



Practical reflections on the capacity of business names to contract, sue and be sued in Nigeria

Introduction

In Nigeria, two major forms of business are popular¹ – business names (sole proprietorship and partnership) and registered companies in their various forms. The form under which a business operates has multiple implications in business law. This is especially so when it comes to contractual dealings and resolving disputes arising from such contracts. Traditionally, while businesses established as companies can contract, maintain legal actions, own properties and act independently of their ‘owners’, different considerations apply to business names. Therefore, it is always crucial for business owners as well as well those who deal with them to understand the nature and limitations of the various forms of business when engaging in contractual relationships to safeguard their interests.

In most jurisdictions, as the right to seek redress for breaches is inextricably tied to contracts, registered business names often enter into contracts through and in the name of their

¹ Under the Companies and Allied Matters Act 2020, we have limited partnership and limited liability partnership. However, these two forms of business are not common.

owners/proprietors because of the notion that, unlike registered companies, registered business names are not independent of their owners, do not have juristic personality and thus when a dispute arises from a contract, they cannot sue and be sued. However, there now appears to be a deliberate effort to move away from this paradigm. As the jurisprudence on corporate law continues to develop, there is now an increasing recognition of the capacity of business names to do certain things they could not do before in their registered names. Most notable among these are: the ability to enter into valid contracts and the legal capacity to sue and be sued in their registered names. To be sure, in *Ataguba v Gura (Nig.) Limited*,² the Supreme Court held that business names can maintain an action in court where the right to do so is conferred by statute, and in its recent decision in *Attorney-General of Bayelsa State v Abang Odok*,³ the Court took the view that business names can now enter into valid and enforceable contracts in their registered names.

Interesting as these decisions may appear, they clearly have thrown up the question of whether this recognition of the right of business names to contract and maintain legal actions in their registered names does not translate to a tacit recognition of their independence. This article seeks to examine this issue in light of recent decisions of the Nigerian Supreme Court. In doing this, an attempt will be made to establish whether the rights of business names to contract and to maintain legal actions in their registered names do not amount to creating a leeway for their hitherto elusive independence.

[The concept of distinct personality and the capacity of business names to contract](#)

The absence of independence and distinct personality in registered business names is of great antiquity. In virtually all jurisdictions around the world, registered business names are hardly conferred with distinct, juristic and independent personality. For instance, in England, Wales and Northern Ireland, with legal systems similar to ours, a partnership has no separate legal identity, so it cannot own assets or enter into contracts in its own right. The partners own the assets and are personally liable for contracts entered into by the partnership and any debts owed by the partnership. A partnership can sue or be sued in its name. However, the partners are personally liable if the court gives a judgment against the partnership.⁴

² (2005) 8 NWLR (Pt. 927) 429.

³ (2024) LPELR – 63035 (SC).

⁴ MyLawyer blog, 'The Basics' <<https://www.mylawyer.co.uk/the-basics-a-A76058D76482/#-text-A-partnership-can-sue-or-view-to-making-a-profit>> accessed 20 January 2025

In the same fashion, in Nigeria, business names are not distinct from their owners even though they are registered and legally recognised as business entities. This is because the law does not intend to create an artificial person in business names as it were in the case of companies but to give persons the opportunity to carry on business in a name other than their true surnames and forenames.⁵ In other words, despite using a business name, the owner is still personally responsible for all aspects of his business, including contracts consummated by or on behalf of the business. Therefore, the legal obligations and liabilities arising from such contracts are ultimately the owner's personal responsibilities.

AG, Bayelsa State v Abang Odok

Given the absence of a distinct identity and juristic personality for business names, over time, many have taken the view that a business name should not enter into a contract since it lacks the legal capacity to sue and be sued. However, the recent decision of the Supreme Court in *Attorney-General Bayelsa State v Abang Odok*, appears to have changed the narrative. In that case, the Appellant contended at the Supreme Court that the Consultancy Services Agreement under which his government recovered huge sums of money from various Federal Government agencies through the Respondent was null and void having been entered into by Abang Odok-Ogar & Co., a business name which cannot contract. The Appellant then called on the Court to set aside the arbitral award and the decisions of the High Court of the Federal Capital Territory as well as the Court of Appeal upholding the arbitral award made in favour of the Respondent on the ground that the arbitral award was founded on an arbitration agreement which was executed by a business name not recognisable in law and by the Court. The Supreme Court was not swayed by the argument of the Appellant and consequently, discountenanced it.

From the judgment, the reasons for the decision of the Supreme Court are simple. First, the decisions in *SLB Consortium Ltd v NNPC*⁶; *The Nigerian Army v Samuel & Ors.*⁷ and *Nweke v Okafor*⁸ relied upon by the Appellant in canvassing his argument all questioned the validity of court processes signed by law firms as against the legal practitioners permitted by Section 2(1) and 24 of the Legal Practitioners Act to sign them. In none of the decisions was the issue of entering a contract by a business name raised. The authorities heavily relied upon by the Appellant were thus inapplicable.

⁵ This right is recognised in Nigeria by Sections 814(1) and 863(1) of the Companies and Allied Matters Act, 2020.

⁶ (2011) 9 NWLR (Pt. 252) 317

⁷ (2013) 14 NWLR (Pt. 1375) 466

⁸ (2007) 10 NWLR (Pt. 1043) 521

Secondly, the Supreme Court considered the meaning of “business name” as provided by section 588 of the Companies and Allied Matters Act⁹ now Section 868(1) of the Companies and Allied Matters Act 2020. In this section, business name is defined as a name under which any business is carried on, either by an individual, firm or a corporation. On the premise of this definition, the Court opined that if a business name is registered for the purposes of carrying on business and business is carried on by agreements, it thus makes no sense for anyone to contend that business names cannot execute valid contracts in their registered names.

Another reason the Court jettisoned the argument of the Appellant was the Appellant’s inclination to technicality. In the Court’s view, the argument of the Respondent was an invitation to return to crass technicality which the Court could not be compelled to accede to. In the wordings of the Court, “... the heydays of technical justice are over”. Perhaps, the more telling reason the Court refused to be swayed by the arguments of the Appellant was the fact that the Appellant, who had taken benefit under the contract, was now seeking to avoid its obligation under the contract by deploying technicalities to deprive the Respondent the fruit of his labour. This position is time-honoured and immutable.

It is noteworthy that the attempt to recognise the capacity of business names to carry on business in their registered names was first mooted two years earlier in the dissenting judgment of the Honourable Justice Agim, JSC in *Network Securities Limited v Dahiru*.¹⁰ However, not only was it a dissenting decision which has no force in law but it was also a passing comment since the decision dealt primarily with the validity of a court process signed by a firm of legal practitioners.

Notwithstanding the position of the Supreme Court in *Attorney-General of Bayelsa State v Abang Odok*, it does not appear that the time-honoured rule on the absence of distinct and independent personality for business names has been eroded. In fact, the principle was further reinforced as it is now clear that any contract entered into by a business name, whether in its registered name or in the name of its owner(s), is valid and enforceable. In other words, no contract will be invalidated simply because it was executed by an individual using his business name or the name of the owner; it is the owner that is contracting and it is the same person that will be ultimately held liable for anything done or not done under the contract. This is perhaps why the Supreme Court, after validating the Consultancy Services Agreement made by Abang Odok-Ogar & Co., did not comment on the competence of the action brought against Abang Odok because they are one and the same person.

⁹ Cap C20, Laws of the Federation of Nigeria 2004.

¹⁰ (2022) 14 NWLR (Pt. 1840) 351 at 379 -380, paras. H-B.

Another thing that jumps out of the foregoing is that one can elect to either use one's registered business name or one's name trading under the business name to enter into contractual relationships.

The capacity of business names to sue and be sued in their registered names

By a plethora of judicial authorities, it has been held that a person carrying on business in a name or style other than his own name can only bring an action in his own name and not in the name or style under which he is carrying on business. In the same vein, actions cannot be brought against a business name as only its owner cannot be sued. This principle proceeds on the premise that business names are not juristic persons who can sue and be sued.¹¹ On this score, several suits have been thrown out by the courts on the ground that they have been brought by or against business names.

Nevertheless, it would appear from the positions espoused in some recent decisions that this principle is being gradually pushed into oblivion as business names can now sue and be sued where such capacity is conferred by an enabling law. This position was clearly elucidated almost two decades ago by the Supreme Court in *Ataguba & Co. v Gura (Nig.) Ltd*,¹² where it was held as follows:

"In the instant case, the appellant on record, sued by the firm's name, is not a juristic person capable of suing or being sued in the firm's name but it could have that capacity if there is an enabling law. In this regard, the applicability of Order 11 rules 9 and 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987, needs to be examined."

At page 447, paras. C-D, the Court continued:

"It is plain to me that from the above averments, it is reasonable to assume that the firm of Ataguba and Company consists of and/or is run by more than one person to entitle the respondent to maintain the action in the name of the firm pursuant to Order 11 rule 9 of the Kaduna State High Court (Civil Procedure) Rules, 1987. But even if it is suggested that the firm is a one man business, the suit in the name of the firm is authorised under rule 26 of the said Order 11. It is, therefore, my view that even though the firm "Ataguba and Company" is not a juristic person, it is suable eo nomine by virtue of Order 11 rule 9 or 26 of the Kaduna State High

¹¹ *Shittu v Ligali* (1941) 16 NLR 21; *Agbonmagbe Bank Ltd. v General Manager, G.B. Ollivant Ltd.* (1961) All NLR 116 and *Emenike Mbanugo & Co. v FBN Plc* (2014) 16 NWLR (Pt. 1434) 621 at 638, paras. C-E (CA).

¹² At page 445 – 446, paras. H-A (SC).

Court (Civil Procedure) Rules, 1987. The appellant's contention to the contrary, is misconceived and baseless as rightly conceded to by learned counsel who represented the appellant in court when the appeal was being heard."

From the above, it is clear that the right to sue and be sued, once conferred on business names by a statute, even if it is a subsidiary instrument like the Rules of Court, the general rule would be suspended, and the Court would entertain the matter. This position is not an isolated case as even in jurisdictions like England, Wales and Northern Ireland, a partnership can sue and be sued, and the partners are personally liable if the court gives a judgment against the partnership.¹³

Be that as it may, a closer examination of the decision of the Supreme Court and Order 11 Rule 26 of the Kaduna State High Court (Civil Procedure) Rules, 1987 dealt with, will show that the right to sue in the registered name of a business is not extended to a sole proprietorship business. It is only the right to be sued in the registered business name that is conferred on a sole proprietorship. In other words, a sole proprietor can only be sued in his registered business name but cannot sue in his registered business name.

It is also worth mentioning that while the above cited authority creates the impression that only a narrow window is provided for the legitimisation of actions by or against business names, an inductive analysis shows that the decision has established a new paradigm as virtually all the civil procedure rules of Courts in Nigeria contain provisions which are similar to Order 11 Rules 9 and 26 of the High Court of Kaduna State (Civil Procedure) Rules 1987.¹⁴

What this decision also brings to light is that, contrary to previously held popular view, the right of action against business names had not been prohibited all along. It is however not clear if this right to sue and be sued by business names will apply to proceedings before arbitral panels since they are not guided and bound by the Rules of Court. The decision in *Attorney-General of Bayelsa State v Abang Odok*, which arose from arbitration proceedings, and which could have helped in this regard, only stopped at recognising the right of business names to contract. It does not provide any guidance on the rights of business names to sue and be sued in court or undertake proceedings before an arbitrator or an arbitral panel. Nevertheless, it may be argued that if business names can undertake proceedings in Court, the same right should ordinarily avail them

¹³ MyLawyer blog, 'The Basics' <<https://www.mylawyer.co.uk/the-basics-a-A76058D76482/#-text-A-partnership-can-sue-or-view-to-making-a-profit>> accessed 20 January 2025

¹⁴ See Order 15 Rules 24 and 28 of the High Court of Rivers State (Civil Procedure) Rules 2023; Order 9 rules 26 and 30 of the Federal High Court (Civil Procedure) Rules, 2019, etc

more in proceedings before arbitral panels which operate under more relaxed rules and atmosphere.

Also, like the right to contract, the right of business names to sue and be sued does not in any way change the fact that they do not have a distinct identity. The principle that business names lack distinct identity remains immutable. The decisions analysed here only established, in the case of partnerships, the right of the partners to elect to either sue in the partners' own names or in their business' name and in the case of sole proprietorships, the right to sue the owner either in the owner's name or in the name and style in which he carries on business.

The above notwithstanding, it is safer and recommended that when entering a contract or considering a legal action by or against a business name, to commence with the name of the business owner followed by "trading as or under the name and style ..." or any similar notation required or recommended in one's jurisdiction. For example, "Samuel Tsado, trading under the name and style Samuel Tsado & Co." or "Samuel Tsado, trading as Samuel Tsado & Co." There is yet to be any law in Nigeria, statutory or judicial, that forbids this practice.

Conclusion

This article reflects on the gradual shift in the paradigm as it relates to the capacity of a business name to contract or sue and be sued in the event of a breach. It depicts a commendable effort by the Nigerian superior courts to bring the country up to speed with global trends in procedural regimes. As has been made clear, even though the principle that business names do not have a distinct identity has not been thrown overboard, a business name can indeed function as a vehicle for contractual relationships, subject to proper registration and adherence to legal guidelines. In the same vein, a business name, with the exception of sole proprietorships which can only defend an action in their registered business names, can maintain an action in court while the owner is held liable in the event of an adverse decision. Therefore, while business names continue to have a fused identity with their owners when it comes to entering into contractual relationships or maintaining an action, each can act validly, except a sole proprietorship that can only be sued in its registered name but cannot sue. Subject to the exception highlighted, the rights to contract and to sue and be sued are therefore matters of choice both for the business names/owners and those that deal with them.

Overall, no contract will be invalid by reason of it having been entered into by a business name, the same way no action instituted by or against a partnership or instituted against a sole proprietor's registered business name is incompetent merely because the business owner's name is not mentioned. Notwithstanding, it is safer to commence with the name of the business owner

followed by "trading as or under the name and style ..." or any similar notation required or recommended in one's jurisdiction.

Note: This article does not constitute a legal advice. For proper legal advice or inquiries on the issues raised in this article or other general enquiries relating law practice in Nigeria, please contact Aret & Bret LLP at ab@aret-bret.com. You can also reach out to the author:



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