

THE REGISTERED TRUSTEES OF IGBO COMMUNITY, OYO STATE

v.

CYRIL AKABUEZE AND TWO OTHERS

HIGH COURT IBADAN
OYO STATE

J.O. IGE, J.

1/568/96

Friday, 30th June 2000.

FUNDAMENTAL RIGHTS – Freedom of Association – Right to form unincorporated association – Nature of protection offered by the Constitution.

FUNDAMENTAL RIGHTS – Right to form Association – Whether non-incorporation of an Association renders the Association unlawful and illegal.

FUNDAMENTAL RIGHTS – Right to form Association – Distinction between incorporated Association and unincorporated Association.

FUNDAMENTAL RIGHTS – Distinction between legal Association and lawful Association.

Issues for Determination:

1. Whether the unregistered Igbo Community Development Association is obligated to seek incorporation before it can operate as an umbrella body for the promotion of the interests of the Igbo in Oyo State.
2. Whether by being unregistered, the Igbo Community Development Association is a legal and lawful body.

Facts:

Plaintiffs who are the Registered Trustees of Igbo Community, Oyo State claimed, among other reliefs, that the Igbo Community Development Association organised by the 1st and 2nd Defendants was an illegal and unlawful organisation not being registered under the laws of the Federation and that the Plaintiffs are the only legal and known organisation uniting the Igbos in Ibadan and Oyo State in general and the only umbrella body for all Igbo Town Unions and Associations in Oyo State. Plaintiffs further claimed an injunction restraining the Defendants from convening or further organising meetings of Igbo Town Unions and Association in such a way and manner as to cause breach of peace and disunity amongst Igbos in Oyo State. Plaintiffs argued that the Defendant association, being unregistered, could not legally exist, and furthermore violated the provision of Part C of the Companies and Allied Matters Act 1990. Defendants argued that no law in Nigeria prohibited the existence of unregistered Associations and that the incorporation of an ethnic organisation like the Defendant was a matter of free choice as well as privilege, but never a duty.

Held:

An unincorporated association of persons is a constitutionally legitimate body and is not illegal merely by non-registration under applicable laws.

Incorporation does not confer on an association pre-eminence and authority of leadership over unincorporated associations, and no rights of an incorporated association is violated by an unincorporated association engaging in the pursuit of objectives similar to that of the incorporated body.

Details of Principles in Judgement

1. **Legal Status of Unregistered Association of Persons**

The right to form any association for the protection of the interests of the members is guaranteed under the Constitution of Nigeria and is an entrenched right. However, though recognised, the Constitution does not *ipso facto* vest in the association the attributes of incorporation, which alone confers legal personality. Thus an association of persons recognised by the Constitution is a lawful association *simpliciter*. It is a recognition of the reality that the group of persons who have formed an association have an existence in fact. (page 15; para D-F)

2. **Constitutional Distinction Between Lawful Association and Legal Association.**

The association which the Defendants represent is not a legal association because it has not been registered under the appropriate law and therefore has no legal personality to sue and be sued except through its appointed representative or trustees. But this same association is nonetheless a lawful association duly recognised by the Constitution, the Supreme Law of the Country and the Companies and Allied Matters Act as well as the Rules of Court, (i.e. Order 11 Rule (8) which states that persons with joint interest may sue or defend actions on behalf of other persons interested). (page 15: para F – H)

3. **Registration of an Association Not Conferring Supremacy Over Unregistered Association.**

Mere registration under Part C of the Companies and Allied Matters Act does not and cannot give or confer on any association any additional attributes than what the law has conferred on it. The act of registration is no qualification or authority for leadership or supremacy over and above any other association. Registration confers only legal personality and other attributes of corporate existence. (page 18: para. B – C)

4. **Where Injunctive Orders May Curtail Rights of Others.**

The right to assemble or associate freely with other persons or to form or belong to any association is a constitutionally guaranteed right, and if an order of injunction is granted against such association, it will tantamount to a curtailment of such right.(page 18: para. F)

5. **Association's Right to Operate as Umbrella Union Not Infringed Merely by Existence of Another.**

In so far as the Plaintiffs have not been able to show any particular law which forbids the existence of the Igbo Community Development Association (ICDA), the association which the Defendants represent, or any law which gave them the right to lead the other association they cannot rightly contend that their right has been infringed. (Page 18; para. G)

Nigerian Cases Referred to in the judgement:

1. *Adeniran v. Alao* (1992) 2 NWLR (Pt. 223) 350
2. *Alliu Bello & ors v. A.G. of Oyo State* (1986) 5 NWLR (Pt. 45) 828
3. *Anigboro v. Sea Truck Nigeria Limited* (1995) 6 NWLR (pt. 399) 35
4. *Anyaegbunam v. Osaka (2000) 5 NWLR (pt. 657) 386.*
5. *Carlen Nigeria Ltd v. University of Jos* (1994) 1 NWLR (Pt. 323) 631
6. *Fawehinmi v. N.B.A. (No. 2)* (1989) 2 NWLR (pt. 105) 558
7. *Odofin v. Ayoola* (1984) 11 SC 72
8. *Olabanji v. Ajiboye* (1992) 1 NWLR (Pt. 218) 473

Nigerian Laws Referred to in the Judgement:

1. Companies and Allied Matters Act 1990 Part C Sections 54, 58, 532, 536, 650, 673 (1), 675, 676, 679 (1) 695
2. The 1979 Constitution of the Federal Republic of Nigeria, Section 37
3. The 1999 Constitution of the Federal Republic of Nigeria, Section 40
4. The Evidence Act, Section 139
5. Land Perpetual Succession Act, Cap. 98, Laws of the Federation of Nigeria 1958
6. Oyo State High Court Rules, Order 11 Rule (8)

Representation:

- Mr. S. O. Ajayi holds Mr. S. O. Sanni's brief for the Plaintiffs.
- Prof. J. O. Anifalaje for the Defendants.

J. O. Ige, J (Delivering the Judgement): The respective status of two rival associations is the bone of contention in this case. The two associations are "The Registered Trustees of Igbo Community Oyo State" and the "Igbo Community Development Association" which I will refer to as "ICOS" and "ICDA" respectively in this judgement. The ICOS was duly registered under Part C of the Companies and Allied Matters Act 1990 but the ICDA was not. In paragraph 30 (1-5) of the Plaintiff's Amended Statement of Claim dated 15th of July, 1998, the plaintiffs who are the Registered Trustees of Igbo Community Oyo State are claiming the following reliefs against the 1st and 2nd Defendants (for themselves and on behalf of Igbo Community Development Association): -

- (i) Declaration that the Igbo Community Development Association, organised by the 1st and 2nd Defendants is an illegal and unlawful organisation, not being registered under the laws of the Federation.
- (ii) Declaration that the Igbo Community Oyo State is the only legal and known organisation uniting the Igbos in Ibadan and Oyo State in general.
- (iii) Declaration that the Igbo Community Oyo State is the only umbrella body for all Igbo Town Unions and association in Oyo /state and registered under the relevant provisions of the Companies and Allied Matters Act 1990.
- (iv) Injunction restraining the Defendants whether by themselves, their servants, agents and or privies otherwise howsoever from convening or further organising meeting of Igbo Town Unions and association in such a way and manner to cause breach of peace and disunity amongst Igbos in Oyo State.
- (v) Injunction restraining the Defendants whether by themselves, their servant, agents and or privies from causing further disunity amongst the Igbos in Oyo State.

The original pleadings filed by both parties were amended and the case was eventually fought on the Amended Pleadings namely: Amended Statement of Claim dated 15th of July, 1998 and Amended Statement of Defence dated 22nd of July, 1998 duly filed and exchanged as well as Reply to the Statement of Defence dated 26th of July, 1998

At the commencement of trial, learned counsel for both parties agreed that they would not call evidence, but would tender documentary evidence by consent. Consequent upon that agreement, the following documents were admitted in evidence as exhibits and thereafter learned counsel for the parties addressed the court. The Documents admitted by consent are as follows: -

- (i) Exhibit A – Copy of Certificate of Registration dated 3rd of October 1996 of Igbo Community Oyo State.
- (ii) Exhibit B – the Constitution of Igbo Community Oyo State. These two documents were tendered by the Plaintiff with consent of Defendants counsel.
- (iii) Exhibit C – Extract of Minutes of meeting held on 19th of August 1996 where Trustees were appointed.
- (iv) /exhibit D – Town Unions that are members of I.C.D.A.
- (v) Exhibit E - letter dated 7th of March 1994 from the Governor’s Office to the Secretary I.C.D.A.
- (vi) Exhibit E1 – letter dated 17th February 1995 by the Director General to the President I.C.D.A. – Re: Launching of the Family Support Programme.
- (vii) Exhibit E2 – Invitation to Book Launch dated 11th September 1995.
- (viii) Exhibit E3 – letter from the Director-General’s Office to President I.C.D.A dated 5th of May 1995.
- (ix) Exhibit E4 – letter from the office of the Military Administrator to Secretary General I.C.D.A dated 2nd of September, 1996
- (x) Exhibit F – letter dated 30th December 1996 by Igbo Community, Ogbomosho to Secretary I.C.D.A.
- (xi) Exhibit F1 – letter dated 27th of January 1997 by Igbo Community Oyo to General Secretary I.C.D.A.

Having admitted the foregoing documents in evidence by consent, Prof. J. O. Anifalaje, learned counsel for the Defendants proceeded to address the court. He referred to the Plaintiff’s claim as set out in paragraph 30 of the Plaintiff’s amended Statement of Claim in which five reliefs are being claimed. According to learned counsel, the substratum of the Plaintiff’s action in this case had been premised on the following propositions namely:

- (i) That the Defendant’s association are illegal and unlawful association on the pre-supposition that it is compulsory for the ethnic association to register as corporate body under Part C of the Companies and Allied Matters Act 1990 – Sections 673 to 695 (hereinafter referred to as CAMA)
- (ii) That the Plaintiffs are of the view that the mere fact that the Plaintiffs have registered under Part C of CAMA automatically makes them “legal” which assumed status also conferred on them some assumed rights as the only legal and known organisation uniting the Igbos in Ibadan and ‘Oyo State’ and as the only Umbrella body for all Igbo Town Unions and association in ‘Oyo State’.

- (iii) That that assumed illegal status of the Defendants allegedly stemming from their incorporated status vis-à-vis the assumed legal status of the Plaintiffs allegedly stemming from their corporate status have automatically rendered the Defendants liable to be restrained by two separate judicial orders of injunction at the suit of the Plaintiff.

Learned counsel then referred the court to the relevant paragraphs in the pleadings filed by the parties as they relate to the three propositions herein-before stated. It was the submission of learned counsel that there is nowhere in the pleadings in which it was alleged that any law of Nigeria whether State or Federal has forbidden the existence of the Defendants as an Ethnic association. He cited the case of *Alliu Belo and others v. Attorney-General of Oyo State* (1986) 5 NWLR (Part 45) page 828 at 854 on the concept of illegality. It was submitted further by learned counsel that the burden of proof that the Defendant is illegal is on the Plaintiff, and that burden has not been discharged. He urged the court to hold that the Plaintiffs have not proved their case that the Defendant is an illegal association.

In his further submission, learned counsel urged the court to hold that the Defendant is a lawful association under the laws of Nigeria for the following reasons:

- (a) That no law forbids the existence of unregistered association in Nigeria either directly or indirectly.
- (b) That incorporation of an ethnic organisation like the Defendant is a matter of free choice as well as a privilege but never a duty.

Section 37 of the 1979 Constitution of the Federal Republic of Nigeria and Section 40 of the 1999 Constitution of the Federal Republic of Nigeria and Sections 532 to 536 and 650 of CAMA were cited in support of the submissions.

According to learned counsel, the privilege available on incorporation is that the body which has been incorporated becomes a separate legal entity which confers the right and power to sue and be sued in the registered corporate name instead of being sued through constructive trustees under Section 2 of the Trustees Law of Oyo State. It was the contention of learned counsel that an association of persons recognised by Section 37 of the Constitution is a lawful association of persons recognised by Section 37 of the Constitution is a lawful association. He cited in support the case of *Anigboro v. Sea Truck Nigeria Limited* (1995) 6 NWLR (Part 399) page 35 at page 62. The attention of the court was also drawn to Section 58 of CAMA on the status of unregistered company to show that an unregistered company is recognised in law. He cited the following cases in support of this submission: *Carlen Nigeria Limited v. University of Jos* (1994) 1 NWLR (Part 323) Page 631, *Adeniran v Aloa* (1992) 2 NWLR (Part 223) page 350 at 372 e.t.c. and urged the court to hold that this is not a case in which perpetual injunction can be claimed, as there is no legal right shown by the Plaintiff to be protected by this court.

Learned counsel referred to the averments in paragraphs 8, 12, 14 to 18 of the Amended Statement of Defence and urged the court to hold that the averments had been admitted since the Plaintiff did not file any reply to those averments.

Finally, it was submitted by learned counsel and the court was urged to hold that the Defendant is neither an illegal nor unlawful association as contended by the Plaintiffs and therefore the three declarations sought ought to be refused. He asked that the suit be dismissed with costs.

In his reply, Mr. Sanni learned counsel for the Plaintiffs having referred to the two exhibits namely Exhibit A and B, the Constitution of the Igbo Community of Oyo State and the Certificate of Registration of the Association respectively contended that by the admission of the documentary evidence, the following facts are no longer in dispute namely: -

- (i) That the Igbo Community of Oyo State is a registered body – see Exhibit A, and that the body was registered under Part C of the Companies and Allied Matters Act 1990 (CAMA)
- (ii) That the association which 1st and 2nd Defendants represent is not registered. Therefore, according to learned counsel the only question that calls for determination is whether the defendant association, that is Igbo Community Development Association which 1st and 2nd defendants represent is a legal or lawful body by virtue of its non-registration; and flowing from the main question is the subsidiary question whether the Igbo Community Development association that is “ICDA” not having been registered can validly lead the Igbos in Oyo State as against the Igbo Community of Oyo State that is “ICOS” which has been shown to be a corporate body by virtue of its registration.

The attention of the court was drawn by counsel to Section 37 of the Constitution of the Federal Republic of Nigeria 1979 which was the law in force at the commencement of this action, and submitted that while conceding that the 1st and 2nd Defendants can associate or assemble to hold meetings, but where they want to be an umbrella body for a particular group in the state where they reside, they have to go a step further as provided for in the Constitution to form a Union or an association.

Learned counsel referred to Sections 673, 675 and 676 of the Companies and Allied Matters Act 1990 and submitted that the law makes provision in Part C for registration as an association where persons of same ethnic group want to come together, that such association must have a Constitution like Exhibit B in this case. He went further to list the consequences of registration under the Act to include the following: -

- (i) By virtue of registration the association will have perpetual succession.
- (ii) The association must have a common seal
- (iii) Power to sue and be sued and
- (iv) Power to hold and acquire property.

He therefore submitted that a registered body vested with power to sue and be sued and having perpetual succession is a lawful and legal body to represent the interest of any particular community, in this case, the Igbo Community Oyo State as opposed to an unregistered body being led by a few individuals whose names were not forwarded to the appropriate authority. In other words, ICDA cannot be said to be an umbrella body for the Igbos in Oyo State because an unincorporated association cannot legally exist citing in support the recent Supreme Court decision in the case of *Anyaegbunam v. Osaka* (2000) 5 NWLR (pt. 657) 386 at 398.

Addressing the court further on the onus of proof which the Plaintiffs have to discharge, it was contended by counsel that ICOS has been clothed with legality and by virtue of Exhibits A and B, the Plaintiffs have discharged the onus placed on them by Section 139 of the Evidence Act to show that ICOS is legal while ICDA is illegal and the onus has shifted to the defendants to show that they are a legal and lawful body. He submitted that the onus on the Defendants has not been discharged. He referred to the definition of the word “illegality” in JOWITT’S Dictionary of English Law 2nd Edition Volume 2, page 1834 and submitted that it is only ICOS as represented by its Trustees that can lead the Igbo Communities in Oyo State.

According to counsel, the ICDA by their existence have breached the provisions of Part C of the Companies and Allied Matters Act, 1990 which is *in parimateria* with the provisions of the Land Perpetual Succession Act, which was considered in *Anyaegbunam’s case (supra)*.

On the reliefs for injunction, it was the argument of counsel that the Plaintiff’s more than the 1st and 2nd Defendants have legal right by virtue of its registration and recognition both by the Constitution and Companies and Allied Matters Act. He drew the court’s attention to the letters Exhibits E-E2 correspondence between the defendants and some government departments and argued that by those letters, the defendants are holding themselves out as a recognised body of Igbo Community in Oyo State, that by the said letters the Defendants are claiming to represent Igbo Community which right the Plaintiffs are also claiming and therefore submitted that a case for injunction has been made.

On the effect of failure to file a Reply to the Statement of Defence, it was counsel’s submission that such failure does not and cannot amount to an admission of facts contained in the Statement of Defence. He cited the case of *Olabanji v. Ajiboye (1992) 1 NWLR (Pt. 218) 473 at 448* in support.

On the submission of defendant’s counsel on the provisions of Section 54 – 58 of the Companies and Allied Matters Act, it was the argument of counsel that those provisions are irrelevant since it has not been shown that the Defendants’ association was granted exemption from incorporation.

Finally, on Exhibit C – List of Towns union tendered by the Defendants, it was the contention of learned counsel that the document has no evidential value because it is not authentic and cannot be of any assistance to the court. He urged the court to hold that the Plaintiff is the only legal and lawful body by virtue of its compliance with both Section 37 of 1979 Constitution and Part C of the Companies and Allied Matters Act.

In his further submission in reply, Professor Anifalaje, learned counsel for the Defendants submitted that wherever the word “Illegal” or Unlawful” is found, it is a concept that will only be found in *quasi* penal enactment and also that an unregistered association cannot of its force and motion appear as a litigant except where it is represented by express or constructive Trustees.

On the import of Section 673 (1) of the Companies and Allied Matters Act, it was counsel’s contention that in law incorporation is a privilege and not a duty. On onus of

proof, it was counsel's argument that assuming but not conceding the onus of proof has shifted, the Defendants have discharged the onus by citing the provisions of Section 37 of the 1979 Constitution together with the relevant averments in the pleadings. On the reliefs for injunction, it was submitted that perpetual injunction can only be granted if the Plaintiffs have proved their case on balance of probabilities or preponderance of evidence.

In the light of the pleadings filed and exchanged by both parties in these proceedings and in view of the documentary evidence tendered before the court, I think the two issues, which call for determination in this case are:

- (i) Whether the Igbo Community Development Association represented by the 1st and 2nd Defendants is a legal or lawful association by virtue of their non-registration under Part C of the Companies and Allied Matters Act 1990 and
- (ii) If the answer to the question is not in the affirmative, can the ICDA validly lay any claim to lead the Igbos in Oyo State not having been duly registered?

In the determination of the aforementioned issues, I think it is very pertinent that the status of the Plaintiff association has to be considered vis-à-vis that of the Igbo Community Development Association which 1st and 2nd Defendants represent. There is no argument that while the Plaintiffs association was duly registered under Part C of the Companies and Allied Matter Act 1990, the ICDA was not so registered. Section 673 (1) under which the Plaintiff's organisation was registered provides as follows:

“Where one or more trustees are appointed by any community of persons bound together by custom, religion, kinship or nationality or by anybody or association of persons established for any religious, educational, literary, scientific, social, development, cultural, sporting or charitable purpose, he or they may, if so authorised by the Community, body or association (hereinafter in this act referred to as “the association”) apply to the Commission in the manner hereafter provided for registration under the Act as a corporate body.”

The Plaintiff got registered on 3rd of October 1996 under Part C of the aforementioned Act and the Certificate of Registration (Exhibit A) was issued in consequence of that registration. The names of the trustees appointed by the community of persons who formed the association are stated at the back of the Certificate of Registration (Exhibit A). As stated in Section 679 (1) of Part C of the Companies and Allied Matter Act, on being registered, the Trustees have become *a body corporate*, the association shall have perpetual succession and a Common Seal, the Trustees shall have power to sue and be sued in its corporate name. The Body Corporate shall also have power to hold and acquire, transfer, assign or otherwise dispose of any property held for the benefit of the association. Those are the powers vested in the body corporate and no more. The registration of the Plaintiff's association is also in conformity with the provisions of Section 37 of 1979 Constitution (now Section 40 of the Constitution of the Federal Republic of Nigeria 1999) which states thus:-

“Every person shall be entitled to assemble freely and associated 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.”

The argument of learned counsel for the Plaintiff was that the association, which the Defendants represent, is illegal by the fact of its non-registration. Learned counsel cited in support of this submission the recent Supreme Court decision in the case of *Akunwata Joe Anyaegbunam v. Pastor Okudili Osaka* (2000) 5 NWLR (Part 657) 386. In that case the Supreme Court considered the relevant provisions of the Land Perpetual Succession Act Cap. 98 Laws of the Federation of Nigeria 1958 now repealed by Section 694 of Part C of the Companies and Allied Matters Act 1990. The provisions of the repealed Act are *in pari materia* with those of Part C of the Companies and Allied Matters Act.

The facts of *Anyaegbunam's* case are as follows: The Plaintiff took an action against the defendants "for themselves and as the Trustees of the Light of Christ Praying Band Onitsha. It is a Christian Organisation for the worship of God. The Organisation was unincorporated. The Plaintiff had a parcel of land, which he made into a Layout, part of which he gave as an outright gift for the purpose of the Organisation. The Organisation built a church on the land. In January 1982, the Plaintiffs wrote a letter to the 1st Defendant, Pastor in charge of the Organisation instructing him to suspend forthwith his entry into the new chapel until settlement was made between the Pastor and the members, elders and trustees of the Organisation. In October 1985, the Plaintiff instituted an action his case being that the Defendants induced him to make a gratuitous gift of his land to the said Church when in fact no such Organisation existed because it had not been incorporated, and if that was so, then the gift of the land would be invalid. At the end of the trial, the High Court found for the Appellant. The Respondents appeal to the Court of Appeal was allowed and Appellants claim dismissed. On a further appeal to the Supreme Court, the Appellant's appeal was dismissed.

In that case the principal relief sought by the Plaintiff/Appellant was –

"A Declaration that the purported gift of the said property to a non existent Light of Christ Praying Band is ineffectual, null and void and of no effect."

In view if the relief sought, the court had to consider the status of the said unincorporated Church Organisation in relation to the Respondents who were appointed its Trustees. Having referred to the provisions of Section 2 (1) of the Land Perpetual Succession Act the court held as follows per Katisna Alu JSC at page 394: _

"It seems clear to me that the above provision shows that an unincorporated body or association of persons is a factual reality. The association though unregistered must appoint Trustees or a Trustee who will apply for registration. Thus the law takes into cognisance the fact that before the Application is made i.e. while the association is not registered in law, certain persons may be appointed Trustees who may act in that capacity"

The Supreme Court whet further to hold that the status of the Defendants as Trustees of Light of Christ Praying Band was settled by the pleadings which shows that the gift was through the Defendants in their capacities as Trustees of the Church for the benefit of the Organisation.

Learned counsel while addressing the court relied heavily on the dictum of the Supreme Court at page 657 of the report that: "An unincorporated association does not legally exist and must of necessity act through its appointed representative." Learned counsel for the

Plaintiff Mr. Sanni placed much reliance on the above statement in his submission contending that the Defendant is an illegal association. I don't think that there is any ambiguity in what the Supreme Court said, namely that an unincorporated association like the association which the Defendants represent is not existing lawfully, in other words that its existence is contrary to Section 673 (1) of the Companies and Allied Matters Act, but certainly not in the sense that its existence is forbidden by any law.

The distinction between an incorporated and an unincorporated Organisation was brought out more vividly in the case of *Fawehinmi v. N.B.A (No. 2)* (1989) 2 NWLR (Part 105) 558 at 640 as follows:

“The most fundamental of the differences between Corporation and an Unincorporated association are that the Corporation has a “perpetual succession,” it maintains its identity and its personality; notwithstanding changes in its membership, its property does not belong to its members. But the property of an unincorporated association does belong to its members from time to time.”

Both counsel have respectively sought to further rely on the provisions of Section 37 of the 1979 Constitution (now Section 40 of the 1999 Constitution) to which reference has been made in the course of this judgement. At page 633 of the Report in *Fawehinmi's case (supra)*, this is what Karibi Whyte JSC said about that Section: -

“Thus the right to form any association for the protection of the interests of the members is guaranteed under this provision of the Constitution 1979 and is an entrenched right. However, such an association of persons, though recognised by the Constitution does not *ipso facto* vest in the association the attributes of incorporation, which alone confers legal personality... . Thus an association of persons recognised by section 37 is a lawful association *simpliciter*. It is a recognition of the reality that the group of persons who have formed an association has an existence in fact.”

The association, which the Defendants represent, is not a legal association because it has not been registered under the appropriate law and therefore has no legal personality to sue and be sued except through its appointed Representative or Trustees. But this same association is none less a lawful association duly recognised by the Constitution, the Supreme Law of the Country and the Corporate and Allied Matters Act as well as the Rules of this court, that is Order 11 Rule (8) which states that persons with joint interests may sue or defend actions on behalf of other persons interested.

The issue in *Anyaegbunam's case (supra)* was not whether the Church is a legal or an illegal association, but rather the question was whether the gift of the land made by the Plaintiff to the unregistered association through its representatives was unlawful by the mere fact of its non-registration. But the Supreme Court answered the question negatively because the gift of land was to the Church through its representatives. In other words, if the gift had not been made to Trustees of the unregistered association for themselves as Trustees of the church, the gift would have been ineffectual. Therefore in so far as an unregistered association acts through appointed trustees the law will always recognise their existence. It is therefore my view that the *Anyaegbunam's case* is distinguishable from the

present case where the Plaintiff merely wants the Court to declare an association illegal imply because it has not been registered.

Now the Plaintiffs are claiming that by virtue of their registration, they have become the only umbrella association for all Igbo Town Unions in Oyo State or that their registration has bestowed them with the power that they alone can lead the Igbos in Oyo State. The attributes of incorporation include power to sue and be sued, having perpetual succession and a common seal, power to hold, and acquire land etc – see Section 673 (1) of Companies and Allied Matters Act. Again Article 3 (1) of Exhibit B – The Constitution of the Igbo Community Oyo State (ICOS), the Plaintiffs, in this case states as follows: -

“The Igbo Community Oyo State shall essentially be a uniting and development Organisation Of all Igbo indigenes in Oyo State in pursuance of this objective it shall have power to initiate and embark upon programmes that will unite the Igbos in Oyo State without hindrance provided that such programmes shall not run contrary to the laws of the land.”

That is the main objective of the ICOS. It was set up to achieve unity among the Igbos in Oyo State. There is nothing in its constitution conferring a leadership role on the association or giving it the right to be the only association to bring about unity among the Igbos in Oyo State; and it will be a misconception on their part to think that they have the right to lead because they have the names of their trustees as well as their Constitution registered with the Corporate Affairs Commission. Their Constitution (Exhibit B) is not a statutory instrument or an enactment. It is a private document, which the members of the association have drawn up to regulate their affairs. Their Constitution has not got the force of law in any shape or form. Neither the law which gave the Plaintiff its legal existence nor its Constitutional Exhibit B gave it the power wither to act as an umbrella association or as they only association that should lead the Igbos in Oyo State. The law, which established the Plaintiff’s associaiton, gave it legal personality and no more. If the ICOS is the only known and legal Organisation uniting the Igbos in Ibadan and Oyo State, one may then ask, what sanctions had the law imposed on the Authors of the Letters Exhibit F and F1, that is, letters written by the Igbo Community who are resident in Ogbomosho and Oyo Town respectively, who wrote severally dissociating themselves from the Plaintiff’s association, that is from ICOS. The law has not given them any sanctions because they have refused to recognise the ICOS as the only legal and known Organisation representing the Igbos in Oyo State.

In the course of his argument, learned counsel for the Plaintiff submitted that the Defendants have, by their existence, breached the provisions of Part C of the Companies and Allied Matters Act, but learned counsel did not refer the court to the particular section of the law which the Defendants have breached. Registration under Section 673 (1) of the aforementioned Act is optional and not obligatory. If the contention of the Plaintiff’s counsel is accepted, then one may ask – what sanction has the law provided for such a breach of non-registration? None.

On the reliefs in legs 4 and 5 of paragraph 30 of the Plaintiff’s Statement of Claim in which the Plaintiffs are asking for injunction restraining the Defendants, their servants and agents from convening or organising meeting of Igbo Town Unions and association and also from further causing further disunity amongst the Igbos in Oyo State, as I stated in the

course of this judgement the association which the defendants represent is a lawful association. The most important precondition for an order of interlocutory injunction is for the Applicant to show that he has a legal right, which is threatened and ought to be protected. The court has no power to grant an injunction where the Applicant has not established a recognisable legal right. In the instant case, as I have pointed out in the course of this judgement, the Plaintiffs have not shown whether it was their Certificate of Registration (Exhibit A) or their Constitution (Exhibit B) or Part C of the Companies and Allied Matters Act 1990 which has conferred on them the exclusive right to lead or act as an umbrella association for all the Igbo Unions in Oyo State.

Mere Registration under Part C of the Companies and Allied Matters Act does not and cannot give or confer on any association any additional attributes than what the law has conferred on it. The act of registration is no qualification or authority for leadership or supremacy over and above any other association. Registration confers only legal personality and other attribute of corporate existence. In my view, the Plaintiffs have not established any legal or equitable right worthy of protection. The attention of the Court has been drawn to the Letter Exhibits E – E3 exchanged between the Defendants and some Government Departments to show that the Defendants are holding themselves out as representing the Igbos in Oyo State. If I am right in my opinion that the mere fact of registration will not give the Plaintiffs the absolute right to lead the Igbos in Oyo State, then I cannot see any reason why the Defendants should be restrained from entering into correspondence with government departments or even embarking on any activities for the protection of their members.

The right to assemble or associate freely with other persons or to form or belong to any association is a constitutionally guaranteed right, and if an order of injunction is granted, it will tantamount to a curtailment of such right.

In so far as the Plaintiffs have not been able to show any particular law which forbids the existence of ICDA, the association which the Defendants represent, or any law which gave them the right to lead the other association, I fail to see in what way the Plaintiffs can rightly contend that their right has been infringed. The injunctive reliefs being claimed in paragraph 30 (4 & 5) of the Amended Statement of Claim being ancillary to the declaratory reliefs in paragraph 30 (1 – 3) which reliefs have not been established, the injunctive reliefs will equally fail because in the words of Oputa JSC (as he then was) in *Odofin v. Ayoola* (1984) 11 SC 72: -

“When the root ceases to stand, the stem and branches will fall with the root.”

In the light of the foregoing, I find as follows: -

- (i) That the Igbo Community Development Association has no legal personality not having registered under the Companies and Allied Matters Act 1990, but the association is not an illegal association because there is no law forbidding any group of persons coming together to form an association to discuss matters of mutual benefit to their members.
- (ii) The Igbo Community Oyo State is not the only legal and known association uniting the Igbos in Ibadan and Oyo State in general. It is also not the only umbrella body for all Igbo Town Unions and association in Oyo State.

- (iii) The Plaintiffs have not established any legal right worthy of protection by an order of injunction.

In the result therefore, all the Plaintiff's claims fail and are accordingly dismissed in their entirety with N1,000.00 costs to the Defendants.