CHANGING ATTITUDES-FOREIGN LITIGATION IN THE NIGERIAN COURTS.

One of the most frequently asked questions by foreign litigants is whether in the Nigerian courts in proceedings in which the other party is a Nigerian. In other words to what extent is local sentiment decisive? Past experience has often revealed a mixed reaction but current experience is to the effect that local sentiment plays an increasingly negligible role.

Two cases emanating from the Court of Appeal demonstrates this tendency. The first is the case of Jimi Oduba –V- C.V. Scheepy Aartibdernment Raamgracht & Anor. Judgment was delivered on the 1st of June 1994 and confirmed by the Supreme Court on the 16th of May 1997.

The Plaintiff, a ship owner filed an action in the High Court against the defendant, a legal practitioner, claiming a declaration that the sum of 283,677.84 British pounds and USD34, 487.83 paid to the defendant professional fees was made under duress having being paid as a precondition set by the defendant for the release from arrest of its ship – the

M.V REAL ENGRACHT. The Defendant applied to curt for security for costs to the tune of USD84, 279.76. The basis of this sum was founded on his oath that he required 22 witnesses in proof of his case. The learned trial Judge in an unprecedented exercise of discretion granted the entire sum. The plaintiff appealed against this decision and the Court of Appeal in overturning it observed as follows:

"It is also important to observe that although the amount of security to be awarded must be fair and just having regard to all the circumstances of the case, it cannot be the practice of courts to order such an amount that may appear to be on a full indemnity basis. In this case, the learned trial Judge ordered as security for costs, the whole amount which the Respondent estimated to be his expenses for calling the 22 witnesses from abroad. This is not guided by any law and is not an equitable decision. The trial Judge has not in my view exercised his discretion judicially in this matter.
The action of the learned trial Judge will in my respectful view create a false impression in the minds of all foreigners that according to the machinery of justice in this country, a foreigner who puts up a claim in our courts can only be allowed to prosecute his claim, if he pays to the curt an amount equivalent to what he is claiming. This is rather unfortunate. This is in fact not so, has never been so, and it is hoped that it would never be so. The effect of this wrong impression would be to discourage the foreigner from suing thereby stifling his claim, which may be genuine…"
(Emphasis mine)

The Court of Appeal and Supreme Courts' decision validated the principle in our legal system that cost are not founded on an indemnity basis but on a discretionary basis of reasonableness and more significantly upheld the principle that justice in the Nigerian courts is administered fairly.

The second case was the Court of Appeal's decision in COKER –V- UBA PLC (1997) 2 NWLR PT. 486 AT P. 226 which enumerated the circumstances in which a party would be restrained from prosecuting a matter in a foreign jurisdiction against such party.

The appellant was an employee of the respondent, a Nigerian bank, serving in the New York branch. He was recalled to Nigeria to explain some serious anomalies discovered in his running of the branch. He asked and was granted leave of 60 days. In the meantime he resigned his appointment. The Bank took steps to dismiss him. He brought proceedings for wrongful dismissal in which he claimed substantial damages against the bank in the Lagos High Court.

suffered as a result of the fraudulent and/or improper manner in which the appellant managed its business. He obtained an injunction in the High Court restraining the respondent from continuing to prosecute the case filed against him in New York.

The court of Appeal in an appeal lodged by the respondent discharged the injunction. The appellant then appealed to the Supreme Court against the decision of the Court of Appeal and in the interim asked the Court of Appeal to restrain the respondent from taking further steps in the prosecution of the suit against him in New York pending determination of the appeal by the Supreme Court.

The facts relied on by the appellant in seeking this injunction are as follows:

- He has no funds to defend himself in New York.
- The cost of retaining an attorney in the U.S. has been phenomenal and oppressive to him.
- He has now resorted to borrowing money from relations in order to retain an attorney to defend him in the New York action.

- He can adequately defend himself in Nigeria if the claim in New York is filed in Nigeria.

The respondent on the other hand deposed that:

  - The proceedings in New York were brought under the Racketeering Influence and Corrupt Organizations Act applicable in the United States.
  - Any restraining action might lead to the action being dismissed in New York and it faces the risk of having a statute barred action in that event.

The Court of Appeal opined that its discretion was to be guided generally by the consideration of substantial justice and specifically by the following:

i) The burden is on the defendant to show that an injunction to restrain proceedings is necessary.

ii) Mere balance of convenience is not a sufficient ground for depriving a plaintiff of the advantages of prosecuting the action in the foreign court if it is other wise properly brought.

iii). In order to justify a stay, two conditions must be present:

- The defendant must satisfy the court that the continuance of the action would work an injustice because it would be oppressive or vexatious to him or would be an abuse of the process of the court in some other way; and
- The stay must not cause injustice to the plaintiff.

It concluded that since the essential reason for the injunction was the impecuniosity of the appellant in defending the New York action; it was not a sufficient reason to warrant an injunction particularly when juxtaposed to the respondent who faced the risk of having its suit statute barred.

Again, the concluding observations of the Court of Appeal in this case epitomizes the current philosophy of even-handed justice:

"*The action in New York is taken on the basis of an allegation that the applicant caused a loss of about USD52 Million. Shall the court shut its eyes to this*

alleged gargantuan loss and hide its head like an ostrich as though the action in New York is a mere pittance or pretend in the altar of skewed patriotism make the order sought. I find it difficult not to associate myself from an uneasy reeling that the court has a great responsibility in not only being clear in the application of the law which will show people doing business with Nigerians but also the world at large that we have a legal system nay a crop of Judges who can rise above banal sentiment and mete out justice that is to be accorded recognition and respect in all foreign jurisdictions." (Emphasis mine)

CONCLUSION

It can be safely assumed that the days of anxiety regarding parity of treatment in international commercial litigation are fast receding. Nigerian courts have made a conscious effort to ensure that the standard of justice is of universal quality. This is good for the development of the law and should be encouraged.

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