

The Federal High Court (FHC) has ruled that private companies incorporated before CAMA 2020 can have one shareholder

Issue No. 8.3 | August 2024



On 30 July 2024, the Federal High Court (FHC), Abuja Division decided that the provisions of Section 18(2) of the Companies and Allied Matters Act (CAMA) 2020 apply to all private companies (Ltd) in Nigeria, including those incorporated before CAMA 2020.

The decision was handed down in the case of *Primetech Design and Engineering Nigeria Limited & Julius Berger Nigeria Plc v. Corporate Affairs Commission*.

Background facts

Primetech Design and Engineering Nigeria Limited (Primetech) was incorporated with two shareholders before CAMA 2020 came into force. After CAMA 2020 introduced single shareholder companies, all the shares of its first shareholder - Martin Brack, were transferred to the second shareholder - Julius Berger Nigeria Plc (Julius Berger), via a share transfer instrument. Thus, Julius Berger became the only shareholder of Primetech.

Upon notification of the share transfer, the Corporate Affairs Commission (CAC) queried the application on the basis that any company incorporated prior to 2020 could not have a single shareholder. It also ruled that such a company could be subjected to winding-up proceedings on the basis that its shareholding has fallen below two persons.

Primetech and Julius Berger filed the suit, challenging the CAC's position.

FHC's decision

The FHC resolved the issues in the suit in favour of Primetech and Julius Berger.

The Court noted that Section 869(1) of CAMA 2020 repealed CAMA 1990, rendering it obsolete and non-existent. Therefore, there was no basis for seeking to distinguish between companies incorporated prior to the enactment of the amendment Act and those formed under it. It declared that the provisions of Section 18(2) of CAMA 2020 apply to all private companies, irrespective of whether they were incorporated before and/or after the commencement date of CAMA 2020.

The Court also held that Section 18(1) of CAMA 2020 does not necessarily mandate a private company to have two members. It clarified that a private company that elected to take advantage of Section 18(2) of CAMA

2020 would not be caught by the provisions of Section 571(c) of CAMA 2020 (this section provides for the winding up of a company by the court where the number of shareholders is reduced below two in the case of companies with more than one shareholder) unless the company's MemArt specifically requires it to have more than one shareholder.

Overall, the Court held that the Defendant could not validly refuse to approve the share transfer instruments.

Commentary

Under the repealed CAMA 1990, many private companies maintained a nominal shareholder primarily to meet the two-shareholder minimum requirement. Interestingly, even after the 2020 amendment that permitted companies to have single shareholder, the CAC refused to acknowledge the right of pre-CAMA 2020 companies to become single-shareholder companies. The general view was that this position was in conflict with the clear intention of the legislature.

It is gratifying that the FHC's decision has clarified that Section 18(2) of CAMA 2020 applies to private companies incorporated under the repealed CAMA 1990, allowing them to operate with a single shareholder.

Importantly, the FHC's judgment serves as a judicial acknowledgement of the Federal Government's expressed policy direction of promoting the ease of doing business in Nigeria. This policy direction has been encoded in CAMA 2020 and several other statutes by the National Assembly of Nigeria, including the Business Facilitation Act 2023, and the Start-up Act 2022. The CAC and other relevant ministries, departments, and agencies (MDAs) of the Federal Government would do well to take a cue from the judgment of the FHC and ensure that the ease of doing business drive is promoted, and the laws are properly given effect. The public should not have to resort to litigation to enjoy rights that have been clearly and unequivocally made available by statutes; especially when such have been clearly expressed to be the intention of the Federal Government which the CAC and MDAs are a part of.

It is hoped that the CAC would apply the principle adopted in Primetech's case across the board to introductions in CAMA 2020, and not restrict itself to the specific sections addressed under the FHC's judgment. Some of the other changes introduced by CAMA 2020 to ease business operations in Nigeria, especially for small and private companies include:

- the formation of private companies by a single shareholder (Section 18(2));
- exemption of small companies and companies having one shareholder from the mandatory annual general meeting of companies (Section 237(1));
- e-meetings for private companies (Section 240(2));
- exemption of companies with a single shareholder from keeping minutes books (Section 266 (1));
- exemption of small companies¹ from the minimum requirement of two directors (Section 271(1));
- exemption of small companies from the requirement to have company secretaries (Section 330); and
- exemption of companies with single shareholder from compliance with the statutory time of filing annual returns (Section 421(2)).

The Court's decision also reiterates the need to interpret laws in a purposive manner to ensure the different parts of the law are read in community. The FHC's decision is a rejection of CAC's insistence on adopting the literal interpretation of the provisions of CAMA despite the unnecessary difficulty this may impose on companies, impeding their ability to conduct corporate transactions seamlessly.

Indeed, an implicit takeaway from the judgment of the FHC is that the CAC is not a legal adjudicator imbued with the power to restrict or expand the meaning of CAMA or any other law, in line with its preference. Therefore, the CAC should seek to apply CAMA in a manner that achieves the intent of the lawmakers, that is, in a business-friendly manner, as advised by the FHC.

Overall, an immediate consequence of the decision should be that the provisions introduced by CAMA 2020 are applied equally to all companies going forward, even those incorporated under the repealed CAMA 1990.

¹ Section 394(3) of CAMA 2020 provides that a small company must be a private company with a turnover not exceeding N120,000,000 and a net asset value not exceeding N60,000,000. Additionally, none of its members must be an alien, a government, a government corporation, or a government agency. In the case of a company with share capital, the directors must collectively hold at least 51% of its equity share capital.



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