MOMENTOUS DECISIONS OF COURTS IN 2025

Contractual Capacity of Business Names: Judicial Clarification in *Attorney-General of Bayelsa State v. Abang Odok* (2025) 4 NWLR (Pt. 1982) 385.

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Facts and Background

On 25th August 2011, the respondent, a legal practitioner, through his law firm of Abang Ogar & Co., entered into a Consultancy Service Agreement (the "Agreement") with the Bayelsa State Government, followed by an addendum on 15th September 2011. The respondent recovered N18,705,308,094.83 (Eighteen Billion, Seven Hundred and Five Million, Three Hundred and Eight Thousand, Ninety-Four Naira, Eighty-Three Kobo) owed to the State by federal agencies including the Debt Management Office, Revenue Mobilization Allocation and Fiscal Commission, and Department of Petroleum Resources, entitling him to 15% fees of N2,820,796,214.22 (Two Billion, Eight Hundred Twenty Million, Seven Hundred Ninety-Six Thousand, Two Hundred Fourteen Naira, Twenty-Two Kobo.) under the Agreement. When Bayelsa State refused to honour its obligation to the respondent, the respondent declared a dispute and called for arbitration per clause 11 of the Agreement. He nominated Ms. Ikpeme Akpan, MCIArb (UK), as arbitrator and sought the appellant's consent, who did not reply. The respondent then applied to the Chief Judge of the Federal Capital Territory (FCT) for appointment of an Arbitrator. On 19th April 2013, the Chief Judge appointed Prof. Paul Idornigie as the arbitrator. The appellant fully participated in the proceedings, where an award was made in favour of the respondent on 17th January 2014, but it refused to make payment to the respondent.

On 13th February 2014, the respondent filed an originating motion at the High Court of the Federal Capital Territory, Abuja (the "High Court of the FCT"), for recognition and enforcement of the award. The High Court of the FCT granted the respondent's motion. An appeal by the appellant to the Court of Appeal was dismissed, informing the further appeal to the Supreme Court. The appellant contended on appeal that a business name (such as the respondent) cannot contract, and that the agreement between parties is void, despite the recovery benefits to the State.

Issues for Determination

On the merits, the Supreme Court considered two issues for determination of the appeal, to wit:

i. WHETHER *an arbitral award which is founded on an arbitration agreement which is not recognizable in law can be validly recognized by the court?*

ii. WHETHER *the Court of Appeal was not wrong in affirming the decision of the trial court when the trial court lacked jurisdiction to entertain the action instituted for the recognition of the arbitral award?*

Arguments of Counsel

On issue one, the appellant argued that the arbitral award contains an error of law on its face, making it liable to be set aside, because a business name like "Abang Odok-Ogar and Co" lacks legal capacity to contract. The appellant argued that the arbitrator erred by applying High Court and Federal High Court rules to validate the execution of the Consultancy Service Agreement, instead of the Arbitration and Conciliation Act and the Arbitration Rules. He therefore urged the court to declare the contract void as Abang Odok-Ogar and Co. lacked capacity to contract. In response, the respondent distinguished contractual capacity from juristic personality, asserting that business names can contract under ss. 558 and 573 of the Companies and Allied Matters Act 1990. The Respondent argued that none of the cases cited by the Appellant support barring business names from entering into contracts.

Arguing issue two, the appellant submitted that the High Court of the FCT lacked territorial jurisdiction to entertain the respondent's originating motion because the affidavit in support of the application disclosed the appellant's address is in Yenagoa, Bayelsa State, outside the court's territory, with no facts linking the claim or appellant to the Federal Capital Territory. On the part of the respondent, it was argued that the jurisdiction for enforcing arbitral awards under ss. 31 and 57 of the Arbitration and Conciliation Act 2004, is not territorially limited as in breach of contract claims. The respondent drew the attention of the court to Clause 11 of the Consultancy Service Agreement to argue that the parties, of their own record, gave the High Court of the FCT jurisdiction over their dispute. In response to this submission, it was argued in the reply brief of the appellant that parties cannot confer jurisdiction *via* an agreement, as held in **Babalola v. Obaoku-Ote.**[12]

Decision and Reasoning of Court

Relying on s. 588 of the Companies and Allied Matters Act ("CAMA"), (now s. 868 of CAMA 2020), which defines "business name" as the name under which "*any business is carried on"*, the Supreme Court reasoned that a business name is registered for the purpose of carrying on business and business is carried on by agreement. The day-to-day activities of a law firm involve accepting briefs from clients and getting paid for services rendered. As a corollary, since briefs are contracts, the Supreme Court held that the arguments of the Appellant lacked merit. Furthermore, the Court held that *"the appellant having taken benefit under the contract, i.e. having being paid sums owed to it by the relevant Federal Government Agencies, it does not lie in its mouth to seek to avoid its obligations under the contract, voluntarily entered into, by bringing on board respondent to enter into the Consultancy Service Agreement to deprive the respondent the fruits of his labour".* The court resolved this issue in favour of the respondent.

Deciding issue two, the apex court dismissed the contention of the appellant that the respondent ought to have filed the application for the recognition and enforcement of the award in Bayelsa State. Their Lordships held that the Arbitration and Conciliation Act ("ACA") did not exclude any High Court in Nigeria from entertaining such an application. The court noted that *"the territorial jurisdiction of a High Court to enforce an arbitral award, does not arise in the instant case."* The court observed that it is also on record that the contract was performed in Abuja, which was why the parties chose the Chief Judge of the High Court of the Federal Capital Territory to appoint the arbitrator. The parties agreed that the arbitration be conducted in Abuja and participated fully therein with their eyes wide open. This issue was equally resolved in favour of the respondent.

Legal Commentaries and Conclusion

The decision of the Supreme Court in ***Attorney-General of Bayelsa State v. Abang Odok*** ("Odok's case") is a landmark clarification on the connect between technicalities in corporate law and the equitable principle of sanctity of contracts. Central to the appellant's case is the fundamental principle that capacity is essential element of a valid contract. Under the Nigerian jurisprudence, capacity typically flows from legal

12 **(2004) LPELR-5259 (CA).**

personality – either natural or artificial. While **CAMA 2020** explicitly clothes an incorporated company with a veil of legal personality upon registration,[13] it remains silent on granting such status to a business name. As a corollary, an incorporated company can own properties, enter into contracts, sue and be sued, among others. Traditionally, this silence can be taken to mean **CAMA 2020** withholds such status from business name [14]

The term "business name" is defined under s. 868(1) of **CAMA 2020** as a "name or style under which any business is carried on whether in partnership or otherwise". By using the word "under", one may argue that a business name is not a legal entity separate from the person who operates it; rather, it is a sobriquet or an alias for the person. From a strict legal standpoint, "Abang Odok-Ogar and Co" is merely the shadow case by the respondent himself. Therefore, the capacity to contract does not reside in the business name itself but the respondent, who is the human proprietor behind it. Rather than making a blanket or loose pronouncement that business names possess contractual capacity – an interpretation which risks blurring the line between unincorporated and incorporated entities – the court could have arrived at a yet less argumentative conclusion by affirming that a contract executed in a business name is, in law and in fact, a contract executed by the proprietor.

Furthermore, the reliance by the court on public policy underscores a refusal to allow the law to be used as an instrument of inequity. The appellant, having accepted the benefit of the respondent's professional services to the tune of **N18,705,308,094.83,** was effectively barred from challenging the very instrument under which those services were rendered. To hold otherwise would be to allow a party to approbate and reprobate, enjoying the fruits of a contract while simultaneously resiling from it.

On the issue of jurisdiction, the decision of the court is unimpeachable. By holding that the High Court of the FCT was competent to enforce the award relating to contract regardless of the appellant's residence in Yenagoa, the court affirmed that arbitration proceedings are *sui generis*.[15] Arbitration and Mediation Act 2023 ("AMA") provides as follows:

"An Arbitral award shall, irrespective of the country or state in which it is made, be recognized as binding, and on application in writing to the court, be enforced by the court...." [16]
"A party to an arbitration agreement may request the court to refuse recognition or enforcement of an award." [17]

In defining "court", AMA provides that it means "the High Court of a State, the High Court of the Federal Capital Territory, Abuja, or the Federal High Court."[18] Therefore, AMA does not impose territorial limitations in the same manner as tortious or contractual litigation, giving parties liberty to select any jurisdiction to set aside or enforce an award.

13 S. 42, CAMA 2020.
14 This resonates with the principle of construction that the express mention of one thing is to the exclusion of others.
15 The decision of the court is similar to its position in ***N.N.P.C. v. Fung Tai Eng. Co. Ltd. (2023) 15 NWLR (Pt. 1906) 117 at 198. para C-E. (SC)***

The decision of the Supreme Court in Odok's case is remarkable in the trajectory of the Supreme Court as a policy court, favouring substantial justice over technicalities. While it cannot be interpreted as vesting business names with legal capacity, the case marks a paradigm shift by affirming the contractual capacity of such names. On jurisdiction, Odok's case cements the sui generis nature of arbitration enforcement proceedings under AMA, preserving parties' liberty from territorial constraints and bolstering Nigeria's stature as a suitable seat of arbitration.

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