advertisement, with a qualification that where the advertisement relates to the items mentioned therein, the Minister must give approval. In my view, the purpose of the APCON Act is obviously to regulate the activities of any person who is engaged in the advertisement profession and no more. This view is complemented and even made clear and visible from the Long Title of the Act, which states that the purpose of enacting same is "establish a council for advertising practitioners and to make provisions for the control of the practice of the

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
ABUJA

profession of advertising." As I have earlier mentioned, a title of a statute, both long and short are meant to provide a guide for its construction but not to control its clear provision. See: Ibrahim v. Judicial Service Committee, Kaduna State (1997) LPELR - 1408 (SC). In the instant case, the clear provision of Section 1 of the APCON Act is that the Act was enacted to regulate the practice of the profession of advertising and in essence persons engaged in that profession and not nonmembers. This is because to ascribe to the relevant provisions of the Act any expansive and loose meaning, as the Respondent has urged, would amount to importing into the words of the statute, such additional meaning, which were not provided there in the first instance by the legislature; that exercise is not within the domain of the Court, because in the interpretation of a statute, the duty of the Courts of law is limited to interpreting the words used by the legislature; it is neither within the province of the Courts nor do they have the vires to circumvent the clear intention of the legislature. As the Supreme Court aptly said in Ibrahim v. Judicial Service Committee, Kaduna State (Supra) to do so would naturally mean to usurp the functions of the legislature under the guise of judicial interpretation. The argument by the Respondent that the APCON Act is applicable to the Appellant was sternly resisted by the

Appellant's Learned counsel and I am convinced that the contention of the Appellant is well founded because it is undisputed that the Appellant is not engaged in the practice of the profession of advertising but as stated at paragraph 3 of the Appellant's Affidavit filed in support of the Originating Summons at page 4 of the record of appeal, the Appellant is engaged in the business of funeral homes; carpentry and joinery trade and also carries on business of manufacturing. There is nothing on record showing that the Appellant had engaged in practicing the profession of advertising, which the Act relates to, but it seems clear to me that the Appellant had only exercised its right to operate its own medium of disseminating information which is permitted under Section 39 of the 1999 Constitution. There will be no need to engage in a voyage of discovery to consider and determine the two other issues relating to the purported inconsistency of the Nigerian Code of Advertising Practice and Sales promotion and other Rights/Restrictions on Practice (5th Edition) with the APCON Act and the latter with the provisions of the 1999 Constitution; because having found that the Act is inapplicable to the Appellant, the latter lacks the locus to challenge the purported inconsistency. However, before I draw the curtain on this appeal, I wish to draw the attention of the Respondent once again to the

opinion expressed by Peter-Odili, JCA (now JSC) in *APCON v. International Covenant Ministerial Council* (Supra) as follows: "...what the Appellant seem to be after is to force into membership of the advertising practitioners, persons or bodies or establishments who have neither the inclination nor the interest to become same... The sum total of what the Appellant is pushing forward is to forcibly make members, those who cannot be and who are completely outside the purview of the Act. The Council is better advised to keep its tentacles within its authorized membership and leave well alone person not within their scope or profession..." It is instructive that the facts of the above case are substantially *impari materia* with those in this case, because in that case, consequent upon the receipt of a letter from the Respondent herein, APCON, requesting them to submit their religious advertisements for vetting to avoid sanction from APCON, the Plaintiff/Respondent had filed an action at the Federal High Court, Abuja Division, where the Court upheld the Plaintiff/Respondent's contention that the APCON Act imposed a restriction on their freedom of worship guaranteed under Section 38 of the 1999 Constitution. Of particular importance to the issue at hand, the Lower Court held, and same was affirmed by this Court, that the Respondents therein, who are Religious Groups, and not

being advertising practitioners are not bound by the provisions of the APCON Act. Speaking for myself, and for all the reasons I have advanced supra, and contrary to the erroneous conclusion of the learned trial judge, I entertain no doubt that the decision of this Court in the above case is applicable herein. In conclusion, I hold the view that the learned trial judge was clearly wrong in law in holding that the Appellant, a person not engaged in the practice of the profession of Advertising can be regulated by the provisions of the APCON Act..."

I cannot depart from the wise words of three Justices of the Court of Appeal, as stated above. Every entity created by or empowered under the Act is limited by the Act. The Minister cannot by regulation increase the powers under the Act and the Courts cannot give any expansionist interpretation of the Act, beyond what was contemplated by the clear words of the statute. Any such exercise by any entity other than the National Assembly through an amendment is *ultra vires* the Act and to the extent of the inconsistency null and void and of no legal effect. Any paragraph in a regulation which purports to expand the powers of the 3rd Defendant beyond what was explicitly contemplated by the Act is *ultra vires* the Act and to the extent of its inconsistency null and void and of no legal effect.

It is not the duty of the court or indeed the Defendants to give an expansive interpretation to the provisions of a statute. The role of the court is to expound the law and not to expand it. See *Ehuwa v. Ondo State I.E.C. & Ors* (2006) 10 NWLR (Pt. 1012) 544, *Kure v. K.S.L.G.S.C* (2003) NWLR (Pt. 807) 337 and *Awuse v. Odili* (2005) 16 NWLR (Pt. 952) 416.

I find myself unable to agree with the Defendants that the extant legislations viz the Nigeria Security and Civil Defence Corps Act or the Private Guard Companies Act creates a duty on the Plaintiffs to either obtain a license from the third defendant or engage the services of a licensee under the Act. The duty of the 3rd defendant as enunciated in the express and unambiguous provision of section 3 of the Nigeria Security and Civil Defence Corps Act, does not include the duty to raise funds for their licensee or prevent them from being "short-changed" as contended by the 3rd Defendant, in **Exhibit "UC5A"**.

Issue 2

Whether Paragraphs 15 and 23 of the PGC Regulations 2018, a subsidiary legislation is binding on the Plaintiff having regards to the Private Guards Companies Act, Cap P30 LFN 2004.

Having decided issue 1 in the manner I have, this issue will be brief. A subsidiary legislation properly made has the force of law of the Principal Act, as it helps give effect to the provisions and intentions of the Principal Act. See *Omatseye v. FRN* (2017) LPELR-42719(CA) Per NIMPAR, J.C.A (P. 30, paras. D-E) when the court held -

"...The council is mandated to make regulations. Regulations made pursuant to a power bestowed by the Act when properly made becomes subsidiary legislations as defined in the case of Best Njoku & Ors v. Chief Mike Iheanatu (2008) LPELR-3871. The efficacy of a subsidiary legislation properly made is therefore not in doubt, this is also supported by Section 18 of the Interpretation Act..."

The law is clear that a subsidiary legislation draws its validity and force of law from its parent legislation. See *Omatseye v. FRN* (2017) (supra) Per Nimpra, JCA (Pp. 19-20, paras. E-B).

"...The question of subsidiary legislation received judicial attention, in the case of Best Njoku v. Chief Mike Iheanatu (2008) LPELR - 3871 (CA) thus": A subsidiary legislation or enactment is one that was subsequently made or enacted under and pursuant to the power conferred by the principal legislation or enactment. It derives its force or efficacy from the principal legislation to which it is

therefore secondary and complimentary." It is trite that subsidiary legislation generally has the force of law, see Section 18 (1) of the Interpretation Act, Adeboye Amusa v. The State (2003) LPELR-474(SC) and it derives its authority from the substantive legislation..."

See also *Governor of Oyo State & Ors v. Folayan* (1995) LPELR-3179(sc); *Odeneye v. Efunuga* (1990) LPELR-2208(Sc) and *Mic Royal Ltd v. APCON* (supra).

Paragraph 23 of the Private Guard Companies Regulation purports to make it mandatory for any person or corporate entity wishing to employ more than one person for the purpose of section 1(1) of the Private Guard Companies Act, to engage the services of a licensed company. The affected services under the paragraph include watching, guarding, patrolling or carrying of money to provide protection against crime. This regulation purports to expand the scope of the legislation, beyond what was intended by the clear words of the Private Guard Companies Act.

As pointed out earlier, the purpose of the Act was for the licensing and regulating of anybody or entity interested in the business of providing private security guard services. The power to license and control those companies is clear and unambiguous. What is also

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B U J A 28/2/2020

clear and unambiguous is the intention of the law makers to restrict the application of that law only to the people or entities interested in providing private guard services and nothing more. To require everyone interested in hiring more than one person to perform that service such as the Plaintiffs, to be subject to the regulation is against the clear exemption provided in section 36 of the Act, which empowers companies to employ staff to inspect, guard and watch their premises.

The Minister of Interior does not have law making powers beyond what is donated by an Act of Parliament or the Constitution. The power to make regulations is donated by section 35 of the Private Guard Companies Act. Section 35 of the Private Guard Companies Act provides:

"The Minister may make regulations generally for the purpose of giving effect to the provisions of this Act."

Any regulations made under this section must give effect to the provisions of this Act. See *Amasike v. Registrar-General, CAC & ANOR* (2005) LPELR-5407(CA). According to Peter-Odili JCA now J.S.C (Pp. 38 Para. 39) where His lordship held -

"...A public body or authority invested with statutory powers must act within the law and take care not to

exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and reasonably..."

I am not satisfied that section 23 of the Private General Company Regulation (2018) gives effect to the Act. In my view paragraph 23 of the regulation is *ultra vires* the Act, given that it makes it mandatory for people not interested in registering Private Guard Companies to employ the services of a licensed company. The Act especially through section 36 intends for persons and corporate entities to employ persons to inspect guard and watch their premises. I make no further pronouncement on the rest of the regulation.

I hold that Paragraph 23 of the Private Guard Companies Regulation is *ultra vires* the powers of the Minister of Interior. Consequently, it is hereby declared null and void and of no legal effect and struck out.

Having come to the above conclusion, the Plaintiffs Originating Summons succeeds and I make these orders-

1. A Declaration is hereby made that the 1st Plaintiff's Security Department by its nature and being an apparatus of an organization established by an Act of

CERTIFIED TRUE
FEDERAL HIGH COURT
A B U J A 08/02/2020

the National Assembly, University of Calabar Act, 1979, does not fall within the jurisdictional scope and or category of persons and/or bodies to be regulated by the 3rd Defendant and cannot therefore be required and or compelled to be registered and/or licensed by the 3rd Defendant.

2. A Declaration is hereby made that the 2018 Private Guard Companies Regulations, do not confer authority on the 3rd Defendant to regulate the activities of University of Calabar.
3. A Declaration is hereby made that the Private Guard Companies Act, Cap P30, LFN 2004, Nigeria Security and Civil Defence Corps Act, Cap N146, LFN 2004, would have been amended, by the National Assembly to enable the Defendants, especially the 3rd Defendant, to regulate activities of 1st Plaintiff, if it was the intention of the Legislature.
4. That Defendants are perpetually restrained jointly and severally, whether by themselves or through their officers and members from embarking on any action against the 1st Plaintiff's Security Department including

but not limited to sealing up the 1st Plaintiff; as threatened in Exhibits UC5 A & B attached in support of the Originating Summons, under the guise of purportedly enforcing the provisions of the Private Guard Companies Act, Cap P30, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of its lawful duties.

5. That the Defendants are perpetually retrained jointly and severally whether by themselves or through their officers and or agents from embarking on any action against the Plaintiffs including but not limited to the arrest and prosecution of the 2nd Plaintiff and any other officer or staff or agent of the 1st Plaintiff as threatened in Exhibits UC5 A & B in the affidavit in support, under the guise of purportedly and unlawfully enforcing the provisions of the Private Guard Companies Act, Cap P30, LFN 2004, Nigeria Security and Civil Defence Corps Act, Cap N146, LFN 2004, the Private Guard Companies Regulations 2018 and therefore disturbing the 1st Plaintiff and its Security Department in the discharge of their lawful duties.

6. A Declaration is hereby made that paragraph 23 of the Private Guard Companies Regulation, 2018, is null and void and of no effect and struck out.

7. I make no order on Costs.

This is the Judgment of the Court delivered this 20th day of February, 2020.


Hon. Justice N.E. Maha
Judge

CORAM

Parties: not in Court

APPEARANCE:

Emmanuel Umoren Esq. (appearing with Ikechukwu Umezuruike Esq.) for Plaintiff.

C. O. Attabor Esq. (appearing with **W. M. Sanni Esq.** for the 1st Defendant.

Saidu Kabiru Esq. for the 2nd Defendant.

Orji Ejike Augustine Esq. for the 3rd Defendant.


Hon. Justice N. E. Maha
Judge
20/02/2020

CERTIFIED TRUE COPY
FEDERAL HIGH COURT
A B U J E
