IN THE FEDERAL HIGH COURT OF NIGERIA
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT ABUJA
ON MONDAY THE 16TH DAY OF NOVEMBER, 2018
BEFORE HIS LORDSHIP, HON. JUSTICE (DR.) NNAMDI O. DIMGBA
JUDGE

SUIT NO: FHC/ABJ/CS/827/2018

BETWEEN:

PAMELA ADIE - **APPLICANT**

AND

CORPORATE AFFAIRS COMMISSSION - **RESPONDENT**

JUDGMENT

By an Originating Summons dated 29/05/2018 but filed 02/08/2018, the Applicant seeks the following reliefs from this Honourable Court:

1. ***A DECLARATION*** *that by the express provisions of Section 40 of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), and Article 10 (1) of the African Charter on Human and People's Right*

(Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004, the Respondent's rejection of the registration/reservation of the Applicant's proposed name of an Association-"Lesbian Equality and Empowerment Initiatives", is a violation of the Applicant's rights to Freedom of Expression.

2. ***A DECLARATION*** *that by the express provisions of Section 39 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), and Article 9 (2) of the African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004, the Respondent's proposed name of an Association- "Lesbian Equality and Empowerment Initiatives", is a violation of the Applicant's rights to Freedom of Expression.*

3. ***A DECLARATION*** *that by the express provisions of Section 39 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), and Article 9(2) of the African Charter on Human and People's Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004, vis-*

a-vis Section 30 (1) (c) of the Companies And Allied Matters Act (CAMA) Cap C20 Laws of Federation of Nigeria 2004, the Applicant's proposed name of an Association-"Lesbian Equality and Empowerment Initiatives", is not misleading and contrary to public policy.

4. ***A DECLARATION*** *that the Applicant is entitled to Assemble and Associate under the name "Lesbian Equality and Empowerment Initiatives" as well as to be registered as an organization under the same name.*
5. ***AN ORDER*** *of this Honourable Court setting aside the Respondent's "Notice of Denial" dated the 27/10/2017 as a violation of the Applicants rights to Freedom of Association and Expression provided in Section 40 and 39 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended) and Article 10 (1) and 9 (2) of the African Charter on Human and People's Rights (Ratification and Enforcement) Act, Cap A9, Laws of the Federation of Nigeria, 2004.*

6. ***AN ORDER OF MANDAMUS*** *compelling the Respondent to forthwith issue Notice of Approval for Applicant's proposed name of an Association- "Lesbian Equality and Empowerment Initiatives" for onward registration with the Respondent.*

The application is supported by a 20 paragraph affidavit deposed to by **Pamela Adie** on 02/08/2018 to which 4 **exhibits** were annexed, marked as **Exhibits 1, 2, 3 and 4** to wit:

1. *Exhibit 1: copy of the Association's constitution;*
2. *Exhibit 2: copy of the computer print-out of the Notice of Denial sent by the Respondent to the Applicant.*
3. *Exhibit 3: copy of the Applicant's lawyer's petition to the Registrar General of the Respondent dated 12/03/2018 requesting the Respondent to rescind its action of denying the reservation of the Applicant's proposed name.*
4. *Exhibit 4: copy of a response to the Applicant's petition by the Respondent dated 22/03/2018.*

In compliance with the rules of this Court, a Written Address dated 02/08/2018 and filed on even date was provided in support of the Application wherein learned counsel to the Applicant **Mike**

Enahoro Ebah Esq., formulated and argued 3 issues for determination to wit:

1. *Whether having regard to the express provisions of sections 40 of the Constitution of the Federal Republic of Nigeria and Article 10 (1) of the African Charter on Human And Peoples' Rights (Ratification and Enforcement) Act Cap A9, Laws of the Federation on Nigeria 2004, the Respondent's rejection of the registration/reservation of the Applicant's proposed name of an Association- Lesbian Equality and Empowerment Initiatives" is a violation of the Applicant's right to Freedom of Association.*
2. *Whether having regard to the express provisions of Sections 39 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), and Article 9 (2) of the African Charter on Human and People's Right (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004, the Respondent's rejection of the registration/reservation of the Applicant's proposed name of an Association- "Lesbian Equality and Empowerment Initiatives", is a*

violation of the Applicant's rights to freedom of expression.

3. *Whether upon proper consideration of Section 39 (1) and (2) of the Constitution of the Federal Republic of Nigeria, 1999 (As Amended), and Article 9 (2) of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act Cap A9, Laws of the Federation of Nigeria, 2004, vis-à-vis Section 30 (1) (c) of the Companies And Allied Matters Act (CAMA) Cap C20 Laws of Federation of Nigeria 2004, the Applicant's proposed name of an Association- "Lesbian Equality and Empowerment Initiatives" can be said to be misleading and contrary to public policy.*

Also filed by the Applicant in response to the Counter Affidavit of the Respondent is a Further Affidavit of 10 paragraphs deposed to by **Pamela Adie** on 15/08/2018, and a Reply on Point of Law dated 15/10/2018 and filed 30/10/2018.

On the other hand, the Respondent reacted to the Originating processes by filing a 21 paragraph Counter Affidavit deposed to by **Nazif Mai'dua** on 25/09/2018**.** In line with the Rules of Court, the Respondent filed a Written Address dated and filed 25/09/2018 wherein learned counsel to the Respondent **Dr. Femi**

Ogunlade, formulated and argued 4 issues for determination to wit:

1. *Whether the name "Lesbian Equality and Empowerment Initiatives" is registrable within the purview of relevant legal frameworks and international instruments to which Nigeria is a signatory.*
2. *Whether the Respondent has discretionary power to determine registration of names under the law in which it was established; and therefore rightly declined the above name.*
3. *Whether the denial of the name "Lesbian Equality and Empowerment Initiatives" by the Respondent can be classified as an infringement of the Applicant's fundamental rights to freedom of association and expression and the right procedure to file this suit was followed.*
4. *Whether an order of mandamus can be invoked by the court to compel the Respondent to carry out an action prohibited by law.*

The above represents the processes filed by the parties in this suit. On the 09/11/18 when the matter came up for hearing, learned counsel for the Applicant, **Mike Enahoro-Ebah Esq.,**

and for the Respondent, **Luqman Salman Esq.,** adopted their processes, adumbrated on same and urged the Court to resolve the suit in favour of their respective clients.

BACKGROUND OF FACTS

The Applicant sometime in October 2017 founded "Lesbian Equality and Empowerment Initiatives" whose objective was primarily to advocate for the rights of same sex sexual orientation people. The Applicant in a quest to register the association applied to the Respondent through her solicitor, **Fajenyo Kayode** for the reservation of the name "Lesbian Equality and Empowerment Initiatives". The Respondent declined to approve the proposed name on the ground that it was misleading and contrary to public policy. The Applicant through her lawyer **Mike Enahoro-Ebah** petitioned, albeit unsuccessfully, the Registrar General of the Respondent to rescind its earlier decision rejecting the name.

Based on the refusal of the Respondent to approve the proposed name the Applicant applied to the Court for redress. The Respondent contends that the name sought to be registered by the Applicant cannot be approved because it is misleading, offensive, contrary to public policy and violates an existing law

that prohibits same-sex marriage in Nigeria. The parties are now before this Court to determine the true position of things.

DETERMINATION OF SUIT

Although I have already set out the various issues formulated and argued by each of the parties in their Written Addresses, I believe that all the arguments made by the respective parties' counsel in respect of the issues that they formulated can conveniently be accommodated under this harmonized single issue which I propose, to wit:

> ***Whether in the circumstance of this case, the Applicant is entitled to the reliefs sought.***

In his written submission, learned counsel for the Applicant made a number of arguments.. Firstly, it was contended that the Respondent did not provide reasons for categorizing the proposed name of the Applicant's association as offensive and contrary to public policy, despite being furnished with the Association's aims and objectives, and this categorization being incorrect and without legal basis is in violation of the Applicant's right to freedom of association as well as freedom to form association for the protection of her interest and that of its members. A corollary argument to this was that the right to form and register an

association is a constitutional one, which cannot be taken away except by an express constitutional provision, and also that the Respondent did not provide any clarification on how the proposed name is contrary to public policy. In his further submission on this point, learned counsel argued that public policy must follow the dictates of the law, and as such any public policy that is against the constitutional rights to Freedom of Association must give way to the Constitution. For all the propositions above, reliance was placed on **Section 40 of the 1999 Constitution of the Federal Republic of Nigeria (CRFN); Article 10 (1) of the African Charter on Human and Peoples' Right (Ratification and Enforcement) Act (ACHPRA); Section 30 (1) (c) of the Companies and Allied Matters Act (CAMA); Articles 13** and **15** of the **Guidelines of Freedom of Association and Assembly of the African Commission on Human and Peoples' Rights; Huri-Laws v Nigeria (2000) AHRLR 273 (ACHPR 2000) Paras 48 and 49; Eric Gitari v. NGO Coordination Board and others, Petition 440 of 2013 (2015) eKLR; Abacha v Fawehinmi (2000) FWLR (pt 4) 533 at 585-586; Edet v Chagoon (2008) 2 NWLR (Pt. 1070) 85 at P108 paras F-G; Total (Nig) Plc v Ajayi (2004) 3 NWLR (Pt. 860) 270,** and a number of other related cases.

Secondly, it was contended that the Respondent's rejection of the reservation of the Applicant's proposed name for its association is a violation of the Applicant's right to freedom of expression guaranteed by Section 39 of the 1999 CFRN and Article 9 (2) of the ACHPRA. Learned counsel placed reliance on **Kivumbi v Attorney-General 2008 UGCC 4; Constitutional Rights Project and Others v Nigeria (2000) AHRLR 227 (ACHPR)** and a number of other related cases.

Thirdly, it was canvassed that the Applicant's proposed name "Lesbian Equality and Empowerment Initiatives" as well as the aims and objectives of the organization are not misleading and contrary to public policy, and as such ought not to be denied reservation and registration by the Respondent. Reliance was placed on **Section 30** of **CAMA; Section 40** of the **1999 CFRN; Monim ELgak and Others v Sudan (Communication 379/09); Agbakoba v Director DSS (1994) 6 NWLR (Pt. 351) 475.**

Conversely, it was submitted by the learned Respondent's counsel that the Applicant's enjoyment of her fundamental rights must be within the confines of existing law, as the same law that guarantees the enjoyment of these rights also provided exemptions thereto, thus the association sought to be registered

by the Applicant is one that is outlawed in Nigeria as a sovereign state. For the above proposition, reliance was placed on **Section 45** of the **1999 CFRN; Sections 1, 4 (1)** of the **Same Sex Marriage (Prohibition) Act 2014; Section 214** of the **Criminal Code; Article 1 (7)** of the **United Nations Charter; Abacha v Fawehinmi (2000) FWLR (Pt 533) at 585-586; Declaration of Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, United Nations Assembly, New York, adopted on 18/12/1992-Resolution A/RES/47/135.**

Secondly, it was contended by learned counsel that the Respondent being a regulatory agency has the inherent power and discretion to reserve, approve or deny a name following the statutorily laid down criteria under Section 30 of the CAMA which has its roots from Section 45 of the 1999 CFRN, and as such, the denial of the proposed name of the Applicant is in order and in compliance with the law. In support of this submission, counsel cited **Sections 30 (1) (c),** and **32** of **CAMA, Section 45** of the **1999 CFRN; Amasike v RG CAC (2010) All FWLR (Pt. 541) 1406 at 1251.**

Thirdly, it was submitted by counsel on behalf of the Respondent that the denial of the proposed name of the Applicant cannot be

challenged under the Fundamental Right Enforcement Procedure (FREP) as the enforcement of a fundamental right should be the main claim and not an ancillary one. A corollary contention was that even if such can be brought under the FREP, the absence of a Statement in the application setting out the Applicant's description and grounds of the application, means that the Applicant failed to follow the prescribed rules under FREP, which is fatal to the case. Reliance was placed on **Governor of Kwara State v Lawal (2006) AFWLR (Pt 336) P 313 at 346; University of Ilorin v Oludare (2006) 6-7 SC Page 755; FRN v Ifegwu (2003) 15 NWLR (Pt 842) page 113 at 180.**

Finally, learned counsel submitted that the reliefs sought by the Applicant are not in the interest of the public for which an order of mandamus can be invoked by the Court to compel the Respondent to carry out an act, that is, register an association prohibited by law. Reliance was placed on **Fawehinmi v IGP (2007) NWLR (Pt. 767) 606 at 686**.

I have carefully reviewed the various submissions and oral arguments of counsel. On the submission that the Respondent did not provide a legal basis or reasons for categorizing the proposed name of the Applicant's association as offensive and contrary to public policy despite being furnished with the Association's aims

and objectives, having reviewed the processes before me, I am of the view that this submission is one that lacks merit. The Respondent in **Exhibit 2** which is the Notice of Denial and **Exhibit 4,** the reply letter from the Respondent to the Applicant's solicitor, stated clearly the reason for the categorization of the proposed name sought to be reserved by the Applicant as being misleading and contrary to public policy. Both exhibits relied on Section 30 of the CAMA as can be seen on the face of the documents. Now, Section 30 (1) (c) of the CAMA, states as follows:

1. *No company shall be registered under this Act by a name which-*

    c. *in the opinion of the Commission is capable of being misleading as to the nature or extent of its activities or is undesirable, offensive or otherwise contrary to public policy.*

From a literal perspective, the emphasis of the restriction in the registration of names in the above section 30 of CAMA is on both the name of the company and the nature of its activities. While the proposed name of a company or association can be easily identified on the face of it, the nature of its activities can be

verified from the memorandum and articles of association or the aims and objectives of the association as laid out in its constitution. Thus, applying the literal rule of interpretation in line with the case of **African Newspapers (Nig.) Ltd. v. Federal Republic of Nigeria (1985) 2 NWLR (Pt. 6) 137** where the court held that the proper approach to the interpretation of clear words of a statute is to follow them in their simple, grammatical and ordinary meaning, it is my view that where either the proposed name of the company or its aims and objectives are caught by the provisions of Section 30 (1) (c) of CAMA, the Respondent is duly empowered to reject such an application for reservation of name or registration as it has done in this case. The discretion given by statute is that of the Respondent, and except in clear cases of gross unreasonableness, the Court must defer to the exercise of that discretion and cannot substitute its own judgment for that of the responsible agency.

On the corollary submission, I agree with the submission of learned counsel to the Applicant that public policy must follow the dictates of the law and as such any public policy that is against the constitutional rights to Freedom of Association must give way to the Constitution. It is also trite that section 40 of the 1999 CFRN guarantees the right to form or belong to any association.

There is no doubt that the Applicant has the right to form or belong to any association of her choice as provided by Section 40 of the 1999 CFRN, in so far as the enjoyment of such a right is not limited by section 45 of the same constitution which provides the basis for the limitation of the enjoyment of the rights guaranteed by section 40 above. Instances where the right to form and belong to an association can be limited as provided in section 45 (1) (a) of the 1999 CFRN includes situations where such a right is in conflict with public safety, public order, public morality. As such, the rights of the Applicant to form and register an association are not absolute. They are to be exercised and enjoyed within the precincts of the law. In **Salihu v. Gana & Ors (2014) LPELR-23069(CA)** the court held that:

> *It must be understood that fundamental rights of a citizen are not absolute - Ukaegbu Vs National Broadcasting Corporation (2007) 14 NWLR (Pt 1055) 551 and Ukpabio Vs National Film and Video Censors Board (2008) 9 NWLR (Pt.1092) 219. They can be curtailed by the appropriate authorities where there are grounds for doing so - Dokubo-Asari Vs Federal Republic of Nigeria supra and Onyirioha Vs Inspector General of Police*

(2009) 3 NWLR (Pt 1128) 342. **Per Abiru, J.C.A. (Pp. 29-30, paras. F-A).**

Strictly speaking, it is on the basis of the protection of public morality as provided by section 45 (1) of the 1999 CFRN that some laws were enacted by the National Assembly to safeguard same. The Same Sex Marriage (Prohibition) Act of 2013 is an example of one of these laws. Section 4 (1) of the Same Sex Marriage Act prohibits the registration of same sex associations. It provides as follows:

> *The Registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.*

Though it was eloquently and intellectually argued by learned counsel for the Applicant that the word lesbian is different from gay as provided in Section 4(1) above, in my view, this distinction is more theoretical than real. Although the Act did not define the word "gay" in the interpretation section, for one to arrive at the actual definition of the word "gay" in the Act, one needs to ask the question, what was the intendment of the legislature in the enactment of the Same Sex Marriage (Prohibition) Act? The main object of statutory interpretation is to discover the intention of

the lawmaker, to be deduced from the language used. See **Buhari v. Yusuf (2003) 14 NWLR (Pt. 841) 446 @ 535**. In this suit, the intention is glaring on the face of the name of the Act. It was intended to prohibit the union of people of the same sex, and or any promotion of activities or association of individuals for the support of the same sex ideology. It could not have been the intention of the legislature to prohibit the registration of gay associations while allowing lesbian associations, as learned counsel appears to be advocating with this distinction. The court being a court of law and justice must give effect not just to the literal meaning of words, but also give effect to the real intention of the legislature in the construction of statutes. Moreover, it is common knowledge that in recent times, the word "gay" is used to denote homosexuals, lesbians, bisexuals and transgenders. **The Cambridge Online Dictionary 2018** defines gay as *sexual attraction to people of the same sex and not to people of the opposite sex.* I therefore find no basis in the attempt by learned counsel to distinguish the words "gay" and "lesbian".

From the above analysis, I agree with the submission of learned counsel to the Respondent that the violation of public policy as a reason by the Respondent in rejecting the reservation and

registration of the proposed name of the Applicant was not at large but rather has its bearing from constitutional and statutory provisions. Being so rooted, the refusal could not have been a violation of the Constitution as the Applicant's counsel has argued.

On the contention that the rejection of the reservation of the Applicant's proposed name of an association is a violation of the Applicant's right to freedom of expression, it is my view that such an argument merits a summary dismissal as the arguments in support of this contention are similar to the one earlier dismissed. Undoubtedly, the Applicant has the right to freedom of expression. However, in exercising its discretion to reject the name sought to be reserved, the Respondent has not violated the right to freedom of expression since the proposed name itself is in collision with an existing and operational law. The Respondent being a regulator was established to carry out functions as listed in Section 7 of CAMA which includes the regulation and supervision of the formation, incorporation, registration, management, and winding-up of companies. It is also empowered under Section 30 to exercise its discretion in the approval of names for registration. See **Amasike v. Registrar-Gen., C.A.C. (2006) 3 NWLR (Pt.968) Pg. 462**. As stated

earlier, the Court must defer to the exercise of that discretion save where it is demonstrated to be grossly unreasonable, which has not been done here. Where a regulator like the Respondent uses its discretion and refuses a name for being in violation of public policy, it is for the person applying to reserve the name to provide another which complies with the guideline for the reservation of names as provided for in Section 30 of CAMA. I wish to state at this juncture that the provision of Section 30 of CAMA does not violate the CFRN or the ACHPR. CAMA does not prohibit people from forming associations from where they can express themselves and their ideologies. It is the case of the Applicant as clearly stated in paragraph 1 of her affidavit in support of the Originating Summons that the association, "Lesbian Equality and Empowerment Initiatives" has been in existence prior to the application to the Respondent for registration sometime in October 2017. If the Applicant as a trustee and founder of the association has been operating the association and using it to express her views without any interference from the Respondent prior to the application for the association to be accorded a legal status in Nigeria which was subsequently denied, I am at a loss as to the claim that the Respondent in rejecting the proposed name for registration, acted

in violation of the fundamental right of the Applicant to expression. See **CAC v Ayedun (2005) 18 NWLR (Pt. 957) 391.**

Before I conclude, I note the contention by learned counsel to the Respondent that this suit cannot be maintained under the FREP Rules. I do not agree with this submission. I rather agree with the submission of learned counsel to the Applicant that the principal reliefs sought by the Applicant are accommodated under the FREP Rules. The law is trite that a trial court will only have jurisdiction to proceed to enforce a fundamental right of an Applicant guaranteed under Chapter IV of the constitution if the main relief discloses a breach of the fundamental right of the Applicant. See: **Sea Trucks Ltd. V. Anigboro (Supra) at page 178 paras. G-H.**; **COP Abia State & Ors v. Okara & Ors (2014) LPELR-23532 (CA)**. Going through the originating processes of the Applicant, it is clear that Reliefs 1 and 2, which are the principal reliefs, are well within the confines of the FREP Rules 2009. The other leg of the argument which challenges the absence of a Statement accompanying the processes of the suit, and contends that the suit is not properly brought under the FREP Rules, is one that is rooted in technicalities. One of the fundamental procedural changes brought about by the FREP

Rules 2009 is the move completely away from procedural technicalities in the enforcement of human rights disputes. **See Ekanem v. Asst. I.G.P. (2008) ALL FWLR (Pt.420) 775 at 783-784 paras. F-A**. This court being a court of justice will not allow technicalities stand in the way of substantial justice. I therefore dismiss this argument for lacking merit.

In conclusion, I must commend the research and analytical skills of the learned counsel to the Applicant who showed great industry in assisting the Court with helpful insights on several provisions of the ACHPR and persuasive authorities of foreign decisions. That industry notwithstanding, so far as the Same Sex Marriage (Prohibition) Act is still much operative in Nigeria and has not been repealed, the case of the Applicant must fail. Therefore, on the strength of the above analyses, the sole issue for determination is resolved against the Applicant. This suit fails and is accordingly dismissed.

I make no orders as to cost.

HON. JUSTICE (DR.) NNAMDI O. DIMGBA
JUDGE
16/11/18

PARTIES: Absent

APPEARANCES: **Mike Enahoro Ebah Esq.,** for the Applicant

Luqman Salman Esq., with **C. Bassey Esq.,** for the Respondent.