

**IN THE FEDERAL HIGH COURT OF NIGERIA**

**IN THE LAGOS JUDICIAL DIVISION**

**HOLDEN AT IKOYI-LAGOS**

**ON WEDNESDAY THE 25<sup>TH</sup> DAY OF NOVEMBER, 2020**

**BEFORE THE HONOURABLE JUSTICE O. O. OGUNTOYINBO**

**JUDGE**

**SUIT NO. FHC/L/CS/1418/2019**

IN THE MATTER OF THE LEGALITY OR OTHERWISE OF THE MANNER OF  
COPYRIGHT SOCIETY OF NIGERIA LTD/GTE'S DISTRIBUTION OF  
ROYALTIES

**BETWEEN:**

- |   |   |            |
|---|---|------------|
| 1. GREEN LIGHT MUSIC PUBLISHING LTD     | } | PLAINTIFFS |
| 2. CHOCOLATE CITY MUSIC LTD             |   |            |
| 3. PREMIER MUSIC PUBLISHING COMPANY LTD |   |            |

AND

COPYRIGHT SOCIETY OF NIGERIA LTD/GTE      ....      DEFENDANT

**JUDGMENT**

By an Originating Summons dated and filed on the 16<sup>th</sup> day of August 2019, the Plaintiffs submitted a question before the Court for determination, to wit:

Whether, by virtue of the provisions of Regulations 15 (1) & (2) of the Copyright (Collective Management Organization) Regulations 2007, the Defendant's manner of distribution, known as 'General Distribution' or however so called, which does not reflect the usage of the works covered by the Defendant's repertoire and/or is not based on information furnished by its users, is illegal?

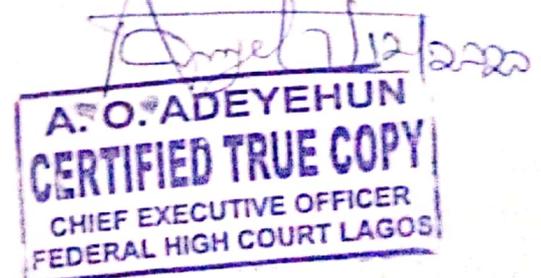
*August 7/12/2020*  
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AND by same summons, the Plaintiffs claims against the Defendant the following reliefs:

1. A Declaration that the Defendant's manner of the royalties distribution, known as 'General Distribution' or however so called, which does not reflect the usage of the works covered by the Defendant's repertoire and/or is not based on information furnished by its users, is illegal.
2. An order of Court prohibiting the Defendant from further distributing royalties in a manner, known as 'General Distribution' or however so called, which does not reflect the usage of the works covered by the Defendant's repertoire and/or is not based on information furnished by users.
3. Any order or such other order(s) as the Honourable Court may deem fit to make in the circumstances.

Accompanying the originating summons is an Affidavit of eight paragraphs deposed to by Ms Ibukun Abidoye and Written Address of Counsel wherein a lone issue is formulated for the court's determination, to wit: *whether, by virtue of the provisions of Regulations 15(1) & (2) of the Copyright (Collective Management Organization) Regulations 2007, the manner of the distribution, known as 'General Distribution' or however so called, which does not reflect the usage of the works covered by the Defendant's repertoire and/or is not based on information furnished by its users, is illegal?*

In opposition to the Originating Summons, the Defendant filed the following processes on the 3<sup>rd</sup> of October 2019:



- 1) Forty six (46) paragraph Counter Affidavit deposed to by Chief Tony Okoroji,
- 2) Ten (1) paragraph Counter Affidavit deposed to by Vincent Adawaisi;
- 3) Thirty four (34) paragraph Counter Affidavit deposed to by John Ewelukwa Udegbumam, and
- 4) Written Address of counsel wherein four issues are formulated for the Court's determination.

On the 11<sup>th</sup> day of October 2019, the Plaintiff filed a Further Affidavit of 11 paragraphs as well as a Reply on points of law.

Learned Counsel adopted their processes and urged the Court to hold as per their different stances.

I have carefully considered the originating summons, its supporting processes and opposition thereto.

The Plaintiffs allege that they are member of the Defendant, entitled to royalties. That the Defendant's distributes royalties in a manner known as General Distribution and that this manner is illegal in view of the provisions of the Memorandum and Articles of association of the defendant as well as **Regulations 15 (1) & (2) of the Copyright (Collective Management Organization) Regulations 2007**. The Plaintiff therefore wants this court to determine the lone question on the face of the summons and to grant the reliefs sought therein.

On the other hand, the Defendant had contended that its mode or manner of distribution of royalties is not illegal. The Defendant has also raised other issues as to the locus standi of the Plaintiff to commence this action and is questioning the jurisdiction of this Court to proceed with this action.

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I shall first consider the issue of locus standi and jurisdiction raised by the Defendant.

On the issue of jurisdiction, the defendant had contended that this court lacks jurisdiction over this suit on the ground that the Plaintiff allegedly has no locus standi to institute this action. In other words, the Defendant is alleging that this Court lacks jurisdiction on the believe that the Plaintiff has no locus standi to institute this action.

Locus standi is the legal capacity to institute proceedings in a Court of law. It is the standing to sue or competence of a party to sue. Locus standi focuses on the party seeking to get his complaint before a Court, not on the issue he wishes to have adjudicated. In considering whether or not a Plaintiff or an Applicant has the locus standi to institute an action or bring an application before a Court of law, the chances of success of the suit or application are not relevant consideration. Likewise, the justifiability of the action is not relevant consideration. What is relevant at that stage is whether or not the Plaintiff or Applicant is the right person to seek adjudication over the issue, or whether he or it has shown sufficient interest warranting him or it to bring the action or application. In **I.N.E.C. v. OGBADIBO LOCAL GOVT. (2015) ALL FWLR (Pt. 812) 1586**, the Court held thus:

***Locus standi* is a latin term or expression. It denotes the plaintiff's capacity to sue in a court of law to enforce a legal right. Once the plaintiff has a right or vested interest to protect and enforce legally and this has been disclosed in the writ of summons and statement of claim and in an action commenced by originating summons (as in the instant case) in the averments in the affidavit in support of the summons, the plaintiff would be adjoined to have shown sufficient**

interest which entitles him to sue on the subject matter. Chances of success of an action are not relevant consideration: Taiwo v. Adegboro (2011) All FWLR (Pt. 584) 52, (2011) 11 NWLR (Pt. 1159) 562. ....

Likewise, in the case of C.B.N. v. OKEFE (2016) 4 NWLR (Pt. 1502) 345 at 354 – 355, paras. H – D, the Court of Appeal (Makurdi Division) held thus:

*“Locus standi* has been defined to mean the legal right of a party to an action to be heard in a litigation before a court of law or tribunal. The expression encompasses the legal capacity to institute, initiate or commence an action in a competent court of law or tribunal without inhibition, obstruction or hindrance from any person or body whatsoever including the provision of existing law. The *locus standi* raises the question whether the person whose standing is in issue is the proper person to seek adjudication of the issue. It is not whether the issue itself is justiciable; or whether the case was likely to succeed. The issue is whether the plaintiff has sufficient legal interest, ...” See: A.G, Federation v. A. G., Abia State & Ors (2001) 11 NWLR (Pt. 725) 689 at 772. ... *locus standi* goes to the jurisdiction of the court to adjudicate on the subject-matter of a suit. Once there is no *locus standi*, the court cannot proceed to adjudicate over the matter in issue.”  
[Underlining is mine for emphasis]

A party who seeks any relief from any Court must, before seeking the relief, have the *locus standi*, the platform, for doing so. Any relief he seeks in the absence of the platform to press such relief remains incompetent :

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**ADEDAYO v. PDP (2013) 17 NWLR (Pt. 1382) 1 at 88 – 89, paras. H-B (SC).**

In order to determine whether a Plaintiff has locus standi, the Court is required in the main, to look at the originating processes such as the Writ of Summons and the Statement of Claim. : **JUKOK INT'L LTD v. DIAMOND BANK PLC (2016) 6 NWLR (Pt. 1507) 55 at 94, para. A.** In this case, the Originating summons and Affidavit in support.

I have considered the Originating summons and the accompanying Affidavit. By the Originating Summons, the Plaintiffs are questioning the manner of distribution of royalties by the defendant. The Plaintiffs have in the accompanying affidavit introduced themselves as members of the Defendant and have given the Defendant rights to manage their vast interest.

I have gone further to read the arguments of the Defendant on the issue of locus standi of the Plaintiff as well as the pleadings of the Plaintiff before this Court. I am of the view that the Plaintiff has the locus standi to commence this action. It seems to me that a person who has given part of his right to another to manage his or her interest can question how such interest is managed. The contention of the Defendant as to locus standi and jurisdiction are therefore overruled. I so hold.

I now go to the main issue for determination, i.e. the question for determination on the face of the originating summons.

I have read the Affidavit and Further Affidavit filed by the Plaintiff as well as all three Counter Affidavits filed by the Defendant. I observed that some key paragraphs in the Plaintiff's Affidavit such as paragraph 5, is not controverted by the Defendant. Uncontroverted facts are deemed admitted: **NEW NIGERIA BANK PLC v. DENCLANG LTD & ANOR**

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(2000) LPELR-5941(CA); **AGBOR v. THE POLYTECHNIC CALABAR**  
(2009) LPELR-8690(CA) at 19, PARAS. B - F. The Plaintiff had  
contended that this manner of distribution is contrary to the memorandum  
and articles of association of the Respondent which argument is not also  
challenged. That deposition is therefore deemed admitted.

It must be appreciated that members and shareholders including directors  
of a company are bound by the memorandum and articles of association of  
a company. They cannot act outside it. See the following authorities:

1. **NAT. PALM PRODUCE ASSO., (NIG.) LTD. v. UDOM** (2014) 8  
NWLR (Pt. 1410) 479, (P. 501, paras. A-C; F-G) wherein it was  
held thus:

"By virtue of section 41(1) of the Companies and Allied  
Matters Act, Cap. C20, Laws of the Federation of  
Nigeria, 2004, subject to the provisions of the Act, the  
memorandum and articles of a Company, when  
registered, shall have the effect of a contract under seal  
between the Company and its members and officers and  
between the members and officers themselves whereby  
they agree to observe and perform the provisions of the  
memorandum and articles, as altered from time to time in  
so far as they relate to the Company, members, or officers  
as such. In the instant case, the parties in this appeal  
were bound to observe and perform the provisions of the  
memorandum and articles of association of the National  
Palm Produce association of Nigeria Limited by  
Guarantee. All the acts of the respondents were ultra-  
vires the memorandum and articles of the 1<sup>st</sup> appellant  
and they were accordingly declared null and void"

*[Signature]*  
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2. **N.I.B. INVEST. W. A v. OMISORE (2006) 4 NWLR (Pt. 969) 172**  
(P. 200, paras. B-C), the Court held thus:

"The Memorandum and articles of association of a Company constitute a contract not merely between the shareholders and the Company but between each individual shareholder and every other shareholder of the Company. [Obikoya v. Ezenwa (1973) 8 NSCC 509 referred to.]"

3. **LADEJOBI v. ODUTOLA HOLDINGS LTD. (2002) 3 NWLR**  
(Pt. 753) 121 (Pp. 152 - 153, paras. H - B), the Court held thus:

"The articles of association of a Company contain the rules and regulations by which the internal affairs of the Company are governed. On the other hand, the memorandum of association of a Company sets out the objects and constitution of the Company. Therefore, the articles and the memorandum when registered become a contract between the Company and its members and officers, and between the members and officers themselves. Their provisions are binding on the parties thereto. Any contravention of their provision is actionable at the instance of an interested party. [Obikoya v. Ezenwe (1973) 8 NSCC 504 referred to.]"

4. **YALAJU-AMAYE v. A.R.E.C. Ltd. (1990) 4 NWLR (Pt. 145) 422**  
(P.445, para. A), the Court held thus:

"The Memorandum and articles of association of the Company bind the Company and the managing director,

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in this case the plaintiff. The documents constitute a contract between them."

5. OKOYA v. SANTILLI (1990) 2 NWLR (Pt. 131) 172 (P. 203, paras. F - G), the Court held thus:

"For a Company to conduct its affairs otherwise than on the basis of its true memorandum and articles of association will be ultra vires the Company".

I am of the view that this action has merit. Accordingly, the question for determination is answered in favour of the Plaintiff and Reliefs 1 and 2 sought are granted in the terms sought.

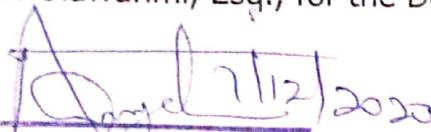
That shall be the Judgment of this Honourable Court

  
HON. JUSTICE O. O. OGUNTOYINBO  
JUDGE

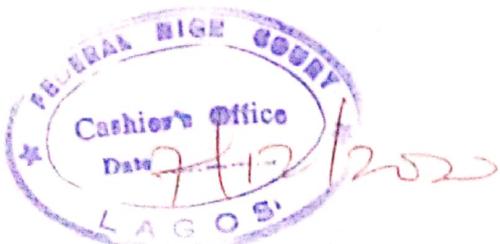
25<sup>TH</sup> NOVEMBER, 2020

**APPEARANCES:**

- Seun Olaobaju, Esq., holds the brief of Olumide Akpata, for the Plaintiff
- S. B. Olawunmi, Esq., for the Defendant

  
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