

IN THE HIGH COURT OF JUSTICE OF THE F.C.T.
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT APO, ABUJA
ON TUESDAY, THE 9TH DAY OF MARCH, 2022
BEFORE HIS LORDSHIP: HON. JUSTICE ABUBAKAR HUSSAINI MUSA
JUDGE

SUIT NO.: FCT/HC/CV/1251/2021

BETWEEN:

1. GASGAINU MERCHANDISE COMPANY LIMITED
2. MUHAMMAD SANI MUSA **CLAIMANTS**

AND

1. ILIYASU ABDULLAHI (SHEKARE)
2. KAMILU SA'IDU **DEFENDANTS**

JUDGMENT

This Judgment is in respect of a suit by the Claimants seeking the interpretation of section 830(1)(a), (b) and (c) of the Companies and Allied Matters Act, 2020 and section 40 of the Constitution of the Federal Republic of Nigeria 1999 as amended.

By an Originating Summons dated and filed on the 24th of June, 2021, the Claimants instituted this action seeking the determination of the following questions:

- 1. Whether by virtue of section 830(1) (a), (b) and (c) of the Companies and Allied Matters Act, 2020, the Defendants, either by themselves, agents, staff, officers, or howsoever called, can lawfully operate an unregistered association entitled "General Scraps Dealers Association" and impose the membership of the Association and levies/dues in the name of the Association on the Claimants and*

their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria.

- 2. Whether even if the General Scraps Dealers Association is a registered Association, by virtue of the provisions of section 40 of the 1999 Constitution (as amended), the Defendants, either by themselves, agents, staff, officers, or howsoever called, have the power to compel the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place to become members of the Association and that the Defendants do not have the power of making it mandatory on the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria to pay levies and/or dues to the Defendants in the name of the Association.*

Upon a determination of the above questions, the Claimants seek the following reliefs from this Honourable Court:-

- 1. A Declaration that by virtue of section 830(1)(a), (b) and (c) of the Companies and Allied Matters Act, 2020, the Defendants, either by themselves, agents, staff, officers, or howsoever called, cannot lawfully operate an unregistered association entitled "General Scraps Dealers Association" and impose the membership of the Association and levies/dues in the name of the Association on the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria.*

2. *A Declaration that even if the General Scraps Dealers Association is a registered Association, by virtue of the provisions of section 40 of the 1999 Constitution (as amended), the Defendants, either by themselves, their agents, staff, officers, or howsoever called, have no power to compel the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria, to become members of the Association and that the Defendants do not have the power of making it mandatory on the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria to pay levies and/or dues to the Defendants in the name of the Association.*
3. *And for such further Order (s) as the Honourable Court may deem appropriate to make in the circumstances of this case.*

The Originating Summons is supported by a 7-paragraph affidavit deposed to by Abdussamad Ibrahim, a litigation officer in the law firm of Hammart & Co., Counsel to the Claimants in this suit, two exhibits and a written address. Briefly, the facts upon which the Claimants seek answers to the questions they have raised are these: the Claimants, who are dealers in scrap iron and metals at the scraps market at Zuba, Federal Capital Territory, Abuja are aggrieved that the Defendants have formed themselves into an unregistered union that goes by the nomenclature 'General Scraps Dealers Association, Zuba, Federal Capital Territory, Abuja' under the leadership of the 1st Defendant as the Chairman and the 2nd Defendant as the Secretary.

The Claimants, through the deponent to the affidavit, swore that the Defendants retained the services of other people to perpetrate their acts of illegality which the Claimants particularized as the imposition and collection of levies and dues on the traders at the scraps metal market, including the Claimants, which included a levy on the loading and offloading of trucks in the market.

According to the Claimants, they had informed the Defendants that they were not members of the association and, as such, should not be liable to the levies and dues the Defendants had imposed on the traders at the market. They also asserted that they challenged the Defendants to produce evidence of registration of the association, but they Defendants failed so to do. Because the Defendants continued to impose the levies and dues on the Claimants, the Claimants wrote a petition to the Inspector-General of Police alleging extortion against the Defendants. The Claimants averred that this suit was necessary because the Defendants were persistent in their acts of illegality and prayed this Court to grant the reliefs sought.

In the written address in support of the Originating Summons, the Claimants formulated two issues for determination. These are the issues:-

- 1. Whether by virtue of section 830(1) (a), (b) and (c) of the Companies and Allied Matters Act, 2020, the Defendants, either by themselves, agents, staff, officers, or howsoever called, can lawfully operate an unregistered association entitled "General Scraps Dealers Association" and impose the membership of the Association and levies/dues in the name of the Association on the Claimants and*

their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria.

- 2. Whether even if the General Scraps Dealers Association is a registered Association, by virtue of the provisions of section 40 of the 1999 Constitution (as amended), the Defendants, either by themselves, agents, staff, officers, or howsoever called, have the power to compel the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place to become members of the Association and that the Defendants do not have the power of making it mandatory on the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria to pay levies and/or dues to the Defendants in the name of the Association.*

In his argument on the first issue, learned Counsel submitted that the association called 'General Craps Dealers Association' was an unregistered association and, therefore, could not operate as a registered association. Specifically, Counsel argued that the association, being unregistered, lacked corporate personality, perpetual succession and could neither sue nor be sued in law. He relied on section 830(1)(a), (b) and (c) of the Companies and Allied Matters Act, 2020 and **Exhibit A** annexed to the affidavit in support of the Originating Summons and urged the Court to resolve this issue in the negative.

Making submissions on the second issue, learned Counsel contended that even if the 'General Scraps Dealers Association' is a registered association, the Defendants

lacked the powers, by virtue of section 40 of the Constitution of the Federal Republic of Nigeria 1999 as amended, to impose its membership on the Claimants, or, by extension, to prohibit the Claimants' trucks from entering or exiting from the scrap metals market at Zuba or at any other place for that matter only on the basis of the fact that the Claimants refused to pay the levies or dues imposed by the Defendants. Learned Counsel urged this Court to hold that the acts of the Defendants amounted to a violation of the Claimants' fundamental right to freedom of assembly and association as protected under section 40 of the Constitution.

The Defendants entered appearance *vide* a Memorandum of Appearance dated the 25th of August, 2021 but filed on the 27th of August, 2021. In their joint Counter-Affidavit deposed on the 27th of August, 2021 by the 2nd Defendant, the Defendants swore that the 1st and 2nd Defendants, who were scrap dealers at the Pantaker Market, Zuba, within Gwagwalada Area Council of the Federal Capital Territory, Abuja, were elected as the Chairman and the Secretary of the General Scrap Dealers Association, Zuba, an association of persons engaged in the business of scrap metals and duly registered with the Corporate Affairs Commission as an incorporated trustee. The Defendants exhibited the Certificates of Appointment into the offices of the Chairman and the Secretary and the Certificate of Incorporation of the association.

They further swore that the association retained the services of certain entities to provide and guarantee the orderliness, security, sanitation, regulation of traffic, maintenance and the general efficiency in the administration of the market. To fund

these essential services, therefore, the Defendants averred that the trustees and the members of the association approved the imposition of levies on the users of the market. These levies, according to the deponent, were ₦1,000.00 (One Thousand Naira) only for heavy duty trucks while smaller vehicles like pickups were required to pay ₦200.00 (Two Hundred Naira) only. To prove these assertions, the Defendants attached the receipts of payments to those entities and samples of receipts issued to users of the facility.

The deponent on behalf of the Defendants admitted that the Claimants were not members of the association and, therefore, have not been paying any of the levies agreed by the trustees and the members of the association. Yet, notwithstanding these facts, the Defendants have been using the monies generated from other users of the facilities to service the market and its users including the Claimants. They further claimed that **Exhibit A** attached to the Claimants' supporting affidavit was a receipt issued to a heavy duty truck that used the facility and not to the Claimants since the Claimants do not own a heavy duty truck. They added that no membership was imposed on the Claimants or any other person for that matter; that the vehicles that entered the market facility were commercial vehicles that had the option of either entering the facility and paying for the use of the facility or parking by the roadside to conduct their businesses without any encumbrance.

On **Exhibit B** attached to the affidavit of the Claimants, the Defendants denied that they were ever invited by the Inspector-General of Police. They also asserted that the

Claimants never wrote to the association or the board of trustees of the association to inquire after the registration status of the association. Finally, they insisted that the association had never demanded for or collected any due or levy from the Claimants as they were not members.

In the written address in support of the Counter-Affidavit, the Defendants through their Counsel adopted the two issues formulated by the Claimants and formulated a third issue, to wit: *“Whether considering the depositions contained in the supporting affidavit to the Originating Summons and the Counter-Affidavit of the Defendants the Claimants are entitled to the declarations sought.”*

In his argument on the first issue, learned Counsel submitted that the law placed a duty on whoever that asserts a fact to prove same. He cited with approval the cases of ***Owena Mass Transportation Co. Ltd v. Okonogba (2018) LPELR-45221 (CA) at 25 – 26 paras C – E*** and ***Edo Cement Co. Ltd v. ATTA (2018) LPELR-46809 (CA) pp 4 – 5 paras B – B***. On the authority of ***Edo Cement Co. Ltd v. ATTA (2018) supra***, Counsel for the Defendants argued that though the law placed a duty on the Claimants who were asserting the fact of non-registration of an entity to approach the Corporate Affairs Commission to establish the registration status of the entity, the Defendants had attached the certificate of incorporation of the General Scrap Dealers Association, Zuba to prove that the association is, indeed, registered, even when the Claimants had not discharged the burden of proof incumbent on them to prove the non-registration of the

association before the burden of proof could be said to have shifted to the Defendants. He urged the Court to resolve the first issue in favour of the Defendants.

In his submissions on the second issue, learned Counsel agreed with the Claimants that, by virtue of the unequivocal wording of section 40 of the Constitution of the Federal Republic of Nigeria 1999, membership of an association cannot be imposed on an unwilling person. He, however, asserted that any allegation of enforced membership must be proved by the person making that allegation. In relation to the instant case, Counsel for the Defendants maintained that the Claimants have not been able to make out the fact of imposition of membership on them by the Defendants. Referring to **Exhibit A** attached to the supporting affidavit, Counsel for the Defendants pointed out that the receipt was one issued to a heavy duty truck for using the facility and not evidence of membership. He reiterated that the users of the facility had the option of either using the facility and paying the levies imposed therefore or parking by the roadside to conduct their businesses without disturbance. He noted that the funds realized from the imposition of the levies were used to pay for the services itemised in paragraphs 11 and 12 of the Counter-Affidavit. He urged the Court to resolve the second issue in favour of the Defendants.

On the third issue formulated by learned Counsel for the Defendants, it was argued on behalf of the Defendants that the facts placed before the Court determine the grantability of the reliefs sought in any suit. He quoted the provisions of section 136 of the Evidence Act, 2011 and the case of *Luna v. Commissioner of Police & Ors*

(2018) MJSC (Pt. II) 45, para G and urged this Honourable Court to hold that the Claimants have not been able to discharge the minimal burden of proof placed on them by the law.

Both parties filed Further and Better Affidavits. In the Claimants' Further and Better Affidavit in response to the Defendants' Counter-Affidavit, the deponent, Abdulssamad Ibrahim, a litigation officer in the law firm of Counsel for the Claimants denied paragraphs 4, 5, 6 and 7 of the Defendants' Counter-Affidavit and insisted that the association operated by the Defendants was 'General Scraps Dealers Association' without a registration certificate number as seen from **Exhibit A** attached to the affidavit in support of the Originating Summons, which, he further claimed, was different from 'General Scrap Dealers Association Zuba' with registration certificate number CAC/IT/NO. 23121.

He also denied paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Defendants' Counter-Affidavit and insisted that the Defendants have been using the name of the unregistered association to extort money from the Claimants, their employees, their truck drivers and trucks which the Claimants hired in furtherance of their business. He referred the Court to **Exhibits B1, B2, B3, B4 and B5** attached to the Claimants' Further and Better Affidavit.

With respect to the petition the Claimants wrote to the Inspector-General of Police against the Defendants, the deponent averred that it was not within the remit of the Defendants to assign the petition to themselves.

In their Reply on Points of Law, it was argued on behalf of the Claimants by the Counsel that the certificate of incorporation produced by the Defendants and attached as **Exhibit LL3** to the Counter-Affidavit was in respect of an association other than the association under which cover the Defendants have been extorting the Claimants. He maintained that the word 'Zuba' and the alphabet 'S' added to the name on the certificate were so fundamental that they radically altered the identity of the association. He therefore urged the Court to grant the reliefs sought.

On their part, the Defendants filed a Further and Better Counter-Affidavit. The said Further and Better Counter-Affidavit was deposed to by one Sani Isma'il, one of the Trustees of the General Scrap Dealers Association, Zuba. He restated some of the averments contained in the Counter-Affidavit of the Defendants and, in addition, explained that the reason for the discrepancy between the name on the certificate of incorporation and the name on the receipts of payment is attributable to a typographic error in the course of printing the receipt booklets. He also explained that the trustees and the members agreed that it was economically prudent and expedient that the receipts with the typographic errors be exhausted before new booklets would be printed. He attached a copy of the corrected receipt booklets as **Exhibit LL7**, adding that the receipts were used as proof of payments and to facilitate accountability. He concluded that the error was not of a fundamental nature as to mislead anybody.

The above represent the facts and legal arguments of the parties before me in this case. In order to answer the questions raised in the Originating Summons, I shall adopt

the two issues formulated by the Claimants, which issues were adopted by the Defendants. I shall also adopt the third issue formulated by the Defendants.

ISSUE ONE

“Whether by virtue of section 830(1)(a), (b) and (c) of the Companies and Allied Matters Act, 2020, the Defendants, either by themselves, agents, staff, officers, or howsoever called, can lawfully operate an unregistered association entitled ‘General Scraps Dealers Association’ and impose the membership of the Association and levies/dues in the name of the Association on the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria.”

I must state at the beginning that learned Counsel for the Claimants committed the logical fallacy of the loaded question in the drafting style he employed in crafting this issue. First, Counsel wants to know if, by virtue of section 830 (1) (a), (b) and (c) of the Companies and Allied Matters Act, 2020, the Defendants or their proxies “can lawfully operate an unregistered association known as ‘General Scraps Dealers Association’”. He also wants to know if the Defendants or their proxies can “impose the membership of the Association and levies/dues in the name of the Association on the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria”. According to learned Counsel, “...We respectfully submit therefore that the acts of operating General Scrap Dealers Association, being an unregistered

association, is illegal, unlawful, null and void and the Honourable Court is urged to so hold.”

The Issue runs afoul of the rule against the loaded question for three reasons. First, no law actually prohibits the formation of associations by persons who so desires. The fact that an association of persons is unregistered does not in itself make its formation and operation unlawful or illegal. Addressing Issue One without modification will necessarily involve a concession that an unregistered association is illegal and unlawful. This process of reasoning is rather *ipse dixit*. Second, section 830(1) (a), (b) and (c) of the Companies and Allied Matters Act, 2020 does not make unlawful the formation and operation of unregistered associations; what the section provides for is the legal effect of registering an association as an incorporated trustee. See the case of ***The Registered Trustees of the Church of the Lord (Aladura) v. Jacob Konah Sheriff (2000) 15 NWLR (Pt. 689) 165 at 177 – 179 paras A – B***. Third, the section does not provide for the incidences of membership of an association, whether registered or unregistered.

While it is unclear whether the Claimants are challenging the registration status of the association for which the Defendants have been shown to be its officials or the legality of an unregistered association, the Defendants, in their Counter-Affidavit and their Written Address in support adduced evidence to prove that General Scraps Dealers Association is, indeed, a registered association. This evidence is **Exhibit LL3**, to wit, the certificate of incorporation of the Incorporated Trustees of General Scrap Dealers

Association Zuba. The Claimants' response to this, as contained in their Further and Better Affidavit in response to the Defendants' Counter-Affidavit is contained in paragraphs 4(a) and (b) thereof where they contended that the association the Defendants are operating is 'General Scraps Dealers Association' as deduced from **Exhibit A**, namely, a receipt of payment, attached to the Claimants' Affidavit, and **Exhibits B1, B2, B3, B4 and B5** attached to the Further and Better Affidavit and not 'General Scrap Dealers Association Zuba'. Counsel has urged this Court to hold that the presence of the alphabet 'S' and the absence of the noun 'Zuba' radically altered the identity of the association. The Defendants, in paragraph 8, 9 and 10 of their Further and Better Counter-Affidavit have explained that the inclusion of 'S' to the word 'scrap' on the receipts was a printing error. They exhibited what they believed to be the corrected receipt. This is **Exhibit LL7**. Interestingly, though 'Zuba' was added to the name, the 'Scrap' still appears in the plural form.

I have carefully scrutinized all the exhibits. **Exhibit A** attached to the affidavit in support of the Originating Summons and **Exhibits B1, B2, B3, B4 and B5** attached to the Claimants' Further and Better Affidavit have the name of the General Scraps Dealers Association on it. The address is stated as 'Zuba Abuja FCT (Pantaker Market)'. **Exhibit LL3** describes the association as 'General Scrap Dealers Association Zuba'. There is no doubt that the documents have two common denominators, and those are, the geographical location of the association, which is Zuba, and the nature of the business, which is scraps dealing.

Going further, the trustees as stated on **Exhibit LL3** are Hon. Benson Maxwell, Chukwuemeka Igbozurike, Chief Obediah Anyanwu, Mr Simon Okafor, Sani Ismail, Alhaji Namaka Mohammed, and Mallam Aliyu Suleman. **Exhibit LL1** is the certificate of appointment into the office of General Secretary issued to one Hon. Kamilu Sa'idu. Kamilu Sa'idu is the 2nd Defendant in this suit. **Exhibit LL2** is the certificate of appointment into the office of the Chairman issued to one Iliyasu Abdullahi. Iliyasu Abdullahi is the 1st Defendant in this suit. Both certificates of appointment were endorsed by one Alhaji Mohammed Namaka and Sani Ismail as Chairman and Secretary respectively of the General Scrap Dealers Association, Zuba. Both names appear on **Exhibit LL3** as the trustees of the Association.

The Claimants are alleging that the association known as 'General Scraps Dealers Association' is unregistered and is not the same as 'General Scrap Dealers Association Zuba' which is registered and has as its registration certificate number CAC/IT/NO/23121. The Defendants are asserting that 'General Scraps Dealers Association' with its address at Zuba, Abuja which appears on **Exhibits A, B1, B2, B3, B4 and B5** is the same as 'General Scrap Dealers Association Zuba' which appears on **Exhibit LL3**. From the facts contained in the affidavits before me and the exhibits attached to those affidavits, I am minded to agree with the Defendants. To be quite specific, the confusion between 'General Scraps Dealers Association' and 'General Scrap Dealers Association Zuba' is one of a misnomer as no one, not the least the Claimants, could claim to be confused as to the identity of the association. The Courts

have held repeatedly that a mistake in name is treated as a misnomer where it does not lead to confusion as to the identity of the person concerned. See ***Pfizer Incorporated v. Mohammed (2013) 16 NWLR (Pt. 1379) 155 at page 20 para H*** where the Court held that ***“A misnomer arises when the proper party is incorrectly named and not when there is mistake in a party’s identity...”***

By virtue of sections 131, 132 and 133 of the Evidence Act, 2011, the burden of proving the non-registration of the association is on the Claimants. In ***Edo Cement Co. Ltd v. ATTA (2018) LPELR 46809 (CA) pp. 4 – 5, paras B – B***, cited by Counsel for the Defendants, the Court of Appeal placed the duty of establishing the registration status of an entity registrable by the Corporate Affairs Commission on the party who is claiming the said entity is not registered. In ***Pfizer Incorporated v. Mohammed (2013) supra, the Court held at Pp. 21, paras. A-B; 22, paras. B-D*** that ***“He who asserts must prove. It behoves the plaintiff and his counsel to supply the accurate name of the party or corporation the plaintiff intends to sue or feels he has a right of relief against. The plaintiff’s counsel is under onerous duty to ascertain the registered name of the company or corporation he wishes to initiate proceedings against. He needs to be diligent and thorough in his search for the registered name of the company he wants to sue. It is not the duty of the defendant’s counsel to furnish or supply the plaintiff with the registered name of the defendant company.”*** See also the case of ***Njemanze v. Shell BP. Port***

Harcourt (1966) 1 SCNLR 9 per Bairamian JSC which is the *locus classicus* on this subject.

The Claimants herein have failed to discharge this burden. Not even a single document has been tendered to support their claim that the association is unregistered. On the contrary, the Defendants have established, based on the preponderance of evidence, or balance of probabilities, which is the standard of proof in civil cases as stipulated in section 134 of the Evidence Act, 2011, that the association is registered. In **A.P.C. v. Obaseki (2022) 2 NWLR (Pt. 1814) 273 at 302, paras C – F, 308, paras D – H** the Supreme Court per Agim, JSC held that ***“The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side... It is the duty of the claimant to prove every averment in his pleadings, particularly where issues are duly joined on such pleadings. Where no satisfactory evidence is led in proof of any fact in issue, the trial court would be entitled to dismiss such issue.”***

Evidence of registration of a body corporate has always been the certificate of incorporation issued by the Corporate Affairs Commission upon the fulfillment of all conditions precedent to the registration. Section 830(3) of the Companies and Allied Matters Act, 2020 provides that ***“A certificate of incorporation when granted shall be prima facie evidence that all the preliminary requisitions herein contained and required in respect of such incorporation have been complied with, and the date of incorporation mentioned in such certificate shall be deemed to be the date on***

*which incorporation has taken place.” In **Nkume v. The Registered Trustees of Aba Diocese (1998) 10 NWLR (Pt.570) 514 at 522 para B – D** the Court of Appeal held that “**When a community body or association of persons is incorporated, a certificate is issued to that effect. By virtue of sections 2(1) and 6 of the Land (Perpetual Succession) Act, the registration of such community, body or association of persons as a corporate body bears the Registered Trustees and the certificate is evidence of the incorporation. [The Registered Trustees of the Apostolic Church Ilesha Area, Nigeria, West Africa v. Attorney-General of the Mid Western State of Nigeria (1972) 4 SC 150 referred to.]**”*

In view of the foregoing, therefore, I hold that **Exhibit LL3** attached to the Counter-Affidavit of the Defendants is a conclusive proof that the association is registered. The feeble defence put up by the Claimants in their Further and Better Affidavit wherein they strenuously strove to contrive a distinction between ‘General Scrap Dealers Association Zuba’ and ‘General Scraps Dealers Association’ with address at the Pantaker Market, Zuba, Federal Capital Territory, Abuja by making a heavy weather between the presence or absence of ‘S’ and ‘Zuba’ is of no moment and, accordingly, goes to no issue. This Court will not abide such trivial nitpicking. I therefore find, and so hold, that ‘General Scrap Dealers Association Zuba’ which appears on **Exhibit LL3** and ‘General Scraps Dealers Association’ with address at the Pantaker Market, Zuba, Abuja, which appears on **Exhibit A** are one and the same association. Accordingly, in

so far as Issue One relates to the registration status of 'General Scrap Dealers Association Zuba', it is hereby resolved against the Claimants.

ISSUE TWO

“Whether even if the General Scraps Dealers Association is a registered Association, by virtue of the provisions of section 40 of the 1999 Constitution (as amended), the Defendants, either by themselves, agents, staff, officers, or howsoever called, have the power to compel the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place to become members of the Association and that the Defendants do not have the power of making it mandatory on the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place in Nigeria to pay levies and/or dues to the Defendants in the name of the Association.”

Again, the fallacy of the loaded question. The Claimants, in framing this issue have embedded therein two disparate issues. The first is whether the Claimants are entitled to exercise their fundamental right to freedom of peaceful assembly and association pursuant to section 40 of the Constitution of the Federal Republic of Nigeria 1999. The second is whether the Defendants are empowered, legally, in imposing levies and/or dues on the Claimants. I shall address them anon.

First, section 40 of the Constitution of the Federal Republic of Nigeria provides that ***“Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade***

union or any other association for the protection of his interests. Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord registration.”The right to freedom of peaceful assembly and association is one of the cardinal touchstones of a constitutional democracy. In **Anambra State Govt. & 1 Other v. Igbonwa & 6 Others [2021] 13 NWLR (Pt. 1794) 475 at P. 495, paras. A-G** the Court of Appeal per Ngozi-Iheme, JCA held that “ **By the provision of section 40 of the 1999 Constitution, every person shall be entitled to assemble freely and associate with other persons. He may form or belong to any political party, trade union, or other association for the protection of his interest... The right to freedom of assembly and freedom of expression are key in any proper democratic system of Government.**” See also **N.C.P. v. National Assembly, F.R.N. (2021) NWLR (Pt. 1492) 1 at page 20, paras G – H.**

Clearly, it is the choice of any person, the Claimants inclusive, to either belong to an association or not to belong to the association. In **Emeka v. Okoroafor (2017) 11 NWLR (Pt. 1577) 410 at 517 – 518 paras G – B per Eko, J.S.C.**, the Supreme Court held that “**The right under section 40 of the Constitution, the right to assemble and freely associate with others, works both ways. The others you want to associate with must be prepared to associate with you. None can be imposed, by order of court, on the other. The right to freedom of association also connotes**

the right of the others to freely associate with or disassociate from whosoever.” Similarly, in the case of *Registered Trustees of Association of Tipplers and Quarry Owners of Nigeria v. Yusuf & Ors (2011) LPELR-5024(CA)* at pages 42 – 43, paras D – E, the Court of Appeal per Kekere-Ekun, J.C.A. (as he then was) held that “*In the exercise of his right to freedom of assembly and association, a citizen has no right to infringe on another’s enjoyment of the same right. It is the right of every citizen to decide which association or group of persons are in the best position to protect his interests. No association or group of persons can arrogate to itself the authority to make that determination on behalf of another.*” See also the case of *Ali v. Osakwe (2011) 7 NWLR (Pt. 1245) 68 at 106 paras E – G*, the Court of Appeal held that “*Section 40 of the 1999 Constitution of the Federal Republic of Nigeria guarantees freedom of association, and freedom of association includes freedom not to associate, freedom to terminate an existing association and embrace a new one...*”

I must state here that the derogation recognized under the proviso to section 40 is specific and relates to the constitutional powers of the Independent National Electoral Commission to register associations as political parties upon the fulfillment by those associations of the conditions for registrability stipulated by the Independent National Electoral Commission. See also *N.C.P. V. National Assembly, F.R.N. (2021) supra*.

On the other hand, the derogation provided for under section 45 of the Constitution is generic. The section provides for the circumstances under which the exercise and

enjoyment of those fundamental rights can be restricted and derogated from. Specifically, section 45(1) provides that,

“Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society-

(a) In the interest of defence, public safety, public order, public morality or public health; or

(b) For the purpose of protecting the rights and freedom of other persons.”

In the recent decision of the Supreme Court in ***N.U.P. v. I.N.E.C. (2021) 17 NWLR (Pt. 1805) 305 at pp. 354 – 355, paras E – B***, the apex Court per Jauro, JSC, held that,

“Freedom of association defines a right to voluntarily associate or dissociate from a group. It broadly refers to the ability of associations to co-ordinate their activities and exercise control over their members without any form of interference from the state in the affairs of the association. In other sense, it refers to a State's obligation in ensuring that there is a free, reasonable, conducive atmosphere for the exercise of the right of association. In Nigeria, the right to associate as a political party is enshrined in section 40 of the Constitution of the Federal Republic of Nigeria 1999 (as amended). In addition, international treaties such as the African Charter on Human and People's Right 1981

and other international laws recognise the right to freedom of association. The right of association includes right to form or belong to any political party and pursue political goals. However, the right of association is not absolute as there are situations whereby the freedom of association can be restricted which include amongst others to protect the safety of the people, to protect national security, to protect the morals and the right/freedom of others. Nigeria operates a multi-party system which allows for different associations of political parties. The regulation of political parties is a worldwide recognized restriction of the right of association of political parties.”

Applying the above dictum *mutatis mutandis* to the instant case before me, it becomes immediately obvious that the facts of this case neither come within the contemplation of the proviso to section 40 of the Constitution nor are they among the circumstances envisaged under section 45 of the Constitution. To that extent therefore, I hold that by virtue of section 40 of the Constitution of the Federal Republic of Nigeria 1999 the Defendants cannot impose the membership of the General Scrap Dealers Association Zuba on the Claimants.

On the second sub-issue embedded in Issue Two, that is, whether the Defendants are empowered, legally, in imposing levies and/or dues on the Claimants, it remains to be stated that the answer to this question is dependent on whether the said levies and/or dues are being imposed on the Claimants as an incidence of membership of General

Scrap Dealers Association Zuba and whether the facilities the usage of which necessitates the imposition of the levy are publicly owned, that is, provided by the government for the benefit of the community or privately owned by the association on the one hand; or whether same are imposed on the Claimants as service charges for the use of the facilities privately provided by the association. If the said levies and/or dues are being imposed on the Claimants as an incidence of membership, then the imposition and collection of same are illegal and unlawful since a person cannot be compelled, against his will, to become a member of an association. In the case of ***Nkpa v. Nkume (2001) 6 NWLR (Pt. 710) 543 at 559 – 560 paras E – C***, per Ikongbeh, JCA, the Court of Appeal held that,

“Community development is a laudable enterprise that ought to be encouraged. Governments have often encouraged it and members of the community themselves recognise its value. In this regard, no rational community will wait for the government to do everything for it. However, this is how far it goes. With the rise of Parliament, that is, since the beginning of participation of people in their own governance, the arbitrary power of the ruler to impose levies disappeared. Levies, which the people are obliged to pay, and which can be legally enforced against them, can now only be imposed by law. No community leader of the calibre of the respondent in the instant case has any legal power to impose any levies on anybody in the community. They can only

encourage the people to participate in community development either by direct (not forced) labour or by financing contribution towards same and such financial contribution can only be a voluntary thing as the community cannot recover by legal process the levy agreed on towards such development Thus, if it is not recoverable by legal process, it follows that it must be even less capable of recovery by self-help.”

If, on the other hand, the levies and/or dues are so imposed irrespective of membership but for the service provided by the association, then, the beneficiary of such service is obligated under the law, good conscience and morality to pay for such service, particularly, in circumstances where the continued provision of such service and the reciprocal enjoyment of same is predicated on the payment of charges for the services rendered. The only limitation to the power to impose and collect levies is that same must be exercised within the defined perimeters of the law. In ***Nkpa v. Nkume (2001) supra, the Court held at page 557 paras C – G***, the Court held that,

“In this wise, an action, such as the imposition and collection of communal levies by compulsion, is either legal or illegal. If the threat used to effect the purpose is legal, it gives no ground for legal proceedings; if it is illegal, then the right to sue of the person injured is established. In all cases, if the end sought to be achieved or the means of achieving it or both are illegal, then the person injured can recover damages by action.”

I have scrutinized, most meticulously, the depositions in all the affidavits filed in support and in opposition to the Originating Summons. I have also given due consideration to all the exhibits attached to the said affidavits. According to the Claimants in paragraphs 3(g) and (h) of the supporting affidavit, “the Defendants have imposed levies and dues on all the traders in Zuba Pan Taker Market, including the Claimants and their employees who are over twenty people working under the Claimants. The Defendants have also imposed another levy on loading and off-loading trucks in the market and that the Defendants have been collecting same from the Claimants against their wish.” The Claimants attached **Exhibit A** in prove of these averments. I have examined the said **Exhibit A**. The purpose of payment is stated as “loading”

Responding to these particular averments, the Defendants claimed, in paragraphs 6 and 10 of their Counter-Affidavit, that the association has retained the services of persons who provide “security, sanitation, regulation of traffic flow of heavy trucks and other routine activities for orderliness and safety in the business premises in the market” and “area council annual rental/business revenues”. To fund these expenses, the Defendants explained, in paragraph 8 “That the association has adopted means through which to generate money for its smooth running of affairs, which include dues from members and security/market maintenance levy paid by vehicle loading and offloading in the market.” In support of these averments, the Defendants exhibited a number of receipts of payment. **Exhibit LL4** is the receipt of payment to Gwagwalada Area Council of the sum of ₦300,000 (Three Hundred Thousand Naira) only for

business premises 2021. **Exhibit LL5** is the receipt of payment to Gwagwalada Area Council of the sum of ₦200,000.00 (Two Hundred Thousand Naira) only for rental fees 2020. **Exhibit LL6** is the receipt of payment to Oraine Mobile Ltd of ₦100,000.00 (One Hundred Thousand Naira) only being payment for environmental levy.

Challenging the averments contained in the Counter-Affidavit, the Claimants denied paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Counter-Affidavit. Apart from this general traverse, the Claimants did not controvert the assertions of the Defendants that the monies were imposed on the users of the market for the services rendered to the users thereof. The Claimants, in paragraph 4(c) of the Further and Better Affidavit were preoccupied with the fact that “the Defendants have been using the name of the unregistered General Scraps Dealers Association to generate revenues and collect same from the Claimants, their employees, their truck drivers and the loaded trucks hired by the Claimants whenever they load or unload their goods or materials in trucks.” Of paramount significance, even where the Claimants alleged that the imposition and collection of the levies were unlawful and illegal, they have not been able to establish unlawfulness and illegality. Of equal significance, they have not been able to show that the Defendants employ illegal and unlawful means to collect the levies.

The Claimants further claimed that the receipts issued to the Claimants and attached to the Further and Better Affidavit as **Exhibits B1, B2, B3, B4 and B5** were tagged ‘monthly dues’. I have examined the said exhibits. Indeed, the words ‘monthly dues’ were printed on the receipts. It could be seen, however, upon further examination, that

the purpose for the issuance of the receipts were stated on each receipt. Apart from **Exhibit B2** which purpose of payment is 'revenue', the purposes of payment for **Exhibits B1, B3, B4** and **B5** are stated as 'loading'. On none of those receipts was the purpose of payment stated as membership dues.

My reasoning would have been different if the Claimants had adduced evidence to show that the market was built and maintained by the government – either of the Federation, the Federal Capital Territory, Abuja or Gwagwalada Area Council – and all the services – security, sanitation, traffic control and other services – provided by the government. But, also the facts of the case show otherwise. **Exhibit LL4** which is the receipt of payment the association made to Gwagwalada Area Council for use of business premises for the year 2021 and **Exhibit LL5** which is the receipt of payment the association made to Gwagwalada Area Council for 2020 annual rental fees presuppose that the scrap materials market at Zuba was privately built and has been maintained by the association. By virtue of section 167 of the Evidence Act, 2011, the Court is empowered to draw inferences from the facts before it. Having reviewed the facts and the evidence adduced in this case, I find that the market is privately built and maintained by the association of which the Defendants are its key officers. Nothing in the Claimants' Further and Better Affidavit disproves and dislodges this presumption.

For this reason, I have no hesitation in arriving at the inevitable conclusion that the monies imposed on the Claimants, which from the facts before me, were also imposed on other users of the market, were for the services rendered by the association in order

to effectuate a smooth running of all the activities in the market. It is rather paradoxical that the Claimants would want to use the market infrastructures and facilities set up by the association, enjoy a guaranteed security of their wares and vehicles, relish the sanitary environmental conditions and savor a seamless traffic flow which are evidence of the allocation of financial resources but would be averse to the payment of the levies which are directed towards the realization of those objectives identified above. I hereby resolve the second sub-issue against the Claimants.

ISSUE THREE

“Whether considering the circumstances and evidence as contained in both affidavits in support and counter in this suit, the Claimants are entitled to the declaration sought.”

This third Issue was formulated by the Counsel for the Defendants as a corollary of the resolution of the two issues formulated by the Counsel for the Claimants and which he adopted. The Claimant who seeks the Court’s intervention in respect of making declaratory orders must perforce demonstrate to the Court’s satisfaction that he is entitled to the declarations sought. In ***Nduul v. Wayo (2018) NWLR (Pt. 1646) 548 at 586 para E – G***, the Supreme Court held that ***“Where a claimant seeks declaratory reliefs, the burden is on him to prove his entitlement to those reliefs on the strength of his own case. A declaratory relief will not be granted even on admission. The claimant is also not entitled to rely on the weakness of the***

defence, if any. The rationale for this position of the law is that a claim for declaratory reliefs calls for the exercise of the court's discretionary powers in favour of the claimant. Therefore, the claimant must place sufficient material before the court to enable it exercise such discretion in his favour." On this point, see also the following cases: *Williams v. Hope Rising Funds Society (1982) 1 – 2 SC 145*; *Ogolo v. Ogolo (2003) 18 NWLR (Pt. 852) 494*; *Okoye v. Nwanwko (2014) 15 NWLR (Pt. 1429) 93*; *Dosunmu v. Dada (2002) 13 NWLR (Pt. 783) 1*; *Sufianu v. Animashaun (2000) 14 NWLR (Pt. 688) 650*.

In *Mohammed v. Wammako (2018) 7 NWLR (Pt. 1619) 573 at 586 paras A – B*, the apex Court held that *"A party who seeks declaratory reliefs has an obligation to advance evidence in proof thereof. This is so in that courts have the discretion either to grant or refuse declaratory reliefs. The success of a declaratory claim largely depends on the strength of the plaintiff's case. It does not depend on the defendant's defence. This must be so for the burden on the plaintiff in establishing declaratory reliefs is, often, quite heavy."* See also *Majav. Samouris (2002) 7 NWLR (Pt. 765) 78*; *CPC v. INEC (2012) 1 NWLR (Pt. 1280) 106*; *Bello v. Eweka (1981) 1 SC 101*; *Okedare v. Adebara (1994) 6 NWLR (Pt. 349) 157*; *Dumez Nig. Ltd. v. Nwakhoba (2008) 18 NWLR (Pt. 1119) 361*.

I have taken my time to review the facts of this case and all the evidence adduced on both sides of this imaginary scale of justice. It is my considered opinion, and I hasten to hold, that the Claimants have not totally made out their entitlement to the declaratory

reliefs sought herein. In other words, they have not discharged satisfactorily the onerous burden placed on them by the law to guarantee that this Court exercise its discretion wholly in their favour.

In all, and in view of the foregoing, therefore, I answer the first question formulated for determination in the negative only in so far as it relates to the lack of legal capacity on the part of the Defendants to impose the membership of General Scrap Dealers Association Zuba on the Claimants. I also answer the second question in the negative only in so far as the Defendants do not have the power, by virtue of section 40 of the Constitution of the Federal Republic of Nigeria 1999, to compel the Claimants and their employees in Zuba Pantaker Market, Federal Capital Territory, Abuja or any other place to become members of the association. Accordingly, this suit succeeds in part. This Honourable Court therefore declares as follows:

- 1. THAT General Scrap Dealers Association Zuba is a duly registered entity with the registration certificate number CAC/IT/NO 23121.**
- 2. THAT ‘General Scraps Dealers Association’ with its address at Zuba, Federal Capital Territory, Abuja, which name appears on all the receipts issued by the Defendants to the Claimants is the same as ‘General Scrap Dealers Association Zuba’ with registration certificate number CAC/IT/NO 23121.**
- 3. THAT the 1st and 2nd Defendants are the current Chairman and Secretary respectively of General Scrap Dealers Association Zuba having being**

appointed into that office on the 12th of October, 2020 for a four-year term to run the affairs of the association.

4. That the 1st and 2nd Defendants do not have the power to impose the membership of General Scrap Dealers Association Zuba on the Claimants, their agents, staff, officers, or proxies and to collect membership dues from them.
5. That the 1st and 2nd Defendants have the power to impose on and collect from any user of the scrap materials market situate at Zuba otherwise known as the Pantaker Market Zuba whether such user be a member of the association or not such levies as the members, officers and trustees of the General Scrap Dealers Association Zuba may deem fit to impose and collect for the purpose of providing and maintaining the market infrastructure and facilities such as security, sanitation, regulation of vehicular traffic movement and such other necessary and incidental services that conduce for the safety, cleanliness, orderliness and organizational efficiency of the said market.

This is the Judgment of this Honourable Court delivered today, the 9th of March, 2022.

HON. JUSTICE A. H. MUSA
JUDGE
9/03/2022

APPEARANCES:

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