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**REGISTRATION OF BUSINESS NAMES LAW IN NIGERIA: A
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David A. Oluwagbami*

ABSTRACT

Registration of business names facilitates the identification, registration and minimally regulating the informal sector business operators. This article, using doctrinal and legal comparative method, discusses and compares the 1990 and 2020 Nigerian Business Law legal regimes, drawing similarities and differences between the provisions of the 1990 and 2020 Companies and Allied Matters Acts. There has been improvement in the legal and administrative framework for business name registration as a special purpose vehicle for exploring business opportunities in Nigeria. It is however recommended that the newly improved administrative structure is adequately funded and efficiently managed to foster sustainable economic development for the entrepreneurs concerned in particular, and the nation as a whole.

1.0 INTRODUCTION

There are several special purpose vehicles for carrying on businesses in Nigeria. In the private sector, these include private companies limited by shares, public companies limited by shares, partnerships, co-operative societies and trading under the name and style of registered business names, among others. Of these, the registered business names model is relatively attractive to small and medium-scale entrepreneurs in Nigeria. The Nigerian Law Reform Commission noted this in 1991, over (30) thirty years ago:

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“The use of business names is a very popular means of carrying on business in this country. It is the mean between individual business and companies. Compared with purely individual business, it avoids the publicity of personal name where this is not desired and because it may require to be registered under the Registration of Business Names Act 1961, it provides some means of separate identification especially where two or more persons are involved. Its advantage over a company is its informality.”¹

The main objective of this paper is to comparatively examine the provisions of the Companies and Allied Matters Act 1990 (repealed) and the Companies and Allied Matters Act 2020 (newly enacted) on registration of business names in Nigeria. This study compares the old and new Acts in order to determine how the new Act, when compared to the old, can improve the effectiveness of the regime of business registration as a tool for encouraging entrepreneurship and economic development.

The scope of this paper is relatively narrow. While this study is comparative, it does not go beyond comparing selected provisions of the present and the repealed Nigerian legislation on registration of business names. It does not inquire into recent policy decision of the Federal Government of Nigeria to register, free of charge, business names for young entrepreneurs under the present Federal Government Poverty Alleviation Programmes.² While the author is aware of how the legal transplant affects business laws in Nigeria, but will refrain from comparing Nigeria’s business names registration law to

¹ Nigerian Law Reform Commission, ‘Report on the Reform of Nigerian Company Law’, Lagos, January 1991, P.261, paragraph 1

² This is the ‘Formalisation Support (Registration of 250, 000 New Businesses with the Corporate Affairs Commission)’ under the Federal Government MSME Survival Fund. The summary of the Scheme is outlined below:

(1) The programme: Formalisation Support Scheme aimed at registering 250, 000 new businesses at the CAC nationwide commencing 20th October 2020, administered by the steering Committee of the MSME Survival Fund and the guaranteed off-take scheme headed by the Hon. Minister of State, Federal Ministry of Industry, Trade and Investment, FMITI, Ambassador Mariam Yalwaji Katagun.

(2) The scheme is one of the compliments of the Economic Sustainability Plan signed into law by President Muhammadu Buhari on 1st July 2020 to cushion the effects of the COVID 19 pandemic on MSMEs and self-employed individual across the country.

(3) Target beneficiaries 250, 000 micro enterprises, spread as follows: Lagos 9, 084; Kano, 8,406; Abia, 7,906; other states, 6,606 each.

See generally The Nation (Newspaper) October 23, 2020, p.8

those of the United Kingdom, other common law jurisdictions, or indeed any jurisdiction.

2.0 CONCEPTUAL CLARIFICATION

The term “Registration of Business Names” had come to be closely linked to an aspect of the Law of Business Association³ in Nigeria. This law has a post-independence history of sixty years.⁴ The first Registration of Business Names Act was enacted in 1961. The first concern is defining the topic matter of this paper's scope. It is required to shine light on the crucial aspects of the subject in order to do it justice.

2.1 Business

The new *International Webster Pocket Business Dictionary* defines business as an enterprise established to provide a product or service in the hope of earning a profit. Such an enterprise may be a sole proprietorship, a partnership, or a corporation.⁵ Although this explanatory definition is helpful, *Chambers Dictionary* sheds more light on the idea of Business:

*“Business-1. The buying and selling of goods and services. 2. A shop, firm or commercial company, etc. 3. A regular occupation, trade or profession. 4. The things that are one’s proper or rightful concern: mind your own business. 5. Serious work or activity: let’s get down to business. 6. An affair or matter: a nasty business. 7. Colloq a difficult or complicated problem. 8. Commercial practice or policy: Prompt invoicing is good business. 9. Commercial dealings, activity, custom or contact: I have some business with his company.”*⁶

Thus, the word business as a noun connotes several ideas. These include *doing business* (in the sense of trade, commerce, industry, manufacturing, dealings, transactions, bargaining, trading, buying, selling and

³ The areas covered by the Law of Business Association include Company Law, Partnership Law, Mergers and Acquisition Law (which was essentially a Company Law topic now enlarged to stand alone as a field of Corporate Law and Finance subjects). Business Name Registration Law belongs to these areas of law.

⁴ The 1961 Act was repealed and re-enacted as part C of the *Companies and Allied Matters Act, 1990*. In 2020, the 1990 Act was wholly repealed. The new law, the *Companies and Allied Matters Act, 2020* retained the Part C of the 1990 CAMA, but now as Part E, with minor amendment of the 1990 Act.

⁵ The New International Webster’s Pocket Business Dictionary, Trident Reference Publishing, USA, 2006, P.26

⁶ The Chambers 2-in-1 Dictionary and Thesaurus, Chambers Harrap Publishers Ltd, 2008, P.122.

merchandising). It also connotes *setting up a new business*. In that sense business includes company, firm, industry, corporation, establishment, organisation etc. Business in this second sense tends to reflect a more complex special purpose vehicle for carrying out business than the simplicity of business name registration which the first sense tends to connote. There is yet a third sense. This is business as a “*line of business*”. In this sense, business means a job, an occupation, employment, trade, professional line, calling, career, vocation, duty, task, responsibility and metier.”⁷

The foregoing is essentially an English Language perspective of what business means; business is perceived as *an organised productive adventure*. The Business Dictionary, which was quoted earlier, reflects that the English meaning is also close to the viewpoint of the business community. The question now is: Does this match the legal definition of a business? The answer is in the affirmative. This can be deduced from the definition provided by the *Black’s Law Dictionary*:

“Business. 1. A commercial enterprise carried on for profit; a particular occupation or employment habitually engaged in for livelihood or gain. 2. Commercial enterprises <business and academia often have congruent claims>. 3. Commercial transactions <the company has never done business in Louisiana>. See Doing Business 4. By extension, transactions or matters of a non-commercial nature <the courts; criminal business occasionally overshadows its civil business>. 5. Parliamentary law. The matters that come before a deliberative assembly for its consideration and action, or for its information with a view to possible action in the future. • In senses 2, 3, and 4, the word is used in a collective meaning.”⁸

The CAMA 1990 in section 588, which provides for interpretation of words used in Part C of the Act, also offers a statutory definition of a number of words used.⁹ It provides that, “Business includes any trade, industry and profession and any occupation carried on for profit.” This is a useful statutory

⁷ Martin H. Manser (ed) ‘The Chambers Thesaurus’ (Allied Chambers (Indian) Limited, New Delhi, India (with licence from Chambers Harrap Publishers Ltd, USA the 2004), p.134

⁸ Bryan A. Garner (Editor-in-Chief) Blacks’ Law Dictionary. (Ninth Edition, West Publishing Co, A Thomas Reuters Business St. Paul. MN 55123, USA) p. 226

⁹ CAMA, 1990, section 588 defined “Assistant Registrar,” “business”, “business minister”, “minor”, “registrar”, “show cards”.

definition. The legislative framework for the registration of business names implies that business is widely defined to include a wide range of the most lawful economic endeavours.

2.2 Registration of Business Names

The idea of registration of business names is practically easy to digest among lawyers specialising or practising in the field of business or corporate law. This is made even easier by the Act by providing definitions for both business name and registration of business names, as well as dividing the Part F of CAMA, 2020 into sub parts.

Business name is defined statutorily as “the name or style under which any business is carried on whether in partnership or otherwise.”¹⁰ Registration of Business Name is the legal processes of registering every individual firm or corporation that has a place of business in Nigeria and carrying on businesses under a business in a manner provided under the Companies and allied Matters Act.¹¹

3.0 LEGAL AND INSTITUTIONAL FRAMEWORK

3.1. The Convergence of Business Names Registration and Companies Act in Nigeria

Prior to 1990, Nigeria operated a separate legal regime for the registration of business names and companies. The Registration of Business Names Act of 1961 governed the registration of businesses and individuals using trade names, as well as matters related thereto.¹² The Act is a relatively short enactment with only twenty sections. In summary, the Act provides for the registration of business names; manners of registration, registration of changes in names and certificate of registration.¹³

It also provided for the office of the Registrar of Business Names, removal of names from register, publication of true name, offences, penalties and

¹⁰ Companies and allied Matters Act, 1990, section 588(1)

¹¹ *ibid*, section 573 and now section 814-818 of the CAMA Act 2020.

¹² Registration of Business Names Act, 1961, Act No. 17 of 1961, Long Title

¹³ Registration of Business Names Act 1961, section 3-14

regulations.¹⁴ These regimes remained effective until the reform of company and related laws initiated in the late 1980s by the then Attorney General of the Federation, Prince Bola Ajibola,¹⁵ and actively implemented by the Nigerian Law Reform Commission under the leadership of Sir Danley Alexander.¹⁶

Company Law was also separate. The Companies Act of 1968¹⁷ was the principal legislation for the regulation of matters relating to the incorporation, operation and winding up of companies, among other matters. Though a comprehensive enactment, it never contained matters relating to registration of business names.¹⁸ The Nigerian Law Reform Commission in 1990 had the philosophy of maintaining the strict separation between the two, but the Government of the day over-ruled the Commission.

¹⁴ ibid section 15-18

¹⁵ Prince Bola Ajibola, SAN, FCI. Arb FNIALS, KBE, CFR was the Honourable Attorney-General and Minister of Justice, Federal Republic of Nigeria 12 September 1985-4 December 1991. He was also the President of Nigerian Bar Association 1984-1985. He was a Judge of the International Court of Justice, The Hague, 5 December 1991 to February 1994.

¹⁶ Hon. Sir Danley A. R. Alexander, GCON, CFR, KT, CBE, was the Chairman of the Nigerian Law Reform Commission as at the time of the commission undertook the rigorous process of reforming the Nigerian Companies Act 1968. The other members of the commission then were Dr. S.N.C. Obi, Hon. Dr. Olakunle Orojo, CON, OFR, Alhaji Usman D. Bungudu and Alhaji Aminu I. Kastina, who seemed as the secretary to the Commission. The process took place between 1987 and 1990.

¹⁷ Companies Act (then Decree), No. 51 of 1968

¹⁸ The principles of Company Law in force in Nigeria are derived principally from English Law. The first Company Legislation in Nigeria was the *Companies Ordinance 1912*. This Ordinance, coming shortly after the *English Companies (Consolidation) Act 1908*, understandably, adopted many of the provisions of the latter. Various amendments were made to this Ordinance and the existing statutes were consolidated into the *Companies Ordinance 1922* (see Cap. 38 of the laws of Nigeria 1948 Edition and Cap. 37 of the Laws of Nigeria 1958 Edition). This ordinance was also amended by various subsequent Ordinances, e.g. *Companies (Amendment) Ordinances 1929, 1941 and 1954*. All these amendments were based on *the English Companies Acts*. The next important attempt at company legislation was in 1968 when the *Companies Decree (later Act)* was promulgated. This Act was again based on the existing *U.K. Companies Act 1948*. Since it incorporated some of the provisions of the U.K. Act, it is an improvement on the previous law. For example, it makes mandatory provisions in respect of the accounts of companies. However, as has been pointed out, ‘one of the major criticisms of the Act is that it is little more than the putting together of some of the sections of the repealed Companies Act, Cap. 37 and some sections of the English Companies Act, 1948 instead of taking the bold step of codifying both the statutory and case law on companies. The preparation of such a Code would have provided the opportunity for reviewing and modifying some of the more inconvenient common law rules’ (Orojo, J.O., *Nigerian Company Law and Practice*, Vol. 1 p.11) ibid P.1 paragraph 1-2. See also Nigerian Law Reform Commission, ‘Report on the Reform of Nigerian Company Law’, Nigerian Law Reform Commission, Lagos, 1991, P.1

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In her Working Paper, the Nigerian Law Reform Commission had recommended an amending Business Name Decree. The Commission felt that a new Decree would be preferable due to the extensive nature of the proposed amendments in the Amendments to the Registration of Business Names Act, 1961. This, according to the Commission, would obviate the need for a consolidating statute which will inevitably be necessary if the Act were merely amended. In the circumstances, it proposed a new Business Names Decree incorporating these changes. It therefore recommended that:

- “A new Business Names Decree should be promulgated incorporating the changes suggested above, namely –*
- (i) Establishment of State registry offices.*
 - (ii) Better means of identifying individual applicants.*
 - (iii) Administration of the Decree by the Corporate Affairs Commission.*
 - (iv) Appointment of the Registrar of Companies as the Registrar of Business Names and the appointment of Assistant Registrars and other officers.”¹⁹*

The aforementioned statement was included in the Nigerian Law Reform Commission's Report on the Reform of the Nigerian Company Law, which it submitted to Prince Bola Ajibola,²⁰ the then-Attorney General of the Federation, and which was eventually published in 1991. This quotation substantially represents the philosophy of the Commission on Registration of Business Names as at that time. This philosophy was also reflected in the Registration of Business Names Scheme adopted under the Companies and Allied Matters Act 1990, the product of that law reform project.

The Act was unique in many respects. Part of that uniqueness was the incorporation of the Registration of Business Names Act 1961 (with necessary modifications) into the Companies and Allied Matters Act, 1990. The Nigerian Law Reform Commission considered CAMA 1990 to be one of the best-researched Companies Acts developed in the common law jurisdiction as of

¹⁹ Nigerian Law Reform Commission, *Report on the Reform of Nigeria Company*, fn 1 1991, pp263, paragraphs 14-15. Indeed, the Commission included a Draft Registration of Business Names Decree in the Volume 2 of her Report submitted to the Attorney General for consideration.

²⁰ Prince Bola Ajibola, SAN, FNIALS, KBE, CFR, later Judge International Court of Justice (ICJ), activated the law reform functions of the Federal Ministry of Justice during his tenure as the Federal Attorney General. One of products of those reform activities was the CAMA, 1990

that time when it looked back on its uniqueness in 2007, sixteen years after it was adopted. in the commission's own words:

“When CAMA was promulgated in 1990, it was (and still is) generally acclaimed to be one of the well-researched code ever produced in recent times as it is a drastic improvement on the repealed Companies Act 1968, and it also contains novel provisions which suit and reflect the economic and business climate prevailing at the time it was promulgated.”²¹

3.1.2 Business Names under CAMA 1990

As earlier noted, the Nigerian Registration of Business Name Law was first incorporated into her company legislation under the Companies and Allied Matters Act, 1990²². This section of the essay analyses those trailblazing initiatives with the goal of highlighting the crucial clauses pertaining to the registration of business names.

In summary, the Part B of CAMA 1990 has 21 sections. Broadly, these sections cover issues relating to administrations;²³ registration of business names, and procedure for registration;²⁴ issuance of certificate of registration and registration of changes;²⁵ removal of name from register;²⁶ searches, copies of entries in the register and publication of true name;²⁷ offences and penalties.²⁸ Other provisions relate to power to make regulations;²⁹ validity of previous registration under the Registration of Business Act No. 17 of 1961;

²¹ Nigerian Law Reform Commission, Workshop papers on the Review of the Company and Allied Matters Act, 1990, 2007, p.2

²² Companies and Allied Matters Act, 1990, Cap C20, LFN 2010, Part B, section 569-589 hereafter called CAMA 1990

²³ CAMA 1990, section 569-572, *ibid.*

²⁴ CAMA 1990, *ibid*, section 573-575

²⁵ CAMA 1990, *ibid*, section 576-577

²⁶ CAMA 1990, *ibid*, section 576

²⁷ CAMA 1990, *ibid*, section 577-582

²⁸ CAMA 1990, *ibid*, section 583-584

²⁹ Indeed, the Registration of Business Names Act No.17 of 1961 provides a good precedent to the drafter of the Part B of the Companies and Allied Matters Act, 1990.

Annual Returns, Interpretation of words used in Part B of CAMA 1990³⁰ as well as a repeal provision.³¹

Although Part B of CAMA, and indeed, the whole of CAMA 1990 had been repealed,³² the provisions of Part B of CAMA are still very much relevant to this discussion. This is because of their historical and comparative value. Similarly, the Nigerian courts had assisted to resolve disputes between the Corporate Affairs Commissions and a number of aggrieved users of the Act, especially on the extent of powers of CAC. We found some of these cases useful. Therefore, an examination of the jurisprudence of the Registration of Business Names Law under CAMA 2020 will be grossly defective without an idea of the 1990 provisions.

3.2 Legal Framework

The legal framework for the registration of business names in Nigeria is broadly provided for under the following:

- i. The Constitution of the Federal Republic of Nigeria, 1999, as amended
- ii. The Companies and Allied Matters Act 2020
- iii. The Regulations made pursuant to the CAMA, 2020

3.2.1 The Constitution of the Federal Republic of Nigeria, 1999

The Federal Government of Nigeria is given authority to make laws, exercise executive and adjudicative functions related to business name registration under the community reading of section 4 and item 62(f) of the Exclusive Legislative List, Second Schedule Part III of the Constitution of the Federal Republic of Nigeria, 1999, as amended. Section 4(1) and 4 (2) provide that:

“(1) The legislative powers of the Federal Republic of Nigeria shall be vested in a National Assembly for the Federation which shall consist of a Senate and a House of Representatives.

³⁰ Part B of CAMA has its own Statutory Interpretation Clause. This is understandable in view of the fact that Part is essentially a “Statute within a Statute”.

³¹ The Drafter also provides a separate repeal provision for Part B in relation to the Statute that was in operation before the coming into operation of CAMA 1990. The rationale for this is equally reasonable. Such repealing provisions are necessary within to clear doubts as to whether the Act is repealed or not. A closer examination of CAMA also revealed that this repealing provision is repealed at the end of the Act, section -- -- CAMA, 1990.

³² See CAMA 2020

(2) The National Assembly shall have power to make laws for the peace, order and good government of the Federation or any part thereof with respect to any matter included in the Exclusive Legislative list set out in Part 1 of the Second Schedule to this Constitution.”³³

Item 64(f), Second Schedule, Legislative Powers, Part I of the Exclusive List provides that the National Assembly shall have power to make law for: “62 Trade and Commerce, and in particular- (f) registration of business names.” The above provisions clearly take business name registration away from the realm of the legislative powers of the State Houses of Assembly. The Company Law Reform workshops that took place in the late 1980s and gave birth to the CAMA 1990 discussed the possibility of shifting business name registration from the Exclusive Legislative List to the Residual List. This was rejected.

The Nigerian Law Reform Commission, in her Report on the Reform of Nigerian Company Law published in 1991, documented this argument and the resolutions then. The Commission reported that:

“The registration of business names is a subject in the Exclusive Legislative List in the Constitution of the Federal Republic of Nigeria 1979. It has been urged by some people that the subject be removed from the list and left as a residuary subject for the States, or alternatively, that it should be included in the Concurrent List. We do not consider that this is desirable as it is likely to create unnecessary confusion and reduce the value of a business name and the possibility of protecting it.”³⁴

3.2.2 Regulations by the Corporate Affairs Commission

The Corporate Affairs Commission is a statutory corporation created initially by the Companies and Allied Matters Act, 1990. The Companies and Allied Matters 2020 Act scrapped the 1990 Act and replaced it, but the good news is that the 2020 Act recreated the Commission. It has been observed that the most important characteristic of a corporation is that it has separate legal

³³ The Constitution of the Federal Republic of Nigeria, 1999 as amended section 4(1) - (3)

³⁴ Nigerian Law Reform Commission, *Report on the Reform of Nigerian Company Law*, Annexes 1, Registration Emphasis more of Business Law, Nigerian Law Reform Commission, Lagos, 1991, Pp. 261-263, at P. 261, paragraph 5, italics mine, for emphasis.

existence from the existence of its members for the time being.³⁵ The Corporate Affairs Commission is empowered to make Regulations relating to Registration of Business.³⁶ Similar powers to make regulations are provided under section 587 of the CAMA, 2020. Under the 1990 CAMA, the CAC issued several regulations on various aspects of her regulatory functions. One of such regulation was packaged as Notes for Customer Guidance.³⁷

3.3 Institutional Framework

Theoretically, institutions are important for the implementation of government policies, especially when such policies are translated into laws. Thus, the establishment or the re-establishment of the Corporate Affairs Commission can be justified. The Regulations and regulatory institutions are generally important for public good. This is supported by the theory of regulation. By this theory regulatory commissions which are established by law performs several regulatory duties.

These include licensing, developing rules as well as ensuring compliance and enforcement.³⁸ It is in this light that the powers and duties of the Corporate Affairs Commission become clear in relation to the registration of business names.

3.3.1 Corporate Affairs Commission

CAMA 2020 re-established the Corporate Affairs Commission. The Commission may sue and be sued in its corporate name, may own, possess, and dispose of any property, moveable or immovable, for the purpose of carrying out its duties. The Commission is a body corporate with perpetual succession and a common seal. The headquarters of the Commission shall be

³⁵ Ian McLeod, *Principles of Legislative and Regulatory Drafting*, Harts Publishing Ltd, Oxford, United Kingdom, 2009, chapter 8 on statutory corporations, pp.133-138 at p.134

³⁶ CAMA 1990, CAMA 2020, section 16

³⁷ Corporate Affairs Commission, *Notes for customer Guidance: Legal Requirements for services of the Commission*, undated CAC, Abuja, Nigeria. This was issued in the early 2000. It was of tremendous benefits to those involved in operating the Companies and Allied Matters Act 1990 then.

³⁸ On theory of regulation see generally; Robert C. Fellmeth, 'A Theory of Regulation: A platform for State Regulatory Reform', available at <<http://www.cpil.org/download/>> Accessed 28 December 2019

in the Federal Capital Territory, Abuja, and there shall be established an office of the Commission in each State of the Federation. There is established for the Commission a Governing Board (in this Act referred to as “the Board”), which shall be responsible for performing the functions of the Commission.³⁹

3.3.2 The Registrar General and The Commission’s Staff

The Corporate Affairs is governed by a Board, policy-wise. However, the Commission names a Registrar-General who is licensed to practice law in Nigeria, has done so for at least 10 years, and who has additionally had experience in the practice or administration of company law for at least 8 years.⁴⁰ The Registrar-General is the Chief Executive Officer of the Commission and is subject to the Board's directives. He or she will hold office under the terms and conditions outlined in his or her letter of appointment as well as any other terms and conditions that the Board may decide upon with the President's consent.

For the purpose of managing and distributing funds from the Fund created in accordance with section 13, he serves as the accounting officer. The Commission also has such other staff as it may deem necessary for the efficient performance of the functions of the Commission under this Act.⁴¹ The office of the Registrar General is more or less the alter ego of the Commissions and a very important institution for the Registration of Business Names under the CAMA 2020.

3.3.3 Registrars of Business Names and State Offices⁴²

Long before the enactment of the CAMA 2020, there was a call for the decentralisation of the registration officers for the registration of business names in Nigeria. This was in the late 1980s before the enactment of the CAMA, 1990. The creation of state Business Name Registries has its genesis in the reform debates that led to the promulgation of Part B of 1990 CAMA. The Law Reform Commission reported this graphically:

³⁹ CAMA 2020, section 1-2

⁴⁰ CAMA 2020, section 9(1) -(3)

⁴¹ CAMA, 2020 section 9-10

⁴² CAMA 2020, section 9 (1) -(3)

“A strong plea was made for further decentralization of registration. It was suggested that there should be a registry in each State. Thus, if the registration of business names comes under the Corporate Affairs Commission as we recommend, then the Commission should set up and supervise the State registries. In addition, there is the point that most of these businesses are local in nature. In order to solve the problem of confusion of names, it has been suggested that each name registered should bear as an essential part of the name the identification letters of the State, either before or after the name as in the case of motor vehicle registration. Thus “Garuba & Co.” may be registered in Lagos as “Garuba & Co (LA)”, or in Enugu as “Garuba & Co.” (AN)” or in Yola as “Garuba & Co. (GG)”. In such circumstances, it will not be necessary to search for a name beyond a State. We believe that this arrangement is feasible, simple and desirable and we recommend it.”⁴³

Thirty years after, the legislature had yielded. So part of the institutional framework for the registration of business names under CAMA is now the state offices of the Registrar of Business Names. Section 851 (1) -(3) of the 2020 provides clearly for this. This is a great improvement over the positions under the 1961 and the 1990 Acts.

3.3.4 Administrative Proceedings Committee (of the CAC)

One interesting innovative institutional provision of the CAMA 2020 is the Administrative Proceedings Committee. This is established under section 851 of the Act. The Committee comprises the Registrar-General of the Corporate Affairs Commission, as the Chairman; five representatives from the operational departments of the Commission, not below the level of a director and a representative of the Federal Ministry of Industry, Trade and Investment not below the grade of director and other co-opted members.

The secretary is elected from among its members and must be a legal practitioner of not less than ten years post call experience⁴⁴. The Committee is essentially a dispute resolution mechanism, outside the Federal High Court. In this respect, section 851(4) provides that:

“The Administrative Committee shall –

(a) Provide the opportunity of being heard for persons alleged to have contravened the provisions of this Act or its regulations;

⁴³ Nigerian Law Reform Commission, ‘Report on Company Law’, 1991, at p 62.

⁴⁴ CAMA 2020, section 851 (1) -(3)

(b) Resolve disputes or grievances arising from the operations of this Act or its regulations; and

(c) Impose administrative penalties for contravention of the provisions of this Act or its regulations in the settlement of matters before it.”⁴⁵

The Committees also have potent administrative powers. Thus, under section 851(10), the sanctions that may be imposed by the Administrative Committee include: (a) Imposition of administrative penalties; (b) Suspension or revocation of registration; (c) Recommendation for criminal prosecution if matters brought before it reveals any criminal act or conduct.⁴⁶

Nevertheless, decisions of the Administrative Committee are subject to confirmation by the Board (of the Commission). Parties dissatisfied with decisions of the Committee may appeal to the Federal High Court. These provisions can be found under section 851 (11) -(12). While it may be argued that the establishment of the Committee may lead to abuse, invariably there are good news however.

The powers of the Committee, though judicially and quasi-judicially potent, the checks inherent in the preserved appellate power of the Federal High Court is good for checking probable abuse of power by the Committee.

4.0 BUSINESS NAME REGISTRATION UNDER CAMA 2020

The incorporation of corporations, limited liability partnerships, limited partnerships, the registration of business names, and the incorporation of trustees for specific communities, bodies, and associations are all provided for by this Act.⁴⁷ The long title provides that it is:

“An Act to repeal the Companies and Allied Matters Act, Cap. C20, Laws of the Federation of Nigeria, 2004 and enacts the Companies and Allied Matters Act, 2020 to provide for the incorporation of companies, limited liability partnerships, limited partnerships, registration of business names together with incorporation of trustees of certain communities, bodies, associations; and for related matters.”⁴⁸

⁴⁵ CAMA 2020, section 851(4). There are also provisions for Order of Proceedings under section 851 (5) -(9) (13)

⁴⁶ CAMA 2020, section 851(10) (a)-(c).

⁴⁷ CAMA 2020, Explanatory Memorandum

⁴⁸ CAMA, 2020 Long Title.

What is the scope of the business name registration provisions in the Act? There are eleven sections of the CAMA, 2020 that are devoted to Business Names. These are under Part E of the Act, sections 811-821. The sections are further structured into four parts; business names registry, registration of business names, removal of business names from register and miscellaneous.⁴⁹

4.1 Business Registration under CAMA 2020

The legal regime of business registration under CAMA 2020 is relatively more comprehensive than what was obtainable under the 1990 Act.⁵⁰ First, there are more provisions. In all, there are eleven sections (section 811-822) structured into three chapters.⁵¹ Each of the chapters has a number of related provisions grouped together to cover all the necessary fields in this area of the law.⁵²

5.0 SIMILARITIES AND DIFFERENCES BETWEEN THE 1990 & 2020 CAMA

As noted earlier, there are several points of similarities and differences between the provisions of the CAMA 1990 and that of 2020 on matters relating to the registration of business names. This segment of the paper focuses on that comparison. To sum up, the scope and structure of the two Acts, the regulatory framework, the registration of business names and the associated procedures, the repeal and savings provisions, the electronics documentation, the offences and penalties, the prohibited names, the Business Names Law, and the Nigerian federal system were the themes chosen for the comparative study.

5.1 Scope and Structure of the Two Acts

In terms of scope, the two legislations are not substantially different. However, the 2020 legislation is slightly different in structure from that of the 1990. The following subject matter is common to the two Acts: Registration of

⁴⁹ See generally CAMA 2020, Part E, chapters 1-4

⁵⁰ CAMA 2020, Part E, chapter 1, section 811-813

⁵¹ CAMA 2020, Part E, *ibid* chapter 2, section 814-818

⁵² *Ibid*, chapter 3, section 819. Indeed, there is the fourth chapter, section 820-822.

Business Names⁵³; Procedure for Registration⁵⁴; Entry of Business Name in the register⁵⁵; Certificate of Registration⁵⁶; and Registration of changes.⁵⁷

Arguably, these are the core provisions required in a Business name registration enactment. These are basically historical extraction from the Registration of Business Names Act, 1961 by the legislature.⁵⁸ The other similar provisions to the two Acts are removal from register, searches, and prohibited names, publication of true name, offences and penalty.

Structurally, however, the 2020 Act appears to have come up with a structural innovation. First, the provisions for Business Registration are now under Part E of the CAMA 2020, as against Part B under the 1990 Act.⁵⁹ Similarly, the 2020 Act's provisions on Business Name Registration are divided into chapters. This is a new innovation. The four chapters are:

- i. Chapter 1: Establishment of Business Name Registry etc.⁶⁰
- ii. Chapter 2: Registration of Business names.⁶¹
- iii. Chapter 3: Removal of Business Name from Register.⁶²
- iv. Chapter 4: Miscellaneous & Supplemental.⁶³

The other major difference in scope has to do with the regulatory and administrative framework. This is examined in the next segment of this paper.

5.2 Regulatory Framework under the Two Acts

The regulatory framework for the Registration of Business Names under the two Acts remains substantially the same with minor variations in nomenclatures of the Registrars and offices for the registration of Business Names.⁶⁴ Under the two Acts, the Corporate Affairs Commission established

⁵³ CAMA 1990, section 573; CAMA 2020, section 814

⁵⁴ CAMA 1990, section 574; CAMA 2020, section 815

⁵⁵ CAMA 1990, section 575; CAMA 2020, section 816

⁵⁶ CAMA 1990, section 576; CAMA 2020, section 817

⁵⁷ CAMA 1990, section 577; CAMA 2020, section 818

⁵⁸ Registration of Business Names Act 1961, section 7-12 provides for matters relevant to the registration similar to those itemized above.

⁵⁹ Compare CAMA 1990 Part B and CAMA 2020, Part E

⁶⁰ CAMA 2020, section 811-813

⁶¹ CAMA 2020, section 814-818

⁶² CAMA 2020, section 819

⁶³ CAMA 2020, section 820-821

⁶⁴ CAMA 1990, section 569; CAMA 2020, section 9

under the Act has the overall administrative power over matters relating to Registration of Business Names. Similarly, the Registrar General of the Corporate Affairs Commission is the Registrar of Business Names under the two Acts.⁶⁵

It is however important to note that the 2020 Act differs in some respects. It now strengthens the provisions for state offices, Registrar of Business Names at state level. More importantly, CAMA 2020 now establishes an Administrative Proceedings Committee (a quasi-judicial dispute resolving mechanisms within the Corporate Affairs Commission regulatory system).

5.3 Registration of Business Name

The essence of the provisions relating to registration of business name under both the CAMA 1990 and 2020 is to provide a registration scheme. Thus, provisions relating to registration can be found under sections 573-577 of the CAMA 1990. Likewise, sections 814-818 of CAMA 2020 provide for matters relating to registration. Both Acts therefore cover the basic registration elements such as registration of the name,⁶⁶ procedure for registration,⁶⁷ entry of the names in the register,⁶⁸ certificate of registration⁶⁹ and registration of changes.⁷⁰

Under the CAMA 2020 section 814 is the main provision for registration of business names. This is similar to section 573 of the 1990 Act. The core provisions under 573 (1) -(3) of 1990 are almost identical with section 814 (1) -(3) of the 2020 Act except for the substitution of the word corporation for company under the 2020 Act in section 814 (1)(c). It provides:

“814 (1)(c) Every individual, firm or Corporation having a place of business in Nigeria and carrying on business under a business name shall be registered in the manner provided in this Part.”

What then are the dissimilarities? First the legislative introduced the concept of dividing the relevant provisions on Business Name Registration under

⁶⁵ CAMA 1990, section 571; CAMA 2020, section 812

⁶⁶ CAMA 1990, section 573; CAMA 2020, section 814

⁶⁷ CAMA 1990, section 574; CAMA 2020, section 815

⁶⁸ CAMA 1990, section 575; CAMA 2020, section 816

⁶⁹ CAMA 1990, section 576; CAMA 2020, section 817

⁷⁰ CAMA 1990, section 577; CAMA 2020, section 818

CAMA 2020 into chapters. Thus, there are four chapters⁷¹ under Part E of the 2020 Act. This was not the case under the 1990 Act. Secondly, the provision relating to the appointment of Assistant Registrars of Business Names under S. 571(2) of the 1990 Act had been redrafted. It now reads, under S. 812 (2):

“Suitable staff of the Commission may be appointed from time to time to be head of office and other officers of the Business Name Registry in each state of the Federation as may be necessary for the administration of this part of this Act.”

Thirdly, section 573(a)-(b) of the 1990 and section 814 (1) -(3) of 2020 are similar. There is however a major departure in the number of subsections. While the 1990 section 573 has 2 subsections, the 2020 section 814 has 4 subsections. The first 2 subsections are identical with that of 573 (1) -(2) while the remaining 2 i.e. 814 (3) -(4) are new provisions providing for the *powers of inspectors* over a registered partnership business name.

This provision becomes necessary for two reasons. One, CAMA 2020 now provides for a new regime of limited partnerships.⁷² Second, the new CAMA Act also strengthens the power of inspection⁷³ vested in the relevant organ of the Corporate Affairs Commission. Section 814 vests an inspector with a number of discretionary powers. These include power to examine on oath and other remedial regulatory matters.

The above observations are but a part of the central problem. The core challenge with the provision relating to registration under the Act is section 814 which provides for compulsory registration of all businesses commenced in Nigeria within 28 days of their commencement. Why do we have to enact a regime of compulsory registration when the socio-economic indices available are not supportive of such an over-formalised system?

5.4 Procedure for Registration

The procedures for registration of business name under the two Acts are almost identical. These are contained under section 574 of the 1990 and

⁷¹ The chapters are: Chapter 1: section 811-813 Chapter 2, section 814-818, Chapter 3: section 819, Chapter 4: section 820-821

⁷² CAMA 2020

⁷³ CAMA 2020, section 814

section 815 of the 2020 CAMA. Each of the two provisions has six subsections each. The retention of the procedure under the 1990 Act in the 2020 Act is good for consistency. Nevertheless, electronics registration is now part of the new scheme.

5.5 Electronic Documents

One encouraging difference between the 1990 and the 2020 CAMA in respect of filing is the introduction of electronic filing under s.860 (1) -(3) of the new Act. These provisions put a permanent end to the controversies that raged in our procedural law (Evidence inclusive) before the enactment of the Evidence Act, 2011 and CAMA 2020. It would be recalled that section 84(1) -(5) Evidence Act, 2011, now provide for what the side note to the section describes as “Admissibility of Statement in Documents Produced by Computers.” Section 84(1) provides that:

“In any proceedings a statement contained in a document produced by a computer shall be admissible as evidence of any fact stated in it of which direct oral evidence would be admissible, if it is shown that the conditions in subsection (2) of this section are satisfied in relation to the statement and computer in question.”⁷⁴

The provision of CAMA 2020 on electronics documentation is a good development. This provision will add value to ease of doing the business of registration of business names in Nigeria. The positive effects of this on commercial law practice and business transactions by the registered businesses are equally likely to be enormously positive. This will lead to sustainable development of the jurisprudence of Nigerian business registration law and entrepreneurship.

5.6 Repeal and Savings Provisions

The 1990 Act has three separate repeal provisions, one each for Part A, B, and C of the Act as appropriate. For Business Name, section 589 was the repealing section. It provided that, “The registration of Business Names Act 1961 is

⁷⁴ Evidence Act 2011, section 8 (1). Interestingly section 64 (2) build on the provision of section 84(1).

hereby repealed.”⁷⁵ However, under the 2020 Act, there is only one repealing and savings provisions, though comprehensive in its drafting. This forms part of the final and transitional provisions at the end of the Act.

5.7 Offences and Penalties

It is in the nature of licensing, registration or regulatory laws to provide penal provisions relevant to the activities forming the subject matter of the law. The objective of this is to ensure obedience and to make enforcement relatively easy. As rightly observed by Vicrabb:

*“Laws are commands in the main. A command demands obedience. Obedience to the law is secured by sanctions. Sanctions are the penalties attached to disobedience to the law’s commands. An enactment would thus contain a penal provision to ensure its observance or compliance. Penal provisions must be clearly expressed; they are strictly construed by the courts, in the favour of an individual.”*⁷⁶

Following the above rationale, both CAMA 1990 and 2020 make penal provisions for the violations of relevant legal commands relating to the registration of Business Names under the two Acts. Whatever approach is taken, it is important that the three elements of penal provisions must be present in any penal provision. These are *prohibition, contravention* and the *sanction or penalty*.⁷⁷

However, and this is crucial, the *Interpretation Act* established the guidelines to be followed when reading a penal provision. Section 17 (1) of the *Interpretation Act, 1961* while providing for penalties unequivocally states as follows:

*“(1) Where a punishment in respect of an offence is provided by an enactment, the enactment shall be construed as providing that an offender shall be liable in pursuance of the enactment to a punishment not exceeding the punishment so provided.”*⁷⁸

⁷⁵ Companies and Allied Matters Act, 1990, section 589. On Part A dealing with companies, section 568 was the Repeal section. section 568(1) provides that subject to the provisions of section 568, the companies Act 1968 and the Companies Special Provisions Act 1964 shall, on the commencement of this Act be repealed. Similarly, Part D dealing with incorporated Trustees was repealed by section 611. That section provides that “The Land Perpetual Succession Act Cap 98 is hereby repealed.

⁷⁶ Vicrabb Legislative Drafting p.171, quoting with approval *ibid*, p.171

⁷⁷ Vicrabb *ibid*, p.171

⁷⁸ Interpretation Act, Cap I 23, section 17

Going by its predecessor, the CAMA 1990, the CAMA 2020 is arguably an Act that is intended to last for a few decades before a substantial reform, repeal, and re-enactment. This invariably implies that many of its provisions, including those on Registration of Business Names are to be driven by Regulations made pursuant to the principal Act. Where this is the case it must be noted that in the absence of a general power such as is commonly found in the more modern interpretation statutes, specific provision must be made empowering delegated legislation to include penal sanctions.⁷⁹

This is self-explanatory. The Regulations to be made under the CAMA, 2020 must derive penal power from the Principal Act. If otherwise, such powers to punish will be ultra vires, and consequently void.

5.8 Prohibited Names

The law relating to registration had always provided for the regulation of the classes of names that may or may not be used. Under section 579 of the CAMA 1990, the law provided for Prohibited and restricted names. Where any business name under which the business of a person is carried on or to be carried on:

- i. contains the word “National” “Government”, “Municipal”, “State”, “Federal”, or any other word which imports or suggests that the business enjoys the patronage of the Federal, State or Local Government;
- ii. contains the word “co-operative” or its equivalent in any other language or any abbreviation thereof;
- iii. contains the words “Chamber of Commerce”, “Building Society”, “Guarantee”, “Trustee”, “Investment”, “Bank”, “Insurance” or any word or similar connotation;
- iv. is identical with or similar to a name by which any firm, company or individual is registered under this Part of this Act or any company is registered under the Act;

⁷⁹ Thornton, Legislative Drafting, 4th Edition p.147

- v. is similar to any trade mark registered in Nigeria; and the Registrar is of opinion that registration would likely mislead the public then the Registrar shall, unless the consent of the Commission has been first obtained by the person refuse to register the business name or, as the case may be, cancel the registration thereof.⁸⁰

Section 579 (2) elaborates further. There are other bases such as underage, fraud or previous registration under section 579 (3)-(4).⁸¹ It would be recalled that Part A of CAMA 1990 has similar provisions for prohibited names under section 30 (1) -(2). The regimes of different provisions for the prohibition of certain names for companies and communities have changed. Under the CAMA 2020, there is now a single provision for prohibited and restricted names. The provision applies to companies, partnerships, non-profit making organisations as well as business names.

Thus under section 862(1):

“No company, limited liability partnership, limited partnership, business name or incorporated trustee shall be registered under this Act by a name or trade mark which –
(a) is identical with that by which a company or limited liability partnership in existence is already registered, or so nearly resembles that name as to be calculated to deceive, except where the company or limited liability partnership in existence is in the course of being dissolved and signifies its consent in such manner as the Commission requires.”

This is a welcome development.

5.9 Business Name Law and Federalism

Arguments had been made in favor of removing business names off the Exclusive Legislative List. This debate has been going on for more than 30 years, even before the CAMA of 1990 was passed. In 1988, the Nigerian Law Reform Commission, a representative of government circles, held the opinion that keeping it on the Exclusive Legislative List was preferable.

The Commission argued then that:

“The registration of business names is a subject in the Exclusive Legislative List in the Constitution of the Federal Republic of Nigeria

⁸⁰ CAMA 1990, section 579 (1)

⁸¹ CAMA 1990, section 579 (2) – (4)

1979. It has been urged by some people that the subject be removed from the list and left as a residuary subject for the States, or alternatively, that it should be included in the Concurrent List. We do not consider that this is desirable as it is likely to create unnecessary confusion and reduce the value of a business name and the possibility of protecting it.”⁸²

As with the CAMA 1990, the CAMA 2020 is a federal law, same as before. However, we believe that state authority over business registration should be given to them. Small-scale informal companies are the main subject of Registration of Business Names. This is the approach. There is nothing in it that is so extraordinary that states shouldn't be able to handle it.

6.0 JUDICIAL CONTRIBUTIONS TO REGISTRATION OF BUSINESS NAMES REGIME

It is important at this stage to examine, in brief, the contributions of the Nigerian judiciary to the development of Business Names Registration Law in Nigeria. The courts, in many cases, had pronounced on several aspects of the provisions of the Companies and Allied Matters Act, 1990, on Business Names Registration. There are also cases on the registration of limited liability companies that have bearings on registration of business names. Few of these relevant cases will form the basis of my discussion in this segment of this paper.

Under the CAMA 1990, the rules relating to names are the same for business names and limited liability companies. Sections 30-32 of CAMA deal with prohibited and restricted names change of a name and reservation of names of companies. These provisions are similar to section 579-580 of the same CAMA, 1990 that provide for prohibited and restricted names and searches in relation to business names.

6.1 General Attitude of the Court

Generally, the courts had shown uncommon willingness to keep its doors open to any litigant on the provisions of the Companies and Allied Matters Act, 1990. Specifically, the cases had revealed that the courts are always

⁸² *Nigerian Law Reform Commission, Report on the Reform of Nigerian Company Law, NLR, Lagos, 1991, p.261*

ready to interpret the provisions of the Act objectively, using the CAMA, legal submission of counsel and adhering to the interpretative functions of the courts. While it is true that it is the Federal High Court that has the jurisdiction to adjudicate on matters relating to the provisions of the CAMA, 1990, the case that went on appeal testified to the fairness of the justice dispensed by the trial courts. We therefore review few of these cases here under.

6.2 The Scope of the Power of the Corporate Affairs Commission on Registrable Names

The Corporate Affairs Commission is conferred with the responsibility of registering companies (and businesses) operating in Nigeria by statute; CAMA 1990. Under that Act it can prohibit and restrict certain names sought to be registered. The case of *Mustapha v. C.A.C.*⁸³ illustrates this point clearly. This was an appeal against the judgment of the Federal High Court, Abuja, which dismissed the claims of the appellant against the respondent.

The Court of Appeal, in a unanimous decision, dismissed the appeal. The question in this case was whether the trial court was correct in ruling that the appellant's proposed company names were the same as or confusingly similar to those of companies that were already in existence and were thus properly rejected by the respondent acting in accordance with section 30 of the Companies and Allied Matters Act, 1990.

It was held, inter alia, that Companies and Allied Matters Act does not place any duty on the Corporate Affairs Commission to undertake an etymology of the words used in formulating the names to be registered in ascertaining whether they are identical as to mislead or deceive people as to the identity of the names already registered. All that is required of the Commission by law is a comparative analysis of the names from the ways they look or sound in the mouth and ears of ordinary citizens on the streets of Nigerian towns and cities

⁸³ *Mustapha v C.A.C.* [2009] 8 NWLR (part 1142) 35

and in particular those doing business in markets in the commercial cities who may be potential business customers of these companies.

That by virtue of section 30(1)(a)(b)(c) of the CAMA, 1990, the CAC is under a mandatory duty to refuse to register any company in Nigeria with a name identical or so resembling another company already registered. The CAC's discretionary ability to approve names to be registered is being preserved in this case. I consider this to be justifiable good judgment. S.579 CAMA 2020, which addresses names for business names that are forbidden or restricted, is the exact same as Section 30 of CAMA 1990.

6.3 Duty of CAC to Act Within the Law

A public entity or authority with statutory powers must follow the law and take care not to overstep or abuse its authority, the courts have repeatedly emphasized. It must stay within the bounds of the power granted to it. It must behave honestly and sensibly.⁸⁴ This principle of law also came up in one of the relevant cases to my discussion, the case of *Amasike v. Registrar-Gen., C.A.C.*⁸⁵

This was an appeal against the ruling of the Federal High Court, which struck out the appellant's suit for being incompetent. The Court of Appeal, in a unanimous decision, dismissed the appeal. The questions in this case were whether the trial court had done the right thing in raising and considering suo motu legal and factual issues in dismissing the case without giving the appellant a chance to be heard, and whether the trial court had done the right thing in concluding that the respondents were justified in their determination that the names proposed by the appellant are ineligible for registration under the terms of the Companies and Allied Matters Act, 1990.

It was held, inter alia, that the Corporate Affairs Commission has the discretion to refuse registration of a company. By section 30(1)(c) and (2)(a) of

⁸⁴ *Psychiatric Hospital Management Board v Ejitagha* (2000) 11 NWLR (Pt. 677) 154_referred to.] (P.500, paras. F-H)

⁸⁵ *Amasike v Registrar-Gen., C.A.C.* [2006] 27 NWLR (part 968) 462

the Companies and Allied Matters Act, 1990 no company shall be registered under the Act by name which in the opinion of Corporate Affairs Commission is capable of misleading as to the nature or extent of its activities or is undesirable, offensive, or otherwise contrary to public policy. According to the ruling on the presumption of discretion in the use of statutory powers, discretionary powers are implied and, when appropriate, utilized for beneficial purposes unless a legislation expressly or by necessary implication forbids it or the obligation demanded prevents it.⁸⁶

6.4 Discretionary Power of the CAC to Register Names

It should be recalled that no company may be registered under the Companies and Allied Matters Act, 1990, by a name that, in the opinion of the Corporate Affairs Commission, is undesirable, offensive, or otherwise contrary to public policy or is capable of deceiving as to the nature or extent of its activities. A company's name cannot include the words "Federal," "National," "Regional," "State," "Government," or any other word that, in the Commission's opinion, implies or is intended to imply that it enjoys the patronage of the Government of the Federation or the Government of a State in Nigeria, as the case may be, or any Ministry or Department of Government, without the Commission's consent.

The Court of Appeal sheds more light on this in the case of *Corporate Affairs Comm. v. Ayedun*.⁸⁷ This was an appeal against the ruling of the Federal High Court, Abuja, which granted an order of mandamus at the respondent's instance against the appellant, directing the appellant to apply to court for directions on the issue of refusal to register the name Credit Registry Limited which the respondent had presented for incorporation. The Court of Appeal, in a unanimous decision, allowed the appeal.

In this case, the question of whether section 36(2) of the CAMA, 1990 imposes an obligation on the appellant to seek court directions regarding the

⁸⁶ The Court also held that Courts are enjoined to apply the literal interpretation of words where such words are used in a statute without any ambiguity. Therefore, in interpreting a law or laws the court should do so as they ought to be.

⁸⁷ *Corporate Affairs Comm. v Ayedun* [2005] 18 NWLR (part 957) 391

appellant's refusal to register the name Credit Registry Limited, as well as the question of whether the trial court's order of mandamus requiring the appellant to seek court directions under section 36(2) of the CAMA, was legally justifiable, were the issues to be resolved.

It was held that under section 30 of the Companies and Allied Matters Act dealing with names of companies to be registered there is no provision requiring the CAC to apply to court for directions. It gives the Commission the discretion in the registration or rejecting to register a name based upon certain criteria. It is only when those criteria are not adhered to or the discretion improperly exercised that a court can interfere.⁸⁸

The foregoing cases illustrate the position of the law on the express and discretionary powers of the Corporate Affairs Commission to accept or refuse to register a proposed company name or that of business names. Though the above cases were mainly on proposed names for private limited liability company, it is obvious from the provisions of the CAMA 1990 and the pronouncements of the courts that the same principles apply when it comes to the issue of acceptable or unacceptable names for registration of companies or business names, Sections 29-32 of the 1990 Act deals with name of company.

The provisions cover the name stated in the memorandum; prohibited and restricted names; change of name of company and reservation of names.⁸⁹ These provisions are obviously in Part A of the CAMA 1990, which deals with

⁸⁸ On Construction of clear and unambiguous words of a statute, it is a fundamental and cardinal principle of interpretation of statutes that where in its ordinary meaning a provision is clear and unambiguous, effect should be given to it without resorting to external aid. The proper approach to the interpretation of clear words of a statute is to follow them in their simple, grammatical and ordinary meaning rather than look further because that is what prima facie gives them their most reliable meaning. This is also generally true in the construction of statutory provisions if they are clear and unambiguous even when it is necessary to give them a liberal or broad interpretation. In the instant case, the provisions of section 36 of the Companies and Allied Matters Act, 1990 are clear. Therefore, the trial court was wrong to have imported into section 30, the requirement in section 36 of the Act.

⁸⁹ CAMA, 1990, section 29-32

companies. Section 579, Part B, CAMA, 1990 provides for identical regime of prohibited and restricted names for business names.

7.0 FINDINGS, RECOMMENDATIONS AND CONCLUSION

The foregoing discussions have focused on a number of issues relating to the Registration of Business Names under the Companies and Allied Matters Acts, 1990 and 2020. The discussions revealed a rich historical context, a succinct conceptual definition of the key terms, a discussion of the relevant legal and institutional framework on the operation of the Acts, a fairly straightforward comparative study of the provisions relating to the registration of business names under the two Acts, as well as the discussion of a number of illustrative decided cases on the subject.

7.1 Findings

I found that the CAMA, 1990 and 2020 have several common provisions on the registration of business names. This, is good for policy stability and smooth transitions from one legal regime to another. It will enhance sustainability of the system of business name registration in Nigeria, and arguably leads to further growth and development of small and medium scale enterprises which form the main focus of the business name registration system.

I also found that the two Acts derived the origin of their provisions from the Registration of Business Names Act, 1961. Secondly, that the change from the Registrar of Business Names under Ministry of Trade to the Self-regulatory administrative corporation, the Corporate Affairs Commission, in the 1990 Act also continued under the 2020 Act. Further, that the framework under the 2020 Act had been consolidated and improved upon. Thirdly, that the Registration of Business name remains constitutionally and legally a federal matter.

Structurally, the two Acts remain the same, with slight but useful drafting modifications. Regulatory frameworks remain basically similar except with the improved restructuring of, and re-designating relevant officers of the Corporate Affairs Commission as the State Registrars of Business Names.

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There is however the establishment of the Administrative Committee of the Commission, whose quasi-judicial functions also extend to matters relating to disputes emanating from the administration of the provisions on Registration of Business Names under the 2020 Act.

The provisions relating to removal of business names from the Register as well as provisions relating to offences and penalties are substantially similar. The repeal and savings provisions remain technically the same but structurally adjusted in terms of placement in the new Act. This is basically a legislative drafting design issue. Furthermore, the courts have made meaningful contributions to the development of the jurisprudence in this area of the law.

The few cases examined exhibited the willing consistency in the pronouncements of the courts in relevant disputable areas of the administration of the law under the 1990 Act. These cases are arguably, good pointers to future reasoning of the courts under the 2020 Act. Nevertheless, there are a number of differences between the 1990 and 2020 CAMA provisions. Few of them were identified and discussed: scope and structure, regulatory framework, the scheme of registration, procedure for registration and the introduction of electronics registration are the key areas of comparison.

The key differences noted are: modified structure; more elaborate registration procedure; the statutory establishment of the state offices for business names registration; and the statutory introduction of electronics documentation under the CAMA 2020. The paper also found that the new Act had further consolidated the control and regulation of matters relating to Registration of Business Names in the Federal Legislature and the Federal Executives. States have no say in this, constitutionally.

The 2020 Act provided for continuity of the 1961 and 1990 regime of business name registration. This is good for stability in this area of our law. Nevertheless, there are areas for improvements. These form the basis for the policy recommendations, which follows.

7.2 Policy Recommendations

I make the following recommendations:

There is a need to re-examine the centralised regime of Business Name Registration in Nigeria, a federal system. The Business Name Registration model is essentially designed for informal and semi-formal, relatively localised businesses. The constitution made a feeble attempt at decentralising business name registration to local government by providing for the control and regulation of shops and kiosks under the Fourth Schedule Paragraph K (iii) of the Constitution of the Federal Republic of Nigeria 1999, as amended. It failed to go further. The issue is central to the future of Registration of Business name regime in Nigeria.

Section 814(1) of CAMA, 2020 is drafted in a mandatory forum “shall be registered”. This is not reflective of the socio-legal position of the law. We have a regime of voluntary registration in practice. This section should be redrafted with the word “may” as the operative key word. This will make registration voluntary, legally.

The introduction of State Registrars of Business Names is a welcome development. But this must be supported with well-equipped accessible offices across the commercial cities and towns in the states, rather than the state capital alone.

7.3 Conclusion

The legislature must be commended for sustaining the policy framework of the Registration of Business Names already well-established under the 1961 and 1990 legal framework. This consistency will go a long way in sustainability of the system as more business inclined citizens gradually adopt the registration of their businesses. This will contribute to economic growth and development through more formalised approach to business, and consequently positive tax contributions.

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