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1. ERASMUS OSAWE
 2. DICKSON OHIKHENA APPELLANTS
 3. GOODLUCK EHAREVBA
 V.
 REGISTRAR OF TRADE UNIONS RESPONDENT

SUPREME COURT OF NIGERIA

SC. 100/1984

ANDREW OTUTU OBASEKI, J.S.C. (Presided)
 ANTHONY NNAEMEZIE ANIAGOLU, J.S.C.
 MUHAMMADU LAWAL UWAI, J.S.C.
 BOONYAMIN OLADIRAN KAZEEM, J.S.C. (Read the lead Judgment)
 CHUKWUDIFU AKUNNE OPUTA, J.S.C.

FRIDAY, 31ST MAY, 1985

CONSTITUTIONAL LAW - Fundamental Human Rights - Freedom of Association - Formation of Trade Union - whether S.3(2) of Trade Union Act 1978 conflicts with S.37 of the 1979 Constitution - Section 41 of the 1979 Constitution considered.

INTERPRETATION OF STATUTES - Use of Preambles.

TRADE UNIONS - Registration of - power of Registrar to refuse registration - Scope of.

Issues:

1. Whether Section 3(2) of the Trade Union (Amendment) Act 1978 which provides inter alia that "no trade union shall be registered to represent workers or employers in a place where there already exists a trade union", is an infringement on Section 37 of the 1979 Constitution which guarantees freedom of association.
2. Whether the Registrar of Trade Unions must first; on application for the registration of a trade union; cause a publication of a notice of the application to be made in the Gazette; requesting any objections to the registration; to be submitted to him within three months of such publication; before he can exercise his discretion to refuse to register a trade union; even when he is of opinion that there is an existing Trade Union which caters for the interest of the Trade Union/applicant.

Facts:

In 1980, the appellants applied to the Registrar of Trade Unions for the registration of a Trade Union called "The Nigerian United Teaching Services Workers Union" otherwise called the "Nigerian Administrative Staff Union

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of Primary and Post Primary Schools." The Registrar of Trade Unions refused to register the association on the ground that there is in existence a Trade Union namely the 'Non-Academic Staff Union of Educational and Associated Institutions' which sufficiently caters for the interests of members of the proposed Union. The Registrar relied on the Provisions of Section 5(5) of the Trade Unions Act 1973 and Section 3(2) of Trade Unions (Amendment) Act 1978.

The appellants appealed to the High Court Benin against the Registrar's decision and sought an order of the Court compelling the Registrar to register the proposed Union. The order was granted; whereupon the respondents appealed to the Court of Appeal against the order of the High Court. The Court of Appeal allowed the appeal of the respondents and the decision of the High Court was set aside. The appellants appealed to the Supreme Court against the decision of the Court of Appeal. The appeal was dismissed.

HELD:

1. The Right of Association guaranteed in Section 37 of the Constitution; like the other rights in Chapter IV of the Constitution, is not an absolute right; but a qualified right; which can be derogated from in accordance with the provision of Section 41 of the 1979 Constitution.
2. The Trade Union Act 1978 is a law passed in the interest of public order. It was necessary to ensure order in the chaotic proliferation of trade unions which was the practice before the promulgation of the law.
3. The powers conferred on the Registrar of Trade Unions to refuse registration of a Trade Union are not limited by the provisions of Section 5(2) of the Trade Union Act 1973.
4. In interpreting the provisions of a statute, the preamble to that statute though not a part of the statute, can be resorted to as an aid to interpreting the statute where there is some difficulty in arriving at the meaning of words in the statute.

Nigerian Cases Referred to in the Judgment:

D.P.P. v. Chike Obi (1961) 1 All NLR. 186

Nigerian Nurses Association & Anor. v. Attorney-General of the Federation & Ors. (1981) 11/12 SC. 1

Nigerian Statutes Referred to in the Judgment:

Constitution of Federal Republic of Nigeria 1979 Sections 34, 35, 36, 37, 38, 41, 41(1)(a) and (b)

Evidence Act - Section 141.

Trade Unions (Amendment Decree 1978) now Act No. 22 1978 Sections 1(1)(a) and (b), 3, 3(1),(2),(5), 5, 5(5),(7), Schedule 3, Item 63.

Trade Unions Act 1973 (Act No. 31 1973) Schedule 3 Sections 1(1)(a) and (b), 3, 3(1),(2),(4),(5), 5.

Book Referred to in the Judgment

Nwabueze - The Presidential Constitution of Nigeria, Page 588.

Appeal:

This was an appeal against the decision of the Court of Appeal allowing the appeal of the respondent against the decision of IKOMI, J. sitting at the High Court of Justice Bendel State granting the plaintiffs/appellants claim that: the Registrar of Trade Union was wrong to have refused the registration of their trade union.

The appeal was dismissed by the Supreme Court.

History of Case:**Supreme Court:**

Appeal No: SC.100/1984

Date of Judgment: 31st day of May, 1985

Names of Justices in the Appeal: Obaseki, J.S.C., (Presided), Aniagolu, J.S.C., Uwais, J.S.C.; Kazeem, J.S.C., (Read the lead judgment), Oputa, J.S.C.

Court of Appeal:

Division of the Court of Appeal from which the appeal was brought: Court of Appeal, Benin.

Names of Justices in the Appeal: Omoigberai Eboh, J.C.A., Rowland Obiora Okagbue, J.C.A. (Read the lead judgment), Abai Ikwechegh, J.C.A.

Date of Judgment: 24th day of January, 1984.

Appeal No.: FCA/B/52/83

High Court:

Name of the High Court: High Court, Benin.

Name of Judge: Justice D. O. Ikomi.

Date of Decision: 26th day of February, 1982.

Counsel:

K.S. Okeanya-Inneh, S.A.N., (with him Mr. B.E. Isherhien) - For the Appellants.

Mr. F. Nwadialo, S.A.N. (Legal Adviser, Federal Ministry of Justice) (with him E.U. Ifonu, (Miss), Assistant Legal Adviser, Federal Ministry of Justice) - For the Respondent.

KAZEEM, J.S.C. (Delivering the Lead Judgment): This is an appeal by the appellants against the decision of the Court of Appeal dated 24th January, 1984 allowing the appeal of the respondent who was ordered by the High Court Benin City to register the appellants' Union.

In order to understand the whole matter clearly, it is necessary to go into the history of the matter. Sometime in December, 1980, the appellants applied to the respondent for the registration of their proposed Trade Union called "The Nigerian United Teaching Services Workers Union", otherwise known as "Nigerian Administrative Staff Union of Primary and Post-primary Schools". The decision to get that Union registered was made

at a meeting of representatives of schools and colleges in Bendel State held on 13th December, 1980 as contained in the minutes of that meeting which state as follows:-

7. The Chairman further called on the delegates to resolve here and then to break away from NASU and, set a machinery in motion to register with the Registrar of Unions in Lagos a body corporate with a different name.
8. The Chairman concluded by reading to the delegates the proposed name of the Union if it is resolved and accepted by all members present to break away from NASU and form a new union that will adequately cater for the interests of the workers in Schools and Colleges in the Unified Teaching Service. The proposed name was given as: "Nigerian Unified Teaching Service Workers Union" *NUTSWU*."

The reference to "NASU" in the above context means "Non-Academic Staff Union of Educational and Associated Institutions" which was a registered Trade Union; and it is therefore clear that the Union proposed by the appellants was a break-away group from the one already registered.

It also happened that prior to that time, the Federal Military Government had, because of the proliferation of trade unions in the country, embarked on an exercise to regroup and reorganise them with a view to reducing their number. Hence by Government Notice No. 92 in the Nigeria Official Gazette No. 6 vol. 65 of 8th February, 1978, it was *inter alia* published as follows:-

"Government Notice No. 92

RESTRUCTURING OF TRADE UNIONS

The Federal Military Government has approved, consequent upon the report of the Administrator of Trade Union Affairs and the recommendations of the Commissioner for Labour, the restructuring into 71 industrial unions of the existing registered trade unions of senior and junior staff, professional personnel, self employed persons, independent contractors and employers which are over 800. Consequently, a number of trade unions will have their certificates of registration cancelled. It is in the interest of self-employed persons, contractors, and employers, etc. whose unions will be cancelled to re-group as Co-operative Unions to further the interest of their members as their various unions do not conform with the present concept of a trade union.

The proposed 71 industrial unions with their constituent unions and the 277 unions whose registration will be cancelled are listed below:

(a) List of the proposed 71 industrial unions

Out of the 71 proposed Industrial Unions in List (a) of the said Gazette was Item 64 - the "Non-Academic Staff Union of Educational and Associated Institutions" - which embraced *inter alia* a union called "Union of Administrative Staff of Mid-West Colleges" whose registration was later cancelled.

Pursuant to that exercise carried out as published in the Official Gazette, the Trade Union (Amendment Decree 1978) now Act No. 22 of

1978, was promulgated by the Federal Military Government with effect from 3rd August, 1977. The said Act extensively amended the existing Trade Union Act of 1973 (Act No. 31 of 1973) and in Schedule 3 to the Act of 1973 was published as No. 63 the "Non-Academic Staff Union of Educational and Association Institutions" which was deemed to be a Registered Trade Union by the Act.

On the receipt of the appellants' application for registration, the respondent duly considered it and it was rejected in accordance with Sections 3(2) (as amended) and 5(5) of the Trade Union Act, 1973. He thereafter forwarded to the appellants in compliance with the law, the following letter dated 6th July, 1981:

**"FEDERAL MINISTRY OF LABOUR EMPLOYMENT
AND
PRODUCTIVITY
OFFICE OF THE REGISTRAR OF TRADE UNIONS DIVI-
SION**

61, BROAD STREET, LAGOS

P.M.B. 12576

Ref: No. ML.TU/IC/27/T/42

Telegrams: Tradunion

Telephone: 662368

Date: 6th July, 1981

Sir,

**REFUSAL TO REGISTER THE NIGERIAN UNIFIED
TEACHING SERVICE WORKERS UNION LATER
RENAMED NIGERIAN
ADMINISTRATIVE STAFF UNION OF PRIMARY AND
POST
PRIMARY SCHOOLS**

With reference to an application of the above-named Union for registration as a trade union dated 13th December, 1980 and your letter No. NUTSWU/RTU/3 dated 2nd March, 1981 I wish to draw your attention to the fact that the NON-ACADEMIC STAFF UNION OF EDUCATIONAL AND ASSOCIATED INSTITUTIONS is the registered and recognised trade union as listed in Schedule 3 of the Trade Unions (Amendment) Act No. 22 of 1978 which caters for the class of persons who intend to form the Nigerian Unified Teaching Service Workers Union/Nigerian Administrative Staff Union of Primary and Post Primary Schools.

2. Members of the proposed Union belong to the different non-teaching staff unions in educational institutions in Nigeria which were restructured to form the NON-ACADEMIC STAFF UNION OF EDUCATIONAL AND ASSOCIATED INSTITUTIONS as shown in pages 164 and 165 of the Official Gazette Extraordinary No. 6 Volume 65 of February 18th, 1978.

3. In accordance with Section 5(5) of the Trade Unions Act 1973 and Section 3(2) of Trade Unions (Amendment) Act 1978, I wish to inform you that I cannot register your Union because the NON-ACADEMIC STAFF UNION OF EDUCATIONAL AND ASSOCIATED INSTITUTIONS is an existing trade union which is sufficiently representative of the interests of the class of persons whose interest your proposed union is intended to represent.

4. The effective date of this refusal to register your proposed trade union is 6th July, 1981.

5. Members of your proposed union are therefore advised to join the NON-ACADEMIC STAFF UNION OF EDUCATIONAL AND ASSOCIATED INSTITUTIONS WHOSE registered address is SW8/109 Ijebu Bye Pass, Oke Ado, Ibadan.

Yours faithfully,
(Sgd.) (P.J.O. AREWAH)
Registrar of Trade Unions.

The Secretary,
Nigerian Unified Teaching Service Workers' Union,
9, Nosayaba Street,
New Benin,
Benin City."

See Exhibit "A"

The appellants thereafter appealed against the decision of the respondent to the High Court, Benin City and the appeal was allowed. The High Court not only declared the decision of the respondent contained in *Exh. A* as unconstitutional, invalid, null and void and of no effect whatsoever; but it also held that it constituted an infringement of the fundamental rights of the appellants as contained in Section 37 of the Constitution of the Federal Republic of Nigeria 1979 in so far as that Section affects trade unions. The Court therefore set aside the decision of the respondent and ordered him to register the appellants' union forthwith. As already stated above, the appeal by the respondent against that decision was allowed by the Court of Appeal, Benin City. In the course of their judgment the Court of Appeal observed that the crux of the matter was whether the respondent was right in refusing to register the appellants' union; whether or not he followed the prescribed procedure before doing so; and whether the High Court was right in allowing the appeal against that refusal. The Court of Appeal then considered the various provisions of Sections 3 and 5 of the Trade Union (Amendment) Act, 1978 as well as Sections 37 and 41(1) of the Constitution of 1979; and it made the following findings:

"I agree with counsel for the respondent that the provisions of subsection (2) are mandatory. I also agree that the refusal to register a trade union is an act which fetters the citizen's right to free association and this tends towards restricting his constitutional rights. Where however these rights are interfered with on statutory authority, the exercise of the purported powers under the authority will be construed strictly. Where the purported exercise of the powers is not in conformity with the statute under which it is supposed to have been exercised, there will be no basis for considering the legality or otherwise of the action. It would be *ultra vires ab initio*."

The Court of Appeal then applied the provisions of the Trade Union law and the Constitution of 1979 to the complaint of the appellants and then observed thus:

"In the case in hand the main complaint is that the appellant

failed to comply with Section 5(2). The complaint is that he did not publish the required notice. The question is how relevant is a notice to the entire proceedings. As I see it his action is not based on any opposition expressed or unexpressed to the registration from any quarters. If that were the case I would hold without any qualms that his action was ultra vires. It seems to me however that the application is intrinsically bad and that it does not meet with the statutory requirement which he is statutorily required to maintain. In other words he is expected to prevent a proliferation of trade unions in a particular trade. The appeal is not against the exercise of his discretion but the effect of his action on the fundamental rights of the respondents.

The whole matter centres around Section 37 of the Constitution. This Section states as follows -

"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 other association on the protection of his interest."

It is agreed on all sides that this Section is subject to the over-riding provision of Section 41 of the Constitution.

Section 41 states -

"(1) Nothing in sections 34, 35, 36, 37 and 38 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society.

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

We were asked by learned counsel representing the applicant to give the expression "public order" in Section 41(1)(a) a liberal interpretation to include good order within the rank and file of the Trade Unions enabling the avoidance of multiplicity of registered trade unions within the same trade.

I am inclined to go along with this suggestion. The former Military Regime brought order and sanity to the trade union movement of this country and I do not think it will be in the interest either of the unions or the country at large to re-introduce a free for all in the Trade Union Movement.

In the circumstances, I would allow this appeal. I will set aside the order made in this matter by the Benin High Court. I will make no order as to costs."

In this appeal against the decision of the Court of Appeal, the appellants filed two grounds as follows:-

1. That the learned Justices of Federal Court of Appeal erred in law in allowing the appeal despite the mandatory provisions of Section 5(2) Trade Unions Act, 1973 and Section 37 of the Constitution of the Federal Republic of Nigeria 1979.
2. That the learned Justices of the Federal Court of Appeal erred in law in allowing the appeal thereby misconstruing the provisions and tenet of Sections 37 and 41(1)(a) of the Constitution of the Federal Republic of Nigeria 1979."

Both sides have filed their briefs of argument. However, learned coun-

sel for the appellants, Mr. Okeaya-Inneh, S.A.N. relied on his brief and then submitted that the crux of the matter was that the respondent had a duty to comply with the provisions of Section 5(2) of the Trade Union Act, 1973 before exercising his discretion under Section 5(5) thereof in refusing to register the appellants' Union; that having failed to do so, he was therefore wrong; and that the High Court was right in setting aside his decision and ordering him to register the said Union. However, learned counsel for the respondent, Mr. Nwadialo S.A.N., submitted that the union which the appellants proposed to register was one seeking the same interest as the one already registered as Item 63 in Schedule 3 to the 1978 Act; that the intention of Section 1(1)(a) of the 1978 act was to prevent a proliferation of trade unions; that the requirement of Section 41(1)(a) of the Constitution had been fulfilled accordingly; and the action of the respondent was not a breach of the Constitution. He then cited Professor Nwabueze's "Presidential Constitution of Nigeria" page 588 last paragraph, in support of his contention.

In considering Ground 1, it seems to me quite clear from the historical account of trade union reorganisation discussed above, that prior to the exercise of 1978, the position of registered trade unions in this country, was rather chaotic; and there was a proliferation of some 800 different registered trade unions with varied objectives and aspirations. It was in order to correct that situation and to bring sanity to the organisations, that the Federal Military Government in order to maintain *public order* and good government embarked upon the exercise of restructuring all registered trade unions as set out in the Nigeria Official Gazette No. 6 Volume 65 of 8th February, 1978. That exercise culminated in the recognition and registration of some 71 Industrial Trade Unions as contained in Schedule 3 of the Trade Unions (Amendment) act, 1978. Consequently, the registrations of all the other registered trade unions were cancelled. Among those cancelled was the Union of Administrative Staff of Mid-West Colleges which is another name for the proposed union. Moreover, the Trade Unions (Amendment) Act, 1978, amended some provisions of the Trade Unions Act, 1973 as shown in Sections 1(1)(a) and (b) thereof. Particularly, Section 3 of the Trade Unions Act 1973 was replaced by a new Section 3 and Section 5(4) was completely deleted. The new Sections 3(1) and (2) of the Trade Unions Act 1973 as amended, (which are relevant to this appeal), provide as follows:-

- "3(1) An application for the registration of a trade union shall be made to the Registrar in the prescribed form and shall be signed -
- (a) in the case of a trade union of workers, by at least fifty members of the union; and
 - (b) in the case of a trade union of employers, by at least two members of the union.
- (2) No combination of workers or employers shall be registered as a trade union save with the approval of the Commissioner on his being satisfied that it is expedient to register the union either by regrouping existing trade unions, registering a new trade union or otherwise howsoever; *but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union.*"
- (The italics is mine).

It is to be noted that the portion italicized above is similar to Section

5(4) of the Act deleted completely by Section 1(1)(b) of the Trade Union (Amendment) Act, 1978.

In my view, this new provision makes it mandatory for the Registrar of Trade unions, on receiving an application to register any trade union, to ensure that there is no other registered trade union in existence which caters for the same interest as the one applying for registration. If there is, it becomes incumbent in my view, for the Registrar, as the custodian of such information, to decline to proceed to put into effect the machinery for the registration of the new trade union as set out under Section 5(2) of the Trade Unions Act, 1973.

Having regard to the facts of this case, I am of the view that the Registrar was right to have rejected the application for registration immediately; for to have done otherwise, might have led to a ridiculous situation. It may even be asked: What would have been the result if the Registrar had first complied with the provisions of Section 5(2) of the Act by publishing the name of the proposed trade union in the Nigeria Official Gazette and had called for objections? What would have happened if he later discovered that there had already been in existence a registered trade union catering for the same interest as the proposed one? I am of the view that to have embarked upon such an exercise would not only have been wasteful, but it would also have served no useful purpose, because in the end, he would have had to reject the registration of the proposed union. For these reasons, ground 1 fails.

As regards ground 2, it was not disputed that the fundamental right enshrined under Section 37 of the Constitution of 1979 for freedom of association as trade unions was subject to the derogation set out in section 41(1)(a) of the said Constitution. Hence Section 37 of the Constitution is not absolute as it cannot invalidate any law that is reasonably justifiable in a democratic society "in the interest of defence, public safety, *public order*, public morality, or public health." It was not also the contention of the appellants that Section 3(2) of the Trade Unions Act, 1973 as amended by Section 1(1)(a) of the Trade unions (Amendment) Act, 1978 was a law reasonably justified in a democratic society. It was in fact in order to maintain public order out of a chaotic situation that the exercise of 1978 was embarked upon which gave rise to the promulgation of the Trade Unions Amendment Act 1978. I am therefore unable to agree that Section 3(2) of the Trade Unions Act 1973 as amended, contravenes Section 37 of the Constitution of 1979. Accordingly, I am satisfied that the Court of Appeal was right in allowing the appeal and in setting aside the order of the High Court Benin City which ordered the respondent to register the appellants' union.

In the circumstances, this appeal fails and it is hereby dismissed with N300.00 costs.

OBASEKI, J.S.C. (Presiding): I have had the advantage of reading in draft the judgment just delivered by my learned brother, Kazeem, J.S.C. and I agree with him that there is no merit in the appeal and that it should be dismissed.

The question for determination in this appeal is a very short one. It is -

"whether the Registrar of Trade Union should have caused a notice of the application of the appellants (to be registered as a trade union) to be published in the gazette, and objections if any, to the registrations invited by the Registrar before proceeding to determine whether the application ex facie contains material which disqualifies the applicants from registration."

This naturally leads to the further questions:

- (a) whether the Registrar of Trade Union was right in refusing to register the Union;
- (b) whether or not he followed the prescribed procedure and whether or not the High Court was right in its ruling and
- (c) whether or not the Court of Appeal was right in reversing the ruling of the High Court.

The facts relevant to this appeal have been fully set out in the judgment of my learned brother, Kazeem, J.S.C. They are not in dispute. Put shortly, the appellants applied to the Registrar of Trade Union to be registered as "The Nigerian Unified Teaching Service Workers Union" and their application was refused on the ground that a registered trade union -

'the Non-Academic Staff Union of Educational and Associated Institutions which fulfils the proposed role of the applicants is already in existence and on the Registrar of Trade Unions'.

This refusal, the appellants attacked before the courts below and this Court as a breach of their fundamental right entrenched in Section 37 of the Constitution of the Federal Republic of Nigeria 1979 which reads:

"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 ..."

This right to freedom of association is made subject to its being in consonance with 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 [see Section 41(1) Constitution of the Federal Republic 1979 as amended].

The Trade Union Act 1973 No. 31 as amended is a law reasonably justifiable in a democratic society. Indeed, it is the law under which the appellants applied to be registered. Section 3(2) of that Act in part reads:

"..... but no trade union shall be registered to represent workers or employers in a place where there already exists a trade union."

Having regard to the mandatory provisions of this section, if an application received by the Registrar is caught by the provisions of this section, it is incumbent on the Registrar of Trade Union to refuse registration without publication of the application and inviting objections to the registration. It will amount to an act of financial irresponsibility to proceed to publish a notice of application in the gazette when he knows that the application has already been barred by the Act from any consideration.

For the above reasons and the reasons ably set out in the judgment of my learned brother, Kazeem, J.S.C., I hereby dismiss this appeal with N300.00 costs to the respondents. The decision of the Court of Appeal is

hereby affirmed.

ANIAGOLU, J.S.C.: The judgment just delivered by my learned brother, Kazeem, J.S.C., was made available to me in draft and I agree with his reasoning and conclusion.

It is apparent that some officers of some Trade Unions want to escape from some legal consequences of the *Trade Unions (Amendment) Decree 1978 No. 22 of 1978* and have employed some designs, sometimes ingenious, to form new Trade Unions, or maintain old ones, contrary to, and against the intendment of, the re-structuring exercise of the Government designed to prune down proliferating Trade Unions.

This Court has had to deal with one such attempt in the *Nigeria Nurses Association and S.S. Okezie v. Attorney-General of the Federation and 2 Others* (1981) 11 - 12 S.C. 1 in which an attempt was made to keep alive the "Nigerian Nurses Association" which had become defunct, and consumed by the new "National Association of Nigeria Nurses and Midwives" created by the said *Trade Unions (Amendment) Decree, 1978*. In that case the Nigerian Nurses Association whose existence had become determined by that Decree was sought to be kept alive by some officers of the Union on the argument that the rights in respect of which they were suing had accrued to the Union long before the re-structuring exercise and, therefore, that they were entitled to maintain their action in the name of that Union even after the Decree had determined the existence of the Union. That argument was rejected.

The gravamen of the argument of Mr. Okeaya-Inneh, S.A.N., was not that the Registrar of Trade Unions had not the power to refuse registration, but that he had failed to follow the procedure laid down in *Section 5(2) of the Trade Unions Decree 1973* by his failure to publish a notice of the application made by the appellants for registration and call for objections.

The reason given by the Registrar for his refusal to register the Union is contained in his letter dated 6th July 1981, *Exhibit A*, reproduced in the judgment of the High Court at pages 63 - 66 of the record of proceedings. He drew attention to Schedule 3 of the *Trade Unions (Amendments) Act, 1978* and pointed out that the *NON-ACADEMIC STAFF UNION OF EDUCATIONAL AND ASSOCIATED INSTITUTIONS* listed in that schedule catered for members of:

"different non-teaching staff unions in educational institutions in Nigeria"

and being an existing Trade Union

"which is sufficiently representative of the interests of the class of persons whose interest"

the proposed new union was intended to represent, he could not, acting on *Section 5(5) of the Trade Unions Act 1973* and *Section 3(2) of the Trade Unions (Amendment) Act 1978*, register the new Union. Under *Section 5(5)*, the Registrar is required to inform applicants for registration of his reason for refusal to register and under *Section 3(2) of the 1978 Act*,

"... no trade union shall be registered to represent workers or employees in a place where there already exists a trade union."

Mr. Okeaya-Inneh, S.A.N., submitted that the Registrar, in order to act under *Section 3(2)* must receive objections pursuant to a published notice

before he could say that

"there already exists a trade union"

in a place. With due respect to appellants' Counsel, surely that is carrying specious argument too far. The Registrar is the Registrar of Trade unions. He knows or is supposed to know the existing registered trade unions, the ambit of their operations, the interests which those registered cater for. All these and more (see *Section 3(5) of the 1978 Act*) are facts which applicants for registration are supposed to furnish the Registrar before registration. As the Registrar, apart from the list of Registered and Recognised Trade Unions contained in *Schedule 3* added by the *1978 Act* pursuant to *Section 5(7)* thereof, the matter of registered trade unions is peculiarly within his knowledge (see *Section 141 of the Evidence Act*) since he receives the applications for registration and registers them.

The Registrar does not, therefore, need to be informed, or need to have extraneous evidence from objections lodged pursuant to a published notice, that there is an existing registered trade union catering for any particular interest. In the instant case, *Item 63* of the *Schedule 3* has the

"Non-Academic Staff Union of Educational and Associated Institutions"

and all the Trade Unions in that *Schedule 3* are required by *Section 5(7) of the 1978 Act*, which provides that:

"Notwithstanding anything contained in this Decree to the contrary, the Registrar, shall on the coming into effect of this section, register without any conditions whatsoever, the trade unions specified in *Schedule 4* to this Decree; and on such registration the said trade unions shall have all the powers and duties of a trade union registered under this Decree."

to be registered "without any conditions whatsoever".

Finally, although *Section 37 of the Constitution of 1979* gives right to peaceful assembly and association, *Section 41* thereof provides that nothing in *Section 37* shall invalidate any law that is reasonably justifiable in a democratic society, in the interest, among others (see *Section 41(1)(a)*) of "public order."

The proliferation of trade unions clearly lends itself to chaos in labour circles - a fact which has the tendency of destabilizing society by its tendency to wild-cat strikes and work-stoppages called by all sorts of disparate and unviable trade unions. It is, therefore, in the interest of public order that systematized, cohesive and responsible trade unions be established, for the good of society.

Moreover, *Section 41(1)(b) of the Constitution* permits the enactment of a law which runs counter to *Section 37* if enacted

"for the purpose of protecting the rights and freedom of other persons."

An existing registered trade union has a vested right to cater for the interests of its members within its registered objects, rules and regulations. Such a registered trade union has a right - which the law courts should protect - that its organised labour be not thrown into confusion, to the detriment of its registered trade union, by mushroom unions, ostensibly aimed for the same purpose, springing up here and there. As is well known, many of those mushroom unions emerge after personality clashes in the leadership echelon.

each leader wanting, in most cases, to carve out an empire of his own.

The argument that the refusal of the Registrar to register the appellants could be, in this case, an infringement of *Section 37 of the 1979 Constitution* is, in my view, without merit.

For the above reasons and the wider reasons given by my learned brother, Kazeem, J.S.C., I would also dismiss this appeal, and hereby dismiss it, with N300.00 costs to the Respondent.

UWAIS, J.S.C.: I have had the opportunity of reading in draft the judgment read by my learned brother Kazeem, J.S.C., I agree that this appeal lacks substance and that it should be dismissed with N300.00 costs to the respondent. I have nothing to add.

OPUTA, J.S.C.: I have had the privilege of reading in draft the leading judgment just delivered by my learned brother Kazeem, J.S.C. I am in complete agreement with him that this appeal should be dismissed.

The Appellants applied to the Respondent on the 13th December 1980 to register "The Nigerian Unified Teaching Service Workers Union Later Renamed Nigerian Administrative Staff Union of Primary and Post Primary Schools" as a Trade Union. By letter No. ML.TU/IC/27/T/42 of 6th July, 1981, the Respondent refused to register the proposed Union and gave the reason for his refusal namely:-

"That there is already in existence a recognised Trade Union - The Non-Academic Staff Union of Educational and Associated Institutions, which caters for the class of people who now intend to form the new Union."

The present appellants then appealed to the Bendel State High Court against the Registrar's refusal to register their Union. Ikom, J. held:

- (a) That the decision of the Registrar of Trade Unions as contained in Exhibit "A" in this appeal is unconstitutional, invalid, null and void and of no effect.
- (b) That the refusal of the Registrar of Trade Unions to register the Nigerian Unified Teaching Service Workers Union constitutes an infringement of the fundamental rights of the Appellants as enshrined in Section 37 of the Constitution of the Federal Republic of Nigeria 1979 in so far as that Section affects trade unions."

And ordered:

- (a) I hereby:- set aside the decision of the Registrar of Trade Unions contained in Exhibit "A"
- (b) order that the Registrar of Trade Unions should forthwith register the Nigerian Unified Teaching Service Workers Union as a Trade Union."

The Registrar of Trade Unions then appealed to the Court of Appeal. In a leading judgment by Okagbue, J.C.A. (Omo-Ebo and Abai Ikwechegh, J.J.C.A. concurring) allowed the Registrar's appeal, observing that:-

"The former Military Regime brought order and sanity to the trade union movement of this country and I do not think it will be

in the interest either of the Unions or the public at large to reintroduce a free for all in the Trade Union Movement."

The present appellants aggrieved by the above decision of the Court of Appeal have now appealed to this Court on two grounds namely:-

1. That the learned Justices of Federal Court of Appeal erred in law in allowing the appeal despite the mandatory provisions of Section 5(2) of the Trade Union Act 1973 and Section 37 of the Constitution of the Federal Republic of Nigeria 1979.
2. That the learned Justices of the Federal Court of Appeal erred in law in allowing the appeal thereby misconstruing the provisions and tenet of Sections 37 and 41(1)(a) of the Constitution of the Federal Republic of Nigeria 1979."

The Court of Appeal Benin Division accurately summarised the bone of contention in this appeal:-

"The crux of the matter as I see it is whether the Registrar of Trade Unions was right in refusing to register the Union; whether or not he followed the prescribed procedure and whether or not the High Court was right in its ruling."

The main plank of the argument of Mr. Okeaya-Inneh S.A.N. on ground 1 is that the Respondent failed to comply with Section 5(2) of the Trade Union Decree now Act No. 31 of 1973. This sub-section stipulates:-

"5(2) The Registrar shall cause a notice of the application to be published in the Gazette, stating that objections to the registration of the trade union in question may be submitted to him in writing during the period of three months beginning with the date of the Gazette in which the notice is published."

It may now be relevant to inquire into the purpose that Section 5(2) above was designed to serve. The answer appears obvious from subsection 3 of the self same Section 5, namely:-

"5(3) Within three months after the end of the said period of three months the Registrar shall consider any objections submitted to him during the period and, *if satisfied* -

- (a) that no proper objection has been raised;
- (b) that none of the purposes of the trade union is unlawful; and
- (c) *that the requirement of this Decree and of the regulations with respect to the registration of trade unions shall have been complied with subject to subsection (1) above and to Section 6 of this Decree register the trade union and its rules.*"

In other words, the sole reason, for the publication and for calling for objections is to enable the Registrar to satisfy himself that he can register the union as a trade union. Under the existing law, that is Act No. 31 of 1973, this satisfaction is still "subject to subsection 1 above and to Section 6 of the Decree." The point being made here is that in addition to the satisfaction envisaged by Section 5(3) of Act No. 31 of 1973, the registration of a trade union is still subject to other provisions of the Trade Union Acts.

But Trade Union Act No. 31 of 1973 was amended by the Trade Union (Amendment) Decree now Act No. 22 of 1978 which became operative from 3rd August 1977. The appellants' application for registration dated 13th

A December 1980 will therefore be subject to the amended Trade Union Act No. 22 of 1978. Section 1(1)(a) of Act No. 22 of 1978 replaced the former Section 3 of the 1973 Act (No. 31 of 1973) with a new Section 3. The new Section 3(2) reads:-

B "3(2) No combination of workers or employers shall be registered as a trade union save with the approval of the Commissioner on his being satisfied that it is expedient to register the union either by regrouping existing trade unions, register a new trade union or otherwise howsoever; *but no trade union shall be registered to represent workers of employers in a place where there already exists a trade union.*" (the italics is mine).

C The new Section 3(2) above seems to be a statutory step forward against the erstwhile proliferation of Trade Unions. In fact the Preamble to the Bill for the Amended Act published in the Extraordinary Gazette of the Federal Republic of Nigeria Vol. 65 No. 6 of 8th February, 1978, as Government Notice No. 92, made it clear that the object was to prevent a proliferation of trade unions by drastically reducing their number from 277 to 71. This preamble, I agree, is not part of the Act. It can only be resorted to as an aid to interpretation where there is some difficulty in arriving at the meaning of the words of the Statute. Here, however, the new Section 3(2) of Act No. 22 of 1978 is clear. Therefore whether the Respondent published the application to register the appellants' trade union in the Gazette or not; whether he called for objection pursuant to Section 5(2) of Act No. 31 of 1973 or the new Section 3(2) introduced by Section 1(1)(a) of the Trade Union Act No. 22 of 1978, the Respondent must be satisfied that there is no existing union to cater for the interest of the workers in the place where it is sought to register the new union. It is my view that the statutory duty to refuse registration under Section 3(2) of the Trade Union Amendment Act No. 22 of 1978 far outweighed the procedural method of obtaining the Registrar's satisfaction envisaged in Section 5(2) of the Trade Union Act No. 31 of 1973. This ground of appeal fails.

The argument on Ground 2 was that the Respondent's refusal to register their proposed union violated the fundamental rights of the Appellants entrenched in Section 37 of the Constitution No. 25 of 1978. This section stipulates:-

"37. Every person shall be entitled to assembly 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 ...*" (the italics is mine).

One has to bear in mind that the rights guaranteed under Sections 34, 35, 37 and 38 of the 1979 Constitution are "qualified rights". They are not absolute rights. They are subject "to 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 people."

Now that right to assemble freely, to associate with other people and to form political parties or trade unions no doubt exists. But the freedom to exercise that right is an entirely different thing. That freedom exists within

and not outside all existing and relevant laws. Under Section 41(a) of the same 1979 Constitution No. 25 of 1978, laws can be made curtailing the rights to associate and form trade unions under Section 37. One has been made - Act No. 22 of 1978 which introduced the new Section 3(2) which stipulated that "no trade union shall be registered to represent workers or employers in a place where there already exists a trade union." The onus is now on the appellants to show that the Trade Union Act No. 22 of 1978 is not reasonably justifiable in a democratic society in the interest of public order, etc. The argument in the Appellants' Brief as it relates to Section 41 of the 1979 Constitution was quite scanty. Mr. Nwadialo, S.A.N., for the Respondent, on the other hand, discussed the history behind the promulgation of the Trade Union Act of 1978 and submitted that it was in the public interest to bring a little order into the Trade Union structure and activities in the country. The reorganisation undertaken was quite salutary. I agree that sanity and public order was served by instilling a little discipline into the rank and file of the Trade Union Movement:- *D.P.P. v. Chike Obi* (1961) All N.L.R. 186 per Ademola, C.J.F. at p. 196. I do not subscribe to the view - which was not even argued with any enthusiasm by learned counsel for Appellants - that Section 1(1)(a) of the Trade Union Act No. 22 of 1978 is ultra vires, unconstitutional and void. That being so, the second ground of appeal fails. As both grounds have failed, the appeal itself fails and should be dismissed. For all the reasons given above and for the fuller reasons in the leading judgment of my learned brother Kazeem, J.S.C., I too will dismiss the appeal with N300.00 costs to the Respondent.

*Appeal Dismissed
Decision of the
Court of Appeal affirmed*