CASE REPORT

THE COURT OF APPEAL AFFIRMS THE POWER OF THE SECURITIES & EXCHANGE COMMISSION TO BAR A PERSON FROM BEING APPOINTED INTO THE BOARD OF PUBLIC COMPANIES: THE CASE OF MR. OLUBUNMI OLADAPO ONI Vs. ADMINISTRATIVE PROCEEDING COMMITTEE & SECURITIES AND EXCHANGE COMMISSION. (2014) N.W.L.R. (PART 1424) 334.

The decision in the case of Mr. Olubunmi Oladapo Oni vs. Administrative Proceeding Committee & Securities and Exchange Commission settled the controversy regarding SEC's regulatory powers to disqualify persons from acting as directors of publicly quoted companies. It had been argued in the case that the powers of the SEC were restricted to the regulation of capital market operators and not to companies simply by virtue of the fact that their shares were listed on the stock exchange.

The appellant, Mr. Olubunmi Oladapo Oni, was a former Managing Director of Cadbury Nigeria Plc ("Cadbury"), a company quoted on the Nigerian Stock Exchange. Following an extensive process of investigations, the Securities and Exchange Commission made a finding that Cadbury's 2006 accounts had been misstated to the tune of N13 billion. Consequently, Cadbury, its Directors, persons in charge of the running of the company, the External Auditors, Registrars, and about twenty (20) other persons were invited to appear before the Administrative Proceedings Committee of the SEC ("APC"), to explain why punitive measures should not be taken against them for violation of several provisions of the ISA, the SEC Rules and Regulations 2000 (as amended), Code of conduct for Capital Market Operators and their Employees, and the Code of Corporate Governance in Nigeria. At the end of the proceedings of the APC, several sanctions were imposed on those who were found to have been culpable and the Appellant was disqualified from operating in the capital market, being employed in the financial services sector, and from holding a directorship position in any public company. The Appellant was aggrieved by the APC's decision and filed a suit in the Federal High Court ("FHC"), for among other reliefs, an order to prohibit the SEC from imposing the sanction on him. The FHC dismissed his suit and he further appealed to the Court of Appeal.

The Appellant contended, among other things, that, as defined in section 315 of the Investments and Securities Act, (ISA), a capital market operator is a person duly registered by SEC to perform specific capital market activities; that he was not a capital market operator; that his appointment as a director of Cadbury did not require registration with or approval by SEC; that as director of Cadbury, he was involved in the business of the company (i.e. manufacture of confectionary and beverages) and he could not be said to be involved in securities business merely because the shares of the company were available to the public. He contended that the power of the SEC under section 13 of the ISA was limited to disqualification of persons from capital market activities and securities business or dealing in securities and did not extend to disqualification of a person from membership of the boards of companies; and that the power to regulate the appointment, removal and disqualification of directors or members of boards of companies had been conferred on the Corporate Affairs Commission under the relevant provisions of the Companies and allied Matters Act. In summary, he asserted that the SEC is not empowered to regulate the membership of companies.

The Court disagreed with the Appellant's arguments and dismissed his appeal. In dismissing the appeal, the Court held as follows that:

- any corporate body that issues stocks, shares and debenture is part of the securities industry;
- since Cadbury's stocks were quoted in the Nigerian Stock Exchange and open to investment by interested investors, SEC has a responsibility (under sections 13(bb), 66(1) and (2) of the ISA) to protect the interest of investors in those stocks and that the responsibility of SEC includes the power to check the activities of directors of public companies;
- the provisions of CAMA do not take away from SEC the power to regulate the activities of companies and their boards.

Article written by Otobong Umoh