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**ANALYSING THE COURT'S JUDGEMENT ON SINGLE SHAREHOLDER STRUCTURES FOR  
PRE-CAMA 2020 COMPANIES. – MR. WILLIAMS CHIMAROKÉ ADELE (LL. B)**

## **ANALYZING THE COURT'S JUDGEMENT ON SINGLE SHAREHOLDER STRUCTURES FOR PRE-CAMA 2020 COMPANIES.**

***Re: Suit No: FHC/ABJ/CS/665/2023: Primetech Design & Engineering Nigeria Limited and Julius Berger Nigeria Plc v. Corporate Affairs Commission delivered by the Federal High Court, Abuja on July 30, 2024 (unreported).***

***Written by Mr. Chimaroke Williams Adele***

### **INTRODUCTION**

The enactment of the Companies and Allied Matters Act 2020 ("CAMA") represented a landmark reform in Nigeria's corporate regulatory landscape, aimed at significantly enhancing the ease of doing business in the country. CAMA introduced several key changes designed to streamline business operations, reduce bureaucratic hurdles, and foster a more efficient corporate environment.

Among the notable reforms in CAMA is the provision allowing private companies to operate with a single shareholder, which is a shift from the previous requirement of multiple shareholders. However, the Corporate Affairs Commission ("CAC") had a restrictive stance on single shareholder of private companies incorporated before the enactment of CAMA 2020. The CAC's attitude was based on the interpretation that Section 18(2) of CAMA, which allows private companies to operate with a single shareholder, applied only to companies incorporated under the CAMA framework.

In a significant legal development, Primetech Design & Engineering Nigeria Limited ("Primetech") and Julius Berger Nigeria Plc ("Julius Berger") have challenged CAC over its refusal to approve a share transfer that would designate Julius Berger as the sole shareholder of Primetech. This was revealed in Suit No: FHC/ABJ/CS/665/2023: Primetech Design & Engineering Nigeria Limited and Julius Berger Nigeria Plc v. Corporate Affairs Commission delivered by the Federal High Court, Abuja on July 30, 2024 (unreported). The dispute centres on the interpretation and application of Section 18(2) of CAMA, which permits single shareholder structures for private companies. The CAC denied the application, arguing that this provision applies only to companies incorporated under CAMA and that such a transfer could potentially lead to the company's dissolution under Section 571(c) of CAMA. The plaintiffs dispute this interpretation, asserting that CAMA should be applied to all private companies regardless of their date of incorporation.

Primetech and Julius Berger argue that Section 18(2) of CAMA should be interpreted as applying to all private companies, irrespective of their date of

incorporation. They assert that this interpretation aligns with CAMA's legislative intent to modernize and simplify business operations in Nigeria. They contend that restricting this provision to companies incorporated under the new statute creates an unfair distinction and effectively revives outdated provisions from the repealed CAMA 1990. They point to Section 118 of CAMA to emphasize that the statute was designed to facilitate ease of doing business by allowing private companies to have a single shareholder while excluding public companies and companies limited by guarantee.

In contrast, the CAC maintained that Section 18(2) of CAMA 2020 applied only to companies incorporated after the enactment of the statute. The CAC argued that CAMA 2020 did not have retroactive effect regarding sole shareholding and that statutes generally applied prospectively unless explicitly stated otherwise. The CAC also referenced Sections 18(1) and 571(c) of CAMA, suggesting these provisions mirrored those from the repealed CAMA 1990 and implied that companies incorporated before CAMA 2020 should continue with multiple shareholders. According to the CAC, extending Section 18(2) to pre-CAMA companies would disrupt the existing regulatory framework and contradict the legislative intent.

### **DECISION OF THE COURT**

The Federal High Court decided that the CAC's refusal to approve the single shareholder structure was discriminatory and contrary to the purpose of CAMA. The Court emphasized that Section 18(2) of CAMA applied to all private companies, irrespective of their incorporation date, and that the provisions of the repealed CAMA 1990 were no longer relevant. This decision highlights the Court's interpretation that the new statute's provisions should uniformly apply to both new and existing private companies, facilitating easier business operations as intended by the legislature.

The Court further clarified that restrictions on single shareholder structures should only be enforced if explicitly stipulated in a company's Memorandum and Articles of Association. The Court also noted that the personal liability provisions for operating with fewer than two members applied solely to public companies and companies limited by guarantee, and not private companies.

The Court found that the CAC's reliance on Section 571(c) was misplaced and directed the CAC to accept the share transfer instrument that designated Julius Berger as the sole shareholder of Primetech. The CAC was ordered to update its records in the Companies Registration Portal (CRP) accordingly.

## KEY CONSIDERATIONS

1. **Uniform Application of CAMA:** The Judgement underscores the principle that CAMA's provisions should apply uniformly to all private companies, regardless of their incorporation date. This ensures that businesses benefit from the modernized regulatory framework intended to simplify corporate governance.
2. **Retrospective Effect of Legislation:** The Court's decision clarifies that CAMA does not have a retrospective effect unless explicitly stated. This principle is crucial for ensuring legal certainty and consistency in the application of new laws.
3. **Regulatory Flexibility:** The decision provides greater flexibility for private companies, allowing them to adopt a single shareholder structure if desired. This aligns with the broader objective of easing business operations and reducing regulatory burdens.
4. **Impact on Existing Companies:** By Judgement that the repealed CAMA 1990 provisions is no longer applicable, the Court's decision helps to eliminate confusion and potential conflicts between old and new regulatory frameworks. This is important for maintaining legal clarity and operational consistency for existing companies.
5. **Future Appeals:** While the CAC retains the option to appeal the decision, the current Judgement mandates that the CAC comply with the Court's order until the Appeal Court sets aside the decision of the Federal High Court. This ensures that companies can proceed with share transfer filings and operate under the updated regulatory framework.

## CONCLUSION

The Federal High Court's decision represents a significant clarification regarding the applicability of Section 18 of CAMA 2020, providing a more consistent and streamlined approach to corporate governance. It removes previous barriers for pre-CAMA companies seeking to transition to a single shareholder structure and ensures that the benefits of CAMA are extended to all private companies. The judgment reinforces the uniform applicability of the statute and rejects the notion that provisions from the repealed CAMA 1990 should impede the modernization goals of CAMA 2020. While the CAC may still appeal, the current decision obligates compliance with the Court's directive, thus advancing the objective of simplifying and improving the business environment in Nigeria.