



Research Paper

## A Brief Overview of Non-Juristic Entities in Nigeria

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### Abstract

*One fundamental aspect of due diligence is that a party seeking redress in a court must ensure that the matter is brought against the proper party and that the said party on record is a juristic person. The apex court has held in plethora of cases that for a court to assume jurisdiction in a matter brought before it, the suit must be initiated by due process of law. A matter must be instituted by and against the right parties (juristic or natural persons). The study highlighted the fact that a juristic person is either a natural person in the sense of a human being of the requisite capacity or an entity created by the law which includes an incorporated body and special artificial being created by legislation and vested with the capacity to sue and be sued. It was observed that a mistake in name of a party or incorrect name is a mere misnomer which may not be fundamental to warrant the dismissal or striking out the suit but where a non-juristic personality is sued, it is a fundamental error that affects the validity of the suit. A mistake in the name of a party is not the same thing as mistake in the identity of that party. This research found that in certain instances, such as representative action, public interest litigation and human rights litigation, non-juristic persons may institute an action in that capacity. Conclusively, it was noted that where there is an error about the identity of a party, such should not be regarded as a misnomer. Failure to initiate an action by and against a natural or juristic person renders the action incurably defective.*

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### I. Introduction

This legal opinion will discuss the commencement of legal action by and against a non-juristic person in Nigeria and provide relevant case law examples. In Nigeria, legal actions are typically commenced by individuals or entities recognized by law as having the capacity to sue and be sued. However, non-juristic persons may also bring legal actions in certain circumstances, as established by case law and relevant legislation.

### II. Legal Background

Under Nigerian law, Section 2(1)(c) of the Interpretation Act defines "person" to include "corporations, societies and companies aggregate and unincorporated bodies of persons." This definition implies that only entities recognized under Nigerian law can initiate legal action. Trite, the law is that for a suit to be competent for adjudication by a court of law, there must be, at least, a competent plaintiff and a competent defendant, in the sense that both are juristic persons who can sue and be sued. Where the existing claimant or defendant lacks competent jurisdiction, it will render the action incompetent thereby robbing the court of the requisite jurisdiction to entertain and determine the suit. However, certain exceptions have been recognized by the courts and there are instances where the courts have held that a mistake in the name of a party in an originating process is a misnomer and does not go to the root or fundamental aspect of an action.

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### III. Legal Opinion

#### 3.1. Rule Against Non-Juristic Persons Commencing Legal Action

It is important to elaborate who a juristic person is in the eyes of the law. A juristic persona can be said to be a natural person, that is, a human being of requisite capacity or an entity created by law, which includes an incorporated body or a special artificial being created by legislation and vested with capacity to sue and be sued. The case of *Registered Trustees of Iroyin Ayo Baptist Church V. Sanusi & Anor*<sup>3</sup> is very instructive. It is a fundamental principle of law that a non-juristic person cannot sue or be sued before a Court of law, and where a non-juristic person is made a party, the action is rendered incompetent and liable to be struck out, for the Court would have no jurisdiction to entertain it.

In the case of *T. M. Lewin (Nig.) Ltd Vs. Smartmark Ltd.*,<sup>4</sup> the Court stated that since in law there is no place for filing of live Court processes including a notice of appeal in the name of a non-juristic person and thus every live process in Court must be strictly between natural or juristic persons. Indeed, and in truth, in law, no Court has the jurisdiction to entertain an appeal either initiated by or brought against a non-juristic person.

Under Nigerian law, the general rule is that only juristic persons have the capacity to sue and be sued. Non-juristic persons, such as unincorporated associations or informal groups of individuals, do not have legal personality and, therefore, cannot initiate legal actions. As stated above, only juristic persons have the inherent right and/or power to sue and be sued in their names. Non-legal persons or entities, again as a general proposition of law, may neither sue nor be sued except, of course, where such right to sue or be sued is created and/or vested by or under a statute.

Juristic persons who may sue or be sued *eo nomine* have been recognised to include:-

- (i) Natural persons, that is to say, human beings;
- (ii) Companies incorporated under the Companies Act;
- (iii) Corporations aggregate and Corporations sole with perpetual succession;
- (iv) Certain unincorporated Associations granted the status of legal personae by law such as: -
  - (a) Registered Trade Unions;
  - (b) Partnerships and
  - (c) Friendly Societies or Sole proprietorships

For example, in the case of *Nigerian Association of Agricultural Cooperative Societies v Aroma*<sup>5</sup>, the Supreme Court held that an unregistered association lacked legal capacity to sue in its own name. The court emphasized the need for such non-juristic persons to incorporate or obtain proper legal recognition before bringing a legal action. Simply put, a non - juristic person cannot sue nor be sued, *Fawehinmi v. NBA (No.2)*<sup>6</sup>.

It is also agreed that the naming of a non-juristic person as a claimant in a suit makes the suit outrightly incompetent as held in *Access Bank V. Agege Local Govt. & Anor.*<sup>7</sup> "Undoubtedly, for an action to be properly constituted so as to vest jurisdiction in the court to adjudicate on it, there must be a competent plaintiff and a competent defendant. As a general principle, only natural persons, that is, human beings and juristic or artificial persons such as body corporate are competent to sue or be sued. Consequently, where either of the parties is not a legal person, the action is liable to be struck out as being incompetent: see *Shitta v. Ligali*.<sup>8</sup> The law, however, recognizes that apart from natural and juristic persons, some non-legal entities can sue and be sued *eo nomine*. Thus, it has been held that no action can be brought by or against any party other than a natural person or persons unless such a party has been given by statute, expressly or impliedly or by the common law, either: (a) A legal persona under the name by which it sues or is sued, example, corporation sole and aggregate, bodies incorporated by foreign law and "quasi-corporations" constituted by Act of Parliament; or (b) A right to sue or be sued by that name e.g. partnerships, trade unions, friendly societies and foreign institutions authorized by their own law to sue and be sued but not incorporated, *Ataguba & Co. V. Gura (Nig) Ltd.*,<sup>9</sup>

In the case of *Shell Petroleum Development Company & Anor V Daniel Pessu* where the Court held thus: "The law is that for a suit to be competent for adjudication by a Court of law, there must be at least a competent plaintiff and a competent defendant, in the sense that both are juristic persons who can sue and be sued. Where the existing plaintiff or defendant lacks competence it will render the action incompetent thereby robbing the Court of the requisite jurisdiction to entertain the action".<sup>10</sup>

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<sup>3</sup> (2019) LPELR – 47720 (CA).

<sup>4</sup> (2017) LPELR-43136 (CA).

<sup>5</sup> (2011) 7 NWLR (Pt.1248) 452

<sup>6</sup> (1989) 2 NWLR (Pt.105) 588.

<sup>7</sup> (2016) LPELR – 13014 (CA)

<sup>8</sup> (1941) 16 NLR 23.

<sup>9</sup> (2005) LPELR – 584 (SC).

<sup>10</sup> (2014) LPELR - 23325 (CA)

There is no specific case law on unregistered companies as non-legal persons in Nigeria. However, the Companies and Allied Matters Act (CAMA)<sup>11</sup> governs the registration and regulation of companies in Nigeria.

Under CAMA<sup>12</sup>, a company is recognized as a legal person once it is incorporated and registered with the Corporate Affairs Commission (CAC). As a legal person, a registered company has rights and obligations under Nigerian law, including the ability to enter into contracts, sue and be sued, and hold property in its own name.

Unregistered companies, on the other hand, do not have the same legal status and may not enjoy the same legal protections and benefits as registered companies. They may be considered as partnerships or sole proprietorships, depending on the circumstances. It is important to note that while there may not be specific case law on unregistered companies as non-legal persons, courts in Nigeria have generally held that unregistered companies cannot enjoy the same legal protections and benefits as registered companies.

This was the position of the Supreme Court in *Socio-Political Research Development v Ministry of the Federal Capital Territory & Ors*<sup>13</sup> where an entity was found to be an unregistered outfit under the laws operating in Nigeria. The Court noted that the consequences is that a non-juristic person can neither sue nor be sued for want of capacity.

Unregistered companies may face difficulties in enforcing their rights in courts or entering into contracts as they do not have the same legal status and recognition as registered companies.

It is always advisable for individuals or businesses conducting commercial activities in Nigeria to comply with the requirements of CAMA and register their companies with the CAC to ensure legal recognition and protection.

### **3.2. Exceptions to the Rule**

Despite the general rule against non-juristic persons commencing legal actions, the courts have recognized certain exceptions to protect the rights and interests of such individuals or groups. These exceptions are usually based on principles of justice, equity, and public interest.

#### *i. Representative Action*

A non-juristic person may commence legal action through a representative acting on its behalf. In the case of *Pharmaceutical Society of Nigeria v Iyayi*<sup>14</sup>, the Court of Appeal recognized that a registered trade union, though a non-juristic person, can initiate legal action through its registered trustees as representatives.

#### *b. Public Interest Litigation*

Non-juristic persons may also bring legal actions in the public interest. This allows them to raise important constitutional issues that affect the general public. In *Environmental Rights Action v Shell Petroleum Development Co.*<sup>15</sup>, the Court of Appeal allowed a non-juristic entity, Environmental Rights Action, to sue an oil company for environmental damages due to the public interest involved.

#### *c. Human Rights Litigation*

Individuals or groups without juristic personality can also commence legal actions based on human rights violations. The African Charter on Human and Peoples' Rights Act 2004 recognizes the right of individuals to seek redress for human rights violations, regardless of their juristic status. In *SERAP v. Federal Government of Nigeria*<sup>16</sup>, the Federal High Court granted an unincorporated group, the Socio-Economic Rights and Accountability Project (SERAP), locus standi to sue the Nigerian government for failing to account for recovered stolen funds.

## **IV. Effect of Suing a Non-juristic Person**

The law as stated earlier, is that both natural and artificial persons are the juristic parties who can sue or be sued as parties in actions before the Court of law. Once there is a plaintiff and a defendant with the requisite juristic capacity in an action to sue or be sued, such an action would be properly constituted as to the parties and cannot be defeated on the ground of want of legal personality or capacity to sue or be sued. Where one or some of the parties among others in an action filed by many plaintiffs against many defendants, turned out to be non-juristic and lacking the capacity to sue or be sued, that fact alone cannot render the suit incompetent, on ground of improper constitution, as to the parties. In *Akpan & Ors. V. Umoren & Ors.*,<sup>17</sup> the Court held that in such a

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<sup>11</sup> Companies and Allied Matters Act, 2020

<sup>12</sup> S.18-20, CAMA, 2020

<sup>13</sup> (2018) LPELR-45708 (SC)

<sup>14</sup> (2013) All FWLR (Pt. 697) 1366

<sup>15</sup> (2000) 6 NWLR (Pt. 660) 228

<sup>16</sup> (2016) 1 WRN 1

<sup>17</sup> (2012) LPELR-7909 (CA).

situation, the action cannot be maintained by or against the non-juristic persons made parties therein. Such parties are to be struck out of the suit.

It will be wrong as well to substitute a non-juristic person by a juristic person in the guise of a misnomer. Amendment will be allowed only where a juristic or natural person is sued, and the name is incorrectly or incompletely written as seen in *Njoku v. UAC Foods*.<sup>18</sup> Similarly, in *Agbonmagbe Bank Ltd. v. General Manager G.B. Ollivant Ltd. & Ors.*<sup>19</sup> it was held that "General Manager, G.B. Ollivant Ltd." is not descriptive of a juristic person. The defendant so named, was struck out of the action on a preliminary objection. It was further held, that naming a non-juristic person as a defendant is not a misnomer and cannot be amended to substitute a juristic person.

## **V. Conclusion**

While non-juristic persons generally lack the capacity to commence legal actions in Nigeria, certain exceptions have been carved out to protect their rights and interests. A misnomer can be corrected by way of amendments as it has been held by courts to be a mere irregularity which does not affect the root of a suit. However, it is a different case when the court finds that either or both parties are non-juristic persons. The competence of the court to adjudicate on such a case is highly questionable. However, the exceptions include representative actions, public interest litigation, and human rights litigation. It is crucial for non-juristic persons to consult legal counsel and ensure their case falls within one of these recognized exceptions before initiating legal action.

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<sup>18</sup> (1999) LPELR-13014 (CA).

<sup>19</sup> (1961) 1 All NLR 116.